



CONTEMPORARY ISSUES IN ISLAMIC FINANCE

FROM YOUTH PERSPECTIVE

BY

CLASS OF 2023 LLB AND SHARIAH (HONS.)

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ISLAMIC FINANCE

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ISLAMIC FINANCIAL PLANNING: WHY IT'S IMPORTANT

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ISLAMIC FINANCIAL PLANNING: WHY IT'S IMPORTANT

Financial planning is essential for the well-being of individuals and families in their daily lives, as financial decisions have consequences for their life and family. In order to achieve Shariah's goals, Muslims are encouraged to plan their economic and financial lives. The intention to conduct Islamic financial planning is based on shariah¹ and must align with the application of Maqasid Shariah, which emphasizes the protection of Muslims' essential needs, which includes wealth preservation.² Consequently, Islamic financial plans help people save, invest, and transfer money, like conventional financial plans. Islamic financial management may achieve short and long-term goals because it is founded on Islamic principles.³

Islamic financial planning is heavily influenced by the concept of Islamic finance in our country, as it is based on Islamic concepts and a theoretical framework. In Islam, Allah SWT is the source of all blessings and resources, and the wealth belongs to Allah SWT. Muslims must acquire wealth in accordance with Islamic teachings and use it for proper purposes.⁴ One of the primary concepts of Islamic financial planning is that it is regarded as an act of worship (ibadah). Man has to plan in order to face adverse events in life.⁵ Besides, any Islamic financial planning will be subject to shariah screening, and if there are any Shariah-incompliant assets or financing, options to dispose of the assets or refinance with Shariah-compliant financing products must be considered.⁶

¹ Financial Planning Association of Malaysia & Islamic Banking and Finance Malaysia. 2009. *Islamic Financial Planning: A Brief Introduction*. Kuala Lumpur: Financial Planning Association of Malaysia (FPAM).

² Amalina Abdullah & Junaina Muhammad. 2013. "Ethical Values in Islamic Financial Planning (Nilai-nilai Etika dalam Rancangan Kewangan Islam)". *Jurnal Pengurusan* 38. Selangor: (Faculty of Economics and Management, Universiti Putra Malaysia). October. pp. 133.

³ Dr. Ismah Osman. 22 November 2021. "Islamic Financial Management- A Brief Guide". *Ethics.co*. https://ethis.co/blog/islamic-financial-management-brief-guide/#In_conclusion.

⁴ Amalina Abdullah & Junaina Muhammad. 2013. "Ethical Values in Islamic Financial Planning (Nilai-nilai Etika dalam Rancangan Kewangan Islam)". *Jurnal Pengurusan* 38. Selangor: (Faculty of Economics and Management, Universiti Putra Malaysia). October. pp. 135.

⁵ Zurina Shafii, Safeza Mohd Sapian & Mahadzir Ahmad. 2008. "Using Activity Approach and Analytical Hierarchy Process in Comprehensive Islamic Financial Plan Construction". *The Journal of Muamalat and Islamic Finance Research*. Vol.5 No. 1. pp. 158.

⁶ Zarinah Mohd Yusoff, Engku Rabiah Adawiyah Engku Ali & Habeebullah Zakariyah. 2021. "Islamic Financial Planning Towards Sustaining the Financial Wellbeing of Muslim Families in Malaysia Post Covid-19". *Tujise: Turkish Journal of Islamic Economics*. Vol. 8 (Special Issue). June. pp. 359.

Islamic finance and financial planning aim to preserve one of the five essential needs namely the preservation of wealth, which is interrelated to the preservation of religion. Thus, taking and consuming other people's property in a deceiving manner is strictly forbidden in Islam.⁷ Islamic financial planning is generally significant because it addresses the spiritual needs of Muslims. To achieve the good life in the Hereafter, Muslims must make adequate preparations and proper planning while living in this world and satisfy their spiritual needs.

According to Shariah principles, the owner of wealth is obligated to accumulate and develop his wealth through halal economic activities. Accordingly, he is able to provide for himself and his family without violating the rights of other people and society. In fact, all economic and financial transactions are permissible, with the exception of *riba* (usury), *maysir* (gambling), *gharar* (uncertainty), and the involvement of haram goods and services, as well as other prohibitions stated in the Qur'an and the Sunnah of the Prophet Muhammad (SAW).⁸

If Muslims continue to consume conventional financial products without regard for the prohibitions on *riba*, *maysir*, and *gharar*, the Islamic financial system will never be developed. Maintaining the conventional economic system is undoubtedly a sin for Muslims.⁹ Thus, the wealth protection element is designed to safeguard the accumulated funds, particularly in the event of unforeseen events such as accidents, critical illness, permanent disability, or death. *Takaful* service providers, which is a form of Islamic insurance, offer a variety of *Takaful* policy plans that are tailored to meet a variety of needs, thereby ensuring that each customer has the appropriate coverage.¹⁰

Moreover, the obligation of a Muslim to pay *zakat* implies the need to develop and grow wealth, such as through investment so that it does not deplete over time. Consequently, risk management is essential, and the necessary actions must be taken promptly and effectively.¹¹ The

⁷ Al-Qur'an. Al-Nisa 4:29.

⁸ Dr. Ismah Osman. 22 November 2021. "Islamic Financial Management- A Brief Guide". *Ethics.co*. https://ethis.co/blog/islamic-financial-management-brief-guide/#In_conclusion.

⁹ Yousuf Bashe Ahmed. 2001. *Determinant Factors of Awareness on Islamic Financial Planning among Students*. (Master Research Paper). Universiti Utara Malaysia. p. 7.

¹⁰ Dr. Ismah Osman. 22 November 2021. "Islamic Financial Management- A Brief Guide". *Ethics.co*. https://ethis.co/blog/islamic-financial-management-brief-guide/#In_conclusion.

¹¹ Amalina Abdullah & Junaina Muhammad. 2013. "Ethical Values in Islamic Financial Planning (Nilai-nilai Etika dalam Rancangan Kewangan Islam)". *Jurnal Pengurusan* 38. Selangor: (Faculty of Economics and Management, Universiti Putra Malaysia). October. pp. 136.

Islamic financial plan is practised not only for self-satisfaction but also to seek Allah's (SWT) blessings in this life and the hereafter. This can be performed through sadaqah (charity)¹² and infaq (spending) with no expectation of reward or return but primarily for the welfare of society and family, and with the sole aim of obtaining Allah's favour.¹³

Therefore, Muslims who follow these strategies, for instance, will only invest in Shariah-compliant investments and must make specific preparations for zakat and retirement.¹⁴ The Islamic financial system and products will then be further developed, resulting in a high rate of return for both the bank and its depositors. The division of Islamic financial planning and wealth management contributes significantly to the country's development into a high-income nation.¹⁵

Furthermore, Islamic financial planning is significant from a legal standpoint because, if people practise Islamic financial planning, the use of Islamic finance products will increase, leading to the growth of Islamic banking in Malaysia. This will necessitate additional legal and regulatory development that explicitly addresses the distinctive characteristics of Islamic banking and finance.

The Islamic Banking Act of 1989¹⁶, the Banking and Financial Institutions Act of 1989¹⁷, and the Takaful Act of 1984¹⁸ are the most important laws pertaining to Islamic banking and finance at the present time. Islamic banking law is still undergoing development and must be improved. To date, there has been no conclusive case that can serve as a precedent and guideline.¹⁹ This Islamic financial planning is not only available to Muslims, but also to non-Muslims, as it is based on the principles of profit-sharing, risk-taking, and trust.²⁰ With the increasing use of Islamic

¹² Al-Qur'an. Al-Baqarah 2:177.

¹³ Nor 'Azzah Kamri & Mohd. Zaidi Daud. 2011. "Islamic Wealth Management: A Review on The Dimension of Values". *Jurnal Syariah*. Jil. 19, Bil. 3. pp. 190.

¹⁴ Dr. Ismah Osman. 22 November 2021. "Islamic Financial Management- A Brief Guide". *Ethics.co*. https://ethis.co/blog/islamic-financial-management-brief-guide/#In_conclusion.

¹⁵ Yousuf Bashe Ahmed. 2001. *Determinant Factors of Awareness on Islamic Financial Planning among Students*. (Master Research Paper). Universiti Utara Malaysia. p. 7.

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¹⁹ Asst Prof Dr Rusni Hassan. 2006. "Championing the Development of Islamic Banking Law in Malaysia: Legal Issues and Remedies". *Lexis Nexis: Shariah Law Reports Articles (ShLRA)*; Championing the Development of Islamic Banking Law in Malaysia: Legal Issues and Remedies [2006] 4 ShLR i.

²⁰ Yousuf Bashe Ahmed. 2001. *Determinant Factors of Awareness on Islamic Financial Planning among Students*. (Master Research Paper). Universiti Utara Malaysia. p. 7.

financial planning, the existing Islamic banking industries will change, and the law governing Islamic banking will be modified accordingly.

In conclusion, financial planning has played a significant role in the well-being of individuals and family institutions worldwide as they can manage their wealth and safeguard it in accordance with Shariah's goals. A person should have a proper plan for all the property he owns to ensure that his wealth can be enjoyed indefinitely, whether for his own or others' benefit. Through Zakat, Sadaqah, Infaq, and Waqf, Islam also provides believers with opportunities to invest in the afterlife and the present world. Moreover, as the use of Islamic financial planning increases, it will undoubtedly have an impact on the economic, legal, and social development of Islamic banking. Malaysia will be prepared for this change, as the Malaysian government is committed to achieving its objective of becoming a leader in the development of Islamic banking and finance, and has taken consistent steps in this direction. Consequently, Islamic financial planning is a crucial tool for protecting wealth and sustaining the health of family institutions in Malaysia.

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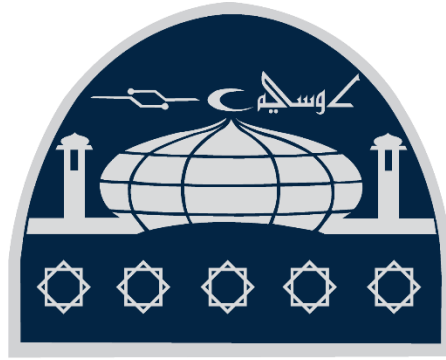
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LAB5153 KEWANGAN ISLAM (A221)

INDIVIDUAL ASSIGNMENT

TITLE: THE CHALLENGES OF ISLAMIC FINANCE INSTITUTIONS IN FACING
THE FINANCIAL CRISIS

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Islamic financial institutions (IFIs) have faced numerous challenges in the wake of financial crises. While some of these challenges are common to all financial institutions, others are unique to the Islamic finance industry. In this essay, the highlight is to examine the key challenges faced by IFIs in facing financial crises and how they can be addressed.

The first challenge faced by IFIs during financial crises is liquidity management. Ensuring adequate liquidity to meet customer demands during times of market stress is critical for the stability of the institution. This can be particularly challenging for IFIs, as they may have limited access to traditional sources of funding, such as interest-based loans. In order to address this challenge, IFIs must have a well-designed liquidity management plan that considers the unique characteristics of their business model. This may include the use of alternative sources of funding, such as sukuk or trade financing, as well as the implementation of robust risk management systems.

Another challenge faced by IFIs during financial crises is regulatory uncertainty. Navigating changing regulations and ensuring compliance with new rules can be difficult for any financial institution, but it can be particularly challenging for IFIs. This is due to the fact that Islamic finance is still a relatively new and evolving industry, and there may be a lack of clarity around the regulations that apply to IFIs. To address this challenge, IFIs must have a strong understanding of the regulatory environment in which they operate, and must be proactive in engaging with regulators to ensure that their operations follow all relevant rules and regulations.

A third challenge faced by IFIs during financial crises is market confidence. Maintaining customer confidence in the stability of the institution during a crisis is critical for ensuring the continued viability of the business. IFIs must have robust risk management systems in place to mitigate the impact of financial shocks, and must be transparent in their communications with customers. This can include regular updates on the financial performance of the institution, as well as a commitment to maintaining the highest standards of ethical behaviour.

Balancing the requirement to comply with Shari'ah principles with the need to remain financially viable is a fourth challenge faced by IFIs during financial crises. Shari'ah compliance is a fundamental aspect of Islamic finance, and IFIs must ensure that all of their operations are in line with these principles. However, this can be challenging during times of financial stress, when the pressure to maintain profitability may lead to a compromise on Shari'ah compliance. To address this challenge, IFIs must have a clear understanding of the

Shari'ah principles that apply to their operations, and must be proactive in seeking guidance from Shari'ah scholars on how to maintain compliance in the face of financial challenges.

Managing risk effectively, including credit, market, and operational risk, is a fifth challenge faced by IFIs during financial crises. The complexity of Islamic finance products and the lack of standardization in the industry can make it difficult to measure risk accurately, and to respond effectively in times of stress. To address this challenge, IFIs must have a robust risk management framework in place, and must regularly assess and update their systems to ensure that they are able to effectively manage risk.

Competing with conventional financial institutions that have more established and well-developed infrastructure is a significant challenge for IFIs during financial crises. Conventional financial institutions may have a greater range of products and services, as well as more established networks and distribution channels, which can make it difficult for IFIs to compete. To address this challenge, IFIs must focus on developing their own unique value proposition, and must differentiate themselves from conventional financial institutions through their commitment to Shari'ah compliance, ethical behaviour, and socially responsible investing.

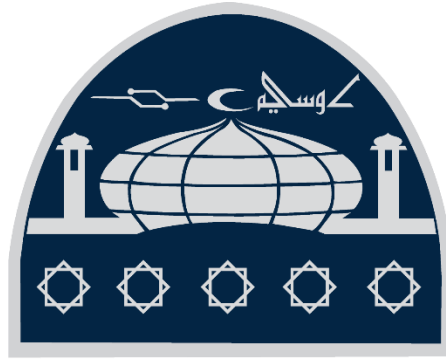
Another challenge faced by IFIs during financial crises is the lack of standardization in the industry. This can make it difficult to measure risk accurately, and to compare different Islamic finance products and services. To address this challenge, there is a need for greater standardization in the industry, including the development of common definitions, methods for measuring risk, and guidelines for product development.

Finding alternative sources of funding, given the limitations on interest-based financing, is a further challenge faced by IFIs during financial crises. This can make it difficult for IFIs to secure sufficient funding to support their operations, especially during times of market stress. To address this challenge, IFIs must look for alternative sources of funding, such as sukuk or trade financing, and must be proactive in engaging with regulators to ensure that their operations are following all relevant rules and regulations.

Expanding into new markets and geographies, where Islamic finance is less established, is the final challenge faced by IFIs during financial crises. This can be challenging due to the lack of understanding and familiarity with Islamic finance in these markets, as well as the need to navigate different regulatory and cultural environments. To address this challenge, IFIs must have a clear understanding of the local market, and must be proactive in engaging with local

stakeholders, including regulators, customers, and the wider community, to build awareness and support for Islamic finance.

In conclusion, the challenges faced by Islamic financial institutions during financial crises can be significant, but there are also several potential solutions that IFIs can implement to address these issues. By focusing on their commitment to Shari'ah compliance, standardization, alternative funding sources, and market expansion, IFIs can not only overcome these challenges but can also grow and expand their operations both domestically and internationally.



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The first challenge faced by IFIs during financial crises is liquidity management. Ensuring adequate liquidity to meet customer demands during times of market stress is critical for the stability of the institution. This can be particularly challenging for IFIs, as they may have limited access to traditional sources of funding, such as interest-based loans. In order to address this challenge, IFIs must have a well-designed liquidity management plan that considers the unique characteristics of their business model. This may include the use of alternative sources of funding, such as sukuk or trade financing, as well as the implementation of robust risk management systems.

Another challenge faced by IFIs during financial crises is regulatory uncertainty. Navigating changing regulations and ensuring compliance with new rules can be difficult for any financial institution, but it can be particularly challenging for IFIs. This is due to the fact that Islamic finance is still a relatively new and evolving industry, and there may be a lack of clarity around the regulations that apply to IFIs. To address this challenge, IFIs must have a strong understanding of the regulatory environment in which they operate, and must be proactive in engaging with regulators to ensure that their operations follow all relevant rules and regulations.

A third challenge faced by IFIs during financial crises is market confidence. Maintaining customer confidence in the stability of the institution during a crisis is critical for ensuring the continued viability of the business. IFIs must have robust risk management systems in place to mitigate the impact of financial shocks, and must be transparent in their communications with customers. This can include regular updates on the financial performance of the institution, as well as a commitment to maintaining the highest standards of ethical behaviour.

Balancing the requirement to comply with Shari'ah principles with the need to remain financially viable is a fourth challenge faced by IFIs during financial crises. Shari'ah compliance is a fundamental aspect of Islamic finance, and IFIs must ensure that all of their operations are in line with these principles. However, this can be challenging during times of financial stress, when the pressure to maintain profitability may lead to a compromise on Shari'ah compliance. To address this challenge, IFIs must have a clear understanding of the

Shari'ah principles that apply to their operations, and must be proactive in seeking guidance from Shari'ah scholars on how to maintain compliance in the face of financial challenges.

Managing risk effectively, including credit, market, and operational risk, is a fifth challenge faced by IFIs during financial crises. The complexity of Islamic finance products and the lack of standardization in the industry can make it difficult to measure risk accurately, and to respond effectively in times of stress. To address this challenge, IFIs must have a robust risk management framework in place, and must regularly assess and update their systems to ensure that they are able to effectively manage risk.

Competing with conventional financial institutions that have more established and well-developed infrastructure is a significant challenge for IFIs during financial crises. Conventional financial institutions may have a greater range of products and services, as well as more established networks and distribution channels, which can make it difficult for IFIs to compete. To address this challenge, IFIs must focus on developing their own unique value proposition, and must differentiate themselves from conventional financial institutions through their commitment to Shari'ah compliance, ethical behaviour, and socially responsible investing.

Another challenge faced by IFIs during financial crises is the lack of standardization in the industry. This can make it difficult to measure risk accurately, and to compare different Islamic finance products and services. To address this challenge, there is a need for greater standardization in the industry, including the development of common definitions, methods for measuring risk, and guidelines for product development.

Finding alternative sources of funding, given the limitations on interest-based financing, is a further challenge faced by IFIs during financial crises. This can make it difficult for IFIs to secure sufficient funding to support their operations, especially during times of market stress. To address this challenge, IFIs must look for alternative sources of funding, such as sukuk or trade financing, and must be proactive in engaging with regulators to ensure that their operations are following all relevant rules and regulations.

Expanding into new markets and geographies, where Islamic finance is less established, is the final challenge faced by IFIs during financial crises. This can be challenging due to the lack of understanding and familiarity with Islamic finance in these markets, as well as the need to navigate different regulatory and cultural environments. To address this challenge, IFIs must have a clear understanding of the local market, and must be proactive in engaging with local

stakeholders, including regulators, customers, and the wider community, to build awareness and support for Islamic finance.

In conclusion, the challenges faced by Islamic financial institutions during financial crises can be significant, but there are also several potential solutions that IFIs can implement to address these issues. By focusing on their commitment to Shari'ah compliance, standardization, alternative funding sources, and market expansion, IFIs can not only overcome these challenges but can also grow and expand their operations both domestically and internationally.

Amezan Afif bin Faizal (1181819) KLB1/TLB1
Islamic Finance Article Assignment

Title:

The Vast Opportunity for Invention and Application of Islamic Finance in Malaysia Today, also its Challenges.

Our beloved Country, Malaysia, has been known by the World as one of the most developed if not the most developed country in the Islamic Financial System (IFS). Malaysia has been the resource provider in term of the information with regards to the establishment, development and application of the Islamic Finance for the todays World. Many of Malaysia's scholars and IFS experts were being referred to for assistance and guidance with any of the IFS matter. In Malaysia today, it is safe to say that the topic of discussion with regard to IFS are in the phase of creation, invention of a new application of the IFS in the economic field, both in the nation also in the World.

Before we go deeper into the topic, we first have understood the basic definition of the IFS. The IFS is simply a Financial System which in accordance to the Shariah principles and Islamic values. The frameworks of the IFS may defer from each country. The rational for the use of the word country here instead of 'Islamic' country is because of the IFS is not only practice and applied in Islamic Countries, but also to other countries as well. For starter, here we can already see the market for IFS is not construed only to countries that are known to applied Syariah governance but can also be marketed to any other countries in the World as well.

The basics, the frameworks, the establishment of IFS are already in place. It is our duty to further polish this precious gem founded by our scholars and experts. Also, what is a knowledge if it is not to be shared and be propagate positively to others world-wide. Let us take the contract of al-Wakalah for example. Bear in mind that this is only exemplary. There are many other combination of contracts that we can applied wither simple, or more complex contracts that we can apply. Personally, al-Wakalah is the most flexible contract there. It can be applied in almost every situation, with the basis of agency. For instance, it can be applied in investments contract where both parties may gain more profit together. There are more to be explore in this topic but let us save that for future articles.

Now, although the market or the 'canvas' so to say are vastly there to be painted and drawn by us, it is important to note that there are still issues that requires attention from us to remedy. First, there are still issues in the IFS product itself if we lower the scope of vision into the products offered by the Islamic Banks (IB) in Malaysia. One of them is the contract of Bai' al-Inah. This contract has been reviewed by the expert as having a long-term issued with regard to the settlement of the contract between the parties, i.e. the IB and the and the customer. The solution that has been in place for this issue is to not further apply this contract into new agreement between the IB and the customer until all the contracts agreed under this frame has been settled. More research is also in place for this issue.

Secondly, although Malaysia as mentioned before, are known for its expertise on IFS, numerous of potential experts of IFS in young generation are still not being exposed into this system. Personally, it is important for us to continue and not stopping in not just expecting the Universities to produce students that possessed the knowledge of IFS, but continue on to open up many other channels to encourage young generation to inherit all these precious IFS knowledge and expertise. These youngsters then, must be trained to prepare them for the vast market for IFS not just in Malaysia, but also in the World.

For the third, let us explore the more serious issue. As almost known to everyone, the world has been struck by the 2007-2009 Financial Crisis or also known as GFC (2007-2009). During these periods, the Financial system globally are nearly collapsed with the uncontrolled growth of credit and debt, lax regulation and supervision, issues in management, disclosure and transparency which were very unfortunate for the world Financial System in general. Although the IFS was considered 'survived' the crisis, and one of the Kickstarter for the World to look at the features of IFS that made it not heavily affected by the crisis, we now must prepare ourself for the upcoming possible crisis that we may face. Again, the vast opportunity for invention and application of IFS are there for us to explore, but still we need to take a very serious precautionary steps to ensure that the IFS can be as strong as the coral in the see to face any threat, challenges, more importantly global financial crisis.

In conclusion, a seriousness is not a thing to be neglected in our mission for more inventions and applications of IFS world widely. However, let us also not allow the enjoyment, the love for the IFS that we are in in this moment to be erased. As the saying goes, no knowing, no love. Thank you!



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جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

FACULTY OF SHARIAH AND LAW

SEMESTER I 2022/2023

ISLAMIC FINANCE

(LAB5153)

INDIVIDUAL ARTICLE ASSIGNMENT:

ROLE OF ISLAMIC FINANCE DURING COVID-19

PREPARED FOR: ASSOCIATE PROFESSOR ZULKIFLI BIN HASAN

PREPARED BY:

NAME	NURUL NAJWA BINTI CHEREMI
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ROLE OF ISLAMIC FINANCE DURING COVID-19

By Nurul Najwa Binti Cheremi . 1181840 . TLB2 . KLB1

Due to complete and partial lockdowns of the economy, economic disruption from decreasing output or even factory closures, and an increase in unemployment, this epidemic has contributed to massive economic destruction. Since the epidemic is global, the economies that rely heavily on exports suffer as importing countries lower their imports as a result of a decline in demand for goods and services. Governments are adopting emergency financial measures to lessen the short-term effects of severe disruptions to the regular income, credit, and spending patterns among companies and families while the global economy is on lockdown.

Islamic finance is a type of financial system that builds, protects, and distributes wealth according to moral and ethical standards that are just to all parties involved. The value claim is that it promotes morality for all of God's creation, is socially focused, ethical, and provides justice for all. These principles become more important during pandemics when the social and economic systems are in disarray and the system must act to lessen the effects of the pandemic on the public. Malaysia is a suitable place to assess the impact of Islamic financing on the pandemic because it has a majority-Muslim population and is currently a centre for Islamic finance worldwide. There are some suggestions for unique initiatives that Islamic Finance might be able to fund and support the government's efforts to lighten the load on the public and, hopefully, weather this pandemic can restore normality to the economy and way of life.

The business sector (financial or otherwise) desperately has to support the government's efforts to protect employment, regardless of whether they are Islamic or conventional. Nearly a million workers have experienced job loss. During the early stages of the pandemic SOCSO has taken the initiative to offer a subsidy programme for employers to keep their personnel. This is an excellent short-term solution to gain time to survive the pandemic. Businesses won't be able to keep their employees if they have significant operational leverage and limited revenue inflow. Most likely, the subsidy programme with fewer working days for the employees might assist lower the unemployment rate and maintain, albeit at a low level, the demand for goods and services. The Islamic finance sector should build their institutions after this wonderful idea. The majority of their payroll expenses and employee retention might be covered by the Islamic financial sector. After all, in addition to the government's tax incentive programmes, they can spend the Zakat and Penalty monies (Gharamah) in these institutions.

Islamic finance can be extremely important in supporting social, health, and educational initiatives. In the societal programmes, more money could be set aside for technical advancements, and it would be more vital to assist financing for small businesses for people who are ready to take a risk and create a modest living for themselves. To those who are eligible for this programme and for others who have lost their small enterprises owing to a lack of working finance, they should offer free funding and advising services. To assist individuals in starting to fund their livelihood, Islamic banks could offer this financing in the form of Qard financing with no interest or even Qard Hassan financing with no necessity to repay the cash borrowed from microbusinesses.

In addition to the zakat money that must be invested with sound governance, there should be some regular savings in each corporate organisation for long-term planning to deal with upcoming pandemics and crises. These money will then be used in times of need to support social programmes and aid in the retention of employees. This is based on the citizen-funds idea that Norway and other developing nations are now using. Businesses are required by law to make a contribution to this fund, which is invested and managed by the government and is only available in emergencies or pandemics.

Another long-term strategy could be for the government to launch infrastructure projects at the state and federal levels (such as motorways, stadiums, hospitals, and schools) in order to generate jobs and recover the economy. Islamic financial institutions might gather together and issue Sukuks as their long-term investments to help finance these endeavours.

The epidemic has pushed the educational sector to give online content whenever it is practical. For the successful running of online classes, this requires a properly configured internet infrastructure. Unfortunately, not all communities or households have access to the necessary internet services, which has led to many students leaving the educational programmes that are generally offered during regular hours. Government can encourage internet service providers to work with Islamic financial institutions to offer internet services where they are required using their zakat and penalty monies, or even offer these facilities for free to impacted students in areas without internet access.

Reviving the agricultural industry is another effort to help the poor. Families in need who qualify for this project may work with the local government to utilise public lands (such as riverbanks, the area around railroad tracks, and major thoroughfares), as well as to mobilise pertinent organisations like FAMA for the distribution of goods for sale in day and night

markets. Participants should receive funding from Islamic financial institutions and the zakat authorities, preferably in the form of goods (such as seeds, fertiliser, pesticides, and technical assistance) without having to make any repayments. Also, give significantly subsidised food to individuals who can still afford to pay for their daily needs.

The governments and the Islamic finance sector must create a new culture of sustainability to collaborate closely with the private sector to not only start short-term initiatives to help the poor, but also to consider long-term initiatives to create jobs through building infrastructure and growing small businesses.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

SEMESTER I, SESSION 2022/2023

FACULTY OF SYARIAH AND LAW

ISLAMIC FINANCE (LAB 5153)

**WRITTEN ASSIGNMENT: THE IMPLEMENTATION OF ISLAMIC SYARIAH IN
THE ISLAMIC FINANCE IN MALAYSIA**

LECTURER:

ASSOC. PROF. DR. ZULKIFLI HASAN

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Islamic finance has been rapidly growing in Malaysia in recent years and has become an important contributor to the country's financial system. One of the key factors that sets Islamic finance apart from conventional finance is its adherence to the principles of Islamic law, also known as sharia. Islamic finance forbids and abolishes the speculative trading (gharar), gambling, and interest-related (riba) activities that exists in conventional banking. The implementation of Islamic finance in Malaysia is guided by the central role of the syariah, which provides the framework for the development of Islamic financial products and services.

The Islamic finance sector has been thriving in Malaysia for more than 30 years. The country's first Islamic Bank was able to be founded due to the passage of the Islamic Banking Act in 1983, and other Islamic financial institutions have since been established as a result of the liberalisation of the Islamic financial system. The growth and development of Islamic finance in Malaysia can be seen in the enforcement from the legislative in its compliance with Islamic syariah. This is evidently shown in the legislation of Islamic Financial Services Act 2013 (IFSA) together with Financial Services Act 2013 (FSA). The Banking and Financial Institutions Act of 1989 (BAFIA), the Islamic Banking Act of 1983, the Insurance Act of 1996 (IA), the Takaful Act of 1984, the Payment Systems Act of 2003, and the Exchange Control Act of 1953 have all been repealed by both of these Acts, which have been improved with a number of new prominent components. More emphasis is placed on Syariah compliance and governance in the Islamic financial sector, specifically for IFSA. The IFSA in particular offers a thorough legal framework that is completely compliant with Syariah in all areas of regulation and supervision, from licencing to the winding-up of an organisation.

In ensuring the smoothness and the correct compliance of syariah in the Islamic finance in Malaysia, a specific body of Shariah Advisory Council (SAC) of the Central Bank of Malaysia is established. The SAC plays a crucial role in certifying that all Islamic financial products and transactions comply with the principles of Shariah. The SAC provides guidance and fatwas (Islamic legal opinions) on the permissibility of various financial products and transactions in accordance with Islamic law. Additionally, Islamic financial institutions in Malaysia are required to have a Shariah supervisory board to ensure compliance with Shariah principles. Overall, the Islamic Shariah plays a significant role in the implementation and regulation of Islamic finance in Malaysia.

Additionally, Sharia scholars also play a key role in the oversight and management of Islamic financial institutions in Malaysia. They are responsible for ensuring the development of the Islamic law within the jurisdiction and it only involves Muslims. The Mufti will be the state's top authority on areas of Islamic law, and the Fatwa Committee's scholar must also advise the ruler in all matters of Syariah. However, only recognised and gazetted fatwa bound Muslims through legal rulings in statues.

The prohibition of interest is one of the most important applications of Syariah in Islamic finance in Malaysia (riba). According to Syariah, charging or paying interest is considered to be unjust and exploitative, as it is seen as a form of unjustified enrichment. To overcome this prohibition, Islamic financial institutions in Malaysia use sharia-compliant financial instruments such as mudharabah and musharakah for investment and financing activities.

Mudharabah is a profit and loss sharing partnership, where one party provides the funds and the other party manages the business. The profits generated from the business are then shared between the two parties according to a pre-agreed ratio, while any losses are borne solely by the financier. Musharakah is a similar concept, but in this case, both parties provide the funds and both parties share the profits and losses.

Another significant contribution of Syariah in the implementation of Islamic finance in Malaysia is the promotion of risk sharing. In conventional finance, the lender bears the risk of default, while the borrower bears the risk of the investment. However, in Islamic finance, the risk is shared between the lender and the borrower. For example, in a Syariah-compliant mortgage, the bank and the borrower jointly own the property, and the bank shares in the risk of the property's value decreasing.

In conclusion, the contribution of Islamic Syariah in the implementation of Islamic finance in Malaysia is significant. The principles of sharia provide the foundation for the development of a financial system that is consistent with Islamic values and principles. The prohibition of interest and the promotion of risk sharing are among the most significant contributions of sharia to Islamic finance.

THE BASIS OF ISLAMIC FINANCIAL SYSTEM IN MALAYSIA AND THE EFFECTS IN FUTURE

Written by: Muhamad Faiz bin Mohd Shaiful (1181887)

KLB1/TLB4

The progress of financial institutions is a yardstick for a country especially in the era of Industrial Revolution 4.0 (IR 4.0) which highlights smart technology with artificial intelligence (AI) as the main medium nowadays. Various effects and benefits can be obtained as a result of the creation and innovation of financial systems and banking institutions that meet the requirements of the latest integration of the world economy and market. Malaysia is also not left behind in this trend of progress, especially from the aspect of the Islamic financial system which is systematic, fixed and comprehensive. Most importantly, the Islamic financial system is also based on the Al-Quran and As-Sunnah as well as some strong arguments and fatwas that can be used as arguments, beliefs, principles or practices in everyday life. It is also free from illegal elements such as usury, gharar (cheating buying and selling) and gambling. This is also in line with the word of Allah SWT in Surah al-Baqarah verse 275 which means "Allah has made buying and selling (business) lawful and prohibited usury (riba)".

As can be seen, the Islamic financial system in Malaysia is robust and is growing at a quick rate despite the fact that it is still in its early stages of development. This change has taken place across the board in the Islamic financial system of Malaysia, including Islamic banking, takaful, and the Islamic money and capital markets. As a direct result of the implementation of an Islamic financial system in Malaysia, a wide range of distinct businesses and institutions have come into being. In addition to this, the range of goods and services that are now on offer has broadened. As Islamic financial products, such as structured and investment-linked products, have gotten more complex, the rate of product creation has quickened. This has led to an increase in the number of new products. These products have entered a competitive market both in terms of their product structure and their pricing. Furthermore, Islamic financial markets have become more robust, which has added to the appeal of Islamic financial instruments as a category of investable assets. The standards are developed by the Islamic Financial Services Board (IFSB) to govern the operations of Islamic financial institutions. The IFSB has, not only, an important role in the harmonization of standards, but also contributes towards the consistent development of Islamic finance across different jurisdictions. Several parts of the world, including in Malaysia, have implemented the prudential standards issued by the IFSB. These standards which have been designed to consider the unique features specific to Islamic finance will contribute towards ensuring its soundness and stability.

The nature of Islamic financial operations is distinctive between nations. As there is no international handbook to serve as a reference, the compilation of the value contributed of the Islamic finance and notably the Islamic banking sector is currently difficult. The System of National Accounts 2008 (2008 SNA), which is used by the majority of countries to compile their Gross Domestic Products and sequence of accounts, focuses on estimating the output of financial intermediation for explicit services through the indirect measurement of financial intermediation services (FISIM). Using FISIM to estimate the output of financial intermediation was originally proposed in SNA 1993. In addition, SNA 2008 provides additional information regarding the reference rate and suggested FISIM to be given to institutional units or economic sectors. FISIM may or may not be applicable for estimating Islamic banking output due to the fact that Islamic banking operations generally differ from conventional banking. Due to this, country-to-country evaluations of Islamic banking value contributed may not be comparable, and diverse Islamic banking practises also contribute to this issue.

Malaysia maintained a global leader in Islamic finance in 2017 as one of homes to the world's third largest Islamic finance market by assets and the largest sukuk market, with a 51.0% share of outstanding worldwide sukuk totaling USD202.2 billion. In terms of product innovation, the Malaysian sukuk market reached a key milestone with the issuance of the world's first two green sukuk totaling RM1.25 billion to support solar energy projects. The green sukuk were issued in accordance with the Sustainable Responsible Investment Sukuk Framework, which was developed collaboratively by the Bank, the Securities Commission Malaysia, and the World Bank in order to provide a fundraising ecosystem that facilitates the financing of green and other sustainability projects. Thomson Reuters and the Islamic Corporation for the Development of the Private Sector (a member of the Islamic Development Bank Group) put Malaysia #1 on the Islamic Finance Development Indicator in their 2017 Islamic Finance Development Report. This was in appreciation of Malaysia's accomplishments in developing an effective market infrastructure, diverse players, a strong Islamic finance talent pool, and powerful legal, regulatory, and Shariah frameworks conducive to the growth and development of the sector.

In conclusion, implementing an Islamic financial system is not the ultimate objective. It is a means and instrument of competitive advantage for the economic development of the ummah. 26 The Malaysian government will continue to invest in human capital development moving forward. It is essential for the Islamic financial services industry to continuously support human capital development and competence in order to increase the number of experts and professionals of high calibre. This requires expanding the talent pool and developing a skilled workforce for the future. In order to further assure the sustainability of the resilience of Islamic finance, it is essential to establish a complete infrastructure that permits the management of Islamic finance-specific risks. There is a need for the Islamic financial system to have the necessary capital requirements, effective risk management, and strong governance to manage the risks unique to Islamic financial activities. In this regard, Bank Negara Malaysia is committed to encouraging the development of human capital.



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LAB 5153

ISLAMIC FINANCE

ISLAMIC FINANCE INDIVIDUAL ARTICLE

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FACULTY OF LAW AND SYARIAH

ISSUES IN ISLAMIC FINANCE AND POSSIBLE WAYS TO IMPROVE THE SYSTEM

Islamic finance is a rapidly growing system that has attracted a lot of attention in recent years. However, as with any emerging system, there are a number of challenges and issues which are being faced by Islamic Finance industry as it continues to develop and being practiced by societies. Hence, the issues of Islamic Finance and possible ways to improve the system will be addressed in this writing as to provide a better understanding on how the system works and how it can be improved.

One of the issues which is being faced by Islamic Finance system is that there are limited products being offered in Islamic Finance industry. Since in Islamic Finance, concept such as earning interest or *riba*, excessive uncertainty or *gharar*, gambling or *maysir*, and short sales or financing activities that it considers harmful to society are amongst the transaction had been prohibited, the options for types of contracts to be made also become limited compare to conventional finance industry. The lack of contracts being offered make it difficult for the industry to attract and retain customer to participated in it.

Therefore, in order for the Islamic Finance system to be improved and implemented around the world, efforts need to be made as to develop new and innovative financial products that are compliant with sharia law in order for it to attract more people into indulging the benefit of Islamic Finance.

Next, the second issue which is being faced by Islamic Finance system is that there is a lack of standardization in the interpretation and application of Islamic Finance which then led towards confusion and lack of consistency in the application. According to CBB governor Rasheed M. Al-Maraj in his speech during the World Islamic Banking Conference 2018, the Islamic Finance industry has achieved reasonable success in establishing its presence around the world, however, industry players cannot hope for a new growth paradigm while maintaining the status quo. Therefore, Shariah standards, accounting standards and prudential standards need to be standardised in the Islamic Finance industry. In order to do that, the implementation of a lawmaker such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) need to be implemented and applied by all organization that involves in Islamic Finance industry.

The AAOIFI is one of the authoritative standard-setting organization in this industry. It is being created as to standardize and harmonize the international Islamic Finance practices

and report in accordance to Shariah. Nevertheless, it does not distinguish between the concept of standardization and harmonization in relation to Islamic finance practices and financial reporting. This will then indicate a failure in the industry as to conceptualize the standardization effort as an interpretive one. Besides, there are also different opinion in the Islamic Finance industry in relation to permissible transactions which is based on the understanding of Islamic jurists' of fiqh. As example, in Malaysia, the jurisprudence is more permissive but in Gulf jurisprudence, they are less permissive. Additionally, Islamic jurists' also have difference opinion in regards of contracts used such as bay' al-inah, bay' al-dayn, tawarruq, Murabaha via double agency, charges for late payment and many others. It can be seen further where jurists in Malaysia allow bay' al-inah to be applied while Middle Eastern scholars does not recognise it as a valid contract. On the other hand, most jurist doesn't allow bay' al-dayn while Hanbali jurist allow it to be made as contract.

Therefore, as a result, the society will be come confuse as to what contract can be made and what contract should be avoided as all jurisprudence as different thought amongst the application of many types of contracts in Islamic Finance industry. In order to avoid this, organisation such as AAOIFI need to make guidelines for the Islamic Finance industry and establish a standardized framework for the interpretation and application of types of contracts in the Islamic Finance industry.

Thirdly, there exist a risk management challenge being faced by the Islamic Finance industry. The prohibition of speculative activities and lack of secondary market for Islamic Financial instrument had make risk management to be more difficult.

Risk management is an important aspect in order for an industry to survive and long-lasting, without a proper risk management environment, the implications will go far beyond the immediate losses borne by individual banks. Furthermore, it will also lead to the collapse of individual banks and more serious implications for the economy in a broad sense. Nevertheless, if the risk management had been done successfully, it will be able to turn the future risks into commercial opportunities which will then generate profits for the industry.

As being mentioned above, the risk management in Islamic Finance industry is more difficult compare to conventional system. This is due to the facts that there are prohibition of speculative activities and hence the addition of risk in the industry such as the Shariah non-compliance risk, which is being developed from disobedience to Shariah regulations and principles which may occur due to inability to follow the terms and conditions of Shariah

contracts. Besides, displaced commercial risk also is one of the unique risks which will be faced. In this risk, the bank may face commercial pressure where it feels the need to give higher returns than it can afford from the returns generated on assets financed by investment account holder. The Bank will then forego a portion or all of its earnings in order to keep its fund provider and stopping them from withdrawing their funds.

Therefore, in order for the Islamic Finance industry to be on par and above from the conventional finance industry, new risk management tools and techniques need to be developed and must be compatible with the principles of Islamic finance.

Last but not least, there are limited research being made upon the Islamic Finance industry. As Islamic Finance industry is still in its infancy stage compare to conventional finance industry, limited research had been made on the products and the sector.

With that being said, the development of Islamic Finance industry also will be affected since limited research had been made upon the industry which negates the industry to discover new potential in their system. These new potentials might be the key to for Islamic Finance to be implemented around the world more effectively.

Therefore, efforts and funds could be made as to attract researcher to make more research upon the industry as to explore new financial products, services and advance understanding of the industry itself.

In conclusion, all of the issues and ways to overcomes it which had been addressed above are important to be taken note as to establish a much more stable Islamic Finance industry and make it competent enough to be on par and above from the conventional finance industry. By overcoming the issues above, more people will be attracted to the practice of Islamic Finance industry as there are a lot of choices for them to pick. Besides, the practices of Islamic Finance also can be centralized and standardized around the world which will ease more people to adapt with it. Furthermore, it will also provide a better future for the next generation especially in overcoming risk in the future and it will also provide better understanding towards the industry and unlock new potential in it.

Why You Should Learn Islamic Finance

By: Mohammad Hafizuddin bin Selamat (1181910) TLB 6/KLB 2

Islamic finance is a growing industry that is gaining recognition and popularity globally. It is a system of finance that is based on the principles of Islam and offers a wide range of financial services that are different from conventional finance.

In Malaysia, Islamic finance has been developing rapidly over the past several decades. It has grown from a niche market to a major player in the country's financial sector. The development of Islamic finance in Malaysia can be traced back to the 1980s, when the government introduced several measures to promote the industry. This included the establishment of the enactment of the Islamic Banking Act 1983 and the introduction of Shariah-compliant financial products and services.

Over the years, the government has continued to support the industry through the creation of regulatory and supervisory bodies under Bank Negara Malaysia. The result of these efforts has been the growth of a robust Islamic finance industry in Malaysia, with many domestic and international players offering a wide range of Shariah-compliant products and services, including Islamic banking, Takaful, investment, and finance.

Islamic finance is based on the principles of fairness, justice, and equality. It prohibits riba (interest) and gharar (uncertainty), two practices that are considered to be unjust and detrimental to society. Instead, Islamic finance relies on profit and loss sharing, equity participation, and other risk-sharing mechanisms that ensure that both the lender and the borrower are involved in the risks and rewards of a financial transaction.

Additionally, Islamic finance offers innovative financial products and services that are in line with its principles, such as profit and loss sharing, which align the interests of the borrower and the lender and promote shared risk and reward. This type of financing structure has been shown to be more resilient during financial crises and can provide a stable source of funding for businesses and individuals.

One of the major benefits of learning Islamic finance is that it offers a unique outlook on the creation and management of wealth, compared to conventional finance. While conventional finance prioritizes maximizing returns and profits, Islamic finance puts more emphasis on the role of individuals and organizations in promoting social responsibility and ethical practices. It recognizes that financial success should be used to benefit society and make a positive impact on the community. This difference in philosophy sets Islamic finance apart and makes it more than just a way to generate income. It's a way of life that values the

greater good and places importance on contributing to the well-being of others. Islamic finance is not just about making money, but also about using financial resources to make a positive difference in the world.

Another reason to learn Islamic finance is that it is a rapidly growing industry. The global Islamic finance market is estimated to reach \$3.8 trillion by 2022 and is expected to continue growing in the coming years. This growth is being driven by a growing number of consumers who are interested in ethical and sustainable finance, as well as by governments and businesses that are seeking to tap into new and growing markets.

Nowadays, Islamic finance is becoming more accessible. Islamic finance is becoming increasingly accessible due to the growth of Islamic banks and financial institutions. This means that it is becoming easier for people to access Islamic finance products and services, making it an even more attractive option for those looking to manage their finances in a responsible and ethical way.

As the demand for ethical and responsible finance increases, the Islamic finance industry is poised to play a major role in shaping the future of finance. This growth presents a unique opportunity for individuals and organizations to become knowledgeable in this field and to contribute to its development. In many parts of the world, there is a shortage of qualified professionals in Islamic finance, making it an attractive career path for those who are interested in finance and have a passion for ethical and responsible investing.

Learning Islamic finance also provides valuable skills and knowledge that are relevant to a wide range of careers, including finance, banking, accounting, and law. Whether you are a student, a professional, or a business owner, understanding Islamic finance can help you to stay ahead of the curve and to make informed decisions in your personal and professional life.

By learning about Islamic finance, individuals can develop a deep understanding of key concepts such as risk sharing, profit and loss sharing, and asset-based financing. They can also gain expertise in areas such as Islamic banking, Takaful, and Islamic capital markets. This knowledge can be applied in various roles across finance, banking, accounting, and law, helping individuals to make informed decisions and to better serve the needs of their clients or customers.

In addition, the skills and knowledge acquired through learning about Islamic finance can be useful in a wide range of careers and industries. For example, professionals working in conventional finance, accounting, or banking can use their understanding of Islamic finance to expand their services to the growing number of customers and clients who are seeking Shariah-compliant financial products and services. Similarly, business owners can use their

knowledge of Islamic finance to make informed investment decisions, or to structure their business in a way that is both financially viable and aligned with their values.

Learning about Islamic finance is a valuable investment in one's personal and professional development. It provides individuals with a unique perspective on finance and investment and equips them with skills and knowledge that are relevant and in-demand in a wide range of careers and industries.

For these reasons, it is important for individuals and institutions to understand the importance of Islamic finance and the benefits it provides. Learning about Islamic finance can help you make better decisions when it comes to your investments and promote ethical, sustainable, and socially responsible investments.

In conclusion, there are many compelling reasons to learn Islamic finance. Whether you are interested in ethics and social responsibility, looking to develop new skills and knowledge, or seeking to participate in a growing industry, Islamic finance has something to offer. So, if you are interested in finance and want to explore a unique and exciting field, consider learning about Islamic finance today.

Islamic Financing And Conventional Banking, Are They The Same?

By Mohammad Ikmal bin Zainol Abidin (1181919)

Islamic finance or Islamic banking refers to a system of banking that complies with Islamic law also known as Shariah law. Islamic banking is founded on the guiding principles of fairness for all, mutual risk and profit sharing between parties, and transactions based on core company operations or assets.

The first major differences are the concept or the involvement of interest. In conventional banking, interest refers to the costs associated with the use of money. It is a cost of borrowing money, and the lender receives the interest to make up for the lost opportunity cost of keeping onto the money for the duration of the loan. In contrast, interest is viewed as forbidden in Islamic banking. This rule is prohibited since it is thought to be exploitative and unfair to charge interest on loans. Islamic finance frames financial transactions as joint ventures, partnerships, or profit-and-loss-sharing agreements rather than charging or paying interest. This indicates that the consumer and the financial institution split the risk and rewards of the underlying investment.

Secondly, the concept of risk-sharing. In conventional finance, the emphasis is on risk transfer, in which the lender charges interest to transfer the investment risk to the borrower. Regardless of how the underlying investment performs, the lender receives a guaranteed return in the form of interest. In contrast, risk sharing is prioritized in Islamic finance. The risk of the underlying investment is shared by the financial institution and the client, and the return is based on how well the investment performs. Basically, if a profit is made, both the financial institution and the consumer profit, and if a loss is incurred, both parties bear a portion of the loss.

Other than that, the concept of ethical investment is also what differs between the two. In conventional bank, there is less attention on ethical issues and more of a focus on optimising returns and profits. This implies that conventional banks may finance a variety of businesses, regardless of how they affect society. Contrarily, in Islamic finance, investments are constrained by a system of rules and regulations known as the principles of Sharia and are motivated by ethical considerations. This means that investing in sectors deemed detrimental to society, such as those involving gambling, alcohol, cigarettes, and weaponry among others, is forbidden for Islamic financial organisations.

In addition, the profit and loss are shared equally in Islamic finance, while it is not quite the same as in conventional banking. Investments are frequently put in place as debt-based instruments in conventional finance, where the lender gives capital in exchange for a certain rate of interest. These investments are meant to provide the lender with a consistent, assured return. In contra, investments in Islamic finance are set up as profit and loss sharing (PLS) contracts. In a PLS agreement, the financial institution and the customer divide the

underlying investment's gains and losses according to their predetermined shares. This means that both the financial institution and the customer will benefit from the investment if it is successful, and that both will share in any losses if it is unsuccessful.

Next, is the issue of asset-backed transactions. Asset-backed transactions in conventional banking sometimes involve the securitization of assets like mortgages, credit card receivables, or vehicle loans. The underlying assets' earnings are utilised to pay back the investors, and the assets are bundled together and sold to investors as securities. In comparison to Islamic financing, asset-backed transactions are structured as profit and loss sharing (PLS) agreements. On the basis of the agreed-upon shares, it can be expected that the customer and the financial institution will divide the gains and losses of the underlying investment. This could mean dividing the income generated by the assets or dividing the rise or fall in value over time.

Last but not least, the spirit of cooperation. Islamic financing places a strong emphasis on justice, shared risk, and joint gain between the financial institution and the client. Islamic finance aims to advance fair and beneficial interactions between financial institutions and their clients as well as to further societal objectives at large. In contrast to traditional banking, the cooperative mindset is usually centered on increasing profits while lowering risk for the financial organisation.

Now to the question, are they the same? Answering the question, they are certainly not. Based on the above differences, while both systems offer similar financial services they differ in their underlying principles and practices. Islamic finance is considered the better choice as it guarantees justice and fairness. The foundation of the Islamic Banking model is based on a profit-sharing principle, whereby the risk is shared by the bank and the customer. This system of financial intermediation contributes to a more equitable distribution of income and wealth.

Furthermore, Islamic finance also practices transparency. Islamic Banking is about conducting business fairly and transparently by guiding the user through to ensure a full understanding of risks and costs associated with the products and services. Hence why we as practicing Muslims should be choosing Islamic financing banks as they comply with shariah practices listed in the Quran and Hadith.

THE COMPARISON ON THE PROHIBITION OF RIBA' IN ISLAM, CHRISTIAN AND JUDAISM IN ITS TEACHINGS AND DIVINE SCRIPTURES.

Written By:

Muhd Zamir Aflah bin Mohd Amin (1181903)

Interest is currently a common practice as this practice could bring more profit to them as they gain more customers especially for those who applied for loan in conventional banks. Interest could be defined as a practice in which a lender could receive an amount of money which resulted from lending the money to another person. In transaction such loan transactions in conventional banks, the borrower needs to pay interest to the banks when they pay for monthly instalments. This practice however is strictly prohibited in Islam as interest is a practice of riba' and it was mentioned in the Quran and the hadith where riba' is forbidden to Muslims. As far as the prohibition of riba' in Islam is concerned, other religions also prohibit the practice of riba' as it would disadvantage another party in the transaction. Hence, a comparison could be made between the prohibition of riba' in Islam and other religions such as Christian and Judaism

In Islam, there are many verses in the Quran which prohibit the practice of riba' such as in Surah Al-Imran 3:130 where Allah mentioned that "O you who believe, do not eat up the amounts acquired through Riba (interest), doubled and multiplied. Fear Allah, so that you may be successful". In hadith, riba' is prohibited based on the hadith mentioned in Kitab al-Musaqat where "From Jabir: The Prophet cursed the receiver and the payer of interest, the one who records it and the two witnesses to the transaction and said: "They are all alike (in guilt)". Based on the verse in Quran and the hadith, riba' is strictly prohibited as there is an element of injustice between the lender and the borrower as it would be unjust for the borrower to pay an amount of money to the lender with a higher rate from the amount of money that he borrowed just because he lent the money. As Islam is a religion that forbids any forms of oppressions and promotes charity, the practice of interest is inconsistent with the teachings of Islam.

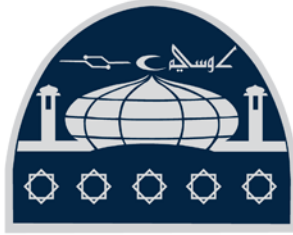
The Christianity also prohibits riba' but the term used for riba' is different which is usury. There are several biblical passages that prohibit usury or excessive charge of interest such as in Deuteronomy 23:19, it was mentioned that "You shall not charge interest on loans to your brother, interest on money, interest on food, interest on anything that is lent for interest", and in Exodus 22:25 where it was mentioned that "If you lend money to any of my people with you who is poor, you shall not be like a moneylender to him, and you shall not exact interest from him". It was also opined by the Christian scholars such as St. Thomas Aquinas in which

he stated that the practice of usury is wrong as it would be the same as double charging which charges for an item and the usage of the item. In the modern world, a Catholic Christian religious order, the Congregation of the Missionary Sons of the Immaculate Heart of Mary had ordered that the practice of interest is sinful as it promotes disadvantage to a person which thorns the human dignity. From these scriptures and views of the Christian scholars, the usury is considered as a sin as it is an unjust transaction which exploits other parties in a transaction and should be avoided. Thus, the Christians also believe that the application of interest is forbidden in their religion as the Bible and many scholars had condemned the charge of interest in a transaction.

As for Judaism, the charging of interest among the Jews was prohibited by Jewish law but it was permissible to charge interest to non-Jews. With regards to the prohibition of usury, there is no one central authority that determines the interpretation and application of the teachings on usury. However, there are several leading scriptures of Jewish law and tradition that are commonly consulted, including the Talmud, the Shulchan Aruch, and the responsa literature. The Talmud is a central text in Judaism that contains the oral tradition and interpretations of the Torah, and it includes discussions and debates on the laws of usury. The Shulchan Aruch is a 16th century code of Jewish law that summarizes and codifies the Talmud's teachings and in responsa literature, it provides additional insights and interpretations on the laws of usury. Based on the Judaism teachings on the prohibition of usury, the basis for this prohibition is that usury, or the charging of interest, is unjust and exploitative and this is the reason why usury should be avoided. In the modern era, there is some debate within the Jewish community about the interpretation and application of these teachings as some Jews believe that the traditional prohibition on usury still applies, while others believe that it is no longer relevant in a modern financial context. It is therefore a matter of one's believe as to the matter of whether or not the teachings of the Judaism on the prohibition of usury is still being practice as the interpretation and understanding are varied.

Based on the teachings of these three religions namely Islam, Christian and Judaism, in could be concluded that these religion prohibits the practice of interest in their religion as it promotes injustice to other person as interest is a form of disadvantage in a transaction. This is inconsistent with the divine practice of these religion as oppressing and exploiting others to gain benefit is immoral as the religions practices all person should be treated fairly which includes in financial transaction. However, as far as modern practice is concern, Islam is the only religion who have a strict application on the Muslims through its implementation in Islamic finance and many authoritative bodies are consensus on the prohibition which applies

to all Islamic financial institutions around the world. Therefore, even though Islam, Christian and Judaism had the same views in forbidding interest, the only religion that remains imposing strict prohibition to its believers is Islam.



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ
ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

FACULTY OF SYARIAH AND LAW

SEMESTER I 2022/2023

ISLAMIC FINANCE

(LAD 5153)

INDIVIDUAL ASSIGNMENT

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TOPIC: SIGNIFICANCE OF ISLAMIC FINANCE

The Islamic financial system consists of the Islamic banking system, the Islamic money market, Islamic insurance or takaful, the Islamic capital market, and specialised financial institutions that offer alternative sources of financing. The interdependence of these key structural components creates a comprehensive enabling environment for the Islamic financial system to effectively play its role as a resource mobilisation and financing conduit for productive economic activity. This structure also improves the Islamic financial system's resilience and robustness in the face of financial shocks, contributing to the overall stability of the Islamic financial system. The Islamic banking system, which serves as the backbone of the Islamic financial system, is critical in mobilising deposits and providing financing to support growth.

These Islamic banking institutions provide a comprehensive and diverse range of Islamic financial products and services, including savings, current, and investment deposit products, as well as financing products such as property financing, working capital financing, project financing, plant and machinery financing, hire purchase, education financing, and other financing products such as trade finance products. The existence of an active Islamic interbank money market is another important component in the Islamic financial system.

Funds are raised in the Islamic capital market through the issuance of Islamic private debt securities to finance long-term infrastructure and development projects. The Islamic capital market reduces long-term reliance on the Islamic banking system and allows Islamic banking institutions to diversify some of the risks associated with asset and liability mismatches. The existence of an Islamic capital market helps to reduce potential sources of financial vulnerabilities and contributes to the robustness and resilience of the Islamic financial system, resulting in greater financial stability.

The takaful industry contributes significantly to the overall Islamic financial system. Takaful operators, particularly those engaged in general takaful business, help to mitigate some of the risks to the banking system posed by financing transactions, thereby strengthening the resilience of the Islamic financial system. Takaful operators play an important role in the family takaful business as economic agents who mobilise long-term savings for long-term investments

and economic growth. Takaful operators' role as institutional investors has aided in the development of Islamic financial instruments, adding depth to the Islamic financial markets.

The Islamic financial system operates under a robust and comprehensive legal, regulatory, supervisory and Shariah framework. The Islamic banks are regulated and supervised by Bank Negara Malaysia under the Islamic Finance Act. Strong corporate governance is essential to ensure that Islamic banking institutions are managed by competent management who are able to provide the strategic direction for the institution as well as manage the operations of Islamic banking institutions in an effective and prudent manner. Islamic banks adhere to the Central Bank's guidelines on corporate governance pertaining to the appointment of directors, the structure of the board, limitation on the number of directorships of directors and chief executive officers, code of conduct for directors and employees of banking institutions as well as guidelines on minimum audit standards. To further strengthen the corporate governance structure of Islamic banks, additional measures were introduced in 2003 requiring Islamic banks to establish a nominating committee, remuneration committee and risk management committee to ensure that the shareholders play a more active role in overseeing the effectiveness of the board of directors and management. The guidelines highlighted the roles and responsibilities of independent directors, which include inter alia, to provide effective oversight and enhance the independence of the board. The guidelines also specified the minimum qualifications and training requirements for directors.

Another important dimension in Islamic banking operations is Shariah compliance. Under the Islamic Finance Act, Islamic banks need to establish Shariah advisory bodies. Central to these bodies is the Shariah Advisory Council (SAC) at Bank Negara Malaysia as the sole authority to decide on Shariah matters on Islamic banking and financial business that fall under the purview of the Central Bank. The SAC at Bank Negara Malaysia also serves as the ultimate reference for Shariah ruling in court proceedings on Islamic banking and finance cases. Consequent to this development, the role of the Shariah advisory bodies and Shariah consultants at the Islamic banks, the IBS banks and takaful companies will be rationalised accordingly. Bank Negara Malaysia is preparing a comprehensive guideline on the new structure, roles and functions of the Shariah committees of the Islamic banks, the IBS banks and the takaful operators. The guideline would specify among others, the requirements for the appointment of the Shariah committee members. In this regard, the Islamic financial institutions are required to seek Bank Negara Malaysia's

approval prior to the appointment of the Shariah committee members. The duties and responsibilities of the Islamic financial institutions would also be outlined in order to assist the Shariah committee in carrying out its roles and functions effectively.

In a nutshell, Islam has its own way of doing things and there is a culture and custom of doing things in Islam which is different from others. Islamic finance should not be subjected to the dictates of conventional banks. The support of the Islamic finance legal fraternity has been important in the advancement and significant growth of Islamic finance. The existence of appropriate laws and well-developed related institutional infrastructure has been fundamental to the orderly and sound development of Islamic finance.



UNIVERSITI SAINS ISLAM MALAYSIA

جامعة العلوم الإسلامية الماليزية
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ISLAMIC FINANCE

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PERANCANGAN KEWANGAN ISLAM

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Perancangan Kewangan Islam

Secara asasnya, perancangan kewangan ialah satu proses yang berterusan dimana ia melihat keseluruhan gambaran kewangan seseorang untuk mencipta ataupun menyusun strategi kewangan mereka selain untuk mencapai matlamat jangka pendek serta jangka panjang mereka. Perancangan kewangan yang betul boleh mengurangkan tekanan tentang status kewangan, menyokong keperluan semasa dan membantu seseorang individual untuk membina satu dasar untuk matlamat jangka panjang contohnya seperti persaraan.

Mewujudkan perancangan kewangan adalah penting kerana ia membolehkan seseorang untuk memanfaatkan sepenuhnya aset mereka dan memberi mereka keyakinan untuk mengharungi sebarang halangan sepanjang perjalanan kehidupan mereka. Seseorang individu boleh membuat perancangan kewangan dengan sendiri atau dengan mendapatkan bantuan daripada khidmat perancangan kewangan wang profesional.

Krisis ekonomi semasa yang terjadi akibat yang tidak diingini daripada wabak Covid-19 telah membuktikan lagi kepentingan perancangan kewangan dan pengurusan harta dalam kehidupan seseorang individu, lebih-lebih lagi kepada yang sudah berkeluarga dan mempunyai tanggungan. Di Malaysia, seperti kebanyakan negara lain di dunia, majoriti isi rumah menghadapi masalah kewangan kerana pencari nafkah didalam sesebuah telah diberhentikan oleh syarikat yang terpaksa menghentikan operasi mereka dan dipotong gaji oleh majikan sebagai langkah untuk mengurangkan kos operasi.

Selain itu, ada yang terpaksa mengambil cuti tanpa gaji kerana perniagaan yang merosot. Lebih teruk lagi apabila ia melibatkan mereka yang bekerja sendiri di mana ramai yang mengalami kehilangan pekerjaan atau pengurangan tahap pendapatan. Jadi, ianya menunjukkan betapa pentingnya perancangan kewangan dalam sesebuah keluarga di dalam ekonomi yang tidak menentu seperti masa kini, kerana kesan daripada wabak Covid-19 adalah tidak terjangka sehingga boleh menyebabkan ramai yang terkesan.

Perancangan kewangan Islam mempunyai objektif yang sama seperti perancangan kewangan biasa dimana ianya bertujuan untuk membantu orang ramai mengumpul, melindungi dan mengagihkan harta dan aset mereka untuk jangka masa pendek mahupun jangka masa yang panjang. Perbezaannya adalah, perancangan kewangan Islam diwujudkan mengikut nilai dan

prinsip Islam. Sebagai contoh, orang yang mengikuti perancangan ini hanya perlu melabur dalam pelaburan patuh Syariah dan memerlukan perancangan khusus untuk pemberian zakat dan perancangan untuk pergi ke haji. Perkhidmatan ini sesuai untuk mereka yang ingin merancang masa depan mereka sambil mengikuti nilai-nilai Islam dan sebaliknya untuk perancangan kewangan yang biasa.

Perancangan kewangan Islam mengguna pakai proses enam langkah daripada amalan standard global profesion perancangan kewangan yang ditubuhkan oleh Lembaga Piawaian Perancangan Kewangan (FPSB). Standard amalan ini diterima pakai oleh semua badan perancangan kewangan di seluruh dunia, termasuk FPAM dan MFPC di Malaysia. Ia bermula dengan mewujudkan hubungan pelanggan-perancang, mengumpul data kewangan dan bukan kewangan, menganalisis data, membangunkan rancangan kewangan, melaksanakan rancangan dan akhirnya memantau dan menyemak rancangan untuk memastikan bahawa ia berada di landasan yang betul untuk mencapai objektif.

Perancangan kewangan telah memainkan peranan penting untuk kesejahteraan individu dan juga institusi keluarga di seluruh dunia termasuklah Malaysia. Perancangan kewangan Islam adalah proses langkah demi langkah mengurus harta dan aset umat Islam dan dengan langkah ini, institusi keluarga boleh menguruskan dan melindungi harta mereka seperti yang dinyatakan di dalam objektif Syariah. Perancangan harta ataupun kewangan yang betul boleh membantu mereka dalam mengurangkan kesan pandemik, seperti Covid-19 yang telah memberi kesan ataupun impak yang besar kepada seluruh masyarakat di mana ada yang kehidupan mereka telah berubah 360 darjah akibat daripada pandemic Covid-19 ini.

Jadi, Islam mementingkan pengurusan harta dan menggalakkan umat Islam untuk menjaga harta mereka dengan sewajarnya dan betul. Perancangan kewangan Islam adalah cara ataupun inisiatif yang sangat penting dalam melindungi harta dan kewangan seseorang individu disamping mengekalkan kesejahteraan institusi keluarga di Malaysia. Dengan membuat perancangan kewangan yang betul dan teliti, ianya akan dapat memberikan kesan yang positif pada masa hadapan dan untuk jangka masa yang Panjang.

Adakah Perbankan Islam Menyediakan Pinjaman?

Disediakan oleh: Nuraini Nadhirah Bt Mohd Jamil (1181927)

Perbankan Islam kini mendapat perhatian dan semakin menjadi pilihan bagi kebanyakan pelanggan yang ingin membuat pinjaman bagi pembelian produk, komoditi atau aset seperti kenderaan, rumah, mahupun perniagaan. Ia bukan sahaja popular dalam kalangan pelanggan muslim malahan bukan muslim turut menjadikan perbankan Islam sebagai pilihan mereka. Perbankan Islam merupakan sistem perbankan dan transaksi kewangan yang halal serta berlandaskan undang-undang syariah iaitu undang-undang Islam seperti yang termaktub di dalam Al-Quran dan Hadith. Ia juga dipantau oleh Majlis Penasihat Syariah Kebangsaan (SAC) Bank Negara yang merupakan badan berkuasa syariah tertinggi bagi kewangan Islam di Malaysia. Mereka terdiri daripada pakar-pakar syariah Islam yang bertauliah bagi memberikan nasihat dan pendapat tentang produk kewangan Islam yang ditawarkan oleh semua perbankan Islam di Malaysia. Pemantauan yang dijalankan adalah bagi memastikan ianya mengikut prinsip Syariah serta mengelakkan daripada unsur-unsur berikut:

- Haram – Urus niaga yang melibatkan minuman keras, tembakau dan pornografi.
- Riba – Aktiviti pinjaman wang yang mengenakan kadar faedah yang tinggi.
- Gharar (keraguan) – Urus niaga yang nilainya tidak jelas, spekulatif serta berunsur syak wasangka.
- Maisir – Aktiviti perniagaan yang melibatkan perjudian dan pertaruhan.
- Zulm (zalim) – Urus niaga atau aktiviti yang melibatkan unsur-unsur eksploitasi, penindasan dan kekejaman.

Seperti perbankan konvensional, perbankan Islam juga turut menawarkan pinjaman kepada pelanggan, namun menggunakan istilah atau konsep yang berbeza. Perbankan konvensional menggunakan konsep 'pinjaman' iaitu meminjamkan wang kepada pelanggan, manakala perbankan Islam pula menggunakan konsep pembiayaan dengan pihak bank (jual beli) produk, aset atau komoditi seperti yang dikehendaki oleh pelanggan dan kemudiannya menjual semula kepada mereka pada harga tetap yang telah dipersetujui. Apa yang menariknya adalah perbankan Islam tidak mengenakan kadar faedah (*interest rate*) tetapi pihak bank memperoleh keuntungan dengan mengenakan kadar keuntungan (*profit rate*) yang lebih patuh syariah kepada pelanggan. Walaupun perbankan Islam menawarkan produk dan perkhidmatan yang sama dengan bank konvensional, namun perbezaannya terletak pada rangka dan kandungan serta kontrak yang mendasarinya iaitu kontrak jual beli manakala perbankan konvensional menggunakan kontrak pinjaman.

Secara amnya, pembiayaan di dalam perbankan Islam tertumpu kepada dua konsep utama iaitu:

- Bai' Al-Inah iaitu pembiayaan yang melibatkan penjualan aset/komoditi secara bayaran tertunda yang disusuli dengan pembelian semula oleh penjual pada harga tunai yang lebih rendah daripada harga jualan tertunda.

- Tawarruq iaitu kontrak pembeli yang membeli aset/komoditi secara tertunda dan menjual semula kepada pihak ketiga secara tunai.

Berikut merupakan senarai institusi perbankan Islam yang terdapat di Malaysia:

1. Affin Islamic Bank Berhad
2. Al-Rajhi Banking & Investment Corporation (Malaysia) Berhad
3. Alliance Islamic Bank Berhad
4. AmBank Islamic Berhad
5. Asian Finance Bank Berhad
6. Bank Islam Malaysia Berhad
7. Bank Muamalat Malaysia Berhad
8. CIMB Islamic Bank Berhad
9. HSBC Amanah Malaysia Berhad
10. Hong Leong Islamic Bank Berhad
11. Kuwait Finance House (Malaysia) Berhad
12. Maybank Islamic Berhad
13. OCBC Al-Amin Bank Berhad
14. Public Islamic Bank Berhad
15. RHB Islamic Bank Berhad
16. Standard Chartered Saadiq Berhad

Seterusnya, kelebihan memilih pembiayaan secara perbankan Islam dapat dilihat daripada pelbagai sudut. Pertama sekali, perbankan Islam merupakan transaksi yang patuh syariah. Hal ini kerana perbankan Islam hanya menyokong perniagaan yang halal serta mengelakkan transaksi yang haram seperti judi, riba, arak dan berunsur zalim. Pelanggan yang menggunakan pembiayaan Islamik terutamanya golongan muslim juga secara tidak langsung terhindar daripada terjebak dengan urus niaga yang melanggar hukum syarak.

Permohonan pembiayaan Islamik terbuka kepada semua pelanggan tidak terhad kepada golongan muslim sahaja asalkan sumber pendapatan mereka terhindar daripada sumber yang bertentangan dengan syarak.

Selain itu, perbankan Islam tidak mengenakan sebarang caj kadar faedah (*interest rate*) sepanjang pembiayaan sebaliknya hanya mengenakan kadar keuntungan (*profit rate*) yang telah ditetapkan dan dipersetujui bersama pelanggan. Kadar faedah merupakan riba yang diharamkan dalam transaksi kewangan Islam.

Walaupun perbankan Islam mengenakan caj lewat bayar, namun ianya masih rendah iaitu maksimum 1% daripada tunggakan seperti yang ditetapkan oleh Bank Negara. Caj yang dikenakan tersebut bukanlah penalti tetapi merupakan ganti rugi (*Ta'widh*) iaitu kos yang terpaksa ditanggung oleh pihak bank disebabkan kelewatan pembayaran oleh pelanggan.

Tambahan pula, pelanggan bukan sahaja bebas untuk menyelesaikan sepenuhnya pembiayaan pada tempoh yang lebih awal daripada yang ditetapkan, malahan mereka akan turut diberikan rebat (Ibra). Ianya berbeza dengan bank konvensional yang akan mengenakan penalti sekiranya pelanggan menyelesaikan pinjaman lebih awal daripada tempoh berkunci (*lock-in period*).

Semua transaksi dalam pembiayaan Islam adalah lebih telus, tepat dan memberikan pendedahan kepada semua maklumat yang diperlukan supaya ia seimbang dengan tiada pihak mempunyai kelebihan berbanding pihak lain. Pelanggan hanya perlu membayar amaun yang telah ditentukan sahaja. Oleh itu, tiada amaun yang perlu dibayar oleh pelanggan melebihi jumlah maksimum yang telah dipersetujui sepanjang tempoh pembiayaan.

Di samping itu, perbankan Islam juga mempromosikan perkongsian risiko dan perkongsian keuntungan atau kerugian. Ini telah membawa kepada kewujudan pengagihan pendapatan yang lebih seimbang serta mengelakkan peminjam bertanggungjawab sepenuhnya kepada semua risiko yang terlibat.

Akhir sekali, majoriti pembiayaan Islam adalah dilindungi oleh insuran Takaful yang patuh Syariah serta berdasarkan konsep kerjasama dan perkongsian risiko. Kadar keuntungan akan menjadi rendah sekiranya pelanggan memilih untuk mengambil pembiayaan dengan perlindungan Takaful. Ini kerana risiko yang dihadapi oleh bank akan berkurang, sementara bank juga dapat menghasilkan keuntungan dengan menjual insuran Takaful kepada pelanggan.

Walaupun bagaimanapun, terdapat juga kelemahan dan kelemahan yang perlu dihadapi oleh sistem perbankan Islam iaitu ia melibatkan lebih banyak dokumen undang-undang berbanding perbankan konvensional. Selain itu, sekiranya terma utama bagi pembiayaan perlu ditukar atau berlaku penstrukturan semula, kontrak yang baru perlu disediakan dan ditandatangani serta menelan kos yang agak tinggi berbanding konvensional yang hanya perlu ditukar ganti dan dicop sahaja.

Oleh itu, dapat disimpulkan di sini bahawa sistem perbankan Islam lebih tertumpu kepada perkongsian keuntungan dan risiko, bersifat adil dalam urusan niaga yang dijalankan, dipercayai, serius serta stabil kerana ianya menawarkan pembiayaan yang lebih telus. Walaupun pelanggan bebas membuat pilihan, pembiayaan Islamik adalah merupakan pilihan yang terbaik bagi mengelakkan daripada sistem riba khususnya kepada pelanggan muslim.

Islamic Financing is More Expensive Than Conventional Loans?

By: Nurul Fadhilah Binti Kamarulzaman, 1181925, TLB 6 / KLB 2

It is true that Islamic financing is more expensive than conventional loans? Some people believe that the said statement is true and therefore refuse to use Islamic financing. However, before making a decision, it is prudent for us to look into account on how they operate.

Although both Islamic financing and convention loans provide money for the customers, they are not the same. In conventional loans, it is a straightforward transaction where the financial institution will provide a certain amount of money to the customer and the customer will repay the loan amount, together with the interest at the prescribed rate. However, the prescribed rate is not fixed and can vary from time to time as it is based on Bank Negara's base lending rate (BLR).

In contrast to the Islamic financing facility, it is offered based on Shariah principles. Islamic principles prohibit the interest-based transaction or also known as *riba*'. Islamic financing involves a contract of sale between the financial institution and the buyer. For instance, the bank will buy the item at the offered price and sell it back to the buyer at a marked-up price based on an agreed profit margin by both parties. Then, the buyer will pay the price in installments. This is known as the principle of *Murabahah*.

Besides, Islamic financing can be conducted under *Ijarah Thumma al-Bai'* concept. It refers to a contract to be followed by a purchase. In this concept, the hirer leases the goods from the owner at an agreed rental over a specified period. Upon the expiry of the leasing period, the hirer enters into a second contract to purchase the goods from the owner at an agreed price.

The other option is Islamic financing can be operated through a partnership contract or also known as *Musyarakah*. For example, in home financing, the customer forms a partnership with the bank for the purchase of the house. The bank will then rent out their part of the house to the customer, and the rental amount paid to the bank increases the share of the customer in the house and reduces the share of the bank.

In addition, the difference between Islamic financing and conventional loans is on how the profit was obtained. Conventional loans make profits by charging interest on the amount borrowed, whereas Islamic financing makes profits through the sale of commodities. Since the markup is pre-

agreed, the additional amount that the buyer pays every month is fixed. In addition, it is called as a “profit rate” instead of an “interest rate”. This is in line with Islamic banking principles which forbid charging of *riba*’.

Other than the prohibition of *riba*’, the underlying principle that governs Islamic financing is mutual risk and profit sharing between the parties. For instance, under the Musyarakah contract, the profits will be distributed according to an agreed ratio and in the event of losses, both parties will share the losses based on their equity participation. Conventional loans, on the other hand, exposes the lender to greater risk if the borrower fails to repay the loan.

It is undeniable that both Islamic financing and conventional impose compensation or penalties for late payment. Nevertheless, Bank Negara Malaysia (BNM) only permits Islamic banks to impose late payment compensation if certain conditions are met. This only aims to compensate the Islamic banks for the actual cost incurred. The amount collected in excess of the actual cost is not permitted to be recognized as the bank’s income and will instead be channeled to charity. However, such practice does not apply to conventional.

Another frequently asked question is about the requirements for applying for Islamic financing. As Islamic financing is based on the Shariah principles, can non-Muslims choose Islamic financing? Yes, the answer is yes. There is no reason why non-Muslims should be barred from utilizing Islamic financing, and there is no religious requirement in applying for Islamic financing. Islamic financing, like conventional loans, is available for anyone who requires additional funds for consumption goods, property, or capital.

One of the government’s initiatives to promote Islamic financing is by providing a 20% discount on stamp duty for Islamic financing documents. Furthermore, stamp duty is rescinded for the redeemed amount in cases of refinancing from a conventional loan to Islamic financing.

Since Malaysia now has more financing options, it is important for the buyer to conduct research before moving forward with any financing provider to ensure that you are prepared to make a well-informed decision. Any decision should not be made unless you are fully informed about the subject matter. Islamic financing is now competitively priced when compared to conventional loans, and it has become an affordable option for those who require funds such as to purchase a house or a car.

In conclusion, Islamic financing is now on par with conventional loans, despite the fact that the basis of Islamic financing is completely different from conventional loans. Actually, Islamic financing is preferable, especially for Muslims. It is not true that Islamic financing costs more than conventional loans. In fact, it provides the best financing facility in terms of ensuring fairness for all. Thus, it is our responsibility to change this stigma in order to enhance the contribution of Islamic finance in facilitating the economy in Malaysia.



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SESSION: SEMESTER I, 2022/2023

COURSE: ISLAMIC FINANCE (LAB5153)

WRITTEN ASSIGNMENT: CHALLENGES IN PRACTICING ISLAMIC FINANCE

LECTURER'S NAME:

PROF MADYA DR ZULKIFLI HASSAN

GROUP: KLB1 / TLB3

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CHALLENGES IN PRACTICING ISLAMIC FINANCE

Islamic finance or Shariah compliant financing has shown a robust growth to its practice worldwide including to the Europe countries such as United States and United Kingdom. However, it is undoubtedly that Asia countries still stands at the forefront of its development and practice in Islamic finance. Plus, many people, both locally and globally, have expressed interest in financing through Islamic finance because of how efficiently it is being used and practiced today since its operation of practice is according to Shariah where the application of Riba and unfair contracts are prohibited. Thus, this is opposed to the capitalist approach where the bank will likely receive maximum return from financial assets. Even though Islamic finance and conventional finance have different applications, financing through Islamic finance could guarantee that both sides achieve social justice. Regarding this, Islam has a variety of finance options available that adhere to Syaria regulations. These financing modes can be categorized into two main principles, which are profit-and-loss sharing and non-profit-and-loss contracts. These includes Mudarabah, Murabaha, Musharakah, Ijarah, Istisna dan Bai Salam.

In relation to this Islamic style of financing, there are also few challenges needs to be faced in order to practice this Islamic finance in some countries including Malaysia itself. Firstly, the lack of public awareness and public knowledge of Islamic Finance. This is since the public are not exposed to the real meaning and practice of Islamic finance, there were no education introduced from early stage which leads the public to be conservative in accepting Islamic practice in their financing. Also, since Islamic law accommodates for differences of opinion and interpretations of its meaning, this leads to different practices and interpretation to the policies in adopting Islamic principle in different jurisdiction. There are currently no unified principles on which shariah scholars decide on the creation of new products since different countries adapt different school of thought. This challenge therefore called for the needs to establish a body which could regulate and standardized the practice of Islamic finance all around the world.

Moreover, since Islamic financial institutions demand more compliance in their issue or transaction costs, there is a shortage of professionals in this field. As a result, banks must perform more due diligence since they must know more than they would otherwise. There is a shortage of qualified bankers and professionals who are well versed with both financing system, Islamic and conventional financial way. Nowadays, there is an effort provides by various universities and training institutes in offering courses in Islamic finance, but they also

lack the qualified instructors to teach the students on this course. In addition, there is also a lack to Shariah Scholars that understands in deep the application of Islamic finance to tell the public about benefits in practicing Islamic finance. Furthermore, Islamic banking currently lacks an efficient supervision structure, which is one of the flaws in the current system and requires serious attention. In order to carry out their banking operations, Islamic banks have developed their own methods and processes; nonetheless, there are no commercial banking or corporate laws that implement Islamic banking or financial contracts. This is due to the fact that commercial, banking, and company regulations have provisions which specifically prohibited and have a limited definition of what constitutes Islamic banking.

The misunderstanding to the availability of Islamic financing is only for Muslims is a factor to slow the progress of Islamic finance in general. Some of the non-Muslim is still unaware that the financial system provides by Islam is available to everyone including non-Muslim communities. Next, Islamic bank also suffer from a competitive disadvantage with conventional banks due to the limited availability of tradable Islamic money market instruments and weak systemic liquidity infrastructure. Local Islamic banks are hindered and may potentially experience a liquidity crisis due to a lack of liquidity and viable alternatives paired with competitive disadvantages.

The challenges facing Islamic institutions include the risk management weaknesses among Islamic banks. Even if the Shariah Board exists, their position poses a barrier to the management of Islamic financial institutions because the Board of Directors of one institution may overlook their opinion if other factors take precedence over the Shariah Board. Islamic financial institutions also in a small size where it cannot afford to invest substantial funds in research and development compared with conventional banks. In matters of deployment of funds, it still suffers from having profitable deployment. Regarding to the primary application of Islamic finance, where *riba* is not permitted, this procedure must be carefully managed to safeguard the interests of those choosing Islamic investments of their funds against mismanagement by Islamic banks and blending with interest-based activities of the conventional banks.

CONCLUSION

In conclusion, despite numbers of challenge face by Islamic finance as outlined above, the future still bright for Islamic finance since this system have captivate many countries to slowly learn about Islamic finance. This can be proved by the developments making in financial institutions such as in Bahrain, Malaysia, and United Arab Emirates where they have been gearing up and making improvements to the current system financial to accommodate to conventional way of practice.

What the future seems for Islamic Finance in United Kingdom

The growth?

Global institutions and corporations are no longer strangers to the term Islamic finance especially when it has been appreciated and recognized in so many Muslim and the non-Muslim countries regardless of their Muslim population. Thanks to local and international organizations with excellent marketing skills, Islamic finance has brought great fortune to many places and communities. Currently, United Kingdom has earned itself a reputation worthy of recognition from the Muslim world, with outstanding performance in Islamic financial system not only in Europe, but overall Western countries. From the opening of a branch of Al Baraka Bank in 1980 to the launching of Al Rayan Bank in 2004, the government has displayed an admirable effort to ensure an equal treatment of both conventional and Islamic financial systems. Hence, numbers of amendments have been made to the legal and non-legal frameworks, but not like it is the first time they ever did that since the country has always been on that path towards diversity. But there is no reason to not wonder whether it is enough to draw multi-racial customers in the UK.

The Challenge?

It is out of question that London is the Western hub for Islamic finance, but only about 60,000 Muslim population out of 3.3 million currently chose Islamic banking as their bank. Meanwhile, the others still having a hard time to depart from conventional and traditional ways. In fact, 2022 so far has left the local Islamic finance in a tough spot with the closure of several Islamic windows including HSBC Amanah. A survey has been made to analyse the potential cause of this matter and the result in majority leads to the same pattern, which is that it is not so different from conventional system. Some claims revolve around the existence of interest but only this time it shaded by instruments of Islamic Finance. Lack of society exposure to the nature of Islamic finance is partly to blame, because *riba* has never been in the dictionary of Islamic Finance. Bashaar Al Nattoor, the Global Head of Islamic Finance in Fitch Ratings admitted the potential growth of Islamic finance industry in the UK but it may not be enough to gain mainstream relevance in the long run. He further argued the main contributors to this problem are lack of public awareness and lack of confidence in the survival of Sharia-compliance products in the market. On that note, stakeholders need to double their effort to ensure Islamic Finance thrives in the global market instead of settling with the existing products. Surely the issuance of Sukuk has brought a massive fortune on Islamic Finance Institution in the UK but over-reliance on this product has limit the potential of Islamic Finance in the global market. Not to mention the total Islamic banking assets held by UK banks is a bit downer with not more than 0.5%.

What's next?

The United Kingdom has always keen to maintain its reputation as European nation with outstanding performance in diverse marketing and assets management. Therefore, Islamic Finance is another puzzle to complete, but of course the puzzle needs its pieces, or it shall miss the whole picture.

In this case, one of the pieces is a proper education on Islamic Finance. The nation has always been recognised as international education hub that produced not only the best students from around the world but also professionals in various fields. Therefore, UK universities never shy away from offering new course to the local and international students with new programmes including Islamic Finance itself. Currently there are over 70 universities and business schools offering the cause, which marks UK as number one Islamic Financial Institution. With active engagement of the country in Islamic financial system, citizens are encouraged to take the course not only as a business opportunity, but also as an eye opener to a new lifestyle. These education programmes should at least, mend society's misconception of Islamic finance, especially on what terms it is more ethical than conventional

products. Hence more reasons to call for extensive study in Islamic Finance, mistake should not be an option especially when you chose to throw yourself in Sharia compliance business. A proper education is not just as preparation measure to deal with Islamic finance products, but to guide the customers as well. For instance, financial advisor can help customers walk through the whole process of Islamic transactions, like investment, insurance takaful, or even college savings accounts.

There are many ways Islamic Finance can enhance the quality of their product and services, but the best one offers an advanced technology facility. Finance technology or fintech is a great opportunity for financial institutions to juice up their business. Currently based in London, Kestrl is a leading Muslim Money App that helps Muslims navigate through various digital facilities without costing their religious beliefs. This app may as well become a doorway that allows easy access to retail banking products, as well as multipurpose tool to assist users with their account and investment plan. As a matter of fact, it has recently caught the attention of the Techstar, the global platform for innovation and investment of entrepreneurs, investors, and corporation from all over the world. Apart from being crowned as top 5 in the 2022 Global Islamic fintech index, there are currently 45 Islamic Fintech headquarters in the UK. The centralisation of this sector has never been put this much before Covid-19 pandemic strikes, which totally makes sense due to the strict movement control order to reduce in-person transactions. Following the footsteps of Kestrl there is Algra and Qardus, both digital platforms founded in 2020 but with different areas of specialization. The former set up multiple transaction facilities on the tip of your fingers while the latter offers financing services to SME businesses under the doctrine of Murabaha. With this sector growing like topsy in the UK, Islamic finance stakeholder groups like the UK Islamic fintech panel have been formed independently to forge conducive conditions for Islamic fintech.

For the last couple of years, Sukuk has made quite an impression on the London Stock Exchange (LSE), as it became a preferred platform for Sukuk listing. In 2021, the issuance of the second sovereign Sukuk worth £500 million marks UK as the heart of sharia-compliant investment in Europe, which is double the size of their 2014 issuance. With Sukuk issuance dominating the chart, investors and stakeholders across the globe mainly Islamic finance-based countries gain more options to expand their investment and secure promising returns. In fact, the Sukuk market set a milestone achievement with the issuance of Green Sukuk, a sharia-compliant scheme to finance the development of eco-friendly assets and energy. As of now, the country has raised over 50 billion dollars through 68 Sukuk listings on the LSE. Plus the latest scheme proposed by Sukuk issuers focuses on Covid-19 recovery, whereby the fund was channelled through various projects to mitigate health and economic impacts of the coronavirus. 4 billion dollars, that is how much ESG bond market has made so far from the Sukuk-based projects. Furthermore, a digital app has been upgraded to include Sukuk so it is more convenient for investors and stakeholders to access and purchase them.

It is out of question that Sukuk and fintech are the stronghold of Islamic finance in UK. The stakes are high but the existing products already reflected a long-term sustainability despite the slight drop of 2022 Sukuk issuance. Hence, room for improvement is always available for UK-based innovators who wish to support Islamic finance. Takaful or basically sharia-compliant insurance is still underappreciated as one of the assets valuable to Islamic finance, whereby the main factor points out to the poor management of the capital market. If this continues, who knows what the future holds for Islamic finance in UK. Before this sector can prosper at an international level, the government and private stakeholders specialized in Islamic finance must first step up their game to win the local.



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FACULTY OF LAW AND SYARIAH
SEMESTER 1, 2022/2023

LAB 5153

ISLAMIC FINANCE

INSTRUCTOR

DR. ZULKIFLI BIN HASAN

**TOPIC: WHY ISLAMIC FINANCE IS THRIVING DESPITE GLOBAL
MARKET STORMS?**

(1047 WORDS)

CLASS

TLB 1/ KLB 1

NAME AND MATRIC NO

AZAM BIN MOHAMAD DIAH (1181818)

Islamic finance refers to financial practices that are compliant with Islamic law, also known as Shariah law. This typically involves avoiding interest-based transactions, as the charging or paying of interest (riba) is prohibited in Islam. Instead, Islamic finance focuses on risk-sharing and asset-based transactions, such as profit and loss sharing. Islamic finance products include Islamic mortgages, Islamic bonds (sukuk), and Islamic funds. These financial products and services are offered by Islamic banks, as well as by conventional financial institutions that offer Islamic finance windows or subsidiaries.

Islamic finance has started to grow in international finance across the globe, with some concentration in few countries. Nearly twenty percent annual growth of Islamic finance in recent years seems to point to its resilience and broad appeal, partly owing to principles that govern Islamic financial activities, including equity, participation, and ownership.¹ What makes Islamic finance different from conventional banking, that makes Islamic finance successful and thriving despite global market storms?

Global market had been greatly affected by Covid-19 pandemic that widely spread during 2020. Anything that correlated to business been down so bad from big business to medium and small business. During that time, countries fighting record inflation levels with soaring interest rates across the board. For example, inflation in the United States recently went as high as 9.1%: a figure that has not been seen in over 40 years. Similar numbers are being witnessed globally in the United Kingdom, France, Germany and others.

Despite the adverse developments in the western world, the Islamic finance industry has not only weathered the storm exceptionally well. Despite the global recession, Islamic finance continues to expand at an impressive rate, registering double-digit growth of 10.6% in the height of the pandemic.²

One of the factors that makes Islamic finance able to withstand the recession in global market and thriving is adherence to principles of risk-sharing, which aligns the interests of the lender and borrower and can provide a safeguard during market downturns. Islamic finance principles of risk

¹ Mumtaz Hussain, Asghar Shahmoradi & Rima Turk. 2015. "An Overview of Islamic Finance". IMF Working Paper. International Monetary Fund. June. pp 1-4.

² Mohamed AlKaff AlHashimi. 24 January 2023. "Why Islamic finance is thriving despite global market storms." *Yahoo Finance*. <https://finance.yahoo.com/news/why-islamic-finance-thriving-despite-030200220.html>

sharing and investment in real assets can provide some safeguards for customers during financial breakdowns. Because Islamic finance prohibits interest-based transactions and promotes profit and loss sharing, the interests of the lender and borrower are aligned, which can reduce the risk of defaults and mitigate the impact of market downturns. Additionally, investments in real assets, such as property or infrastructure projects, can provide a more stable source of returns compared to speculative investments.

The use of Islamic financial instruments, such as mudarabah, musharakah and murabaha, also promotes transparency, fairness and social responsibility. It also encourages a more cautious approach to lending and borrowing, which can help to reduce the risk of systemic financial failure.³

Another factor that makes Islamic finance invisible is It prohibits speculative investments and promotes investments in real assets, which can also provide stability during market fluctuations. This principle is based on the idea that investments should have a tangible and productive purpose, and should not be based on speculation or gambling.⁴

For example, in Islamic finance, investments in stocks and derivatives are typically not permissible because they are considered speculative. Instead, investments are directed towards real assets such as property, infrastructure projects, and businesses that produce goods and services. This approach to investing can provide more stability during market fluctuations because the value of the investment is based on the underlying asset, rather than on speculation. Additionally, the focus on real assets can also support economic development and job creation.

In addition, Islamic finance also prohibits investments in sectors considered harmful, such as gambling, alcohol, and tobacco, which can further promote social responsibility and contribute to the overall stability of the financial system.

Other than that, the factor that makes Islamic finance relevant is the increased demand for Islamic financial products and services from Muslims around the world, as well as from non-Muslims who appreciate the ethical and socially responsible principles of Islamic finance. Muslims seek financial products and services that align with their religious beliefs and values. Additionally, many

³ Ahmad Sekreter. 2011. "Sharing of Risks in Islamic Finance." Scientific Journal of International Black Sea University. Georgia. Vol I. No 2. pp 14-18.

⁴ Alfred Kammer, Mohamed Norat, Marco Piñón, Ananthakrishnan Prasad, Christopher Towe & Zeine Zeidane. 2015. "Islamic Finance: Opportunities, Challenges, and Policy Options." International Monetary Fund. April. pp 8.

non-Muslims are also attracted to the ethical and socially responsible principles of Islamic finance, such as the prohibition of speculative investments and the promotion of investments in real assets and in socially responsible sectors.⁵

This increased demand is driven by a number of factors, including the global Muslim population growth, rising income levels, and increased awareness of Islamic finance among both Muslims and non-Muslims. Additionally, as the industry has grown, it has become more accessible and more diverse, with a wider range of products and services available. The growth in demand has led to the establishment of Islamic finance institutions and the development of Islamic finance products and services around the world. Additionally, many conventional financial institutions are also offering Islamic finance windows or subsidiaries to meet this demand.

Due to the increased demand of Islamic finance, it has become invisible during the pandemic of Covid-19 because all Muslims and non-Muslims around the world using Islamic finance and bank as their medium for example online banking, investment, leasing and renting, and many more using Islamic finance. Thus, it led to non-stop use and not affected by mere pandemic.

Coming back to the main question; Why does Islamic finance is thriving despite global market storms? Basically, to find the answer to the question, one need to know the advantages and benefits of Islamic finance compared to conventional banking. Subsequently, one can figure out on why Islamic finance is thriving and successful eventhough global market declining.

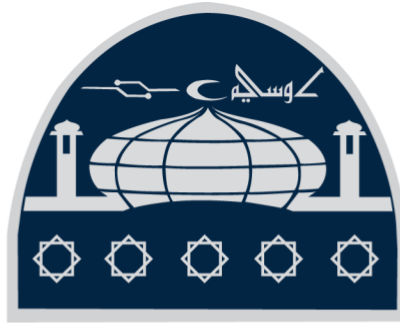
In conclusion, Islamic finance is a unique financial system that is based on principles that align with Islamic law, also known as Shariah law. It prohibits interest-based transactions and promotes risk-sharing and investment in real assets, which can provide a more stable and sustainable financial system compared to conventional banking. Additionally, its ethical and socially responsible principles, which promote transparency, fairness and social responsibility, appeal to many people. Furthermore, the growing demand for Islamic finance products and services, both from Muslims and non-Muslims, is driving the growth of the industry. Due to the uniqueness and customer-friendly system, what makes Islamic finance first's customer choice and been using

⁵ Dr. Zulkifli Hasan. 2013. "Islamic finance: Attractive for non-Muslims?" May. <https://zulkiflihasan.wordpress.com/2013/05/12/islamic-finance-attractive-for-non-muslims/>

worldwide whether Muslims or non-Muslims. Hence, it is the core reason on why Islamic finance had been relevant and successful even in the critical time of economy all over the world.

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جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ
ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

ACADEMIC SESSION 2022/2023, SEMESTER I

FACULTY OF SYARIAH AND LAW

COURSE:

ISLAMIC FINANCE

COURSE CODE:

LAD5153

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NAME: FATINFATIHA BINTI SHAMSUL AZHAR

MATRIC NUMBER:1181915

GROUP:TLB6

How Islamic Finance Keeps World's Economy Sustainable

Malaysia exemplary role in the global Islamic finance industry and the growing influence of Islamic banking and finance in Malaysia's financial sector have prompted an assessment of the significance of Islamic financing to the real economy. Islamic Finance is known to be a comprehensive module which promotes growth of real economy where multitude of society from different financial background, status, races and religion actively participated. According to Warde (2000), Islamic finance is broadly defined as "all financial procedures that are founded on Quranic principles in their objectives and operations." Although this description is wide, it effectively conveys the essence of Islamic economics as an effort to harmonise religious values with economic operations. This extends well beyond interest-free banking and includes, among other things, refusing to work with corporations who engage in immoral commercial practises such as gambling. Having stated that, the primary characteristic that distinguishes Islamic finance in actual operations of Islamic financial institutions and for the purposes of this article is the express forbiddance of transactions involving riba (interest).

Due to the framework of Islamic Finance which is strict, moral- based and promotes greater livelihood through financing, Islamic Finance had become a sought banking in this world regardless of people religion and belief. It is known to be a relatively comprehensive system with clearer guidelines on how to manage financial resources and undertake business dealings. Transparency is one of the major reasons where people are changing to Islamic Finance banking instead of the traditional conventional banking. Islamic Finance relies of its principle of Shariah itself whereas it must not use deception as a method of getting profit. In contrast, people are losing trust over conventional banking prior to its inconsistencies in conducting business whereas there are hidden interest per transaction and such additional charges are not priorly disclosed during briefing with client which later contributes to unhealthy banking environment for the society.

Islam's prohibitions against harmful products and activities, its direct connection to the real economy and physical transactions, and its support of economic and social justice are the three key ways that Islamic finance theory fosters economic progress. These elements has keep the economy sustainable it is not possible for Islamic Finance to support traditional financial practises including debt swaps, debt rescheduling, speculating, and other purely monetary or financial endeavours that have no positive impact on the real economy. The concept of relying

to Maqasid Shariah is a great way to integrate a system that promotes participation of beneficial real economy towards the society. Sustainable economy is achieved through ways of prohibition of riba which riba (interest) is particularly only depreciates the economy level of a weaker person. This can be in situation whereas the lender is rich person and the borrower is impoverished. If interest is permitted, the wealthy will take advantage of the poor, which goes against the principles of mercy and charity. As a result, in a society where profit is legal, the powerful profit on the suffering of the weak. Hence through this, there are large socioeconomic gaps in the society and the rich get richer while the poor get poorer.

Islamic Finance also prohibits the presence of gharar or known as concept of excessive uncertainty. In conventional banking, there is also means of banking industry to seek profit through method of investment where there is excessive uncertainty. Such practice is only beneficial for one party which is the bank itself if there is an undesirable occurrence. The investors who had blindly take the risk will have major loss which could be hazardous not only to the person itself but also to the economy. The prohibition of gharar has known to limit such occurrence and protect innocent investor which the system operates on the basis of transparency and disclosure to its clients. Hence, this would be beneficial to the economy as its decrease the percentage of bankruptcy.

In conclusion, Islamic Finance is an instrument known to negates the concept of deception which had been traditionally practiced in banking industry through the world. The emergence of Islamic Finance aids the society to have a choice of banking system that is ethical and promotes balance in society. The key to a sustainable economy relies of the community and such choices could make a better future.

RELEVANCY AND CONTRIBUTION OF ISLAMIC FINANCE TO THE MALAYSIA'S ECONOMY

Author: Khairunnajwa Binti Rahmat Fauzi (1181907) (TLB5/KLB2)

It is trite knowledge that Islamic finance is constructed upon a variety of specific and unique characteristics, based on the principles emphasised by Shariah. This includes the prohibition of *riba*, which is the predetermined rate of interest, *gharar* or ambiguity, *maysir* or gambling, anything that is ethically and socially unacceptable as well as monopoly. The journey of Islamic Finance in Malaysia has begun since 1963 and had grown and flourished since then. The Islamic finance sector has been active in Malaysia for more than 30 years. The country's first Islamic Bank was able to be founded thanks to the passage of the Islamic Banking Act in 1983, and other Islamic financial institutions have since been established as a result of the liberalisation of the Islamic financial system. It is important to note that the *Central Bank of Malaysia Act 2009* and *Islamic Financial Services Act 2013* are the two current regulations that sets out the pivotal and strict compliance of Shariah requirements when setting up Islamic financial business. Hence, the purpose of this writing is to determine the relevancy and resulting performance of Islamic Finance in Malaysia's economy.

According to Bank Negara Malaysia (BNM), Malaysia features a sizable number of fully functional Islamic banks, including many foreign-owned companies, conventional financial institutions with Islamic subsidiaries, and companies engaged in foreign exchange trading. All financial institutions are permitted to carry out ringgit-based and non-ringgit-based transactions. Efforts has also been made to expand the functions and influence of Malaysia's Financial Industry by the Bank Negara Malaysia in collaboration with the Islamic finance Industry. A strategy paper on Value-Based Intermediation; namely "*Strengthening the Roles & Impact of Islamic Finance*" released in 2018 lays forth plans for enhancing the contributions and influence of Islamic banking institutions (IBIs) in the creation of a stable financial system. *Bank Negara Malaysia's 2019 Annual Report* recorded that Islamic financial institutions and takaful providers have been presenting fresh, creative ways to advance financial inclusion, empower locals and businesspeople, and aid Malaysia's economic transformation to a more environmentally sustainable economy. These goals align with the Maqasid Shariah goals of encouraging income distribution, boosting economic output, and protecting the environment.

Growing public knowledge and acceptance of Islamic financial solutions as a viable alternative to conventional finance with unique value propositions is reflected in the expansion

of Islamic finance. The report provides that Islamic financial institutions provided 39.2% (up from 37.7% in 2018) of the overall banking industry financing. As of 2019, deposits made with Islamic banks account for 38.0% of all banking sector deposits (up from 36.6% in 2018). The percentage of net takaful contributions to the overall insurance and takaful business climbed from 16.6% in 2018 to 18.3% in 2019. Continuing further, a study in 2020 by Ibrahim Musa Gani and Zakaria Bahari reveals that although the contribution of Islamic banking on the Malaysian real economy in the short-run is not significant, Islamic banking has a favourable and considerable impact on Malaysia's real economy in the long-term. Significant investment has been gathered, and the Malaysian economy is growing as a result of effective capital productivity.

The halal economy is one of Malaysia's main growth sectors, and it ranks among the top exporters of halal goods in the world. Improving the halal industry's competitiveness in order to take a bigger proportion of the global halal market is one of the primary initiatives outlined in the Twelfth Malaysia Plan, 2021–2025 (12MP), to stimulate Malaysia's economic growth. One of the five main enablers for implementing the policies specified in Malaysia's Halal Industry Master Plan (HIMP) 2030 is the highly developed Islamic finance industry in Malaysia, which offers a wide range of financial products and services. A report on *Islamic Finance and the Development of Malaysia's Halal Economy* by the World Bank Group provides that with a contribution to the Gross Domestic Product (GDP) of 7.5 percent as of 2020, the halal economy (HE) is also significant to Malaysia's economic development. As of December 2019, Malaysia's takaful assets amounts to USD 9.1 billion, with takaful net contributions accounting for 18.3% of the country's overall insurance and takaful sector. Halal exports increased 19.0% from RM30.5 billion in 2020 to RM36.3 billion in 2021, according to official statistics from the Halal Development Corporation (HDC), making up 2.9% of Malaysia's total exports. The export value of halal goods is anticipated to reach RM56 billion by 2025, and the halal sector's GDP contribution is anticipated to increase from 7.5% in 2020 to 8.1% by then.

Hence, from the above findings, it is evident that Malaysia has fully embraced Islamic finance and that it has continued to grow and contribute to the country's economy. Great effort and meticulous planning in promoting Islamic banking activities and sustaining the sector by the Malaysian authorities, Bank Negara Malaysia, Islamic financial institution, takaful providers and relevant stakeholders are one of the factors why Islamic Finance had managed to reach the heights it did now and their blood, sweat and tears had been proven fruitful as

Islamic banking assets formed 42.5% or RM886.6 billion of the banking industry's total assets in 2021, according to Bank Negara Malaysia. The *Financial Sector Blueprint 2022-2026* proves that Islamic finance will thrive more as Malaysia will continue its efforts in sharpening its proposition as an international gateway for Islamic finance, develop a more conducive regulatory environment to facilitate the application of diverse Shariah contracts and elevate social finance as an integral part of the Islamic finance ecosystem.



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SEMESTER 1, ACADEMIC YEAR 2022/2023

ISLAMIC FINANCE
(LAB 5153)

ARTICLE: THE ROLE OF ISLAMIC BANKING TO SMALL BUSINESS

PREPARED FOR: DR. ZULKIFLI B. HASAN

PREPARED BY: MUHAMMAD AMIN BIN AZIZAN 1182524
TLB8/KLB2

Introduction

First and foremost, small businesses are types of corporations, partnerships, or sole proprietorship which have fewer employees and/or less annual revenue than a regular-sized business or corporation. Businesses are defined as "small" in terms of being able to apply for government support and qualify for preferential tax policy. Furthermore, small businesses are considered one of the sources of innovation, productivity and dynamism in many countries. Thus, to translate innovative ideas into sustainable businesses, access to capital becomes a part and parcel of their business life cycle. Despite their potential importance for economic development, small businesses are facing difficulties in attracting external finance at the early and middle stages of the entrepreneurial life cycle in many countries, including developed and developing countries. Therefore, in line with this, Islamic banking and finance is a broad framework that has great potential for supporting development finance particularly related to small business, given their fundamental criteria emphasizing generating positive societal impact.

Mostly, small businesses in many countries include service or retail operations such as convenience stores, small grocery stores, bakeries or delicatessens, hairdressers or tradespeople such as carpenters, electricians, restaurants, motels, photographers, very small-scale manufacturing, and Internet-related businesses such as web design and computer programming. Some professionals operate as small businesses, such as lawyers, accountants, dentists, and medical doctors.

Islamic banking really played an important role to the small business. Among the roles are:

- i. To identify and unpack innovative financing opportunities within Islamic banking and finance instruments such as Mahabharata (profit-sharing), Musharakah (profit-loss sharing), Murabahah (sale with cost plus profit margin, Ijarah [Islamic leasing]), and Salam (forward sale) as potential solutions for addressing small businesses' funding gaps; and
- ii. To initiate the development of systematic principles for the utilization of Islamic banking and finance instruments in financing small businesses.

Challenges implementing Islamic banking to small business

Some of the challenges involving in Islamic finance implementation for small business are as follows:

- i. Regulatory Framework

One of the crucial challenges for Islamic finance, regardless of whether it is for small businesses or other platforms, is the lack of a regulatory framework for financial products. Looking at conventional financing, the regulation standards are more harmonized and standardized, which makes their

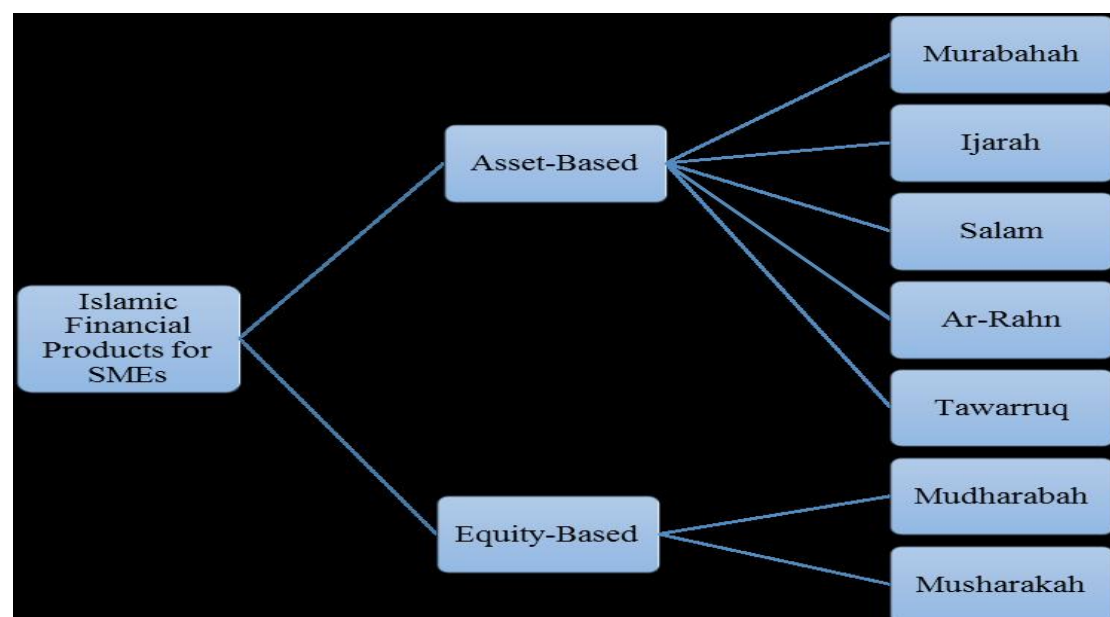
products more marketable and easier to follow. In Islamic finance, the products are less standardized since there are no approved standards per se for Islamic finance. Most of the Islamic finance products follow the conventional banking rules and regulations.

ii. Transaction Costs and Non-movable Collateral

As far as Islamic finance for small business is concerned, the transaction costs and taxes involved are relatively higher compared to their conventional counterparts in financing. Possible reasons for this may be the Shariah verification processes and complicated taxation guidelines. Furthermore, small businesses generally facing the problem of non-movable collateral cause the Islamic banks to be reluctant to finance small businesses in general. Thus, a strong legal standard is needed in order to allow small businesses to use utilize their movable tangible assets.

Product of Islamic banking to small business

Among three products that suitable and recommend for a small business are as follows:



First, Salam (Parallel Salam Financing). This mode is one of form of Islamic financial forward sale contract whereby the payment of the goods or commodities is paid in advance (present) (mostly agricultural goods) and the delivery takes place on the stipulated date (future). This kind of contact is beneficial for small agro-businesses that need working capital. Salam provides several benefits for small businesses: (i) provision of Shariah-compliant working capital, (ii) usefulness for short-term financing, and (iii) beneficial for the agricultural industry.

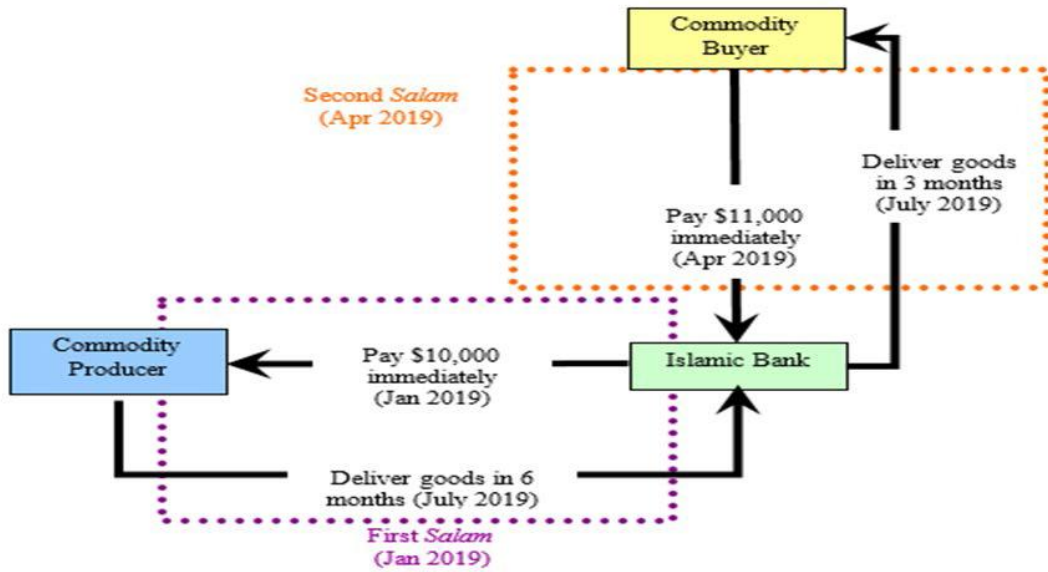


Image 1: Modus Operandi of Salam (Parallel Salam Financing)

Second, Tawarruq Financing (organized Tawarruq). This mode is another Islamic financing mode in which a series of sales contracts are involved in the entire transaction process. Here, a client buys a commodity from a seller on a deferred basis and afterwards sells the commodity to a third party, not the original seller and on a cash basis, to obtain liquidity. This instrument provides benefits in terms of (i) liquidity management, (ii) suitability for meeting the needs of small business' working capital, and (iii) no collateral requirement.

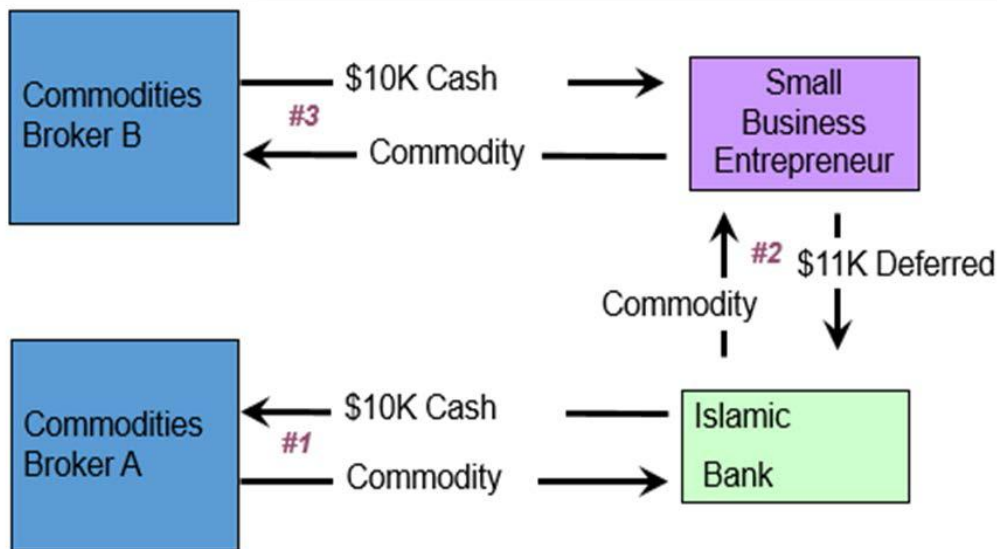


Image 2: Modus Operandi of Tawarruq Financing

Third, Mudharabah Financing. This Islamic financial modes of operations in which the business or project is managed, organized based on partnership. One party provides capital called the capital provider or Rab-ul-Maal and the second party manages the business called the entrepreneur/fund manager or Mudarib. The profits are distributed based on the pre-agreed ratio, and the losses are borne solely by the capital provider except in the case where the fund manager has fulfilled all the responsibilities bestowed on him/her. If there is negligence in managing the funds or bossiness, the fund manager or Mudarib is also liable for the loss amounts. The Mudharabah contact is very appropriate for small businesses because there is (i) profit sharing; (ii) the entrepreneur does not have to contribute capital to the joint venture; and (iii) there is the ability to negotiate the profit ratio.

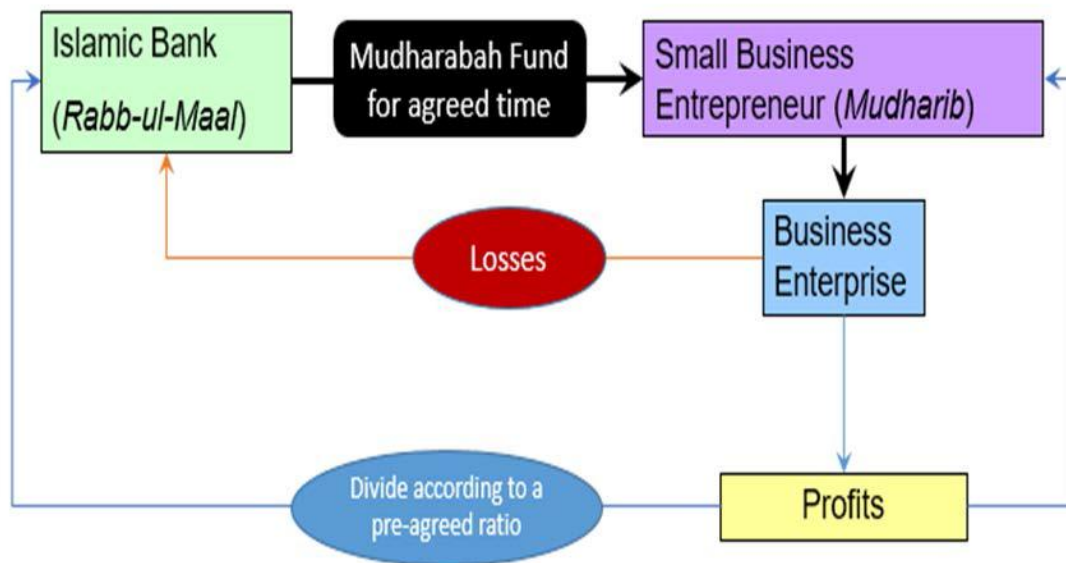
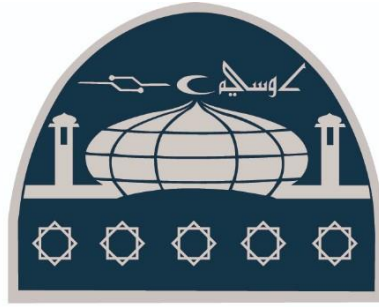


Image 3: Modus Operandi of Mudharabah Financing

Conclusion and recommendation

For conclusion, small businesses are playing an important role in economies as they create employment and contribute to the national income. However, this sector faces many challenges, particularly in accessing financial services in our country. This article also explained on the financier is quite reluctant to provide finance to the entrepreneurs of small businesses and their reason for doing so. Among the causes for most of the loan applications of entrepreneurs to be denied are their early stage of business establishment and lack of proper business experience, no collateral security, higher transaction costs, improper business planning, small size of loans, limited or lower production networks, lower sales, revenue, and cash-flows, and bad credit history. Therefore, among three Islamic financing mode of operations suggested are not only to mitigate the existing financial challenges of small businesses, but it can also bring solutions to varieties of problems faced by the financiers in financing to small businesses and giving opportunities to elevate the small business in order to contribute to economic growth and social welfare.



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ISLAMIC FINANCE
(LAB5153)

INDIVIDUAL TASK

**THE RELEVANCE AND IMPACT OF THE DEVELOPMENT OF ISLAMIC
FINANCE TO THE ECONOMY AND SOCIETY IN MALAYSIA**

PREPARED BY:

MUHAMMAD AMIRUL BIN ROSLI HASIM
(1181904)

TLB5/KLB2

PREPARED FOR:

PROF. MADYA DR. ZULKIFLI BIN HASAN

INTRODUCTION

Islamic finance is not a recent development in the modern economy. The entire banking industry has been steadily assimilated into Islam to the point where it merits further study due to the rapid expansion and development of Islamic financial institutions. The first contemporary closed experiment with Islamic banking was conducted in Egypt, and that is when this field began to develop. For fear of being viewed as an example of Islamic fundamentalism, which was a curse to the political regime at the time, it was carried out in secret. This is among the initial difficulties encountered when introducing the Islamic banking system to a nation.

Ahmad El Najjar, a pioneer, formed a profit-sharing savings bank that served as the foundation for the growth of Islamic banking from its inception until 1967. At that time, banks did not charge interest, and their role started to shift from being a commercial bank to becoming a savings and investment organisation. The Malaysia's first Islamic financial institution is the Muslim Pilgrims Savings Corporation which the purpose of the establishment is to aid individuals in saving money for the Hajj. This show marked the beginning of the growth of Islamic banking in Malaysia. Later, it continued to expand and became 'Tabung Haji', one of the most well-known Islamic financial institutions in the nation. However, since it is only a financial institution and not a bank, it inspired the creation of Malaysia's first Islamic commercial bank namely Bank Islam Malaysia Berhad (BIMB).

As we are already aware, the conventional and Islamic financial systems coexist in Malaysia. Despite the fact that the Islamic banking system only recently emerged, both of these systems play an equal role in the nation's economic development. This Islamic financial system establishment initially only had the goal of encouraging financial inclusion among Muslims, but it has since developed into a comprehensive system that offers a variety of financial solutions for individuals, businesses, and governments. This demonstrates how the Islamic financial system is becoming more and more accepted by society as a viable alternative to conventional finance with a unique value proposition. (Yousuf, A. B.)

IMPACT OF ISLAMIC FINANCE TO THE ECONOMY AND SOCIETY

Along with the development of Malaysian Islamic finance, Bank Negara Malaysia (BNM) makes every effort to preserve the basic principles of Shariah to fully exploit the advantages of Shariah principles that promote the provision of financial services that are in line with Shariah. In achieving these goals, the Shariah Advisory Council (SAC) acts as a Shariah advisor to the Bank in ensuring that the main Shariah principles are followed in the implementation of Islamic financial services to customers. Although it seems to be focused only on Islamic finance, however, this sharia principle can also be applied to all financial endeavours to realize the goal of balanced, inclusive and sustainable economic growth.

In recent years, Islamic financial institutions in Malaysia have grown by offering new innovative solutions to empower communities, help entrepreneurs and support the sustainable economy of the country. Among the efforts made is the Islamic banking and takaful industry to provide financial services for those who are more in need by applying Islamic social financial instruments such as waqf, donations (sadaqah) and distribution of alms (zakat). With this application, it contributes to social finance that opens up the potential to obtain financial resources in a more secure and efficient way from the provision of seed capital, working capital and takaful benefits to low-income individuals or organizations including asnaf, entrepreneurs and low-income households. As a result of this innovation, it can have an important impact in promoting financial resilience and social well-being in Malaysian society.

The average majority of Malaysians are Muslims. Therefore, there is a growing demand for both goods and the provision of services that are based on the principle of halalan-toyyiban that requires total Shariah compliance. For example, in the provision of supplies, the entire supply chain including distribution, marketing and financing must not conflict with any shariah principle. This shariah-compliant supply is also known as the halal industry. With a good level of development, Islamic finance has become a big supporter of the development of the halal industry in Malaysia.

There are numerous financial options available to meet different business demands, including supply chain financing, equipment and machinery leasing, working capital and investment management, risk management, and hedging strategies. The needs of halal industries, including those in the food and beverage, pharmaceutical, cosmetic, and medium fashion industries, are now better served by more value propositions. Innovating new financial strategies that can advance the development of Shariah-compliant trade financing facilities, such as inventory

management facilities, have been made possible by banks for Islamic financial institutions. This is made possible by a more flexible regulatory framework that takes into account the unique traits and hazards connected with the Shariah contracts in use.

CONCLUSION

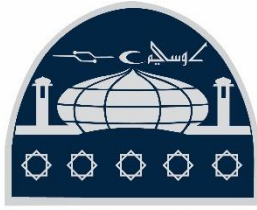
The Malaysian Islamic financial institution in our country has contribute to the Malaysia's economy and society significantly through its rapid development and innovation which suits the way of life of the community. Nowadays, the Islamic institution could finance the society in needs without burdening them with high interest. It can be said that all shariah principles that are followed are none other than to provide facilities to the needy and thus improve the standard of living of a society.

For example, as a result of the support of Islamic financial services, the development of Malaysia's halal industry is able to contribute to a more sustainable economy and benefit the needs of Malaysian community. This is in line with the objectives of Shariah (Maqasid Shariah) to promote wealth sharing, stimulate economic productivity and protect the environment.

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FACULTY OF SYARIAH AND LAW

SEMESTER 1, SESSION 2022/2023

ISLAMIC FINANCE (LAB5153)

PREPARED FOR:

PROFESSOR DR. ZULKIFLI HASAN

TOPIC: INFLATION IN ISLAMIC FINANCE

GROUP: TLB7/KLB2

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Inflation is often defined as an increase in the average price level of common products and services over a specific time period. Because the value of a monetary measurement unit for a commodity decreases, inflation can be viewed as a phenomenon of currency. Modern economists define inflation as a general increase in the amount of money needed to purchase products, commodities, and services (the value of the monetary calculation unit). On the other hand, deflation is referred to as a fall in the value of the unit used to measure the cost of products, commodities, and services. The level of change in the overall price level, or the rate of inflation, is how inflation is calculated.

Demand and supply play important roles in pricing in both the conventional economic system and the Islamic economic system. In fact, Islamic scholars have long known that the interplay between supply and demand led to inflation. Al-Jahiz, Taymiyyah and Ibn Khaldun explain one way or another how the movement of demand and supply causes the price level to rise and fall.

There are two different types of inflation: natural inflation, which is brought on by a decline in the supply of goods, and human error inflation. The Prophet and Khulafaur Rashiddin lived during the first phase of inflation. War or drought are to blame for this, while Al-Maqrizi claims there are three factors behind the second type of inflation. First, there is corruption and weak administrative. Second, exorbitant taxes that affect farmers. Third, the sum of money is excessive.

Natural inflation is inflation that happens on its own, without any external factors encouraging it. It does not result from numerous mistakes made by the nation's leaders. According to the causes, there are two types of natural inflation. Firstly, the amount of money coming in from abroad is excessive because exports rise in value relative to imports, increasing aggregate demand.

This circumstance had arisen under the reign of Umar ibn Khatab, when exporters were more plentiful than the number of products they sold when they were sold abroad. The benefit of this incidence is that more money will be brought to Medina, increasing people's income and purchasing power. To remedy the situation, Umar ibn Khattab banned the residents of Medina from making any purchases for two straight days. As a result, there was a decline in total demand and prices stabilised.

The second type of inflation, known as human error, on the other hand, according to QS Ar-Rum verse 41, inflation is when prices rise as a consequence of human mistakes; "There has been corruption on land and in the sea caused by the works of the hands of men, that Allah may feel to them some of their deeds, that they may return (to the right way)."

Human Error According to its causes, inflation can be divided into the following categories: excessive taxation, excessive Seigniorage, and corruption and poor administration. First, because producers would raise the selling price of their goods to make up for the extra expenses they incurred, corruption and poor administration will result in high prices. Bad bureaucracy and complicated licencing procedures will also stimulate price increases for producer goods since they will be burdened with high administrative expenditures, which will raise production costs and cause prices to rise.

Regarding the excessive tax, the economic impact brought on by the government's imposition of excessive taxes will be nearly identical to those of the consequences brought on

by fraud and incompetent management, namely a contraction of the aggregate supply curve. The price will rise as a result of the higher production expenses required to cover the cost of taxes that must be paid to the government. The selling price charged to the community will be affected if there is a passage of an excessive tax.

Lastly, excessive Seigniorage is a profit obtained from printing money that is used to cover the state budget, usually the printing is done by the government. Excessive printing of money will cause too much money circulating in the community, it will have an impact on the decline in the value of the currency.

A country's government has a duty to control inflation because the issue of macroeconomic conditions will directly impact society. The government can implement monetary and fiscal policies to address this. An-Nabahan, an advocate of Islamic economic theory, asserts that the government is a formal organisation with a duty to recognise and fulfil its citizens' needs. The government's role in the economy is to supervise and intervene in the primary economic driving forces in order to realise the welfare of the community. Islamic states implement two policies: monetary policy and fiscal policy. Islamic fiscal policy aims to achieve economic stability, rapid economic growth, income equality, as well as other goals outlined in Islamic law.

Furthermore, the idea of eliminate riba' in Islamic economics is thought to do away with unfairness in business dealings and oppression of other people. The most crucial element in establishing stable economic conditions is the idea of revenue sharing. In Islamic economics, the government must be more forceful to ensure that zakat revenues collected from every Muslim are withdrawn when there is excess property that has reached nisab.

In conclusion, inflation is detrimental for a country's economy because it will disrupt the way money functions, distort prices, undercut productivity and worthwhile investment, and result in injustice and social upheaval. Fiscal policy and monetary policy are two different sorts of policies that are employed to combat inflation. Islamic economics offers ways to combat inflation, such as changes to the monetary system that ban all types of interest and the implementation of fiscal policy, which includes measures like increasing zakat collection and optimising zakat utilisation, going to impose fees on unused funds, and using the revenue-sharing principle in all business dealings and leaving interest.

RISK SHARING IN ISLAMIC FINANCE

By: *Nur Fadhilah Najihah binti Amir (1181905)*

-TLB5/KLB2-

Long before the creation of modern corporations, banks, and other financial institutions, risk sharing was an essential component of human activity. It has been a common practise for parties to find it more advantageous to operate jointly rather than independently when they pool their resources, whether they be financial, entrepreneurial, or technological. As a result of the risk-sharing arrangement, it is anticipated that more work will be produced and more money will be made than if each party operated independently.

Islam has long endorsed risk sharing as the preferred organizational structure for all economic activities. Through its redistributive mechanisms, such as zakat, Islam incorporates the duty of sharing into all economic relations. The foundational principle of Islamic finance is the prohibition of interest (riba) and interest-based contracts. This prohibition has been stated in many verses in the Qur'an and was explicated in many sayings of the Prophet. In the Qur'an, 2:275, Allah says: "Those who devour riba will stand except as stands one who the evil one by his touch has driven to madness. That is because they say exchange is like riba; but Allah has permitted exchange and forbidden riba." There is no rule violation in the Qur'an more serious than charging interest (see 2:276), which is considered an act of injustice.

The central proposition of Islamic finance is the prohibition of transactions that embody loan for a specific period of time as a percentage of the loaned principal without the transfer of the property rights claims, thus shifting the entire risk of the transaction to the borrower. Alternative to debt-based contracts is al-bay'—that is, a mutual exchange in which one bundle of property rights is exchanged for another, thus allowing both parties to share production, transportation, and marketing risks. It allows both parties to reduce the risk of income volatility and to allow consumption smoothing, which is a major outcome of risk sharing.

Depending on how risk sharing is structured, the term "sharing of risk" can signify many different things. A "mutuality" component can be found in all structured risk-sharing activities. The most well-known way for members to share risk is through cooperatives of different kinds.

When it comes to Islamic insurance, such takaful, which means "shared care," a group combines its funds to protect its members from risk. Normal insurance is not an example of risk sharing, rather, it is an example of "risk transfer," where the insured transfers some of their unique risks to an organisation that is willing to offer protection against potential dangers in exchange for a charge. There is a lack of the element of mutuality.

Rather than only acting as debtors, Islamic financial institutions are encouraged to form partnerships or joint ventures with entrepreneurs looking for capital. The rights and obligations of the parties, their respective responsibilities, the profit split, and the scope of each party's liability should all be expressly stated in the partnership agreements. In this scenario, the partners' shared goal will be to build a prosperous business that will eventually enable them to make significant profits. Additionally, unlike in a typical loan agreement, the entrepreneur is not solely responsible for loan repayment. Additionally, the lending entity (i.e., bank or any other financial institution) has the chance to generate significant returns that may exceed interest payments by a factor of multiples.

Many Islamic banks and banks with Islamic products offered funding that differs from conventional banks. Islamic partnership structures such as Musharakah (joint venture) and Mudarabah (passive partnership) are the most commonly offered to entrepreneurs seeking funding. These agreements place a strong focus on the Islamic principle of profit and risk sharing, which unites the interests of the lender and the borrower.

Musharakah or Islamic joint venture contracts may incorporate more than two partners who provide capital in the form of cash or in-kind contributions. Along with a capital commitment, partners may also offer their expertise, skills, advice, and/or experience. When put into practise, a bank and an entrepreneur become partners in the business, with the bank providing financing while the entrepreneur invests some of the funds along with his efforts, talent, and knowledge. Along with any consulting services, the bank may also play a managerial role in the company. The preference of the parties would determine this.

In terms of how profits are distributed, this depends on how well the business is doing. Profits cannot be promised or determined ex ante by any party. However, losses are allocated proportionately based on each partner's capital investment. When capital is pooled, the bank and the entrepreneur take on joint ownership of the company's assets and become partners in the business. As a result, both parties stand to gain from the asset's value increase.

In the Mudarabah, an Islamic passive partnership agreement, one partner provides finance while the other provides work, knowledge, and experience. As a result, a bank would provide funding for the business, and the entrepreneur would be its sole manager. In this situation, the bank has no right to meddle in the company's management. The partners could, however, stipulate restrictions on the entrepreneur's position in their contract. It is crucial to remember that the financier is the only owner of the assets acquired through a Mudarabah transaction; as a result, only the financier will profit from the assets' value appreciation. In a Mudarabah, the financier who provided all of the capital bears the financial loss while the partners divide the profits according to the agreed-upon ratios. The entrepreneur's loss is restricted to the time and effort he put into the business.

In conclusion, Islam has long endorsed risk sharing as the preferred organizational structure for all economic activities. The foundational principle of Islamic finance is the prohibition of interest (riba) and interest-based contracts. Al-bay' is a mutual exchange in which one bundle of property rights is exchanged for another. Islamic financial institutions are encouraged to form partnerships or joint ventures with entrepreneurs looking for capital. Partnership structures such as Musharakah and Mudarabah place a strong focus on the Islamic principle of profit and risk sharing.

CROWDFUNDING AS AN ALTERNATIVE FINANCING TO HELP SMEs BUSSINESS OTHER THAN BANKS

PREPARED BY: SHAUQI SHAKIR BIN MOHD SHUKRI

INTRODUCTION

Small and medium-sized enterprises (SMEs) make significant contributions to global economies. SMEs account for approximately 99 percent of firms and 70 percent of all jobs in OECD countries, and they contribute more than 50 percent of GDP in high-income countries worldwide. However, between February 2020 and April 2021, 70% to 80% of SMEs in 32 countries lost 30 to 50% of their revenue.

We must recognise that threats to SMEs are also threats to economies and societies. Governments all over the world have made SMEs a priority. through programmes such as direct financial assistance, public loan guarantees, and tax breaks. While such financial assistance is advantageous, it does not necessarily position firms to thrive in the long run and to combat the many converging challenges they face, such as pressure to decarbonize, internationalise, keep up with digitalization, and secure the right talent. Furthermore, many of these assistance programmes are about to expire.

ISSUES OR PROBLEMS ARISES

SMEs businesses have a significant impact on a country's development because studies show that they contribute approximately 50-60% of a country's GPD globally. However, these business-talented products do not have enough capital to run their businesses while struggling in their own. These businesses should receive more attention from the public, businesses, and the government in order to help them grow and contribute to the country's development.

Several studies show that SMEs must internationalise in order to grow, but they frequently struggle to do so strategically or outside of their home market. High-potential SMEs found domestic success in many markets, but their potential was limited by the size of their local market. Unlike large corporations, many SMEs lack the resources to conduct extensive market research before entering new markets, instead opting to pursue opportunities and grow only marginally.

There are source of financial institution such as banks to give them capital to improve or develop their business. However, these kind of financial institution give them a hard process and procedure including their strict rules and regulation in the process of loan approval. In this situation make the SMEs owner do not want to involve in applying loan or finance from them.

ALTERNATIVE

CROWD FUNDING

Crowdfunding is a technique for raising external finance from a large audience rather than a small group of specialised investors, in which each individual contributes a small portion of the requested funding. The concept of "crowdfunding" is related to the

concept of "crowdsourcing," which refers to the outsourcing of specific tasks, such as product development, evaluation, or sale, to the "crowd" via an open call on the internet.

The task, which was traditionally performed by contractors or employees, can now be performed by individuals for free or in exchange for some specified return, the value of which is generally lower than the value of the contribution made to the firm. Crowdsourcing may have both motivation factors, such as the pleasure of completing a task or contributing to a community, and extrinsic motivations, such as monetary rewards, career benefits, learning, or dissatisfaction with current products.

Individuals provide financial assistance to the firm through crowdfunding. Crowdfunding typically occurs via social networks, particularly the internet, with the entrepreneur detailing the business activities and objectives, in some cases in the form of a business plan, and requesting funding under specific terms and conditions. This is the main difference between crowdfunding and other forms of finance in that the entrepreneur does not need an intermediary, such as a banking institution, to obtain funding and can instead tap into the savings of a large audience directly.

Crowdfunding is not only a way to raise funds; it can also be used to share information with a large audience, raise awareness about projects and products, solicit feedback to improve them, and gain recognition that may aid in future commercialization. The sources of funding can range from donations to equity, resulting in processes of varying complexity and contractual relationships between the firm and the individual investor. Crowdfunding in this case can be divided into two categories: "non-financial" crowdfunding and lending-based crowdfunding.

NON-FINANCIAL CROWDFUNDING

Non-financial crowdfunding typically involves the elements of donations, rewards, and pre-selling, which are also the most common forms of crowdfunding and account for a significant portion of the funding raised by private companies through this channel, while also providing non-financial benefits to companies and investors. While these forms of crowdfunding currently dominate the industry, lending and equity-based crowdfunding are expected to play a larger role in the future.

LENDING-BASED CROWD FUNDING

Lending-based crowdfunding, also known as peer-to-peer lending (P2P), began as a type of loan transaction in which individual consumers borrow from and lend money to one another via unsecured personal loans, without the use of a financial institution as a middleman. This community lending entails direct contact between the parties and, frequently, the exchange of information that, via the internet platform, is visible to other current and potential borrowers and may help to broaden the creditor base. In fact, P2P lending communities operate on the principle of "full financing," which means that the loan request is funded only if it receives enough bids to cover the entire amount requested by the borrower within an established pledging period, which can range from a few weeks to several months.

Crowd-lending has become increasingly mediated by online intermediaries over time. In the case of lending platforms, lenders typically purchase notes issued by the sites,

which then use those funds to lend to borrowers via Paypal or WebBank. As a result, the online platform serves as an intermediary, for example, collecting loan pledges from the crowd for private projects, releasing them when a target is reached, and collecting repayment instalments from the debtor and forwarding them to each crowd-lender. The pledged amounts are transferred to an escrow account managed by the platform or a partner bank in some business models. Payments are transferred from the escrow account to the project's account once the threshold pledge is reached.

SUGGESTION

Crowd funding initiative should be one of the alternative to improve the business owners especially those in SMEs area as it is efficiently proven to help other by its indicators and technical aspect. However, Islamic concept should applied such as the concept of 'tawarruq' or 'murabahah' as the transaction should be agreed by parties involved in giving fund and the one who work the business and it should be a secure business because when a business is conducted without a proper guidelines, motive and action, it will just become a lost business not a profitable business where should become a booster to the country economic development especially.

CONCLUSION

SMEs play important roles in economies and societies all over the world. These companies contribute significantly to GDP, exports, employment, and livelihoods in both developed and developing countries, but they are facing increasing threats that could stifle their growth and ability to contribute meaningfully.

SMEs have a variety of needs, and the government has the authority to bring together the various players in an economy to provide this assistance. Private-sector firms, for example, can not only lend their expertise to SMEs as advisers; they can also potentially provide them with access to larger clients and investors, as well as assist them in building capacity. Finally, these collaborations can help SMEs overcome the numerous challenges they face and continue to grow.



UNIVERSITI SAINS ISLAM MALAYSIA



Bandar Baru Nilai, Negeri Sembilan.

Faculty of Syariah and Law

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Islamic Finance (LAB 5153)

Topic: The Ethical and Social Impact of Islamic Finance to the Society.

Instructor:

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The Ethical and Social Impact of Islamic Finance to the Society.

By Muhammad Amar bin Zulambran*

Islamic finance is based on principles of fairness, justice, and social responsibility, which can have a positive impact on society. Here are a few ways in which Islamic finance can have a positive ethical and social impact. Firstly, it is based on the Prohibition of interest (riba). This fundamental principle is to prevent the exploitation of the borrower by the lender. This can promote social justice by preventing the concentration of wealth in the hands of a few. Most of the people who struggle financially and do not have strong finance positions are a vulnerable party if they went into a Banker and Customer relationship contract. Thus, they bear more risk into falling into a debt-trap and if such occurrence were to happen, their position will become more difficult each day as the interest keep increase the amount and debt and eventually, they will never be able to pay the balance. This situation is avoidable if we can utilise effectively the principles of risk sharing in Islamic finance between the lender and borrower, rather than risk transfer. This promotes a sense of shared responsibility for the success or failure of a financial transaction, encouraging both parties to act in their best interests. It also promotes the social inclusion of marginalised people to get equal chance in stepping up the ladder to increase their socio-economic value and life. Thirdly, Islamic Finance can promote economic development by providing access to alternative forms of financing, Islamic finance can promote economic development in underserved communities and support small and medium-sized enterprises. The alternative product and services are based on Islamic finance contract principles such as Mudarabah (profit sharing), Wadiah (safekeeping), Musharakah (joint venture), Murabahah (cost plus finance), Ijarah (leasing), Takaful (Islamic insurance), and Sukuk (Islamic bonds). Fourthly, it encourages socially responsible investments as some Islamic finance products, such as zakat and waqf, are specifically designed to support social and charitable causes. This can encourage socially responsible investments and promote social welfare. Fifthly, Islamic finance promotes environmental sustainability as it prohibits investments in industries that are harmful to the environment and encourages investments in renewable energy and sustainable development. Lastly, Islamic finance encourage ethical behaviour by promoting ethical behaviour through its emphasis on fair dealing, mutual responsibility and other values that are part of the Islamic teachings. While Islamic finance has the potential to have a positive impact on society, it is important to note

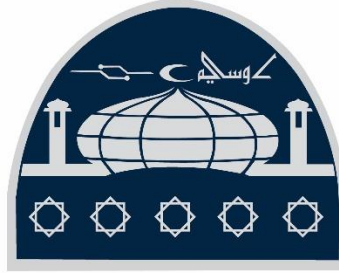
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that like any financial system, it is not immune to potential negative impacts. It also depends on the actors and how they operate within the system, as well as the regulatory environment. In Malaysia for instance, we have the Central Bank of Malaysia (BNM) to create regulation and policy to promote inclusivity in Islamic finance. There's also Tabung Haji that has fostered and encouraged savings among Malaysians by providing attractive returns to savers. The utilisation of Islamic finance structure also has removed religious barriers to ownership and investment participation.

Next, the development of Islamic Fintech is also a catalyst that can further Islamic Finance impact on society. Islamic Fintech refers to the application of technology in the financial services industry to develop and deliver Islamic finance products and services. Islamic Fintech is a relatively new field and has been growing rapidly in recent years, particularly in the Middle East and Southeast Asia, where there is a large Muslim population and a growing demand for Islamic Financial services. Fintech can play a big role in serving underprivileged populations, promote financial inclusion and financial liquidity. It can help people that do not participate in the financial system for reasons such as they lack money, lack proper documentation, have problem to visit the nearest financial institution, don't participate because their other family members already have a bank account, lack of trust in the financial system and for religious reasons. Furthermore, the BNM also has developed a strategy to strengthen the roles and impact of Islamic Banking institutions to better facilitate entrepreneurship, community well-being, sustainable environment and economic growth. It can cater to the needs of undeserved segment which includes B40 entrepreneurs' benevolent microfinancing by corporates. There was also financial protection for hardcore poor families in the form of takaful riders using donation. BNM also lent support to the role of Islamic Finance in driving the sustainability and climate resilience agenda for the financial system. This is consistent with the fundamental values of Shariah to prevent harm and promote the attainment of benefits including safeguarding the environment. The intrinsic value of Islamic Finance principles is universally applicable in realising a vision of economic growth that is balanced, sustainable and inclusive. BNM also collaborated with several Islamic Banking institutions to explore the deployment of differentiated financial structures to facilitate the liquidity needs of SMEs at different stages of their business operations. BNM also focused on enhancing the digital marketplace to enable halal certified SMEs to participate in new markets. This will enhance access to financing and takaful protection for halal certified companies.

In conclusion, Islamic Finance has the potential to create a more ethical and socially responsible financial system. Its emphasis on risk sharing and prohibition of interest aligns well with the principles of social justice and fairness. Additionally, its focus on the real economy and tangible assets can help promote sustainable economic growth and development. However, it is important to note that the effectiveness of Islamic Finance in achieving these goals depends on the implementation and interpretation of its principles. Furthermore, the Islamic finance industry still faces challenges in terms of standardization, regulation, and accessibility. Nevertheless, the ethical and social impact of Islamic Finance to the society is worth further exploration and support. ** (939 words)

** *This article is written as part of the final assessment for the course taken.*



UNIVERSITI SAINS ISLAM MALAYSIA

جامعة العلوم الإسلامية الماليزية

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

LAB5153

ISLAMIC FINANCE

INDIVIDUAL WRITTEN ASSIGNMENT:

**IS NON-FUNGIBLE TOKEN (NFT) SHARIAH COMPLIANT AND CAN
WE INVEST IN IT?**

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FACULTY OF LAW AND SHARIAH

SEM I 2022/2023

Islamic investing is indeed based on the Islamic finance principles and aims to meet investors' financial needs with integrity, honesty, trustworthy and in a fair manner. It also ensures a more equitable wealth distribution. Islamic investing has also been seen as an ethical form of investing that promotes real economic activities that are socially desirable rather than as a religiously guided investment. Since Islamic investing must be Shariah-compliant, it mandates social values and good governance by filtering out the business that engage and involve in unethical and forbidden activities such as alcohol, tobacco, pornography, gambling, weapon and others.

In the era of digitalization that we are living in now, many people are looking for easier and more efficient way to invest and increase their economic income including by way of trading through digital tools. One of the recent ways of digital trading is by the sale and purchase of Non-Fungible Token (NFT). NFT is basically a digital assets on a blockchain network that has an identification code and has unique different metadata from one another. As NFT is a form of a non-interchangeable unit of data and lives on a blockchain, it serves as a sort of digital ledger that enables people to buy and sell it.

The establishment and existence of the NFT was influenced by the development of cryptocurrencies. It runs on a blockchain currency like the bitcoin. Nevertheless, in cryptocurrencies such as bitcoin, the coin is a collection of codes and can be split in many ways whereas in NFT, since it cannot be broken down like a coin, the code collection is digitally archived and the value cannot be replaced, exchanged or compared with other digital assets.

NFT was first introduced in 2014 by a platform called "Counterparty". Back then, the artworks such as of Pablo Picasso, Jean Michel Basquiat, Gerhard Richer and Andi Warhol had dominated the traditional art auctions and had been sold for hundreds of millions dollars. People are willing to buy these artworks at higher price because they viewed that it can be a long-term investment as its selling value can be maintained in the long term. Seeing this, the NFT took the opportunity and came up with the idea of giving codes or tokens to art that can be traded digitally. Nowadays, NFT becomes a platform that can empower the artists by using tools and methods that are easy to access secure and make it easier for artists to monetize their work with a more practical and efficient process. Despite its benefits, it is

crucial to understand whether the NFT is Shariah-compliant and whether Muslims can invest in it.

The general fiqh rule in muamalah is that all forms of muamalah are permissible unless there is a proof and argument that forbids it. In the book of *Qawaid al-Buyu wa Faraid al-Furu'* by Walid bin Rashid Sa'idan, it states that the basic principle in muamalah is lawful and permissible. To determine whether the NFT is permissible, we must examine whether the components in the NFT itself are Shariah compliant.

Mufti Ismail Desai viewed that NFT is considered to be Shariah compliant as long the non-fungible is halal. Once the NFT is consisted of something forbidden and non-compliant, or there could be potential extrinsic issues that could lead to Shariah non-compliance, it will be considered as non-compliant against Shariah values. This view is supported by Sheikh Joe Bradford, an American Islamic Finance Scholar,

In addition, Mufti Faraz Adam explained that there is a need for considering three key Islamic compliance in exploring the investment potential of an NFT. The most important component of any key investment is the presence of *maliyyah* that is something which is considered of value to the average person and which can be retrieved when needed. Secondly, the NFT must be *taqawwum* which is something which has a lawful utility and benefit needs to hold. In NFT, if there is a societal consensus, such investments must possess credible value whilst also pertaining to halal standards. The last key is that NFT should be positive in nature and objectively beneficial.

Other than that, sale and purchase of NFT is permissible and valid if it fulfills the conditions for a valid sale and purchase transactions in accordance with Islamic law. The first condition for a valid sale and purchase transaction is that there must be existence of people who have a contract, that is seller and buyer. For NFT transaction, the seller and buyer are accounts registered in the NFT market. As such, the condition of two people has a contract is fulfilled.

The second condition is the pronouncement of consent and acceptance. In buying and selling NFT, the pronouncement of consent and acceptance is not done verbally but it is made in writing instead since the transaction is carried out online. The goods are displayed in the NFT platform with a certain price tagged and the buyer will buy according to the price.

Despite the pronouncement is done in writing, the legal force is the same as sale and purchase transaction which is done orally.

Next, the third condition is there must be items purchased. This condition is also fulfilled since the goods traded in the NFT platform are in form of digital assets such as painting, drawings, ticketing and others.

For the last condition, there must be an exchange rate. The exchange rate for substitute goods must meet three conditions which are it can store value, can value or value an item and can be used as a medium of exchange. The conditions is fulfilled if the NFT works are obtained in a lawful way and do not represent forbidden and non-Shariah compliant content. It will also be fulfilled once the proof of ownership is real and valid, and the digital assets become underlying assets. Essentially, the value, method of payment and criteria shown on the platform must be clear and agreed on.

As of now, there are two Shariah compliant NFT marketplaces which are Funoon and Souq NFT. Funoon is a Shariah compliant NFT marketplace and its aim is to diversify Islamic portfolios and increase awareness of NFT. Funoon is a UK-based company that offers digital Islamic art, culture and sport assets. It normally showcases NFT goods in form of image and video files. Souq NFT on the other hand, is an NFT market place that focuses on ethical and Halal digital art and other NFT assets. The artists in Souq NFT will verify in the platform that their works are original and they are not allowed to copy existing NFTs. Souq NFT showcases NFT good in forms of audio, image and video files. It also provides guidelines thus the platform does not allow hate speech, racism or nudity.

Besides, there are several industries in which the NFT is commonly produced such as in art, in-game items, media, and ticketing. NFT art which is Shariah compliant and allowed for investment includes calligraphy, inanimate objects, landscapes and abstract phenomena. An NFT art is considered non-Shariah compliant if it represents anything unlawful to see in Shariah, unlawful substance or object, anything sacred which is prohibited to portray, ridiculing or disfiguring of other people, and limbs and areas which the Shariah orders to be covered and concealed.

As for in-game items, the Islamic jurists divide the items into three categories. If the in-game items is beneficial for the worldly life or the afterlife, investing in it is permissible and the Islamic jurists encourage it to be performed. In contrast, if the in-game items is for unreasonable purpose that has no benefit to the worldly life and the afterlife, or when it has no purpose at all where it has neither meaningful objective nor reasonable outcome but instead lead to boredom, a lack of conscience and mental presence, investing in it would be forbidden.

In media industry, the audio, image or video files which is represented through NFT will be permissible and Shariah compliant if it is a lawful content, show no deception or misrepresentation and the objective behind it is positive and beneficial. Then, for NFT ticketing, the Islamic jurists will look at the ticketing purpose. For NFT ticketing to be Shariah compliant and permissible, the event must not have anything unlawful or objectional in Shariah and it should be something that is benefit to people.

To conclude, NFT is emerging trend amongst Islamic investment portfolio. The Islamic Finance industry continues to develop and further promoting a refined outlook on up-and-coming potential investments. Investing in NFT would be permissible and Shariah compliant if it is for reasonable and beneficial purpose. By investing in futile and objectional areas serve no real purpose and wasting the blessing of Allah. The transaction of buying and selling NFT is considered valid in Islam if the pillars and conditions of the sale and purchase transactions are fulfilled. If there is element of gharar or the pillar and conditions of the sale and purchase transactions are not fulfilled, the transaction of NFT is haram. Notwithstanding that, fatwa in relation to buying and selling NFT is needed to educate the public.

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Topic: Crypto Currency in the eyes of Islam

Cryptocurrency is a digital or virtual currency that uses cryptography for security and operates independently of a central bank. While the concept of cryptocurrency is still new and constantly evolving, it has gained significant attention in recent years as an alternative form of currency and investment. In the context of Islamic finance, which is guided by principles of justice, fairness, and ethical behaviour, the concept of cryptocurrency can raise questions and concerns. Some may see it as speculative and unstable, while others may see it as an opportunity to align with the principles of transparency and accountability. In this discussion, we will explore the Islamic perspective on cryptocurrency and the potential for aligning this new form of currency with the values and principles of Islamic finance.

In Islamic finance, the idea of money and currency is tied to the principles of justice, fairness, and ethical behaviour. From an Islamic perspective, cryptocurrencies like Bitcoin and Ethereum can be seen as speculative and inherently unstable, as their value is not tied to a tangible asset or underlying economic activity. Additionally, the decentralized and anonymous nature of cryptocurrencies may raise concerns about their potential use in illicit activities such as money laundering or financing of terrorism. However, some proponents argue that the blockchain technology underlying cryptocurrencies can align with Islamic principles of transparency and accountability, and that cryptocurrencies can be structured in a way that complies with Islamic finance principles. For example, a cryptocurrency could be issued as a token backed by a real asset, such as gold or real estate, and traded in a transparent and regulated marketplace. Ultimately, the Islamic perspective on cryptocurrencies will depend on their specific design and usage, and there is no single, definitive answer to this question.

From an Islamic perspective, there are several reasons why one may consider using cryptocurrency. First and foremost, is the transparency of cryptocurrency. Cryptocurrency transactions are recorded on a decentralized public ledger which is the blockchain that allows for transparency and accountability. This level of transparency can increase accountability and trust in financial transactions, as all parties can see the details and history of a transaction. This aligns with the Islamic principles of fairness and justice in financial transactions.

Next is the avoidance of Riba. Islamic finance prohibits the charging or paying of interest, which is seen as exploitative. Cryptocurrency transactions do not involve the payment of interest, making them more compatible with Islamic principles. The avoidance of Riba, or interest, is an important principle in Islamic finance. As accordance with the Islamic perspective, the charging or paying of interest is exploitative and unjust, as it unfairly benefits one party over the other. In traditional financial systems, interest is often charged on loans or earned on savings deposits, which can result in a situation where the borrower is paying more than the original amount borrowed and the lender is receiving more than their original investment. In contrast, cryptocurrency transactions do not involve the payment or charging of interest. Instead, transactions are made through the transfer of value from one party to another, without the addition of any extra fees or charges based on the amount of time or interest rate. This can make cryptocurrency more compatible with the principles of avoiding Riba in Islamic finance.

Lastly, people can use cryptocurrency as to charitable giving, or sadaqah. Cryptocurrency can facilitate charitable giving by allowing for quick and easy donations to be made to organizations and causes. encouraged through the practices of Zakat (mandatory charitable giving) and Sadaqah (voluntary charitable giving). These acts of giving are seen as a means of purifying one's wealth and helping those in need. Cryptocurrency can facilitate charitable giving by making it easier and faster to make donations. With traditional methods, charitable donations may involve cumbersome processes such as writing checks or transferring funds through bank transfers, which can take time and incur fees. In contrast, cryptocurrency transactions can be completed quickly and inexpensively, allowing for prompt and efficient donations to be made to organizations and causes. This can increase the effectiveness of charitable giving and align with the Islamic principles of helping those in need. Additionally, the transparent nature of cryptocurrency transactions can increase accountability and trust in the charitable organizations receiving the donations.

In conclusion, the Islamic perspective on cryptocurrency is a complex and evolving topic that requires careful consideration of the principles and values of Islamic finance. While cryptocurrencies like Bitcoin and Ethereum have gained widespread attention as an alternative form of currency and investment, they also raise concerns about their potential use in illicit activities and their lack of stability and transparency. However, proponents argue that the blockchain technology underlying cryptocurrencies can align with Islamic principles of

transparency and accountability, and that cryptocurrencies can be structured in a way that complies with Islamic finance principles. Ultimately, the Islamic perspective on cryptocurrencies will depend on their specific design and usage, and the industry continues to explore the possibilities for aligning this new form of currency with the values and principles of Islamic finance.

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Class: TLB3/KLB1

Subject: Islamic Finance

RELEVENCY OF DIGITAL CURRENCY IN ISLAMIC FINANCE

In this era of globalization, Islamic finance is truly well-developed in Malaysia and well-known throughout the world. This can be seen as a good sign that banking sectors such as Maybank Islamic Berhad and Affin Islamic Bank Berhad start to promote Islamic finance products such as ijarah (leasing), mudharabah (profit sharing), musyarakah (partnership) and many more.

Throughout the development of the financial world, exist the term digital currency which is known as an electronic form of money that independently operates from the central bank. For instance, Bitcoin. The most popular virtual currency that operates without the involvement of any person, group or entity (third party) during the payment transaction. However, in Malaysia, Bitcoin is unrecognised because of the principle in this type of transaction kindred to menace. In the meantime, exist the Sharia compliance digital currency in Malaysia known as AEON Credit Service (M) Bhd based on Tawarruq principle. Tawarruq is a principle in Islamic finance to allow the sale and purchase of assets by way of deferred payment.

Regardless digital currency is officially recognised in the financial and business world, however, in Islamic finance, there are three important elements to be complied with which are free from riba, gharar and gambling. There are digital currencies associated with gharar. Gharar means uncertainty that may exist in between the transaction that may cause doubt to the transparency of the business. Due to uncertainty, digital currency such as Bitcoin is unrecognised by the law.

In Surah Hud verse 87, mentioned that "O Shu'ayb, does your prayer command you that we should leave what our fathers worship or not do with our wealth what we please? Indeed, you are the forbearing, the discerning!". This verse illustrates the importance of maintaining the integrity of the currency and the prohibition against doing things unreservedly. Even though the holy Quran did not mention specific characteristics or the shape of money, it must follow the principles as per mentioned from the Islamic perspective.

Referring to Bitcoin as one of the popular digital currencies, there are three different views regarding Bitcoin in Islamic finance. Firstly, the Egyptian Fatwa Council is perceived that Bitcoin is illegal. This is because involvement in Bitcoin dealings is far too risky either to individuals or the country. According to the Mufti of the Egyptian Republic Syeikh Shauqi 'Allam, Bitcoin is banned on the principle that it does not meet the requirements to be recognized as a currency. Secondly, according to Tan Sri Dr. Mohd Daud Bakar, Chairman of

the Shariah Advisory Council (SAC) at the Central Bank of Malaysia. He is of the view that investing in Bitcoin is permissible, and the profit earned should be subjected to zakat. Subsequently, he mentioned that risk is normal in every matter whether in business, investment and in any other field. The third view is from the International Shari'ah Research Academy for Islamic Finance or shortly known as ISRA. However, ISRA does not issue any objections to any opinion or in other words known as tawaqquf which has not officially given a view regarding this matter.

Based on the views above, Dato' Seri Dr. Zulkifli Mohamad Al-Bakri on behalf of Mutiara Federal Territory's Office responded and outlined a fatwa about Bitcoin as unacceptable. It can be admissible only to a certain situation where if improvements are made to the system in regulating Bitcoin of its withdrawal, price control, security system on the exchange and strict regulation to prevent illegal exploitation by irresponsible parties.

Digital currency is not only focusing on Bitcoin as there are many other platforms such as Luno, Kucoin and Huobi. Therefore, the Malaysian Central bank issued an early drafting to consult the public regarding Cryptocurrency in line with Anti-Terrorism Financing Proceeds of Unlawful Activities (AMLA 2001).

This fast development in the financial world may confuse the Muslim community due to the non-existence of special guidelines in our primary reference which are the Quran and Sunnah. However, it does not make digital currency to be automatically forbidden from an Islamic perspective. The best solution in this situation is to ensure the certainty and safety of the products or services.

Generally, there is no specific fatwa or hukum syarak on digital currency due to the wide range of these services that are different from one to another as they have their own specialties and principles. Therefore, it is encouraged to evaluate it on our own. People who have no experience or knowledge regarding Islamic finance can make some research and ask the expert for answers.

To conclude, due to different principles in digital currency, then evaluation must be made between the advantages and disadvantages in this area. If more disadvantages than advantages, then it is not recommended to use such products or services. According to the Securities Commission Malaysia, investors are persuaded to seek legal and expert advice before making any engagement with this financial area. It is to prevent people from any fraud, money laundering and financing terrorist activities.

ISLAMIC FINANCE: CHALLENGES TO KEEP UP WITH FINTECH

Fintech, like many other rising technology industries, may be a difficult topic to grasp due to the vast array of tools, platforms, and services that come under its vast umbrella. FinTech is a phrase that has recently been adopted to refer to technology innovation in financial services. Regulators are seeking to define the definition of this wide phrase. According to the BIS's Financial Stability Board (FSB), FinTech is defined as a technology that enable financial innovation that could result in new business models, applications, processes, or products with a material effect on financial markets and institutions, as well as the provision of financial services. In another words, FinTech can be software, algorithms and applications for both desktop and mobile. After the Covid-19 pandemic, an increasing number of companies are resorting to fintech to accept contactless payments or use other technological innovations. Fintech is used by most businesses nowadays for payment processing, e-commerce transactions, accounting, and, more.

How does FinTech work? Well, Fintech gives consumers and companies access to traditional financial services in novel ways that were previously unavailable. For example, many traditional banks' mobile applications now provide consumers with on-the-go access to bank services such as viewing your balance, transferring cash, or depositing a check. As such, many services used by businesses, such as loan underwriting and real estate appraisals, are also automated via fintech. Artificial intelligence paired with enormous amounts of consumer data assists fintech companies in understanding their clients and powering marketing campaigns, product development, and underwriting.

Islamic finance fintech must adhere to Shariah standards. In general, technology is Shariah-neutral, unless it is employed in a way that clearly contradicts any Shariah judgements or regulations. The use of FinTech in an Islamic finance product should not cause harm, deception or cheating, or hidden expenses, nor should it instil any *Riba*, *Maysir*, *Gharar*, or other banned components that render the sale illegal. So, basically, there are 4 principles of Islamic Finance FinTech. Firstly, is *Musharakah* or *Mudarabah* (profit and loss sharing); all wealth must be asset-backed and have a true economic purpose; investments must provide a social and ethical benefit in addition to monetary returns; and destructive (haram) activities and

industries must be avoided. The notion of profit and loss sharing (*Musharakah* or *Mudarabah*) safeguards the borrower from facing a disproportionate share of the risk in a business endeavour, and the principle of wealth being asset-backed has resulted in traditionally less volatile Islamic investments.

The worldwide Islamic fintech business is projected to be valued RM372.56 billion (\$79 billion) and is quickly expanding. Southeast Asia, with a sizable Muslim population and a growing middle class, is one of the most potential regions for Islamic fintech. According to *FinTechnews.my*, several reasons are driving this rise, including rising demand for Shariah-compliant financial goods and services, the expansion of mobile phones and mobile banking services, and increased awareness of Islamic fintech products and services. Islamic fintech firms are offering a much-needed alternative to traditional banking goods and services that are not Shariah-compliant. They are also capitalising on the region's increased demand for digital banking and financial services. Even so, there are several challenges in adapting FinTech.

One of the challenges in using FinTech is cyberattacks. One of it is the threat to information security and privacy. This is a critical topic right now. Given the growing number of cyber security incidents in recent years, the adequacy of present security standards and processes is being called into doubt. The majority of online financial services, such as payment gateways, net banking, digital wallets, and form filling, are delivered via a cloud-based computer system. Although cloud computing offers benefits such as scalability, speed, and accessibility, the volume of data flowing through it makes it a great cover for cyberattacks. As a result, it needs different security safeguards than traditional local data centres. Another cyberattack that can be a challenge to ponder with is malware. Malware is the most common sort of cyberattack. Malware has advanced dramatically, making it more difficult to detect and eliminate. Malicious software, unlike other types of assaults, can enter through a variety of routes, including emails, third-party software, dubious websites, and pop-up windows. It is especially dangerous due to its lethal transmission and spread rates, which may knock whole networks down. As a result, selecting cybersecurity infrastructure providers with constantly updated malware detection software and features such as automatic real-time malware detection is critical.

Other than that, is the freedom for the third-party to access information. Third-party services and software are often used by financial institutions and banks for a range of purposes.

Because these programmes are linked to the organisations' key networks, they serve as access points for hackers acting as authorised staff members or clients of a third party. Banks must exercise caution when picking a reliable third-party solution to assist fintech in addressing cybersecurity risks. This also brings to identify theft. To provide security and validate identification, banks and financial institutions typically use methods such as one-time payments, biometrics, passwords, and other sorts of authentication. The problem of these tactics is that they are commonly replicated, allowing hackers to steal large sums of money. Although these strategies are beneficial, banks and financial institutions must employ a range of verification gates based on diverse principles to prevent infiltration.

Islamic models such as *zakat*, *sadaqah*, *waqf*, Islamic microfinance, and micro *takaful* help to lower the number of unbanked people by giving them with financial access, that is also helping to financial inclusion. However, the widespread digital towards business owners is lacking in some country, to use digital option in their finance is costly since fintech will use hardware and software. Such as in Malaysia, with the majority of the population also unbanked or underbanked, key financial services offering credit access are mainly inaccessible to those in greatest need.

To conclude, the adaption of technological innovation is a fast-changing ecology, and Islamic banks are not immune to these developments. Islamic banking's digitalization has also had an influence on the Islamic Finance Services Industry's financial stability. Regulators must also be cognizant of potential new threats to digital Islamic banking, such as data privacy, cyber security, and consumer protection, among others.

The Integration of Sustainability and Social Responsibility in Islamic Finance Products and Services

Written by: Muhammad Ammar Bin Abdul Rashid (1181908)

Islamic finance is rooted in principles of fairness, justice, and ethics, and has gained significant momentum in recent years as a viable alternative to conventional finance. While the traditional focus of Islamic finance has been on the avoidance of interest-based transactions, the industry has increasingly recognized the importance of integrating sustainability and social responsibility into its products and services. The purpose of this article is to explore the integration of sustainability and social responsibility in the Islamic finance industry and its implications for economic growth.

Sustainability refers to the development of economic activities that meet the needs of the present generation without compromising the ability of future generations to meet their own needs. In the context of finance, sustainability is concerned with ensuring that financial activities promote long-term economic growth and stability while minimizing negative environmental and social impacts. Social responsibility, on the other hand, refers to the ethical obligations of organizations to consider the impact of their actions on society and the environment.

In Malaysia, the Islamic Financial Services Board (IFSB) has established guidelines for the integration of sustainability and social responsibility in Islamic finance. The guidelines outline the principles of Maqasid al-Sharia and provide a framework for Islamic finance institutions to assess and manage the environmental and social risks associated with their investments. The guidelines also emphasize the importance of considering the long-term impact of investments on the environment and society and encourage Islamic finance institutions to adopt sustainable business practices.

Dr. Humayon Dar, the CEO and founder of BMB Islamic, a leading provider of Shariah-compliant financial products and services, has emphasized the importance of incorporating sustainability and social responsibility into Islamic finance. In an interview with Islamic Finance News, Dr. Dar stated, "Islamic finance has a unique opportunity to play a leading role in promoting sustainable and responsible investment practices. The principles

of Maqasid Al-Sharia and the sharia law prohibition on investment in harmful industries align well with the principles of sustainability and social responsibility."

Islamic finance, by its nature, aligns well with the principles of sustainability and social responsibility. The sharia law prohibits investment in industries and activities that are harmful to society or the environment, such as gambling, alcohol, tobacco, and weapons. This restriction is based on the Islamic principle of Maqasid al-Sharia, which states that the purpose of sharia law is to promote the well-being of humanity. The Quran reinforces this principle in various verses, such as Surah Al-A'raf 7:56, which states, "And do not destroy the earth after it has been set in order." This verse highlights the importance of preserving the environment and acting in a manner that promotes the well-being of humanity.

In recent years, the Islamic finance industry has made significant efforts to integrate sustainability and social responsibility into its products and services. One of the most notable examples of this is the development of Islamic finance products that are designed to support environmental and social initiatives. For example, Green Sukuk, a type of Islamic bond, is used to finance environmentally sustainable projects, such as renewable energy and clean technology. Social Sukuk, on the other hand, is used to finance projects that have a positive social impact, such as affordable housing, education, and healthcare.

According to a report by the Islamic Financial Services Board (IFSB), the global Islamic finance industry has experienced significant growth in recent years. The report estimated that the total assets of Islamic financial institutions reached approximately USD 2.1 trillion in 2020, up from USD 1.9 trillion in 2018. The growth of the industry has been driven by an increasing demand for sharia-compliant financial products and services, particularly in countries with large Muslim populations, such as Malaysia, Indonesia, and the Gulf Cooperation Council (GCC) countries. The report noted that the development of innovative products and services, as well as the increasing recognition of Islamic finance as a viable alternative to conventional finance, has contributed to the growth of the industry.

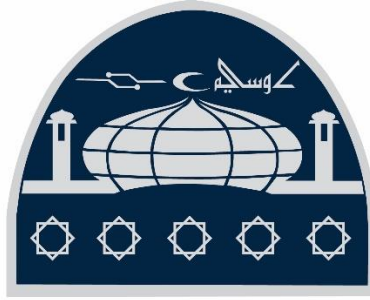
The integration of sustainability and social responsibility in Islamic finance has significant implications for economic growth. Firstly, by supporting environmentally sustainable and socially responsible projects, Islamic finance helps to address the pressing challenges facing society, such as climate change, poverty, and inequality. By investing in

projects that promote the well-being of humanity, Islamic finance contributes to long-term economic stability and growth.

Secondly, the integration of sustainability and social responsibility in Islamic finance increases the appeal of Islamic finance products to a wider range of investors. As awareness of the negative impacts of conventional finance grows, more and more investors are looking for investment options that align with their values and support environmentally and socially responsible initiatives. By offering products that meet these demands, Islamic finance is well-positioned to attract a growing number of socially conscious investors, which will help to drive the growth of the industry.

Finally, the integration of sustainability and social responsibility in Islamic finance helps to build trust and credibility in the industry. The public is becoming increasingly skeptical of financial institutions that prioritize profit over ethics and sustainability. By demonstrating a commitment to sustainability and social responsibility, Islamic finance can increase its credibility and attract a wider range of stakeholders, including customers, investors, regulators, and the wider community.

In conclusion, the integration of sustainability and social responsibility in Islamic finance is a critical step in the development of the industry. By supporting environmentally sustainable and socially responsible projects, Islamic finance can contribute to long-term economic stability and growth while building trust and credibility with a wider range of stakeholders. As awareness of the importance of sustainability and social responsibility continues to grow, the Islamic finance industry is well-positioned to play a leading role in promoting economic growth that is both sustainable and socially responsible.



UNIVERSITI SAINS ISLAM MALAYSIA

جامعة العلوم الإسلامية الماليزية

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

FACULTY OF SHARIAH AND LAW

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LAB 5153

ISLAMIC FINANCE

INDIVIDUAL ASSIGNMENT:

**THE DEVELOPMENT, APPLICATION AND CHALLENGES OF ISLAMIC
FINANCE IN MALAYSIA**

PREPARED FOR:

ASSOCIATE PROFESSOR DR. ZULKIFLI HASAN

KLB 2 / TLB 7

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THE DEVELOPMENT, APPLICATION AND CHALLENGES OF ISLAMIC FINANCE IN MALAYSIA

Islamic finance is a financial system that is based on Islamic law (Sharia) and guided by Islamic economics. It prohibits interest-based transactions (riba) and emphasizes profit and loss sharing, risk sharing, and ethical investing. Instead of interest-based loans, Islamic finance offers products such as murabaha (cost-plus financing), musharaka (joint venture financing), and sukuk (Islamic bonds). The goal of Islamic finance is to promote ethical and socially responsible investing while providing financial services to individuals and businesses.

The development of Islamic finance in Malaysia can be traced back to the 1970s, when the government began promoting and encouraging the growth of Islamic finance as a way to differentiate itself from other countries in the region. Over the years, Malaysia has established itself as a global leader in Islamic finance through a combination of supportive regulations, innovative products, and a strong infrastructure. Today, Malaysia is home to a thriving Islamic finance industry that comprises a significant portion of the country's banking sector and offers a wide range of Shariah-compliant financial products and services, including Islamic banking, sukuk (Islamic bonds), and takaful (Islamic insurance). The government continues to support the development of Islamic finance by providing tax incentives, promoting research and development, and promoting Malaysia as an international center for Islamic finance.

In Malaysia, Islamic finance has been widely adopted and has grown to become a major part of the financial system. The Malaysian government has taken proactive steps to promote the development of Islamic finance and has established a regulatory framework to support its growth.

One of the main applications of Islamic finance in Malaysia is in the banking sector, where there are several Islamic banks and a large number of conventional banks that offer Islamic financial products. Islamic finance is also widely used in the capital market, with the issuance of sukuk (Islamic bonds) becoming a major source of funding for infrastructure and other large-scale projects.

In addition to banking and capital markets, Islamic finance has also been applied to other areas such as insurance (takaful), asset management, and real estate. Malaysia is also home to several Islamic finance institutions and organizations that promote the development and awareness of Islamic finance globally. Overall, the growth of Islamic finance in Malaysia

has had a significant impact on the country's economy, helping to promote financial inclusion, support entrepreneurship, and attract foreign investment.

Islamic finance in Malaysia benefits society by offering ethical and socially responsible financial products and services that are in line with the principles of Islam. This type of finance prohibits activities such as interest-based lending, speculation, and unethical investments, leading to a more transparent and fair financial system. Additionally, Islamic finance promotes financial inclusion by offering alternatives to conventional finance, particularly to those who may not have access to traditional financial services. Furthermore, Islamic finance also contributes to the development of the economy and job creation through investments in infrastructure and productive sectors.

Despite the growth and widespread adoption of Islamic finance in Malaysia, there are still some barriers and challenges that need to be addressed in order to further enhance its application and promote its growth. Some of these challenges are, the lack of awareness. There is still a lack of awareness about Islamic finance among the general public, and many people are unfamiliar with the principles and practices of Islamic finance. This can limit the growth of Islamic finance and limit the availability of Islamic financial products and services to the general public. Second, the skilled Workforce. There is a shortage of skilled professionals in the Islamic finance industry, which can limit the growth of the sector and the development of new products and services.

Third, the lack of harmonization. Despite efforts to promote the development of Islamic finance globally, there are still some inconsistencies in the application of Islamic finance principles and practices across different countries. This can create challenges for cross-border transactions and limit the growth of the sector. Fourth, competition from conventional finance. Islamic finance still faces competition from conventional finance, which is well established and has a larger customer base. This can limit the growth of Islamic finance and limit its reach to new customers. Last but not least, regulatory challenges: There are also regulatory challenges in the application of Islamic finance, including issues related to tax treatment, accounting standards, and risk management practices. Addressing these challenges will be essential for the continued growth and development of the sector.

Despite these challenges, the Islamic finance industry in Malaysia continues to grow and evolve, and efforts are being made to address these barriers and promote its growth. The

continued development of the sector will be important for promoting financial stability, encouraging entrepreneurship, and supporting the broader economy.

In conclusion, Islamic finance in Malaysia has grown significantly in recent years and has become a key player in the global Islamic finance industry. The Malaysian government has implemented policies to promote the growth of Islamic finance and the country has a well-developed infrastructure for Islamic banking and financial services. There is a high demand for Shariah-compliant financial products and services in Malaysia, which has resulted in the growth of Islamic finance institutions and products. Despite some challenges, such as limited understanding of Islamic finance among the public and competition from conventional financial institutions, Islamic finance continues to be a thriving sector in Malaysia.

The Role of Islamic Finance in Achieving Sustainable Development Goals (SDGs)
through Zakat

Prepared by : Muhammad Haikal Bin Che Hasim

Zakat and the Sustainable Development Goals (SDGs) both aim to address various global challenges and work towards creating a more sustainable and equitable world. The SDGs, adopted by the United Nations in 2015, consist of 17 interlinked goals that address pressing global issues such as poverty, inequality, climate change, and access to education and healthcare. On the other hand, Zakat is one of the five pillars of Islam and refers to the obligation of Muslims to give a portion of their wealth to support those in need. Zakat is considered a means of wealth redistribution and poverty alleviation.

Zakat and the Sustainable Development Goals (SDGs) can complement each other to achieve the greater cause of global development and reduction of poverty. Zakat has the potential to contribute to several of the SDGs, particularly SDG 1 (No Poverty), SDG 2 (Zero Hunger), SDG 3 (Good Health and Well-Being), SDG 4 (Quality Education), and SDG 8 (Decent Work and Economic Growth). For instance, Zakat funds can be used to provide food and shelter for the poor, improve access to health services, and support education and training programs. On the other hand, the SDGs can provide a framework for the effective and efficient use of Zakat funds. By aligning Zakat initiatives with the SDGs, the impact of Zakat can be increased and better measured, and resources can be deployed more effectively.

SDG 1 aims to end poverty in all its forms everywhere, and Zakat can play a significant role in achieving this goal by directly addressing poverty at the local level. Zakat is collected from the wealthy and distributed to the poor, helping to reduce poverty and support those in need. The funds collected can be used to provide financial assistance, food, shelter, and other basic needs to those who are struggling to make ends meet. By reducing poverty, Zakat can help to ensure that everyone has access to the basic necessities of life and contribute to the overall well-being of society.

In terms of SDG 2, zakat can play a significant role in reducing hunger and promoting food security. For example, zakat can be used to support food banks and soup kitchens, which

provide meals for those who are struggling to meet their basic food needs. It can also be used to support sustainable agriculture initiatives, such as community gardens, that provide fresh produce to local communities. Additionally, zakat can be used to support programs that provide education and training in sustainable agriculture, allowing farmers to improve their yields and increase their food security.

Another way in which zakat can contribute to SDG 2 is by providing support to small-scale farmers and rural communities. These communities often lack access to credit and other financial resources, making it difficult for them to invest in the tools and resources they need to improve their yields. Zakat can provide these communities with the support they need to improve their livelihoods and achieve food security.

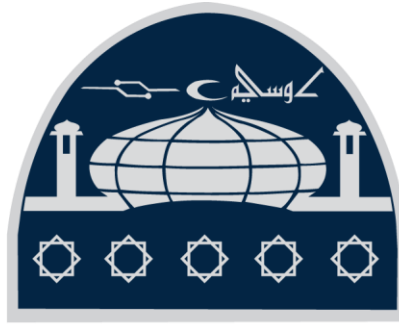
Zakat funds can be used to support healthcare programs and medical facilities in underserved communities, especially in rural areas where access to healthcare is limited. This can help reduce maternal mortality rates and prevent the spread of infectious diseases. Zakat can also be used to support education and awareness campaigns aimed at promoting healthy lifestyles and preventing non-communicable diseases. These initiatives can help to improve the overall health and well-being of individuals and communities, which is a key aspect of SDG 3.

Zakat can also play a role in ensuring Quality Education which is SDG 4, for all by providing resources for education and training opportunities for those who might not otherwise have access. This can help to address inequalities in the education system and increase access to quality education for marginalized communities. For example, Zakat, as a tool for poverty alleviation, can play a role in supporting the implementation of SDG 4 by providing education and training opportunities to individuals in need. Zakat funds can be used to establish schools and support education programs for underprivileged individuals. By providing education opportunities to those who are struggling with poverty, zakat can help break the cycle of poverty and promote sustainable development in communities.

SDG 8, also known as "Decent Work and Economic Growth," aims to promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all. It targets to increase employment opportunities, particularly for women and youth, and to reduce informality by creating decent work conditions, including social protections. In the context of Zakat, it can contribute to SDG 8 in several ways. For instance,

Zakat can provide financial support to individuals who are in need of employment or are in the process of starting a business. This can help increase the number of people participating in the workforce, reducing unemployment rates and boosting economic growth. Additionally, Zakat can be used to fund vocational training programs, helping individuals develop skills and qualifications that are relevant to the job market, thus increasing their chances of finding employment.

In conclusion, Zakat and the Sustainable Development Goals complement each other in addressing the global issues of poverty, hunger, health, education, and economic growth. The principle of Zakat as a religious obligation to give a portion of one's wealth to those in need aligns with the SDG goal of reducing inequalities and promoting inclusive and sustainable economic growth. Zakat distribution can provide financial assistance to the marginalized communities and support the development of small businesses, which can contribute to reducing poverty and promoting income equality. Overall, the integration of Zakat into the implementation of the SDGs can enhance the effectiveness of poverty alleviation programs and contribute to a more inclusive and sustainable development for all.



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ISLAMIC FINTECH IN MALAYSIA: A FUTURE

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ISLAMIC FINTECH IN MALAYSIA: A FUTURE

BY: IZZHAR AIMAN

Malaysia is one of the biggest, if not the biggest, player of Islamic Finance in the world. In 2017, Malaysia alone produced an enormous RM 2.05 trillion of Shariah-compliance financial assets. As such, this small country in Southeast Asia played a huge role in Islamic Finance industry despite competition from other Gulf Countries such as Saudi Arabia and Qatar.

However, despite its leading role in Islamic Finance, Malaysia still has not develop or take part in Islamic FinTech compared to other Islamic players. Practitioners and regulators are still in the early stages of understanding the mechanism of FinTech and its applicability to the present environment of Islamic financial system.

Regardless, there are several steps taken by important players of Islamic Finance in developing and introducing Islamic FinTech in Southeast Asia such as Ethis Indonesia which are based on crowdfunding to give funds for business, trade as well as real estate activities in Southeast Asia. This online platform focuses on Shariah-Compliant activities online which can reach to all types and levels of the society.

The most important aspects of this crowdfunding are all the execution are made online, the investments are only done for Halal products and services which are absent from Riba', Gharar and Maysir which are the core principles of Islamic Finance. These important steps towards the establishment of Islamic FinTech as it opens the door and guidelines for improvements of Islamic FinTech in Malaysia.

Not only that, but there are also several events which has kickstarted Islamic FinTech in Malaysia. The Investment Account Platform (IAP) was introduced as the first Islamic banking FinTech platform to act as a hub marketplace to fund for SMEs. Bank Rakyat, Affin Islamic, Bank Muamalat, Bank Simpanan Nasional, Maybank Islamic, and Bank Islam are the consortium members of this platform.

This is followed by A Memorandum of Understanding (MOU) ratified between the Malaysian Government Advisory Committee (MPM) and IncuBlock, a South Korean blockchain which will lead the development of Shariah-compliant blockchain. Although there are arguments on

the permissibility of Blockchain and Cryptocurrencies, there are also scholars which has argue for its acceptance as Halal.

Some Islamic jurists and experts from Muslim nations claim that cryptocurrency is Halal as blockchain, and cryptocurrencies are fundamentally anti-interest when seen from the standpoint of money production. Islamic banking norms are also anti-interest; hence many Islamic scholars consider the technology, pricing, and buying and selling of cryptocurrency money to be kosher when seeking guidance on permissibility.

Aside from that, the Malaysian government has formed the Malaysian Digital Economy Corporation (MDEC) as an agency tasked with developing Malaysia's digital business environment. This organisation also actively participates in the halal ecosystem by providing Shariah certification.

Furthermore, a significant step forward was made when HelloGold, a gold-backed cryptocurrency developed by Malaysian co-founders Robin Lee and Ridwan Abdullah, received Shariah-compliance certification from Amanie Advisors' Shariah supervisory board.

However, due to a lack of regulatory advocacy, all of these efforts appear to be insufficient. Leaving FinTech unregulated will disrupt the entire digitalization process, perhaps leading to deceptions, misuse, and misapplication of the technology. Malaysia has a strong structure in place to support Islamic finance-related businesses, but there hasn't been much development in terms of technology from the authorities.

Despite the fact that the Central Bank of Malaysia (BNM) and the Securities Commission (SC) have released the FinTech Regulatory Sandbox and crowdfunding guidelines, no significant effort has been made to coordinate the Shariah-compliant component of existing FinTech solutions.

As a result, this legislative constraint would stymie Islamic financial institutions' efforts to improve their goods and services by incorporating cutting-edge FinTech technologies such as bitcoin and blockchain technology. In reality, the use of RegTech would reduce the danger of potential Shariah compliance violations.

As such, the government must play an active role to ensure that Malaysia stays as the leader in Islamic Financial System by taking measures such as enacting laws and more regulations, conduct a colloquium with the stakeholder as well as by promoting the economy of FinTech by allocating budget for startups. These small steps not only will increase Malaysia's influence in Islamic Finance industry, but it will also give Malaysia a head in the world economy as a whole.

THE BENEFIT OF SADAQA HOUSE BANK ISLAM

Prepared by: Nur Fateen Nadia Binti Johari (1181888) (TLB5/KLB2)

YABhg Tun Dr Mahathir in his speech to officiate the launch of Bank Islam's operation for the first time on 1 July 1983 / 20 Ramadan 1403H stated that the establishment of Bank Islam is an effort to demonstrate that Islamic assimilation in our country's economy shall not evoke any economic catastrophe. The purpose of this establishment is harmonious with the mission and vision that guided Bank Islam which is "to provide solutions that deliver value" and "the bank that advances prosperity for all" as Bank Islam has provided an array of diversified Shariah-compliant solutions that best meet their customers' financial need and ensures that their solutions and business activities design is for all people's wellbeing, especially the marginalized and underprivileged communities while safeguarding the world.

The establishment of the Sadaqa House in 2018 is one of the best initiatives invented by Bank Islam to safeguard underprivileged communities which is in line with their vision. The idea of Sadaqa House was broached by Dato' Dr Abdul Halim Ismail who is the first Managing Director of Bank Islam when he received the Royal Award for Islamic Finance in 2014 where he wants to implement Sadaqa House as an Islamic banking product. He envisaged the establishment of an institution governed by a regulator to provide products and services to collect various types of social welfare funds such as sadaqah, waqf and, hibah from the private sector and distribute these to the poor and needy in our society.

Moreover, Sadaqa is all about wealth distribution as it is known as the highest level of wealth management from an Islamic perspective. Sadaqa House is a charity crowdfunding platform which operates as a meeting point between donors and change-makers as well as beneficiaries. In other words, Sadaqa House facilitates this initiative of giving back to society by playing a vital role as an intermediary and meeting point between donors, change-makers and beneficiaries.

Furthermore, the establishment of Sadaqa House has created a new narrative in which a participatory funding platform collaborates with traditional banking to create combined social

impact offers. Its aim is to ensure every aspect of the process is implemented with good governance in order to deliver positive and long-term impact. Additionally, Sadaqa House is run by Bank Islam's Centre of Social Finance and is governed by the Sadaqa House Management Guideline, which was approved by the bank's Management Risk Control Committee and Shariah Supervisory Council. The Sadaqa House & Zakat Committee is a dedicated management sub-committee that oversees and directs Sadaqa House's strategies, processes, and activities.

In addition, Bank Islam welcomes any generous individuals and institutions to choose Sadaqa House in order to manage their philanthropic fund and will professionally manage their fund for charitable causes through three selections of funds namely perpetual fund, direct fund and also general fund. The perpetual fund is where the principal will remain in perpetuity and invested, and only the returns generated will be distributed to charitable causes whilst the direct fund is where the donors can choose to donate directly to charitable projects under Sadaqa House. Lastly, the general fund is where donors do not specify any specific charitable projects and it is the discretion of Bank Islam's Zakat & Charity Committee to decide the distribution according to available and suitable charitable projects.

On the other hand, Bank Islam, through Sadaqa House, provides advanced services to collect, manage and distribute donations collected from the public by channelling such funds towards realising identified charity projects for underserved communities within the focus sectors of Sadaqa House. There are four chief focus sectors aimed by Sadaqa House to channel its fund for sustainable positive impacts.

The said sectors include health, where Sadaqa House aims to support underserved communities to have access to quality health treatment as all human beings regardless of their race, their religion or even their skin colour are deserved to have access to the health services they need, when and where they need them, without suffering financial hardship. No one should get sick and die just because they are poor, or because they cannot access the health services they need. The next sector is the environment sector, where the Sadaqa House aims to protect natural capital and resources by raising environmental awareness and supporting renewable energy efforts.

Besides, the Sadaqa House also focuses on the education sector, where the Sadaqa House aims to support community efforts to ensure that every child has access to a high-quality education, with a focus on holistic student outcomes. The last sector focused on by Bank Islam to channel its fund is community empowerment, where the Sadaqa House aims to enable and support community-led actions that strengthen social cohesion and inclusivity within communities through long-term economic and social empowerment.

In conclusion, through Sadaqa House, Bank Islam has created a platform that gathers financial contributions, big and small towards making a meaningful impact that adds a positive difference to the lives of those in need. Moreover, Sadaqa House also encourages people to voluntarily give charity to people in need with an open heart. There are many decrees in the Quran and sayings attributed to Prophet Muhammad (Sallallahu Alaihi Wasallam) that indicates the beauty of sadaqah such as in surah Al-Hadid, verse 57 where it stated that “Indeed, the men who practice charity and the women who practice charity and [they who] have loaned Allah a goodly loan – it will be multiplied for them and they will have a noble reward.

NFT'S ELIGIBILITY FROM THE EYE OF ISLAMIC LAW

Prepared by: Nur Hafizah Binti Azmi Mukhtar (1181899 - TLB 5 / KLB 2)

Anything that is uniquely recognised kept digitally, and used by companies to generate value is considered a digital asset. Documents, music, video, logos, slide shows, and websites are a few examples of digital assets. From the Islamic perspective, the digital asset may be accepted if it fulfils all the Shariah requirements and does not lead to any uncertainty. In July 2020, the Shariah Advisory Council (SAC) of the Securities Commission Malaysia (SC) announced that it would be permissible to invest and trade in digital currencies and digital tokens on registered digital asset exchanges (DAXs) that satisfy the requirements under the SAC's resolution.

This acknowledged the value of digitization in the capital market and the growing acceptance of it by market players. In essence, the SAC decided that, from a Shariah standpoint, digital assets are recognised as assets. The following conditions must be satisfied to determine if digital tokens are Shariah-compliant: the funds from their issue must only be utilised for Shariah-compliant purposes, and the rights and benefits attached to the tokens must also be compliant. The second condition stated that if the profits and entitlement of rights and benefits of digital tokens are used for Shariah-compliant and non-Shariah-compliant purposes, then the existing SAC resolution on the operation of sukuk profits and the business activities benchmark under the Shariah screening methodology for listed companies will apply.

Meanwhile, the NFT, or non-fungible token, is a new type of digital asset that debuted in 2020. NFT materials, such as pictures, videos, music, and even portions of cyberspace, are also digital assets. NFTs, which are also referred to as "certificates of authenticity" and are unique to the blockchain, is often granted by the person who created the asset. The distinction between NFT and other digital assets is that it is non-fungible, which means that it cannot be traded or exchanged for another; it is also distinct in that one type of NFT is owned by a single person, which distinguishes it from others. The NFT gives an upper hand to the creator of digital artwork, as they may offer their art to the digital world and have people invest in it.

The creator placed the non-fungible token in the blockchain, which is a public ledger in the digital world that records any transactions that occur when buying or selling digital assets. The NFT may be bought by following specific steps, such as the buyer needing to have a crypto wallet and buying the NFT using digital money or Ethereum.

In looking at the NFT from the Islamic perspective, until now, even in Malaysia, there have been no official shariah laws or fatwas issued on the hukum of using the NFT. But in looking thoroughly at the sale and purchase transaction of the NFT under the Islamic perspective, some conditions need to be fulfilled for its sale and purchase to be said to be in compliance with Shariah. According to the terms and conditions of Shariah law on a sale and purchase transaction:

1. Firstly, there must be the existence of the contracted parties, which are the seller and buyer. In the case of NFT, the sellers and buyers are accounts registered on the NFT market, which means in NFT buying and selling transactions, there are two people (the NFT creator and the buyer or investor) who can be said to be the contracting parties.
2. Secondly, there must be a sighah or pronouncement of ijab and qabul for the transaction. Sighah in the transaction system NFT, nothing is done verbally because this type of transaction is carried out online. A transaction system similar to this is part of the general e-commerce buying and selling system. Written offers and contracts are used in transactions, and the goods are displayed on the NFT page by being labelled with a certain price, after which customers and buyers require them at that price. Thus, Sighah in NFT is regarded as legally valid because buying and selling contract transactions can be carried out orally or in writing, both of which have the same legal effect.
3. Thirdly, there must be something that was bought, or the product must exist. For a sale to be valid, there must be “maq'ud alaih” which is the object of the sale to be bought. Goods traded in the NFT system are digital assets including paintings, drawings, written works, moving objects, and others which means the object of sale do exist.

Therefore, by looking thoroughly at the terms and conditions of Shariah law on a sale and purchase transaction, NFT does fulfill the requirements, which means it is a valid sale and purchase transaction. In my opinion, NFT might be a great and distinctive new type of digital asset to be invested in if the investor or buyer would like to have a unique artwork collection in the digital world. The uniqueness of every NFT product may increase the demand from buyers, especially if the NFT product is associated with prominent designs or famous people such as the Nike`s collection of NFT virtual sneakers, called Cryptokicks and the Korean pop group called aespa who dropped their first NFT collections created by the NFT artist, Blake Kathryn.

However, even if the NFT sale and purchase transaction was valid in the eyes of Shariah law, a person should carefully examine it before purchasing any NFT artwork through the digital market. Despite the possibility that some fraudulent schemes exist, the sale and purchase of the NFT must not contain any elements of gharar (uncertainty), dharar (causing damage or harm), or qimar (betting and wagering). These kinds of elements will make the NFT's sale and purchase transaction to not be valid and non-shariah compliance. Muslims must be aware of everything they are involved in, particularly any transaction or investment involving real-life assets as well as digital assets. Nowadays, as the digital world develops, a Muslim must exercise greater caution while engaging in any type of transaction or investment to make sure that it complies with the shariah law.

Whether Bitcoin Complies with the Islamic Finance : An Overview

By *Nur Izzah Farzana Binti Mohd Tafkir* (1181935)

In this 21st century, modern technology is extremely sophisticated and pervasive in the globe today. Constant news of newly developed technologies can be found on a daily basis in order to make life easier for people, notably in the areas of development, agriculture, security, economy and many others. Islamic finance has also expanded into a very broad context where a variety of products and services have been leveraged to enhance the financial system to its maximum point.

News concerning the use and acquisition of Bitcoin has proliferated over the past several years. The demand for Bitcoin is extremely high despite the fact that it is a digital money that has just recently entered the financial market. Bitcoin is a type of cryptocurrency whereby it is a digital, encrypted and decentralized medium of exchange which utilising the “blockchain” system. A system that generates through an open source. Since Bitcoin is still new in the financial market, it does not have a specific definition. It can be understood as a decentralized currency or stateless currency which is not generated from any individual, institution or even a country.

Bitcoin was first created by Satoshi Nakamoto in 2009 where the average price at that time was around \$47,000 USD per bitcoin. Generally, Bitcoin operates on peer-to-peer technology to transfer payments without passing through an institution’s middleman which normally through a bank. When a collection of people or businesses known as miners own and manage computer systems against the bitcoin network, bitcoin currency can move across communities and execute payments.

Since bitcoin is a relatively new technology, it is important to address the sharia concern. The basic principles under the Islamic Finance is that all transactions must be free from any *riba*, *maysir* and *gharar*. In Islam, whenever a certain thing is not clear, then it is not permissible because one party might be treated unfairly. An Arabic term “Gharar” is used when there is something that is uncertain and raises doubts. If the

element of gharar can be found in any financial system, then such a financial system shall be stopped from operating because it does not comply with the Shariah's requirements.

Referring to the existence or position of the Bitcoin whereby Bitcoin is not a physical currency that can be seen or touched. It is an online currency that is decentralized. An individual who owned a Bitcoin will not have access to their Bitcoin like physical money in the normal Bank. The owner could only see how much Bitcoin that he has and utilise it, he does not know where his Bitcoin is placed at or which Bitcoin is his. Here, we can see that there is uncertainty on the existence of one's possessions over his own Bitcoin. His money might be used by other people and also might be exposed to scam. Whenever uncertainty occurs, it is not permissible (Haram).

However, according to Dr. Zaharuddin Abd Rahman (CEO Elzar Shariah Advisory Sdn Bhd), if a person purchased Bitcoin for the sake of investment then it is permissible (Harus) but zakat must be paid when the haul has been fulfilled. There are a number of Islamic scholars that have different views on the usage and purchase of Bitcoin.

In conclusion, the introduction of Bitcoin is very helpful in managing finances nowadays, but we need to ensure that the system created complies with Islamic Sharia. The world indeed needs financial technology to grow stronger and continue to influence people's lives and lifestyles in the future but with the compliance of Shariah principles, the system will be better as both sides will benefit the goodness equally.

THE IMPLEMENTATION OF VALUE-BASED INTERMEDIATION (VBI) IN EMPOWERING COMMUNITY UNDER ISLAMIC FINANCE

Prepared by: Nur Shahira binti Shamsul Anuar (1181906 -TLB 5/KLB 2)

What would be a good initiative in remaking Islamic Finance in-par with the global demand market? In 2017, Bank Negara Malaysia (BNM) has introduced Value-Based Intermediation (VBI), which is an approach in a form of intermediation function. It aims to deliver the intended outcomes of Shariah through practices, conduct and offerings and these outcomes will further generate positive and sustainable impact, in-line with the aim of Sustainable Development Goals (SDG). The concept of wealth preservation in an Islamic financial context goes beyond its literal interpretation. Despite the underlying of the business modality implemented by industry players, VBI also seek to promote a focus on value and impact creation.

Although VBI shares resemblances with concepts such as Environmental, Social and Corporate Governance (ESG), Ethical Finance and Sustainable and Responsible Impact Financing (SRI), the main difference is the central position of Shariah in the determination of its values, moral compass and priorities. Apart from that, it is also important to note that VBI differs from Corporate Social Responsibility (CSR). VBI focuses on doing good that is well-integrated within business activities such as offerings and practices. Meanwhile, CSR initiatives are usually separated from business activities. CSR is commonly perceived as a cost centre, not a profit centre. Regardless, we believe that these two separates components are linked inter-changeably in terms of the participation of the community as a whole.

The Islamic finance is capable in implementing VBI, as IF currently operates in a conducive environment, which is well equipped with comprehensive market infrastructure and its own regulations and guidelines. Given the current level of practice among the world, IFIs have the necessary capacity to upgrade its system. The Islamic finance industry is well-equipped with a variety of Shariah contracts Innovative application of these contracts has the potential to create and deliver significant impact. Given the size of its market share, the Islamic banking players are expected to drive this VBI initiative. Moving forward, the underpinning thrusts of the VBI will be re-visited to enhance its relevance to takaful industry. Intended outcomes of VBI are universal in nature, which may also be relevant to conventional financial institutions.

The implementation of VBI can be practically seen in various Islamic financial institutions such as Bank Islam, Agro Bank and etc. As one of the aims of VBI is to serve the community and customer, various approaches have been made in engaging with the community. Its focus on engaging with the community has driven lots of provision of financial solutions that create positive impact. In the context of social obligation / 'fardhu kifayah', those who are capable have the responsibility to assist those who are not capable via effective distribution of wealth. As a result, an IBI can have a big impact on how the communities' socioeconomic situation is. This can be achieved through developing, funding, and implementing workable solutions to issues encountered by communities that are meant to positively impact local areas and offer up new economic opportunities for IBIs.

All the above goals can be achieved through few initiatives which includes the integration of waqf and sadaqah within Islamic financial transactions. Besides that, Agrobank has firstly introduced 'Agro Bakti' where it provides working capital financing for person with disabilities to run their agricultural related business, thereby increases income level and provides jobs for persons with disabilities. Second, they also had introduced 'Program Rakan Ladang BERNAS' and made collaborations with to improve productivity of paddy and farmers' standards of living. Agrobank provides working capital amounting RM 50 million to farmers while BERNAS provides free technical consultation.

Besides that, Bank Islam also has stepped up their game by making collaborations with Al-Waqf Home Financing-i by Bank Islam resulted in the construction of 76 residential and 9 commercial lots on a 9-acre plot in Penang. This project which cost RM 24 million was in partnership with Jabatan Agama Islam Pulau Pinang and a property development company.

Therefore, the implementation of this VBI is indeed a good initiative introduced by Bank Negara Malaysia where it focuses more on value-based ranking. Supported by the underlying principles of Islamic Finance, this VBI has instill higher leadership-role in ensuring that Islamic Finance grows and spread among the community, through its Shariah-compliant financing and solutions. The intrinsic principles of fairness and social responsibility are among the main root of VBI which further promotes financial stability, sustainable ecosystem, efficient use of resources and innovation to create new market opportunity. Besides that, with the current situation, the increasing cost of finance makes it difficult for small farmers to get funds and as consequence,

unable to continue their business. Its focus on enhancement of well-being of the people through preservation of wealth, faith, lives, posterity and intellect will at last empower the community. The implementation of VBI through Islamic Financial Institutions has welcome positive impacts and clearly portrays the independency of Islamic finance system is in-par with the global needs and also the industry.

The Role of Islamic Finance in Achieving Sustainable Development Goals (SDGs) from Waqf perspective in Malaysia

by Nurhanis Annisa binti Zulkifli (1181897) (TLB 5/KLB 2)

Sustainable Development Goals (SDGs) are a set of 17 goals adopted by the United Nations in 2015 as part of the 2030 Agenda for Sustainable Development. The SDGs aim to end poverty, protect the planet, and ensure peace and prosperity for all people. The goals are interdependent and cover a range of sustainable development challenges, including poverty, hunger, health, education, gender equality, water and sanitation, energy, economic growth, and partnerships for the goals. The SDGs serve as a blueprint for action and provide a shared vision for the international community to work towards a more sustainable future for all. The SDGs are a call to action for governments, civil society, and the private sector to work together to achieve sustainable development for all people and for the world.

Besides, waqf is an Islamic financial institution and a form of philanthropy that has been used for over a thousand years. It involves dedicating a property, asset, or money for the purpose of charitable or religious activities and benefiting the community. The property or asset is managed by a trustee and the income generated from it is used for charitable purposes such as building mosques, schools, hospitals, or supporting the poor. The waqf property is considered inalienable and its original purpose cannot be altered. It is considered a permanent endowment and can provide a source of continuous funding for community development. The waqf system has been traditionally used in Islamic countries, including Malaysia and its principles of social responsibility and mutual benefit are aligned with the goals of sustainable development.

Islamic finance, including waqf, can play a significant role in achieving the SDGs set by the United Nations. Waqf, a charitable endowment in Islamic law, can be used to fund projects in areas such as poverty reduction, education, and healthcare, which align with several of the SDGs. Additionally, the principles of risk sharing and profit and loss sharing in Islamic finance align with the goal of promoting economic growth and ensuring financial inclusion for all. The use of Islamic finance, specifically waqf, can be a valuable tool in promoting sustainable development, supporting sustainable development projects and achieving the SDGs.

Waqf funds can be used to establish and maintain schools, hospitals, and other social welfare institutions, which align with several of the SDGs, such as no poverty (SDG 1), zero hunger (SDG 2), good health and well-being (SDG 3), quality education (SDG 4), clean water and sanitation (SDG 6), and affordable and clean energy (SDG 7). Additionally, waqf can be used to fund infrastructure projects that promote economic growth, such as building roads, bridges, and housing, which align with the goal of decent work and economic growth (SDG 8).

Furthermore, the principles of risk sharing and profit and loss sharing in Islamic finance align with the goal of promoting economic growth and ensuring financial inclusion for all. This is because, these principles promote financial inclusion by providing access to finance for those who may not have access to traditional banking services, and promote economic growth by encouraging investment in productive activities. Waqf also aligns with the SDGs in terms of promoting sustainable communities. Waqf can be used to fund projects that support sustainable urban development and housing, such as building affordable housing and community centres. This aligns with the goal of sustainable cities and communities (SDG 11).

Moreover, Waqf can also be used to support environmental sustainability, such as funding renewable energy projects and protecting natural resources. This aligns with the goal of responsible consumption and production (SDG 12) and life below water (SDG 14) and life on land (SDG 15). To achieve gender equality (SDG 5) and reduced inequalities (SDG 10), waqf can be used to support the empowerment of marginalized communities, such as funding education and skills training programs for women and children. Not only that, waqf can be used to support the development of micro, small and medium-sized enterprises (MSMEs), this aligns with the goal of sustainable economic growth (SDG 8) and reduced inequalities (SDG 10) by creating jobs and promoting economic development in underserved communities.

In Malaysia, the role of Islamic finance in achieving the Sustainable Development Goals (SDGs) through the use of waqf is significant. The government of Malaysia has been actively promoting the use of waqf for social and economic development. The Waqf Board of Malaysia, established in 1991, is responsible for managing waqf funds and properties and promoting the development of waqf-based projects. One of the main ways in which waqf is used in Malaysia to support sustainable development is through funding social welfare projects, such as building schools, hospitals, and community centres. These projects align with several of the SDGs, including no poverty (SDG 1), zero hunger (SDG 2), good health and well-being

(SDG 3), and quality education (SDG 4). In addition, waqf funds are used to support economic development and financial inclusion in Malaysia.

For example, waqf funds have been used to establish microfinance programs, which provide access to finance for small businesses and entrepreneurs. This aligns with the goal of decent work and economic growth (SDG 8) and reduced inequalities (SDG 10). Furthermore, waqf funds have been used to support sustainable urban development and affordable housing projects in Malaysia. This aligns with the goal of sustainable cities and communities (SDG 11) and reduced inequalities (SDG 10).

It is worth noting that Waqf is a unique form of philanthropy that is perpetual and self-sustaining, as the income generated from waqf properties is used to maintain and expand the waqf properties and activities, this ensures that the impact of the Waqf will be sustainable in the long run. Overall, the use of waqf in Malaysia plays a significant role in promoting sustainable development and achieving the SDGs. The government's active promotion of waqf and the efforts of the Waqf Board of Malaysia have been instrumental in ensuring that waqf funds are used effectively to support sustainable development projects and promote economic growth and financial inclusion.

In conclusion, waqf as a form of Islamic finance aligns with many of the SDGs and can be a valuable tool in promoting sustainable development and achieving the SDGs by providing funding for sustainable development projects, promoting economic growth, financial inclusion, and empowering marginalized communities. Through the use of waqf, Malaysia has the opportunity to make significant progress towards achieving the SDGs and promoting sustainable development for all people and the world.

THE EXTENT OF THE PROHIBITION OF *GHARAR* IN ISLAMIC FINANCE

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Islamic finance is a financial system that prioritizes the rights of a seller and buyer in a financial transaction. This is done by incorporating a few fundamentals that differentiate it from conventional finance. One of these fundamentals is the prohibition of *gharar* which literally means uncertainty, deception or risk. Generally, Muslim scholars have defined *gharar* as something which its manner and consequence are not pre-determined.

It refers to any transaction of goods whereby the details or existence of the goods are uncertain, usually because of a lack of information and knowledge of the outcome of the transaction. For example, when a person pays a certain amount of money in the hope of getting a prize, but the result will not necessarily be in his favour. The uncertainty in this kind of transaction is *gharar*. Thus, the prohibition of *gharar* prevents the exploitation of the weak in a transaction where one party gains something at the expense of another.

However, it must be noted that not all *gharar* is prohibited since the element of *gharar* cannot be fully eliminated. Muslim scholars have identified that there are two types of *gharar*: *gharar fahish* (excessive *gharar*) and *gharar yasir* (slight *gharar*). *Gharar fahish* may include the uncertainty as to whether one will receive the goods paid for, while *gharar yasir* may be in terms of the uncertainty as to the taste of the food bought. The former has a much higher risk than the latter. Trivial uncertainties that are common in every financial transactions are permissible.

Allah S.W.T. mentions in the Quran under Surah Al-Baqarah verse 188, which the translation means: “Do not consume one another’s wealth unjustly, nor deliberately bribe authorities in order to devour a portion of other’s property, knowing that it is a sin.” In verse 29 of Surah An-Nisa’, Allah S.W.T. mentions and translated as follows: “Do not devour one another’s wealth illegally, but rather trade by mutual consent.” These verses can be understood to prohibit *gharar* as gaining profit at the expense of another is an unjustly act.

For instance, gambling is an illegal act in Islam as it is a form of financial transaction which contains a lot of uncertainties and benefits certain parties only instead of everyone who contributed to the amount of money collected. Even though most if not all parties consent to gamble their properties, they do so in hope of winning all of the properties gambled when only

one person will eventually win the gamble. That one person will 'devour' the others' wealth in an illegal trade and it is a sin in Islam. The prohibition of gambling is stated clearly in the Quran under Surah Al-Baqarah, verse 219.

In terms of practice, the Prophet Muhammad S.A.W. during his time had forbade many transactions because of the *gharar* in them. One of such transactions is the purchase of an unborn animal in the mother's womb. The uncertainty in this kind of transaction can be understood to include whether the unborn animal will be safely delivered by the mother, whether the unborn animal, after delivery by the mother, will survive to adulthood, or even the question of whether the unborn animal is alive in the mother's womb is also a valid uncertainty to invalidate such a transaction because the *gharar* will affect the parties in the transaction.

Another transaction that was not allowed by the Prophet was the sale of milk in the udder which is the mammary gland of a female cattle or such related animals without measurement by the seller. The uncertainties can be considered as *gharar fahish* (excessive *gharar*). This is because either parties may get the short end of the stick if the amount of milk is not decided beforehand. The milk in the udder of a female animal cannot be determined its quantity unless measured as each female animal does not produce the same amount of milk.

These examples by the Prophet Muhammad S.A.W. should be a clear indication as to why *gharar* is prohibited and how to determine the amount or types of *gharar* that should be avoided. *Gharar* in modern days is usually related to pricing, delivery of goods, the quantity and/or quality of the properties in transactions between parties. These are honestly similar to the issues that arose during the Prophet Muhammad's time as financial transactions are not newly developed. The differences may be in the distance for delivery of goods and the methods of delivery, as well as methods of payment of the goods.

Besides that, the element of *gharar* is present in conventional financial instruments and Islamic financial instruments. However, *gharar* in Islamic financial instruments is greatly minimized to render them permissible. An example can be drawn by looking at the *gharar* in conventional insurance compared to Islamic *takaful*. In conventional insurance, it is a contract that involves uncertainty as to the amount that may be incurred in the future and looks at the probability of a loss that may occur.

There is no principle of sharing the losses and profits between the parties in the contract. The *gharar* can be said to be excessive in nature. Alternatively, *takaful* involves policyholders who contribute to a fund with the aim of aiding each other if a loss occurs and they receive a

surplus based on the principle of sharing the losses and profits. There is no guarantee from the company to the policyholder and the policyholder is grouped with other policyholders in a mutual assistance contract. The *gharar* here is very much minimized.

In conclusion, *gharar yasir* (slight *gharar*) in a financial transaction is allowed while *gharar fahish* (excessive *gharar*) is prohibited. This ensures that for each transaction, the details are ascertained and all parties have full knowledge, full disclosure and transparency regarding the transaction itself. Such prohibition encourages full consent and satisfaction of the parties involved. This fundamental in Islamic finance is only there for the benefit of the people. It inherently serves to uphold justice and keeps the peace between parties.

LOGICAL REASONING TO ALLOW RIBA

BY: MARHAINI MUSA | 1181815 | TLB1 | KLB1

Once *riba* injected in the mind of society as a mechanism to capitalize, it becomes more desirable to practice *riba* although it is strongly against the Shariah. *Riba* is highly advantageous to those committing it due to some logical reasonings. Practicing *riba* transaction should be logically permissible since the lender prioritizes the interests of others over his own interests. Indeed, the rights that the lender has based the grounds of danger and can be canceled by asking the borrower in the form of collateral or asking a guarantor for the safety of his property or not to put his property in a dangerous position at all. That is, do not give any person a loan to borrow forever. But the danger is not a commodity that can be bought and sold, nor is it a house or furniture or a car that can be rented. At least the lender can present an argument about the legality of usury according to the law: "I have given someone else the opportunity to take the proceeds from my money, so of course it is my right to get a share of the proceeds". It seems that this word can be accepted by the mind, but for God's sake, whether the person who borrows from you a quantity of grain to help the souls of his children who are groaning in hunger, or a little money to treat a sick baby, wife or mother, has received the result of your grain or money, in where you feel you have the right to receive a share every month or every year according to a certain and guaranteed rate.

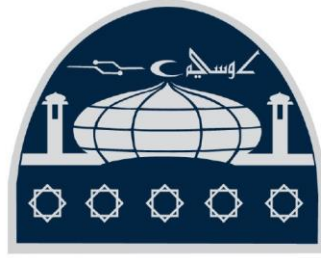
As for putting other people's interests first, it is indeed a noble character, as long as it is not used as a means of livelihood. Anyone who wants to do charity by prioritizing the interests of others, should feel satisfied with the moral gain implicit in this spiritual charity. When it is used as a means of livelihood or hunting for profit, then it should stop his speech from chattering prioritizing the interests of others and let him say frankly: "I do want to make it a source of livelihood", while explaining the reasons that make him entitled to receive an advantage from his capital every year or every month in the name of 'riba' (interest). But the right way, if he wants to invest his accumulated capital in the world of trade or industry that produces with the aim of benefiting and profiting, then a good way to go is to go for "MUDARABAH" (sharing with capital, profit, loss borne together) with other people. Mudarabah is not a muamalah of debts and accounts receivable and sharing in the world of trade or industry with joint profit and loss according to an agreement that has been agreed by both parties.

To be logic, the longer, the extension of the time limit given, the higher the value. They said: "Every hour since the borrower took the capital from the lender and planted it in the world of trade or industry until it produced goods, then brought it to the market and receiving the profit, it has value for the borrower because if you do not get that time back, or the capital is asked back before finishing the work, then it is impossible for the trade and industry to run at all. If that is the case there is no doubt that time or time has a role and value for the person who borrows capital, then invests it in the world of commerce and industry, why should he not give a part of the profit he gets to the person who lends the capital and give him the possibility to get benefit from it?" They said: that time according to its length and shortness determines how much or how little the borrower is likely to get profit. Does the lender act unjustly, if he sets any price for his capital according to the length and the shortness of the loan period? We then bump into another question: How and by what means does the lender know that the person who borrows his capital, then invests it in trade or industry will surely make a profit in his trade or industry but will find any loss? Then how can he know that the profit he will get amounts to a certain percentage.

Another group says that profit taking is the natural and normal nature of capital. When someone develops another person's capital, it means that he has given the right to the lender to demand services from the borrower and obligate him to pay it as agreed from month to month and from year to year, that the capital can help in producing consumer goods and its provision. This is because income increases with the increase of capital and decreases with the decline of capital, with the help of capital, it is possible to produce the highest quality goods in large quantities and send them to the world (international) market. While goods that are small in quantity and of low quality, are not be sent to the world market because the capital is little, which clearly shows that taking profit is a common characteristic of capital alone, therefore it can be said that investing that capital means giving the right to the owner of the capital to earn usury. In fact, the statement that taking profit is a natural characteristic of capital is not true, because that characteristic is born in capital when it invests in trade and industry that produces and is only possible in this form. You can say, that the borrower must hand over to the lender what is his share of the profit he gets, because he takes advantage of the capital he invested in a productive business, as for the person who borrows money to treat himself or his family or to bury the body of one of its members, then what economic value has this capital created for this poor person, and what profit has it given, until the lender is entitled to his part?

The fourth justification of usury, people have tried to portray in the eyes of the public (campaigned) which they have never tried so far, namely that people prioritize present benefits and pleasures over future benefits and pleasures. The more distant the time to come, the more there is no certainty about its profits and pleasures, as well as its price from day to day decreasing due to several reasons: The time to come is still in the dark and covered with uncertainty, that's why the profit that people get in the future is not certain, and there is no image in the mind. whereas the benefits obtained now are certain and can be witnessed with the eyes. Indeed, the person who needs something today, is more important and more valuable to him, if that need can be fulfilled today also by getting the item he wants, as opposed to acquiring something in the future, which he sometimes needs or doesn't need at all anymore. Indeed, the property acquired today is very useful and can be used in a real way, so from this point of view it is more valuable than the property that will be acquired in the future.

Due to these reasons, then the definite profit in the present, is preferred by people over the profit in the future which is not yet clear. So the property that is lent today, has a higher value than the property that will be returned to the lender tomorrow, and in fact the usury is an "EXCESSIVE AMOUNT" which is added to that capital when it is returned by the borrower to the lender, and makes it the same price as the capital received by the borrower from the lender when the loan is made. while the interest obtained now is certain and can be witnessed with the eyes. How thoughtless is the person who is more fun to make his life now luxurious and abundant, while the future is bad and even worse than now! This appears for someone who is the result of his foolishness, or he has been defeated by a temporary and sudden passion, then clearly cannot be used as a measure. If it is not like that, it is not possible that there is a person with a healthy mind and a strong view who will say that the view is wrong. but is true and makes sense.



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FUNFAIR GAMES: BETWEEN NORMS, DO AND DONT'S

TUTORIAL GROUP: TLB 1/ KLB 1

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SEMESTER I, 2022/2023 ACADEMIC SESSION

FUNFAIR GAMES: BETWEEN NORMS, DO AND DONT'S

BY: NURUL HUSNA ZAINI

The most and long-awaited weekend from every week must be surely brightened up with interesting activities to fill and have the time spent with family members and the loved ones. Apart from the tourism spots all around the world, amongst the society's choices to enjoy their day and relieve the stressful life routines are undoubtedly fun fairs or theme parks. However, it's a pity that in fact, it is not familiar to certain part of the society regarding the awareness on the do's and dont's as a Muslim in entertaining themselves.

Initially, it is permissible to play and take parts in the games provided at the fun fair or be it any other games center, so long as the participation does not involve the element of gambling or unclear considerations upon payments made. For instance, a kid might pay for a game to play and and if he wins the game, there are prizes provided according to his level of 'success' or otherwise, he will get nothing upon losing the game. This kind of game is in fact, involves betting which is an element in gambling, hence turning it a prohibited one.

Besides that, it is also interesting to note regarding one of the most common game machines that is already fixed nationwide, be it in the shopping mall or at any random hallways; the claw machine. Some part of the society believe that the 'claw' machine game can interestingly challenge their self-efficacy, and some might also be attracted by the prize offered, which comes in variety of types, from as cheap as a small toys until the pricey ones including jewelries, despite the fact that the game is not as easy as it seems like. In defining the claw machine itself, it is a type of arcade game that uses iron claws to reach items staked in that particular machine. Despite its normal look, the practicality of this game undoubtedly contents the elements of gambling that are forbidden according to the Islamic law.

This is in line with what has been clearly stated in the Al-Qur'an verse which strictly prohibits gambling *"O you who believe! That indeed alcohol, and gambling, and idolatry, and casting lots with arrow shafts, are (all) dirty (abominable) from Satan's deeds. Therefore you should stay away from it so that you will succeed."*

It is undeniable that indeed, gambling is one of the most potential and speedy way to turn needy people rich. However, this practice can also extort wealthy people. It is because the person

who lost at his or her first time will feel challenged to repeat the game in the hope of winning and will continue doing so until he is satisfied with the results obtained. Besides that, the game will get people used and tend to rely on luck in everything they do. Further, the concept highlighted in this 'claw' machine game is denying the buyer the right to choose the items he exactly prefers at a price commensurate with what has been paid. This is against the proper principle of *al khiyar* which actually is a must in a sale and purchase transaction in Islam. It is sad that today, this game is still considered part of a norm even in this Muslim-majority society. Therefore, the law of playing games at fun fairs and even in any other places is permissible, on the condition that we shall not participating in game events that involve the gambling elements.



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ARTICLE:

TAXES IMPOSED ON ISLAMIC BANKING AND ITS ISLAMIC PERSPECTIVE

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Taxes Imposed on Islamic Banking and its Islamic Perspective

Islamic banking is a banking activity which is comply with the principles of Syariah. Islamic banks must govern principles of non-interest-based transactions (*riba*), no speculation in economic activities (*gharar*) and gambling (*maisir*). In general, sources of national income collected from the citizen are divided into two namely, *zakat* and taxes. The government needs these sources to increase peace, security, development and others. The tax issue is a *siyasaah syar'iyah* issue that depend on the issues that vary from one country to another. There are two types of taxes in Malaysia, namely direct taxes which administered by the Inland Revenue Board and indirect taxes governed by the Royal Customs and Excise Department of Malaysia. Example of direct taxes includes Income Tax, Petroleum Income Tax and Real Property Gains Tax while indirect taxes are such as Good and Services Tax (GST) and Sales and Service Tax (SST).

Undeniable, the implementation of taxes imposed by the government may benefit its citizens. It can keep the state revenue stable, the tax management system in Malaysia can be more efficient and effective in order to avoid irregularities and injustice that have a negative impact on the national economy as well as on the welfare of the people. On the other hand, there are also disadvantage caused by these taxes such as it might burden the living costs of citizen. It also can cause inflation to become more difficult to control and increase the majority of goods' price which has a negative impact on almost all income classes of citizen, especially those with medium and low income. Furthermore, the rising price of goods causes purchasing power and the value of the currency fall.

For instance, GST which has been implemented in 2014 was imposed on Islamic banking and its products and services. For the purpose of GST, Islamic banks make three types of supplies which are exempt, standard rate and zero-rated supplies. Firstly, in Islamic finance, an exempt supply occurs in the form of a profit or spread. As example, profit paid by Islamic banks as a result of deposit taking through various types of accounts and the profit charge for the granted credit card are an exempt supply. The services rendered when a bank makes payment and collects a cheque is also an exempt supply. Besides, within Islamic finance, exchange of currency with the profit taking on the spread of currency exchange rate as income for the service is exempt supply and not subject to GST. While for the provision of financing, the sale of an asset by the Islamic bank is an exempt supply such as financing under hire purchase.

Secondly, a standard rate supply is a fixed fee being imposed on the supply. Banks usually charges tax for services to facilitate for the operation of current, deposit or investment accounts such as Electronic Fund Transfer (EFT) and transaction via ATM or MEPS. The banks also charge tax for the service of transferring cheques, prepaid and reload charges and an annual subscription fee for the usage of the bank card. Lastly, zero rated supply is for customer who is outside of Malaysia at the time the services are rendered and he is not trading Malaysian capital market products. Moreover, any Islamic financial service rendered in connection with land and goods situated outside Malaysia.

According to Islamic perspective, there is no restriction on the practice of tax collection as long as this activity complies Shariah compliance and able to achieve *maslahah* (good) and

reject *mafsadah* (bad). Every tax collection is to cover all the needs of the country's expenses and even be channelled back to the citizen through the provision of life needs and national infrastructure facilities. The taxation system in Islamic has started from the time of the Prophet SAW in the Charter of Madinah which established the payment of *jizyah* for non-Muslims and zakat for Muslims. Besides, in Saidina Umar's era, there was a development of other taxation systems such as *al-kharaj* (tax on land), *al-'usyur* (trade) and others.

There are two views of scholars which are prohibited (*haram*) and permissible (*harus*). In the first view, Ibn Muflih said it is forbidden to take taxes from the people as collected by the King from his people. Besides, according to Ibn al-Azraq, one of the examples of bad governance is unjust tax collection. Scholars who absolutely prohibit taxes adhere to several verses of the Quran and Hadith. For instance, verse 188 of Surah al-Baqarah, verse 85 of Surah Hud and Hadith narrated by Ahmad (4/109), al-Tabarani (4493) and al-Suyuti (2290). In contrast, there are some scholars who argue that tax is permissible in Islam. Among of the scholars who permit the tax are Ibn Hazm, Ibn Taimiyah and Ibn Khaldun. They adhere to verse 41 of Surah al-Taubah, verse 94 of Surah al-Kahfi and Hadith narrated by al-Tirmizi (659). They argue that the government only need to tax the people just to meet the general problems of national administration. Also, it should be imposed only on wealthy people at certain times for certain urgent needs.

In a nutshell, the government may impose an income tax, but the government is not permitted to impose a consumption tax unless forced to do so by necessity after exploring income tax options. The taxes that are not based on *maslahah* permitted by Syarak are prohibited. Therefore, it is permissible if the government collects taxes to meet the needs and the interests of the citizen. Last but not least, the government needs to examine the impact and tax rate from time to time so that the requirements of *maqasid syariah* are met by following the priority of *maqasid al-daruriyyat*, *al-hajiyyat* and *al-tahsiniyyat*, especially in Islamic banking.



SEMESTER I, ACADEMIC YEAR 2022/2023

LAB5153

ISLAMIC FINANCE

(LAB5153)

INDIVIDUAL WRITTEN ASSIGNMENT

CLASS

(KLB1/TLB3)

LECTURER:

(PROF MADYA DR. ZULKEFLI HASSAN)

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RIBA FROM THE PERSPECTIVE OF TASAWWUF

Conventional finance which has been in the limelight forever was slowly shone by the practice of Islamic Finance. It has become a phenomenon that is broadening its appeal to non-Muslims. The most salient characteristic of Islamic Finance is the prohibition of *riba* which has become the key feature that distinguished the Islamic Economy and capitalist economy system. There are many explorations on the rationale of the *riba* prohibition by Islam but very few discussed it from the *Tasawwuf* prospect.

Riba refers to ‘increase’, ‘addition’, and ‘surplus’ meanwhile dominant among *fuqaha* defines it as an addition to the principal and by implication a payment for the use of money that has been fixed beforehand. Abu Bakr Ibn al ‘Arabi held that every excess in return for which no reward is paid is *riba*.

Tasawwuf or Sufism definition vary among Islamic scholar which the definition of *Tasawwuf* is vary up to 2000 definition. It was cited from the word ‘*suf*’, meaning ‘wool’. Ma’ruf al Kharki defines it as the apprehension of Divine Realities and Al- Junayd defines it as the purification of the heart from associating with created beings, separation from natural characteristics, suppression of human qualities, avoiding the temptations of the carnal soul, taking up the qualities of the spirit, attachment to the sciences of the reality, using what is more proper to the eternal, counselling all the community, being truly faithfully to Allah and following the Prophet (saw) according to the law.

Sufism which emphasizes the purification of the heart from the turbidity would defy any practice that avert from freeing the heart from evil desires. Sufism Scholar view it as very vile and against human nature. Few grounds were established on the prohibition of Riba from Sufism belief.

First on behalf of *Barakah* or blessing. In Surah Al Baqarah verse 276, “Allah deprives interest of all blessing, whereas He blesses charity with growth.” Tafsir Ibn Kathir in elaborating this verse said that Allah states that He destroys *riba*, either by removing this money from those who eat it, or by depriving them of the blessing, and thus the benefit of their money. Because of their *riba*, Allah will torment them in this life and punish them for it on the Day of Resurrection.

Riba-based transactions means declaring war with Allah Almighty and His Messenger (Muhammad, peace be upon him) as stated in Al-Baqarah, verse 279 that said; “And if you do not, then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal – [thus] you do no wrong, nor are you wronged.” Ibn ‘Abbas, Hasan al-Baari, Ibn Sirin and Rabi’ ibn Anas are of the view that anyone who takes interest within the boundaries of the Islamic State (Dar al-Islam) should be pressed to repudiate the transaction and recant and, if he persists, should be put to death

Riba also embody greed. They will never be satisfied with what they obtained that lead them to commit an act prohibited in Islam which is involving with *riba*. The concept of *riba* that achieve profit using an easy way while extorting others is an act that is not allow in Islam. Islam had warned us on greed where we need to be wary of greed as it will cause our downfall and destruction.

Next, the *riba* itself will nullify the essence of *warak*. *Warak* according to Abu Sulaiman al-Darani, *Warak* is the beginning of *Zuhd*, meanwhile Yunus bin Ubaid said that *Warak* is leaving all uncertainty behind or *syubhah*. Regarding *riba*, there is no *warak* in those who choose to take *riba* since it will destroy the individual’s state of religion. It was narrated that Abu Bakr al-Siddiq once said that we leave 70 halal’s things as we fear of one haram thing.

Riba also is a manifestation of loving *Dunya* (world) since the wealth is part of *Dunya*. Once the *dunya* had been placed in the heart, it will become an obstacle and will find it hard to achieve sincerity in performing Ibadah.

In shorts, prohibition of *Riba* is definite. No means no. Islamic scholar can lay out indefinite number of reasons through various aspects with one ultimate purpose, to preach Islam. In *Tasawwuf*, the goal is to be a servant of Allah and no any other stage are higher than the stage of servanthood or *abdiyat*. The act of *riba* which clearly impermissible in Islam shall be abandoned and never being practiced anymore.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

SEMESTER 9, ACADEMIC YEAR 2022/2023

ISLAMIC FINANCE

(LAB 5153)

ARTICLE ON ISLAMIC FINANCE

(INDIVIDUAL)

GROUP

(TLB3/KLB1)

LECTURER:

(PROF DR ZULKIFLI HASAN)

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TITLE OF THE ARTICLE: Awareness of *Gharar* in Sale and Purchase: The Use of 99 Cents in Sales

WRITER : Siti Nur Afiqah binti Azizi

Sales and purchase is a noble activity in which is also listed as a worship to achieve the pleasure of Allah SWT. Such worship is required in Islam by Allah thru His messengers, and perfected through the last messenger, Prophet Muhammad SAW. This proves that Islam is a religion that brings teachings not only to a specific religious rituals, but also covers all aspects of human life, including economics, politics, education, social affairs, and others. From the smallest things to the biggest things in life, Islam requires the ummah to practice the Islamic teachings in fulfilling the five major areas as prescribed under the *Maqasid al-Shariah* to preserve religion (*hifz al-din*), soul (*hifz al-nafs*), intellect (*hifz al-aql*), offspring (*hifz al-nasl*) and property (*hifz al-mal*).

The sale and purchase is included in the *muamalah* system thus, identified as a worship in preserving the property prescribed under the *Maqasid al-Shariah*. Additionally, sale and purchase are the *sunnah* of the Prophet SAW, showing that this buying and selling activity started since the time of Prophet SAW. Thus, it should be noted that the involvement of *gharar* in buying and selling activities is prohibited and contrary to the Islamic teachings. In simple terms, any uncertainties, doubts and shortcomings in the sale and purchase contract are counted as *gharar*. In applying to the current issue arise, the concept of *gharar* in sale and purchase contract do not get serious attention, especially the Muslims. Many research proves that the main factor that *gharar* transactions arise is due to the lack of knowledge by the community in practising a good trading contracts according to Islamic teachings.

Basically, *gharar* is prohibited and considered as *haram* in Islam. The words of Prophet SAW in the *hadith* of Abu Hurairah which means “Prophet SAW forbids buying and selling by *al-hashah* and *gharar* trading”. This is because *gharar* causes the occurrence of the element of consuming other people’s property in vain. *Gharar* is based on an Arabic word, also found in al-Quran meaning deceive and deceit. In short, transactions involving *gharar* could be pictured where the buyer and seller do not know what he has bought or sold. Since the business of sale and purchase contract prohibits *gharar* transactions, thus further awareness of such arising issue shall be handled accordingly to avoid the community from getting involved with

gharar transactions either directly or indirectly. This is also to prevent any oppression against one party.

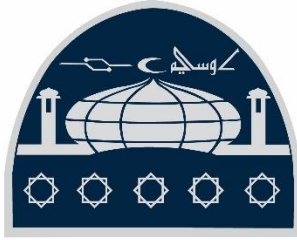
In relation to the issue that will be considered is related to the price of goods where business premises nowadays tend to put a price tag using the value of 99 cents but instead, the customers have to pay RM1. However, such transaction is prohibited in Islam as it involves the element of *gharar*. Clearly, it is about the uncertainty in price. For example, the price of the goods displayed by the sellers is RM5.99, but it turns out to be RM6.00. Many people underestimate about this situation. In fact, the buying and selling activities involving *gharar* is one of the way to deceive and deceit customers, thus making the transaction to be prohibited in Islam. This is because, the smallest value in the market is 5 cents while 1 cent no longer exists. Also, the trick used by the sellers in displaying the price tag requiring customers to pay a higher price is considered as *gharar* in Islam.

According to the Mufti of Pahang, Datuk Seri Dr Abdul Rahman Osman, the act of business premises requiring customers to pay RM1 using the value of 99 cents does not fulfill the condition of sale and purchase as Islam requires. He further stated that this 99 cents price system must be abolished or banned because it is against the concept of Islam. In fact, every sale and purchase must be returned the balance even it involves 1 cent. Logically, even it seems little, the balance of 1 cent, but if a million transaction are involved, would have reached RM10,000. Supposedly, the smallest value of coins in the market is 5 cents, therefore it shall be in compliance with Islam where any transaction must involve in multiples of 5 cents so that there would be no overpayment or underpayment.

The main element in Islamic buying and selling is that there shall be a mutual consideration and agreement between both buyers and sellers which does not involve any element of *gharar*. This is in order to avoid any unnecessary profit which is prohibited in Islam. However, such phenomena is becoming much widespread and cause a huge competition among traders especially supermarkets. This is the reason why users especially buyers need to be aware that this is one of the easiest tactics to trick and deceive users. According to some research, the weakness found in this arising issue is in the Goods and Services Tax (GST) implementation mechanism itself. However, the Ministry of Domestic Trade and Consumer Affairs (KPDNKK) could not act itself because GST allows this one-cent transaction. In fact, it is even allowed by the Bank Negara itself.

Therefore, more enforcements are needed in order to abolish the use of 1 cent in selling and buying transactions. The government need to make a kickstart by enforcing the use of 99 cents to be in line with the Islamic law in order to safeguard the rights of customers. Such enforcement mechanism must be deterrent in nature which it should be 5 cents below, and not above, as required in the Islamic teachings. In addition, clear rules also need to be enforced so that the traders would display the price of goods, and not the price after GST. This in result would be the most effective solution to deal with the issue of misleading consumers with uneven price tags such as 99 cents.

To conclude, Islam strictly forbids all form of transactions that involve *gharar* or excessive uncertainty that would make the contract or the sale and purchase to be void. Clearly, the prohibition of *gharar* protects businesses against transactions that involve high uncertainty or deceit due to the possibilities in causing injustice and involve risks such that will result in a one-sided loss or a gain at the other's expense. A strict enforcement would ensure a genuine consent in dealings as genuine consent can only be achieved through transparency. Thus, not only the process of sale and purchase is in compliance to Islamic teachings, but the element to preserve wealth (*hifz mal*) in *Maqasid Syariah* would also be fulfilled.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

FACULTY OF LAW AND SHARIAH, USIM

SEMESTER I, ACADEMIC YEAR 2022/2023

ISLAMIC FINANCE
(LAB 5153)

INDIVIDUAL ASSIGNMENT: IS PTPTN UJRAH SHARIAH COMPLIANCE?

LECTURER'S NAME:
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STUDENT:
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IS PTPTN UJRAH SHARIAH COMPLIANCE?

PTPTN stands for the Perbadanan Tabung Pendidikan Tinggi Negara or National Higher Education Fund Corporation. PTPTN is a government-owned corporation, the Ministry of Higher Education, established under the National Higher Education Fund Corporation Act 1997. The main functions of the PTPTN are to manage the financing for higher education and its repayment collection, provide a saving scheme and administer the deposits for higher education, and perform any other functions entrusted to PTPTN by any written legislation.

Nevertheless, education is essential for the development of humankind and economic progress. But not everyone has the opportunity and access to the proper education system; therefore, taking a student loan from PTPTN will inevitably help them further their studies when they receive the offer to continue. However, the interest (*riba*) rate is charged in the payback amount, leading to many issues.

Individuals feel burdened by PTPTN extremely high service fees ranging from 10% to 3%. Later, PTPTN has released a new policy known as *ujrah* finance, which complies with Islamic law and only requires 1% to relieve the burden on borrowers. The 1% represents the service fee that PTPTN assesses to users. This case study explores whether the *ujrah* finance introduced by PTPTN is considered interest or otherwise.

The prohibition of *riba* or interest in Islam is clearly mentioned in the Holy Quran and also was saying by Holy Prophet Muhammad (peace be upon him). Interest rate means that increase, addition, or expansion. In Islam, interest refers to the premium the borrower must pay to the lender along with the principal amount as a condition for the loan or for extension in the maturity.

On the contrary, *ujrah* is the commission or fee for services rendered. In Arabic terms, *ujrah* as a fee or '*iwad* (remuneration). The Malikiyyah school of thought has defined *ujrah* as a contract that provides some benefits, while majority of the scholars viewed *ujrah* as the possession of profit for a particular reward for labour or service given. According to Securities Commission Malaysia, *ujrah* is an income received by employees in the form of money assigned as a service or labour within a specified period as long as they do their work.

There is also an indication of a 'service charge' mentioned in Surah al-Qasas, verses 26 and 27. One of the women said, "O my father, hire him. Indeed, the best one you can hire is strong and trustworthy." He said, "Indeed, I wish to wed you to one of these, my two daughters, on [the condition] that you serve me for eight years; but if you complete ten, it will be [as a favour] from you. And I do not wish to put you in difficulty. You will find me, if Allah wills, from among the righteous" (Quran, 28:26,27). And which Musa A. S. honourably accepted. These verses show the conditions of *ujrah* which are no force should be used against a person and the reward must be clearly stated.

The payment of *ujrah* (fee) should be based on the contract thus, it would create cooperative relationships between the two parties. The contract should contain the rights and obligations of each party, and one of them includes the duty of the fee payment. In other words, *ujrah* avoids *riba* and prevents the borrowers from escaping to pay the debt.

But how *ujrah* finance works in PTPN? Let us look at an example below:

The outstanding amount of Y as of Jan 2010 x 1% x 10 Years =
Total *ujrah* for the term of 10 years

If the outstanding amount RM20,000, the total *ujrah* for the term of 10 years would amount to RM2,000. Nonetheless, why do several people argue on the 1% fixed rate introduced by PTPTN? Recently, the former Youth Council of Malaysia, Jufitri Joha has appealed for the government to abolish the *ujrah* system in the presentation of Budget 2019. He said the *ujrah* system was seen as a burden for creating additional debt to PTPTN borrowers. He shared that one of the borrowers had met him with a stroke of up to RM9,000 due to the said system, which burdens most of those who want to start a career and build a life.

It is not deniable that *ujrah* finance may be cumbersome to the borrowers, but it must be noted that *ujrah* is distinguished from *riba*. The 1% *ujrah* by PTPTN amounts to administrative costs, where the payment of administrative costs is used as a fee for photocopying and other related needs and repayment of installments. If the borrower pays late or delays payment, he will be charged the remaining debt amount.

But is *ujrah* in PTPTN shariah compliance? The Muzakarah Committee of the National Council for Islamic Religious Affairs (MKI) has convened on 28 July 2008 to discuss 'The Implementation Study of Education Funding in The National Higher Education Fund Corporation (PTPTN) Based on *Ju'alah* Contract'. The Muzakarah has concluded as below: -

1. Agree with the service charge introduced by PTPTN to students based on the concept of wages (*ujrah*) at a reasonable rate and not burdening the students;
2. PTPTN can apply compensation (*ta'widh*) to students who have found a permanent job and are financially capable but deliberately do not want to pay back PTPTN funding. For students who do not have a permanent job and are unable from a financial aspect, compensation is not charged;
3. PTPTN must give a rebate (*ibra'*) to students who successfully complete the financing earlier than the end of the agreement period; and
4. Agree that PTPTN funding based on this wage concept is applied to all categories of students at every level of study and applies to all students regardless of religion and race.

It is crystal clear that *ujrah* in PTPTN complies with shariah. However, the *ujrah* calculation method presented by PTPTN which is still dependent on the sum or value of the loan provided, gives a perspective of masking usury even though the reason behind it is to follow the notion of time value of money. It might be argued from a conceptual and economic standpoint that both usury and wages are equivalent. It is suggested not to use the loan amount as a reference when calculating service fees (*ujrah*).

“THE AWARENESS OF RIBA GHARAR AND MAISIR IN ONLINE GAMES BY MUSLIM YOUNGSTERS IN MALAYSIA AND ITS POSSIBLE SOLUTIONS”

By Ahmad Rasyidi Bin Nazeri 1181836

In Malaysia, as well as in many other countries, there is a growing number of Muslim youngsters who are not aware of the prohibition of riba in Islam. This lack of awareness is not limited to financial matters but also extends to other areas of life, including the use of technology and online gaming. The prohibition of riba, gharar and maisir are important principles in Islamic finance and have significant implications for the daily lives of Muslims.

Riba, which literally means “increase” or “growth”, refers to the charging or paying of interest on a loan. It is considered haram (forbidden) in Islam as it is seen as a form of exploitation and unjust enrichment. One example of riba in mobile games is its use for in-game purchases in mobile games like Mobile Legends. These games often feature virtual currency or in-game items that can be purchased with real money, such as diamonds. However, many Muslim youngsters may not be aware that purchasing these virtual items with real money can be considered a form of riba, as they are essentially paying extra for something that has no real value.

Gharar refers to uncertainty and ambiguity, is also prohibited in Islam. It is considered haram because it can lead to exploitation and deception. An example of gharar in mobile games is the use of randomized items or loot boxes. These loot boxes are often purchased with real money, but the contents inside are unknown. The player is essentially gambling on the contents of the loot box, which can lead to exploitation and deception if the player is not satisfied with the contents inside.

Maisir, which refers to gambling or speculation, is also considered haram in Islam. An example of maisir in mobile games is the use of betting systems. Some mobile games have in-game betting systems where players can bet on the outcome of a match or game. This is considered maisir as it is based on pure chance and not on any form of skill or knowledge.

It is important to note that this lack of awareness is not unique to Muslim youngsters in Malaysia, but is a global issue that affects many young Muslims. It is essential that Islamic organizations and educators make a more concerted effort to educate young Muslims about the prohibition of riba, gharar and maisir and its implications on their daily lives, including in the context of online gaming and technology usage.

In order to address the lack of awareness of Islamic financial principles among Muslim youngsters when they play games, there are a number of steps that can be taken. First and foremost, Islamic organizations and educators should make a more concerted effort to educate young Muslims about the prohibition of *riba*, *gharar* and *maisir* and its implications on their daily lives, including in the context of online gaming and technology usage. This could be done through workshops, seminars, and educational materials that are tailored to the interests and needs of young people. Second, Muslim communities should provide young Muslims with practical examples of how to live in accordance with Islamic principles in their daily lives, including financial matters, and to provide support and guidance when they encounter difficulties. This could include providing Islamic-compliant mobile games that do not involve in-game purchases or randomized items, or providing alternative forms of entertainment that align with Islamic values. Thirdly, Muslim parents should be more aware of the games their children are playing and the in-game transactions they are making. They should be able to guide their children on the *halal* and *haram* aspect of the game. Fourthly, It is important for Muslim game developers to create *halal* games and *halal* in-game transactions. These *halal* games can be marketed towards the Muslim community and can be a good alternative for Muslim gamers. Finally, Muslim scholars and financial experts should create guidelines and standards for the *halal* and *haram* aspect of online games and in-game transactions. This will be a valuable resource for Muslim game developers, players and parents. By taking these steps, Muslim communities can help ensure that young Muslims are able to enjoy the benefits of technology and online gaming while still adhering to the principles of their faith.

In conclusion, the lack of awareness about the prohibition of *riba*, *gharar* and *maisir* among Muslim youngsters in Malaysia is a serious issue that needs to be addressed. Education and guidance are crucial in helping young Muslims to understand the importance of these principles and their practical implications on their daily lives, including in the context of online gaming and technology usage. Muslim communities should provide alternative ways for Muslim youngsters to access entertainment, such as games, without breaking the laws of Islam. This will help ensure that young Muslims are able to enjoy the benefits of technology and online gaming while still adhering to the principles of Islam.



UNIVERSITI SAINS ISLAM MALAYSIA

جامعة العلوم الإسلامية الماليزية
ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

BACHELOR OF LAWS AND SHARIAH
SEMESTER 1, ACADEMIC YEAR 2022/2023

ISLAMIC FINANCE (LAB 5153)

LECTURER

PROF. DR. ZULKIFLI BIN HASSAN

INDIVIDUAL ASSIGNMENT

**ARTICLE TITLED “ BUYING AND SELLING OF ‘CEDOK’ : THE RULINGS AND
ISLAMIC FINANCE PRESPECTIVE”**

NAME	MATRIC NO.	GROUP
NURUL HUMAIRA BINTI ZAKARIA	1181866	TLB3/KLB1

INTRODUCTION

With the growing of e-commerce, many social media platforms also become the medium for online business, including TikTok. One of the issue that went viral is the buying and selling using a 'scoop' or 'cedok' in Malay. In this kind of dealings, the seller sells goods by putting a price for one scoop using a container, or any other similar thing, then the buyer will only get what is scooped or scooped by the container.

This has raised concerns among the Muslims in Malaysia especially in terms of Islamic law and Islamic finance. Many have questioned whether Islam allow such dealings? According to the Mufti of Federal Territories of Malaysia, such dealings is illegal in Islam. But how does the Mufti come with this fatwa? This was done based on several elements that are prohibited by syariah, namely the element of *gharar* (ambiguity/uncertainty), *maysir* (gambling) and also the element of denying the right of *khiyar*.

A. GHARAR (AMBIGUITY/UNCERTAINTY)

This term is derived from the Arabic word '*gharra*', which gives the meaning of deceive, mislead, or defraud. In Islamic finance, *gharar* can be defined as any transaction of probable objects which its existence or description are uncertain, due to lack of information and knowledge of the ultimate outcome of the contract or the nature and quality of the subject matter of it.

Generally, *gharar* is prohibited because it contravenes with the concept of certainty and openness in business dealings, which leads to the injustice or deceit against any of the parties. This prohibition is also based on the Quran in Surah Al-Baqarah verse 188 and Surah An-Nisa verse 29, which Allah S.W.T said: "eat not your property among yourselves unjustly by falsehood and deception, except it be a trade amongst you by mutual consent".

Gharar occurs in all sorts of transactions where the subject matter, the price or the two, are not determined and fixed in advance. Applying to the current issue, the element of *gharar* does exist in such transaction by 'scooping'. The uncertainty of the rate, value, and type of goods the buyer receives as soon as the seller packs the mixed goods. In this case, there is uncertainty about what the goods will be obtained during the sale and purchase agreement.

B. MAYSIR (GAMBLING)

Also known as gambling, *maysir* is defined as the easy acquisition of wealth by chance, whether or not it deprives the other person's right. It also refers to any form of business activity where monetary gains are derived from mere chance, speculation or conjecture. Historically, the word *maysir* was used for a game or play with unfeathered or headless arrows.

Gambling is strictly prohibited in Islam. Allah forbids such act in Surah Al-Baqarah by saying "they ask you "O Prophet about intoxicants and gambling. Say, "There is great evil in both, as well as some benefit for people-but the evil outweighs the benefit."

In the current issue of 'scooping', such dealings does contain elements of gambling where there is a profit and there is a loss. If the value of the scooped goods is still lower than the price paid by the buyer, then the buyer is the party that suffers a loss, and vice versa. It is also because the goods sold are uncertain and that there is an act of denying the will of one party.

C. KHIYAR (RIGHT TO CHOOSE)

Literally, *khiyar* means choice. In Islamic finance, *khiyar* refers to an option or certain rights of two parties to verify or cancel a contract. For example, the buyer can return the object of sale and recover the price if the object is found to be defective or incomplete. *Khiyar* was designed to fulfil the interests of business transaction, including protection of benefits and wills of both parties and protect them from possible danger towards their business in future.

Referring to the current issue, the buyer actually does not have the right to choose an item he wants to buy. Therefore, such dealings has denied the right of the buyer who is basically free to choose goods. This is clearly visible when buyers want to buy mixed items in the container, where some are large, small, expensive, or cheap. The buyer has to pay as much as the price in advance before the seller scoops up the mixed items live. There is a possibility that the buyer may or may not get what they want. This kind of buying and selling is similar to the description of buying and selling *munabazah* and *mulamasah* which is forbidden by Syarak.

In a hadith narrated by al-Bukhari "the Prophet SAW forbade buying and selling by touching (*mulamasah*) and throwing (*munabazah*)."
Mulamasah's depiction of buying and selling is that a man touches a piece of clothing with his hand at night or day and he cannot take anything other than the item he touches. While the depiction of Munabazah buying and selling is that a man throws his shirt to another man and the man throws his shirt to the other

man and the man throws his shirt to the first man, thus buying and selling takes place without seeing or pleasing each other.

CONCLUSION

Buying and selling *cedok* does have several elements which are prohibited by syarak such as *gharar*, *maisir*, and denying the right of *khiyar* to the buyer. Thus, buying and selling *cedok* is illegal in Islam. Muslims, especially, should prevent from getting involved in this kind of dealings as it will cause the buyer to suffer losses. On the other hand, buyer should uphold their responsibility and honesty by using sales methods that are free from prohibited elements above to ensure that their business is halal and obtain blessings from Allah SWT.

Making Part-Time Work Shariah-Compliant: An Exploration of Islamic Finance in Early Conversion.

By Athirah Basri (1181845)

As the gig economy continues to grow, so too does the need for job seekers to receive payment earlier than the agreed terms. However, finding a solution that is Shariah-compliant can be a challenge. In this article, we explore how Islamic finance instruments such as Murabahah, Ijarah, and Musharaka can be used to make early conversion more accessible for job seekers while still maintaining compliance with Shariah principles. In this article also, we explore how Troopers App is making part-time work more accessible and inclusive for all by aligning its early conversion option with the principles of Islamic finance.

Troopers is a Malaysian home-grown app-based platform that connects talents seeking part-time and freelance jobs with thoroughly-vetted employers. The app aims to make part-time jobs more accessible by allowing users to search and apply for jobs easily and work on a flexible schedule. The platform ensure that the job seekers are paid on time, provided with clear job deliverables & expectations, and have access to an all-in-one flexible job app that manages their attendance, earnings, performance, and career progress.

One of the features offered by Troopers is early conversion, which allows users to receive payment for their work earlier than the agreed-upon payment terms. This option is particularly useful for those who need to access funds quickly or have unexpected expenses. However, this option comes with a fee, which could be included in the price, lease payments or profit distribution. Additionally, it's important to note that supposedly the user can only cash out a month after the payment is received by Troopers. So, if they want to use the cash quickly, a fee, typically a percentage, will be deducted from the payment.

The application of Islamic finance instruments, such as Murabahah, Ijarah and Musharaka, can be used in this concept of early conversion by allowing the buyer, lessee or partner to have the option to receive the goods, asset or profit earlier than the agreed upon payment terms. By incorporating these instruments, Troopers can ensure compliance with the principles of Shariah and provide a transparent and legitimate option for users.

For example, in the case of Murabahah, the seller could offer the buyer the option to purchase the goods at a discounted price if the buyer agrees to pay for the goods earlier than the agreed upon payment terms. This is a common practice in the Islamic finance industry, where Murabahah is a popular financing structure. The seller would charge a fee for this early conversion option, which would be included in the profit margin. In the context of the Troopers app, an app user, who is a part-time worker, could be offered the option of receiving payment earlier than the agreed-upon payment terms through the application of Murabahah. This option could be particularly beneficial for the worker who needs access to funds quickly or has unexpected expenses. However, it is important to note that there would be a fee for this early conversion option. This fee would be included in the payment and would be intended to compensate the Troopers app for the reduced

risk and increased liquidity that results from the early payment. It's important to note that the user should carefully consider the terms of the early conversion option before accepting it, as the fee can be substantial and could potentially outweigh the benefits of receiving payment earlier.

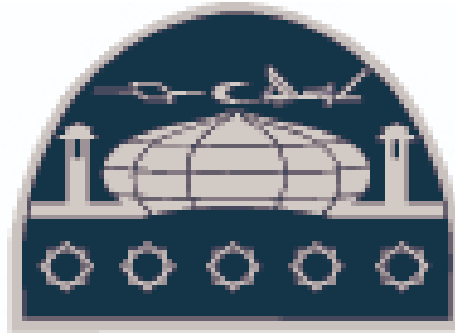
In the context of the Troopers app, the worker, who is considered as the lessee, could be offered the option to receive their payment earlier than the agreed-upon payment terms through the application of Ijarah. This option could be particularly beneficial for the worker who needs access to funds quickly or has unexpected expenses. The Troopers app, as the lessor, would charge a fee for this early conversion option, which would be included in the payment as an additional fee for providing this service. The worker can have the option of receiving their payment earlier than the agreed upon terms, and in return, the Troopers app will have the opportunity to earn an additional fee for providing this service

Similarly, in the case of Musharaka, the partnership could offer the option for one partner to exit the partnership at a predetermined point in time, but with a fee for it. This would allow the exiting partner to receive their share of the profits earlier than the agreed upon terms, while the remaining partners would continue to share the profits in accordance with the Musharaka agreement. The fee for this early conversion option would be included in the profit distribution.

It's important to mention that the above-mentioned Islamic finance instruments are based on the concept of profit and loss sharing, where the lender and borrower share the risk and reward, and are designed to be fair, transparent, and avoid any elements of interest. This aligns with the principles of Islamic finance, which prohibits the charging and paying of interest, and promotes ethical and fair business practices.

Furthermore, the application of these Islamic finance instruments in the early conversion option offered by Troopers app can provide an alternative solution for users who are looking for a shariah compliant to receive payment earlier than the agreed upon terms. By incorporating these instruments, Troopers can ensure that the principles of Shariah are upheld and provide users with a trustworthy and legitimate option for early conversion.

In conclusion, the application of Islamic finance instruments such as Murabahah, Ijarah and Musharaka in the early conversion option offered by Troopers app can provide an alternative solution that aligns with the principles of Shariah. This can increase the accessibility and inclusivity of the platform for users who are looking for a compliant and transparent way to receive payment earlier than the agreed upon terms. Troopers continues its mission to provide hiring managers with access to a well skilled talent pool and ensure job seekers are paid on time, provided with clear job deliverables & expectations, and an all-in-one flexible job app that manages their attendance, earnings, performance, career progress as well as a wide range of added benefits to enhance their work experience on Troopers.



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ISLAMIC FINANCE (LAB 5153)

**INDIVIDUAL ARTICLE: FUNDAMENTAL PROHIBITION IN
ISLAMIC FINANCE.**

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FUNDAMENTAL PROHIBITION IN ISLAMIC FINANCE.

The words Islamic finance is a combination of two words that shows two significant meaning. The word finance would show on financial markets and institution that deal with fundamental issues in finance which is on risk transformation and management. It is also involved in resource allocation, management, acquisition and investment. In other words, it consists of the same function and produce similarly as the conventional finance institution. However, the different exists between both is on the Islamic parts where in Islamic finance that using the Quran and Hadith as a reference, the transaction and management is depending on the shariah principles as a bedrock. Syariah can be defined as sum of Islamic teachings and system, which was revealed to Prophet Muhammad and deducible from the prophet divinely guide actions, sayings and whatever he tacitly approved (Marjan.et.al.2016). There are numbers of Syariah principles that had been introduced to be follow in Islamic finance includes it fundamental prohibition in Islamic finance.

The first fundamental prohibition in Islamic finance is on the prohibition of riba. Generally, Riba can be defined as Az- ziyadah that means excess or expansion. Technically, Riba can be defined as an excess over and above the principle of loan without any countervalue. The prohibition also had been told in Quran in number of verses such as in for their taking usury (riba), that they were prohibited, ... (Surah An-Nisaa Quran 4:161). And in the other verses, O believers, devour not usury (riba), doubled and redoubled, and fear you God; haply so you will prosper. (Surah Al-i-'Imran Quran 3:129-130). For example, in the practise of ta'wid or late payment compensation that had been use under conventional bank system that compile person to be charged upon any defaulted or late payment of debt. However, currently there is SAC- BNM allowed bank to impose ta'wid but it subjects to some conditions which is the amount of ta'wid cannot exceed the amount of loss suffered by the financier, the determination of the amount made by the third party which is the BNM and the delay or non-payment is due to the negligent from the customer themselves. The most important thing is the practise will constitute unjustified increment above the principal amount due to deferment of the payment if did not being prohibited or control from using it. This prohibition is actually to stop bad intention or monopoly from the bank from defaulting customers.

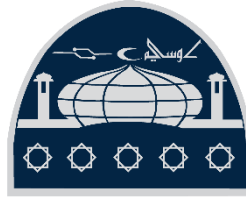
The other prohibition that needs to be follow is on the prohibition of Gharar. Literally, Gharar implies risk, uncertainty and hazard. This terms also had been defined by Al- Sarakhsi that defines Gharar as any bargain where the results are hidden. Even the prohibition of Gharar is not been said directly in the Quran. Quran had clearly prohibited any transaction that will cause injustice or zulm to any parties involved in the transaction, especially to whom which a weaker economic and bargaining position. For instance, in Surah Al Nisa' verse 29 reads: O you who believe! Eat not your property among yourself unjustly by falsehood and deception, except it be a trade among you, by mutual consent. According to the jurists, the words batil (unjust) includes all categories of illegal and defective elements in commercial contracts.

However, a number of Prophetic hadith have rendered the condemnation of gharar conclusive (SAW). The Prophet (SAW) forbade gharar in trade, according to the companions. The Prophet (SAW) forbade all gharar sales, according to a hadith reported by Abu Hurayra. Two sorts of transactions, mulamasan and munabadhah, were reportedly forbidden by the Prophet (SAW), according to another hadith by Abû Hurayra. Al-mulamasah is a type of pre-Islamic contract that became legally binding as soon as the buyer touched the item being sold. Al-munabadhah is a pre-Islamic method of sale in which one side throws their garment to the other without first inspecting it. In both cases, the sales are prohibited due to gharar. Based on the above evidences, the jurists unanimously agreed that gharar is prohibited and the existence of gharar may render a contract null and void.

Other than that, Islamic financial system also strictly prohibited the transaction that have the elements of Maysir or gambling. This prohibited gambling is widely being pronounced as Qimar as the word Maysir is actually referred to form of gambling practiced in the ancient pagan era. There are numbers of scholars that provides on the definition of the Qimar which is one of them is Ibn Qudamah of the Hanbali schools defines qamar as a situation where each party must either enjoy gain or bear loss. In other words, Qamar can be defined as an act of betting one's assets in order to acquire another person's asset, either through competition, conditional games or by other means. The act of gambling was also being condemned and prohibited in Quran in Surah al Maidah reads: O believers, wine and gambling, idols and divination by arrows are but abomination devised by Satan; avoid them so that you may prosper. Indeed, Satan seeks to stir up enmity and hatred among you by means of wine and gambling and to keep you away from remembrance of Allah and from your prayers (5:90-1). In this verse, it is also explained on the gambling activity will bring you enmity in society and distracts believers from worshipping Allah.

To conclude, the fundamental prohibition is a must in any transaction under Islamic finance in accordance to Syariah compliance as a main references of Islamic finance system. All of this prohibition is actually helping people or bank to avoid any monopoly and injustice happen made by the financier to the weaker party which is the customer. Besides that, it is also will helps to make a better world where there is more peace and invokes enmity in society as the members in it live in honest and not persecute others.

(1008 WORDS)



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ISLAMIC FINANCE

YEAR 5, SEMESTER I 2022/2023

ARTICLE ISLAMIC FINANCE:

CARBON TRADING IN MALAYSIA IS IN COMPLIANCE TO SHARIAH

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INTRODUCTION

The carbon market has grown so fast that it is estimated to be the world's largest trading market. In carbon trading it is not the sale and purchase of carbon but trading is the right to emit Greenhouse gases (GHGs) in the form of units having different rules and regulations; Assigned Amount Units (AAUs), Certified Emissions Reduction Units (CERs), Emissions Reduction Units (ERUs), Removal Units (RMUs), and European Union Allowances (EUAs).¹ Carbon Trading is designed to manage risk. The producing units are required to estimate the risk about carbon price and carbon reduction and to formulate hedging strategies.

MALAYSIA'S ACTION

On 10th December 2021, Environment and Energy Minister Datuk Seri Tuan Ibrahim Tuan Man told the Dewan Rakyat that the planned domestic carbon trading market, a complex mechanism to incentivise a reduction in carbon emission, will be Shariah-compliant. A domestic emissions trading scheme will be developed by the Environment and Water Ministry and carried out jointly with the Finance Ministry, Bursa Malaysia, and other stakeholders.² This planned has been realised on 09th December 2022, where Bursa Malaysia Berhad had launched the Bursa Carbon Exchange (BCX), which is a voluntary carbon market (VCM) and the world's first shariah-compliant carbon exchange.³

THE PURPOSE OF VOLUNTARY CARBON MARKET

According to Nik Nazmi Nik Ahmad, Natural Resources, Environment and Climate Change Minister, the purpose is to contribute to Malaysia's ambition to achieve target of net zero GHGs emissions by 2050, and assist Corporate Malaysia's pivot towards a green economy and meet global standards for a sustainable supply chain. He believes if they do not embark on this path, it will greatly affect businesses when compete in the international market. Carbon credits can be generated from nature-based solutions, such as reforestation and afforestation projects, agriculture by improving fertilizer management. It can also be generated from

¹ Naila Nazir, (2012). *Carbon Trading: Capital Market Challenges and Regulatory Reforms for Islamic Finance*. Social Sciences and Humanities. Vol. 3, No. 3. pp: 440-445

² Syed Jaymal Zahiid. (2021) Carbon Trading, Already A Complex Mechanism, to be made Shariah-Compliant, Parliament Told. Malay Mail. Retrieved January 16, 2023 from <https://bursasustain.bursamalaysia.com/droplet-details/news/carbon-trading-already-a-complex-mechanism-to-be-made-shariah-compliant-parliament-told>

³ Tan Zhai Yun. (2022) *Bursa Malaysia launches first shariah-compliant carbon exchange*. The Edge Markets. Retrieved January 16, 2023, from <https://www.theedgemarkets.com/article/bursa-malaysia-launches-first-shariahcompliant-carbon-exchange>.

technology-based solutions like methane capture for waste management, renewable energy, and industrial gases.

HOW CARBON CREDITS CAN BE TRADED UNDER VOLUNTARY CARBON MARKET?

The first stage is emission mitigation project. A developer sets up a project and obtains validation and registers on a certification standard. The developer will operate and monitor the results. The second stage when the project verified by standards and credit issuance. A carbon credit is “issued” which means a certificate is issued and a unique serial number on the registry is created for each ton of carbon dioxide. The first credit issuance can be 2 – 3 years after the start of the project. The third stage is the trading and carbon markets. The credits issued belong to project developers. These can be bought and sold, and their ownership on the registry changes, until a buyer “redeems” (retires), at which point the credit ceases to exist, it is marked as “retired” in the registry. The last stage is the credits retired toward company targets. Nowadays, companies tend to buy a credit, and retire it shortly after, to use in meeting their emissions targets. However, transactions when a company buys credits for future use, or intermediaries buy credits to sell onwards / to benefit from price appreciation can also occur.

The chairman of Bursa Malaysia, Tan Sri Wahid Omar urged the corporates in hard-to-abate sectors to prioritise the purchase of carbon credits to combat climate change, rather than buying it as a last resort to close their emissions target gap. While developing their mitigation strategy, the corporates are urged to contribute to the financing of other decarbonising projects, as the planet cannot wait until 2030, 2040 or 2050 for corporates to invest in carbon credits. Under the BCX rules, buyers and sellers are incorporated entities, which could be foreign entities or companies incorporated in Malaysia. This could be commodity traders, financial institutions, brokers, project developers or corporates. Companies that purchase the credits could choose to retire it to offset their own carbon footprint or sell the standardised contracts with underlying carbon credits through the BCX’s trading platform. They could also keep it in their BCX trading accounts for future use.⁴

Corporate buyers will be able to purchase high-quality carbon credits from the BCX to offset their emissions, demonstrating progress in their voluntary climate commitments while

⁴ Tan Zhai Yun. (2022) *Bursa Malaysia launches first shariah-compliant carbon exchange*. The Edge Markets. Retrieved January 16, 2023, from <https://www.theedgemarkets.com/article/bursa-malaysia-launches-first-shariahcompliant-carbon-exchange>.

creating carbon-neutral products. At the national level, more local carbon credit projects will lead to higher GHG emissions reduction or removal, directly improving Malaysia's ability to meet its net zero aspirations and contribute to the Paris Agreement for the reduction of GHGs emissions.⁵

The BCX will provide three modes of carbon trading: auction, spot trading for standardised contracts of carbon credits and spot trading services for off-market transactions. Standardised contracts refer to a collection of carbon credits that could have shared attributes, like project type, which could be nature-based solutions, geography, or standards.

CONCLUSION

BCX is the world's first shariah-compliant carbon trading exchange, which covers the standardised carbon credit products to be traded on the platform as leverage on Malaysia's position as a global Islamic finance marketplace and the world's leading exchange for Islamic fundraising and investment. This achievement on the application of Islamic financial industry in environmental market especially in carbon trading had opened new doors of investment and growth for global capital market. It may lead to the establishment of new proposed products that can be adopted such as Carbon Takaful, Emission Ijara, Carbon Sukuk, Shariah Joint Implementation (SJI) and Islamic Clean Development Mechanism (ICDM).⁶

⁵ Adam Aziz. (2022). BCX carbon credits open to local, international buyers. The Edge Markets. Retrieved January 16, 2023 from <https://www.theedgemarkets.com/node/647609>.

⁶ Naila Nazir, (2012). Carbon Trading: Capital Market Challenges and Regulatory Reforms for Islamic Finance. Social Sciences and Humanities. Vol. 3, No. 3. pp: 440-445

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“Ingatkan *game* biasa; judi rupanya...”

Apabila kita bercerita tentang judi, seringkali dan secara automatik fikiran kita akan terbayangkan permainan kasino dan loteri. Walaubagaimanapun, perlu difahami bahawa aktiviti dan permainan yang berunsurkan perjudian juga telah berubah dan mempunyai evolusi yang tersendiri sekaligus ia tidak lagi terikat kepada dua perkara ini sahaja dan masih boleh melibatkan aktiviti-aktiviti dan permainan-permainan lain.

Perjudian telah dikategorikan sebagai sesuatu yang haram dan tidak dibenarkan dalam hukum-hakam Islam. Ia telah dinyatakan dalam firman Allah Surah al-Maidah ayat 90 iaitu,

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ
فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

“Wahai orang-orang yang beriman! Bahawa sesungguhnya arak, dan judi, dan pemujaan berhala, dan mengundi nasib dengan batang-batang anak panah, adalah (semuanya) kotor (keji) dari perbuatan Syaitan. Oleh itu hendaklah kamu menjauhinya supaya kamu berjaya.”

Melalui ayat ini, Allah telah secara jelas telah menjelaskan bahawa perjudian termasuk sebagai suatu perkara yang keji di samping arak dan pemujaan berhala. Berdasarkan *Tafsir al-Maraghi*, perjudian merupakan perkara yang keji kerana ia boleh mencetuskan permusuhan dan kebencian dalam kalangan yang berjudi kerana akan ada yang menang dan akan ada yang kalah. Berdasarkan kepada *Fiqh al-Manhaji* pula, perjudian ini dianggap keji kerana ia melibatkan kebergantungan kepada nasib semata-mata.

Setelah memahami hukum perjudian, konsep dan maksud perjudian juga perlulah difahami dengan lebih teliti untuk mengenal pasti permainan yang boleh dianggap sebagai judi. Judi atau dalam Bahasa Arab lebih dikenali sebagai *Maysir* atau *Qimar*. Mengikut pendapat

Ibn al-‘Arabi, *Maysir* atau *Qimar* melibatkan aktiviti yang mana setiap seorang daripada dua peserta berusaha mengalahkan masing-masing bagi memperoleh harta yang telah diketepikan untuk pemenang. Berdasarkan pendapat al-Jurjani, *Maysir* bermaksud mengambil sesuatu daripada pihak lawan dalam sesebuah permainan. Al-Shawkani pula mendefinisikan ia sebagai situasi di mana terdapat pihak yang untung dan pihak yang rugi. Namun, ulama kontemporari, al-Sabuni telah merangkumkan semua definisi tersebut kepada satu makna iaitu, “semua permainan yang menghasilkan keuntungan bagi satu pihak dan kerugian bagi pihak yang lain”.

Dengan erti kata lain, sesuatu permainan boleh dikira sebagai perjudian sekiranya ia disertai oleh dua orang atau lebih, setiap yang terlibat mempertaruhkan sama ada harta ataupun keuntungan, dan pihak yang menang akan diberi ganjaran harta dan keuntungan daripada pihak yang kalah di samping dapat menyimpan harta dan keuntungan yang dipertaruhkan pada awalnya.

Namun begitu, satu elemen penting yang tidak boleh diketepikan dalam menentukan sesuatu permainan itu berunsur perjudian ialah elemen *gharar*. *Gharar* membawa maksud ketidakpastian. Ia boleh melibatkan ketidakpastian terhadap item, kuantiti, harga dan ketidakpastian yang lain-lain. Manakala dalam konteks perjudian, ia merupakan ketidakpastian kepada hasil judi itu sendiri iaitu sama ada seseorang peserta mempunyai peluang untuk meraih keuntungan atau tidak.

Konsep permainan kasino dan loteri merupakan corak perjudian yang klasik dan mudah untuk masyarakat mengetahui dan menyedari pengharamannya dalam Islam. Tetapi, setelah difahami maksud perjudian itu sendiri, sedar atau tidak masih banyak permainan yang berunsur perjudian dimainkan oleh segelintir masyarakat yang mana telah dianggap sebagai suatu norma. Antara permainan sebegini ialah mesin ‘*claw*’ yang sering terdapat di pusat beli belah dan arked. Permainan ini mempunyai corak permainan yang mana pemain perlu menggerakkan ‘*claw*’ untuk mendapatkan hadiah di dalam kotak mesin dengan melakukan pembayaran terlebih dahulu sebagai taruhan. Oleh kerana permainan ini tidak mempunyai gaya perjudian yang klasik, sukar untuk masyarakat mengidentifikasikan ia sebagai perjudian. Tambahan pula, konsep permainan dan barangannya yang menarik telah menarik perhatian masyarakat tanpa

berfikir panjang kerana memahami ia sekadar 'game'. Meskipun begitu, Pejabat Mufti Wilayah Persekutuan telah membuat penjelasan bahawa mesin 'claw' merupakan perjudian kerana pemain tidak semestinya akan memperoleh hadiah yang dikehendaki sepertimana yang dibayarnya dan ia akan menyebabkan pemain terus melakukan pembayaran sehingga ia mendapatkan hadiah yang diinginkan. Oleh sebab itu, ia boleh dilihat bahawa permainan ini telah memenuhi elemen-elemen penting dalam perjudian iaitu *maysir* dan *gharar*.

Selain itu, sebahagian permainan video seperti *Player Unknown's Battle Ground* (PUBG) dan *Mobile Legends: Bang Bang* (MLBB) yang sering dimainkan oleh kebanyakan anak muda mempunyai suatu sistem yang boleh dikenalpasti sebagai perjudian. Sistem tersebut dikenali sebagai sistem Gacha di mana pemain boleh mendapatkan item, karakter, dan kemahiran yang ditawarkan tetapi bukan secara percuma. Antara faktor ia dikategorikan sebagai judi adalah kerana untuk mendapatkan tawaran tersebut, pemain diberi pilihan untuk menggunakan *Unknown Cash* (UC) dan *Diamond* bagi PUBG dan MLBB dengan perlu ditambah nilai menggunakan mata wang sebenar. Faktor lain juga adalah disebabkan item-item tersebut diperolehi secara tikam iaitu memilih secara rawak dan tekaan yang mana ia merupakan *gharar* kerana pemain berkemungkinan tidak boleh mendapatkan item yang diinginkan. Berdasarkan keterangan yang dikeluarkan oleh Pejabat Mufti Wilayah Persekutuan, kedua-dua faktor ini menyebabkan pemain sedar atau tidak mereka telah meletakkan taruhan ke atas item-item tersebut menggunakan nilai wang yang sebenar di samping proses tikam yang tidak menjamin keuntungan kepada mereka.

Kesimpulannya, konsep perjudian dalam sesuatu permainan turut berubah dan berkembang seiring dengan peredaran zaman. Arus pemodenan akan menyebabkan pelbagai jenis permainan lain yang akan dicipta dan diperkenalkan kepada masyarakat. Oleh yang demikian, betapa pentingnya bagi masyarakat untuk benar-benar memahami konsep perjudian supaya boleh lebih berhati-hati dan bijak dalam memilih permainan-permainan yang ditawarkan untuk mengelakkan diri daripada terlibat dengan judi tanpa sedar.



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SEMESTER I 2022/2023

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FUNFAIR GAMES CONSIDERED AS GAMBLING?

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FUNFAIR GAMES CONSIDERED AS GAMBLING?

The prohibition of gambling in Islam has been stated in Surah Al-Ma'idah Verse 90:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلُمُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.

It also has been stated clearly in Surah Al-Baqarah Verse 219:

يَسْتَأْذِنُكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ لِلنَّاسِ وَإِنَّهُمَا أَكْبَرُ مِنْ نَّفْعِهِمَا وَيَسْتَأْذِنُكَ مَاذَا يُنْفِقُونَ
قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَتَفَكَّرُونَ

They ask you about wine and gambling. Say, "In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit." And they ask you what they should spend. Say, "The excess [beyond needs]." Thus Allah makes clear to you the verses [of revelation] that you might give thought.

Gambling or maysir means the act of giving or receiving goods or money in anticipation of an uncertain outcome. Islam has firmly prohibited all forms of gambling as it refers to the easy acquisition of wealth by chance, whether or not it violates another person's rights. The main goal of gambling is to gain money or valuables by making the correct prediction. In Islam, a person's possession is considered as sacred and cannot be taken from them unless they are exchanged legally or willingly given as gifts or donations.

Gambling occurs when a person pays to play in attempt to win a prize. It also denies the rights of the buyer to choose a prize that he wants according to the payment he made. Hence, this situation violates the proper principles of trade such as khiyar (choice). Scholars define gambling as any game in which two or more people participate, each party bets something in terms of property or profit, and any participant who wins is rewarded with property or profit from the losing party and gets to keep the property or profit that he put as a bet in the beginning.

So, what is the relationship between gambling and funfair? Generally, funfair has widely known as an outdoor event featuring various kinds of games, rides, exhibitions, and other kind of entertainments. During weekends or holidays, many families will choose to spend their free time together playing funfair games. There are many games at the funfair where one

pays to play and if they win, they win a prize. Some examples are claw machine, shoot the balloons, get a hoop around a bottle, hook a duck, and get the ball in the bucket.

All the games mentioned above mostly depends on luck as people will pay the fees but uncertain whether they will win the prizes or not. This also can lead to addiction since people will take it as a challenge and try to win the game again and again. Sometimes, someone will keep on losing until he has spent all of his money. This types of games negatively affects people. It is also unjust because the prices paid to play the games are the same for everyone, but the outcomes of the games differ, with one party winning rewards and the other party losing money on the games.

However, is it true that all of funfair games considered as gambling and is prohibited? The answer is no. According to Mufti of Federal Territory's Office on Irsyad Al-Fatwa 713th Series on 4 August 2022, regarding the rulings of funfair games which is it is permissible on condition that the games must not involves any gambling elements. For example, any competition where the organizers provide prizes to the winners without using the money collected by the participants or any games that paid to use the services such as funfair rides.

Why funfair rides is permissible? This is because it is fair as it involves win-win situation where people will pay to enjoy the rides. There is no uncertain or gambling elements as people knows that they will certainly enjoy the rides adequately with what they pays. However, it is differs with other funfair games such as claw machines where the result whether they will get the prizes in the machines is uncertain but people keeps on spending and losing their money in attempt to win the prizes without getting anything in return.

What is the drawbacks if people keeps on involving in this kind of transaction? They will crave to bet more as they feel like they will likely to win the prizes without realizing that they have spend a lot of money on certain prizes. In other word, they are betting or gambling their chances of winning certain prizes. It is prohibited in Islam as it is an unfair transaction which contains a risk to any one of parties which could lead to his loss of money while other parties will gain illegal excessive profit.

In conclusion, funfair games is permissible and not considered gambling provided that the games does not involves elements of gambling where we need to pay to play a certain game and if lose, we get nothing but if win, we get prizes. This is because this kind of game is included in betting which is an element in gambling amd it is illegal. Apart from that, we are free to play funfair games without any restrictions and prohibitions.



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جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

FACULTY OF LAW AND SHARIAH

SEMESTER I, SESSION 2022/2023

LAB5153

ISLAMIC FINANCE

THE APPLICABILITY OF ZAKAT TOWARD INFLUENCERS

PREPARED FOR:

DR. ZULKIFLI HASSAN

KLB 1/ TLB 3

PREPARED BY:

NAME	MATRIC NO.
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THE APPLICABILITY OF ZAKAT TOWARD INFLUENCERS

When discussing about zakat, it is generally known as an Islamic finance term that zakat is the third pillar from the five pillars of Islam. Allah S.W.T had mentioned about zakat in the Quran in Surah An-Nur, verse 56 where Allah told to keep up the prayer, pay the zakat and obey the Messenger to get His mercy.

Zakat in simple words is the obligation toward a person to donate a portion of his wealth to charitable causes every year, when it reaches the certain threshold. There are a lot of zakat that includes zakat on earnings, business, savings and several more. Section 34(1) of the Administration of Islamic Law (Federal Territories) Act 1993 governs the Mufti to make a fatwa, therefore fatwa in our country stated that the zakat of earnings includes the salary, allowances, freelance payments, commissions royalties, rental income or any bonus.

Also in this discussion, we will focus more on zakat of the influencers' earnings. Hence, the question here is, does these influencers obligated to pay their zakat of earnings? As we know, most of the influencers did not have any fixed income and they are likely to rely on collaborations or reviews from brands and business. Some of them also made videos or skits which sometimes equivalent to an actor on the television.

Despite having no fixed income, they receive quite a lot of money from freelance jobs that they did rather than a normal office worker. Although some of them are also contracted with brands and company, they usually do not have a fix basic income and they will obtain money based on their performance online.

Being a public figure, these influencers are bound to set and show a really good example to the public with their behaviour, action and attitude. it is obvious that not only zakat was given to charity to purify the earnings, but it is also taught us to be more concern and sharing among others. We shall go back to the basis of zakat, where only a certain amount of the earnings that reaches definite threshold will be taken and given to charity. Meaning, there is going to be some calculations needed in order to ensure the qualification of such influencers to pay zakat.

Person who have been employed for more than a year and received an amount of income that is above the minimum amount is obligated to pay their zakat on earnings. The certain threshold or nisab of zakat is 85g of gold nowadays and it varies periodically from state to state. Whenever the income of that person reached has more than the minimum amount, which is the price of 85g of gold, the person ought to pay 2.5% of the total income to the charity as zakat.

Looking back at the requirements and calculations of zakat, if we applied to the influencers, basically they are obliged to pay the zakat. The applicability of zakat are said to be implied upon them and not having a fixed or unstable income are not the reasons for them to disobey the order.

This is because once the income had passed the minimum amount, regardless the amount was not as big as the Prime Minister's salary or it was as low as the income of street hawker, there are still the responsibility upon them to pay the zakat. Living as influencers means everything, every detail of their action was looked at and taken seriously. Therefore, if they pay zakat on earnings without taking into account the consistency or how big the amount of their income, it will pick the interest of public to be influenced by them.

Such action will resulted to a positive and better outcome where people will be more aware about their duty and obligations to pay zakat on their earnings. It has been proved and researched that influencers really do have a big impact on the public. Hence, the applicability of zakat toward influencers is really relevant and proper for it to be discussed of. In conclusion, influencers also are obligated to pay zakat on their earnings for 2.5% once the amount has reached nisab allocated which is 85g of gold.



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LAB 5153 ISLAMIC FINANCE

SEMESTER 1,

ACADEMIC YEAR 2022/2023

ARTICLE ISLAMIC FINANCE:

DOES ISLAM RECOGNIZES TIME VALUE OF MONEY?

PREPARED BY:

NURDALILA SYAFIQAH BINTI ABDUL RAHMAN

(1182667)

(KLB 2 / TLB 8)

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ARTICLE ON: DOES ISLAM RECOGNIZES TIME VALUE OF MONEY

BY: NURDALILA SYAFIQAH BINTI ABDUL RAHMAN 1182667

Since the time value of money is associated with *riba*, this means there is zero time value of money in Islam. So, how an Islamic zero-interest-rate economy allocate real and financial investments? The term 'Islamic zero interest rate economy' is a term that does not suit to describe an Islamic economy, whether in theory or in practice as Islam prohibits interest. And also how can a Muslim digest a term 'Islamic-zero-interest economy' which implicitly recognizes the existence of interest in the economy where Allah says in the Qur'an:

"Allah will deprive usury (interest) of all blessings" (Qur'an, 2:276).

In theory, the exchange in the commodity market determines the price. Commodity market means a marketplace for buying, selling, and trading raw materials or primary products. Nothing prohibits the real commodity markets to determine the price in a sale with deferred payment to be different from the sale with cash payment. The difference will be due to several factors that could be grouped into two categories, which are the pure time factor and the risk factor associated with the time interval. Market determines the compensation of both components in a single price quotation and Allah has permitted it. The Qur'anic answer is:

"Allah has permitted exchange and prohibited riba" (Qur'an, 2:275) .

This means that permission given is for exchange in the real market, where real goods and services are sold and bought and the prohibition is for exchange in the money market, where money or credit is sold and bought.

Every economy has a market segment and a non-market segment. The non-market segment, in an Islamic economy, is in substantial proportion because of the religious imperatives of spending for divine causes, which is referred to as *sadaqah* or *infaq fi sabilillah*. For this segment of an Islamic economy, discounting will not be needed and instead may even be sinful. For example, if my expected zakat liability at the end of the year is RM5, 000 and I pay it at the beginning of the year after discounting it at the rate of my time preference, then this discounting is not permissible.

Similarly, if a lender extends a loan to a borrower as *qard hasan*, discounting will not be allowed to equate the payback in future to the present value of the loan. Qard, lending and borrowing is made to meet the needs of needy in an Islamic economy is a non-market

economic transaction. The lender who lent \$1,000 will be happy to receive back the same amount at an agreed upon future date. Accepting an amount of less than \$1,000 is desirable in case the borrower is in distress and cannot return the full amount.

It is non-logical to say that Islam requires zero interest rate on loans. The verse that tells us is:

“And give up what remains (due to you) from usury (interest) if you are (in truth) believers” (Qur’an, 2:278)

Which means that cannot be taken as zero interest rate. Another verse when the instruction is:

“And if the debtor is in a difficulty, then grant him time till it is easy for him to repay” (Qur’an, 2:280).

Which in fact shows a negative discount rate. Thus, the time value of money in Islamic view represents the advantages to the economy and society.

Thus, there are several advantages to the application of time value of money in Islam. First, to meet the human need completely. In Islamic principles, the time valuation of money in Islamic principle differs from the conventional theory since money and commodities have different qualities, which is that money has no intrinsic value but is just a unit of value or medium of exchange. As a result, unless transformed into a commodity, it is unable to fulfil human needs on its own. Thus, commodities can fulfil human needs directly and can be different quality while money has no differential quality in the sense that the new note of RM50 is exactly equal in value and quality to an old note of RM50.

Next, the second advantage is enhancing economic productivity. It stimulates individuals to work and trade because its concept is based on the real sector of economic operations. This leads to the improvement and enhancement of the ability in competition. Furthermore, these economic activities improve the system's actual productivity and build the national economy in order to achieve high levels of economic growth and living standards. Hence, poverty will be reduced, and everyone will live in comfort and peace.

Lastly, the advantage is the stability of the national economy and society. Furthermore, it contributes to the stability of the country's economy because when all economic activities are mostly from the real sector, it prevents the effect of fluctuation and recession that is caused by greed and speculation. It also reduces the socio-economic difficulties that occur when applying the conventional time value of money applied to the

system, such as system collapse, loan payment default, economic recession, and unfairness.

In practice, the application of time value of money in Islam is treated differently than its application in conventional finance. Time value of money, in the sense of a fixed monetary increment, is applied in Islam to sale contracts like deferred sales and mark-up sales. On the contrary, conventional finance recognizes time value of money and its application in borrowing and lending arrangements in the form of a predetermined increment on the loan principal, which is prohibited by Islam.

In conclusion, Islam clearly recognizes time value of money, but its recognition of time value money is totally different from conventional finance in both theory and practice. In theory, a fixed and predetermined increment in a deferred sale as compensation for time is acceptable in Islam as long as it is related with the price of the contracted subject matter. This means that any deferment cannot be compensated with a specific and fixed incremental amount regardless of the price of the transacted commodity.



SEMESTER I, ACADEMIC SESSION 2022/2023

FACULTY OF SHARIAH AND LAW

ISLAMIC FINANCE (LAB 5153)

INDIVIDUAL ASSIGNMENT

PREPARED FOR:

PROF. MADYA DR. ZULKIFLI BIN HASAN

PREPARED BY:

NURUL HALIMATUN SAADIAH BT TUMIJAN (1181947) (TLB 7)

DATELINE:

3 FEBRUARY 2023

[998 WORDS]

THE BASIS FOR THE PROHIBITION OF GAMBLING IN DEALING

By: NURUL HALIMATUN SAADIAH BT TUMIJAN (1181947)

Muslims are prohibited from any kind of gambling be it is done for the purpose having fun/ entertainment or to get money/ benefit out of it. It is haram for Muslim to be dealing with any form of gambling in any type of situation. Allah put great emphasis and importance in the Quran for us to distance ourselves from gambling for it is a method of wrongfully taking someone else's property, that could lead to conflict, enmity and hatred.

To first understand gambling and its form, it is best to first learn on the definition. Gamble is also known as Al-Maisir or Al-Qimar in Arabic, which means betting on something using arrows and it is a custom of the Arabs. The word Qimar is closely associated with the word 'Khida' which means to deceive. Basically Qimar is an act of betting one's asset in order to acquire another person's asset be it through competition, conditional games or any other means. Gambling games for examples includes gambling using rocks, dice or any type of bets. It is clearly understood that gambling is not confined to games but in a much broader perspective. Every action that involves wagering of property to be given to the winner is to be included under act of gambling.

Moreover, scholars presented several opinions for the usage of term of gambling. According to al-Mawardi, any type of game or contest is considered as gambling when there are two parties involve; winner (takes) and loser (gives) the rewards, through betting. On the other side, Ibn Taimiyyah states that gambling is when a part of someone's property is taken and used as a bet and he will end up rewarded or he will lose his bet. Besides, Imam Malik divided gambling into two types: Unbeneficial / useless gambling (lagha), such as the games of dice, chess and any unbeneficial entertainment and the second type is gambling involving bets, such as anything that is harmful or in the form of sacrifice. From the discussion of scholars' opinions regarding the definition of gambling, it can be concluded that gambling is defined as any type of game or contest that involve a bet from the contestants and there will be a winner and a loser.

The provision on the prohibition of gambling can be found in the Quran, hadith and scholarly consensus (ijma'). In the Quran Allah SWT states: "They ask you about wine and gambling. Say, "In them is great sin and [yet, some] benefit for people. But their sin is greater

than their benefit." And they ask you what they should spend. Say, "The excess [beyond needs]." Thus, Allah makes clear to you the verses [of revelation] that you might give thought."- Surah al-Baqarah (219).

In another surah, Allah SWT states: "O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful."- Surah al-Maidah (90). "Satan only wants to cause between you, animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So, will you not desist?" -Surah al-Maidah (91).

Furthermore, the prohibition of gambling is also stated in a hadith of the Prophet PBUH, where he said: "Whoever says to his companions, 'Come let me gamble' with you, then he must give something in charity (as an expiation for such a sin)." - Sahih al-Bukhari (6107) and Sahih Muslim (1647).

Last but not least, the provision of gambling has also been prohibited by the scholarly consensus (ijma'). Ibn Hazim al-Zahiri, al-Jassas, Abu Hayyan al-Andalusi, Ibn Taimiyyah and al-Qurtubi state that none of Islamic scholars concurs the prohibition of gambling.

Additionally, there are conditions set by Islamic scholars to classify a certain game or contest as gambling. Primarily it is participated by two or more people, or two or more groups. Next, each party (participant) would put a bet on something; in terms of property or profit. Consequently, any participant that wins will be rewarded with property or profit from the losing party and gets to keep the property that he puts as a bet in the beginning.

So what is not considered as gambling. According to Islamic scholars, any type of game where the winner receives a reward from a third party, not from anyone involved with the game, then it is considered as just a game and the reward is considered as a gift. A game is also not considered as a gamble when the reward is just from one party. For example, if someone said to his friend, "If you could beat me, I would reward you. However, if you lose, you don't have to give me anything." This is in accordance with a hadith narrated by Abu Daud where the Prophet PBUH was challenged by a Quraisy disbeliever named Rukanah to wrestle with him with the reward of a few goats if the Prophet PBUH wins. The Prophet PBUH accepted

the challenge and won. However, any type of game where a person wins all of the bet while the loser loses his bet, then it is prohibited.

Gambling consists in a form of speculation and there should not be any place for it in any dealings as it is purely speculative. As Muslim, together we reflect ourselves to be careful of gambling and its forms in modern days, to avoid getting involve in sin and transgressions towards Allah SWT. Prophet Muhammad (pbuh) said: “There is no benefit for flesh that grew from Haram sources, except that Hell is a better place for that flesh”. For those who won the game, they should give their prize to Baitulmal to be managed and given to the poor and needy for they have a right to the prize. May Allah SWT protects us in this world and the next.



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SEMESTER I, ACADEMIC SESSION 2022/2023

COURSE:

ISLAMIC FINANCE (LAB5153)

LECTURER:

PROF MADYA DR ZULKIFLI BIN HASAN

TOPIC:

**INDIVIDUAL WRITTEN ASSIGNMENT: UNDERTSANDING RIBA IN ISLAMIC
FINANCE**

GROUP:

KLB 1 / TLB 4

NAME	MATRIC NUMBER
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UNDERSTANDING RIBA IN ISLAMIC FINANCE

Riba is derived from the Arabic word, '*raba*' which means 'to grow' or 'expand' or 'increase', or 'inflate' or 'excess'. It is often translated as 'usury' which it is typically understood as the charging of an exploitative interest rate. However, *riba* actually refers to any excess value transaction that Islamic Law has prohibited. An express of prohibition of *riba* is in the Chapter Ali 'Imran which clearly mentions *riba* and prohibits it in which Allah states: "O you who believe! Do not devour *riba* multiplying it over, and keep your duty to Allah that you may prosper" [3:130].

In Shariah, *riba* is defined as a 'premium' that the borrower must pay to the lender along with the principal amount as a condition for the loan or an extension in its maturity. Further, *riba* also has been used in the Shariah in two senses which are *riba al-nasi'ah* and *riba al-fadl*.

Riba al-nasi'ah occurs when the specified increase is in return for postponement of, waiting for, the payment. It is commonly referred to as compound interest. Furthermore, it is also considered as the most harmful and unethical of all forms of *riba*. In simpler words, *riba al-nasi'ah* is an increase in the amount of a commodity due to the mere passage of time. Besides, this kind of *riba* is under the category of interest-based loans. *Riba al-nasi'ah* has been prohibited by Islamic law as the Prophet S.A.W. said, "There is no *riba* except in *nasiyah* (*waiting*)".

On the other side, *riba al-fadl* can be understood as immediate exchange of unequal quantities of the same commodity such as gold, silver, wheat and barley and hence be described as the *riba* of surplus, as opposed to *riba al-nasi'ah* which involves the passage of time. Other than that, it does not have substantial effect on transactions as it is rare to be happened. This is due to the fact that it is not the intention of people to buy or sell one thing in exchange for another unless there is something extra from which both parties may benefit. In example, a trader may claim that a quantity of a specific brand of wheat is equivalent to other brands because of its superior quality, or that a one-of-a-kind gold ornament is worth twice its weight in gold. Such transactions are unquestionably defrauding to the uninformed party and may result in harm. The prohibition of this *riba* has been narrated in the Hadith from Abu Said al Khudri, the Prophet S.A.W. said, "Gold for gold, silver for silver, wheat for wheat, barley for

barley, dates for dates, and salt for salt, like for like, and hand-to-hand. Whoever pays more or takes more has indulged in riba. The taker and the giver are alike (in guilt).”

In Islamic finance, *riba* is the interest rate charged on loans or deposits. Even at low interest rates, religious practise forbids *riba* as illegal, unethical, or usurious. Islamic banking has provided several workarounds to accommodate financial transactions without charging explicit interest. As far as Muslims’ knowledge, Islam categorically bans its followers in dealings that involve *riba*. However, in daily life, Muslims require banking services just as much as anyone else and for a variety of reasons. This includes financing business ventures, purchasing a home or car, facilitating capital investment, engaging in trading activities, and providing a secure place for savings.

Subsequently, Muslims are not opposed to legitimate profit, and Islam encourages people to use their money in Islamically legitimate ventures rather than simply sitting on their funds. Keeping this in mind, the hallmark of Islamic banking is the prohibition of *riba*, or interest, and there is now widespread agreement among Muslim economists that *riba* includes interest as well as usury. Therefore, there are few principles in prohibiting *riba* in Islamic banking and finance that has been enshrined from *al-Qur’an* and *Sunnah*.

Firstly, any predetermined payment over and above the actual amount of principal is prohibited. Islam permits only one type of loan, *qard hassan* in which the lender does not charge any interest or additional amount over the amount lent. It should be noted that this principle derived from the quotation emphasises that associated or indirect benefits are prohibited. Secondly, the lender must share in the profits or losses arising out the enterprise for which the money was lent. Rather than becoming creditors, Islam encourages Muslims to invest their money and become partners in order to share profits and risks in the business. However, it is unwilling to allow a loophole to exist for those who do not wish to invest and take risks, but are content with hoarding money or depositing money in a bank in exchange for receiving an increase on these funds with no risk.

Thirdly, *gharar* (deception) and *maisir* (gambling) are also prohibited. Under this prohibition, any contract entered into should be free of uncertainty, risk, and speculation. Contracting parties should have complete knowledge of the counter values that will be exchanged as a result of their transactions. Therefore, it can be seen that the rationale behind the prohibition was enacted to protect the weak from exploitation.

In conclusion, it is crystal clear that *riba* is prohibited in Islamic Law as there are evidences from *al-Qur'an* and *Sunnah* as well as juristic opinions. It is also clear that the prohibited *riba* includes the interest imposed on bank loans and given on deposits by the banks. The most important element to be eliminated in determining whether the Islamic bank conforms to the precepts of Islamic Law is the element of *riba*. With the abolition of *riba*, all forms of exploitation will be eliminated, particularly the financier's assurance of a positive return without doing any work or sharing any risk, whereas the entrepreneur, despite his management and hard work, is not assured of such a positive return. However, it is difficult to see how anyone could justify interest in an Islamic social system. The difficulty to understand the prohibition comes from lack of appreciation of Islamic values, particularly its uncompromising emphasis on socio-economic justice and equitable distribution of income and wealth.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

FACULTY OF SHARIAH AND LAW, SEMESTER I, 2022/2023

SUBJECT:

LAB5153 ISLAMIC FINANCE

ASSESSMENT:

ARTICLE ON COMPETITION THAT ARE PROHIBITED IN ISLAM

PREPARED BY:

SITI NUR FADHILAH AFIQAH BINTI MOHAMMAD RIDHUAN

1181959

CLASS AND GROUP:

KLB 2 / TLB 8

PREPARED FOR:

ASSOC. PROF. DR. ZULKIFLI HASAN

COMPETITION THAT ARE PROHIBITED IN ISLAM

Nowadays, there are a lot kind of competitions organised by any organisation, team or club. People tend to join the competition that they like especially when it involves their hobby or interest such as fishing competition, bowling competition or some others competition. Usually, the organiser will charge some fees for the participant who wants to join the competition. Also, the organiser will prepare the prize for the winner of the competition as it will attract more people to join the competition.

However, what people not aware about this kind of competition is that the competition could be prohibited in Islam. It is not on the types of competition itself, because if it involves the games that are prohibited in Islam, then it is clear that it is prohibited in Islam. However, the prohibition here means how the organiser organized the fees of the participants and how the organizer prepares the prize for the winner because there is possibility that there is element of gambling in the competition itself.

According to the concise Oxford dictionary of current English on 7th edition, the competition means the activity of doing something with the goal of outperforming others or winning something and basically a competition is not prohibited in Islam. However, it will become prohibited if it involves the elements of gambling.

Gambling is prohibited in Islam, and it is clearly stated in the Quran, in verse 90 of Surah Al-Maidah. In Arabic language, the term of gambling is also referred to as “al-qimar” and Mawardi of the Shafi’i school defined it as a situation which must yield one of two results for the person who enters into it, to emerge as a winner if he takes or as a loser if he gives. In short, gambling can happen when someone is putting the risk and there is equal probability that he will win everything or lose everything.

There are few elements of gambling which are, it happens between two or more parties, each party bets his property, each party has an equal probability of gain or loss, and the winning party’s gain corresponds exactly with the losing party’s loss.

By looking at the meaning and elements of gambling, it can be seen that there is possibility that there are few competitions involve the elements of gambling without people who joins it realise it. Hence, in order to analyse whether the competitions involve the elements of gambling or not, the participants must look at whether all elements of gambling exist in the organisation of the competition.

As for the first element where it happens between two or more parties, it can be said that the nature of the competition itself involve between two or more parties because all the parties will involve are competing. So, on the first element, even though the competition involves this element, however, it must be further analysed whether this element and all other elements are involved.

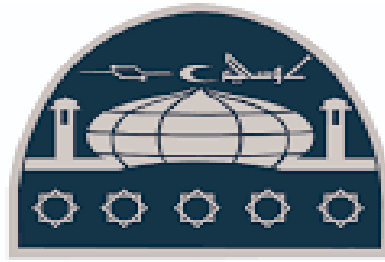
Next, the second element is each party bets his property. In competition, the term of betting should not exist because if there is betting in the competition, it can be said that it is clear that the competition is prohibited. However, this is one of the grey areas in the competition where the organiser will usually collect the fees for participants who want to participate in the competition. This is related to another two elements of gambling which are each party has an equal probability of gain or loss, and the winning party's gain corresponds exactly with the losing party's loss.

In collecting the fees from the participants, it is not prohibited because usually the organiser needs the money to provide any facilities for the competition. However, it will become prohibited when the fees paid by the participants are used for the winner prize. As an example, there are two participants in a competition, both participants paid RM50 each and at the end of the competition, the first participant win the competition and win RM100 as the winner prize where the money comes from the fees of both participants meanwhile the second participant lose everything and did not gain anything from the competition.

This is when the element of gambling involves in a competition which had caused the competition to be prohibited in Islam. This is because in that competition, both parties put their money for the winner prize, there is an equal probability that both parties might win, or loss and the winning party's gain corresponds exactly with the losing party's loss because the winner get all the money from the other participant and the loser lose all his money to the other participant.

Hence, before joining any competition or organising any competition, all the parties need to make sure that the elements of gambling does not exist in the organisation of the competition. As for the participants fees, it is not prohibited for the organiser to collect the fees, however, the money collected must not be used for the prize of the winner. The source of prize should come from the third party such as from any sponsorship and not from the participants itself.

In conclusion, this issue is usually overlooked by so many people, and they thought all the competitions that they join are free from any elements that are prohibited in Islam. However, people need to be very careful in every single thing that they do so that they do not do things that are prohibited in Islam. Gambling is prohibited in Islam in any form and a competition, which at first is permissible in Islam can become prohibited if there are elements of gambling in organising the competition.



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SEMESTER I, 2022/2023

LAB5153

ISLAMIC FINANCE

INDIVIDUAL ASSIGNMENT:

CONSEQUENCES OF RIBA IN SPORTING ASPECT IN
MALAYSIA

PREPARED FOR:

ASSOCIATE PROFESSOR DR. ZULKIFLI HASAN

PREPARED BY:

TARIQ BIN TURAHERIM

1181813

TLB1/KLB1

Riba, or interest, is considered a major sin in Islam and is prohibited. This has consequences for the sporting industry in Malaysia, where a significant portion of the population adheres to the Islamic faith. Firstly, there may be a loss of support from Muslim fans and athletes who may choose not to participate or support events or organizations that engage in riba. This can lead to financial losses due to decreased participation and support. Additionally, organizations and events that engage in riba may suffer reputation damage and be seen as un-Islamic or unethical, which can lead to decreased investment in the sporting industry from Muslim investors. Overall, the consequences of riba in the sporting aspect in Malaysia can negatively impact the growth and development of the industry, as well as its reputation and support from the Muslim community.

Furthermore, the absence of riba-compliant financial options in the sporting industry may limit the growth and development of the industry, as well as the involvement of Muslim athletes and fans. For example, riba-compliant financing options are needed for the development of new sporting facilities and infrastructure, as well as for the promotion and growth of various sports. Additionally, the absence of riba-compliant financing options may also limit the ability of Muslim athletes to pursue their careers in sports, as they may not have access to the necessary funding. In conclusion, it is important for the sporting industry in Malaysia to consider the consequences of riba and to strive towards providing riba-compliant financial options in order to promote growth and development and to ensure inclusiveness for all.

Hence, it is important for the sporting industry in Malaysia to address the issue of riba and provide alternative, riba-compliant financial options. This will not only ensure that the industry is inclusive and accessible to all, but it will also demonstrate the industry's commitment to ethical and responsible practices. By offering riba-compliant financial options, the sporting industry in Malaysia can demonstrate its commitment to the values and beliefs of the Muslim community, which will lead to increased support and participation. Moreover, this will also provide a positive example for other industries to follow, promoting a culture of ethics and responsibility in business practices. Hence, addressing the issue of riba in the sporting industry in Malaysia will have far-reaching positive impacts and contribute to the overall development and growth of the industry.

Moreover, addressing the issue of riba in the sporting industry can help foster a sense of community and belonging among Muslim athletes and fans. When an industry is seen as promoting values that align with the beliefs and principles of a particular community, it can lead to increased participation and support from that community. This, in turn, can help build a

stronger and more vibrant sporting culture, which can have positive impacts on the health and well-being of individuals and society as a whole. Additionally, promoting riba-compliant financial options in the sporting industry can help promote financial literacy and responsibility, as well as provide a positive role model for young people who are interested in sports. Hence, by addressing the issue of riba in the sporting industry, Malaysia can promote not only the growth and development of the industry but also the overall well-being of its people and society.

Besides, addressing the issue of riba in the sporting industry can also promote greater understanding and unity among different communities. The sporting industry has the ability to bring people together, regardless of their background or beliefs, and promoting riba-compliant financial options can help further this goal. By promoting values and practices that are inclusive and respectful of different beliefs, the sporting industry can help build bridges between communities and promote greater understanding and unity. This, in turn, can have positive impacts on the social and cultural fabric of the country and contribute to a more harmonious society. Hence, by addressing the issue of riba in the sporting industry, Malaysia can not only promote the growth and development of the industry but also contribute to a more united and harmonious society.

In addition, addressing the issue of riba in the sporting industry can also have a positive impact on the broader economy. By promoting ethical and responsible financial practices in the sporting industry, the country can attract investment from responsible investors who value such practices. Furthermore, by providing riba-compliant financial options, the sporting industry can also provide a positive example for other industries to follow, which can help promote responsible business practices across the economy. Hence, by addressing the issue of riba in the sporting industry, Malaysia can not only promote the growth and development of the industry but also contribute to the overall stability and growth of the economy.

To conclude, the issue of riba in the sporting industry in Malaysia is of great importance and requires attention and action. The absence of riba-compliant financial options may limit the growth and development of the industry, as well as the involvement of Muslim athletes and fans. Furthermore, addressing the issue of riba in the sporting industry can promote a sense of community, ethical and responsible practices, financial literacy and responsibility, and the overall well-being of individuals and society. By offering riba-compliant financial options, the sporting industry in Malaysia can demonstrate its commitment to the values and beliefs of the Muslim community, promote inclusiveness and accessibility, and contribute to the overall development and growth of the industry.

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**TOPIC: PRINCIPLES OF HIBAH AND ITS APPLICATION IN CONTEMPORARY
ISLAMIC FINANCE**

There are numerous Shariah contracts for Islamic financial instruments practiced in Malaysia and other countries that choose to practice Islamic finance. It is interesting to note that a prerequisite in ensuring the legitimacy and integrity of Islamic financial products and services is such products and services are duly complied with Shariah requirements. Furthermore, one of the Shariah contracts for Islamic financial instruments is *Hibah* which is known to be a charitable contract. Therefore, this article is aimed to further discuss on the principles of *Hibah* and its application in contemporary Islamic finance.

Hibah can be identified as a benevolent contract for the unilateral transfer of ownership of an asset, and subsequently referred to as a *hibah* asset specifically from a donor to a recipient with no consideration at all. In addition, it can be observed that Muslim scholars agree on a general concept of *hibah* which stipulates that *hibah* is a voluntary contract that results in uncompensated ownership transfer between living individuals. An Islamic financial institution may grant *hibah* to its customer but subject to requirements specified by Shariah.

To further, it is notable that there are numbers of basic principles and conditions of a *hibah* contract that must be fulfilled. The first one is conditions related to gift object. In general, the conditions for the gift object can be described by a legal maxim in which it states that 'every object which is legally tradable from the Shariah perspective is considered legal to be given away as a gift'. This is due to the goal of *hibah* is the transfer of ownership of tangible items which is likely similar to a sale and purchase contract. Therefore, the Islamic jurists have enumerated number of conditions to be met by an item that given as *hibah*, *inter alia*, firstly, the object shall be in existence at the time the *hibah* contract is made, secondly, the gift shall be a valuable property which regards as valuable and permissible by the Shariah and is to be compensated in case of damage, and thirdly, the gift object shall be separable.

Moreover, the second principle and condition of a *hibah* contract is related to conditions regarding *qabd* or taking possession. In brief, *qabd* is an expression of offer and acceptance in transferring the ownership of *hibah* object from a donor to the donee. In addition, there are three views among the jurists relating to the issue of whether *qabd* is a requirement to complete a *hibah* contract. Briefly, the first view states that *qabd* is the condition for a *hibah* contract to be legally binding in which the *hibah* object before *qabd* is still legally owned by the donor as the ownership transfer is not yet completed. The second view stipulates that *qabd* is neither a condition required to validate a *hibah* contract, nor to make it binding whereby this means that the ownership of the *hibah* object is transferred from the donor to the donee by a mere acceptance of the offer, thus it binds the *hibah* contract. The third view mentions that *qabd* is only a validity condition for goods measured by weight and volume. However, the first view is known to be the view of the scholars' majority which requires *qabd* to be the condition for a *hibah* contract to be legally binding. Therefore, it can be noted that the components of *hibah* are parties involved, *qabd* and *hibah* asset.

Discussing on the application of *hibah* in contemporary Islamic finance, there are some examples of *hibah* applications that can be provided. For instance, one of the applications is in the family *takaful* product whereby *hibah* is applied in a way the *takaful* participants assign their nominees as recipients of the *hibah*, that is, the *takaful* benefit.

Other than that, in the Islamic finance, a *hibah* may also be arranged alongside an *ijarah* contract in which the lessor who is deemed to be a donor may transfer ownership of the leased asset to the lessee who is a recipient upon settlement of all obligations under the *ijarah* contract.

In a conclusion, it is important to note that *hibah* contract shall be complied with Shariah compliances in order to prevent any unlawful practices of *hibah* principles in the Islamic financial products and services that being contrary to the Shariah compliances.



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LAB 5153

ISLAMIC FINANCE

SEMESTER I

ARTICLE ASSIGNMENT:

**THE COMPARATIVE FEATURES BETWEEN AI-IJARAH THUMMA AL-BAI
AND CONVENTIONAL HIRE PURCHASE IN VEHICLE FINANCING PRODUCTS
FROM SYARIAH VIEW**

THE ACADEMIC YEAR 2022/2023

PREPARED BY

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TUTORIAL CLASS: TLB5/KLB2

INSTRUCTOR'S NAME:

PROF DR ZULKIFLI HASAN

Buying your first car is not an easy task, but if it's worth doing and it's worth doing well. Therefore, the subject of car finance comprises the different financial products either conventional or Syariah products which allow someone to acquire a car with any arrangement other than a single lump payment. Nowadays, the trading of the contract exists because it is unlikely for most people to be affordable in buying certain goods in cash unless they are given the choice of deferred payment schemes and the Hire Purchase contract is one of them. It is notable that on the Syariah side, the Islamic Hire Purchase contract is widely known Al-Ijarah Thumma Al-Bai' (AITAB).¹

Foremost, Islamic finance differs and is distinct from conventional finance in that it is characterised by five major guiding principles namely the prohibition of interest rates (riba), the prohibition of uncertainty (gharar), the prohibition of gambling (maysir), the prohibition of sin dealings, and all the transactions must be asset-based.²

AITAB was first used in Malaysia in 1995 by Bank Islam Malaysia Berhad. Literally, the simplest way to explain AITAB is that it means "hire goods and then purchase. "According to the AITAB definition, a leasing contract and a subsequent purchase contract are two contracts that are entered into independently.³

Since AITAB is a combination of two different contracts, the *dalil* of its permissibility also uses the evidence of the requirement of both contracts. According to Jumhur ulama, the shari'at of both contracts is agreed in Islam based on a Quranic verse that reads;

And if they nurse your child, compensate them, and consult together courteously.

(Surah al-Talaq, 65: 6)

It is noteworthy that AITAB has no specific law, and its application is based on the conventional Hire Purchase Act 1967 (HPA). Commonly, a conventional hire purchase contract is not exactly considered as a sales contract or a lease contract as the owner is allowed

¹ Rahman, A., My, R., & Rahman. (n.d.). *Evaluation on Al-Ijarah Thumma Al-Bay' (AITAB) Facility: The Case of Affin Islamic Bank Berhad*. https://www.isfin.net/sites/isfin.com/files/evaluation_on_al-ijarah_thumma_al-bay_aitab_facility.pdf

² Ibid.

³ Ab Aziz, Muhammad Ridhwan. (2013). *A Vehicle Financing Comparative Study Between Ijarah In Maybank Berhad And Bai Bithaman Ajil In Bank Islam Malaysia Berhad*.

to take back or repossess the asset and the hirer is given a right to purchase the asset upon agreement with particular terms.

Thus, it is beneficial to illustrate the operation of AITAB in vehicle financing. Essentially, AITAB works as follows where the financial institution purchases the vehicle on behalf of the customer from a car dealer. Then, the financial institution rents the car to the customer for a predetermined amount of time at a predetermined rate. Moreover, the road tax and insurance are to be covered by the customer (hirer) as well as he will be in charge of its maintenance as well. In the end, the sale and purchase agreement will be signed by the customer and the finance company at the conclusion of the time frame.

With regards to the comparative features between AITAB and conventional hire purchase in vehicle financing products from Syariah's view, there are four remarkable differences to be highlighted.

Firstly, the documentation differs fundamentally in some ways. In conventional hire purchase, it uses a standard hire-purchase agreement based on the HPA. This car loan agreement includes information about the transaction, conditions and warranties, the parties' rights and obligations and penalties. On the other hand, in the present contract, AITAB must be made up of two independent contracts: one for *ijarah*, and the other for *bai'* at a later stage of the transaction.⁴

Secondly, there are differences with regard to certain technical terms pertaining to both contracts. Generally, a conventional hire-purchase agreement is perceived as a regular loan. On the other hand, Islamic hire purchase is viewed as a type of financing. In simple terms, conventional financing is usually in the business of lending and borrowing money based on interest thus the customers are required to repay the loan along with the interest however because interest is considered *riba* in Islamic banking and it is not permitted hence Islamic financing are not money lending institutions, but rather trading and investment firms.⁵ Nevertheless, as far as no interest can be charged in Islamic finance namely in AITAB, a profit rate that closely resembles the interest rate is imposed, and late payment charges may be vary

⁴El-Din, Seif & Abdullah, Nurdianawati. (2007). Issues of Implementing Islamic Hire Purchase in Dual Banking Systems: Malaysia's Experience. *Thunderbird International Business Review*. 49. 225-249. 10.1002/tie.20141.

⁵ Differences between Conventional Bank and Islamic Bank. (2023). *Ubldigital.com*.

as the Bank Negara Malaysia (BNM) allows the commonly practised charge of 8% if 7% are passed on to charity in order to compete with the conventional sector.⁶

Thirdly, the imposition of a late penalty fee is one of the significant differences between Islamic and conventional facilities. Defaulters under conventional hire purchase will be charged 8% per annum, whereas the penalty for late charges or known as Ta'widh is only 1% under AITAB and it is subject to change as approved by BNM from time to time. It is significant to highlight that the imposition of Ta'widh on delayed repayment against financing is permissible in Islamic banking based on the ijtehad made by the Shariah Advisory Council of BNM (SAC) as a maslahah which is consistent with fiqh method that is "the harm must be eliminated."⁷

Lastly, in a conventional hire purchase, the purchase price of a vehicle is calculated by synchronising the cost price with the interest rate in effect which is variable based on the annual rate. In contrast, by guidelines issued from time to time by BNM's Shariah Advisory Council (SAC) in Shariah Resolution in Islamic Finance 2010 stipulates that the sale price after the end of the rental period can be in the form of the final rental amount for ijarah.⁸

All in all, there are four remarkable features between AITAB and conventional hire purchase in vehicle financing products from Syariah's view. Notwithstanding, there may be some similarities between them, but AITAB is preferred on the fact that it is based on the value of the capital goods and that it can be securitized or transferred from one owner to another.

(953 words)

⁶ Werner, Jan. (2018). The Islamic Vehicle Financing Market in Malaysia: Identification of Factors Influencing Price Sensitivity. *MaRBL*. 3. 10.26481/marble.2018.v3.631.

⁷ Norazlina, M., Alam, S., Selangor, M., & Ridzwan, A. (n.d.). *Maslahah Approach Towards Imposition of Ta'widh in Islamic Banking*. <http://www.gjat.my/gjat2019-Uitm/SI-NOV2019-04.pdf>

⁸ UM, Jurnal. (2016). Pembiayaan Kenderaan Berkonsepkan Al-Ijarah Thumma Al-Bay' (AITAB) Di Bank Muamalat Malaysia Berhad Dan Isu-Isu Berkaitan. 10.6084/M9.FIGSHARE.3364099.

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FACULTY OF SHARIAH AND LAW

ISLAMIC FINANCE (LAD 5173)

INDIVIDUAL ASSIGNMENT

SEMESTER 1, ACADEMIC SESSION 2022/2023

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DIFFERENCES BETWEEN BAY AL-INAH AND TAWARRUQ

The literal meaning of Bay al-Inah is loan or advanced payment. Technically, Bay al-Inah means the selling of an asset with a markup price on deferred payment with the intention to sell the same asset to the debtor with a lower price, which is meant to settle his debt.

According to Imam As-Syafie, Bay al-Inah is a credit purchase of an asset which later sold to the original owner, whether at a deferred or on the spot, higher or lower price compared to the first contract or even for an exchange of goods. While according to Ibn Qudamah, it is an asset with a deferred price to which the owner will repurchase the same asset at a lower price.

To sum up the definition of Bay' al-Inah, it is a sale and repurchase contract between two similar people by differed payment. The contract is characteristically a loan in a form of sale and clearly aiming to get cash rather than to do selling. Hence, majority of Islamic jurist hesitant to allow such contract as "loaning" is forbidden in Islam.

On the other hand, "Tawarruq" is a type of dealings to buy on credit and sell at spot value. It is a transaction where one party buys some goods on credit at a marked-up price and sells the same at a lesser value for the purpose of getting cash. Technically it is the purchasing of a commodity on credit by the "Mutawarriq" (seeker of cash or the 'purchaser') and selling it to a person other than the initial seller, which is the third-party, for a lower price on cash.

The actual purpose of this transaction is not to possess the goods but to obtain liquidity. Hence, this type of transactions has been used widely by many Islamic banks as an important tool for liquidity management and as a mode of financing especially for personal financing and credit cards.

An illustration of how Tawarruq is currently being utilised is as offered by HSBC Amanah's Personal Finance, that allows the customer to purchase metals from the bank at a pre-determined profit margin (which sum may be paid in instalments), and then sells those metals on the customer's behalf to an international broker. The sales's proceeds will be transferred into the customer's account. Another instances of Tawarruq's application can be seen in Bank Muamalat Malaysia Berhad in its Muamalat Cash-Line Facility-i, which is offered for working capital purposes.

In contrast with Tawarruq, the financier in Bay' al-Inah will first sell the consumer certain products on credit with a markup and then buy those same things from the customer at the spot price. Although Bay' al-Inah is recognised in Malaysia, it has yet been recognised as a shariah-compliant financing option in the Middle East because it is regarded as a legal fiction. This is due to the buy-back of the goods on behalf of the seller. Thus, the sale and purchase transaction is merely serves to create a debt obligation which is similar to, or oftentimes results in, usury ('riba').

For Bay' al-Inah, only Shafie jurists have approved this type of dealings among four school of laws in Islamic traditions. However, the approvals comes with a stern restrictions. The contract is authorised due to it is a sale contract and Islam allow selling as mentioned in Quran (Al-Baqarah: 275). Therefore, the dealings is considered valid and permissible as long as the practice is based on a real contract of sale and purchase without involving loaning or lending.

In a detailed manner, both parties should neither explicitly nor implicitly have any intentions to do loan. All elements of sale and purchase contracts should be included to both contracts and the first contract must be completed before the second contract could be executed. In a meantime, each party to such a contract is free to do other business as usual.

Apart from that, regarding the legitimacy of "Tawarruq", Imam Ahmad Ibn Hanbal reported that there are two versions for it in which one side allows for it and the other side is against it. The version that allows for "Tawarruq" is preferred by the majority of Hanbali jurists. However, for Ibn Taimiyyah and Ibn Qayyim, they deemed "Tawarruq" to be impermissible. Whereas, according to Shafie's jurists, due to their acceptance of "Inah", hence, "Tawarruq" appears to be permitted with them but with a greater force.

Besides that, Maliki jurists are highly rigorous when it comes to 'Inah'. Nevertheless, it appears from their books and writings that they do not view "Tawarruq" as being an issue. Meanwhile, for some of the later Hanafi jurists which claimed that "Tawarruq" is "Inah", they tend to follow that "Tawarruq" is makrooh. Even so, the majority of the Hanafi's jurists have favoured Ibn ul-Humam position that 'Inah' is forbidden when the item is returned to the original seller. Otherwise, when the item is sold in the market, the transaction is valid and permissible.

In conclusion, the obvious difference between Bay' al-Inah and Tawarruq is that there is no act of repurchase of any goods from the initial seller. Rather, the Mutawarruq is free to dispose

goods to any other party on the open market. Therefore, it is seen as a true sale and hence permissible.

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SEMESTER I, 2022/2023

LAB5153

ISLAMIC FINANCE

INDIVIDUAL ASSIGNMENT:

**CONTROVERSY IN THE CONTRACT OF BAI' BITHAMAN
AJIL IN MALAYSIA.**

PREPARED FOR:

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PREPARED BY:

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TLB4/KLB 1

Bai' Bithaman Ajil (BBA) refers to a sale and purchase transaction of an asset to be paid on later date (deferred payment) based on a price, which include a profit margin agreed to by both contracting parties. The BBA financing method was introduced in Malaysia by Bank Islam Malaysia Bhd (BIMB) which began operating on May 13, 1983. This BBA method, although not recognized by other parts of the world that practice Islamic banking, which is more comfortable using the murabahah or cost-to-key method is widely used in Malaysia.

Although there were many scholars against this system, BBA initially was applied in home financing. The Managing Director of Bank Islam Malaysia Berhad (BIMB) at the time, Dato' Abdul Halim Ismail allowed the use of BBA based on verse 282 of Surah Al-Baqarah which means: "O believers! When you contract a loan for a fixed period of time, commit it to writing. Let the scribe maintain justice between the parties". Here, he argues that the Quran uses the deferred payment sales method as an alternative to the debt financing method of the conventional banking system.

However, after the instrument has been implemented, in practice there were many court cases occurred in BBA transaction. The dispute between the bank and the consumer happened because of several reasons such less comprehension regarding Islamic economic between the consumer and the Bank.

In the case of Dato Haji Nik Mahmud bin Daud v. Bank Islam Malaysia Berhad represents the earliest case of dispute between the customer and Islamic banking under the concept of BBA which occurred in 1998. The customer alleging the bank because the instrument executed for the transaction were null and void, and there was no transfer of ownership in the lands concerned. The court was not in the favor of the customer but won the bank side. By doing this, the court was aim to save the bank because if the court won the customer's side, the bank would not able to recover the profit under BBA. Moreover, it would also jeopardize the industry for Islamic bank and financial institution in Malaysia particularly BBA, because this instrument was considered to be the most preferred type of Islamic financing in Malaysia at that time.

Next, in *Affin Bank Bhd v. Zulkifli bin Abdullah* in 2006. This case occurred due to default payment of installment before the end of tenure in the form of home financing facility. In the transaction this incident is considered as part of the sale price or the bank selling price profit margin for the unexpired tenure of the facility. Under BBA agreement, the customer bought a house for a sum of RM 346,000 and the loans were to be repaid over an 18-year tenure or 216 monthly installments and charge was registered against the title. At the end of December 1997, the defendant resigned from the agreement at his request, the loan facility was restructured and the bank selling price of the house was RM 992,363.40, payable over a period of 25 years. There was no fresh set of documents executed. After making several payments in total of RM 33,454.19 and the last was in June 2001, the defendant defaulted again. The two actions were filed, namely an order for sale and an order to recover such sums in the event of a deficiency in the proceeds of sale. The cases won by the bank and the customer had to pay the remaining installment.

However, the judgement regarding the BBA in the High Court case of *Arab-Malaysian Finance Bhd v. Taman Ihsan Jaya Sdn Bhd & Ors* 2008 in a written judgment by Judge Datuk Abdul Wahab Patail on 18 July 2008 when he ruled that the application of the *Bai Bithaman Ajil* method which is widely used in Islamic home purchase financing contracts is contrary to the Islamic Bank Act 1983. The BBA financing method is the main product of Bank Islam Malaysia Bhd which is also the main product of Islamic banking in Malaysia. In Malaysia, it is estimated that almost 70 percent of Islamic financing is given according to the BBA concept. The implications of this judgment are expected to cause Islamic banks and financial institutions to review all BBA-based financing agreements made with customers. In fact, Bank Negara Malaysia in a circular to Islamic banking chief executives on 8 September 2008 advised them to reconsider the use of BBA.

In the first two cases, both cases won by the bank. The judge intentionally won the bank side in order for the bank to cover for its profit. Further, by winning the bank side in these

cases, the bank will gain positive image from the economic side and in the public eye. The purpose of the customer deal with Islamic bank through BBA instrument to avoid conventional bank which contain interest and religious purpose and avoid riba which is prohibited. However, in the practice of BBA due to less comprehension in the customer side regarding the agreement in BBA contract, the customer loss the case and receive the burden by paying the remaining installment. Further, the customer has less legality to sustain his right. But, in Arab-Malaysian Finance Bhd v. Taman Ihsan Jaya Sdn Bhd & Ors, the High Court case finally offers constructive and proactive approach by the learned judge upon the disputed issues in BBA facility by examining the overall facts of the case and applying the equitable principle as well as considering Shari'ah as the grounds of judgment.

For conclusion, Islamic banks in Malaysia and the Court need to find an equitable solution on this matter as this can lead to losses, sufferings, grievances and injustices to the customer purchaser and to ensure that justice as enshrined under Islam.



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LAB 5153 ISLAMIC FINANCE

ISLAMIC FINANCE INDIVIDUAL ARTICLE

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AN OVERVIEW OF THE ISLAMIC PRINCIPLES IN INVESTMENT

An investment can be described when someone made a purchase with the intention of generating income or capital growth. When a person makes an investment, they do not intend to use the product immediately; instead, they intend to use it to build wealth in the future. Aside from investment, there is also trading which also aim to gain profit through market immersion. The difference however can be seen on the method taken where investment seeks for a larger redemption over time while trading depends on the falling and rising of the market. In general, there are several types of investments which the most common comprises from stocks, bonds, real estate, and ETFs/mutual funds. A person invests to increase their money over time. The fundamental tenet of investing is the expectation of a favourable outcome in the form of revenue or price growth with significance value. There is a very broad range of assets that one can invest and generate a return. However, in conventional investment usually contain the element of *gharar* or uncertainty as there is risk. Therefore, in this article, it will look on how an investment can be maneuvered accordance to Islamic principle and compliance through its principle and guidelines.

First and foremost, Muslim shall fret not on choosing the right investment as long as it is based on Sharia-compliance. It was said that Muslims are not worried about Islamic investment, because the Islamic financial sector has shown significant growth as a financial services landscape (Alexakis et al., 2016). As mentioned earlier, there are numerous types of investment available. However, in this writing, it will emphasize on the investment in stock market. The regulations and guidelines accordance with the Sharia-compliance will be discussed below. The term stock of share can be defined as the ownership or stockholder of the company. As mentioned earlier, the long-term investors or shareholders are responsible for the characteristics of the company. However, the short-term investors who usually trade in the changing market and only involve on the operation at the surface value shall follow the following Sharia principles.

First, the nature of the business of the operational company. The company's primary circle of business must be recognised as being permissible in accordance with Islamic principles at the outset. The businesses that engage in wholly unacceptable or *haram* practises, such as those that produce, market, or provide alcoholic beverages or haram meats like pork cannot be invested as the primary revenue is from these activities. The purchase of stocks in companies that are either directly or indirectly related to *riba* or interest is prohibited by Islamic law. This

prohibition also applies to businesses that offer financial services at interest rates, such as interest-based banks, insurance providers, finance and leasing businesses and others.

Next, the nature of Assets of that company. Shariah principle also gives some standards regarding the nature of the company's assets, with a focus on securing the rights and interests of investors. First of all, it forbids investing in a business with only liquid assets. It would only be legal to trade at the par value of the shares if the company lacked any non-liquid assets because in this scenario, the shares would be comparable to cash. In actuality, the vast majority of businesses have both liquid and non-liquid assets. Further, the investors himself must at all times conduct in the way Sharia permits. Therefore, the nature of the ownership must be that of common stockholders that has the position as the real owner in that company. Sharia principles therefore permits only common stocks can be traded. A common share can be sold just like a portion of the company's stock, and it is regarded as the property of the owner, who is free to sell or lend it as long as it doesn't harm other shareholders (Osmani & Abdullah, 2009)

Moving on to the next principle is the nature of the intention. It is perhaps can be argues that the speculation in the stock market resembles to gambling. In addressing this matter, shariah scholars viewed can be concluded as that the basis of speculation is the intent or actions of the investors. Decisions should not be made based on uncertainty or taking on too much risk. Instead, it should be based on a fundamental analysis and the desire to make a reasonable profit from the market. Next, the nature of the transaction. The manner in which transactions are made and how they take place varies between markets and Islamic jurists. The stock market offers a variety of trading options, including margin trading. Due to their involvement in market manipulation and speculation, many markets have restrictions on them. They are forbidden by Islamic scholars due to their involvement in speculation and interest.

Finally, the nature of zakat. Basically, the owners of the shares must pay the zakat in stocks. Zakat will be calculated on the full market value of the share each year if the shareholder is a short-term investor with the aim of profiting from price increases and is prepared to sell the share at any moment when the price rises. Zakat will only be calculated annually on the dividend amount if the shareholder is a long-term investor who invests for dividend gains rather than short-term price gains.

In Conclusion, Sharia principles have provided the overall guidelines for Muslims to make an investment in the market. For the investors, they need to be aware of all the responsibilities as a Muslim need to be taken when become an investor.

**UNIVERSITI SAINS ISLAM MALAYSIA
FAKULTI SYARIAH DAN UNDANG-UNDANG**

SUBJECT:

ISLAMIC FINANCE (LAB5153)

ASSIGNMENT:

**ARTICLE: HOW THE CONCEPT OF AL IJARAH THUMMA AL BAI
OPERATES IN VEHICLE FINANCING IN ISLAMIC BANKING SYSTEM**

WRITTEN BY:

**MUHAMMAD IMAN TAUFIK BIN MOHD KHAIRULIN (1181954)
KLB2/ TLB8**

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HOW THE CONCEPT OF AL IJARAH THUMMA AL BAI OPERATES IN VEHICLE FINANCING IN ISLAMIC BANKING SYSTEM

Islamic banking has gained popularity in recent years as more people are seeking for Syariah compliant financial services. It consists of many concepts such as *mudarabah*, *murabahah*, and also includes the concept of Al Ijarah Thumma Al Bai. The concept of Al Ijarah Thumma Al Bai which operates in vehicle financing, is a key concept in Islamic banking. In this article, we'll look at what Al Ijarah Thumma Al Bai is, how it works in vehicle financing, and why it's a popular option for Muslims looking for an alternative to traditional financing.

Al Ijarah Thumma Al Bai is an Islamic financing arrangement used to purchase assets such as houses and vehicles. It combines two concepts, Al Ijarah (leasing) and Al Bai (sale). The lessor (the financing institution) leases the vehicle to the lessee (the customer) for a specified period. The lessee makes periodic rental payments over the lease period, after which they have the option to purchase the vehicle for an agreed price.

When a customer chooses Al Ijarah Thumma Al Bai to finance a vehicle, the bank first buys the vehicle and then leases it to the customer. The customer makes monthly payments over an agreed-upon lease period, with a portion of each payment applied to the vehicle's purchase price. The customer has the option to purchase the vehicle for the agreed-upon price at the end of the lease period, or to return it to the bank.

If the customer decides to buy the vehicle, they need to pay the remaining balance of the purchase price and receive ownership of the vehicle. They do not have to pay any additional fees if they return the vehicle, but they do not have the option to purchase the vehicle.

Al Ijarah Thumma Al Bai is a popular choice for vehicle financing in Islamic banking for a number of reasons. For instance, it is a Shariah compliant financing arrangement, which is critical for Muslims seeking ethical financial options. Al Ijarah Thumma Al Bai model is based on the principles of Islamic finance, which prohibits the charging of interest. This makes it an attractive option for those who are looking for a financing solution that is in line with their religious beliefs.

Second, it gives customers flexibility by allowing them to either purchase or return the vehicle at the end of the lease period. Customers are allowed to manage their finances because they can choose to buy the vehicle only if they can afford it.

Another benefit of Al Ijarah Thumma Al Bai is that it allows customers to use the vehicle without having to assume full responsibility for ownership. Customers who do not have the funds to purchase a vehicle outright or who do not want to take on the risks associated with vehicle ownership, such as maintenance and repair costs, may benefit from this.

Al Ijarah Thumma Al Bai's leasing option allows the financing institution to retain ownership of the vehicle during the lease period. This means that the financing institution is responsible for the vehicle's maintenance and upkeep, which can help to reduce the customer's financial burden.

Another advantage of Al Ijarah Thumma Al Bai is that it allows customers to structure their payments in the manner that best suits their financial situation. Depending on their financial capabilities, they may choose to make smaller periodic payments over a longer lease period or larger payments over a shorter period.

However, Al Ijarah Thumma Al Bai may have some disadvantages. One disadvantage is that the customer may end up paying more in the long run than with other financing methods. This is because the rental payments include not only the cost of the vehicle, but also the profit margin of the financing institution.

Furthermore, in order to enter into an Al Ijarah Thumma Al Bai agreement, the customer must make a down payment, which may not be feasible for everyone. Moreover, during the lease period, the customer does not have full ownership of the vehicle, which may be an issue for those who prefer to have complete control over their vehicle.

Despite these possible disadvantages, Al Ijarah Thumma Al Bai is becoming increasingly popular as a vehicle financing option. This is due in part to increased demand for Shariah-compliant financial products, as well as the advantages it provides over traditional financing methods.

One of popular option in Malaysia to enter into Al Ijarah Thumma Al Bai agreement to finance a vehicle is by Maybank Islamic. Maybank Islamic is a subsidiary of Maybank Group which provides the service of financing vehicles which have competitive rates and flexible payment terms. Customers can select from a wide range of vehicles from various brands, making it simple for them to find a vehicle that meets their needs and budget. Maybank Islamic provides customers with a Shariah compliant and ethical financing option for vehicle purchases by offering Al Ijarah Thumma Al Bai financing.

In conclusion, Al Ijarah Thumma Al Bai is a well-known concept in Islamic banking that deals with vehicle financing. It offers customers a Sharia-compliant financing option, flexibility, and use of the vehicle without full ownership responsibility. Customers can make informed decisions about their vehicle financing options and choose the best solution for their financial needs if they understand the AITAB principles.



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ISLAMIC FINANCE

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Investment is the process of allocating money with the aim of generating income or capital appreciation. This can take various forms, including stocks, bonds, real estate, and commodities. Investment can be seen as a way of achieving financial freedom and providing a secure future for oneself and one's family. However, before investing, it is important to understand the different types of investments available and their associated risks.

First are stock, stock represent ownership in a company and are often referred to as equities. They can provide a higher potential return than bonds, but also carry a higher level of risk. Stocks can be bought and sold through a stockbroker and the price of a stock will fluctuate based on market conditions and the performance of the company. It is important to conduct thorough research and consider the company's financials, management, and future prospects before investing in stocks.

Second type of investment is bond, bonds are debt securities issued by governments, municipalities, and corporations to raise capital. They pay a fixed rate of interest over a set period of time and return the principal when the bond matures. Bonds are generally considered to be less risky than stocks, but they offer a lower potential return. It is important to consider the creditworthiness of the issuer and the bond's maturity date before investing in bonds.

Third type is real estate investment, it involves buying, selling, or renting properties. Real estate can provide a steady source of income through rental income and capital appreciation over time. However, real estate can also be illiquid, meaning it may take longer to sell a property, and it can be subject to market fluctuations and changes in property values. It is important to carefully consider the location and condition of a property before investing in real estate.

Last type is commodities which refer to raw materials and natural resources, such as gold, silver, oil, and wheat. Commodities can provide a hedge against inflation and can offer a high potential return. However, they are also subject to market volatility and price fluctuations. It is important to understand the supply and demand dynamics of the commodity market before investing in commodities.

Investing involves a trade-off between risk and return. The more risk one takes, the higher the potential return, and vice versa. A diversified portfolio, spreading investments across different asset classes, can help mitigate risk and provide a more stable return over time.

It is also important to have a long-term investment horizon, as investments can be subject to short-term fluctuations. An investment plan that takes into account an individual's financial goals, risk tolerance, and investment timeline can help ensure that investments are aligned with their financial objectives.

Furthermore, for people who want to invest, they can't overlook diversification as it is a key aspect of investment, which helps to spread risk across a variety of asset classes. By investing in a mix of stocks, bonds, real estate, and commodities, for example, an investor can reduce the impact of market fluctuations in any one particular asset class. This can lead to a more stable return over time and help to weather market downturns.

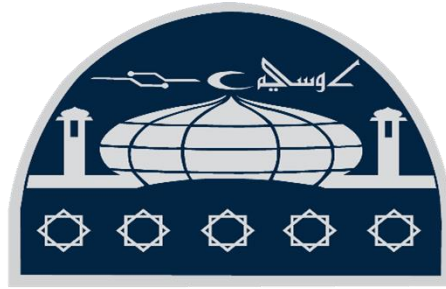
In terms of risk tolerance, it is important for investors to understand their own tolerance for risk and to invest accordingly. For example, individuals with a low risk tolerance may opt for investments with a lower potential return, such as bonds, while those with a higher risk tolerance may prefer investments with a higher potential return, such as stocks.

It is also important for investors to have a clear investment timeline, as different investments may be more suitable for different time frames. For example, short-term investments, such as bonds with a maturity date within a few years, may be appropriate for individuals who are saving for a specific goal, such as a down payment on a house. Long-term investments, such as stocks, may be more appropriate for individuals who are investing for retirement.

In terms of investment strategy, it is generally recommended that individuals invest regularly, such as through a monthly or quarterly investment plan, to take advantage of dollar-cost averaging. This involves investing a fixed amount of money at regular intervals, regardless of market conditions. Over time, this can help to average out the cost of investment and reduce the impact of market fluctuations.

Additionally, it is important to seek professional financial advice, particularly for those who are new to investing or who have limited knowledge of the investment landscape. A financial advisor can provide guidance on investment options and help to develop a personalized investment plan that is aligned with an individual's financial goals and risk tolerance.

In conclusion, investment is a crucial tool for achieving financial freedom and securing one's future. Different types of investments, including stocks, bonds, real estate, and commodities, offer different levels of risk and return. A diversified portfolio, a clear understanding of risk tolerance, a well-defined investment timeline, and a sound investment strategy can help ensure a successful investment experience and help mitigate risk and provide a stable return over time. Before investing, it is important to understand the different investment options and to consider one's financial goals and risk tolerance.



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FACULTY OF SHARIAH AND LAW

SEMESTER I, ACADEMIC SESSION 2022/2023

ISLAMIC FINANCE (LAB 5153)

**INDIVIDUAL ASSIGNMENT: HOW DOES *HIBAH* OPERATE AND WHY DOES
HIBAH IS IMPORTANT IN OUR FAMILY INSTITUTIONS?**

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HOW DOES *HIBAH* OPERATE AND WHY DOES *HIBAH* IS IMPORTANT IN OUR FAMILY INSTITUTIONS?

In Malaysia today, *Hibah* has been widely accepted and is the main choice of the community to manage their property as best as possible. *Hibah* means a voluntary gift by a person during his life to another individual without expecting something in return, that is with a good purpose. In family institutions, *Hibah* is not necessarily given to heirs, in fact this *Hibah* is open to be given to anyone regardless of lineage, age and does not require the consent of any party.

Other than that, *Hibah* must be completed according to its pillars, which are the Grantor, the Grantee, the Agreement (Ijab and Kabul), along with the *Hibah* Property. Further, *Hibah* must be executed during the Grantor's lifetime. When the Grantor dies, the property that has been donated is not his inheritance and it is not subject to the division of *Faraid* law. However, if the Grantee dies, the property will become an inheritance and the heirs of the Grantee will be entitled to the *Hibah* property.

From a legal point of view, *Hibah* is an optional practice with a good reward that is encouraged in Islam, especially to the closest family. This is highly recommended for the Grantor to take care of the welfare of his family members especially if the Grantor has no biological children or only has a daughter. In order to prevent other heirs from getting more property than his children and wife, Grantor needs to act wisely by giving *Hibah* to family members without being bound by property value limits.

Apart from that, the community needs to know that there are some properties that can be given as *Hibah* and some that cannot be given as *Hibah*. Among the properties that can be given as *Hibah* are houses, land, savings accounts in banks, Tabung Haji and Amanah Saham Nasional Berhad (ASNB) which is the largest investment company in Malaysia. While for property that cannot be given as *Hibah* are in the form of Employees Provident Fund (EPF), pension, property belonging to other people, property prohibited by Sharia law and property that has been sold.

There are several types of *Hibah* which are Absolute *Hibah* (*Hibah Mutlak*), Trust *Hibah* (*Hibah Amanah*) and Conditional *Hibah* (*Hibah Bersyarat*). Absolute *Hibah* refers to the transfer of property owns by the Grantor to the Grantee directly based on the principles,

conditions and ownership that have been established by syariah law. This *Hibah* involves the process of transferring ownership right away to the *Hibah* recipient. For example, to give a land as *Hibah*, you can go directly to the land office to make a dealing in order to transfer of ownership using Form 14A of the National Land Code.

In a meantime, for *Hibah Amanah* where the *Hibah* Beneficiary does not yet have the qualifications to receive property and manage the property due to their age as minors or people with disabilities (OKU). Therefore, a certain party will be appointed as trustee on behalf of the *Hibah* recipient. For the *Hibah* through this trust, the property that has been given as a *Hibah* will not be directly transferred to the recipient of the *Hibah* but to the trustee. The element of *qabd* (ownership) in this form of *Hibah* will be done by the trustee in place of the *Hibah* Beneficiary.

While for Conditional *Hibah*, it is categorized into two, namely *Hibah Umra* and *Hibah Rugba*. For *Hibah Umra*, it refers to *Hibah* that is given but tied to age for both parties, the Grantor and Grantee. In addition, this *Hibah* is given temporarily based on the age of the Grantor or Grantee. There are often situations where, if the Grantor dies first, then the ownership of the *Hibah* property is given to the Grantee and the same applied to the Grantee when if he dies first, the *Hibah* property will return to the Grantor.

On top of that, *Hibah Rugba* is tied to the condition of death. For example, if the Grantor dies and the *Hibah* property in the form of a house will fall to the Grantee as well where the Grantee dies first. The most talked about today is *Hibah Takaful*. This type of *Hibah* was just introduced in 2013 under the Islamic Financial Services Act. *Hibah Takaful* is compensation given to the recipient in the form of cash after the owner of this takaful policy chooses the recipient as an absolute *Hibah* Recipient.

However, among the issues that attract the public's attention is whether this *Hibah* is legal in terms of civil and sharia law and how about its effectiveness in safeguarding the interests of *Hibah* Grantor and Grantee. Hence, until today only parties recognized by law can prepare documents related to *Hibah* and its management such as lawyers and trust companies. This *Hibah* document is to ensure that the administration of the *Hibah* property runs smoothly and legally so that the *Hibah* property is not turned into an inheritance that is necessary for the distribution of *faraid* in the future.

In conclusion, the community, especially the head of the family in safeguarding the interests of family members needs to be smart and make a fast move in making financial decisions to

ensure the welfare of family members is guaranteed. Disputes between heirs often occur because of problems in the management of inheritance in a family institution. Therefore, *Hibah* is the first step and the best way to ensure that a person's property can be channelled to the right person. Afterall, *Hibah* is significant to protect the rights of people and give privilege to those who the Grantor wish for.



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ISLAMIC FINANCE

INSTRUCTOR'S NAME:

PROFESSOR DR. ZULKIFLI HASAN

ARTICLE:

**“THE CONTROVERSIAL REGARDING THE USE OF TAWARRUQ TOWARDS
ISLAMIC BANKING AND FINANCE”**

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(1025 words)

1.0 DEFINITION OF TAWARRUQ

According to the al-Quran, *Tawarruq* means ‘*darahim madrubah*’ (Khayat, 2009). Besides, *Tawarruq* refers to buying a good at a deferred price, either as a *Musawamah* or *Murabahah* (mark-up sale), and then selling it to a third party in order to make money. The intention of the buyer of the asset, who has no interest in using the asset or benefiting from it because the main intention is to obtain liquidity, influences the use of the term "*Tawarruq*" (Dusuki, 2010).

2.0 THE ACCEPTANCE OF TAWARRUQ

The majority of modern scholars like Hanafi, Shafi’i and Hanbali share the classical scholars' opinion that *Tawarruq* is permissible. Besides, the Shariah Advisory Council (SAC) of Malaysia’s central bank also deemed *Tawarruq* as admissible. However, Ibn Taymiyyah and his disciple, Ibn Qayyim al-Jawziyyah, two prominent Hanbali jurists, disagreed with the Hanbali School's majority endorsement of *Tawarruq*. They rejected *Tawarruq* and classified it as a legal trick (*hilah*) akin to *bay’ al-‘inah* (Al-Zuhayli, 1989). The Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) decided in 2006 that the application of the *Tawarruq* principle in modern Islamic banking is subject to strict controls and limitations. Moreover, the Organization of Islamic Cooperation Fiqh Academy ruled in 2009 that organized *Tawarruq* is forbidden but upheld the legality of *tawarruq fiqhi* (Dusuki, 2010). Plus, due to the violation of various Shariah principles, the implementation of *Tawarruq* has been called into question.

3.0 ISSUES ON THE LEGALITY OF TAWARRUQ TOWARDS ISLAMIC BANKING

In this regard, there are several issues, including concerns about the commodities used in the contracts, encouraging the proliferation of debt, *bay al 'inah*, and agency issues.

First and foremost, a sale contract must be both valid in form and valid in purpose in order to be legitimate from a Shariah perspective. In order for a contract to be valid in form, there must be a buyer, a seller, a traded item that is legal, and a price. Besides, with the exception of items that can be purchased in the market under *Salam* or *Istisna’*, the seller must

be the owner and in possession of the sale item. No conditions may be imposed on the sale. The contract also must be free from fraud, uncertainty, and interest rate (*riba*).

Meanwhile, valid purpose means the purpose of the contract must be valid. This is because, if the item being sold has no value or is being used for an illegal purpose, the sale will be deemed invalid (Al-Zuhayli, 1989). For instance, the sale contract is void because the purchase of grapes for the purpose of making liquor has an illegal purpose. The contract's ultimate result must also be legal, which means that the sale agreement cannot ultimately result in the exchange of money for future money at a premium. Thus, *Tawarruq* as it is used in Malaysia does not satisfy the requirement for validity of purpose as a sale contract since the ultimate objective of *Tawarruq* is to exchange spot money for a greater sum in the future. Furthermore, there is no good in the deal if the goal of such trading is to acquire more dirhams from dirhams.

Secondly, there is a view that the current practices of *Tawarruq* is closely resemble to *bay al-I'nah*. This is because, if there is any collusion or 'trick' involved, the transaction would be considered to be a *hilah* (trick) to avoid the prohibited *riba*, which resembles the traits of *bay al-I'nah*. Prior to changes to the structures commonly used by Malaysian Islamic banks for personal finance, the custom was for the bank to reach an agreement with the customer in advance to sell the commodity back to them, but this was disallowed by Bank Negara Malaysia. Then, in its place, banks now frequently act as agents to sell a commodity to a third party using a *Tawarruq* structure. Nevertheless, this is still just a trick to avoid lending the client money and force him to return additional funds later (Fa-Yusuf & Ndiaye, 2017)

Thirdly, the concept of *Tawarruq* also encourages the proliferation of debt (Dusuki, 2010). The worryingly rapid growth in private debt in Malaysia has been facilitated by banks' increasing use of *Tawarruq* to finance private debt such as credit card and mortgage debt. As such, this unsustainable, rapid increase in private debt is a sign of an impending crisis (Fa-Yusuf & Ndiaye, 2017).

Lastly, regarding the agency (*at-tawkil*) issues where the bank as a dual agent. According to **Article 4/7 to 4/10 of the AAOIFI** state the requirement on *tawarruq* transactions where if the customer originally purchased the commodity from the bank, neither the bank nor its agent should sell the commodity on the customer's behalf, nor should the bank set up a third party as a proxy seller. The customer should sell the product instead, either

directly or through his own agent. The bank should give the client the details required to sell the commodity (Dusuki, 2010).

However, the *Tawarruq* contract becomes similar to the forbidden *bay al 'inah* when this *tawkil* (agency), allowing one party to purchase the commodity on behalf of another and then make arrangements to sell it to himself (Al-Zuhayli, 1989). The inclusion of *tawkil* in the *Tawarruq* contract, according to some scholars, makes it similar to usurious finance because the *mustawriq* will withdraw the smaller amount from the bank while paying the larger amount when the predetermined time period has passed. Thus, the contract agreement may be prohibited or *makruh* due to this *tawkil* (agency) issue.

4.0 CONCLUSION

The concept of *Tawarruq* used towards the Islamic banking have being disputed and controversial among every scholar. Some may accept its usefulness but some may argue its illegality. Nevertheless, AAOIFI released its **Shariah Standard No. 30** to set forth the Shariah requirements and guidelines for *Tawarruq*. The Islamic financial institutions are required to abide by all stringent guidelines to ensure the legality and acceptability of contracts. Therefore, as a means of facilitating the *Tawarruq* transaction, Bursa Malaysia took the initiative to launch Suq al-Sila' or Commodity Murabahah House even though there are still criticisms and some outstanding Shariah issues involving the practice *Tawarruq*.

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ISLAMIC MICROFINANCE: A SOLUTION TO FIGHT AGAINST POVERTY

1. Introduction

Poverty has become the biggest moral challenge of this century. According to the World Bank, the global poverty rate (at the US\$1.90 poverty line) in 2018 is 8.6 percent down from 9.1 in 2017 which equivalent to a decline by 28 million poor people between two years. Even though the data confirms a continue reduction in extreme poverty at the global level, close to one-third of adults estimated to 1.7 billion people were still have no access to formal financial services in 2017 included women poor households in rural areas or out of the workforce. The data worsening where it was estimated that 10 most populous Islamic countries account for more than 350 million of the world's poor.

In these recent years, the poverty has been a main challenge and its alleviation has become one of the countries' strategic goals to fight poverty and to improve the standards of living of underprivileged population. One of the efforts that has gained attention nowadays is microfinance. Microfinancing has been playing an important role in poverty reduction globally.

2. Microfinance and its Purpose

Microfinance is emerged as an economic development approach targeting that segment of the society that is financially excluded. It is a banking service provided especially for unemployed or low-income individuals or groups who otherwise would have no other access to financial services. It allows people to take on reasonable small business loans safely, and in a manner that is consistent with ethical lending practices. Despite being excluded from banking services, microfinance is designated for those who have limited financial resources and do not have enough income to do business with traditional financial institutions.

Microfinancing organizations support a large number of activities that range from providing the basics such as, bank checking and monitoring savings accounts. It also provides startup capital for small business entrepreneurs and educational programs that teach the principles of investing. These programs focus on skills such as bookkeeping, cash-flow management, and technical or professional skills, like accounting. In a simple word, many microfinance organizations focus on helping entrepreneurs to succeed in their small businesses by standing on their own to engage in profitable activities.

3. How does Islamic Microfinance work?

Islamic microfinance is an innovation in microfinance to attract ethical consideration in line with the dictates of Islam in doing business. Islamic microfinance is an offshoot of Islamic finance, which has its foundation imbedded in Quran and Sunnah. It aims to promote trade base on profit and loss sharing, prohibition on interest, speculation and uncertainty in business transaction.

Islamic microfinance can be defined as provision of micro financial products and services based on Islamic principles. The concept of this mechanism adheres to the principles of Islam and is a form of socially responsible investment. Islamic microfinance has now become an increasingly popular mechanism for alleviating poverty especially in developing countries around the world.

The central focus of this mechanism was to enable the poor people to generate income, build assets or attain an educational level necessary to escape of poverty. It is a solution to achieve the target of poverty eradication by practicing microfinance which involved Shariah compliant way of financing. Islamic microfinance providing credit without collateral or any property for guarantee to the marginally poor for their business. This is one of the most popular tools employed as part of a poverty reduction strategy, empowering, and increasing the productivity of poor, giving social benefits to them in a sustainable way, and aiding economic development.

4. Products of Islamic Microfinance and Its Functions

Throughout the development of Islamic microfinance, it has grouped the products of this mechanism into three products namely; micro-credit, micro-equity and charity. Firstly, micro-credit involves the usage of business asset which based on loan or lease. One of the considerations that create this idea is to provide financial support for those who has lack of capital in the face of a business opportunity. Micro-credit may be carried out as the interest-free loan including Murabaha, Ijara, Salam and Bai bi thaman ajil.

Secondly, micro-equity which enables a business relationship when one party provide the capital while the other manages the business. In this product, the factors of production are brought together while profit and loss are shared in line with what agreed upon. The examples of micro equity are Murabaha and Musharaka.

Another aspect that contributes to the concept of Islamic microfinance is charity which it serves as a source of additional empowerment in the form of safety and for sustainability motives. Charity can be derived from Zakat, Sadaqa and Waqf.

5. Effectiveness of Islamic Microfinance in Poverty Alleviation

The main goal of the Islamic microfinance is to lessen the gap between the rich and the poor, by reducing poverty and ensure improvement in income. Generally, in these recent years, the Islamic microfinance has received a great review on its implementation specifically in Muslim developing countries globally.

In Turkey, the Islamic microfinance has a great effect on the monthly household income where it recorded a significant increase of 35% and monthly expenditures of 23 out of 30 households after receiving the qard al-hasan loan compared to previous record.

While in Bangladesh, the Islamic microfinance mostly depends on the rural development to ensure a balance development of the country. This mechanism does bring a positive impact on poverty reduction, especially in rural areas by providing standardized financial services and products for rural entrepreneurs.

In Indonesia, according to an empirical study, the result suggested that the Islamic microfinance plays an important role on improving income of household, improves access to children's education and also supports improving business for poor people.

While in Malaysia, where the world currently battling the COVID-19 pandemic, the pandemic causes the drastically unprecedented situation and has caused a negative impact toward the economy. The optimizing role of Islamic microfinance is now being used as one of the solutions to reduce the impact to ensure the sustainability of micro entrepreneurs.

By observing the result on the positive impact of Islamic microfinance in alleviating the poverty, it indicates that this principle has a great potential mechanism that can be applied around the world.

6. Conclusion

In conclusion, Islamic microfinance can be used as a tool both to target wealth creation and to provide solutions for raising the living standards of the poor. For the poor people, the prospect of getting out of poverty was difficult since the financial institutions perceived them as unbankable for their inability to own collateral security and possessing a lower human capacity. Therefore, this concept of Islamic microfinance is intended to expand the accessibility to finance which can play a more positive role in eradicating poverty by improving access and making basic financial services available to all members of the society in order to build an inclusive financial system. I believe that if Islamic microfinance implemented in a true spirit can lead to reduced poverty and inequality in Muslim countries plagued by massive poverty.



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SEMESTER I, ACADEMIC SESSIONS 2022/2023

ISLAMIC FINANCE

(LAD 5173)

INDIVIDUAL ASSIGNMENT:

ARTICLE ENTITLED
"THE IMPORTANCE OF MAKING WILLS AND EXECUTION OF HIBAH IN
MALAYSIA"

PREPARED FOR:

PROFESSOR ASSOCIATE DR ZULKFLI HASAN

PREPARED BY:

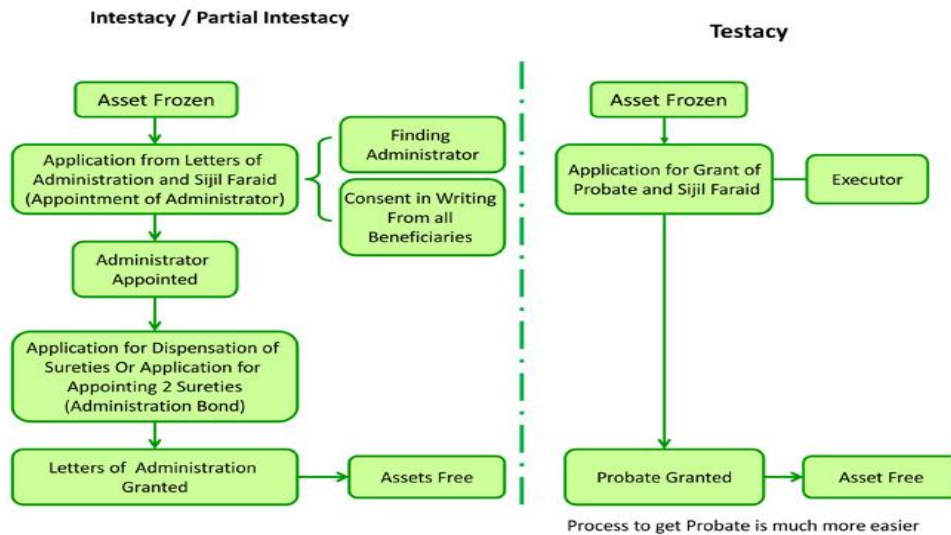
NUR UMAIRAH IZZATI BINTI AHMAD ZAHARUDIN 1181956

Many of the public especially Muslims consider a will to be unimportant. This is because the average opinion is that the division of inheritance is limited to the heirs and is divided through the faraid method only. From language perspective, "wasa" means making a promise. Wasiyyah or will - refers to something bequeathed.

In the Al Quran, Surah Albaqarah verse 180. 'It is prescribed, when death approaches any of you, if he leave any goods that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the fear of Allah.'

Also mentioned in a hadith narrated by Abdullah bin Umar; Prophet Muhammad S.A.W said : "It is not permissible for any Muslim who has something to Will to stay for two nights without having his Last Will and Testament written and kept ready with him."

The purpose is to ensure the validity of the will made and the pronouncing of the will in relation to and who is the beneficiary of the will, whether the will made was really made by the deceased; Whether the will made is not contrary to the purpose of Sharia; whether the will made is not for something illegal; and whether the will made needs to be decided on the rate and the recipient.



Estate planning is not just about deciding how to distribute your assets after your passing; it also involves making sure that your estate administration is handled correctly.

The Wasiat enables people to designate a dependable person or a trust company to carry out the role of executor or administrator of their estate and be in charge of handling the estate's administration. Plus, a capable executor can make the process quicker (the sale of

assets, the payment of debts, and the orderly, impartial, and comprehensive distribution of the inheritance to the intended beneficiaries.

After a death, we often hear about the struggle for inheritance among the heirs of the deceased. In fact, sad stories like this could have been avoided if hibah had been provided while still alive. Hibah is a contract of property donation made by one person voluntarily to another person during his lifetime without any compensation ('Iwad). It is different from a will which is a gift of property after the death of the testator. Hibah is a practice of sunnah and is encouraged in Islam, as Allah SWT says which means:

"... and give the wealth he loves to his relatives, orphans, the poor, travelers (who need help) and those who beg and (liberate) slaves." (Surah al-Baqarah verse 177)

What does hibah mean? Hibah means 'gift'. This is a gift of movable or immovable property that occurs during the life of the grantor. A hibah in real estate planning means that you become the recipient of assets that are bequeathed to you. For example, if the legal owner of an asset, such as a piece of land or a house bequeaths the property to you, you then become the owner of the property or estate.

Hibah is a Shariah principle used in the framework of Islamic banking and finance in Malaysia. Usually, grants are given by the bank to wadiah account owners who execute a contract or savings agreement with a Shariah-compliant financial institution. Why is hibah important? Hibah is important because it allows an asset owner or property owner to distribute his wealth to anyone – family members and non-family members, regardless of their religion. This is different from faraid where the rights and shares of the heirs of the deceased are based on provisions in the Sharia Law.

Since Islamic banking services provide flexible and guaranteed management of the hibah asset along with will-making services, hibah amanah or hibah trust instruments have become a new trend. The hibah trust is a trust product and service that is coupled and referred to as a with the Shari'ah compliant product in Malaysia. It is not a banking product per se. Since Islamic banking services provide flexible and guaranteed management of the hibah asset along with will-making services, hibah amanah or hibah trust instruments have become a new trend. It entails a hibah contract provided by the approved trustee firm, such as Permodalan Nasional Berhad (PNB), Tabung Haji, and Amanah Raya Berhad. It has been noted that a

small number of banks have worked together with the trustee company to provide hibah amanah services. Examples include Bank Islam Malaysia Berhad and Amanah Raya Berhad (the two organisations responsible for the Hibah Amanahraya document) and Bank Muamalat Malaysia Berhad and As-Salihin Trustee Berhad (Pri-Hibah or Hibah Declaration document).

Malaysia has permitted the practice of hibah into two ways; firstly, for the assets' wealth management and secondly for the Islamic banking products and services as a supporting financial instrument. With regards to the first application, hibah has long been applied and recognized as a means to distribute a Muslim's asset after his death. The case of Kiah vs Som was found to be the first case that recorded the application of hibah in the 1950's. In this case, the issue of hibah was raised by the disputed party in relation to the distribution of Muslim Malays' asset among the blood relationship such as between father and son, husband and wife, grandfather and grandson and so forth. In reality, there are many court cases disputing the validity of hibah between family members which is also referred to as classical hibah

In general, the practice of hibah as a financial instrument has been permitted by the Shari'ah Advisory Council of Bank Negara Malaysia (SAC-BNM) by virtue of the Bank Negara Malaysia policy document on Hibah which comes into effect on 31st July 2018. In pursuant to the policy, the act of giving hibah is always subject to the Islamic financial institution's own discretion, but must be based on strict conditions specified by Sha'riah requirements.

The application of hibah as a financial instrument in the Islamic banking and takaful products and services is well recognized and accepted by the law in Malaysia. Although in general, it can be understood that the hibah as a financial instrument will fall under the purview of the Federal law, it still creates confusion in respect of the applicable laws, due to its dual application as a commercial hibah and non-commercial hibah which may possibly occur at the same time and occasion. The main legal issues of the application of hibah is pertaining to the conflict of law and jurisdiction as to whether it should be challenged under the civil court or Shari'ah court. In term of definition, the uncertain definition of gift as provided under Section 148(a) of IFSA also constitutes whether it includes hibah. Generally, IFSA had recognized hibah for banking products, but the term used for the purpose of Islamic deposit is gift rather than hibah

(1000 words only)



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ISLAMIC FINANCE

LAB 5153

ARTICLE: WHAT IS HIBAH?

PREPARED FOR : PROF. MADYA DR.

ZULKIFLI BIN HASAN

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Making someone's day to be cheerful is not a difficult thing. What else cheers up the hearts of loved ones. Various ways can be done to cheer up someone's life and one of them is by giving gifts. Whatever property we have can be gifted with sincerity and good intentions. As long as the gift is done while we are still alive.

Islam has outlined a guide that is very easy for us to follow and makes it easier for Muslims to implement hibah. Let's explore what a hibah is according to Islamic guidance and scholars. Hibah is a contract that contains a voluntary transfer of property by a person to another person during his lifetime without compensation. In one hadith narrated by Al-Bukhari it says *“give each other gifts and you will love each other”*.

Hibah is a gift of property that occurs during the grantor's lifetime. It is a voluntary giving of property by a person to another person during his lifetime without compensation by using the words *ijab* and *qabul* or the like. Both of these instruments are encouraged in Islam, where if they are done correctly and in accordance with the requirements of the Shariah, it can prevent disputes and property disputes.

In addition, Islam sets out the guidelines on the principles of hibah, terms of hibah, terms of hibah recipients and also the terms of goods donated. Firstly, principles of hibah consist of grantor, grantees, donated goods and *sighah* (pronounced hibah agreement). Next, terms of hibah include the owner of the goods, have eligibility to hibah and has full power to use his property. While terms of hibah recipients is eligible to receive hibah include those who are not mukallaf such as children and people with mental retardation or disabled. However, guardians or trustees may be appointed on their behalf, the grantee exists when the hibah is made and can control the donated property (*qabd*). Lastly, the terms of goods donated exists when the hibah is made, the goods must be valuable goods and must be from the property of the grantor.

In performing *sighah* (*ijab* and *qabul*), the important thing to see is whether the element of acceptance or *al-qabd* occurs or not. *Al-qabd* (receipt of goods) means getting something, mastering it and being able to do *tasarf* (dealing) with the goods or property.

Moreover, according to the Hanbali and Maliki schools, the acceptance of goods is not required in a hibah, rather it is sufficient with a mere contract. This means that if there is a death of one or one of the parties, either the grantor or the grantee, before the goods are handed over, the grant is not cancelled.

According to Abu Hanifah and Syafie, the receipt of goods is one of the valid conditions of hibah. Therefore, if there is a death of one of the two parties before the delivery of the goods, then the grant is void. In Syafie's school of thought, al-qabd is a necessary condition, meaning that the gift contract is not perfect and does not take effect with ijab and qabul alone, except after al-qabd. If al-qabd does not occur then the grant contract is a non-binding contract. Therefore, the grantor has the right to withdraw the hibah as long as the property is in his possession.

Furthermore, Islam does not set a certain rate for the property to be donated. This is because the property to be donated belongs to the grantor, so it is up to the grantor to make a judgment on the amount of the property to be donated. Jumhur scholars (Hanafi, Maliki and Syafie) think that circumcision equates giving between children and giving more to one of them is makruh according to the law, even if the gift is valid. According to the Hanbali sect, fairness in giving gifts to children is a mandatory matter. Whereas according to Imam Malik, it is not permissible to grant all property to some children and not to others.

Besides that, there are piles of benefits of making hibah. Hibah is the practice of *sunnah* recommended by Islam, cultivates love and strengthen friendship, giving during life to whomever is desired, unlimited giving and sunnah being equal to children. Other than that, the donor can still enjoy the donated property, an alternative solution to the problem of faraid division, made according to the recipient's suitability and standard of living and the best part is divorce does not affect the right to grant. Without us realising that hibah carries secret hikmah behind its legalisation. It generates the manner to gratitude for the favors bestowed by Allah SWT and helping to meet the needs of heirs or poor and unfortunate people.

Strengthening the bond of friendship among heirs.

In conclusion, Islam is beautiful with all kinds. Facility like hibah is a great blessing for Muslims because they are still guided by Shariah law. In addition to the purpose of the legalization of the hibah is to facilitate the life of the giver and recipient, but without us realizing this practice of giving is one of the praiseworthy practices of the Prophet Muhammad s.a.w. Hopefully by sharing these snippets can benefit all respected readers.

THE LEGALITY AND POSITION OF BAY' AL- 'INAH IN MALAYSIA

Prepared by: Nurin Syakirah binti Mohd Azli (1181898) (TLB5/KLB2)

Islamic banking has become more significant among Malaysian citizens since most of them had started embraced Islamic teachings in their daily lives. Moreover, they also begin to have faith in Islamic banking institution to be clean and complies with the shariah authorities. Islamic banking had used a range of shariah contracts as a financial instrument and one of them is Bay' Al- 'Inah. Bay' Al- 'Inah is considered to be controversial since the contracts has been rejected in most of the countries because it involves the element of hilah or tricks in the transaction. Malaysia and Brunei are the only countries that accept the practice of Bay' Al- 'Inah in their banking system as a result of the Syafie school of thoughts view which allows the practice of Bay' Al- 'Inah with certain restrictions.

Bank Negara Malaysia (BNM) defines Bay' Al- 'Inah as an arrangement that involves sale of an asset to the purchaser on a deferred basis and subsequent purchase of the asset at a cash price lower than the deferred sale price or vice versa, and which complies with the specific requirements of Bay' Al- 'Inah. Hence, from the definition given by BNM, it can be understood that in general Bay' Al- 'Inah is a contract that requires a transaction of selling and buying back the asset by the seller.

The transaction also can be understood in a situation where the seller will sell the property to the buyer for immediate payments. Then, the buyer resells the same property to the seller with higher price on installment payments. The scenario may also happen where the first party which is the seller sells the asset to the second party, the buyer, by installment. Subsequently, the assets were purchased back by the first party however with a lower price on a cash basis. The concept resembles a loan but under the name of Bay' Al- 'Inah. It can be said to be a way to legalize the use of interest or riba in business as the theory of buying it back with higher price on installment represents riba in loan.

Shariah Scholars has different views on the transaction of Bay' Al- 'Inah. In a nutshell, there are two views regarding this issue in al-Fiqh al-Islami. In regards of the first view, the schools of Shafie and Abu Hanifah opined that the things that need to be taken into account in the contract is only the utterance, not the intention and motive. Therefore, this view asserts that every contract is determined based on the sighah or pronunciation in the akad. This means that

the validity of a contract depends on its *sighah* and the contract will not void due to other related factors even though the intention and purpose has been set. This was also supported by the view from the Syafi'i and Zahiri schools which stated that a contract must be evaluated based on what is expressed or seen outwardly.

Besides, Imam Shafie also had referred to the hadith that allowed the transaction of Bay' Al- 'Inah. The Hadith was narrated from Abi Sa'id and Abi Hurairah where the Prophet has appointed a man as his representative in Khaibar. Then, he came to the king with tamar janib. The Prophet asked him, "Are all the dates in Khaibar like this?". The man replied, "We took a bushel of these dates (janib) with two bushels (tamar al-jam') and two bushels (tamar janib) with three bushels (tamar al-jam')". Then, the Prophet said, "Do not do that, but sell the al-jam' dates for dirhams, then you buy the janib dates with those dirhams."

Based on the hadith above, the Prophet prevented and reprimanded the act of his representative in Khaibar who exchanged tamar al-jam' to obtain tamar janib with a different measure. The reason is the transaction is considered to be *riba* which it involves the exchange of *ribawi* goods of the same type with different quantities (measures). Then, the Prophet has given a solution by asking him to sell the tamar al-jam' to get dirhams, then use the dirhams to buy tamar janib. This shows that the sale and purchase agreement is only a *wasilah* or solution to realize the real purpose of getting tamar janib.

Next, as for the second view, among the arguments that was used in rejecting the application of Bay' Al- 'Inah was based on the Hadith narrated by Abdullah ibn Umar in Kitab Al-Ijarah which states that *"If people were greedy with dinars and dirhams and traded with Inah and they followed the tails of cows while abandoning jihad in the way of Allah. Then Allah will send down upon them a force and Allah will not raise it until they return to the path of Allah"*. Hence, the scholars concluded that there is an explicit threat of humiliation in transactions involving Bay' Al- 'Inah.

Additionally, the schools of Ahmad and Malik emphasize on the intention and motive in the contract, rather than just words or '*sighah*' in the contract. Among the arguments are if the intention of the contracting party coincides with his speech, the contract is valid. If there is a '*qarinah*' that can reveal the intention and purpose, but the intention does not conflict with the Shariah law, then the law of the contract is valid. However, if it is found to be contradictory then the contract is broken and cannot cause any effect.

In conclusion, although there is a difference of opinion among scholars regarding the application of Bay Al- 'Inah, but still each point of view has its own arguments. In fact, despite the fact that the Bay' Inah contract has been criticized by many Shariah scholars as mentioned above, the transaction of Bay' Al- 'Inah is still used by some Malaysian financial institutions. The validation and recognition were based on Shafie's view that the contract is permissible in Islam because it complies with the definition of sale and purchase between seller and purchaser in Shariah law.

Nevertheless, there are other alternatives for those who are hesitant to accept Bay' Al- 'Inah where they can choose Al-Tawaruq instead of Al- 'Inah transaction. Basically, Tawaruq involves not only a shariah-compliant sales process, but also elements of business freedom and ultimately and profit return. There are also many foreign banks, especially those in the Middle East had accepted Al-Tawaruq and rejected Bay' Al- 'Inah. In other words, Al- Tawaruq was an escape plan and a solution for those who felt compelled to repurchase under such a Bay' Al- 'Inah contract.

The Execution Methods Between Wills and Hibah (gift). Are they the same?

By: Sarah Fathiyah Merican Binti Amir Feisal Merican (1181960)/KLB 2

Wills and *Hibah (gift)* appear to be generally the same because both are among one of the methods in the management of property transfer and property division. However, if understood and studied deeply on its implementation, both have many differences especially in terms of applications and conditions on execute it. If people been asked on what documents should be used to plan the division of inheritance, the answer that is often received is certainly to issue a will. This answer is not accurate because the function of the will is to allocate part of the inheritance to non-heirs. Among the non-heirs include adopted children, stepchildren and so on, or it can also be for the purpose of charity.

However, due to some people in the society who are not clear about the true function of the will, they will prepare a will for the distribution of property to the heirs which is slightly not the purpose of issuing a will. The owner of the property may think he has planned well, but the execution of the will depends on the consent of all the heirs as well. Therefore, the best way is by *hibah* because it does not require any consent of the heirs and the property can even be given to whoever the owner of the property wish for.

To execute a will, the testator cannot give more than one third of his property. Whereas, for *hibah*, since it is a charity or a gift, the amount of property that can be gifted does not have any limit. The grantor is free to give whatever he wants according to his ability. Nonetheless, it should be considered that if this gift is given to children or family members, the giver must be fair to avoid any suspicion.

Among other differences that can be seen is on the time of giving the will and the gift where for the will, the property of the deceased will be given after the death of the giver of the property. However, gifts can be given at any time and are usually given while the giver is still alive. This is why, some problems that may or often occur during the making of a will can be avoided by giving a gift or *hibah*.

Based on the explanation above, we can see that both of them is slightly the same because it concern on the way to divide the property and which the giver have given trust to manage the

property that have been lent to us from God and through both we can hand over our trust and property to the person who deserves to receive and continue taking care of such property. Therefore, it is important for us to learn the concept of both will and gift or *hibah* as to guarantee the journey of our property towards good things and that it is also important to know that the two have differences that distinguish them in terms of convenience in the matter of division in order to avoid property disputes between families.



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LAB5153

ISLAMIC FINANCE

INDIVIDUAL ASSIGNMENT

THE CONCEPT OF KAFALAH

PREPARED FOR:

ASSOCIATE PROFESSOR DR. ZULKIFLI HASSAN

PREPARED BY:

WAN NURAIN KARISMA BINTI MOHD SAFIAN

(1181941)

TLB7

Kafalah is regarded as a contract in which the guarantor joins the assured party in accepting the latter's specific liability. The Islamic financial institutions use kafalah in the context of Islamic financial operations to offer guarantee services like bank guarantees, standby letters of credit, and shipping guarantees. It is also being utilised as one of the contracts to augment many major Islamic financial products, mostly for risk-mitigation objectives, such as musyarakah, mudarabah, murabahah, istisna', ijarah, and tawarruq. The procedures of a Kafalah entail the contractual parties, including the beneficiary (makful lahu), the guarantor (kafil), and the guaranteed party (makful anhu), which are an offer (ijab) and acceptance (Qabul), and subject matter based on the evidence of Bank Negara Malaysia.

To support, in the Sunnah of the Prophet Muhammad S.A.W., Abu Qatadah requested that the Prophet pray for a man for whom he (Abu Qatadah) had been a guarantor for a loan (Al Bukhari, Al-Jami Al Sahih,3/94). Moreover, the guarantees (Kafalah) are permitted with relation to contracts of exchange and property contracts pursuant to AAOIFI Shariah Standard No.5. There are four fundamental guidelines that all parties to a Kafalah agreement must follow. Firstly, a guarantor must be of sound mind, have legal ability, and freely accede to the terms of the agreement. Secondly, a debtor and he may even be a child, a crazy person, or a bankrupt. Next, a creditor that each party must be aware of and lastly, a guaranteed item or resource. This asset must actually exist and be recoverable from the guarantor. If the debtor is unable to meet his commitments, it should be a legally enforceable asset that can be sold.

Kafalah is utilised as a loan guarantee in accordance with Islamic law, and all debts must be paid on time. The law allows lenders to ask for security in cases where a borrower defaults a payment on a loan. Kafalah is defined as a guaranteed contract on a certain asset, usufruct, or services provided by a guarantor to the parties involved by the Shariah Advisory Council of Bank Negara Malaysia. By asking the bank to guarantee payment in the international trade transaction, the kafalah significantly contributes to fostering cross-border trade. Islamic banks can offer bank guarantees, standby letters of credit, and shipping guarantees by utilising the idea of kafalah. For instance, financial institutions like Cagamas SRP Berhad and Credit Guarantee Corporation Berhad in Malaysia also issue the guarantee facility apart from Islamic banks.

Furthermore, there are some basic rules of personal guarantee for financial obligations whereby firstly, it is permissible to have more than one guarantor to secure the debt. Next, there are two types of personal guarantees which is a guarantor of a guarantee that has a right of recourse to the debtor and this type of guarantee is offered at the request or consent of the debtor. The other type is a non-recourse guarantee which is offered voluntarily by a third party without the debtor's request or consent. Additionally, it is permissible to fix the duration of a personal guarantee or to set a ceiling on the amount to be guaranteed. Lastly, it is not permissible to take any remunerations for providing a personal guarantee or to pay a commission for obtaining such a guarantee. The guarantor is only entitled to claim actual expenses incurred during the period of a personal guarantee. Nonetheless, some contemporary scholars permit charging a fee for the guarantee on top of the actual expenses incurred with specific parameters and conditions.

The kafalah contract, which comprises a financial guarantee and a performance guarantee, is frequently used in Malaysian business transactions for a variety of products, including the kafalah shipping guarantee and the kafalah bank guarantee. A contractual agreement between the client and the beneficiary to fulfil an obligation is what is known as a kafalah bank guarantee. In order to obtain an Islamic bank guarantee (IBG) facility, the consumer then goes to the Islamic bank. The bank then provides the customers with an IBG in favour of the beneficiary as a surety to release the liability in the event that the consumer defaults and is charged a fee. When a consumer defaults, the beneficiary makes a claim against the Islamic bank. However, if there is no default, upon discharge of the obligation by the customer or on maturity, the validity of the IBG expires.

Despite all of this, it is not permissible to take any remuneration for providing a personal guarantee or to pay commission for obtaining such a guarantee as it is charitable in nature. The guarantor is only entitled to claim expenses incurred during the period of a personal guarantee. The AAOFI Shariah Standard No.5(Appendix B, Item 8/1) is also does not permit charging a fee for guarantee. However, it further states that the letter of guarantee issued by an Islamic Financial Institutions is a service that justifies charging a fee. The Shariah Advisory of Bank Nasional Malaysia also resolves that charging a fee for guarantee is permissible subject to conditions. In the event of default by the customer and the guarantor has subsequently made full

settlement to the beneficiary, charging a fee is no longer allowed because the guaranteed party is indebted to the guarantor.

The principles of service charges can be used to group together the several Sharia principles that BIMB appears to have for their fixed charges category. The phrases "al-wakalah," "al-kafalah," "al-hawalah," and "al-ujr" are used by BIMB to describe the nature of services provided to clients and how clients would be charged for using those services in Malaysia. Variable rate finance (VRF) was initially made available in Malaysia in 2003 and has since been widely used for trade, real estate, and other types of financing. The Central Bank of Malaysia, which supervises Malaysia's Islamic banking sector, introduced VRF to ensure that fund users receive competitive rates of repayment during times of economic uncertainty.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

ISLAMIC FINANCE

LAB5153

(ARTICLE: The Laws governing the criminal liability of Islamic Banking in Malaysia)

SUBMISSION DATE: 29TH JANUARY 2023

ASSOCIATE PROFESSOR DR. ZULKIFLI HASSAN

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(1181839)

KLB1/TLB2

SEMESTER I ACADEMIC YEAR 2022/2023

The Laws governing the criminal liability of Islamic Banking in Malaysia

Despite Malaysia become one of the top countries for rapid growth in Islamic financial institutions (IFIs) and become an international Islamic financial hub, Malaysia IFIs also not exclude from possibility of facing some challenge such as corporate crime that refer to illegal or unethical activities committed by corporations or individuals acting on behalf of a corporation. If the banks were to engage in criminal activities, it could harm the growth and position of the Islamic financial industry in Malaysia, as well as negatively impact the reputation of the banks. As the Annual Report 2020 by Bank Negara Malaysia (BNM) states, there were six convictions in 2020 for illegal money services business, illegal deposit taking, and money laundering, resulting in significant criminal penalties and jail terms for the offenders. This highlights the importance of maintaining strict compliance and preventing illegal activities in the financial sector to protect the growth and stability of the industry. Thus, the purpose of this paper is to examine the provisions in legislation and regulations that may attract corporate criminal liability (CCL) for corporations, including Islamic banks (IBs), in Malaysia and, provides understanding the legal framework for corporate criminal liability in Malaysia.

A corporation can be concluded as a legal entity created under the authority of the laws of a state. It is a separate entity from its owners and members, with its own legal rights and obligations. The law considers the corporation as a "person" and holds it responsible for its actions, including criminal acts. In such cases, the corporation can be held liable for criminal activities under specific laws and regulations that govern its behavior. This highlights the importance of corporations following the laws and regulations to avoid criminal liability and maintain the trust of its stakeholders. Banks are regarded as corporation and contemporary banking crimes can occur through both conventional and Islamic banking.

In Malaysia, Islamic banking is regulated by the Islamic Financial Services Act 2013 (Act 759) (IFSA 2013), which is the main source of law for Islamic banks (IBs). The act was passed in 2013 and introduced the concept of corporate criminal liability (CCL) for Shari'ah non-compliance. Section 28 of IFSA 2013 imposes a duty on the institution to ensure compliance with Shari'ah principles. Breaches of this duty, as specified under **Section 28(5) of IFSA 2013**, can attract criminal liability, including a maximum imprisonment of 8 years and a maximum fine of RM 25 million. This highlights the importance of Islamic banks following Shari'ah principles and

complying with the laws and regulations to avoid criminal liability. Furthermore, **Section 29** of the act requires IFIs to comply with the BNM's Shariah standards, and failure to do so can result in criminal liability, including a maximum imprisonment of 8 years and a maximum fine of RM 25 million.

Additionally, **Section 15 of IFSA 2013** provides for the offense of an authorized person conducting unauthorized business, carrying a penalty of imprisonment for a term not exceeding 8 years or a fine not exceeding RM 25 million. Moreover, **Section 259 of IFSA 2013** provides for the offense of false entries in documents such as books, records, reports, slips, and statements, which carries a penalty of imprisonment for a term not exceeding 8 years or a fine not exceeding RM 25 million. These provisions emphasize the importance of compliance with laws and regulations and the need for accurate documentation in the Islamic financial industry. Besides, the Central Bank of Malaysia Act (CBMA) 2009 requires Islamic banks (IBs) to comply with Shariah provisions and follow all circulars, guidelines, and notices issued by the Bank Negara Malaysia (BNM). Failure to comply with these regulations may result in a fine of up to RM3 million under **Section 59(3) of the CBMA 2009**.

Stable corporate governance and Shariah governance help prevent criminal liability for Islamic financial institutions (IFIs) in Malaysia. The Islamic Financial Services Act (IFSA) 2013, with its principal regulatory objective of promoting financial stability and Shariah compliance, highlights the importance of Shariah compliance in Malaysia. The case of *JRI Resources Sdn Bhd v. Kuwait Finance House (Malaysia) Bhd* [2019] 3 MLRA underscores the significance of Shariah compliance in Islamic banking and finance. The Federal Court held that Shariah compliance is a defining characteristic of Islamic banking, separating it from conventional banking, and that Shariah principles are the fundamental reason for all Islamic financial contracts. Shariah compliance is therefore the backbone of the Islamic banking and finance industry. In addition, David Wong Dak Wah CJ on the case made decided that Islamic banking is regulated under the Islamic Financial Services Act 2013 (IFSA) and any license banks operating under IFSA must conduct business in accordance with Islamic principles, ensuring that all financial transactions are Shariah-compliant.

There are many more laws and legislation are in place to ensure proper corporate and Shariah governance in Islamic Banks in Malaysia as in Part VII of the Central Bank of Malaysia

Act 2009 from Section 51 to 58, Part IV of the Islamic Financial Services Act 2013 Section 28 to 38, SGF for Islamic Financial Institution which took effect on 1 April 2020, and Financial Reporting for Islamic Banking Institutions. **Section 130T of the Penal Code** in Malaysia recognizes corporations as legal persons and subjects of criminal law. If an offense under sections 130N, 130O, 130P, or 130Q is committed by a corporation, a person responsible for the management or control of the corporation, such as a director, manager, secretary, or similar officer, can be held guilty of the offense and can be punished unless they can prove that: (a) the offense was committed without their consent or connivance, and (b) they exercised all due diligence to prevent the commission of the offense, taking into account their role and all circumstances.

The study found that there has been research on Corporate Criminal Liability (CCL) in Malaysia, but there is a lack of research specifically on Islamic Banks (IBs). Currently, there are no reported cases of CCL involving IBs in Malaysia. Though, there were unreported case involving CIMB Malaysia Berhad (CIMB) and CIMB Islamic Bank Berhad (CIMB Islamic) as reported by the Enforcement Action Publication Notice 01/2019 (PN 01/2019).

As conclusion, with the implementation of Corporate Criminal Liability (CCL) provisions, Islamic Banks (IBs) in Malaysia are obligated to comply with regulations and guidelines to protect themselves. However, some IBs have failed to fully implement CCL provisions, creating compliance problems and potential harm to the stability of the financial system. To address these issues, IBs must establish effective measures, such as checks and balances, and work closely with regulators. Laws and regulations on CCL must be accepted and implemented by all parties and supported by an effective compliance program. This may include reporting any misconduct or Shariah non-compliance to the government, conducting internal investigations, and cooperating with the relevant authorities.



SEMESTER 1, ACADEMIC YEAR 2022/2023

LAD5073

ISLAMIC FINANCE

(LAB5153)

INDIVIDUAL ASSIGNMENT

CLASS

(KLB1/TLB3)

LECTURER:

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CONCEPT OF PROFITABILITY IN ISLAMIC BANKING

Islam prohibits interest but allows profit. In pursuance to that, the concept of profitability in Islamic Banking is different from conventional banks. Islam adapted many business instruments and practices from the past including the concept of profit. In Islam, it promotes trade as an occupation and regards profit as a bounty from God. It promotes complete honesty in business to the point that it forbids exaggerating the qualities of the goods being sold; rather, known flaws in them must be disclosed to the consumer.

The core of distributive fairness is rewarding according to contribution when there is uncertainty about the business outcome. Islam tries to establish fair, cooperative, and reciprocal exchange relationships among the components of production. It instructs individuals to refrain from causing damage (loss) to themselves or others. The rule against dealing with gharar (indeterminacy risk) is a perfect illustration of how the edict should be put into practise. The Islamic desire to avoid harm is expressed by keeping transactions gharar-free.

The conventional banking system, which is interest-based, and the Islamic banking system, which is interest-free, are two different types of banking. Both conventional banks and Islamic banks foster competition among themselves in an effort to please consumers, meet their expectations, and produce long-term economic gains. In pursuance to that, Islamic banks were compelled to create fresh, Islamically permissible financial products that would appeal to their clients while keeping up with ongoing financial industry advancements.

The Islamic banks and financial entities are not permitted to pay or charge interest under Islamic law, or Shariah. However, Islamic bankers have created a wide range of cutting-edge financial products and services over the past 20 years in place of interest-bearing banking that actively involve both customers and banks in economic activity that requires funding. However, such a method of conducting banking operations entails the application of the profit and loss sharing (PLS) concept to both the assets and liabilities of banks.

According to, Hassoune (2002) examined the Islamic bank profitability in an interest rate cycle, he states that since Islamic banking is based on profit and loss sharing managements, Islamic Banks have to generate sufficient returns for investors given that they are not willing accept no returns. Due to that, one of the most important tasks of banks including Islamic banks is to transform the maturities of its assets and liabilities.

Almost all banks have liabilities in the form of demand deposits, savings deposits, term deposits, and the issue of securities with shorter maturities than the assets. These obligations are paid by assets in the form of financing (loans) and investments in marketable securities. When this approach is put into effect, the management of Islamic banks will be divided into three portfolios: short-term assets (Murabaha, Istisna, and Salam); medium-term investments (Ijara and Istisna); and long-term partnerships (Mudaraba, Musharaka). The net profit/income of Islamic banks won't vary as a result of changes in money market factors due to this asset-liability management method.

If the Asset-Liability Management in Islamic Banking follows the concept of an Islamic Rate of Profit, whereby the profit will always be marked to the market with profit in real sector and this will result in the net duration or volatility of the Islamic Bank balance sheet will be approach to zero or risk neutral so that it will be immune to the changes in market variables such as interest rates.

Apart from that, the real profit proxy that will be used as a benchmark by Islamic Bank for calculating the rate of profit should be obtained from profits in the products market or the real sector and should not be speculative (real) or exploitative. Islamic Bank, for instance, shouldn't use money market interest rates as a benchmark for calculating profits from cash transactions.

Besides, the establishment of economic fairness, stability in investment income, and community welfare all depend on the rate of profit in Islamic financial products and Islamic bonds. When compared to adopting a system of interests (rate of interest), the justice issue may be evident in the form of just (relatively cheap) business expenses, especially for the bottom segment like microentrepreneurs.

To conclude, there are many ways for Islamic Banks to get profit and revenue using their products and services. Although Islamic Banks are interest-free, it does not mean that Islamic Bank cannot grow and develop.



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FACULTY OF SYARIAH AND LAW
SEMESTER I, SESSION 2022/2023

LAB 5153

ISLAMIC FINANCE

ASSOCIATE PROFESSOR DR. ZULKIFLI HASAN

INDIVIDUAL WRITTEN ASSIGNMENT:
THE GROWTH OF ISLAMIC BANKING IN MALAYSIA

PREPARED BY:

ANNISA UL HUSNA BINTI ARMEN

1181859

KLB 1/TLB 3

The Growth of Islamic Banking in Malaysia

Islamic banking is an institution created to provide bank facilities and services especially to Muslims in a manner based on Sharia law in order to gain fair distribution of wealth and income. Thus, the products or services offered by Islamic bank must refer to and must be consistent with the Principles of Islamic Law, which is Syaria law. In Malaysia, the Islamic banking system fully abide the Sharia law, which lead to development of a competitive and viable part of the nation's financial system, which also serving as driver for both economic development and growth since the Islamic banking industry in Malaysia has advanced significantly over the years. The main purpose of Islamic banking institution being introduced is to create an Islamic bank to accumulate and invest Muslims' funds in profitable and *halal* investment opportunities.

The Islamic banking system had been practiced since a long time ago. For instance, conditional sale or *bay' al-wafd'* had been practiced by the Malaysian community especially among farmers in Kedah, Perlis, northern Perak and Kelantan before the colonial era. The *Fiqh* scholars define *bay' al-wafd'* as buying and selling that will be done by two parties, and there is a condition where that goods can be bought back by the seller when the time period that both parties mutually agreed upon had expired. This form of transaction is intended to get interest-free capital. This system had received attention in legislation by English judges in decisions made by them. In the case of *Tengku Zahara v. Che Yusuf [1951] MLJ 1*, Lord Briggs decided that, the purpose of conditional sale transaction is to obtain credit facility (debt) and give the lender the corresponding compensation payment, without engaging in interest or *riba'* which Muslims are prohibited from doing and engaging with it. Thus, it can be seen that this culture or practice of the local community back then is very important since it became the basis of offering Islamic banking products especially capital financing products.

After that, following the successful establishment of Islamic banks in several countries such as Qatar, UAE, Egypt, Pakistan and Iran, Muslims in Malaysia had also voicing their wish that an Islamic bank should be established in this country. Later, the first Islamic financial institution introduced in the Malaysian finance system is the establishment of the '*Lembaga Pengurusan dan Jadual Haji*' which is now being known as '*Lembaga Tabung Haji*' which started from the year 1969. It is a savings institution in the Malaysian financial system that was established to allow Muslims to save money gradually to meet the expenses of fulfilling the

obligatory *Hajj* and involve themselves in the field of capital investment in the field of enterprise, trade, plantations and real estate through ways that are *halal* on the Islamic side.

As a result of the government's acceptance of the establishment of Bank Islam in Malaysia, Parliament passed an act called the **Islamic Banking Act 1983** in March 1983, which came into force in April 1983 to enable Bank Islam to conduct its operations based on Syaria law. The purpose is to provide the licensing and regulation of Islamic banking business. At the same time Parliament had also passed the **Government Investment Act 1983** which gives authority to the government to issue investment certificates based on the principles of *Sharia-al-qard alhasan*.

Apart from that, Malaysia also has set up comprehensive Islamic financial infrastructures such as Islamic insurance, started from 1984, Islamic capital market that has been introduced in 1993, Islamic inter-bank money market since 1994, Kuala Lumpur Stock Exchange (KLSE) Shariah Index in 1999. The Central Bank of Malaysia (BNM) also had launched the financial sector master plan which incorporated the 10-years master plan for Islamic banking and *takaful* that is aimed at creating an efficient, progressive and comprehensive Islamic financial system and at the same time, to promote Malaysia as regional financial centre for Islamic banking and finance.

In addition, the Islamic banking institution in Malaysia follows the Sharia law which prohibits the practice of giving or accepting additional money for money that is borrowed. In other words, Sharia law bans interest charged on loans, regardless of the quantum of the interest. Furthermore, the types of businesses must also comply with the principles of Islam and did not involved with prohibited activities. For example, the business should not be involved directly or indirectly in alcoholic drinks, gambling-related business, pornography or any type of business that is considered harmful or that could cause disruption to the welfare of the society. Therefore, the main difference between Islamic banking and conventional banking is the interest-based business or *riba*' since Islam does not view money as a commodity that can be rented out. Essentially, Islam encourages businesses to grow by taking risk and taking part in a project without compromising the welfare of either party.

Hence, there are four categories or principles of Sharia used in Islamic banking, which replace the interest-based transactions. First, profit and loss sharing principles (*Mudarabah and*

Musyarakah). Second, fee or charged based principles (*Murabahah and Ijarah*). Third, free service principles (*Qard-Hassan*). Fourth, ancillary services (*Wadiah*). Hence, it can be seen that Islamic banking serves as a commercial and investment bank as well as an investment trust and investment-management institution. In some aspects, Islamic banking products are better than conventional banking products.

In conclusion, the Islamic banking System in Malaysia has gone through several level of development can be considered advanced and in line with the conventional banking system. The Islamic Banking System is also seen as sustainable in providing viable and helpful service and product offerings that can increase the contribution in the economic development of the country.

HOW ISLAMIC IS THE ISLAMIC BANKING IN THE WORLD TODAY?

Does The Shariah/Islamic Wording Just a Facade of The System but The Application Are of The Conventional Bank?

Written by:

Adilah Farzana binti Che Ad, 1181865, KLB1 (Islamic Finance)

The Islamic banking industry has seen rapid growth in the last few years, more than doubling between 2009 and 2014 in many countries around the world, particularly in countries with a Muslim majority population. This is mainly attributed to the rising popularity and awareness of the Islamic finance model, as well as its robust practices, which are deemed superior to conventional banking practices in terms of transparency, profitability, and ethical business conduct. Islamic banking in general is based on the principle of Islamic law, also known as the Shariah, since Islamic law forbids any involvement of interest/riba' it paths, and financial systems are different from the conventional bank.

The primary objective of the conventional banking system is to maximize shareholder wealth through interest-based financial transactions. Just like the conventional bank, Islamic banks also have products and services that are similar to conventional banks, i.e., saving and deposit accounts, loan, credit card and other financial products. All these products and services must abide with the Shariah principle. Although Islamic banks do not use interest payments, they are still subject to many of the same regulations as conventional banks. However, the Shariah principle demands that all loan contracts be based on profit-sharing and do not allow for any pre-determined interest rates. Hence, this comes to a big question to how Islamic is Islamic Banking if it is still subject to many of the same regulations as conventional banks?

The most important feature of Islamic banking is that it promotes risk sharing between the provider of funds on the one hand and both the financial intermediary (the bank) and the user of funds on the other hand. However, in conventional banking, all this risk is borne in principle only by the loan borrower. In a practical perspective according to El Hawary, Islamic Banking is a system that adhere to four principles. First, it based on risk sharing. The terms of financial transactions need to reflect a symmetrical risk or return distribution among each participant to the transaction. Second, is materiality. In Islamic Banking all financial transactions must have "material finality", such as it must be directly linked to a real underlying economic transaction. Third, it must not have any existence of exploitation where neither party to the transaction should be exploited in anyway. Fourth, there shall be no financing of sinful activities. Any transactions cannot be used to produce goods banned by the Qur'an such as alcohol, pork products, gambling, and other Haram transaction in Islam. Purview from the principles, the difference between conventional banking and Islamic banking can be summed up as the former is largely debt-based, and allows for risk transfer, while the latter is asset-based, and centres on risk sharing.

While the idea of Islamic finance may seem quite appealing to some, there is a common perception that it is hard to understand and, therefore, difficult to enforce. In reality, however, the opposite is true. Islamic finance actually has a set of principles and rules that

are very simple in design. For example, one of the basic tenets of Islamic finance is that transactions should be based on real assets rather than speculative instruments. This means that when someone makes a payment or a loan is agreed upon, it shouldn't be based on pure speculation about future values. Instead, it should be based on tangible business realities current in the economy at that moment in time.

The other thing that makes Islamic Banking different from any conventional banks are due to its existence and requirement of Shariah Governance. As some of the issues covered by these rulings of Islamic Banking can be quite complex, it forces the institutions involved to often seek the assistance of experts in interpreting them. Therefore, the first measure that an institution wishing to offer Islamic products must undertake, is to appoint a Shariah board or, at a very minimum, a Shariah Committee. The Bank Negara Malaysia have produced a policy document for Shariah Governance Framework that all Islamic financial institutions shall follow. Shariah governance is integral to Islamic financial system stability. The institutionalization of a sound Shariah governance framework strengthens public confidence in the integrity, management, and business operations of the Islamic financial institutions.

This highlights the idea that Shariah governance is crucial for ensuring good Shariah practice and will therefore affect the firm's performance. Shariah governance places a strong emphasis on equity for all parties involved by fostering high levels of accountability and transparency. Muslims who trust the institution to manage their assets or investments in line with Shariah principles may lose confidence and faith as a result of the presence of any non-Shariah compliant aspects. Having Shariah Governance in Islamic banking is important because in Corporate Governance used by the other conventional bank or hybrid bank is there is absence of Shariah principles in the overall business functions and it only emphasizes on shareholder value, and the stakeholder-centric model.

To conclude, the Islamic wording in Islamic Banking system is not just a Facade of the system of the conventional bank, because it has to follow all the rules and principles of Shariah where it is based on two main sources, the Quran, and the Sunnah. The Quran is considered to be Allah's literal words, while the Sunnah refers to the Prophet Mohammed's (Peace Be Upon Him) teachings and practices. Any practice that conforms to these two sources is acceptable in Islam and otherwise is Haram and unacceptable for any transactions to involve. It is evident that despite some of the similarities between the two, there are major differences between Islamic banking and conventional banking. However, if one has to pinpoint the question if how Islamic is Islamic banking it can pursue to differentiate on the governance of both financial systems. This is because, comparing the principles in both the Bank for International Settlements Guidelines and Shariah Governance Framework, there is not much difference except for the usage of Islamic in its terms. Shariah governance is one of the cornerstones that will determine how successful Islamic finance will be in the years to come. It is in Shariah governance that we will find the issue of whether Islamic finance is really Islamic (in terms of its achievement of social justice) or just a copy of Wall Street products with Islamic wrappings.



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SEMESTER I, ACADEMIC SESSION 2022/2023

ISLAMIC FINANCE [LAB5153]

INDIVIDUAL ARTICLE:

EMPOWERING THE ISLAMIC BANKING SYSTEM IN MALAYSIA

INSTRUCTOR: PROF ZULKIFLI HASAN

GROUP: KLB 1 / TLB 4

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EMPOWERING THE ISLAMIC BANKING SYSTEM IN MALAYSIA

Malaysia is the fastest growing country in the Islamic financial industry, especially in Islamic banking. The Islamic banking system in Malaysia has now received various approvals and become a reference for other countries. Muslims now have the option to choose a banking system that has been adopting the practice of usury (*riba*) to a system based on Islamic Banking based on Islamic law (*Shariah*), namely *fiqh muamalat* in transactions. Any bank that offers an Islamic banking system needs to comply with Shariah Compliant. In fact, all these banks need to establish a Shariah Committee to guide and make decisions on matters related to Shariah and ensure that the function of the bank is to comply with the will of Shariah.

The interest-free Banking Scheme introduced in Malaysia in 1993 has separated conventional banking and Islamic banking and followed by the establishment of the Shariah Advisory Council in 1997. According to the 2019 Annual Report issued by Central Bank of Malaysia (BNM), financing by Islamic financial institutions accounted for 39.2 per cent of the total financing of the banking sector. In fact, at the end of last year, Shariah-compliant assets stood at RM2.3 trillion, from RM1.1 trillion in 2010, according to the Securities Commission Malaysia. The development of Islamic banking in Malaysia began as early as 1962 with the establishment of *Tabung Haji* which was mandated to manage the funds of the Muslim community that saved with the aim of enabling them to fulfil the fifth pillar of Islam, namely Hajj.

In the Shared Prosperity Vision 2030, the government has listed the Islamic Banking industry as one of the 'Main Economic Growth Activities' and set a high goal: 'Malaysia should once again lead the second wave of Islamic banking by adopting a digital fintech that is beginning to grow.' The Malaysian government itself has its own steps in strengthening the Islamic banking system as the new pillar for the Malaysian economy. The Malaysian government also introduced the Islamic Financial Services Act 2013 to replace previous Islamic financial acts such as the Islamic Banking Act 1983. This law gives BNM the necessary oversight, control and supervision powers to achieve its broad mandate in a more complex and interconnected environment in view of regional and international financial developments.

In addition, the Malaysian government has prepared a financial sector plan for a period of 10 years. This plan provides a more conducive environment to pool higher volumes of Islamic financial flows from various market participants to be channelled through innovative Islamic financial instruments. This plan also enhances Malaysia's ability to facilitate cross-border financial flows while contributing to Malaysia's economic growth. By establishing regulations that are conducive to clear shariah stipulations from the relevant authorities as well as special funds for Islamic financial technology companies, local and foreign start-ups will certainly be attracted to strengthen their position and thrive in Malaysia.

Furthermore, the government developed the capacity of human capital to support the Islamic economy and finance through the establishment of the International Centre for Education in Islamic Finance (INCEIF) to produce a qualified workforce and the International Shariah Research Academy for Islamic Finance (ISRA) for research and development purposes

in the field. The strengthening of Islamic banking is crucial to rival conventional banking institutions. The Islamic banking institutions, formerly Bank Islam Malaysia Berhad and Bank Muamalat Malaysia Berhad, have now evolved in tandem with the progress and operating system undertaken by conventional banking institutions.

Besides, the Economic Transformation Programme implemented by the government has succeeded in making the Islamic banking and finance industry an important sector that has the potential to contribute to additional gross national income as well as provide employment opportunities for Malaysians. The Government intends to become a global hub for Islamic finance where Malaysia will be known as an intellectual centre and capital centre for Islamic finance, and Malaysian Islamic financial institutions will have a significant position abroad. In addition, the government also facilitates and disseminates cross-border financial transactions through the sharing of Islamic financial expertise and infrastructure with various countries including the United Kingdom, Turkey, Indonesia and more through closer bilateral ties.

Finally, the government has offered continuous financing to Small and Medium Enterprises. As the *sukuk* market can only be leveraged by large companies, alternative funding is essential to create more opportunities for micro, small and medium enterprises as well as to enable the participation of more investors. Small and Medium Enterprises are an important component of the Malaysian economy and provide jobs to more than five million workers. The development of this sector is important to ensure that balanced growth and shared prosperity in the country's transition into a high-value-added and high-income economy. In particular, this sector contributes significantly to the eradication of poverty in Malaysia.

In a nutshell, it turns out that there are many efforts made by the government and various parties in strengthening the Islamic banking and financial system in Malaysia that it is able to meet the demands of economic units in Malaysia and even across the Southeast Asian region, especially among regional Islamic countries. Malaysia has also been ranked as the best country on global Islamic economic development based on factors such as market size, governance, media awareness, and social impact. Its growth continues to be vibrant in tandem with conventional banking with the support of policy implementation and various strategies for the empowerment of Islamic banking in Malaysia. This has a positive impact on the performance of Islamic banking in order to continue to develop and stabilize through the management of service systems in various sectors, resulting in the growth of internationalization of Islamic finance.

ISLAMIC BANKING AND ETHICAL BANKING: REFLECTING OR DISTORTED MIRROR?

AMIRUL SYAFIQ BIN JAMSARI . TLB 2 . KLB 1

Ethical banking is a banking practice which focusing on values of stakeholders involved in regard to environmental and social responsibility. This concept emerged in the early 20th century where the banking world start to concern on the impact of banking towards social and environment. One of the initiating concept, Socially Responsible Investing (SRI) is a good reflect of ethical banking which targets the financial resource for investment purpose to be directed in a project which promotes positive social and environmental change. Approaching modern banking, this idea is popularized especially by the socialist and environmentalist which pressuring financial institution to play its huge influence in the betterment of social life and environment.

Islamic banking system is always associated with ethical banking. Its mandatory compliance with Syariah law makes Islamic banking as a naturally ethical banking from its essence. As Islamic banking prohibits interests and investments in unethical activities such as gambling, alcohol and tobacco related product, it reflects the ethical banking which promoting social improvement. Any dealing involving prohibited element or items will not be allowed and included in any Islamic banking products. The prohibition set by main Islamic law sources always aims to protect the society at large from being immoral. Taking alcohol as example, it is mentioned in Al-Quran that it brings lot of harms rather than benefit. The temporary loss of consciousness, humane and morality while being in state of drunk will invites a lot of harm towards society if the influence of drinking spreads viral.

Islamic banking also implements justice in its system, as applicable by ethical banking which emphasize on fairness and transparency towards its client. The inclusiveness of Islamic banking with the society by promoting social welfare service such as Zakat, Qard Hasan and Takaful also coincidentally accords to principle of ethical banking that strive towards making a better condition of society. This provides the society with an ethical financial system that aims in helping the society to improved financially rather than benefiting from it. This can also be seen through the prohibition of riba' or interest to avoid the manipulation by the rich towards the poor that want to make their life better. With zero interest financial assistant, it will not put any unnecessary burden towards the poor who wants

to improve their life by starting new business with huge burden of debt incurred through excessive interest.

It must be noted that Islamic banking is not a creation of ethical banking. Rather, Islamic banking exist way before the awareness of Westerners towards huge powers located at banking system in bringing positive impact to the world. As Islamic source and kanoon as its reference, Islamic banking always ensures to be promoting social justice as well as improving the society's way of life through financial assistant. Islamic banking, though having lots of similarities with ethical banking, there still a thin line which differentiate these two banking system.

As mentioned before, Islamic banking sourced its legitimacy from Islamic law developed through main sources which are Al-Quran, Sunnah, Ijma' and Qiyas. Ethical banking, however, did not based on any reference. It is more towards practice of banking which consistently promotes the responsibility of financial institution towards the betterment of both environmental and society. The coincidental crossing path between ethical banking and Islamic banking is not due to the later use the former as its reference, rather, it is motivated by the people for the financial institution to stop its one-sided advantage exploitation from the society and urge to sharing its influence and power to elevates societal life.

The difference also can be seen by the yardstick to measure the level of ethics. As compared to conclusive standards set up by the Islamic law sources, ethical banking acts more in dynamic. The ethical measurement is always changing according to societal acceptance. The trend of changing in societal ethics can be seen easily through comparing the accepted matters in 60s and current trend. In taking social justice, society in 60s did not include gender liberty in their social justice as it still considers taboo among the society during the said time. As of now, the Westerners not only actively defending people who changes their gender, they also promotes the idea to be "true" to yourself by changing their gender based on their made-up character. As such, it is not possible for financial institution which accords to ethical banking principle to financially assists groups or associations of "social justice warrior" in protecting and promoting their belief. This is contrary to the practice of Islamic banking which mandatorily abide to Islamic law which will never assist this kind of movement. The yardstick uses to measure the level of ethics by ethical banking is ever-changing; reflecting the norms and acceptance of current society.

In conclusion, movement in pushing the practice of ethical banking towards financial institutions worldwide should be applauded. It is indeed a good push made by the society in ensuring the influence of financial institutions will not be exploited to elevate their status, rather, this advantage should be used to help those in need. The practice of Islamic banking is a suggested role model for financial institutions worldwide in implementing ethical finance. The demand for Islamic banking is at all times high as it promotes a good economic environment which focuses on helping the society to either sustain their life financially or further improve their life and helping others once they have achieved their goal in business. Islamic banking that goes hand in hand with ethical banking will not only help the society to improve their life, but also ensure the distribution of wealth is not centered towards a specific group of people. After all, the law applied in Islamic banking is always the same, but the creation of financial products is still rapidly developed to cater the markets as well as keeping its essence unchanged; to promote social justice, protect the society from unethical activities and improve the society's condition of living.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

SEMESTER I, ACADEMIC SESSION 2022/2023

LAB5153

ISLAMIC FINANCE

INDIVIDUAL ASSIGNMENT

THE IMPORTANCE ISLAMIC MONEY MARKETS AND ITS CHALLENGES

PREPARED FOR:

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PREPARED BY:

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(1181946)

TLB7

The money market is a key appendage of the banking system. Banks depend on the money market to manage their liquidity. While liquidity management is not the only use of money markets for banks, it is by far the most important. Just like their conventional counterparts, Islamic banks as a financial intermediary are exposed to liquidity risk emanating from the nature of their asset-liability portfolio. This is particularly true since the statement of financial position or the balance sheets of Islamic banks are similar to those of conventional banks. Like their conventional counterparts, Islamic banks hold illiquid assets while their liabilities are relatively liquid. The nature of the Islamic banking operation that transforms the terms of their liabilities into different maturities and characteristics on the asset side of the statement of financial position, exposes the banks to the risk of being unable to match the maturity differences. In fulfilling their role of financial intermediation, Islamic banks face liquidity challenges on a daily basis. For example, when an existing financial asset or financial liability of a bank's statement of financial position matures, or when a new financial asset or financial liability is created, this has implications on the bank's cash flows. The maturity of an asset, for example a repayment of a loan by a customer, constitutes a cash inflow for the bank. On the other hand, a maturing item on the liability side, for example a withdrawal of a fixed deposit by a customer, would constitute a cash outflow for the bank. Since the maturing items on either side are seldom of equal size, the bank would either have a cash surplus or a deficit. A cash surplus would occur if the maturing assets were larger than the maturing liabilities, and vice versa. This phenomenon is applicable for both conventional banks and Islamic banks. Therefore, conventional, and Islamic banks alike depend on the money market to manage the imbalance in their liquidity positions.

A bank with surplus funds can either lend by placing deposits with other banks in the interbank deposit system or lend by purchasing money market instruments. A bank which has experienced a temporary cash deficit can borrow by either accepting deposits in the interbank deposit system or selling money market instruments. Either way, however, the interbank money markets only allow for short-term borrowing or lending. While the money market serves as a suitable avenue for banks to implement proper liquidity management practices, Islamic banks cannot utilize the conventional interest-based instruments because of their Shariah non-compliance. Hence, there is a need for an Islamic money market with instruments that can facilitate the achievement of the abovementioned goal of liquidity management, while at the same time comply with the rules and guidelines of the Shariah. The features and advantages of an efficient Islamic money market would include, providing Shariah-compliant short-term instruments for liquidity management, offering secured instruments with minimal risk exposure, and allowing the International Financial Institutions (IFIs) to act as both investors and financing clients. Not only

that, but it also enhances the institutional robustness of the IFIs as avenue for excess and deficit of funds are available over short periods. Lastly, reducing the displaced commercial risk for the IFIs as excess deposits are no longer idle.

Although the advantages of an Islamic money market are clear, the establishment of the market has been slow and appeared to be challenging in different countries. Whilst Malaysia established an Islamic money market in 1994, other countries have been slow in introducing the facility and none to date have managed trading volumes on the scale of Malaysia. Central banks such as in Saudi Arabia and Kuwait offer short-term liquidity instruments without the need for a dedicated Islamic money market. This proves that the functions of an Islamic money market can be provided through alternate avenues. The underlying premise of a money market is the trading of money, any excess or discount thereof considered interest. Though an Islamic money market introduces Shariah-compliant products, the skepticism of the legitimacy of 'money-trading' does not bode well for rapid development of the sector. The lack of Shariah-compliant instruments has also been a major challenge as classical Islamic contracts are molded into achieving money market objectives of short-term funding or investment. Even though the use of bay' al-dayn and bay' al-inah in certain regions has provided the IFIs the widest options available, these instruments are pronounced as unacceptable outside those regions and have raised controversy as to the need for the existence of an Islamic money market as a whole.

Hence, the standardization of the Shariah pronouncements is greatly needed to avoid the controversies. Other issues include the possible contamination of funds if conventional banks involve in Islamic money market, especially in a dual banking system. In the presence of an effective regulation, the contamination can be avoided. However, except for a few of countries, the IFIs operate in an environment where no specific regulation is introduced for Islamic money market. Nevertheless, certain regions have introduced tax incentives and revised regulations to support Islamic money market development, in absence of which the Islamic money market instruments would be more costly than the conventional instruments and struggle to sustain. This highlights the importance of regulation for the governing of Islamic money markets.



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THEORY ON ISLAMIC BANKING

Islamic banking is a financial system that conducts banking and business operations in accordance with the norms and principles of Islamic Shari'a. It adheres to Islamic jurisprudence's views and principles pertaining to trade and business, known as Fiqh al-Muamalat or Islamic regulations on transactions. The Quran, Sunnah, and other Islamic law sources such as *Ijma'* (opinions collectively agreed upon among Shari'a scholars), *Qiyas* (analogy), and *Ijtihad* (personal reasoning) provide the foundation from which norms and practises of Fiqh al-Muamalat are created.

Islamic banking forbids any activities that are prohibited in Islam such as *riba* (usury-interest), *gharar* (uncertainty), and funding of *haram* (forbidden) trades and industries like as alcoholic beverages, pornography, gambling, and so on. The primary distinction between Islamic banking and conventional banking is that Islamic banking is founded on Shari'a principles, whereas conventional banking is entirely man-made. Thus, all aspects of transactions, including as product characteristics and business style, are derived from Shari'a law, resulting in substantial differences from those of conventional banks.

Islamic bank does not compromise on the Islamic Shari'a rules, though it is a profit-making organization. Islamic banking is not based on pricing, exchanging money, and generating interest like conventional interest-based banks do, but rather on a trading system in which goods and services are offered and capital is invested by taking risks in order to generate Shari'a-compliant profits. It is based on the Quranic admonition that trade is acceptable but *riba* is prohibited.

There are four distinct features of Islamic banking that distinguish it from regular banking. The first one is the prohibition of interest (*Riba*). *Riba* is the primary distinction between Islamic and conventional banking. Islam forbids all forms of *riba* (loan interest) on the grounds that interest rates are a form of exploitation that contradicts the concept of fairness. In practise, this means that Shariah law prohibits predicting a positive return on a debt as a reward for waiting. According to the argument, *riba* signifies the improper appropriation of other people's property and is detrimental to growth. Islam recognises the importance of time value of money, but it cannot be realised as part of a loan contract; it can only be realised as part of a real transaction. In a leasing agreement, for example, the time value of money is an intrinsic part of the rent agreed upon, with longer leases expected to offer better returns.

The second one is the prohibition of *maisir* (chance games) and *gharar* (uncertainty). Islamic banking forbids speculating, which is the accumulation of money from chance rather than constructive activity. In practise, however, the line between speculation and constructive work is frequently blurred. While entrepreneurship can be seen as a sort of gambling, *maisir* refers to unneeded uncertainties that are not part of normal living, such as visiting to a casino. Unavoidable risk is allowed. The prohibition of *gharar* contracts is a related notion. It pertains to contracts that are questionable or ambiguous, such as undertaking on a commercial venture without sufficient knowledge or assuming undue risk. It is similar to asymmetric information in that the goal is to reduce the likelihood of misunderstandings and conflicts between contracting parties.

On top of that, Islamic banks prohibit the *haram* (illegal) activities. The code of conduct for Islamic banks allows them to finance only *halal* (legal) activities. They are not supposed to lend to companies or individuals involved in activities deemed to have a negative impact on society (for example, gambling) or that are illegal under Islamic law (for example, financing construction of a plant to make alcoholic beverages)

The other one is the payment of part of bank profits to benefit society (zakat). Muslims believe that for a society to function, fairness and equality of opportunity (rather than outcome) are essential. One strategy for achieving this goal is to redistribute income to ensure that the impoverished have a basic quality of living. This type of donation, known as zakat, is also one of Islam's five tenets. The amount of zakat is widely acknowledged to be 2.5 percent of assets held. In countries where zakat is not collected by the state, Islamic banks set up zakat funds to collect money for religious organisations.

Islamic banking could supplement conventional banking and so help to spread systemic risk. When a typical bank makes a loan, the borrower takes all risks, except in the event of bankruptcy. In Islamic banking, both the bank and the entrepreneur share the profits and losses. In many poor nations, risk sharing may enable entrepreneurs with little capital to embark on initiatives that they would not consider in an environment where all risk is on them. In traditional banking, the borrower's creditworthiness is the primary factor of lending decisions, and banks are interested in the interest and principal on the loan. Because profits and losses are shared in Islamic banking, banks will only receive a return if a project is successful.



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Why Islamic Banking is better than Conventional Banking?

Nowadays, Islamic banking is becoming more popular choice among Muslims and is rapidly gaining its popularity to the non-Muslims as well. This is due to the unique way Islamic Banking operates comparing to their conventional counterpart. In the year 2020, the total size of the Islamic Banking sector had a 4.3% growth rate for the year and reached over 2.7 trillion USD in total assets. This shows how significantly huge the reception of Islamic Banking around the globe is not to mention the statistics were during the pandemic.¹

Now what makes Islamic Banking a better option than conventional banking? First of all, it has to do with the fact that Islamic Banking offers many unique services that is Shariah compliant such as Murabahah, Musyarakah, Ijarah, Istisna and others. The relationship of customer and bank is often Seller-Buyer and partners whereas the relationship between customer and bank in conventional bank is of creditor and debtor. For an example, the Mudharabah investment account where we as the consumer deposit our savings into the mudharabah account and we are called as rabbul-mal which is the capital provider. Our deposit would then be invested by the Bank into various Shariah compliant assets and the consumer may enjoy a higher return based on the amount of money we deposit. The Bank that manages our investment account will be called as a mudharib. The profits would then be distributed between the bank and the consumer according to the agreed profit-sharing ratio. Although the average returns for a mudharabah savings account is quite low based on Maybank's Premier Mudharabah Account which is at 0.33% at the year 2020, it is undoubtedly Shariah compliance unlike the Conventional counterpart which does not regard where do they invest our funds to. This can lead to many possibilities such as a casino center, wine factories, the ham market and much more.

Secondly, Islamic Banking is free from elements such is riba, gharar and maysir. Riba generally means an interest imposed upon a borrowed money. Normally, a consumer acquires a bank facility from a bank to buy something he desires such as a house, a new car or even to get married. At the end, the consumer is compelled to pay more than the amount he acquired, and this is due to riba. Unlike Islamic Banking, they practice profits which is permissible instead of riba. In order for a consumer to buy a house through Islamic Banking, one of the methods available is by murabahah. The Islamic Bank will purchase the desired house firsthand

¹ Islamic Financial Services Industry (IFSI) statistics. Qardus. (n.d.). Retrieved January 26, 2023, from <https://www.qardus.com/news/the-islamic-financial-services-industry-statistics#:~:text=While%20Islamic%20banking%20is%20still,68.2%25%20of%20the%20total%20market.>

with their assets and then sell it to the consumer with an increased price but not significantly. The consumer then pays to the Islamic Bank through monthly installments. Islamic Banks also does not involve itself into gharar and maysir which means uncertainty and gambling. This means that Islamic Banks stay away from any possible investment funds or markets that operates or deals with gambling or uncertainties such as the risk involved or the substance they deal with such as wine or pork. By this, your funds are in safe hands as you do not have to worry about getting involved involuntarily into any restricted matters without your knowledge.

As a safeguard in Islamic Banking, their daily operations will be monitored by their own Shariah Advisory and Audit Committee Council. Their job is to monitor the institution's dealings to make sure that every product and services that they offer is in accordance with the Shariah standards. As you already know in conventional banking, they do not have such advisory council as it is not needed within their scope of products and services.²

Another unique feature of the Islamic Banking is their deposit account where they utilize the contract of Wadi'ah Yad Dhamanah which means savings with guarantee. Consumers are also entitled for what it is called "hibah" which literally means gifts, but it is subjected to the discretion of the bank.³ In contrast to the conventional savings account, the consumer will be promised a certain rate of returns, and this leads to riba through your savings account. Not to mention, the bank will utilize the consumer's savings for the purpose of their business which may consists the element of gharar and maysir as the consumer is unaware to where their money goes for the purpose of the bank's business. It could end up in any alcohol beverage company or any pork processing factory.⁴

One of the important pillars of Islam is the payment of Zakat, this is an obligation that is imposed to Muslims that can afford to pay zakat. Islamic Banks are involved in the payment and distribution of zakat to the poor. This is another ace that conventional banks do not have.

² Perbezaan Perbankan Islam Dan Perbankan konvensional. Pinjaman Peribadi Malaysia. (2022, January 20). Retrieved January 24, 2023, from <https://pinjamanperibadibank.com/perbezaan-perbankan-islam-dan-perbankan-konvensional/>

³ B. M. (n.d.). Perbezaan Antara Perbankan Islam dan Konvensional. Muamalat.com.my. Retrieved January 24, 2023, from <https://www.muamalat.com.my/downloads/media-room/publications/Perbankan-ISLAM-&-Konvensional-web.pdf>

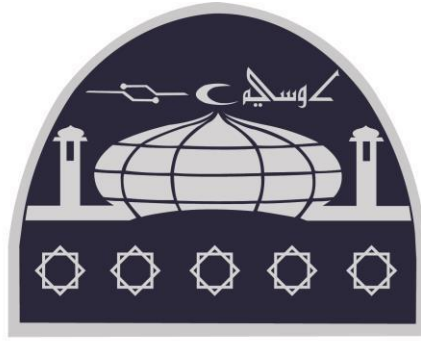
⁴ Pereira, G. (2019, December 16). How is an Islamic savings account different from a conventional one? RinggitPlus. Retrieved January 24, 2023, from <https://ringgitplus.com/en/blog/banking/how-is-an-islamic-savings-account-different-from-a-conventional-one>.

Conventional Banks are not involved in the distribution of zakat.⁵ So consumers of Islamic Banking can be rest assured that the money that is paid to the bank may be used for the distribution of zakat. Islamic Banks also offer to their consumers the service of payment of zakat based on their savings and investments account.⁶ The bank will calculate the amount of zakat payable based on the amount of assets in the savings or investment account. For Muslims who are using conventional banks for their savings account, they are still compelled to pay zakat based on the amount of assets they have in their savings account. However, conventional banks do not provide the service of payment of zakat. Therefore, they are required to calculate themselves, the amount of zakat payable and pay the zakat to the Lembaga Zakat.

All in all, Islamic Banks possesses many unique attributes that conventional banks do not have. As Muslims, it is more sensible and appropriate for us to subscribe to Islamic Banking as they are a much safer option as they distance themselves from what it is forbidden in Islam. They do not deal with matters that contain the elements of riba, gharar and maysir. As for conventional banks, it is uncertain.

⁵ B. M. (n.d.). Perbezaan Antara Perbankan Islam dan Konvensional. Muamalat.com.my. Retrieved January 24, 2023, from <https://www.muamalat.com.my/downloads/media-room/publications/Perbankan-ISLAM-&-Konvensional-web.pdf>.

⁶ Sri Ayu Kartika Amri (2019, May 3) 'Bank Islam perkenal kemudahan bayar zakat'. *Harian Metro*. <https://www.hmetro.com.my/bisnes/2019/05/451470/bank-islam-perkenal-kemudahan-bayar-zakat#:~:text=%E2%80%9CDengan%20ciri%20baharu%20ini%20juga,dan%20tiada%20sebarang%20caj%20dike>nakan.



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جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

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IMPACT OF COVID-19 PANDEMIC TO ONLINE BANKING SYSTEM

The global pandemic have brought a new significance of digital banking platforms to the populace, but mobile and online banking are not new concepts. The past few years have been challenging for the banking sector, as banks were required to develop new solutions and adapt to the changes caused by Covid-19. Some of the challenges that banks had to deal with included maintaining their activities while employees were working from home and tackling increased fraud activities.

Covid-19 severely affected the retail banking sector. In the UK, the lockdown forced banks to temporarily close their 8,500 branches as well as migrate all their operations to online banking to maintain business and customer service continuity. The ongoing COVID-19 pandemic has meant that businesses are being challenged to rethink how day-to-day activities are conducted. Whilst financial services are essential services and are operating amidst the Movement Control Order (MCO) in Malaysia, there has been a significant shift in how customers are being served during this period.

However, a global trend can be seen in consumers and retailers as they adapt to the changing environments and norms. For example, in a bid to help retailers struggling through the outbreak, and to minimise the use of cash and physical contact points among retailers and customers, the UK has increased the limit for contactless payments.

In South East Asia region, it was reported that there were an increase of registration of banking accounts in digital banks during the enforcement days of their respective movement control orders. Similarly in Malaysia, in the days leading up to the MCO enforcement, there was an increase in traditional small and medium-sized enterprises (SMEs) opening up online banking accounts to facilitate the transfer of funds rather than depositing traditional cheques at their local bank branches.

On 27 December 2019, Bank Negara Malaysia announced its intention to award up to 5 new digital bank licences in 2021 to drive further innovation in the market to support the unbanked, underserved, and micro-SME segments. Evidently, consumers and SMEs are turning to online banking out of necessity during these challenging times. This is proving to be an unlikely catalyst and a further business case on the opportunities for future digital banks in Malaysia.

The SME sector, which contributed to 38.8% of the country's GDP in 2019 and employs about 10 million workers, is negatively affected by the pandemic. When the dust settles from the aftermath of the MCO, these micro-SMEs and SMEs, which are already underserved due to high servicing costs and low revenue potential, will require assistance from financial institutions. These segments face challenges in obtaining traditional credit facilities owing to their limited track record and low credit scores which typically result in high loan rejection rates.

Potential digital bank licence applicants can bring innovations which provide better credit assessment as well as lower servicing costs to micro-SMEs. For example, they are able to use data analytics to accelerate lending decisions and are supported by machine learning algorithms to more accurately assist in credit assessment and lending decisions.

Future digital banks will have a role to play. They are likely to form various partnerships with retailers. With their insights on consumer spending patterns, they will be able to direct consumers towards promotions on their partners' platforms. Analytics tools and platforms may provide personalised information that allow consumers to change their spending and savings habits. The B40 segment (the bottom 40% income group in Malaysia) is likely to benefit from these product features.

For employees to work from home, banks had to improve their online platforms to ensure that the services usually provided in-branch could be completed online. In addition to expanding online services to customers, banks also had to invest in their IT departments to maintain online systems and ensure that they could operate without error, particularly

amid the increase in consumers' online transactions and queries. With the migration to online banking, banks had to find new approaches to guarantee that their customers were still offered the services that they need.

Consumer behaviours were forced to change due to the pandemic, and some of those changes led to the sudden surge in global e-commerce transactions. According to a WorldPay report, global e-commerce increased by 19% in 2020 and is expected to keep growing in the coming years.

With the increase in online transactions and non-cash payments, banks are also facing an increase in fraud and cybersecurity. Criminals pretend to be banks by sending deceptive emails and text messages in order to convince consumers to send them money or give up their personal information. Online fraud and cybersecurity are areas that banks are actively investing in to protect their customers.

Banks are leveraging machine learning and behavioural analysis to identify fraud activities and prevent them before they harm customers. The pandemic has accelerated the adoption of online banking by retail banks. To meet customer demands, banks need to improve their platforms to guarantee that employees can fulfil their tasks remotely.

With the rise of online banking, criminals are also adapting to these new means of payments and taking advantage of customers' vulnerability to defraud them. As the transition to online banking is expected to continue long after the pandemic is over, banks will need to develop solutions that protect their customers' transactions and personal information.

The MCO period has unexpectedly triggered opportunities and catalysts but also identified challenges which aspiring applicants will need to consider. Players which are able to best appreciate these opportunities and respond quickly, be they incumbent banks, or new entrants to the digital banking landscape, will be primed to serve the best interest of Malaysians, as they carve out a future for themselves.



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FACULTY OF SHARIAH AND LAWS

SEMESTER I ACADEMIC SESSION 2022/2023

LAD5173

ISLAMIC FINANCE

INDIVIDUAL ASSIGNMENT:

FACTORS INFLUENCING THE ADOPTION OF ISLAMIC BANKING IN MALAYSIA

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KLB2/ TLB8

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FACTORS INFLUENCING THE ADOPTION OF ISLAMIC BANKING IN MALAYSIA

The history of Islamic Banking in Malaysia started in 1963. It started when the Muslims in Malaysia found that it is necessary to establish an official banking system that is based on the Islamic financial system of trading and investment. Islamic banking is a financial system which is in line with the principles of Shariah such as free from Riba and Gharar. Islamic banking has become one of the fastest growing industries in Malaysia and conventional banks have to compete with Islamic banking to maintain their market share. They are quite competent in the banking sector and it plays a big role among the service industry in Malaysia today. The introduction of Islamic banking into the banking system has changed the financial landscape by providing a banking system which influences consumers in the religious and social sense. There are various factors that affect the adoption of Islamic Banking in Malaysia which are consumer satisfaction, compatibility, and consumer knowledge towards Islamic banking.

The first factor affecting the adoption of Islamic banking is consumer satisfaction. It is known as a measurement that determines how happy consumers are with the bank's products, services and capabilities. Its information including surveys and ratings can help a bank determine how to best improve or change its product and services. The marketing concept suggests that there is a higher probability for a buyer to repurchase a product or service when they are satisfied compared to when they are unsatisfied. It is similar to a person who bought food from a buyer and that person is satisfied with the quality and quantity of the food, then automatically that person will repeat the order again with the same buyer. In a bank situation, if a consumer is satisfied with products and services provided by the bank, then for sure the consumer will repurchase the said product and services with the same bank in future and they will suggest their family members or friends to deal or involve in any transaction with the same bank. Therefore, consumer satisfaction plays an important role that influenced the adoption of Islamic Banking.

The second factor is compatibility. Compatibility known as the degree to which an innovation is perceived as consistent with the existing values, past experiences and the needs of potential adopters. Islamic banking provides many products and services and consumers will assess and check whether it will fit their needs and if it matches their beliefs, social system, habits, norms as well as their values and lifestyle. Consumers will follow what their beliefs are

and the more compatible with a consumer's need a bank can provide, the more likely it is for the consumer to choose the bank.. As Islamic banking is free from riba, uncertainty and risk and profit sharing, consumers will choose it because usually they require for their banking services to avoid the usage of interest and will find a bank that provides services that are compatible with their values. Compatibility has a significant impact on consumer's adoption of Islamic banking and the more its products and services are compatible with a consumer's beliefs and values, the more the consumers will adopt its usage

The third factor that influenced the adoption of Islamic banking is the consumer knowledge towards Islamic banking. Before consumers decide to involve themselves in a transaction with a certain bank or purchase a product or service from a bank, usually they will make a research first regarding the bank and they also will get the information from their friend members or family who have dealt with the said bank. After they gain sufficient knowledge about the bank and they have the confidence and beliefs towards the bank, then they will choose the bank in whatever transaction that they are interested in. The degree of how much a consumer will look into a product is influenced by the consumer's knowledge regarding a product. This is why it is important for the bank to give their best in terms of products, services, how they treat the customer, how they deal with the customer to make sure that they really understand the products and services that they provide and many more.

As a conclusion, the adoption of Islamic banking in Malaysia may be influenced by several factors which includes consumer satisfaction, compatibility and the knowledge of the consumer regarding the bank institution. It shows that Islamic banking institutions play a big role in ensuring that the services and products that they provide can attract the public to know more about their bank and will choose their bank in any transaction that they involve in future. As we know that Islamic banking is not only confined to Muslim users but it is also available to non-Muslim who are interested. Thus, Islamic banks have to put focus on customer satisfaction and make them feel comfortable and satisfied with its products and services if they want to attract more users to employ Islamic banking.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

LAB 5153

ISLAMIC FINANCE

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SEM I, 2022/2023

FACULTY OF SHARIAH AND LAW

The History and the development of Islamic Banking and Financial Institution

Islamic banking has been started since the time of Prophet Muhammad. He was known as a successful businessman trading from one country to another. He practises and teaches the society on how to trade and to deal business in a Shariah way. The Islamic Finance has expanding widely until the modern world now. In 1971, Islamic financial services began in Malaysia. Thus, during September 1963, Perbadanan Wang Simpanan Bakal-Bakal Haji (PWSBH) had been established and it was the first Islamic banking in Malaysia which established for the purpose to assist Muslims to save their Haji expenses to pilgrimage to Mecca. Next, in 1969, Lembaga Urusan dan Tabung Haji or known as Lembaga Tabung Haji established as results from the merging between PWSBH and Pejabat Urusan Haji.

Generally, Islamic banking is a banking system that compliance with Islamic law. This means that, the banking system must follow the primary sources of Shariah Law which are Quran and Sunnah. In the absence of such specific practices which does not state under the primary sources, secondary sources which developed by Muslim jurists such as Ijma, Qiyas, Ijtihad will be used as reference.

Furthermore, Islamic banking emphasizes on profit and loss sharing as they do not allow excessive earning that does not involved with real hard work and productivity as Islamic banking involved with real assets instead of financial assets. Under Islamic banking, the returns are not guaranteed since they share the profit and loss together with depositors.

Therefore, Islamic banking operates banking business with some principles which are firstly, prohibition of Riba' (interest) or Usury. Under Islamic finance transaction, it is strictly prohibited on charging and receiving of interest between both parties between both parties This is because interest is deemed as profit which had been generated without involving the actual productivity.

Next, prohibition of Gharar and Maysir. Under Islamic Law, transaction exposes to excessive risk are prohibited to execute. Thus, most of the conventional financial instruments such as forwards, futures, options, short selling, and speculation are strictly forbidden to be execute because they involve with the uncertainty of the price for underlying asset in future date.

Other than that, Islamic banking also must be undergo with an ethical standard. This means that, investors must clarify whether the invested company or businesses are compliance with Shariah. This is because, some of the activities are strictly forbidden to be invested in

Islamic banking such as businesses that involved with gamble, pork, and alcohols. Thus, when investors would like to make investment, they must overview the background of the potential company, including the company's policy, products and services produces, method for background of the potential company, including the company's policy, products and services produced, method for company to operate the business and the positive or negative impacts of the products or services contributed to the society.

Next, Islamic banking emphasizes on the moral and social by being caring and sharing some of the wealth to them. Furthermore, peoples with more financial ability to aids and support the poorer. Thus, as Islam emphasised on the welfare of the poorer, Riba' is prohibited since it will increase the burden of the borrower by paying interest.

Therefore, Zakat which is the religious tax is compulsory to be contributed by every Muslim in order to help and support the people that in need. Thus, it can be said that zakat promotes the moral values by providing financial support for needy and poor from peoples who have stable financial abilities.

Last but not least, liability and business risk. When the lender financing the borrower, lender has to provide some contribution as an exchange for his return. He must either accept the investment risk involved in the business or provide some relevant services to the invested project such as offering an asset. Thus, all the profit gained must derived from hard work. Therefore, Islamic law emphasizes the lawful profits from others kind of gaining through this principle.

Next, Islamic banking and the conventional banking system operate parallel to each other in Malaysia. Furthermore, non-bank Islamic financial intermediaries are allowed to provide Islamic financial products and services because of the comprehensiveness of the Islamic financial system.

In addition, Islamic banking products are increasing day by day and it is proven that Islamic banking products are in the same level with conventional banking products. Some of the Islamic banking products are Bai' al 'inah, Bai' bithmanajil, Murabahah, Mudarabah, Musharakah, Ijarah, Istisna and Takaful.

Nevertheless, despite the good development in Islamic banking, it also has a loophole or issue in Islamic banking which is late payment charges or known as ta'wid. Moreover, some customers face difficulties in fulfilling their promises to pay the instalment to the banks, and some of them like to delay in the payment. Thus, to mitigate such delays by the customers, which distract the common flow of the financial productivity of the banks, the Islamic banks have to apply penalties to protect against procrastination and paying extra due to delayed payment.

To conclude, Islamic banks provides many types of Islamic financial products that are beneficial to their customers compared to the conventional banks. Nevertheless, there are still challenges and deficiency in Islamic finance services. Plus, the existing Islamic financial institutions shall actively be responsible for promoting awareness campaigns throughout the country regardless of race and religion and providing sufficient information and services.

THE IMPORTANCE OF SHARIAH GOVERNANCE IN BANKING

By: *Nurul Suhada Azwa Binti Zaruzi*

(1181900) (TLB 5)

Due to the high public demand for interest-free financial transactions and a profit-loss sharing structure, Islamic banking has expanded significantly in recent years. Islamic banking has witnessed enormous increases in both deposits and investments over time, demonstrating a tremendous growth and spread of the system throughout the nation. Thus, the Islamic Finance Industry can only be sustained if there is good corporate governance practice by all Islamic Financial Institutions (IFIs) that comply with Shariah.

In 2010, The Central Bank of Malaysia or known as Bank Negara Malaysia (BNM) has introduced Shariah Governance Framework (SGF) that required all Islamic Financial Institutions (IFIs) to fully implement in 2011. It is to provide a proper framework Islamic Financial Institution to operate within the required Shariah Framework. It will help to strengthen the international investor confidence in the fast-growing Islamic Finance Industry in the Country.

In 2013, the Islamic Financial Services Act 2013 then has been enacted in respond to the need of the economy to provides greater regulatory clarity and focus also has been put on Shariah Compliant. It to protect the interests of players and stakeholders of Islamic Finance. It also important to make sure that the governance system is strong and practicable as to avoid failure in market.

In Islamic Finance, it is strictly advised to follow the Shariah principles by observing it tenets, conditions and principles. With this guidance, it is right to expect that any transactions and business in Islamic Financial Industry to be consistent with Shariah compliant. By referring to Shariah Governance, the system and procedures are surely will strictly follow Islamic Teaching.

Shariah Governance is a set of institutional and organizational arrangements through which all Islamic Financial Industries ensure that there is effective independent oversight of Shariah compliance over the issuance of relevant Shariah pronouncements/resolutions and its

dissemination, as well as an internal and annual Shariah compliance review or audit (Demi Fatmawati, 2022).

According to the Central Bank of Malaysia, this policy of Shariah Governance aims to further strengthen the effectiveness of Shariah governance implementation and reinforce a closer integration of Shariah considerations in the business and risk strategies of the Islamic Financial Institutions.

Islamic financial institutions should therefore show that their Shariah governance structures are functional and adequate for their size, type of business, complexity of operations, and organisational structure. The Bank also expects to see indications of improved alignment in Islamic financial institutions' promotion of a comprehensive Shariah compliance risk culture.

In Shariah Governance, the chairman of the Shariah committee, in leading the Shariah committee is responsible for the effective functioning of the Shariah committee. In fulfilling this role, the chairman of the Shariah committee must– (a) ensure appropriate procedures are in place to govern the Shariah committee's deliberations and proceedings; (b) act as a direct liaison between the board and Shariah committee to foster greater understanding between both organs; Shariah Governance 9 of 22 (c) ensure that Shariah decisions or advice are made on a sound and wellinformed basis, including based on a robust decision-making methodology which ensures that all business, operations and risk implications are considered by the Shariah committee; (d) encourage healthy discussion, participation and contribution, and ensure that dissenting views can be freely expressed and discussed; and (e) ensure sufficient records of the discussion leading to formulation of the Shariah committee's decision or advice are maintained.

Shariah Governance control all and standardised all aspects such as the board, the shariah committee the functions and so on. Based on Section 31 of the IFSA, an Islamic Financial Industry shall appoint a person to be its Shariah Committee member if the person is a Muslim individual, if the person has been assessed to have met the requirements specified in the policy document on Fit and Proper Criteria on a continuous basis and the person is either a Shariah qualified person or an expert who possesses skills, knowledge and experience that is relevant.

In conclusion, the Shariah Governance framework is important for an Islamic Bank to comply and monitor the functions of the bank. Shariah Governance Framework also is an important mechanism to ensure that IFIs are carrying out their roles in accordance to Shariah principles in the interest of depositors, investment account holders, shareholders and stakeholders. Therefore, it is crucial to have good Shariah Committee that understand and knowledgeable regarding Shariah and Islamic Studies.



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LAB 5153 ISLAMIC FINANCE

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ARTICLE ISLAMIC FINANCE:

**DIFFERENCES ON LOAN WITH ISLAMIC BANKING
AND CONVENTIONAL BANKING**

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DIFFERENCES ON LOAN WITH ISLAMIC BANKING AND CONVENTIONAL BANKING

Islamic banking in Malaysia refers to the banking system in the country that operates in accordance with the principles of Islamic finance. It is based on the principles of fairness, justice, and shared risk and prohibits the charging or paying of interest, also known as *riba*. Instead, it operates on the principles of profit and loss sharing, where profits and losses are shared between the bank and the customer. Islamic banking in Malaysia has grown rapidly in recent years and has become an integral part of the country's financial sector. Today, there are several Islamic banks and Islamic banking windows within conventional banks that offer a range of products and services based on Islamic finance principles.

Islamic banking, also known as Shariah-compliant banking, is based on the principles of Islamic finance and follows the teachings of the Quran and the Sunnah. It prohibits the charging of interest (*riba*) and engages in profit and loss sharing arrangements instead. In Malaysia, Islamic banking has been established as a parallel banking system and operates in accordance with the guidelines and principles set by the central bank, Bank Negara Malaysia (BNM).

While for Conventional banking, it operates based on the principles of commercial banking and follows the conventional banking laws and regulations set by BNM. This type of banking operates by charging interest on loans, accepting deposits and engaging in other financial activities.

In Malaysia, there are several Islamic banks operating as part of the country's parallel banking system. There are Maybank Islamic Berhad, CIMB Islamic Bank Berhad, RHB Islamic Bank Berhad, Public Islamic Bank Berhad, Bank Islam Malaysia Berhad and others.

These Islamic banks offer a range of financial products and services that are compliant with Shariah principles, including Islamic personal financing, Islamic home financing, Islamic credit cards, and Islamic deposit accounts, among others. They also offer various investment products and services, such as Islamic unit trust funds and Islamic insurance (*takaful*) products. These banks have been instrumental in

promoting and growing the Islamic finance industry in Malaysia and have played a significant role in the development of the country's financial sector.

First and foremost, the main difference between Islamic banking and conventional banking lies in their approach to finance and the instruments they use. Islamic banking prohibits the charging of interest and focuses on profit and loss sharing arrangements, such as mudharabah (profit-sharing), wakalah (agency) and musharakah (joint venture). In contrast, conventional banking operates by charging interest on loans and uses other conventional financial instruments, such as bonds and securities.

Another key difference between the two banking systems is their approach to risk. In Islamic banking, the risk of investment is shared between the bank and the customer, as both parties have a vested interest in the success of the venture. In conventional banking, the risk is borne solely by the customer and the bank's role is limited to lending money.

In terms of customer service, Islamic banking also places a strong emphasis on ethical and responsible banking practices, while conventional banking operates primarily with a focus on maximizing profits. This difference is reflected in the products and services offered by the two banking systems, with Islamic banking offering products that are designed to be socially responsible and in line with Shariah principles.

In Malaysia, both Islamic banking and conventional banking are regulated by BNM, which oversees all banking and financial activities in the country. Despite the similarities in regulations, the central bank recognizes the differences between the two banking systems and provides specific guidelines and frameworks for the operation of Islamic banking in Malaysia.

Besides, there are several advantages for people who use Islamic loans offered by Islamic banks in terms of Ethical banking practices. In Malaysia, Islamic banks operate based on the principles of Islamic finance, which prohibits the charging of interest and encourages ethical and socially responsible banking practices.

Next in terms of Profit and loss sharing: Islamic loans are structured as profit and loss sharing arrangements, which means that the customer and the bank share in the risks and returns of the financing agreement. This encourages both parties to work towards the success of the venture.

Furthermore, in Islamic Banking, there are no hidden costs or charges associated with Islamic loans, as the financing agreement is based on a clear and transparent profit and loss sharing arrangement. The profit and loss sharing structure of Islamic loans encourages entrepreneurship and innovation, as both the customer and the bank have a vested interest in the success of the venture.

Despite that, Islamic finance is often used to finance socially responsible and environmentally sustainable projects, which can contribute to the overall development of communities. Overall, Islamic loans offer a unique alternative to conventional loans and provide customers with a range of benefits that align with their religious beliefs and values, while also encouraging ethical and responsible banking practices.

In conclusion, the main differences between Islamic banking and conventional banking in Malaysia lie in their approach to finance, the instruments they use, and their approach to risk. While both systems are regulated by BNM, Islamic banking operates based on the principles of Islamic finance and focuses on ethical and socially responsible banking practices, while conventional banking operates based on the principles of commercial banking and focuses on maximizing profits.

ISLAMIC SECURITIES (SUKUK): THE UNDERLYING RISKS

MUHAMMAD MUTMAIN B RAMLAN 1181857 TLB3

Securities or also known as Bond is a type of investment whereby the investor will act as the creditor and lend money to the issuer for a set of period and charging interest. Basically, the investor will receives an annual income as well as the ultimate repayment of the principal amount of the loan. Bond is usually traded in the Bond Market where investor will do sell and buy debt securities. Every investment has its own risks. Similar to bond, it has a high risks that the issuer defaults in its debts.

In Islam, securities or bond is known as *Sukuk*. *Sukuk* can be defined as a financial instruments similar to bonds but in compliance to the Islamic Law. By referring to Accounting and Auditing Organisation for Islamic Financial Institution (AAOIFI), *Sukuk* is defined as certificates of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or the assets of particular projects or special investment activities. What makes the difference between conventional bond and *Sukuk* is that the conventional bond represent issuer's pure debt while *Sukuk* represent ownership stake in an underlying assets for a specific period.

As mentioned earlier, *Sukuk* as a financial instrument also has its own underlying risks. The crucial risks are the market risks, operations risks and Shariah compliance risks. The market risks happen when there is rise in market interest rates because *Sukuk* is indirectly exposed to the fluctuations of interest rate by the London Inter-Bank Offered Rate (LIBOR). As *Sukuk* is based on fixed rates, the rise of market interest rate will leads to a fall of in the value of fixed-income *Sukuk*. Since repricing of debts is not allowed in Shariah, therefore both the issuer and the buyer is exposed to the interest rate risks.

Besides that, markets risks also affected by the foreign exchange-rate. This can be logically seen when there is difference in the currency units in which the assets in the *Sukuk* pool are denominated. For example in Islamic Development Bank (IDB), the weight-composition consist of 45% in U.S dollars, 29% in euros, 15% in Japanese yen and 11% in British pounds. The unit of account of the IDB is an Islamic Dinar, thus when the *Sukuk* pool in denominated by U.S dollars, any increase in the value of the U.S dollar against Islamic Dinar will cause financial loss. Even though the investors are protected from any exchange-rate fluctuations, but the originators still affected.

Apart of that, *Sukuk* also have its own operational risks. On of the operational risks is called as default risk. Default risk happens for example when a company is unable to generate enough income and cannot repay its *Sukuk*'s interest or principal on specific period, the company might defaulted on

its payment. Each prospectus has provision for the termination of the certificate in the event of a default by the obligor. For example if the obligor is unable to pay the rental or coupon on the *Ijarah* agreement the certificate holder has the right to nullify the contract and demand the obligor to buy back the assets.

Consequential to that, regarding the coupon payment, there is also risks that any delay payment will caused accumulation of amount to be paid. Coupons payment is related to the payment scheduled to the investors. The investors will receive periodic coupon payment until maturity. As *Sukuk* has different maturity period, therefore it also impose a different degree of risks and coupon rates. If the obligor failed to pay the required coupons on time, it will subjected to a specific payment amount that will be accumulated in a fund. However, the Shariah boards recommend that the accumulated amount to be donated for charity purposes.

On the other hand, operational risks also carries assets redemption risks. Assets redemption risks is where the originator must buy back the underlying assets from the certificates holders when there is default or matured. This impliedly pressured the issuer to prepare the necessary amount to redeem the *Sukuk*. In conventional bond, the borrower need to return the initial amount invested by buying the bond or also know as redeeming the bond. In *Sukuk*, the asset redemption will be in the form of repurchasing the underlying assets which was inserted in the *Sukuk* contract.

Last but not least, *Sukuk* also has the Shariah Compliance risks. Shariah compliance risk is usually occurs when the *Sukuk* is to be issued, whether the financial service is compliant to the Shariah principle or not. Shariah compliance risks also been referred as “the loss of asset value as a result of issuer’s breach of its fiduciary duty and responsibility with respect to the Shariah. For example in project financing, it happen to be difficult to design the perfect *Sukuk* structure that fulfils the demand and requirements of Shariah board. Plus, it will costs more and time consuming.

In conclusion, Islamic securities or *Sukuk* has grown and become worldwide attraction. This also shows that the challenge to structure the *Sukuk* will require extra diligence to satisfy the demand and requirements of Shariah board.

KAFALAH IN MALAYSIAN LEGAL PERSPECTIVE

By: Nushaibah Binti Badruddin (1181847) (TLB2/KLB1)

It is essential for an Islamic financial institution to comply with Shariah requirement to ensure the legitimacy and integrity of Islamic financial products and services. Among the Shariah contracts that is widely used by the Islamic financial institution is *Kafalah*.

As defined by the **Bank Negara of Malaysia's Kafalah Policy Document 2018**, *Kafalah* or guarantee is a contract where the guarantor conjoins the guaranteed party in assuming the latter's specified liability. It is a form of guarantee that secures obligations in financial transaction that serves as a protection to either the bank or the customers from default risk. *Kafalah* is being used as one of the contracts to supplement various primary Islamic financial products, mostly for risk mitigation purposes, such as musyarakah, Mudarabah, Murabahah, Ijarah and Tawarruq. For instance, *Kafalah* is applicable in Islamic financial transaction by way of bank guarantee, standby letter of credit and shipping guarantee.

According to proofs from the Quran, Sunnah and Ijma', *Kafalah* is a legal service-based contract and permissible in Islam. In **Surah Yusuf verse 72**, "They said, "We are missing the king's goblet." [And their chief added], "He who brings it shall have a camel-load of provisions; I personally guarantee it". It is also proven from the Sunnah of the Prophet Muhammad S.A.W narrated from Salamah bin al-Akwa, where Abu Qatadah asked the Prophet to pray for a man to whom (Abu Qatadah) had been a guarantor for a debt and the Prophet S.A.W prayed for him. Additionally, Ibn Qudamah in *Al-Mughni* cited that the Muslim jurists have reached Ijma' on the permissibility of *Kafalah* in principle since it is necessity in the society.

In Malaysia, *Kafalah* is enforced under the Contracts Act 1950 along with the Bank Negara of Malaysia's *Kafalah* Policy Document 2018. The Contracts Act 1950 as the principal legislation governing contractual agreement including guarantees and *Kafalah* in Islamic banking, serves to ensure that each parties execute their obligations and shall be applicable to *Kafalah* due to its contractual nature. The proviso for contract of indemnity and guarantee is listed under Part 8 of the Contracts Act 1950 where it describes how the guarantee shall operates. According to **section 79 of the Contracts Act 1950**, a contract of guarantee can be defined as a contract to perform the promise, or discharge the liability, of a third person in case

of his default. The person who gives the guarantee is called the “surety”, the person in respect of which default the guarantee is given is called the “principal debtor”, and the person to whom the guarantee is given is called the “creditor”. It is also provided in **section 80 of the Act** that a sufficient consideration for guarantee is anything done, or any promise made, for the benefit of the principal debtor. This shows that a consideration is an important element in a contract of guarantee which in its absence will render the contract as void.

However, despite the liability of the surety being co-extensive with the principal debtor as provided in **section 81 of the Contracts Act 1950**, the banks practically avoid risking indefinite liability beyond the guaranteed amount. Besides, the banks, as a surety may revoke a continuing guarantee for the future transaction by notice to the creditor in accordance with **section 83 of the Contracts Act 1950**. In the case of *Small Medium Enterprise Development Bank Malaysia Berhad v Seacera Group Berhad & Ors* [2020] MLJU 639, the bank proceeded to issue a Notice of Demand cum Termination Notice in the event of default by the Defendant. The High Court granted the application for summary judgement for the Plaintiff to recover the outstanding amount of *Kafalah* Facility from the Defendant.

Aside from the Contracts Act 1950, Bank Negara Malaysia’s *Kafalah* Policy Document have more specific provisions than the Act. This policy is applicable to all Islamic financial institution except the licensed takaful operator and professional retakaful operator which only required to comply with Part B of the Policy. According to **paragraph 15.1 and paragraph 15.2 of the Policy**, a guarantor may impose a fee for providing the *Kafalah* service and such fee may be in the form of an agreed fixed amount or a percentage of the guaranteed amount.

Moreover, *Kafalah* may be arranged with other Shariah contracts as long as it remained Shariah-compliance. **Paragraph 17.1 of the Policy** permits such arrangement with other Shariah contracts or concept including exchange-based contract, agency contract and wa’d provided that the requirements for such arrangement are observed.

It is also permissible for the institution to dissolve the *Kafalah* by discharging the guarantor from the guaranteed liability as provided in **paragraph 18.1 of the Policy**. However, it is further stated in **paragraph 18.2 of the Policy** that if a fee is paid by the guaranteed party for the *Kafalah*, the *Kafalah* contract shall not be dissolved without the consent of the guaranteed party.

In application to Islamic banking, *Kafalah* services such as Shipping Guarantee and Bank’s Guarantee are generally provided as a part of other contracts to secure the future

payments owed by the customer to the bank. Among the Islamic financial institution that offer *Kafalah* is Bank Islam Berhad by means of *Bank Guarantee-i*. To applied for this service, the customer and the Bank, who is the beneficiary, will enter into a bilateral contract and then approached the Bank for issuance of a Bank Guarantee. Upon approval, the Bank Guarantee will be issued to the beneficiary. It also charged fees by percentage of the guaranteed amount at the rate of 0.75% to 2.25% per annum for providing financial guarantee which is in accordance to the Kafalah Policy Document.

In conclusion, the application of *Kafalah* in the Malaysian Islamic financial institution is mainly governed by the Contracts Act 1950 and Bank Negara Malaysia's *Kafalah* Policy Document. It is important for each institution to comply with these provision at all times to ensure that the validity of the Kafalah in legal perspective while remain a lawful contractual relationship between the institution and the customers.

(999/1000 words)



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COURSE: ISLAMIC FINANCE (LAB5153)

**WRITTEN ASSIGNMENT: THE CONCEPT OF CONVENTIONAL
INSURANCE, TAKAFUL AND HIBAH.**

LECTURER'S NAME:

PROF MADYA DR ZULKIFLI HASSAN

GROUP: KLB1 / TLB3

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The Concept of Conventional Insurance, Takaful and Hibah.

Nowadays, most of us have been covered with the insurance. This trend is started to show its progress due to the awareness of the importance of using the insurance in times of emergency. But wait, is our understanding of the importance of this insurance is only for the emergency purpose? it is completely wrong impression and understanding by many peoples especially us due to the insurance itself have many kinds of its policies and coverage.

As for instances, there are kind of life insurance, health insurance, long-term disability, auto insurance and many others. Although the context of insurance has been understood by many depositors, many are still confused in regards of the difference between the existence of a conventional insurance system and Takaful. Is it both insurance and Takaful being operated with the same system? Which one is more beneficial to the depositors, especially for the long-term life covered? Which one are compliance with the Islamic Finance System? We can assure that both are totally different in the way of its conduct and operational. As for Conventional Insurance, it is a policy that shifts the risk to the insurance company. As for the depositors, we need to pay a premium to receive any kind of coverage. While for the Takaful, it is a co-operative policy where funds are contributed by donations from the participants. The pooled funds can be used to protect other participants from risk. In terms of funds investment, as for the conventional Insurance, any insurance companies are free to invest in legal instruments like stock bonds and others.

Therefore, most Islamic jurists conclude that conventional insurance is unacceptable in Islam because it does not conform with sharia. Conventional insurance includes an element of al-gharar or uncertainty. This is very different from the way of investment by Takaful. Takaful investments will follow strict principles. Takaful cannot invest in anything that has elements of gambling, uncertainty or the practice of lending money at unreasonably high-interest rates.

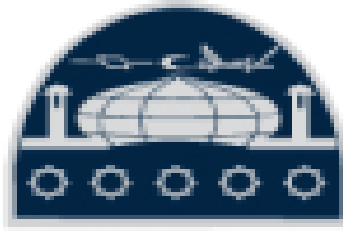
In the term of profit or return, if there is extra money because of low claim rates by insurers under Takaful, it will be distributed to participants. While the profits from investments will be distributed to both participants and shareholders. Takaful operators make money through performance fee or by sharing the surplus. But the total amount of payment from the surplus that Takaful operators get cannot exceed the amount that is paid to Takaful participants. However, under conventional insurance, extra money and profits belong to the shareholders of the insurance companies.

Apart from Conventional Insurance and Takaful that have been mentioned, there are also companies that offer the other kind of products and services which are established under the Islamic Institutions such as Hibah. Hibah is a kind of gift in which a solution to deliver to non-heirs apart from the wasiyyah (bequest) or faraid (succession) systems. Hibah can be considered as one of the important instruments used in Islamic wealth management. Hibah occurs where an individual confers his valuable asset to another, during his lifetime unilaterally, without any due consideration. Hibah in its original form is considered as a tabarru' contract, which is made without any reverse intention. In Islam, the practice of giving the hibah is encouraged among the Muslims as it promotes the concept of maqasid of Shari'ah in term of the protection of the wealth as well as strengthening the relationship with one another. In Malaysia, the hibah instrument is usually used by Muslims in planning asset distribution to the intended beneficiaries in relation to specific assets, whereby the ownership of the asset is transferred to the beneficiary during the donor's lifetime (inter vivos) or in certain limited circumstances, conditionally passed over after the donor's death.

The Hibah instrument has also been used in the takaful industry in two ways either by way of direct Hibah or conditional Hibah. In a direct Hibah, the takaful company will structure and offer a takaful product to its takaful participants whereby the takaful benefits will be surrendered to the Hibah recipient upon the maturity of the takaful certificate. Under this concept of Hibah, the beneficiary of the takaful benefits may be the children of the takaful participant, or the takaful participant himself or herself. This concept of direct Hibah covers the educational plan, medical plan and other types of plans offered by the takaful company. This is addition to the saving plan on behalf of the beneficiary himself or herself. As far as the direct Hibah concept is concerned, this practice is allowed by all Muslim jurists.

On the other hand, the conditional Hibah in takaful is made in respect of the nomination of the takaful recipient by the takaful participant during his life as to who will receive the takaful benefits as an executor of his estate or as the actual beneficiary. This kind of Hibah is enforced subject to the occurrence of the event, as for instance, the death of the takaful participant's death prior to the maturity of the takaful certificate. The practice of giving the conditional Hibah in takaful is seen to be benefiting the beneficiary since all the payment sum or the benefits received can be directly given to the heirs of the deceased takaful participant without going through the faraid (Muslim law of administration) procedures.

As for the conclusion, Takaful and Hibah are the best instruments in providing benefits to their depositors or participants. Although conventional insurance also offers the same protection services as Takaful and Hibah, but in term of operating sources that do not follow with the Sharia instrument have made any transaction carried out under the conventional insurance system to be Gharar and should be avoided.



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SEMESTER I, ACADEMIC SESSION 2022/2023

LAB 5153

ISLAMIC FINANCE

INDIVIDUAL ASSIGNMENT:

INSURANCE VS TAKAFUL: HOW IT DIFFERS?

NAME:

NUR ABIDAH BINTI MOHD ZAHARI

MATRIC NUMBER:

1181868

GROUP:

KLB 1 / TLB 3

LECTURER'S NAME:

PROF MADYA DR. ZULKIFLI HASAN

INSURANCE VS TAKAFUL: HOW IT DIFFERS?

Every each of us wishes the best for ourselves and wants to provide protection for ourselves, families, and our property. However, without stable and intact finances, it is difficult for us to care for our personal welfare, family, and property. Nowadays, a person's financial status is very important, especially for the head of the family, because he is the one who is responsible for providing protection and comfort to all family members.

It can be seen that in providing protection and financial stability at the same time is difficult, especially when receiving treatment in a hospital, accidents, and other emergencies for which we may not be prepared. However, there is an instrument that can assist people in providing protection to their loved ones while also achieving a stable financial status, particularly for young people which are insurance and takaful products.

Insurance is a legal agreement between an insurer, which is the insurance company, and an insured, who is an individual, in which an insured receives financial protection from an insurer for losses he may suffer under certain conditions. The insured must pay regular premiums that can be applied to the consideration amount for the insurance provided by the insurer. This demonstrates that insurance is a contract in which the insurer buys and sells protection services to the insured, and the premium covers the policy that was agreed upon between the insurer and the insured.

However, the 94th Discourse of the Fatwa Committee of the National Fatwa Council for Islamic Religious Affairs Malaysia convened in April 2011 had discussed the status of conventional insurance and the Discourse has decided that conventional insurance is a form of Shariah non-compliant transaction as it contains elements contrary to fundamental Islamic principles which are riba, gharar and maysir.

Riba means "to increase" or "to exceed," and it is commonly used to refer to unequal exchanges or borrowing charges and fees. When we talk about riba, we must include interest where there is an exploitative and unjust gain. Riba occurs in insurance policies when the amount of money received by the insured for the loss, he suffered exceeds the amount of premium paid. Although it is debatable whether insurance falls under the category of charity, we must first examine the primary contract of the policy, which is only an agreement between the insurer and the insured and not between the individuals who enter into the insurance agreement.

Aside from that, gharar or uncertainty refers to intentional deception and cheating, as well as ignorance of the object of sale and undeliverability of the object. Gharar exists in insurance because it involves doubtful and uncertain subject matter until the event occurs. When the parties sign the contract, the subject matter is unknown. Furthermore, there is an element of maysir or gambling, which involves both the hope of profit and the fear of loss. The insured are required to wager premiums on the condition that the insurer will pay out based on the circumstances of a specific event.

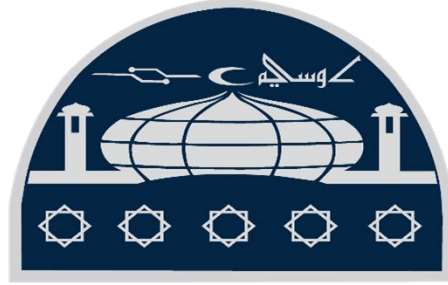
This is why insurance had not been accepted in Shariah as it is contrary to the fundamental of Shariah principles. Meanwhile, Takaful is another alternative to insurance which had been rejected and not accepted in Shariah as there are elements of riba, gharar, and maysir which are contrary to the fundamental principles of Islam.

Takaful had been defined in Section 2 of Islamic Financial Services Act 2013 where takaful is an arrangement based on mutual assistance under which takaful participants agree to contribute to a common fund providing for mutual financial benefits payable to the takaful participants or their beneficiaries on the occurrence of pre-agreed events. It can also be defined as a process of agreement between a group of people to handle injuries caused by specific risks to which they are exposed to, and the process includes the payment of contributions as donations.

This demonstrates that takaful is an instrument that does not involve a contract of buying and selling in which one party offers and sells protection and the other accepts and purchases the service at a set cost or price. Takaful is a type of tabarru'at contract in which a group of people contribute a fixed amount of money, and the members are compensated for the losses that they have suffered from the total sum. This is why Shariah has accepted the takaful system, which is based on a cooperative system and mutual aid for the good of society.

Although Takaful and Insurance products differ in terms of the principles that have been applied in the products, there are some similarities that can be listed to illuminate their primary purposes. Takaful and insurance are two instruments that can assist people in protecting themselves from unforeseeable events and emergencies.

In conclusion, it is a financial safety net that we all hope we never have to use when we participated in insurance or takaful. But, if things do not go as what we had been planning, it is nice to know that our policy that we had participated will help cover all expenses. For example, if someone becomes ill or injured and is unable to work, medical insurance or Takaful will assist in covering their medical expenses. Furthermore, if a company suffers property damage, it can help cover lost revenue. The bottom line is that insurance and Takaful are critical components of financial planning. However, it is up to us as Muslims to decide which system we want to use to protect ourselves and our loved ones while adapting and applying Islamic principles in our daily lives.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

FACULTY OF SHARIAH AND LAW

SESSION:

SEMESTER I, ACADEMIC SESSION 2022/2023

SUBJECT:

ISLAMIC FINANCE (LAB5153)

INDIVIDUAL ASSIGNMENT

(ARTICLE: THE MALAYSIAN TAKAFUL INDUSTRY)

LECTURER:

PROF. MADYA DR. ZULKIFLI BIN HASAN

GROUP:

KLB 1 / TLB 4

NAME	MATRIC NUMBER
IZZATUL SYATHIRAH BINTI JAHIT	1181880

THE MALAYSIAN TAKAFUL INDUSTRY

Takaful was established in 1983 and it was formed to complete the operations of Bank Islam Malaysia Berhad. It was inspired by the prevailing needs of the Muslim public for a Shariah-compliant alternative to conventional insurance. The establishment of takaful provides an alternative to conventional insurance for Muslims who need a guarantee of financial protection based in sharia. The takaful industry in Malaysia is growing rapidly in line with the development of the Islamic banking industry and it is one of the choice of the insurance which not only for Malaysians but also for the entire world. The development of takaful industry shows that takaful is the best alternative offers in Islamic risk management and control.

First and foremost, Takaful is a type of Islamic insurance and it is a system of cooperative insurance for followers of Islam. Takaful, an Arabic word meaning “guaranteeing each other”, is the same as insurance but approved under Islamic jurisprudence or Sharia guidelines. This concept becomes an important basis in parallel takaful contracts with the concept of al-Takaful. Al-Tabarru' means to donate, to make charity or bestowing something willingly for the purpose of devotion and help. It represents the concept of insurance based on mutual co-operation and solidarity of people by participating in a takaful scheme.

Therefore, the business concept that was built is mutual protection plan based on unity, sense of responsibility and brotherhood between the participants. The takaful participants who entering into this agreement agrees to give certain parts from his contribution or contribution to provide assistance and equally bear any participant who is befallen by misfortune as participation in takaful services made on a tabarru' basis. For instance, when an accident occurs or loss that may happen to the lender then he will be paid damages from the fund with agreement other contributors. He also agreed to donate a portion from giving it to other contributors when something accident or loss to other contributors.

Besides, takaful system is based on Sharia and it is the code of conduct and guidelines for Muslims. There are some of prohibitions in order for takaful to be works which are Gharar, Maysir and Riba'. Malaysian National Fatwa Committee which ruled that life insurance in its present form is a void contract due to the presence of the elements of Gharar (uncertainty), Riba' and Maisir (gambling). According to Jamal Zarabozo, the majority of modern Muslim such as scholars from Islamic Fiqh Council of the Organisation of Islamic Cooperation, the Board of the Leading

Scholars of Saudi Arabia, the Fiqh Council of Mecca under the auspices of Muslim World League, Siddiq ad-Dharir, Wahbah al-Zuhayli, Muhammad Mustafa as-Sinqithi, and numerous other respected scholars and jurists were agreed that commercial insurance were forbidden.

In developing the takaful industry in Malaysia, Bank Negara Malaysia has adopted a gradual approach which can be divided into three phases which are Phase I (1984-1992), Phase II (1993-2000) and Phase III (2001-2010). For the first phase which is started in 1984-1992, with the enactment of a dedicated regulatory law, the Takaful Act 1984 and the establishment of the first takaful operator in 1984. The primary focus during this period was the establishment of the basic infrastructure for the industry. This Act which is still in use is enacted to govern the conduct of takaful business and requires the registration of takaful operators. It also provides for the establishment of Shariah Committees to ensure that the business operations of a takaful operator are in compliance with Shariah principles at all times.

Second, for Phase II started in 1993 till 2000, marked the introduction of competition with the entry of another takaful operator. This period also saw greater cooperation among takaful operators in the region including the formation of the ASEAN Takaful Group in 1995 and the establishment of ASEAN Retakaful International (L) Ltd. in 1997. This has facilitated retakaful (reinsurance) arrangements among takaful operators in Malaysia and in the region, namely Brunei, Indonesia and Singapore.

And last but not least, Phase III started in 2001 till 2010, began with the introduction of the Financial Sector Masterplan (FSMP) in 2001 which, among other objectives, is to enhance the capacity of the takaful operators and strengthen the legal, Shariah and regulatory framework. The section of the FSMP which relates to Islamic banking and takaful is a roadmap towards realising the aspiration of Malaysia becoming an international centre for Islamic finance. This period has so far witnessed an increased pace of development and competition with the licensing of three new operators. To further promote the development of the takaful industry, the Malaysian Takaful Association (MTA), an association for takaful operators, was established in 2002. The MTA aspires to improve industry self-regulation through uniformity in market practices and in promoting a higher level of cooperation among the players in developing the industry

In a nutshell, Malaysian takaful industry has experienced rapid growth and transformation since its inception 20 years ago. It has grown from an industry comprising of a single player with limited basic products to become a viable industry that has been integrated into the mainstream financial system. This was achieved through the concerted efforts of Bank Negara Malaysia and the takaful operators in developing a dynamic, resilient and efficient takaful industry. The growth of the takaful business can be seen by the increase in public awareness on takaful products coupled with more efficient and diversified distribution channels that will provide greater access to a larger segment of the population.

Do Takaful Agent in compliance with Malaysian Law? By Abdul Hakim bin Ahmad Turmizi

Since Malaysia is mostly populated with Malaysians who are Muslims, the acceptance of Takaful is quite welcoming making the business of Takaful slowly taking place inside the heart of people in Malaysia. According to Malaysian Takaful Association Report on 2020, for the Family Takaful business, the industry has registered RM6.59 billion new business gross contributions in 2020, an increase of 7.0% compared to RM 6.16 billion in 2019. A total of 839,358 new certificates were issued in 2020, an increase of 4.8% compared to 2019. The outstanding achievement of Takaful Business is backboned with numerous takaful agent that assist in making the insurer understand schemes provided and building locals confidence on the legality and benefits of Takaful. This article will be answering the curiosity on whether the Takaful Agent is legally allowed under Malaysia Law and whether an agent is vested with any power in representing the principal.

The definition of agent is defined under Malaysian **Penal Code, section 402A** as any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any company or other person whether as agent, partner, co-owner, clerk of works, engineer, advocate and solicitor, accountant, auditor, surveyor, buyer, salesman, trustee executor, administrator, liquidator, trustee, within the meaning of any Act relating to trusteeship or bankruptcy, receiver, director, manager, or other officer of any company, club, partnership or association or in any other capacity either alone or jointly with any other person and whether in his own name or in the name of his principal or not.

The appointment of an agent by the insurer and broker is significant in the Shari'ah setting, according to the principles of al-wakala (agency). Wakalah is an agency contract. In this relationship, one person selects another to undertake a certain work on his behalf, typically for a specified fee. Using the Wakalah Operational Model as an example, in a wakalah model, participants make a donation or tabarru' to the Takaful fund. The participants will appoint and allow the Takaful operator to act as their agent in managing the Takaful fund as a group. The wakalah usually permits the Takaful operator to act as the participants' agent (Takaful agent) to administer the Takaful fund for both insurance and investment purposes.

Under **section 2 of the Islamic Financial Services Act 2013**, Takaful agent has been defined as a person who solicits or obtains a proposal for a Takaful certificate on behalf of a

Takaful operator, offers or assumes to act on behalf of a Takaful operator in negotiating a Takaful certificate or does any other act on behalf of a Takaful operator in relation to the issuance, renewal, or continuance of a Takaful certificate. Takaful agent has been defined as a person who does all or any of the following:

- (a) solicits or obtains a proposal for a Takaful certificate on behalf of a Takaful operator;
- (b) offers or assumes to act on behalf of a Takaful operator in negotiating a Takaful certificate; or
- (c) does any other act on behalf of a Takaful operator in relation to the issuance, renewal, or continuance, of a Takaful certificate.

Who is eligible to be a Takaful agent? No law has established appropriate guidelines for becoming a Takaful agent. To become a qualified Takaful agent in Malaysia, a person must pass the Takaful Basic Examination (TBE) offered by the Islamic Banking and Financial Institute Malaysia (IBFIM), and registration can be done through any Takaful operator.

In Malaysia, the powers of an agent are governed by the **Contracts Act 1950**, which, among other things, contains Section 181. The general rule is that the principal will not be held accountable for any dealings or transactions carried out by an agent in excess of his or her permitted authority.

These authorities can be divided into three types: express authorities, implied authorities, and common authorities. The law regulating the agent is specified in the **Contracts Act of 1950**, specifically **sections 135 to 191**. Express authority must be required verbally or in writing, and in the event of ambiguity that creates doubts about interpreting the authorizations, the agent can be protected as long as he or she perceives them sensibly, even if not in accordance with the principal's intention in the first place.

Section 140 of the Malaysian Contracts Act 1950 defines implied authority as something that can be drawn from the facts of the case, which is what reasonably could be understood from a spoken, written, or in the ordinary course of business expression. Common authorities, on the other hand, would naturally come with the function or role of the work, something that is regularly conducted within the industry or profession.

Further, power of an agent spelled under **section 141 of the Contracts Act 1950** states that (1) an agent with authority to do an act has authority to do every lawful thing which is necessary in order to do the act; and (2) an agent with authority to carry on a business has authority to do every lawful thing which is necessary for the purpose, or usually done in the course of conducting such business. These are because of their importance in the Takaful sector and their influence on society.

In conclusion, the idea of Takaful agent is valid and legally allowed as it follows principle of agency outlined as provide under **section 402A of Penal Code** and **section 135 to 191 of Contracts Act 1950**. Not only that, but there is also a special clause provide under **section 2 of Islamic Financial Service Act 2013** on the definition of Takaful Agency. As provided, under Contract Act, the power of Takaful Agent is similar to authorities of any agent either express authorities, implied authorities, or common authorities. Hopefully, this paper will clear any misunderstanding on the definition of Takaful Agent power delegated upon the agent throughout any legislations.

UNIVERSITI SAINS ISLAM MALAYSIA

ISLAMIC FINANCE

(LAB5153)

(TASK 2)

PRACTICE OF INSURANCE ON ISLAMIC FINANCE PERSPECTIVE

PREPARED FOR:

PROF. MADYA DR. ZULKIFLI BIN HASAN

PREPARED BY:

AHMAD BADRI BIN MUSTAFFA (1181837)

TLB2/KLB1

In Islamic finance, insurance is not seen as a form of gambling or speculation, as is sometimes the case in conventional finance. Instead, it is seen as a form of mutual assistance and cooperation between participants. Insurance products in Islamic finance typically involve mutual cooperation and risk sharing, and are based on principles such as cooperation, solidarity and mutual responsibility. These principles are based on the concept of 'Takaful', which means mutual guarantee, and is derived from the Islamic term 'Kafalah', which means guarantee. The purpose of these principles is to protect participants from potential losses and to ensure that they are not exposed to unnecessary risk. In Islamic finance, insurance products are typically based on three different models: Wakala (agency) model, Mudaraba (investment management) model and Musharaka (partnership) model. These models are based on the principles of Islamic law and aim to ensure that all parties involved in the insurance process are treated fairly and equitably. In short, insurance products in Islamic finance are designed to promote mutual cooperation and risk-sharing between participants, rather than being based on gambling or speculation. This is in line with the Islamic principle of 'Kafalah', which promotes mutual responsibility and solidarity.

Other than that, insurance also plays a crucial role in Islamic finance in terms of providing security and protection from risks. Islamic law prohibits gambling and speculation, and insurance is seen as a form of risk management and protection from potential losses. In general, insurance products in Islamic finance are based on principles of mutual responsibility and cooperation and aim to ensure that all parties involved in the insurance process are treated fairly and equitably. In Malaysia, a number of insurance companies offer insurance products based on Islamic principles, such as Takaful Malaysia. These products typically involve mutual cooperation and risk sharing between participants and aim to ensure that all parties involved in the insurance process are treated fairly and equitably. Insurance also could be used as a tool to provide protection against potential losses and to encourage people to take precautions and practice risk management. Hence, insurance plays an important role in Islamic finance in terms of providing security and protection from risks.

Furthermore, insurance also plays an important role in Islamic finance as it can be used to provide financing for businesses and individuals who may not be able to access other forms of financing. For example, insurance companies may offer Islamic insurance products such as Takaful, which provides protection against potential losses and encourages people to take precautions and practice risk management. Additionally, insurance can also be used to provide financing to entrepreneurs who may not be able to secure financing from traditional sources. Insurance companies may offer Islamic insurance products such as Takaful, which provide financing to

entrepreneurs who may not be able to secure financing from traditional sources. This could help to promote entrepreneurship, economic growth and development in Islamic countries. Insurance Act 1996 regulates the insurance industry in Malaysia, states that insurance companies must offer Islamic insurance products such as Takaful. Thus, insurance plays an important role in Islamic finance in terms of providing financing for businesses and individuals who may not be able to access other forms of financing.

Bank Negara Malaysia (BNM), the Central Bank of Malaysia, is the regulator of the insurance industry in Malaysia. Insurance Act 1996 regulates the insurance industry in Malaysia, states that insurance companies must offer Islamic insurance products such as Takaful. Furthermore, the Malaysian government has also set up a dedicated Takaful body called Takaful Malaysia Berhad (TMB) to promote the Islamic insurance market and to ensure that Islamic insurance products are properly regulated. TMB is responsible for the regulation and monitoring of all Islamic insurance products and works to ensure that they are in line with the principles of Islamic law. In addition, BNM has also introduced a number of initiatives to promote and develop the Islamic insurance industry in Malaysia, such as offering incentives for the development of Islamic insurance products and encouraging insurance companies to offer Islamic insurance products.

Moreover, insurance is also seen as a form of risk management and protection from potential losses and is an important tool to promote economic growth and development in countries with predominantly Muslim populations. Islamic insurance products are designed to promote mutual cooperation and risk-sharing between participants, and to ensure that all parties involved in the insurance process are treated fairly and equitably. Furthermore, insurance can also be used to provide financing to entrepreneurs who may not be able to secure financing from traditional sources. Thus, insurance plays an important role in Islamic finance in terms of providing security and protection from risks, encouraging risk management, and providing financing for businesses and individuals.

To conclude, insurance plays an important role in Islamic finance in terms of providing security and protection from risks, encouraging risk management, and providing financing for businesses and individuals. Insurance products in Islamic finance are typically based on principles of mutual assistance and cooperation and aim to ensure that all parties involved in the insurance process are treated fairly and equitably. Furthermore, Islamic insurance products are regulated by the Malaysian government and the Central Bank of Malaysia, and a number of initiatives have been

introduced to promote and develop the Islamic insurance industry in Malaysia. Hence, insurance is an important tool for promoting economic growth and development in countries with predominantly Muslim populations and is seen as an important part of Islamic finance.

Issues Affecting the Takaful Industry

By: Anis Azimah Bt Azizan (1181833)

Insurance is a financial need of life since individuals are increasingly vulnerable to a range of risks and uncertainties in their settings. Death, incapacity, injury, disease, or property damage as a result of tragedy can happen to anybody at any moment. Insurance obviously cannot prevent these unfortunate events from happening, but it may provide financial assistance to lessen the weight of the damages which results from such occurrences. In contrast, the presence of prohibited elements in conventional insurance has inspired Muslim scholars to suggest Takaful as an alternative for traditional insurance.

The Shariah law prohibits conventional insurance because it contains elements of uncertainty (*gharar*), interest (*riba*), and gambling (*maysir*). Takaful can be defined under Section 2(1) of the Islamic Financial Services Act 2013 as an arrangement based on mutual assistance under which takaful participants agree to contribute to a common fund providing for mutual financial benefits payable to the takaful participants or their beneficiaries on the occurrence of pre-agreed event. This shows that Takaful serves as a means for individuals, particularly Muslims, to prepare for any potential unfavourable event in their everyday lives and to reduce the dangers that may arise.

Takaful is formed based on the concept of *tabarru'* (donation) and *ta'awun* (mutual cooperation) in line with Shariah compliance. As takaful is gradually integrated into daily life activities, there are also some concerns that arise related to takaful. The entity of the takaful operator is one of the concerns. Since takaful is based on the concept of mutual assistance and contribution, there is a research being conducted to determine if takaful can be a business or a charity. In the research, it was discovered that takaful may serve as an alternative to insurance and that it can operate as a company, not a charitable organisation. Since takaful is a potential business entity, managing risk may become as part of its operations.

Furthermore, there is also an issue regarding the validity of Hibah in takaful. Hibah can be referred as a 'gift'. The issue arises is whether the insured money may be given as Hibah or distributed through faraid when the participant died. Some of the Muslim scholars are on the view that the insured amount is part of the participant's asset, thus it must go by means of faraid. In contrast, there is also opinion from another scholars that the insured amount is not part of the participant's asset. This is because the contribution of the participant is to lessen the

burden suffered due to the losses of fellow participants, thus it should be appropriately regarded as an obligation upon the Takaful fund to pay on behalf of other participants.

Other than that, naming a person or persons to receive the takaful benefits granted to the participant by the certificate in the case of the participant's death is one of the processes in takaful. This raises the question of whether the participants may nominate anyone according to his/her preferences or there is some restriction on this matter. By referring to the issue of hibah before, if the takaful benefits are considered as the participant's asset and the distribution is by way of faraid, then only those who are legal heirs may apply. However, if the takaful benefits can be considered as hibah, the participant may nominate any persons either they are legal beneficiaries or not, to receive the takaful benefits.

In addition, takaful industry also involve the issue of surplus distribution of the takaful fund. Surplus distribution is the process of dividing the underwriting surplus and investment income between the takaful operator and its participants at the end of the certificate term based on an agreed-upon sharing ratio. Since there is a concept of *ta'awun* which give a mutual guarantee for potential risks, surplus may be an issue on how to manage if the risks are handled through risk transfer or indemnity. There is a study conducted which resulted two different opinions. The first opinion is absolutely forbids the takaful operator and participants from sharing the underwriting surplus, while the second view allows the sharing using ratios that vary depending on the product line being supplied.

In the situation where the takaful operator use the Mudharabah model in takaful products, the remaining principle capital must be returned to the capital supplier whether there is profit or loss. Currently, the surplus is what is left over after claims have been paid out of the total risk fund which includes the remaining capital and the takaful operator and the participant are sharing the profit and the principal amount. It shall be that the takaful operator is only entitle for the profit, as the principal amount must be return back to the participant.

As a conclusion, comparing to other areas of the financial industry, Takaful industry in Malaysia is relatively new, but it has experienced rapid growth. Although the Takaful industry is quickly expanding, it still confronts certain significant difficulties raised by Shariah scholars that may have an impact if not addressed. Therefore, it is appropriate to build a discussion mechanism to address such issues through numerous ideas, so that Malaysia can be promoted as a takaful hub throughout the entire world.

HOW TO REACH THE POTENTIAL NON-MUSLIMS TAKAFUL CLIENTS?

Written by Arina Amiruddin | 1182523 | KLB2 | TLB8

The trend of the takaful market grew 17% globally with assets of USD73 billion from 2021 despite the pandemic according to the Islamic Finance Development Indicator (IFDI) Report (2022). A digit that marks a rising competitor to its counterpart, conventional insurance. It was also reported that there are 335 takaful providers worldwide in 47 countries, with more operators in the making such as Philippines and Tanzania. These new markets illustrate that the demand of Takaful is not only exclusive to the Muslims majority countries, but it also penetrates the non-Muslim majority countries. It was estimated that about 20% of the global Takaful revenues come from the non-Muslim consumers (Ibrahim, 2008). Malaysia, a country with diverse ethnicities and multi religion, comes as the third largest takaful asset owned, of USD12 billion. While there is significant growth of non-Muslim consumers in Malaysia, it still bears the stigma and misconception surrounding Takaful products.

What, if anything, dissuades non-Muslims from choosing Takaful in favour of interest-based insurance? There are few factors which influence the preference of the non-Muslim. One frequent explanation is implied by the word "takaful" itself. Its Arabic flavour gives off the impression that only Muslims can understand it. When in reality, most Muslims themselves are not certain and only few are well versed with the idea and concept behind it. The root of this word is the Arabic verb *kafalah*, which means "to help one another" or "mutual guarantee" (Safder, et. al, 2010). This word, unlike the idea that it may literally translate as insurance, is in fact, the best word to represent a takaful product, especially in demonstrating its key elements of "helping" such as the concept of takaful fund and surplus sharing.

Just like how branding affects the public as the first impression is only based on the outer cover, an article written by Tharmini Kenas (2019) listed three other superficial misconceptions that hinder the non-Muslim to subscribe to Takaful. Those include the idea that by default that an Islamic product is for Muslim and non-Muslim have to opt for conventional insurance, the security of takaful which might be lacking in comparison to conventional insurance and that takaful is a religious matter in which the standards or procedures would not follow the norms of the conventional business. It is apparent that these misconceptions are derived from the lack of education and awareness of the consumers. On the other hand, it might be due to the boundary and religious tolerance. The non-Muslims opt not to choose Takaful because of their strong belief they misunderstood that Takaful is only meant for Muslims and it is more suitable for them to purchase conventional insurance with their belief (Rusni et al, 2018).

On the bright side, several solutions may be implemented by the Takaful companies to address the said issues. Firstly, the reconstruction of takaful agents and their training. The personality of a Takaful agent is very important to ensure any potential customers to participate in Takaful (Aziz et al., 2016). It is the agent's duties to represent the Takaful concept, assess the understanding of their potential clients and educate them on the benefits of Takaful. Furthermore, it is a vital aspect of an agent to maintain a good professionalism. An ethical agent might promise sales

performance since every policy begins with the client's initial impression of the agent. (Pui Yee L. et al., 2018). In this situation if the agent is unethical, the number of complaints will increase. It is also significant that the agent must know the basics of other religions and its beliefs in order to cater to their perceptions.

Another crucial angle is the marketing itself must be robust and informative. The approach will make them interested and more aware of what Takaful is. Today, it can be observed how the influence of word-of-mouth and social media ads progressively alters people's opinions. A click away to increase awareness is a step that must not be overlooked. Salman et al., (2017) found that the fact that conventional insurance practices entail risk, gambling, and interest is unknown to non-Muslim insurance policy holders. Due to this ignorance, the majority of non-Muslims do not think such insurance activities violate their religious beliefs and are supposed to be prohibited such as Christian and Jews. Takaful companies need to be more proactive in planning marketing strategy to educate the public, making it less stigmatised. When a non-Muslim has sufficient knowledge and is confident in the effectiveness of takaful, they are more likely to choose it (Pui Yee L. et al., 2018).

Takaful is a business product, not a religious one, to sum up. Anybody can use it, regardless of their religious beliefs. It contributes significantly and enormously to the financial sector. It also offers greater value-added substance than insurance, making it the best option for anybody looking to safeguard their finances for risk management.

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INDIVIDUAL ARTICLE:

MEDICAL TAKAFUL: A PREPARATION FOR EMERGENCY SITUATION

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MEDICAL TAKAFUL: A PREPARATION FOR EMERGENCY SITUATION

A proverb "thatch your roof before the rain begins" is appropriate to describe the use of medical takaful in emergency times such as accidents, critical illness, death and the rising cost of hospital treatment. People need to be aware of the importance of medical takaful and should immediately join a takaful plan to avoid regret in the future. Medical takaful is a type of protection plan that reimburses medical costs caused by illness or accident. When a person undergoes hospital treatment, there are many costs that he or his family members have to bear. If there is no medical takaful, the individual or his family will have to bear the costs of the treatment which may take a lot of cost. Therefore, medical takaful is a necessity and also a preparation for our finances when facing this kind of situation. The concept of takaful is that individuals who want to participate in medical takaful must contribute a certain amount of donations to a fund which is based on the concept of *tabarru'*. The funds are managed by the takaful operator and will then be distributed to the participants according to the participant's needs in a case of misfortune. If there is a surplus from the fund, it will be distributed based on the agreed ratio and after all the obligations of the participants are fulfilled. However, if our current financial situation does not allow us to make the contributions, we do not need to worry because the takaful operator will analyse our financial status and suggest us a takaful plan that suits our current financial situation.

In medical takaful, participants will have a medical card that applied according to their respective financial capabilities. This card will allow us to receive treatment at any hospital that becomes panel to our takaful company. Besides, there are many different types of services offered by the medical cards for various health issue and the people can subscribe to medical card according to their financial ability and preference period which are for a lifetime or a short period. Moreover, anyone who interested in obtaining a medical card is encouraged to do at a young age and in good health. This is because the age factor affects the eligibility of the medical card application, and if we apply at older age with diseases such as diabetes or heart disease, our application may be rejected and although, if we have good health in old age, this age factor also affects the monthly takaful payment because the risk will be higher as we get older.

Among the benefits of participating in medical takaful is that we could manage the rising of the medical costs. As we all know, following the COVID-19 pandemic, all institutions including health institutions are still in the recovery phase and experiencing inflation which will certainly

have an impact on the rising of the medical costs. This can be avoided with medical takaful which covers all medical and treatment costs while the patient is in hospital. The patient or his family do not have to worry about paying medical costs for the treatment. In addition, we no longer need to borrow from our friends or use EPF savings and other ways in order to finance our treatment at the hospital. In addition, medical takaful can also ensure that we get treatment immediately at the hospital. This is because we can choose treatment at private hospital that can provide services quickly since we are already covered by medical takaful. As we can see, the government hospitals usually are always occupied with patients and they have to wait for a long time for their turn to receive treatment. Meanwhile, it is a different situation in private hospitals where we will get treatment immediately even if it requires high cost but the good news is it will be covered by the medical takaful. Moreover, people who are government employees think that when they seek treatment at a government hospital, their medical and treatment costs will be borne by the government. Nonetheless, the government will only bear the normal treatment costs or half of the treatment and we will still bear the treatment costs when it comes to critical cases and large treatment costs.

Many of us also still think that the coverage offered by the employer at work has covered our needs including medical coverage for life. However, it should be remembered that when we quit the job, all of the coverage will also stop. Therefore, we should take our own initiative by making a long-term plan which is to make personal medical takaful that can secure our finances when facing situations that are beyond our control such as critical illness and accident. Besides, parents should also take the medical takaful for their children in order to guarantee their child's well-being. The kids are normally susceptible to infectious diseases which will require hospital treatment and also medical costs. There are also children who are less fortunate because they face diseases at a young age and have to go back and forth to the hospital in order to get treatment. Thus, medical takaful can help the parents to bear the cost of their child's treatment.

Furthermore, in Malaysia, there are many agencies that offer medical takaful services such as Etiqa General Takaful Berhad, Zurich Takaful Malaysia Berhad, Takaful Ikhlas General Berhad, Prudential BSN Takaful and others. These agencies offer various packages and options that provide medical and health benefits for people. Therefore, the choice lies in our hands to make plans with takaful for a long period of time and further guarantee the stability of our life in the

future. In Islam as well, we are required to choose medical takaful because it is an alternative to conventional insurance that does not comply with shariah and it is part of Islamic finance. This can be seen when takaful does not contain any elements of *maisir*, *riba* and *gharar* which these elements are in conflict with Islamic financial principles. Therefore, takaful insurance is *halal* for the Muslim community to apply in order to protect their finances for future use.

All in all, medical takaful is very important to have on hand in case of an emergency at any time. We could not guarantee that we and our family will not be suspected of health problems or accidents in the future which it will require huge costs of treatment. Besides, in today's volatile economic climate, the cost of living is rising, as is the cost of our health-care system. Therefore, we should be acknowledge with the medical takaful for our financial planning in the future and immediately made a change from participating in conventional insurance that does not comply with shariah to the takaful insurance.

(1103 WORDS)

INSURANS KONVENSIONAL VS TAKAFUL

by Deena Nur Najwa Ab Rashidi,

TLB 6, FSU, USIM

on 3/2/2022.

Insurans sepertimana yang dipraktikkan di dalam sistem kewangan konvensional adalah merujuk kepada sistem perlindungan kewangan yang melibatkan pelaksanaan kontrak insurans di antara pihak insurans dan penanggung insurans, di mana pihak insuran bersetuju untuk menjamin risiko terhadap kontrak-kontrak tersebut.

Takaful pula bertindak sebagai alternatif kepada Insurans Konvensional. Istilah Takaful berasal daripada perkataan '*kafalah*' yang bermaksud tanggungjawab atau jaminan. Takaful boleh diertikan sebagai jaminan bersama, perkongsian tanggungjawab ataupun perkongsian jaminan. *Seksyen 2 Akta Perkhidmatan Kewangan Islam 2013* menakrifkan '*Takaful*' sebagai '*Aturan berdasarkan bantuan bersama di bawah peserta takaful, yang mana bersetuju untuk menyumbang kepada dana bersama, menyediakan manfaat kewangan bersama, yang perlu dibayar kepada peserta takaful atau benefisiari mereka apabila berlaku peristiwa yang telah dipersetujui*'.

Perbezaan antara Takaful dan Insurans Konvensional

1. Jenis Kontrak

Jenis kontrak yang digunakan dalam Takaful ialah gabungan kontrak *tabarru'* dan agensi dan/ atau kontrak perkongsian untung manakala Insurans Konvensional menggunakan kontrak pertukaran (jual beli) antara pihak insurans dan penanggung insurans.

2. Kewajipan peserta/ pemegang polisi

Dalam Takaful, peserta bertanggungjawab untuk membuat caruman kepada skim ini dan dijangka lebihan "surplus" bersama. Manakala di dalam Insuran

Konvensional, pemegang polisi terikat dengan kewajiban untuk membayar premium kepada pihak insurans.

3. Kewajipan pengendali/ pihak insurans

Pengendali Takaful bertindak sebagai pentadbir dana takaful dan membayar faedah daripadanya. Sekiranya terdapat sebarang kekurangan dana, pengendali takaful mesti menyediakan pinjaman tanpa faedah untuk memperbaiki kekurangan tersebut. Manakala pihak Insurans Konvensional bertanggungjawab untuk membayar faedah seperti yang dijanjikan daripada dana insurans dan/ atau dana pemegang saham.

4. Keuntungan yang diperoleh oleh pengendali takaful/ pihak insurans

Pengendali takaful mendapat pulangan kerana menyediakan perkhidmatan menguruskan program takaful and daripada skim perkongsian untung *mudharabah* sebagai *mudharib*. Manakala syarikat insurans mendapat keuntungan apabila terdapat lebihan pengunderaitan.

5. Nilai balas ('iwad)

Di dalam Takaful, nilai balas ialah usaha dan/ atau aku janji risiko. Manakala dalam Insurans Konvensional, tiada nilai balas yang sah dan jelas. Sumber keuntungan adalah dengan menjangka (berharap) bahawa masa depan yang tidak menentu akan memihak kepada mereka (berharap jumlah premium melebihi nilai tuntutan).

6. Komponen ganti rugi

Di dalam Takaful, komponen ganti rugi adalah berdasarkan sumbangan bersama dan derma timbal balik (*tabarru'*). Manakala dalam Insurans Konvensional, komponen ganti rugi ialah hubungan komersial antara syarikat insurans dan penanggung insurans.

7. Hubungan antara pihak insurans dan penanggung insurans

Di dalam Takaful, tiada hubungan yang diinsuranskan oleh penanggung insurans antara pengendali takaful dan peserta. Peserta bertindak sebagai penanggung insurans dan pihak insurans secara serentak. Manakala terdapat hubungan antara pihak insurans dan penanggung insurans yang jelas dalam Insurans Konvensional.

8. Pelaburan dana

Dana Takaful mestilah dilaburkan dalam instrumen patuh syariah. Manakala tiada sekatan ke atas pelaburan dana dalam Insurans Konvensional.

Mengapa Insurans Konvensional Dikatakan Tidak Patuh Syariah?

Pendekatan semasa untuk mengurangkan risiko adalah untuk membeli polisi insurans di mana pihak yang diinsuranskan memindahkan risiko kepada syarikat insurans yang, sebagai pertukaran untuk premium, menerima tanggungjawab untuk menanggung rugi pihak yang diinsuranskan sekiranya risiko yang diinsuranskan menjadi kenyataan. Kaedah pengurangan risiko ini telah diisytiharkan sebagai *haram* oleh kebanyakan Sarjana Islam kerana ia secara kontrak mengandungi unsur *haram* seperti *riba'*, *gharar* dan *maysir*.

1. Unsur *Riba'* (Faedah)

Dalam Insurans Konvensional, jumlah wang yang diterima oleh pihak yang diinsuranskan, sama ada semasa kejadian yang diinsuranskan atau apabila polisi matang, kebanyakannya melebihi jumlah premium yang penanggung insurans sebenarnya sudah bayar. *Riba'* adalah jelas kerana tidak ada persamaan antara jumlah ansurans yang dibayar oleh pihak yang diinsuranskan dan pampasan yang dibayar oleh syarikat insurans. Apa yang sebenarnya dibayar oleh syarikat mungkin lebih, kurang atau sama dengan yang dibayar oleh pihak yang diinsuranskan dan kesaksamaan adalah sangat tidak mungkin. Lebih-lebih lagi, memandangkan pembayaran ditangguhkan, pampasan yang lebih besar daripada ansuran yang dibayar oleh pihak yang diinsuranskan merupakan *riba'* berlebihan (*riba al-faql*) dan *riba'* kredit (*riba al-nasi'ah*).

2. Unsur *Gharar* (Ketidakpastian)

Gharar atau ketidakpastian dalam perundangan Islam merujuk kepada penipuan; penipuan yang bertujuan; serta kejahilan tentang objek jualan dan tidak dapat

diserahkan objek tersebut. Profesor al-Zarqa' mendefinisikan *gharar* sebagai 'penjualan barang berkemungkinan yang tidak pasti kewujudan atau ciri-cirinya; oleh itu kerana sifat berisiko ini menjadikannya serupa dengan perjudian'. Para fuqaha Islam sebulat suara dalam melarang penjualan yang melibatkan *gharar*. Larangan ini berdasarkan hadis sahih Rasulullah (SAW) yang diriwayatkan oleh Muslim, Abu Dawud, al-Tirmizi, al-Nasa'i dan Ibn Majah dari Abu Hurairah, di mana Rasulullah (SAW) telah mengharamkan jual beli *gharar*.

Walau bagaimanapun, fuqaha' membuat perbezaan antara dua jenis *gharar*: (a) *gharar fahish* (substantial), dan (b) *gharar yasir* (remeh). Walaupun yang pertama adalah dilarang, yang kedua diterima kerana ia mungkin tidak dapat dielakkan tanpa menyebabkan kerosakan yang besar kepada salah satu pihak. *Gharar fahish* ialah ketidakpastian yang berlebihan dan ketara seperti menjual aset yang tidak boleh dihantar atau menjual sesuatu yang bukan milik, oleh itu, ianya dilarang.

Kontrak insurans mempunyai unsur *gharar* apabila ia sering terlibat dengan perkara yang meragukan dan tidak pasti. Elemen *gharar* wujud dalam kedua-dua polisi insurans hayat dan am, di mana subjek kontrak atau *ma'qud 'alayh* tidak pasti sehingga peristiwa yang diinsuranskan berlaku.

3. Unsur *Maysir* (Perjudian)

Maysir atau perjudian melibatkan kedua-dua harapan keuntungan dan juga ketakutan kerugian. Islam melarang segala jenis perjudian dan permainan peluang. Ini berdasarkan nas-nas yang jelas dalam al-Quran. Sebagai contoh:

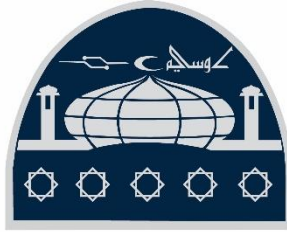
“Wahai orang-orang yang beriman! Bahawa sesungguhnya arak, dan judi, dan pemujaan berhala, dan mengundi nasib dengan batang-batang anak panah, adalah (semuanya) kotor (keji) dari perbuatan Syaitan” (QS. 5:90).

Sifat insurans dikatakan mengandungi unsur *maysir* kerana pemegang polisi dianggap sebagai premium pertaruhan dengan syarat pihak insurans akan membuat pembayaran (indemniti) bergantung kepada keadaan peristiwa tertentu. Sebaliknya,

pihak yang diinsuranskan tidak mendapat apa-apa daripada premiumnya jika kejadian yang diinsuranskan tidak berlaku sama sekali.

Kesimpulan

Disebabkan kewujudan elemen-elemen yang *haram* yang terdapat dalam Insurans Konvensional, *Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia Kali Ke-80* yang bersidang pada 1 - 3 Februari 2008 telah memutuskan bahawa hukum mengambil dan melanggan Insurans Am termasuklah insurans kereta adalah tidak diharuskan oleh Islam. Umat Islam mestilah beralih kepada model perniagaan Takaful yang berasaskan tabarru' dan wakalah yang difatwakan harus oleh *Majlis Penasihat Syariah* pada mesyuarat ke-24 bertarikh 24 April 2002.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

LAB5153

ISLAMIC FINANCE (A221)

INDIVIDUAL ASSIGNMENT:

THE DEVELOPMENT OF *TAKAFUL* IN MALAYSIA

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THE DEVELOPMENT OF TAKAFUL IN MALAYSIA

Along with the development of the times, humans are required to protect themselves from any risk, loss or damages that they might occur in the future such as death, disability, injury, sickness or damage of property. Therefore, with the growth of the demand, the financial system has later introduced a concept known as insurance to help with the protection of human civilization, which by time has played an important and significant role in the daily lives of people.

However, as Muslims, as decreed issued by the Malaysian National Fatwa Committee ruled that life insurance in its present form is a void contract due to the presence of the elements of uncertainty (*Gharar*), usury (*Riba*) and gambling (*Maisir*). Therefore, in 1982, the Islamic financial system created a Special Task Force and has come up with a new concept in order to substitute the conventional insurance, which also known as *Takaful*.

Takaful, which was derived from an Arabic word '*kafalah*' can be defined as joint guarantee or guaranteeing each other, whereby a group of participants agree to jointly guarantee among themselves against a defined loss. As encouraged by the Prophet Muhammad ﷺ,

“The one who looks after and works for a widow and for a poor person (dependent), is like a warrior fighting for the cause of Allah ﷻ, or like a person who fasts during the day and prays throughout the night”

In other words, the participants will subscribe to the product and contribute a sum of money (*Tabarru*) to deliver a joint guarantee that they will be protected against any misfortune that can incur a physical or economic loss to the participants. If any of the member experience any loss or damage, he shall receive compensation from the fund. In order to help with the fund, a *Takaful* operator shall be appointed to run the operation commercially as a business venture for profit and making sure that the product is complying with the Shariah principle. In Malaysia, there are various *Takaful* operators such as AIA Public Takaful Bhd, Etiqa Family Takaful Berhad and Prudential Takaful Berhad.

This means that, *Takaful* are bound to follow Islamic Shariah principles. Unlike the normal conventional insurance which has already integrated in the daily life activities, *Takaful* avoid prohibited elements such as interest, uncertainty and gambling in its product since it will not provide fairness to all the participants. Nevertheless, *Takaful* is suitable for anyone, regardless of religion since it offers an ultimate solution for anyone seeking financial protection from any predetermined hazard.

The similar system to *Takaful* has been introduced in the earlier days of pre-Islamic period with the practices of Arab tribes such as the system of *Al-Diyah*, which is an annual contribution into a fund called *Al-Kanz* to pay the blood money. Other than that, there is also a system known as *Ma'qil*, a fund designed to pay ransom money for abducted members of a tribe. Along the time, with various creation of Islamic institutions, the *Takaful* industry has been established around the globe, including Malaysia, which then leads to the enactment of the Takaful Act 1984 in order to govern the *Takaful* industry.

In 2010, the *Takaful* industry has grown radically and has introduced a few takaful models in Malaysia which includes *Mudharabah* takaful model and the *Wakalah* model. Firstly, *Mudharabah* is a deal between a capital supplier (*Rab al-Mal*) and a business individual (*Mudarib*) through which the capital supplier offers wealth to be managed by the business individual and any profit made will be divided between them. Malaysia has been the first *Takaful* company to demonstrate the success of *Mudharabah* model as profitable for both participants and shareholders.

As for *Wakalah* model, one party shall provide funds while the other shall manages it. Under *Wakalah*, the other party receives fixed payment instead of profit sharing in managing the funds. This can be seen in the practice of *Takaful* Berhad and *Takaful* Ikhlas where the participants will offer their wealth in the form of a contribution, and such contribution will be managed by the *Takaful* operator. Concurrently, the *Takaful* operator shall have a supplementary fixed fee for his service in managing the funds.

Additionally, there are two types of *Takaful* products namely the General *Takaful*, where the products' scope includes Personal Accident *Takaful*, Home *Takaful* and Motor *Takaful* and also the Family *Takaful*, which includes a typical reserve fund,

such as Child Education *Takaful* or Medical and Health *Takaful*, designed to fulfil a participant's future financial position he wishes to attain or be passed down to any beneficiary if he passes away.

CONCLUSION

As a conclusion, *Takaful* forms an important aspect in a human's life. Based on *Surah Ar-Rad*, Verse 11, Allah ﷻ said that:

“Verily never will Allah change the condition of a people until they change it themselves”

Therefore, with full support from the government and Bank Negara Malaysia, it is possible for *Takaful* industry in Malaysia to achieve another milestone. With utilizing its potential and capability completely, it may create awareness among Malaysian consumers regarding *Takaful* products.

(884 words)



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A COMPARISON BETWEEN TAKAFUL AND CONVENTIONAL INSURANCE

One of the key elements in a well planned financing of a person is by having a monetary protection if an unfortunate incident happens to them. When it comes to this topic, most people will have heard about Takaful and Insurance. Most people in Malaysia may not have realised or known that both these terms are different, though they may be similar in some aspects. However, there are various differences between Takaful and Insurance that must be taken note of, especially among the Muslims.

Before we know the difference between Takaful and Conventional Insurance, we have to know what the meaning of those two terms is. Takaful, also known as Islamic insurance, is an alternative form of insurance that is based on the principles of mutual cooperation and mutual protection. It operates on the principle of shared responsibility and is based on the concept of "takaful" or mutual guarantee. Instead of an insurance company, a takaful operator manages the fund and distributes any profits among the participants.

The concept of Takaful is rooted in Islamic teachings and is based on the principle of mutual assistance, cooperation and solidarity among members of a community. It is a concept that has been derived from the Arabic word "Kafalah" which means "to take care of one another" or "to guarantee one another." Takaful is based on the principle of mutual cooperation and shared responsibility, where the members of the community contribute money to a common pool, which is then used to compensate those who suffer losses.

In a Takaful system, the participants contribute money to a common pool, which is then managed by a Takaful operator. The operator acts as a trustee of the fund and is responsible for investing and managing the money in a way that is consistent with Islamic principles. The operator is also responsible for distributing any profits among the participants and ensuring that the fund is being used for its intended purpose.

One of the key differences between Takaful and conventional insurance is that Takaful operates on the principle of mutual cooperation and shared responsibility, while conventional insurance is based on the principle of indemnity. In conventional insurance, the insurer agrees to compensate the insured for any loss or damage in exchange for a premium. The insurer assumes the risk and manages the fund, and any profits are retained by the company. In Takaful, the participants share the risk among themselves, and the profits are distributed among the participants. This means that the participants have a vested interest in the success of the fund and are more likely to take steps to minimize their risk. For example, they may be more likely to take steps to prevent losses, such as installing security systems, because they know that any losses will ultimately impact their own profits.

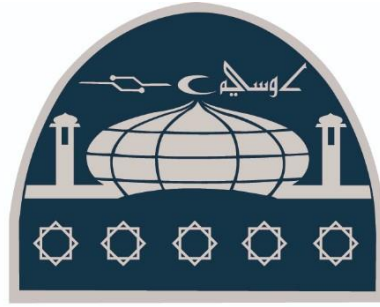
Another key difference between Takaful and conventional insurance is that Takaful is based on Islamic principles and is subject to Islamic laws and regulations. This means that Takaful is not allowed to invest in businesses or activities that are considered haram (forbidden) under Islamic law, such as gambling or the production of alcohol. In Takaful, the investment of funds is done in a way that is consistent with Islamic principles, such as investing in socially responsible or ethical investments. This means that the funds are invested in a way that is consistent with the values and principles of the participants, which can provide a sense of security and peace of mind.

Takaful also prohibits any form of interest (Riba) and any speculation (Gharar) in its operation and investment. This is a fundamental difference between Takaful and conventional insurance, as interest and speculation are commonly used in conventional insurance to generate returns. In addition, Takaful prohibits any form of uncertainty (Gharar) in its contracts. This means that the terms and conditions of the contract must be clear and specific, and that the participants must have a clear understanding of the risks and rewards involved.

One way Takaful can attract more clients is by increasing awareness and education about the benefits and unique aspects of this form of insurance. Takaful also has the potential to attract more customers by expanding the range of products and services offered. Additionally, by increasing transparency and customer service, Takaful operators can build trust and satisfaction among clients. Investing in technology and digital platforms can also make it easier for clients to access and manage their Takaful policies. Takaful operators can also increase their reach and impact by collaborating and partnering with other companies and organizations.

Furthermore, Takaful can be made more accessible to people from different backgrounds and cultures by providing more options and flexibility. Additionally, Takaful can be marketed as a more socially responsible form of insurance by investing in socially responsible or ethical investments. Takaful can also attract more clients by developing new and innovative products and services. Additionally, Takaful should be marketed as a more professional form of insurance, and more efforts should be made to attract and retain talented and experienced professionals to work in the Takaful industry. Finally, Takaful operators should be subject to the same level of regulation and oversight as conventional insurance companies, this will help to build trust and confidence in Takaful among potential clients.

In conclusion, takaful and conventional insurance are two distinct models of insurance that operate on different principles. Takaful is based on the principles of mutual cooperation and shared responsibility, and is compliant with Islamic law, while conventional insurance is based on the principle of indemnity. The two models have different operations, investment activities, and are subject to different laws and regulations. Takaful is considered more transparent and fairer, and policyholders are actively involved in the management of the pool, which gives them a say in how the funds are managed, and they have a vested interest in the success of the pool.



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THE DEVELOPMENT OF TAKAFUL IN MALAYSIA

Takaful industry in Malaysia started to develop rapidly in the 1980s whereby the Muslim communities at that time needed an alternative for conventional insurance. This concern arose from the decision made by the Malaysian National Fatwa Committee whereby it was ruled that conventional life insurance does not comply with Shariah principles which prohibits uncertainty, interest and gambling. Hence, it took two years since the establishment of a Special Task Force for the government to pass a legislation called as Takaful Act in 1984. This is called as Phase I in developing Takaful industry in Malaysia. In November 1984, Malaysia incorporated its first Takaful operator. The Takaful Act was passed to regulate how Takaful business is conducted and calls for Takaful operators to register. Additionally, it calls for the creation of Shariah Committees to guarantee that a Takaful operator's commercial operations always adhere to Shariah principles.

From 1993 until 2000, there was a competition when another Takaful operator was introduced. This was during Phase II of the development of Takaful industry. During this time, there was also a rise in regional Takaful operators' cooperation, as seen by the 1995 formation of the ASEAN Takaful Group and the 1997 launch of ASEAN Re-Takaful International (L) Ltd. This has made it easier for Takaful operators in Malaysia and the surrounding countries of Brunei, Indonesia, and Singapore to make re-Takaful (reinsurance) arrangements.

The Financial Sector Masterplan (FSMP), which among other things aims to reinforce the legal, Shariah, and regulatory framework, was introduced in 2001, marking the start of Phase III of the project. The FSMP's section on Islamic banking and Takaful serves as a road map for achieving Malaysia's goal of becoming a hub for Islamic finance on a global scale. The licensing of three additional operators has so far resulted in a faster rate of development and competition. The Malaysian Takaful Association (MTA), an association representing Takaful operators, was set up in 2002 to help enhance the development of the Takaful sector.

There are many operational models adopted by Takaful operators which are Mudharabah, Wakalah and Waqf. Some Takaful operators emerge two of the three models into a hybrid model.

In Mudharabah, participants take on the role of rabbul mal (capital providers), while the Takaful operator assumes the role of mudharib (entrepreneur). The contract outlines the

distribution of the Takaful operations' surplus between the participants and the Takaful operator. As the capital provider in this sort of contract, participants are responsible for losses. However, in order to safeguard the interests of the participants, Takaful operators are required to follow by prudential regulations, which include offering interest-free loans to the Takaful risk funds in the event that there is a shortage in those funds.

The Wakalah model is used in the business operations of the other two operators. In essence, the Wakalah concept is an agent-principal arrangement in which the Takaful operator works as an agent on behalf of the participants and receives payment in exchange for the services provided. The fees may be set at a fixed sum or determined by an agreed ratio of investment profit or Takaful fund surplus.

However, Wakalah and Mudharabah models by itself do not have commercial value to attract clients because there is no sharing of surplus. Therefore, the original models have subsequently been conceptualized so that the operator is eligible for a share of the underwriting surplus based on performance. A new model known as the "Hybrid model" that combines Mudharabah and Wakalah was created in reaction to the strong and significant criticism for their use of the performance fee.

In "Hybrid model", the participants' funds are divided into two pools namely the Participants Risk Fund (PRF) and the Participants' Investment Fund (PIF). The Wakalah contract is used in the model to control the operator's management of the PRF. On the other hand, the operator's administrative duties for the PIF are specified in the Mudharabah contract. The operator is entitled to a predetermined fee in exchange for managing the PRF and distributing the PIF profit.

Another Takaful model is known as the Waqf Model, and it entails using a Waqf fund that was created by donations made by the shareholders of a Takaful operator, while the participants contribute a portion of the Fund's endowment. Waqf is thus funded by two sources: a fund created by the shareholders and another one discovered by the participants. The Takaful operator serves as a Wakil for shareholders and remuneration participants throughout the process. A performance fee and a Wakalah fee are due to the operator. This form of operation can be compared to a hybrid of the Waqf and Wakalah contract.

Malaysia is the largest contributor to the ASEAN region's Takaful industry, which contributed USD 4.2 billion to the gross Takaful contribution in 2014 and was anticipated to

reach USD 6.4 billion in 2016. With almost three-quarters share (71%) of the ASEAN region's gross Takaful contributors, Malaysia is now the leading nation in Takaful.

In Malaysia, conventional insurance continues to hold a significant portion of the market, with the Takaful sector's market share only being 20% in 2017. According to The Malaysian Reserve in 2019, this latter is growing more quickly as a result of the government's push for reasonably priced insurance and more specific regulations.

Malaysia has made further steps to promote the development of the worldwide Takaful industry, either through management participation or equity. For instance, to lead the development of Takaful and Re-Takaful investments between the nations of the Organisation of Islamic Conference (OIC), the government has signed a Memorandum of Understanding (MoU) with the Islamic Development Bank. In an effort to impart its knowledge and experience to other member nations, Malaysia has also been holding a number of seminars and workshops on Takaful.

In conclusion, an Islamic financial system comprises of three core components which are Islamic banking, Takaful, and Islamic money and capital markets. The rapid growth of the Takaful industry in Malaysia is due to the increase of public awareness about the effectiveness and security offered by the Takaful operators. Subsequently, Bank Negara Malaysia (BNM) has been working to narrow the regulatory gaps by establishing a Takaful regulatory framework and promoting it to be one of the world's most advanced Takaful industry.



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FACULTY OF SYARIAH AND LAW

LAB 5153

ISLAMIC FINANCE

INDIVIDUAL ASSIGNMENT

THE IMPORTANCE OF TAKAFUL IN 2023

INSTRUCTOR'S NAME

ASSOCIATE PROFESSOR DR ZULKIFLI HASSAN

CLASS

KLB 2/TLB 7

PREPARED BY

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THE IMPORTANCE OF TAKAFUL IN 2023

The contemporary economy has been impacted by inflation and price increases for necessities and basic goods in many different ways from the year 2022. This is in response to the several events that occurred last year, one of which being the global-reaching conflict between Russia and Ukraine in which has affected basic supplies all around the world. According to the World Bank Group's annual estimates, the world economy might experience a recession and one of the slowest rates of development ever in 2023, following a year marked by increased inflation, deteriorating financial circumstances, and Russia's invasion of Ukraine.

As the cost of essential commodities rises steadily but employee and staff salaries stay the same each month, people are hardly able to meet its demands. If an unexpected event, such a medical emergency or accident, arises, there is a good chance that the costs will be substantial and that they won't be able to pay for them because they barely have enough money to handle each month's needs. Therefore, individuals would need some form of back-up plan to guarantee that their financial situation is safeguarded even in unforeseen circumstances, and takaful is a very good choice that people need to think about.

Takaful is a sort of participation insurance where risks are shared by consumers according to cooperative principles as opposed to being transferred to a firm as a third party. Consumers share in the technical and investment surplus of the insurance and reinsurance funds. The corporation manages the risk pool and operates on a for-profit model while maintaining corporate obligations to its stakeholders. i.e., the shareholders, staff, and clients. The business operations are strictly focused on aspects of social goodness with all its monies and funds invested according to certain shariah principles for the greater good of Society and Environment at large benefitting everyone irrespective of religion.

In contrast to traditional insurance, both the insurers and the insured are parties to a takaful contract. Each participant in the takaful group commits to paying recurring premiums or payments. Individual accounts are opened with the funds, and they are then invested in Sharia-compliant securities. As a condition of signing the takaful contract, you consent to contribute a portion of the money from your account in the event that another participant suffers loss. The same goes for your other members, who consent to assist in paying your losses.

In actuality, takaful might resemble traditional insurance quite a bit. Consider the scenario where property takaful is used to safeguard our house. Our house sustains damage during a storm and becomes unlivable. Fortunately, our takaful policy covered any increased

living costs incurred due to an accident. Similar to additional living expenses on a homeowners insurance claim, we'll be compensated for your housing while you wait for repairs to your property to be completed. Takaful may appear to be the same as traditional insurance, such as auto or house insurance. There are often two forms of takaful: family takaful, which safeguards us and our loved ones from hazards like illness or death, and general takaful, which covers property like our house, place of work, or automobile.

One may say that takaful and conventional insurance are similar as both went through a similar process, where the client made small monthly contribution each month and customers may use the contribution in times of need. However, conventional insurance involves elements of *riba*, *gharar* and *maysir*. It can be compared to *riba buyu*, in which a customer purchases an insurance policy but receives a different payment and the transaction takes place afterwards. The element of *gharar* is also present in conventional insurance since the policyholder is unclear whether the client will receive the protection or coverage for which he is paying. Last but not least, there is the element of gambling because the policyholder is uncertain as to whether he would get the premium or payment for the premium he has paid for the coverage. Islamic law forbids all three components, making conventional insurance illegal as well.

The amount of contribution for each customer differs depending on the vendor and the plan chosen by the customer. For example, a person who opted to participate in the family takaful plan might have to pay more than a person that opted to cover individually as the protection covers more than one person. The age of the customer is also a consideration to the difference in monthly contribution as older age have a higher tendency to fall sick and higher probability to use the contribution more often.

People may think they do not need such participation as emergencies and accidents rarely occurs and they be better off spending the fees for something else. However, with the highly unpredictable conditions, nowadays, i.e., the weather, the pandemic, and natural disasters such as floods and rainstorms etc., and with the recession that to presume to occur in 2023, it better to opt to have an emergency plan that people can lay on to when such an event occurs. The contributions are similar to the money we put in our piggy banks each month, with the exception that we can utilize this piggy bank regardless of the time frame or quantity contributed. Therefore, it is preferable to contribute a little amount each month rather than having to pay a significant sum all at once and risking diverting cash intended for other purposes.

As a result, in light of the inflation and the unpredictability of the economy in which we presently live, takaful is a choice that people should think about in order for it to serve as a fallback alternative. Despite the fact that it may seem like we don't need it right now, if anything unforeseen occurs and we don't have any additional money to pay it, we will be grateful that we opted to take part in takaful.

TAKAFUL: TAHUI KAEDAH YANG BETUL

Oleh: Nur Amalia Binti Awang Jalil | 1181106 | Tlb 1/ Klb 1

Sesuatu harta yang mutlak milik kita, adalah harta yang kita mempunyai kawalan sepenuhnya. Rumah yang telah habis dibayar adalah harta. Rumah yang belum habis dibayar, belum tentu itu hart a kita. Sama juga seperti kereta, ia bukan harta selagi anda berhutang dengan bank. Insuran dan takaful, adalah harta anda sebenarnya. Hal ini demikian kerana anda berhak mempunyai kawalan kepada polisi insuran atau sijil takaful.

Apabila insuran dan takaful adalah harta anda, jadi bolehkah ianya diwarisi? Jawapannya, tidak. Ia hanya boleh diwarisi dalam bentuk pampasan dan nilai tunai sekiranya berlaku kematian. Kaedah pembahagian manfaat takaful adalah berbeza dengan kaedah pembahagian Kumpulan Wang Simpanan Pekerja (KWSP). Di Malaysia, wang di bawah polisi insurans tidak menjadi sebahagian daripada harta pusaka si mati. Ini adalah untuk melindungi kepentingan pasangan dan anak-anak si mati terhadap tuntutan oleh mana-mana si pemiutang.

Di dalam kes *Re Bahadun bin Haji Hassan*, Mahkamah Tinggi Malaysia memutuskan bahawa manfaat insurans takaful merupakan hadiah lengkap daripada peserta kepada penama apabila beliau meletakkan penama sebagai benefisiari di dalam polisi insurans tersebut. Sebagai contoh, apabila seseorang mengeluarkan polisi insurans hayat berjumlah RM40,000 dan menamakan isterinya sebagai penerima manfaat, isteri berhak sepenuhnya mendapat wang insurans apabila orang yang diinsuranskan meninggal dunia.

Ramai yang mengetahui kaedah pembahagian manfaat takaful kepada penama sekiranya peratusan tersebut telah ditetapkan oleh peserta. Akan tetapi, tahukah anda kaedah pembahagian yang betul sekiranya penamaan (*nomination*) dibuat oleh peserta lebih daripada seorang benefisiari tanpa menyatakan peratusan bahagian masing-masing?

Sekiranya penamaan dibuat kepada lebih daripada seorang benefisiari tanpa menyatakan bahagian peratusan masing-masing, pembahagian manfaat takaful perlu diberi secara sama rata kepada setiap penama sebagai benefisiari. Memandangkan peserta telah memilih untuk membahagikan manfaat takaful kepada penama-penama tersebut secara hibah semasa hidupnya, adalah adil dan munasabah sekiranya setiap penama mendapat bahagian yang sama rata dalam keadaan tidak dibuat pembahagian peratusan bahagian masing-masing. Di samping adil dan munasabah, kaedah tersebut boleh mengelakkan timbulnya persengketaan sesama penama sekiranya satu pihak mendapat bahagian yang lebih berbanding pihak yang lain.

Berbeza dengan situasi kedua di mana kaedah pembahagian manfaat takaful sekiranya penamaan dibuat kepada lebih dari seorang penama dengan peratusan pembahagian manfaat

telah ditentukan, namun salah seorang penama telah meninggal dunia sebelum kematian peserta dan tiada penamaan baharu dibuat. Isu ini sering menjadi tanda tanya dalam kalangan masyarakat kerana tiada info yang jelas mengenainya.

Bagi menjawab isu di atas, bahagian manfaat yang diperuntukkan kepada penama yang meninggal dunia tersebut akan menjadi milik peserta dan ia tertakluk kepada pembahagian hukum faraid selepas kematian peserta tersebut. Hal ini demikian kerana hibah manfaat tersebut akan dikembalikan kepada peserta kerana tidak ada penerima bahagian hibah tersebut. Oleh itu, bahagian manfaat tersebut hendaklah diuruskan berdasarkan hukum dan prinsip faraid setelah kematian peserta kerana manfaat itu akan menjadi sebahagian daripada harta peserta.

Jadi, adalah jelas bahawa kaedah pembahagian takaful mengguna pakai konsep pemberian hadiah (*hibah*) kepada penama setelah kematian peserta. Berbeza dengan KWSP yang menggunakan konsep faraid di mana si mati melantik seorang atau beberapa pemegang amanah untuk membahagikan wang setelah kematiannya kepada penerima bahagian faraid.



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LAB5153

(ISLAMIC FINANCE)

ARTICLE:

TAKAFUL, IS IT A CHOICE OR A NECESSITY?

PREPARED BY:

NUR ATHIRAH BINTI MOHAMMAD SHUKRI

(1182866)

GROUP:

TLB 8

(KLB 2)

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TAKAFUL, IS IT A CHOICE OR A NECESSITY?

Often we heard about takaful in our community that takaful is like something that we really needed in case of emergency or in other words, some kind of future investments. Takaful usually being referred as an Islamic insurance where it is based on social solidarity and cooperation among a group of people who agree to jointly indemnify loss or damage from a fund they donate to collectively. The origins of takaful can be found in “Kafalah” which means guaranteeing each other. Kafalah has been going on for more than 1000 years.

According to the research made by Zurich Malaysia, one in three working Malaysians aged 25 to 40 years old has no personal protection. Here we can see that many Malaysians did not have a personal protection whether it is a conventional insurance or takaful. Besides that, referring to the survey made by the Ministry of Health Malaysia (MOH), more than 80% of Malaysians had to use their own income for health services and 35.8% of them resorted to use their savings. The questions that the article will discuss will lead to the answer of whether takaful is really important like a necessity in life or just a choice of privilege for people who have spare money.

First, what is actually a takaful? According to **Section 2 of the Islamic Financial Services Act 2013**, takaful means an arrangement based on mutual assistance under which takaful participants agree to contribute to a common fund providing for mutual financial benefits payable to the takaful participants or their beneficiaries on the occurrence of pre-agreed events. In addition, **Section 2 of the Takaful Act 1984** defines takaful as a scheme based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose.

Second, do takaful have any advantages? Takaful do have a plenty advantages which are takaful is actually founded on the Islamic ideals of charity (Tabarru') and cooperation (Ta'awun), which encourage a loving approach in society. Besides that, The pool of takaful participants owns the takaful fund, and the funds will be utilized to cover one another in emergency situations or misfortunes. The takaful plan will be manage by the Takaful Operator which acts as an agent (Wakeel). In addition, any

investments under takaful will surely be made to the Shariah-compliant instruments. Furthermore, through nomination under the conditional hibah, the beneficiaries which is our loved ones would certainly enjoy the takaful benefits right away, sparing them from time-consuming inheritance procedures.

Third, do takaful have any disadvantages? Unfortunately, like any other, takaful also have its own disadvantages. Among the disadvantages are since the general public could view takaful as just another form of conventional insurance product, a takaful window can lead to confusion among the general public regarding the distinctions between takaful and conventional insurance. Additionally, there is a chance that conventional insurance and takaful will mix their money in the event that the insurance provider decides to use the takaful funds for non-Shariah compliant investments. In other words, an agency problem with regards to Shariah compliance exists with a takaful window. Besides that, allowing takaful windows is seen as having the potential to violate Shariah by those who oppose it.

Fourth, how does takaful works? The Takaful Operator will manage all investments in accordance with the Shariah law. On behalf of the participants, the Takaful Operator will manage these money. In contrast to the conventional insurance, the takaful fund's participants still retain an ownership interest in the takaful fund. Participants' contributions are eventually put into funds that are halal and Shariah compliant in order to generate investment income. If the fund has a surplus, it is distributed to the participants (and, in some cases with the Takaful Operator). This results in a situation where everyone will gain benefits.

Furthermore, the important facts that need to be highlights about takaful are takaful is definitely different from the conventional insurance where in conventional insurance, the risk is transferred from the insured to the insurer, however, with takaful insurance, the mutual risk is shared amongst the participants. Each of the participant needs to contribute to a takaful fund. Subject to the takaful terms and conditions, the participant will be compensated for any losses in the amount of its claim.

In summary, takaful prohibits obtaining a financial advantage at the costs of expense of others. Thus, members contribute a sum of money as a donation to a shared pool. Based on the terms of the coverage each member needs, what is covered, and how long it is covered are what determine the contribution to the takaful

fund. Each contribution also takes into account the specific circumstance and risk profile of each member own businesses. Losses are allocated based on a mutually agreed-upon community pooling system. The policyholders are the sole owners of any surplus in the takaful fund (it does not become a profit to the fund).

Therefore, in the question of whether takaful is a necessity or a choice, from the author opinion, takaful could be said as some kind of like necessity in life because the future cannot be predicted especially when those unfortunate times come. In those uncertain times, it is very important than our financial and medical bases are well covered just so that we could have a peace of mind knowing that even the worst could happen, our family will be well taken care of. In other words, it is like having more protection to safeguard us and our family in case unfortunate incidents happens that requires us to replace our income, pay off debts, or cover medical expenses.



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SEMESTER I 2022/2023

LAB 5153

ISLAMIC FINANCE

INDIVIDUAL ASSIGNMENT:

TAKAFUL INDUSTRY IN MALAYSIA

TLB 7 / KLB 2

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LECTURER: ASSOCIATE PROFESSOR DR. ZULKIFLI HASAN

TAKAFUL INDUSTRY IN MALAYSIA

Takaful, an Arabic term that means “guaranteeing each other” or “joint guarantee,” is a type of Islamic insurance in which members contribute money to a pool system in order to guarantee each other against loss or damage. Takaful is based on Shariah guidelines or Islamic jurisprudence, which explains how individuals are responsible for cooperating and protecting one another. Takaful insurance companies were established as an alternative to the commercial insurance industry, which are believed to go against Islamic restrictions on *Riba*’ (interest), *Maysir* (gambling), and *Gharar* (uncertainty).

The Takaful industry in Malaysia began in the early 1980s, as the Muslim communities need for it as an alternative to conventional insurance. It occurred as a result of an issued by the Malaysian National Fatwa Committee, which ruled that life insurance in its current form is a void contract due to the presence of *Gharar*, *Riba*’, and *Maysir* elements. In 1982, the Government formed the Special Task Force to study the viability of establishing an Islamic insurance company. It was based on the experience and progress of existing insurance companies in this country, as well as work visits to several countries that have already implemented Islamic insurance.

The Takaful Act was then enacted in 1984, and the first Takaful operator, known as Syarikat Takaful Malaysia Berhad, was established in November 1984, with operations beginning on July 1985. The Act, which still in effect, was enacted to govern the conduct of Takaful business and requires Takaful operators to be registered. Aside from that, the establishment of Shariah Committees was to ensure that Takaful operators’ business operations are always in accordance with Shariah principles. The Malaysian Takaful Association (MTA), a mandatory association required under the Takaful Act 1984, was formed in 2002 to improve self-regulation and promote the interests of operators. All operators must be MTA members before they can begin operations.

To strengthen the regulation of Islamic financial institutions, the Parliament passed the Islamic Financial Services Act 2013 (IFSA 2013), which went into effect on 30 June 2013. The IFSA repeals the Takaful Act 1984 and combines Islamic financial and Takaful services under one legislation. The combination was meant to pave the way for the development of Shariah-compliant regulatory framework for the conduct of Islamic financial operation in Malaysia.

Takaful is classified into two types which known as general Takaful and family Takaful. General Takaful is concerned with the protection of properties and liabilities against loss or damage in the short term. General Takaful provides liability and asset protection and financial coverage against damage or loss caused by events such as fire, flood, explosion, and so on. General Takaful products include fire Takaful, motor Takaful, business Takaful, and home Takaful, among others. Zurich Malaysia, for instance, offers a variety of general Takaful products, including fire Takaful, Z SME Business Takaful, Z-Rider Takaful, and Z-HomeProtect Takaful.

Family Takaful provides participants and their dependents with both long-term savings and protection. They also provide death benefits, accidental benefits, repatriation benefits, and other services that benefit participants and their families. There are three types of family Takaful: ordinary family, annuity, and investment-linked. Under ordinary family, it can be divided into two categories. The first is individual family Takaful, which is for individuals, and the second is group family Takaful, which is for employers, clubs, associations, and societies. Etiqa Malaysia offers a variety of Family Takaful products. For example, Enrich Life Plan Insurance, AafiahCare Takaful, Prisma Takaful, and i-DoubleSecure Takaful.

Wakalah and *Mudarabah* are two common business models in Malaysia. Syarikat Takaful Malaysia Berhad has adopted the *Wakalah* contract as its business model. Under this model, the company will act as an agent to manage the Takaful fund on behalf of the participants and will be entitled to a *Wakalah* Fee for its services. This model also offers the participants a unique concept of surplus distribution. By contributing *Tabarru'* to the common Takaful fund, both the participant and Takaful Malaysia may be entitled to the share of any fund surplus, if any.

The *Mudarabah* model is the earliest model that was adopted by Takaful operators in Malaysia. During the early days of the Takaful industry, most Takaful operators followed the *Mudarabah* model. Nowadays, many Takaful operators have switched to the *Wakalah* model. The *Mudarabah* model refers to the contract of profit sharing between takaful participants and the operator from the Takaful business's profit, if any. A profit-sharing contract is signed between the operator, as the entrepreneur (*Mudarib*), and the participants, as the capital providers (*Rabbul Mal*).

Therefore, it can be seen that the Takaful industry in Malaysia is expanding and becoming an integral part of the Islamic financial system, as proven by an increase in the number of takaful companies, advancements in industry models, and other factors. Malaysia's Takaful industry has also become a role model for the global Takaful industry as Malaysia is the third-largest Takaful market globally, according to the Islamic Financial Services Board.

WHY TAKAFUL RATHER THAN CONVENTIONAL INSURANCE?

by Nur Mudrikah binti Mohamad Nizam (1181912) (TLB6)

Prior to the development of Takaful, conventional insurance used to rule the world in the insurance industry. Throughout the years, the developments of Islamic Insurance named Takaful have become widely progressed and practiced in countries of the world including Muslim and non-Muslim countries. The underlying difference between conventional insurance and Takaful is significant in the principles of Shariah.

The financial security offered by modern insurance can be defined as a means for people to transfer the burden of uncertainty to the insurer in the case of financial loss based on the agreed financial fee termed the "premium". In return, the insurer agrees to compensate the insured financially if a specific loss is incurred. It is an efficient risk transfer mechanism that allows individuals or organizations to trade the uncertainty of financial loss or risks for the certainty of the premium.

On the other hand, Takaful is a group of participants who agree to mutually guarantee each other against a specified loss. Contrary to conventional insurance, Takaful contracts are based on the financial transaction between two parties to protect one of them from unexpected future risk. In a Takaful transaction, the participant pays a specific amount of money known as the contribution to the Takaful operator with the mutual agreement that the Takaful operator is under a legal obligation to provide the participant with financial protection against unexpected loss if it occurs within the agreed period.

In a situation where during the specific times the loss does not occur to provide the financial securities towards the participants, the total accumulated from the contributed paid by the participant known as the paid contribution and shares profits based on the *Mudharabah* concept will be enjoyed by the participant collectively.

Referring to both concepts of Takaful and conventional insurance, the main similarity between both is the purpose and objective which is to provide protection for individuals and businesses in cases of occurrence of losses. Insurance's concept is in line with Islamic teachings as it is a noble objective to protect and cover misfortune. Nevertheless, deep-rooted problems derive from conventional insurance is in the operational modes itself as it operates with the presence of *Shari'ah*-incompatible elements such as *Gharar* (uncertainty),

Riba (interest), and *Maysir* (gambling). Thus, Takaful was created to provide an Islamic and Shari'ah-compliant alternative to conventional insurance.

The operational modes between Takaful and Insurance differ due to the contract application. In Takaful, the payment for the contribution is based on *Tabarru'* (donation). The contribution will be managed on behalf of the participants through a *Wakalah* or *Mudharabah* contract by the agent or manager named as the Takaful operator who has the authorization to manage the fund. It must be borne in mind, in Takaful, the surplus fund or profit accumulated by the fund does not belong to the Takaful operator by any means, but to Takaful participants collectively. Any amount of contribution should not be taken by the Takaful operator without consent or authorization by the participant.

Notwithstanding Takaful, insurance applied a sale and purchase contract whereby the premium paid by the insured for the protection promised by the insurance company, any surplus or profit accumulated through the payment of premium will not be returned or shared to the insured but will be taken by the insurance company.

Furthermore, the weakness of the insurance contract procures from the elements of the contract itself that are obviously against the shariah principle. The existence of *Gharar* (uncertainty), *Maisir* (gambling) and *Riba* (usury) is a significant objection on why Takaful is better than insurance.

Firstly, in the insurance contract it contains "gharar," which may prevent the contractual parties from having an equal bargaining position and prevent them from making well-informed decisions because they are unable to fully comprehend the nature or implications of the contract.

Secondly, it has elements of *Maysir* which entails accepting risk that is established by the contract itself. Gambling is typically linked to the existence of *Gharar*. In conventional insurance, the element of *Maysir* is often attached to the act of buying the policy in the hopes of receiving more in terms of compensation or indemnity if any of the risks arise.

Thirdly, conventional insurance is also alleged to contain *riba* elements whereby the premium payments are typically deposited in *riba*-based financial instruments, including interest-bearing accounts.

Therefore, Takaful has provided a Shariah compliance financial security that can offer protection and cover if any loss or risk occurs towards the participant. Takaful has operated based on the contract of *Tabarru'* which provides the participant will be carrying the risks alone

and not the insurance company. The Takaful operator will only act as a custodian to manage the fund and the contributions cannot be used by the Takaful operator without the consent of the participants. Hence, the concept of *Tabarru'* eliminated the element of *Gharar* and *Maysir* from the contract.

Apart from that, in regards of the investment of funds, the Takaful is more visible and conspicuous compared to the insurance. The distinction is from the investment method of the insurance company that invest their fund in interest-based avenues and the likeliness to disregard the concept of Halal and Haram.

However, Takaful companies only abide and follow Shariah-compliant business and not forbidden by Islam and the distribution of the profits will be in accordance with the Takaful Agreements that has been established during the earlier process of participant joining Takaful. It is evident from the distribution of shares in surplus that would be returned to the participants and not belong to the Takaful companies.

In conclusion, Takaful has provided an alternative of financial securities that has zero absence of elements that is prohibited in Islam. Moreover, it ensures there is fairness and fair play for all parties in all dealings. Only practices that could result in human exploitation or that the Shari'ah deems to be unjust would be prohibited.



SEMESTER I, YEAR 2022/2023

ISLAMIC FINANCE (LAB5153)

ASSOCIATE PROFESSOR DR. ZULKIFLI HASAN

INDIVIDUAL WRITTEN ASSIGNMENT: TAKAFUL AND MAQASID SHARIAH

TLB 4 / KLB 1

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Takaful has its name derived from an Arabic word “kafalah” which can be defined as joint guarantee, shared responsibility, shared guarantee, collective assurance and mutual undertaking. **Section 2(1) of the Islamic Finance Services Act 2013** defines “takaful” as an arrangement based on mutual assistance under which takaful participants agree to contribute to a common fund providing for mutual financial benefits payable to the takaful participants or their beneficiaries on the occurrence of pre-agreed events. Takaful is founded on the concept of ta’awun or mutual assistance. Surah al-Maidah Verse 2 reads to the effect: - *“And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty.”* In a Hadith, the Prophet Muhammad pbuh said that: - *“Whosoever removes a worldly hardship from a believer, Allah will remove from him one of the hardships of the hereafter. Whosoever alleviates the needy person, Allah will alleviate from him in this world and the next.”*

Maqasid shariah is the underlying objectives for the shariah rulings which aims to safeguard the Ummah and to discipline their lives in compliance with the Islamic values and principles as set out in the primary sources of reference in Islam, the Quran and Sunnah. There are three main categories in maqasid shariah namely, daruriyyat, hajiyyat, and tahsiniyyat. Maqasid shariah also focuses on preserving five fundamental elements in human’s life namely, religion, life, intellect, ancestry and property or wealth. The comprehensiveness of maqasid shariah includes the objectives and purposes to abide by in all activities including economic activities such as finance, banking and takaful, and social activities. As Islam is a complete way of life, it provides comprehensive rules and norms for general principles of man behaviour as detailed

The scope of maqasid shariah encompasses the objectives and goals to be followed in all activities, including takaful. Takaful protects **religion** as it involves a transaction in the form a sincere contribution i.e., “tabarru” (donation) by the participants to pool of fund. The relationship between the participants and the risk pool is known as “tabarru”. The contributions received from the are meant to help those who are in misfortune or hardship. This form of transaction is “ibadah”. In preserving religion, the takaful operator who manages the risk pool must adhere to shari’ah requirements and ensure that its vision, mission, and core values reflect the protection and advancement of religion which can be achieved if investments are made in consideration of ethical and social responsibility.

Furthermore, Takaful concepts of joint guarantee, mutual sharing of risk and mutual assistance are consistent with maqasid shariah in preserving **life** as they are primarily intended to aid and protect the society in solving problems by providing protection for their lives, assisting those who is in calamity and disaster, and predicting future uncertainties.

Takaful encourages Muslims to do good deeds to self and others. Thus, the social responsibility rests on the shoulder of Muslims who are financially capable to assist those who poor. Takaful provides self and family protection by ensuring family continuity where the breadwinner dies or becomes permanently incapacitated and incapable of generating income. Takaful meets basic requirements such as food and clothing, affording the families a chance to continue their life after the death of their breadwinners. Takaful also enables the treatment of serious illnesses which can be costly to cover surgery, hospitalisation, medicine, post-surgery, dialysis, chemotherapy, and so on.

Moreover, Takaful gives the participants and Takaful operators the peace of heart and mind which could preserve their **intellect**, as the takaful practices are well-protected from riba, maysir and gharar, and its operations are lawful. Takaful does not involve in non-shariah compliant activities in the sense that contributions paid by the participants are invested into a 'halal' or Shariah compliant funds to derive investment income which is devoid of prohibited elements that are blessed by the Almighty Allah.

Apart from that, the preservation of **ancestry** can be realised through Family Takaful as the policyholder's family members will benefit from the compensation given after his or her death. The family members will receive some financial support based on the terms agreed upon. The compensation provided by Takaful operators is essential in assisting families, particularly those who have lost their primary source of income. In a Hadith of Prophet Muhammad pbuh said that: "Leaving behind one's heirs rich is better than leaving them poor. With the availability of takaful, immediate wealth is ready for distribution in the case of death of the participant.

Lastly, Takaful aims to preserve **wealth and property** of the participants by eliminating riba, maysir, and gharar which create injustice and harm to society by causing societal turmoil and exploitation. Fairness, transparency, and social justice in takaful dealings is seen as one of the primary goals of Shariah and its operations. The Quran has emphasised the need of making all agreements and contracts as transparent and unambiguous as possible. As Islam prohibits hoarding of wealth, it must be disseminated for the benefit of the community. In takaful, wealth preservation is achieved through the creation of a mechanism that provides a cushion against the devastation of property loss, thus satisfying one of the daruriyyat. Wealth protection as has been emphasised in Quran and Hadith is a fundamental facet of takaful which ensures that the deceased's family has the means of maintenance even after the loss of income from the death of a breadwinner.

To conclude, the beauty of Takaful lies in its concepts of mutual assistance and mutual sharing of risk which falls within the framework of maqasid shariah which enables the realisation of the five essential elements of maqasid shariah through Takaful practices. Takaful's ultimate objective is not only in the idea and objectives, but also in all of its economic operations all of which must be Shariah compliant. These objectives are backed by the spirit of ta'awun, brotherhood and social justice, and fair use of the participants' funds, and attainment of maslahah of the ummah, which fulfils the shariah objectives.

(1000 words)



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ARTICLE

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3RD FEBRUARY 2023

**ADAKAH TAKAFUL CUMA HALAL PADA NAMA ATAU PELAKSANAANNYA?
OLEH: NURUL FADILAH BINTI ABU SUFIAN 1182525 KLB2/TLB8**

Bermula pada tahun 1985 sehingga tahun 2006, terdapat lima buah syarikat takaful telah ditubuhkan di Malaysia menunjukkan perkembangan industri takaful yang sihat dan penuh persaingan. Permintaan terhadap industri takaful semakin baik dan bertambah sehingga menyebabkan Bank Negara Malaysia mengeluarkan empat lesen takaful baharu kepada empat konsortium dengan usaha sama antara institusi kewangan domestik dan asing.

Menurut portal rasmi Mualamat dan Kewangan Islam, takaful ialah suatu skim yang berdasarkan prinsip ta'awun, jamin menjamin atau bantuan bersama. Ia memberikan perlindungan bersama aset dan harta serta menawarkan perkongsian risiko bersama sekiranya salah seorang ahlinya mengalami kerugian. Takaful adalah sebahagian daripada institusi kewangan Islam yang menyediakan perkhidmatan perlindungan kewangan berlandaskan Islam. Ia adalah sebahagian daripada kerangka sistem kewangan yang ada seperti perbankan Islam dan Pasaran Modal Islam. Industri takaful ini dikawalselia oleh Akta Takaful 1984 yang memberi garis panduan supaya aktiviti takaful selari dengan kehendak Islam.

Takaful merujuk pada pelan insurans patuh syariah yang berasaskan kerjasama bersama, tanggungjawab dan perlindungan. Dalam erti kata lain, produk takaful memberi perlindungan ke atas diri anda termasuk aset atau harta benda anda sekiranya berlaku sebarang musibah. Segala risiko dan dana dalam takaful dikongsi bersama antara pemegang polisi dan syarikat takaful. Ia diperkenalkan sebagai alternatif kepada pengguna terutamanya pengguna Islam untuk memilih insurans yang sesuai. Terdapat empat (4) perkara yang dapat dilihat pada takaful yang menjadikannya patuh syariah dan dibenarkan dalam Islam iaitu konsep, akad, prinsip dan operasi.

Pertama, takaful mempunyai konsep dan matlamat tertentu. Konsep asas takaful ialah tabarru' dan ta'awun yang menjadi pegangan asas dalam setiap sijil yang disertai oleh peserta. Kedua-dua konsep asas takaful ini akan digabung dengan konsep akad. Akad tabarru' (sumbangan kebajikan) dan akad ta'awun (kerjasama dan tolong menolong) akan disatukan untuk memberi kefahaman kepada peserta bahawa apabila menyertai skim takaful, mereka dengan rela hati dan ikhlas hati memberi sumbangan ke dalam satu tabung khas yang akan digunakan bagi tujuan membantu peserta lain yang ditimpa musibah.

Kedua, takaful mempunyai dua akad iaitu *mudharabah* dan *wakalah*. Kontrak *mudharabah* ini melibatkan pemberian modal kepada orang lain yang kemudiannya dilaburkan dengan tujuan untuk berkongsi keuntungan berdasarkan nisbah yang telah dipersetujui. *Mudharabah* ini melibatkan permuafakatan perkongsian keuntungan antara satu pihak yang dikenali sebagai *sahib al-mal* iaitu peserta yang menyediakan modal perniagaan dan pihak yang dikenali sebagai *mudharib* iaitu pengendali takaful yang dipertanggungjawabkan untuk mengedalikan perniagaan melalui modal yang telah diberikan oleh peserta.

Kontrak *Wakalah* berasal daripada perkataan arab *wakala* yang bermaksud menjaga, menjamin, melengkap dan menyerahkan. Dari segi istilah pula, ulama mendefinisikan *wakalah* sebagai seseorang yang memberikan kuasa kepada orang lain iaitu ejen untuk menguruskan dana takaful. Pengendali takaful atau *wakeel* mendapat yuran yang ditetapkan iaitu yuran *wakaal* sebagai ejen dalam menguruskan *mushtarik* iaitu wang caruman peserta atau *ishtirak*. Semua risiko ditanggung oleh dana takaful dan keputusan operasi tahunan sama ada lebih atau kerugian adalah milik peserta semata-mata. Pengendali takaful tidak berkongsi secara langsung dalam risiko, defisit atau lebih. Model *Wakalah* boleh dilihat sebagai telus kerana yuran yang dibayar adalah jelas berkaitan dengan kos operasi pengendali.

Ketiga, prinsip takaful ini adalah mematuhi etika dan ketelusan garis panduan Syariah yang melarang ketidakpastian (*Gharar*), perjudian (*Maisir*) dan faedah (*Riba*). Takaful ini menggunakan kontrak *Tabarru'* (derma dan sumbangan) yang disertakan dengan pelaburan. Para peserta membuat caruman ke dalam takaful dan saling menjamin sesama sendiri di bawah skim takaful. Syarikat takaful bertindak sebagai pemegang amanah dan membayar manfaat daripada kumpulan wang peserta. Pelaburan kumpulan wang takaful hanya dilaburkan dalam instrumen yang selari dengan Syariah. Wang peserta tidak dikira sebagai wang syarikat malah ia diasingkan dan tidak dimiliki oleh syarikat. Lebih daripada keuntungan dipegang oleh tabung untuk dibahagikan semula kepada peserta.

Yang keempat, operasi takaful pula dipantau oleh Majlis Penasihat Syariah (SAC). Majlis ini telah dibentuk oleh Bank Negara Malaysia dengan objektif meneliti dan menimbang sebarang keputusan syariah mengenai perbankan Islam dan takaful di bawah penyeliaan Bank Negara Malaysia (BNM) sepertimana yang dinyatakan dalam Seksyen 56 Bank Negara Malaysia 2009. Dalam peruntukan ini, ia memutuskan secara mandatori kepada mana-mana mahkamah atau penimbang tara yang lain untuk merujuk Majlis Penasihat Syariah BNM dalam membuat keputusan kes berkaitan institusi kewangan Islam.

Hal ini dapat dilihat dalam kes *Teng Gia Hwa & 1 or v Syarikat Takaful Malaysia Bhd* 2010 melibatkan isu berkaitan dengan kewangan Islam iaitu kontrak takaful. Dalam kes ini, keputusan penghakiman menimbulkan isu pematuhan syariah kerana ia menggunakan istilah faedah tambahan 4% dan 8% yang boleh menimbulkan persoalan mengenai elemen riba dalam kontrak takaful. Pihak mahkamah tidak sepatutnya hanya merujuk kepada English Common Law Marine Insurance Act 1906 of England dan *Koster v Reed* (1926) 6 B & C 1 bahkan perlu merujuk kepada Majlis Penasihat Syariah BNM sebelum membuat keputusan kerana ia berkaitan dengan isu kewangan Islam. Mahkamah perlu bijak dengan merujuk kes tersebut kepada Majlis Penasihat Syariah BNM untuk mengelakkan sebarang isu syariah timbul selepas penghakiman keputusan berkaitan kewangan Islam.

Kesimpulannya, melalui takaful akan dapat diwujudkan suatu perhubungan yang erat mengikut amalan dan perhubungan dalam Islam di mana para peserta perlu saling berpakat untuk sama-sama bersetuju menanggung peserta lain yang ditimpa musibah. Melalui hubungan perpaduan inilah akan terhasilnya matlamat saling membantu, saling bertanggungjawab dan saling bekerjasama sesama rakan yang menyertai takaful. Oleh itu, takaful bukan sahaja halal pada namanya bahkan dapat dilihat pada pelaksanaannya yang patuh syariah.

Strategies of Takaful for Poverty Reduction towards Sustainable Development.

The Sustainable Development Goals (SDGs) is a global framework adopted by the United Nations in 2015, which aims to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity. The SDGs consist of 17 goals and 169 targets, which aim to address various social, economic, and environmental issues. One of the main goals of the SDGs is to reduce poverty, which is reflected in Goal 1: No Poverty. The targets under this goal aim to end poverty in all its forms everywhere, and to ensure that people have access to basic needs such as food, shelter, and healthcare. Takaful, or Islamic insurance, can play an important role in reducing poverty and promoting sustainable development. The principles of Takaful, such as mutual cooperation, mutual responsibility, and risk sharing, align well with the goal of reducing poverty and promoting sustainable development. There are several strategies that can be implemented to reduce poverty and promote sustainable development through the use of Takaful, a type of Islamic insurance. Some of these strategies includes.

Micro-Takaful is a type of Islamic insurance that provides small, affordable insurance policies to low-income individuals and families. It is designed to protect them from financial shocks and promote financial stability. Micro-Takaful policies typically have low premiums and coverage amounts, making them accessible to people with limited financial resources. The concept of Micro-Takaful is similar to microinsurance in conventional insurance, which is providing insurance coverage to low-income and low-literate individuals and families. Micro-Takaful policies can cover a wide range of risks such as health, life, accident, and property damage. One of the main benefits of Micro-Takaful is that it allows low-income individuals and families to access insurance coverage that they otherwise would not be able to afford. This can help to reduce poverty by providing financial protection against unexpected events and promoting financial stability. Additionally, Micro-Takaful can also help to promote economic growth by providing financial assistance to low-income entrepreneurs and small businesses.

Next, Takaful-Based Microfinance is a strategy that combines the principles of Takaful (Islamic insurance) with microfinance to provide financial services, such as small loans, to low-income individuals and families. The goal of this approach is to promote entrepreneurship and economic growth in poor communities. Takaful-based microfinance works by creating a Takaful fund, which is a pool of funds contributed by members of the community. These funds are used to provide small loans to individuals and families who are in need of financial assistance to start or grow their businesses. The loans are typically provided at low-interest rates and with flexible repayment terms. The Takaful principle of mutual cooperation and mutual responsibility is applied in this type of microfinance where the community members collectively bear the risks and losses of the loan recipients. The members contribute to a fund that can be used to provide financial assistance to those who are facing financial difficulties. Takaful-based microfinance can help to reduce poverty by providing financial assistance to low-income individuals and families, promoting entrepreneurship and economic growth in poor communities.

Afterwards, Takaful-based Education and Health is a strategy that uses the principles of Takaful (Islamic insurance) to provide financial assistance to individuals and families for education and healthcare expenses. The goal of this approach is to promote human development and improve

overall well-being in poor communities. It works by creating a Takaful fund, which is a pool of funds contributed by members of the community. These funds are used to provide financial assistance to individuals and families for education and healthcare expenses. For education, the Takaful fund can be used to provide scholarships or financial assistance for school fees, uniforms, and other education-related expenses. This can help to promote access to education for children from low-income families, which is crucial for breaking the cycle of poverty and promoting human development.

For healthcare, the Takaful fund can be used to provide financial assistance for medical expenses, such as doctor visits, medications, and hospitalization. This can help to promote access to healthcare for individuals and families who otherwise would not be able to afford it, which is important for improving overall well-being and promoting good health. Therefore, it can help to reduce poverty by providing financial assistance to individuals and families for education and healthcare expenses. It also promotes human development and improves overall well-being by increasing access to education and healthcare for low-income families.

Lastly, Takaful-based housing, a strategy that uses the principles of Takaful (Islamic insurance) to provide low-cost housing for low-income families. The goal of this approach is to ensure that people have a safe and secure place to live, which is essential for improving overall well-being and reducing poverty. It works by creating a Takaful fund, which is a pool of funds contributed by members of the community. These funds are used to provide low-cost housing for low-income families or to provide financial assistance for the purchase or repair of existing homes. It also promotes human development and improves overall well-being by increasing access to housing for low-income families.

In conclusion, Islamic finance can play a crucial role in reducing poverty by providing financial services and solutions that are based on the principles of fairness, equity, and social justice. By focusing on the well-being of the wider community and promoting financial inclusion, Islamic finance can help to empower low-income individuals and communities and provide them with the resources they need to improve their financial stability and overcome poverty. Additionally, the focus on ethical and socially responsible investment in Islamic finance can help to drive positive change and promote sustainable economic growth, further contributing to the reduction of poverty.



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ARTICLE:

THE IMPORTANCE OF TAKAFUL

PREPARED FOR:

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THE IMPORTANCE OF TAKAFUL IN LIFE

In Malaysia, there are two types of insurance policy that has being participate by the Malaysian namely the conventional insurance and Takaful. In Islam, conventional insurance is considered as forbidden since the contract consists of gharar (uncertainty), maysir (gambling) and riba (usury). However, Takaful is a Shariah-compliant insurance that based on the tabarru' contract. The development of Takaful in Malaysia can be seen in the early 1980s where it was inspired by the prevailing needs of the Muslim public for a Shariah-compliant alternative to conventional insurance.

The practice of Takaful in Malaysia can be seen where the participants will contribute their sum of money usually per month into a common fund. This money will be keep by the operator that has been appointed by the Takaful and it will be used to mutually assist the other members or participants against any losses or damages. The main underlying concept of Takaful consists of there components. Firstly, the Takaful concept itself. It means joint guarantee where the participants in a group will jointly guarantee among themselves against a defined loss.

Secondly, the Tabarru' concept. Tabarru's means donation where the participants will agree some or certain proportion of the scheme fund will be used to cover other's losses or damages. Thirdly, the Mudharabah or Wakalah concept. Under this concept, the fund will be manages by the Takaful operator on trust on behalf of the participants. Mudharabah will give the parties in the contract to share the profit and the liability will be borne by the participants. Meanwhile, the Wakalah concept is when the operator take some fee from the fund for the service of managing the fund of the participants.

However, even though the Takaful policy has been introduced since 1980s, but there are still lack of awareness on the importance of the Takaful especially among the Muslims in Malaysia. There are many importance of Takaful. Firstly, Takaful will help the participants to be ready with any risks that will be faced in the future. It is undeniable that every person will face with any risks in their life including the death, disability and diseases. There are many Takaful policy in Malaysia that provide the protection against the said risks. For example, if a person dies but he is the participant of Takaful policy, then his family will be compensated by the Takaful company using the funds that has been trusted to the Takaful operator.

Secondly, Takaful policy also provide the protection towards the property or the assets of its participants. Among the property that protected by Takaful is car. Every person in Malaysia is required to renew their road tax every year in order to get the insurance coverage for the car. This means that the Takaful also protect the coverage of the car in case any accidents happen and it also will cover the other car that involved in the same accident. This is how the Takaful insurance is very important to all of people since the rates of accidents in Malaysia can be considered one of the highest in the world. This will help the participants from suffering too much losses since Takaful insurance will cover all or some of the repair costs.

Thirdly, the Takaful participants can also bequeaths his or her funds to their family in the event they dies. The funds can be inherit by the family members by hibah after all the liabilities of the participants be settled by the funds of Takaful. This will help the family members to continue their daily life with the help of the money left. Besides, the money can also be used to pay all the participant's liabilities and the family member does not have to worry about the it anymore.

Lastly, the most important point on why Muslim should participate in the Takaful insurance policy is because it is Shariah compliant. In Malaysia, the number of Muslims participating in Takaful insurance policy are still lower than the conventional insurance. The main reasons why Islam prohibits the conventional insurance is because of the uncertainty, gambling and usury concept that involves in it. All these concepts are in contradiction with Islamic principle. Thus, it really important for a Muslim to choose the Takaful insurance policy rather than conventional insurance because a good Muslim is always the one that follow the Islamic principle even at the tiniest matters.

In conclusion, the importance of Takaful can be seen in so many aspects. Despite the growth of the Takaful in Malaysia day by day, but there are still people that still lack of awareness of the importance of the Takaful insurance policy. In my personal opinion, Takaful industry in Malaysia already has the strong base where its growth can be seen increasing every year but still cannot be compared to the participants of the conventional insurance. Thus, it is really important for the Takaful industry to comply with the new trends in global economics to be the best competitors of the conventional insurance and can become the first choice of among the Muslims and also non-Muslims.



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LAB 5153

ISLAMIC FINANCE

INDIVIDUAL ARTICLE ISLAMIC FINANCE

**“CONCEPTUAL MODEL OF SHARIAH COMPLIANT INSURANCE (TAKAFUL)
IN MALAYSIA”**

PREPARED FOR:

PROF. MADYA DR. ZULKIFLI BIN HASAN

CLASS: KLB1/TLB2

PREPARED BY:	MATRIC NUMBER:
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SEMESTER I 2022/2023

CONCEPTUAL MODEL OF SHARIAH COMPLIANT INSURANCE (TAKAFUL) IN MALAYSIA

Siti Hajar binti Sulaiman
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What is Shariah Compliant Insurance (“Takaful”)?

Takaful means joint guarantee. It is an alternative form of Islamic insurance which it is different from conventional insurance due to the fact that it approached the concept of mutual assistance as in a charitable collection of funds accordance with Islamic *Shari’ah*.

Takaful is a mechanism to help the ummah overcome some of their social and economic issues faced by the world’s diverse nations. According to Abu Hurayrah, the Prophet s.a.w says,

“Whoever removes a worldly grief from a Muslim, Allah will take away one of his griefs in the hereafter, whoever alleviates the needy, Allah will alleviate from him in both the world and hereafter.”

Historical of Takaful Industry

During the period of the Prophet Muhammad s.a.w., some of the practices of the *Jahiliyyah* were continued. This specifically involved the payment of compensation to the cousins of the deceased in one lineage when killed by a person from another lineage. The practice was allowed to be suitable to reduce the pressure between the lines, as the Arabs during that period, were more prone towards vengeance. This practice of paying compensation is called *diyat* or blood plutocrat and must be paid by the killer’s cousins *aqilah* to the heirs at law of the departed.

This was latterly extended to include that if a lineage killed someone from another lineage, all the people from the same lineage must be held responsible to compensate the departed cousins under the doctrine of *Aqilah* elevated under Article 3 of the Madinah Constitution.

Takaful based on Shari'ah Rulings

The requirements for *shari'ah*-compliant insurance are that both parties be sincere, the policy be for the benefit of the hereafter, and there be no unlawful intent or conduct in the policy's operation. The insured or participant, who supplies the funds, and the insurer or takaful operator must enter into a commercial, profit-sharing, *mudarabah*-based contract. It also can be thought of as a collective agreement among a number of members or participants to collectively guarantee one another against any losses or damages.

Comparison between Insurance and Takaful

In general, the purpose of takaful is the same as that of conventional insurance to protect both individuals and corporate entities from potential losses and risks. In a takaful transaction, a party known as the "participant" or insured makes a financial contribution known as the "contribution" (premium). By mutual agreement, this contribution creates a pool of participants' funds that is administered by a different entity, referred to as the "takaful operator" or insurer. In accordance with the terms of the insurance, the operator is legally required to provide the participants financial protection against unforeseen losses or damages.

The conventional insurance contracts, on the other hand, are covered by a bilateral exchange contract (*mu'awadat*). Major aspects of dishonesty are included in conventional insurance contracts with a fixed periodic premium, which are frequently used by commercial insurance providers. This is due to the fact that it does not comply to Islamic business principles and it makes sense that uncertainty ("*gharar*"), gambling ("*maysir*"), and interest ("*riba*") are components of conventional insurance contracts. As a result, conventional insurance is unlawful according to *Shari'ah*.

Takaful Operation Models practices in the World

In today's global economy, there are three different operating of takaful models: *Ta'awuni* in Sudan, *Wakalah* in Bahrain and *Tijari* in Malaysia.

Ta'awuni Model

Sudan is one of the countries who used the Ta'awuni concept. It was founded in 1979 after the scholars recognized the need for insurance cooperation. The members are expected to contribute to the fund and the profit surplus will be distributed entirely to the participant.

They are implementing the Mudharabah concept, in which the participant is entitled to 100% of the surplus with no deductions made prior to distribution. It is critical to recognize that the contribution paid is based on Tabarru' principles, which state that once the contribution is made, the contributor has no right to any benefits. The fund is used for any participant who encounters difficulties within the time frame specified in the insurance policy. In ta'awun practice, each contributor shares profit, liability, indemnity, and surplus, and parties in the same group receive equal benefit and advantages.

Wakalah Model

Al-Wakalah is a contract of agency in which a person delegated his or her right or business to another person to act as his or her representative. As they are bound by the contract of al-wakalah, a Takaful company as the takaful operator has the right to employ an agent on a full-time or part-time basis to promote and develop the products offered by their company. Since takaful operation is still new to the market compared to conventional insurance, this type of model is designed to raise awareness of its existence as an alternative to the existing conventional insurance.

Tijari Model

The *Mudharabah* model in Takaful is a profit-sharing contract in which participants provide capital in the form of contributions and the Takaful operator acts as a *mudharib* who provides management expertise to efficiently utilise the Takaful fund. It is also known as the *tijari* model because it operates on a commercial basis and Malaysia has used this type of model for 20 years. The Takaful operator shares the profit from Takaful fund investment and he is responsible for all management expenses.

For the time being, two concepts have been used that are pure *mudharabah* and modified *mudharabah*. Pure *mudharabah* is used when the takaful and the participant are both entitled to 100% of the surplus. There is no need to deduct operational expenses. This model is only applicable to the Family Takaful business because it is essentially life insurance coverage provided to the participants.

Modified *mudharabah* include the investment income that is returned to the takaful fund. The surplus is distributed among the takaful companies and their participants. This model is applicable to the General Takaful business in which expenses are deducted. This model is very cost-effective since the takaful company would have to charge higher premiums and contributions just to cover its expenses, this model is very cost-effective.

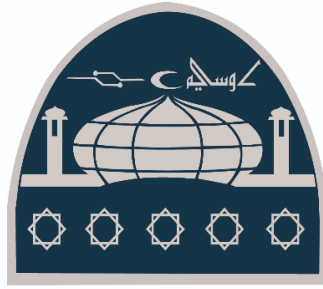
Mixed Model (Mudharabah + Wakalah)

The mixed model is a hybrid of the *Mudharabah* and *Wakalah* contracts, with the *Wakalah* contract used for underwriting and the *Mudharabah* contract used for investment. In terms of underwriting activities, the shareholders act as the *wakeel* (agent) on behalf of the participants to manage their funds, whereby the Takaful company (shareholders) receives contributions, pays claims, arranges *Re-takaful*, and performs all other necessary Takaful business actions.

In exchange for performing these tasks, the company charges each participant a *Wakalah* fee, which is typically a percentage of each participant's contribution. On the investment side, the company invests the excess contributions in *Shariah*-based instruments based on the *Mudharabah* contract, in which the company acts as *mudarib* on behalf of the participants.

Conclusion

In conclusion, these four models encourage the principles of cooperation, unity, and brotherhood. It offers an alternative to conventional insurance that is in accordance with *Sha'riah* principles, its rules as serious matters, and would help in the best performance through Islamic insurance. Malaysia has been used to the *Wakalah* and *Tijari* models of takaful since its fits well in the country.



UNIVERSITI SAINS ISLAM MALAYSIA

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THE CONCEPT AND OBJECTIVE OF RETAKAFUL

First of all, the word “takaful”, which means “guaranteeing each other”, is derived from the Arabic language. Takaful is a way for businesses to reduce the financial risk of unanticipated events. It can be said has the similar concept to insurance but is authorised in accordance with Shariah compliances and guidelines. Takaful can also be understood to represent the idea of insurance based on the solidarity and cooperation of individuals who take part in a takaful scheme. In Malaysia, the development and maintenance of other financial sectors like banking and the capital market depend heavily on the Takaful industry.

In addition, it is important to first discuss on what is Retakaful. Re and Takaful are two distinct words that are combined to form the word Retakaful. The Latin root of the word “re” means “again”, i.e., to show repetition. The word “takaful”, in contrast, comes from the Arabic word “kafala”, which means assurance or protection. Therefore, it is clear that Retakaful, or Islamic reinsurance, is a method of risk reduction. Retakaful operations can be said are identical to Takaful operations because they are both governed by the same Shariah principles. However, the primary distinction is that Retakaful operations involve Takaful operators rather than specific individuals, such as policyholders or organisations being covered.

Moreover, Retakaful can be regarded as a modern contract where it is a risk mitigation tool for Takaful operators. It plays an essential role in addressing the risks of loss faces by the Takaful industry. The contract of Retakaful is an arrangement under which a Takaful company (the insurer) agrees to assume all or portion of the specified risks of another takaful company (the ceding company). It is also crucial to emphasise that in Retakaful, the party that cedes or transfers the risks is referred to as a Takaful operator, while the other is referred to as a Retakaful operator because they provide capacity for the transferred risks. ***Section 2 (Interpretation) of the Islamic Financial Services Act 2013*** also can be said recognizes the close relationship between this Takaful operator and this Retakaful operator.

Furthermore, Retakaful also has its own objectives. It can be said that the first goal is to safeguard the Takaful operator from the possibility of bankruptcy or insolvency. The second goal is to adapt underwriting practices to Takaful operators, and the third goal is to enable the Takaful operator to use the deposit reserves held by the Retakaful fund without charging interest in the client’s best interest. Retakaful also has its own significances, some of which include expanding the capacity for underwriting and handling tragic or catastrophic losses.

Thus, it demonstrates that Retakaful is a useful method or tool to foster the development of Takaful operators and Retakaful operators while also lowering claims and losses that would then keep their respective pools in good progress.

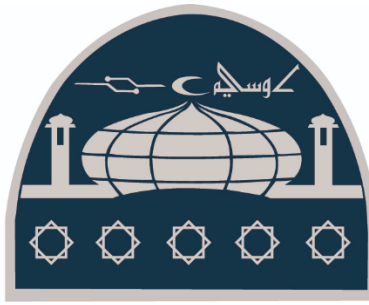
Additionally, it can be said that there were fifteen Takaful companies in Malaysia. However, Retakaful companies remain few in comparison to the number of Takaful companies in operation. According to the Central Bank of Malaysia, currently, there are three Retakaful operator companies operating in Malaysia as of January 2021: Swiss Reinsurance Company Ltd. (Swiss Retakaful), Munchener Ruckversicherungs-Gesellschaft (Munich Retakaful), and Malaysian Reinsurance Berhad. Only one of the these three Retakaful companies in operation is locally owned, while the other two are owned by foreign companies. Meanwhile, six companies were operating in Malaysia for conventional reinsurance: Ambra Versicherung AG, Asia Capital Reinsurance Malaysia Sdn Bhd, Malaysian Reinsurance Berhad, Munchener Ruckversicherungs-Gesellschaft, Swiss Reinsurance Company Ltd., and Toa Reinsurance Company Ltd.

Moreover, in regards to the issue of whether or not Retakaful company can distribute its risks to reinsurance company, the Shariah Advisory Council of the Central Bank of Malaysia in its 47th meeting, decided that a Takaful company is not permitted to accept inward Retakaful from a conventional insurance company or reinsurance company, whether pursuant to a treaty or facultative basis. However, a Takaful company is permitted to distribute its risks to the conventional insurance company and reinsurance company subject to certain conditions. The conditions are that the priority must be given to Retakaful operator companies, Retakaful operator companies cannot underwrite specific risks, and Takaful company must report to the Central Bank of Malaysia if they want to distribute their risks to the reinsurance company.

Furthermore, as the industry faces numerous obstacles during implementation, it can be said that Retakaful complements the ecosystem of Islamic finance in an essential way. Early on, conventional reinsurance companies with non-Shariah compliant business practises filled the majority of the reinsurance capacities for Takaful operators. For some takaful operators, they agree to this practise as it fall under the ground of necessity (*darurah*) or extreme need (*hajah*) as there are only few Retakaful companies in the market. Thus, due to the extremely limited number of Retakaful operator companies that are currently in existence and operation and the need to safeguard the interests of takaful participants, the Shariah Advisory Council of

Bank Negara Malaysia has approved this practise but subject to certain conditions that have been established to limit this permission.

In conclusion, in Malaysia's Takaful market, Retakaful are desperately needed. It is because Takaful operators need the support from Retakaful companies to share the risks they bear due to the industry's rapid growth and development. For Takaful businesses, Retakaful is crucial because it will allow them to cover all claims made by their clients. However, there are currently only a very small number of Retakaful businesses operating in Malaysia compared to the relatively large number of Takaful operators in Malaysia. Hence, in resolving this issue, the Shariah Advisory Council of Bank Negara Malaysia issued a resolution requiring Takaful companies to use conventional reinsurance services to protect the risks they bear, subject to previously discussed conditions.



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ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

**ISLAMIC FINANCE
(LAD 5153)**

**"THE ROLE OF TAKAFUL OPERATORS IN PROMOTING FINANCIAL INCLUSION
AND SOCIAL RESPONSIBILITY"**

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"THE ROLE OF TAKAFUL OPERATORS IN PROMOTING FINANCIAL INCLUSION AND SOCIAL RESPONSIBILITY"

By Zaffri Haziq bin Zuli'zam

Takaful Operators play a crucial role in promoting financial inclusion and social responsibility by providing insurance coverage to under-served and marginalized communities that may not have access to traditional insurance options. The cooperative and mutual model of takaful allows for the sharing of risks and rewards among participants, which can lead to better decision-making and more efficient allocation of resources. Additionally, Takaful Operators actively promote social responsibility and ethical principles through their investments and community development initiatives. This can lead to more sustainable and equitable economic growth.

One example of a Takaful Operator working to promote financial inclusion is Takaful Pakistan Limited. The company operates in a country where only a small percentage of the population has access to traditional insurance options. Takaful Pakistan Limited has been able to provide insurance coverage to low-income communities by offering micro-insurance products that are tailored to their needs. The company also provides training and education to these communities to increase financial literacy and awareness of insurance options.

Another example is Takaful Oman Insurance Company SAOG (TOIC), which is a leading Takaful operator in Oman. TOIC provides a range of insurance products to individuals and businesses, including motor insurance, home insurance, and personal accident insurance. However, it is also actively involved in promoting financial inclusion and social responsibility in the country. For example, it has established a number of partnerships with non-governmental organizations to provide insurance coverage to under-served communities. The company also promotes ethical principles and is involved in a number of community development initiatives.

Takaful Operators can also play a role in promoting financial inclusion by providing Islamic banking and investment solutions. These products are based on the principles of risk-sharing and mutual cooperation and can provide an alternative to conventional banking products for individuals and businesses. For example, Takaful Emarat Insurance in UAE. Takaful Emarat Insurance is one of the leading takaful operators in the United Arab Emirates, offering a wide range of insurance products including motor insurance, home insurance, and personal accident insurance.

The company also offers a range of Islamic financial services, including Islamic banking and investment solutions.

In addition to providing insurance coverage and financial services, Takaful Operators can also promote social responsibility by investing in socially responsible projects. For example, Takaful Malaysia, which is the first takaful operator in the country, promotes investments in infrastructure development, education, and healthcare. This aligns the interests of the insurance provider with the needs of the community, which can lead to more sustainable and equitable economic growth.

In conclusion, Takaful Operators play a crucial role in promoting financial inclusion and social responsibility by providing insurance coverage and financial services to under-served and marginalized communities, promoting ethical principles, investing in socially responsible projects and providing education to increase financial literacy. Takaful Pakistan Limited, Takaful Oman Insurance Company SAOG (TOIC) and Takaful Emarat Insurance are examples of Takaful operators that actively working to promote financial inclusion and social responsibility in their respective region.

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1181827 (TLB1)

PROF MADYA DR ZULKIFLI HASSAN

**“THE ROLE AND STATUS OF THE SHARIAH ADVISORY COUNCIL IN
ENHANCING THE ISLAMIC FINANCIAL SYSTEM IN MALAYSIA”**

The principles of Muamalat emphasized on the strength of corporate governance structure, transparency, disclosure of information and strict compliance of Islamic principles. Based on the basic principles of Muamalat, banking and takaful products were introduced consistent with the rulings of Syarak. Shariah governance framework is organizational arrangement of an Islamic Financial Institution and Takaful in ensuring the effectiveness of the monitoring towards Shariah compliance environment. Complete adherence to the Shariah compliance will enhance the confidence of public and investors towards the credibility of Islamic finance operation. Thus, Section 30(1) Islamic Financial Service Act 2013, Section 124 (3) Banking, and Financial Institution Act 1984 and Part VII Central Bank Act 2009, provides that it is compulsory for every institution which operates Islamic financial system and takaful companies to establish their own Shariah Committee.

Based on Section 51 of the Central Bank Act 2009, Shariah Advisory Council (“SAC”) is the authority for determining Sharia law for business purposes Islamic finance. The jurists’ called the SAC as “al-Raqabat al-Syariyyat”. Hammad (2006) defines the SAC as a committee that looks after and ensure the bank’s activities in order run based on the principles of Shariah, whether in areas of interest, services offered and relationship with other banking institutes to get the best profit and investment. However so, the definition of the SAC detailed as an independent body composed of jurists’ who specializes in fiqh muamalat, as well as entrusted to oversee, supervise, and monitor the activities of Islamic Financial Institutions to ensure compliance with provisions and principles Shariah law. The decisions and opinions issued by the council are also according to the need of banking institutions.

In Malaysia, the Shariah governance structure is two-tiered has been introduced. It consists of SAC at Bank Negara and Shariah Committees established in every Islamic financial institution. The SAC is made up of economic experts who are also experts in the field Shariah. The Shariah Advisory Council has a position higher compared to the Shariah Committee at banking institutions. Refer to Section 58 of the Central Bank Act 2009, if there is a difference decision between the SAC and Shariah Committee, then the decision of the SAC is applicable. According to Section 52 of Central Bank Act 2009, the function of SAC is to advise the Bank on any Shariah issue relating to Islamic financial business, the activities or transactions of the Bank, to ascertain the Islamic law on any financial matter, to provide advice to any Islamic financial institution or any other person as may be provided under any written law and such other functions as may be determined by the Bank.

In particular, the details of the role played by the SAC as stated in Section 52 of the Act, firstly, giving advice on banking products Islam and Takaful. The SAC will review the validity conventional instruments practiced by banking and takaful institutions based on perspective Shariah. The studies focus on structure, mechanism, and the use of such instruments whether available principles that conflict with Shariah principles or no. Next, Islamic banking institutions will devise and form new instruments which based on Shariah as advised by SAC. Secondly, giving advice to the Board of Directors of Financial Institutions. Among the main functions of the SAC as well is giving advice to institutions finance such as commercial banks want to issue a banking product that latest whether it complies with Shariah requirements or not. Thirdly, to validate the Shariah Compliant Manual. In providing a reference source that arranged to determine whether a product the banking passed the Shariah compliance requirements or not, the SAC will confirm a manual that has been produced through discussion among the members of the council. Lastly, to give advice on the handling of takaful. Among his tasks is to advise and monitor managing takaful funds so that they are invested in instruments required by Shariah only. With that, if there is any payment to participants who need help, the money is from a halal source and not manufactured from investments containing usury' or any element that is forbidden in Islam.

Next, refer to the issue of the SAC's position in Islamic finance cases, the privileges available to the SAC is the decision issued by him not only binding the Institutions Islamic finance, but that decision also needs to be taken considered by the Court. In fact, according to the Section

56 of the Central Bank Act 2009, SAC need to be referred to in any judgment for cases related to the Islamic Financial System. However, until 2008, the Court was seen more inclined to make their own interpretations and directly set aside the decision of the Council Shariah Advisor. In the case of *Arab-Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd & Ors, Seri Kota Cooperative Bukit Cheraka Bhd (Third Party) and others [2008] 5 MLJ 631*, it is seen that the SAC seems to have no authority and is even allegedly involved in approving the allegedly conflicting contract with Islam. This is because the Court is arbitrary concluded the Bai' Bithaman Ajil (BBA) contract which used does not fully comply with the Sharia because it is accepted in the Syafie sect only and not all sects. With that, the Court has decided that Bai' Bithaman Ajil's contract is invalid because does not meet the interpretation of 'Islamic bank business' that is 'no involve any element not approved by Islamic religion' as mentioned in Section 2 of the Islamic Bank Act 1983 and Section 124 (7)(c) of the Bank Act and Financial Institutions 1989.

However, in 2009, the Court of Appeal has decided in the case of *Bank Islam Malaysia Berhad v Lim Kok Hoe and others [2009] 6 MLJ*, that the term Islamic Banking Business in section 2 of the Banking Act Islam 1983 does not mean banking business whose purpose and operation are recognized by all four sect. The implication, the judges in the Court Civilians do not have to decide to make declaration of whether something is parallel with Islam or otherwise considering it requires the consideration of a qualified scholar in the field of Islamic jurisprudence. To confirm the same there is something parallel or contrary to Islam, the court must take notice of the judgment that SAC under the auspices of Bank Negara Malaysia has carried out its statutory duty to ensure that Islamic bank operations are in Islamic environment.

In conclusion, along with the development Islamic financial and banking system in Malaysia, the legal framework of the Islamic Financial System is necessary especially empowered in determining the position and the role that the Council should play as a Shariah Advisor. This is for the avoidance of doubt and general distrust of products and operations Islamic finance.

Author: Muhammad Luqman bin Muhammed Kurnain 1181938 TLB7/KLB2

The Benefits that Born from Strict Shariah Governance in Islamic Finance

The origin of Islamic finance in Malaysia can be traced back to the late 1960s and early 1970s, when the government of Malaysia recognized the need for an alternative financial system that was consistent with the beliefs and values of the country's Muslim population. In 1983, the Malaysian government established the first Islamic bank, Bank Islam Malaysia Berhad, as a means of promoting financial inclusion for the country's Muslim community. The establishment of the bank was seen as a crucial step towards the development of a comprehensive Islamic finance industry in Malaysia.

Over the following decades, the Malaysian government continued to support the development of the Islamic finance industry, by introducing a series of regulatory and legislative reforms. This included the creation of a Shariah supervisory board, which was responsible for overseeing the development of Shariah-compliant financial products and services. Today, Malaysia is widely recognized as a leading center for Islamic finance, with a well-developed infrastructure, a supportive regulatory environment, and a thriving Islamic finance industry. The industry has grown to include a range of financial institutions, including Islamic banks, takaful (Islamic insurance) companies, and investment funds.

Those well developed infrastructure is backed up by the legal framework of Islamic finance is based on the principles of Shariah law, which governs the religious and moral aspects of the Muslim community. Shariah law prohibits the charging or paying of interest, also known as *riba*, and requires transactions to be based on real economic activity, risk-sharing and the principles of justice and fairness. Some of the key legal principles in Islamic finance include the prohibition of *riba* where the charging or paying of interest is prohibited in Islamic finance and transactions must be based on real economic activity. Moreover, risk-sharing where Islamic finance requires that both parties share the risks and rewards of a transaction, making it a more equitable system. Additionally, the prohibition of *gharar* that refers to uncertainty or excessive risk in a transaction. It is prohibited in Islamic finance. Also, the compliance with Shariah law which means all Islamic finance transactions must comply with Shariah law and be approved by a Shariah supervisory board. Then, transparency where Islamic finance transactions must be transparent and involve full disclosure of all relevant information to both parties.

As prescribed above, shariah governance is considered as a critical component in the Islamic finance industry, as it ensures the compliance of financial products and services with Islamic law and principles. Some of the key reasons why Shariah governance is important in Islamic finance is through ensuring compliance with Islamic law which is the role of the Shariah supervisory board (SSB) to oversee and certify that financial products and services are in compliance with Shariah law and principles. Also, Shariah governance plays a big role in maintaining integrity of the industry by ensuring that products and services are in line with Islamic principles which helps maintain the integrity of the industry and protect the reputation of Islamic finance. Through such role, shariah governance is building trust and confidence among stakeholders at the same time by ensuring compliance with Islamic principles which helps to build trust and confidence among stakeholders, including customers, investors, and regulators. In addition, by providing oversight and ensuring that financial products and services are in compliance with Islamic principles, Shariah governance promotes transparency and fairness in the industry. Besides, Shariah governance also helps to protect consumers by ensuring that financial products and services are designed and delivered in a way that is consistent with Islamic principles and values.

Through those strict governance, Islamic finance had shown the potential in benefitting the country. Islamic finance can bring a range of benefits to a country, such as financial inclusion for the communities by way of providing financial products and services that are consistent with the beliefs and values of Muslim communities. Islamic financial also provides alternative financing options for businesses and entrepreneurs which can help to promote economic development and job creation. The presence of Islamic finance in a country itself can increase competition in the financial sector, which can lead to lower costs and improved financial products and services for customers. It can also help to diversify the financial sector, reducing the reliance on traditional banking and other financial products. As the country continued to support the growth of the Islamic finance industry, it can attract foreign investment, boosting the economy and creating jobs. With such extraordinary growth, Islamic finance is structured to encourage long-term investments and discourage short-term speculative behaviour, promoting stability in financial markets. Furthermore, being based on ethical and moral principles, Islamic finance promotes a more responsible and socially responsible financial system.

Thanks to such benefits, compared to the conventional finance, the advantages that Islamic finance offers outweigh the disadvantages. Islamic finance offers several advantages

compared to conventional finance, which are fairness, justice, and transparency, which promote a more socially responsible financial system as Islamic finance is based on ethical and moral principles. Being based on the principles of risk-sharing, Islamic finance encourages businesses to be more accountable and responsible for their actions. Islamic finance also provides financing options for small businesses and entrepreneurs, who may find it difficult to access conventional financing. Clearly, Islamic finance discourages speculative behaviour involving interest and promotes investments that are tied to real economic activity. In addition, Islamic finance is structured to encourage long-term investments and discourage short-term speculative behaviour, promoting stability in financial markets. Moreover, Islamic finance promotes a more equitable distribution of wealth, as it requires that profits and losses be shared between the financial institution and the customer. Lastly, Islamic finance discourages investments in industries that harm the environment, promoting more environmentally responsible behaviour.

In conclusion, Islamic finance hold the value of shariah compliance in high regard as from such strict governance give birth to many opportunity for the Islamic finance industry to contribute to the country as they are at the same time had been supported by the government to keep up the outstanding growth of development of Islamic finance.

Shariah Committee: What is the purpose?

Malaysia has been at the forefront of Islamic banking and finance for many years, and has developed a reputation as a global leader in this field. The government has set ambitious goals to make Malaysia the "Global Halal Hub" by promoting and developing Islamic finance as a key driver of economic growth. This includes measures to increase the Islamic finance market share in domestic banking and financial services, as well as efforts to promote Malaysia as a hub for Islamic finance education, research, and innovation. The country has a strong regulatory framework for Islamic finance and a large number of Islamic financial institutions, including banks, investment companies and insurance companies. The Central bank of Malaysia has also established the Shariah Governance Framework for Islamic Financial Institution to ensure the compliance with Islamic principles and laws (Shariah) in the banking and finance industry. Overall, the aspiration is supported by its strong regulatory framework, well-established Islamic financial institutions, and its reputation as a model for Islamic and developing countries that is progressive and successful.

The main duties and responsibilities of the Shariah Committee of a bank are to ensure that the bank's activities are in compliance with Islamic principles and laws (Shariah). This includes reviewing and approving commodities and services offered by the bank to ensure they are Shariah-compliant, providing guidance and advice to the bank's management on Shariah matters, and ensuring the bank's policies and procedures are in line with Shariah principles. Additionally, the Shariah Committee may also be responsible for reviewing and approving any fatwa or religious edict issued by the bank. The Shariah Committee is appointed by the board of directors for a two-year term and the size of the committee must have minimum five members. The duties and responsibilities of the Shariah Committee are governed by the Shariah Governance Framework for Islamic Financial Institution issued by the Bank Negara Malaysia (BNM).

The Shariah Committee plays a critical role in ensuring the legality of any banking product, its documentation and operation in an Islamic financial institution. The Committee is responsible for reviewing and approving products and services offered by the institution to ensure they are Shariah-compliant. This includes reviewing the documentation and operations of the products to ensure they are in line with Islamic principles and laws (Shariah). The Shariah Committee also provides guidance and advice to the institution's management on

Shariah matters and ensures that the institution's policies and procedures are in line with Shariah principles.

The Shariah Committee works closely with the Board of Directors, management and subsidiaries to ensure that the bank's activities are in compliance with Shariah laws and principles, and that the bank is following the guidelines set by the Central bank of Malaysia's Shariah Governance Framework for Islamic Financial Institution. The Shariah Committee also keeps abreast of the latest developments and trends in Islamic finance and incorporates them into the bank's operations and services.

The Shariah Committee plays a vital role in ensuring that the bank's activities are in line with Islamic principles and laws, which is essential for maintaining the trust and confidence of the bank's customers and stakeholders. It also helps the bank to comply with the regulations issued by the Central bank of Malaysia and to maintain its reputation as a responsible and reliable Islamic financial institution.

The Islamic Financial Services Act 2013 (IFSA 2013) was enacted in Malaysia to strengthen the regulatory and supervisory framework of Islamic banks and to ensure full compliance with Shariah principles. The IFSA 2013 repealed the Islamic Banking Act 1983 and the Takaful Act 1984. One of the important provisions of the IFSA 2013 with regard to Shariah governance is the statutory responsibility of Islamic financial institutions to establish a Shariah Committee.

Section 30(1) of the Islamic Financial Services Act 2013 states that "*a licensed person shall establish a Shariah committee for purposes of advising the licensed person in ensuring its business, affairs and activities comply with Shariah.*" This provision requires Islamic Financial Institution to establish a Shariah Committee as a key element of their governance structure. The main role of the Shariah Committee is to ensure that the institution's activities are in compliance with Shariah principles and laws.

However, the Islamic Financial Services Act 2013 is silent about the requirement of qualifications and the number of members that must be appointed to the Shariah Committee. The central bank of Malaysia, Bank Negara Malaysia (BNM), has issued Shariah Governance Framework for Islamic Financial Institutions, which set out the guidelines and best practices

for the appointment, roles and responsibilities of the Shariah Committee. The Framework states that the Shariah Committee should consist of at least five members, including one or more experts in Islamic law and finance. The members of the Shariah Committee are appointed by the board of directors for a two-year term.

The business of Islamic financial institutions is based on the Islamic law of transactions classified under *fiqh mu'amalat*. Hence, the Shariah Committee's responsibilities are limited to matters related to *fiqh mu'amalat* and their decisions determine the Islamic law and permissibility of certain products. The selection of members of the Shariah Committee is based on their expertise in Islamic law of transactions and *usul fiqh*. This expertise is important to ensure that the Shariah Committee can make informed and accurate decisions on complex issues in Islamic banking and finance. The Shariah Committee is expected to provide advice to the bank on matters related to *fiqh mu'amalat*, and its decisions play a crucial role in ensuring the compliance of the bank's activities with Shariah principles and laws.

In conclusion, the Shariah Committee are important in ensuring good Shariah governance. A comprehensive Shariah governance framework requires the participation of all relevant parties, including the Shariah Committee as a key player, government as the regulatory body, Islamic financial institutions as the implementers, and other stakeholders such as auditors, accountants, and lawyers. Effective collaboration between these parties is crucial to ensure that Islamic banking and finance activities are in full compliance with Shariah principles and laws.

**THE CONFLICTS OF MALAYSIAN LAW IN ISLAMIC BANKING:
CONTRACTS ACT 1950 AND EVIDENCE ACT 1950**

Prepared by: Ainul Qistina binti Mat Khoiri (1181902 – TLB 5 / KLB 2)

Legislative conflicts are among the existing challenges of Islamic banking which need to be solved accordingly which leads to the establishment of the Law Harmonization Committee at the Central Bank of Malaysia in 2010. It can be seen in *Dato' Hj. Nik Mahmud bin Daud v. Bank Islam Malaysia Bhd (1998) 3 CLJ 605*, which it was clear from the judgment of this case that there are conflicts arising between Islamic financial transactions and other general laws applicable in Malaysia.¹ Hence, it is proven that there are a few legislative conflicts within the Islamic banking sector. In respect of this study, the legal provisions of *Contracts Act 1950* and the *Evident Act 1950* will be discussed to construct a harmonized legal framework between Islamic law and civil law in regulating the industry of Islamic banking in Malaysia.

The *Contracts Act 1950* is the general law which governs and provides rules for the agreement between the contracting parties in Malaysia. *Section 24 of the Contracts Act 1950* enunciated that unlawful consideration will make the contract void if it is forbidden by a law; it is of such nature that, if permitted, it would defeat any law; it is fraudulent; it involves or implies injury to the person or property of another; or the court regards it as immoral or opposed to public policy.

For instance, in *Tan Sri Abdul Khalid Ibrahim v. Bank Islam Malaysia Bhd & Another (2010) 4 CLJ 388*, according to *Section 24(e) of the Contracts Act of 1950*, the plaintiff alleged that the Bai' Bithaman Ajil (BBA) agreement granted by the defendant was unlawful or contrary to public policy and was therefore unenforceable. The plaintiff claimed that this is because the BBA agreement violates Islamic law. The High Court held that it is crucial to highlight that Islamic teachings uphold the rule of fulfilling the contractual obligations entered between the parties even though the plaintiff argued that there was non-compliance of certain Islamic rules.

Nonetheless, in *Arab-Malaysian Merchant Bank Berhad v. Silver Concept Sdn Bhd (2005) 5 MLJ 210*, the defendant alleged that the BBA agreement and the al-wujuh agreement

¹ Hassan, R. 2011. *Islamic Banking and Takaful*. Selangor: Pearson Custom Publishing.

signed by the plaintiff and he, were against public policy because they were immoral and had misled the public, in violation of *Section 24 of the Contracts Act of 1950* thus the agreement is void and illegal. The defendant also claimed that the al-wujuh agreement was not a sale agreement but rather a loan contract with a fixed interest rate that was due by the defendant. However, the High Court in this case rejected the above argument and stated in the judgment that even Prophet Muhammad had occasion to buy some grain from a Jew to be paid at a specific time with his coat of mail as security. The judge is unable to acquiesce to any argument to that, just because the defendant pays more than what was needed to buy the impugned property, such sum (profit) must be interest per se.

It would be crucial to incorporate the words “contrary to Islamic law for Islamic banking and financial cases” based on *Section 24 of the Contracts Act 1950* in light of the Islamic law perspective.² Consequently, it would unambiguously guarantee that the contract would be null and void if anything in it violated Shariah principles. Most of Muslim scholars hold that any contract that is forbidden is void because it violates Islamic law, and those who enter such contracts would commit sin.³

Among most significant Acts of Parliament that must be cited to support cases involving Islamic banking in court is the *Evidence Act 1950*. Expert opinion is only relevant in cases involving foreign law, science, the art, the identity of handwriting, or finger impressions, according to *Section 45 of the Evidence Act of 1950*. The major question at hand is whether the Malaysian court will interpret Islamic law to encompass “foreign law” in accordance with *Section 45 of the Evidence Act 1950*.

The court’s ruling in *Ramah binti Taat v. Laton binti Malim Sultan (1927) 6 FMSLR 128* infers that expert evidence is not admissible in court cases involving Islamic law since Islamic law is not a foreign law as defined by *Section 45 of the Evidence Act 1950*. Nonetheless, in *Dalip Kaur v. Pegawai Polis Daerah Bukit Mertajam (1992) 1 MLJ 1*, the court held that to determine issues on apostasy, it is necessary to consider the opinions given by expert Muslim scholars in the relevant field of knowledge. Hence, it proves that the testimony of Muslim experts is vital in cases concerning Islamic law. However, in

² Shukri, M. H. M. 30 August 2020. “The Conflicts of Law in Islamic Banking Based on The Contracts Act 1950 and Evidence Act 1950: Malaysian Position”. *International Journal of Academic Research in Business and Social Sciences*. 10(8). <http://dx.doi.org/10.6007/IJARBS/v10-i8/7660>. p. 907-916.

³ Zuhayli, W. 2002. “Financial Transactions in Islamic Jurisprudence”. *Dar Al Fikr*. <https://ia801307.us.archive.org/19/items/FinancialTransactionsInIslamicJurisprudenceVolume1/Financial%20Transactions%20in%20Islamic%20Jurisprudence%20Volume%201.pdf>.

Commissioners for Religious Affairs Terengganu & Ors v. Tengku Mariam (1971) 1 MLJ 265, even though Mufti approved the legality of such waqf in this case, unfortunately, the court refused to accept the opinion given by the Mufti.

Thus, based on the aforementioned court decisions, it appears that the Muslim experts' opinion regarding Islamic law of banking and finance is not consistently admissible in the Malaysian court. In actuality, determining the legitimacy of certain issues in Islamic banking situations may depend heavily on the opinions of the Syariah Advisory Council (SAC). The issue at hand could be resolved by amending the *Evidence Act 1950* in such a way as to include Islamic banking law as an area in which the court might consult an expert opinion before arriving at a verdict, while also avoiding any inconsistency in terms of accepting the evidence whenever the Malaysian courts are confronted with this area of law.⁴

In conclusion, in terms of Islamic law and banking, it is evident that there are several legislative conflicts which need to be resolved principally based on the *Contracts Act 1950* and the *Evidence Act 1950*. The legal framework in Malaysia must be effectively harmonised to make it possible for the Islamic financial sector to expand. Therefore, in order to ensure that the regulations that apply to Islamic banking are always consistent with Islamic law, comprehensive legislation on Islamic banking should be passed.

⁴ Shukri, M. H. M. 30 August 2020. "The Conflicts of Law in Islamic Banking Based on The Contracts Act 1950 and Evidence Act 1950: Malaysian Position". *International Journal of Academic Research in Business and Social Sciences*. 10(8). <http://dx.doi.org/10.6007/IJARBS/v10-i8/7660>. p. 907-916.

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WITHDRAWAL OR REVOCATION OF HIBAH: IS IT PERMISSIBLE?

BY: FATIN SYAZWANI BINTI AWI | 1182792 | TLB8

Malaysia has permitted the practice of *hibah* in two ways, firstly, for the assets' wealth management and secondly for the Islamic banking products and services as a supporting financial instrument.

As for the first application, *hibah* is one of the solution to deliver wealth to non-heirs apart from *wasiyyah* (bequest) or *faraid* (succession) systems (Rusni H, Nor Azdilah M.Z. 2020). *Hibah* is encourage in Islam which was stated in Quran (*Surah an-Nisa*, 4:4 and *Surah al-Baqarah*, 2:177) and according to the hadith of the Prophet PBUH, it cannot be withdrawn or cancelled after *al-Qabd* (possession). The exception to withdrawn *hibah* is limited to the *hibah* from a father to his children or from a grandfather to his grandchildren. Receiving *hibah* is recommended (*sunat*) provided that the gift is not something illegal and is halal (Alias A. & Mohd Zakhiri M.N., 2019).

When a completed *hibah* contract meets the terms and conditions, and there has been a surrender and acceptance of goods, then the property rightfully belongs to the recipient (donee) even without repayment. However, whether or not the said *hibah* can be withdrawn has caused disagreements among the scholars (Yusnita M.Y. & Asmida A., 2013).

First, according to the Hanafi scholar, a donor can withdraw the *hibah* but it is unfavourable (*makruh*) to withdraw a *hibah* that has been given away, and the person may cancel the *hibah* even though the hand-over has occurred, unless the *hibah* was made with repayment.

Second, according to the Syafiee, Hanbali and other scholars from the Maliki, *hibah* withdrawal may occur solely with offer and acceptance. However, when accompanied with the delivery and acceptance of goods, then the *hibah* cannot be withdrawn unless the *hibah* is made by the father (including mother, grandfather, grandmother, and other sources) to the children for as long as the property is not related to other people.

Third, according to Imam Ahmad and Zahiri, the donor are prohibited (*haram*) from withdrawn a *hibah* unless a *hibah* by the father (including mother, grandfather, grandmother and other sources) to his children. This is based on the Hadith of Prophet PBUH by Al-Bukhari and Muslim, saying meaning:

"One who gets back his gift is like a dog which vomits and then swallows that vomit."

Although the Islam ruling permits the revocation of *hibah* made by a father (including mother, grandfather, grandmother and other sources) on his children, however, it is bound by the condition that the property is still in the possession (*qabd*) of his son (his grandson). If the property has gone beyond the jurisdiction and ownership of his son (grandson) such as it has been sold, *wakaf* or given as a gift to another person and the property has already been received by the *hibah* recipient (other people), then the *hibah* cannot be withdrawn (Yusnita M.Y. & Asmida A., 2013).

However, majority of the fiqh schools, are of the view that revocation of the gift after making over possession to the recipient, is unlawful. If the possession of the gift has not yet been made over to recipient, the donor may revoke it. If the donor, after making gift but before,

delivery of its possession, passes away, the gift should be included in his legacy and the recipient has no right in it. (Hayatullah L., Mohad Nasran M., Zaini N., Shofian & Ahmad, 2012)

The second application of *hibah* is applied in Islamic financial supporting instrument for the Islamic banking and takaful products and services as offered by Islamic financial institution (Rusni H, Nor Azdilah M.Z. 2020). According to Bank Negara Malaysia, *hibah* refers to a transfer of ownership of an asset from a donor (*wahib*) to a recipient (*mahwub lahu*) without any consideration.

The Shariah Advisory Council (the SAC) on 165th meeting, has decided that in *hibah* contract, generally, the ownership of *hibah* asset is transferred effectively once the *hibah* recipient takes the possession (*qabd*) of the *hibah* asset physically or constructively. This forms the basis of transfer of ownership of *hibah* asset. Without *qabd*, the donor may still revoke the *hibah* (the SAC 165th Meeting, 2016).

However, in conditional *hibah*, the ownership of the *hibah* asset is effectively transferred to the *hibah* recipient upon the occurrence of agreed conditions. This forms the basis for transfer of ownership of *hibah* asset in conditional *hibah*. As such, in conditional *hibah*, it is not possible for the donor to revoke the *hibah* upon the occurrence of the agreed *hibah* conditions even though the *hibah* recipient has yet to take possession of the *hibah* asset physically or constructively (the SAC 165th Meeting, 2016).

Notwithstanding this, *hibah* which is attached to the condition of the demise of the donor shall only be applicable in the context of takaful. This is to provide certainty to the beneficiary in relation to his ownership of the takaful benefit upon the demise of the donor/participants even though he has not yet taken possession (*qabd*) of the *hibah* asset, in this case, the takaful benefit (the SAC 165th Meeting, 2016).

As conclusion, *hibah* is a gift from a donor to a recipient. *Hibah* happened when a recipient has a possession of the *hibah* asset. If the donor wants to revoke the *hibah*, he must make sure that the the recipient already has the possession of that asset. If not, the donor cannot revoke the *hibah* because the recipient doesn't have the possession over the asset. Other that that, in situation where the father (or mother) give the *hibah* to his children, he may revoke the *hibah* as long as he was the donor of that *hibah*.

MUAMALAH COURT IN MALAYSIA

By: Nur Maizatul Afifa binti Mior Abd Aziz (1181950)

One of the recommendations of Bank Negara Malaysia Financial Sector Master Plan in 2001-2010,¹ is to establish an effective legal structure for Islamic financial in Malaysia. A sufficient number of competent lawyers and judges equipped with sound knowledge and expertise in both Shariah and civil laws is needed to handle legal matters on Islamic financial contracts. This is to promote confidence amongst the industry practitioners and customers. In this regard, it is recommended to establish a Shariah commercial court dedicated to deal with legal matters on Islamic banking and takaful. This suggestion also had been view by Tun Abdul Hamid Mohamad, Judge of the Court of Appeal at that time.

The establishment of such a division in the High Court will ensure cases that involve elements of Islamic banking and finance are tried by judges who are specialized in this field, and ensure consistent and reliable judgments which will in turn ensure certainty in the Islamic banking and finance sector. At the same time, lawyers will be encouraged to specialize in this area and therefore will be better equipped to give advice in their case.²

Thus, the setting up the Muamalah Court is in line with the Government's aspiration to promote Malaysia as a centre of Islamic Banking and Finance. The specialized Muamalah Court began operation in February 2009. In relation to structure, Muamalah Court is part of the Commercial Division of the Kuala Lumpur High Court, and is designated to hear all cases on Islamic Banking and Finance. The Muamalah court comprises a single judge, two registrars and is supported by the Muamalah Registry with three clerks.³

Meanwhile, pertaining to jurisdiction, Muamalah Court has the same original and appellate jurisdiction as any High Court in Malaya under the Court Judicature Act but specializes in hearing Islamic banking and finance cases. Shariah issues will be referred to the Shariah Advisory Council of Bank Negara Malaysia pursuant to section 56 of Central Bank Malaysia Act 2009. It is mainly for determination of Shariah matters relating to Islamic financial business. Accordingly, this set up has promoted Malaysia

¹ Bank Negara Malaysia, Financial Sector Master Plan 2001-2010, (Kuala Lumpur: Bank Negara Malaysia: 2001), 79-83.

² Sherin Binti Kunhibava, "*Legal Challenges Relating to Islamic Banking and Finance, Conquered and Continuing – The Malaysian Experience*" ShLR, (2006)

³ Rusni Hassan and Mohammad Azam (2011). The Establishment of Muamalah Court in Malaysia: An Overview of Issues and Challenges. IIUM Law Journal.

as the first country having a structured court system to determine both Shariah and legal issues in the area of Islamic finance.⁴

Tun Abdul Hamid Mohamad suggested that the Muamalah Court need to be made under the civil court jurisdiction and not under Shariah court jurisdiction.⁵ This is because of several issues that Tun had put his thoughts. Firstly, banking and insurance issues are under the Federal jurisdiction and the civil court jurisdiction. This can be seen as all the laws related in the banking and insurance transactions are all civil related such as in the Companies Act 1965, the National Land Code, the Stamp Act 1949 et cetera. Secondly, in his opinion the judges of the Shariah Court were not familiar with the English terms of the documents in the transactions. Apart from that, the applications and decisions in the Shariah court is limited compare to the civil court. For instance, the Shariah court do not have the jurisdiction to give remedy such as bankruptcy, winding up, and auction under the National Land Code and others laws. Referring to the case of *Tinta Press Sdn. Bhd. v Bank Islam Malaysia Bhd*,⁶ Bank Islam claimed mandatory induction order which is one of the remedy in the common law. This is however beyond Shariah court jurisdiction and also foreign to the court's languages. Moreover, usually the parties involved in the case are not Muslim entirely. Sometimes there are cases that involved non-Muslim. Whereas, the Shariah court only have jurisdiction towards the Muslim.

Tun Abdul Hamid also suggested that the any issues related to Islamic Banking and takaful should not be decided by a judge that only have the knowledge in Shariah law only or civil law only. It also cannot be decide by a judge that only have both knowledge without referring to other branch of knowledge like banking and insurance.⁷ He also added that the judge of the Muamalah court did not have to make his own decision. He can always refer to Fatwas and Shariah Advisory Council in the bank.

In a conclusion, it is best to say that the Muamalah court today is one if the best way to settle all the issues relating to Islamic banking and also insurance. This Muamalah court also indirectly promote that Malaysia do have one of the best Islamic financial effective legal structure.

⁴ ibid

⁵ Abdul Hamid Mohamad. "Cadangan Mewujudkan Bahagian Muamalat Di Mahkamah Tinggi". (2002).

⁶ (1987) 2 MLJ 192

⁷ Abdul Hamid Mohamad. "Cadangan Mewujudkan Bahagian Muamalat Di Mahkamah Tinggi". (2002).

A LEGAL OVERVIEW ON ISLAMIC BANKING IN MALAYSIA

By Nur Syafiqah Aini binti Azahari (1181909)

Islamic finance has grown tremendously since it first emerged in the 1970's where Malaysia's Islamic finance industry has been in existence for over 30 years. Islamic banking refers to a practice that based on the methodology derived from Shariah principles which come from mutual risk and profit sharing between parties thus differs from conventional banking where the profits derived by way of interest. Interest-related (riba), gambling (maysir), and speculative trading (gharar) activities are all forbidden. The burden is on Islamic banks and legal practitioners in preparing Islamic Financial Instruments to ensure that the documents are trade related and do not transgress the Quranic injunctions and civil law.

First and foremost, it is crucial to look into the regulatory authorities for banking regulation. Islamic Financial Services Act 2013 (IFSA) is a statute which enacted to regulate and supervise Islamic financial institutions, payment systems and other relevant entities. It replaced the Islamic Banking Act 1983 and the Takaful Act 1984. Under the provisions of the IFSA, Financial Services Act 2013 (FSA) and Central Bank Act 2009 (CBA), Bank Negara Malaysia (BNM) has the authority to act as the regulator of banking institutions.

In respect of Islamic banking in Malaysia, the Shariah Advisory Council (SAC) is empowered by the CBA to decide the Islamic law on any financial matter and to issue rulings on Shariah matters on a reference made to it. BNM shall consult the SAC on any issue relating to Islamic financial business and the SAC shall advise in making a decision on such matters. Pursuant to section 56 and 57 of the CBA, if a proceeding is involving Islamic financial businesses, a court shall refer any question concerning a shariah matter to the SAC for its ruling which is binding on the court. The rulings made by the SAC pertaining Islamic financial matters will prevail over a conflicting one given by a shariah body or committee constituted in Malaysia by an Islamic financial institution as stated under section 58 of the CBA.

It is worthy to note a landmark case of *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd [2019] 3 MLRA 87*, the Federal Court held that section 56 and 57 of the CBA were not in breach of Federal Constitutional. The rulings on Islamic finance made by SAC are binding on Malaysian court or arbitrator. From this case, it clearly shown that SAC is a statutory expert who aids the court in applying Islamic laws and not a judicial body that resolves dispute between parties.

Some people may have a misconception on Islamic banking is only for muslims or more complicated than conventional banking when in fact it is more convenient compared to the conventional system. Since the Islamic financial system works in accordance with the Shariah principle, the BNM and SC have set out retail and wholesale services based on approved Islamic principles. The range of Islamic financial products offered includes: current deposits and savings deposits under the concept of wadiah (guaranteed custody), equity or partnership financing under the concepts of *musyarakah*, *mutanaqisah* and *mudharabah*; lease-based financing under the concepts of *al-ijarah*, *al-ijarah muntahia bi al-tamlik* and *al-ijarah thumma al-bai*; sale-based financing under the concepts of *istisna`*, *bai` bithaman ajil*, *bai` salam*, *murabahah* and *musawamah*; fee-based activities under the concept of *wakalah*.

Briefly explanation on some of the Islamic instruments mentioned above, *mudharabah* is known as a contract which provides capital by *rabb al-mal* (capital provider) to the *mudharib* (entrepreneur) to manage and invest the capital. The profits gained from the investment will be shared between the parties according to what has been mutually agreed. In the event of a loss, the loss will be bear by the *rabb al-mal* solely. The *mudharabah* principle is usually used in various types of deposit contracts. Meanwhile, *murabahah* also refers to as cost-plus financing is an Islamic financing structure in which the seller and buyer agree to the cost and markup of an asset. Under this contract, the customer, purchases the asset from a third-party supplier/vendor and resells it to the customer either against immediate payment or on a deferred payment basis. The purchase and selling price and the profit margin must be clearly stated at the time of the sale agreement.

Apart from that, there is organisational requirements in banks where there is a board of directors which responsible for the proper governance of a bank to uphold a board charter that outlines the purpose, duties and processes of the board and its committees. The board must establish the following board committees namely nominations committee, remuneration committee, risk management committee, audit committee, shariah committee and internal audit function. Appointment of bank directors, CEOs and chairmen requires the prior written consent of BNM.

Nowadays, more Shariah-compliant products have been offered in the local market, aiming to attract both Muslim and non-Muslim investors in Malaysia. It concerns technological advancements, financial literacy, and ensuring that goods comply with the BNM's rules and regulations. Therefore, it would be wise for those in Islamic finance to consider the technical and legal issues while creating and constructing Shariah-compliant products.

LEGAL ISSUE IN THE APPLICATION OF HIBAH AS A FINANCIAL INSTRUMENT

In Islam, the practice of giving the hibah is promoted among Muslims since it upholds the concept of Maqasid Shari'ah in terms of wealth protection and relationship strengthening. The use of hibah has been expanded in Malaysian modern practice as a form of auxiliary financial instrument within the core Islamic financial services provided by some Islamic financial institutions. This type of hibah is regarded as a commercial hibah that is connected to other types of primary Shari'ah-based contracts for goods or services, including the contract of sale and purchase (albay'), lease (al-ijarah), kafalah (al-rahm), company (al-syarikah), profit and loss sharing (al-musyarakah), and saving (al-wadiah), including takaful products.

The use of hibah as a financial instrument in Malaysia raises several legal issues. However, this writing will only focus on the conflict of jurisdiction between the Shari'ah and Civil courts.

The conflict of jurisdiction between the Shari'ah and Civil courts. Due to the fact that the Malaysian Federal Constitution established two (2) distinct jurisdictions for courts to hear cases involving both civil and Islamic law. The commercial law of transaction issues, particularly those involving banking goods related to finance and the hibah contract, will be heard in civil court. The Shari'ah Court has jurisdiction over cases relating to Islamic law, notably those involving Muslims as individual and Muslims family.

Examining three types of provisions that are applicable in evaluating the jurisdictional question that may emerge in an award of hibah may help resolve the issue. Those provisions are **Article 74 of Item 1, List II of the State List in the Ninth Schedule of the Federal Constitution, Article 74, 77 of Item 4 and Item 7, List I of the Federal List in the Ninth Schedule of Federal Constitution.**

On the basis of the aforementioned statutory provisions, the following conclusions are drawn:

- 1) the phrase "gift" is expressly intended for hibah, which has to do with Muslim family law and therefore subject to Shari'ah Court's jurisdiction, unless otherwise specified by the Federal List. The clause that uses the word "gift" is regarded as a type of hibah and, as such, becomes a part of state matters, which falls under the ambit of Islamic administration in every state and is therefore subject to the Shari'ah Court's jurisdiction;

- 2) Besides, if any of the disputed parties are non-Muslims, the civil court will automatically have the right to hear over the dispute because the clause listed under the State List, where the Shari'ah Court has its jurisdiction over the dispute, will only be applicable for those professing the religion of Islam;
- 3) All types of contracts or agreements will fall under the exclusive jurisdiction of the civil court, with the exception of the hibah contract, which will fall under the Shari'ah's scope of jurisdiction;
- 4) The interpretation of "finance" and the term "contract" stated under Federal List, falls under the purview of Islamic banks and financial institutions; as a result, disputes involving financial transactions, including the use of the hibah as a financial instrument, will be heard by civil courts rather than by Shari'ah courts.

The landmark case demonstrating the conflict of jurisdiction between the Shari'ah Court and civil court over the issue of hibah was **Latifah Mat Zin v. Rosmawati Sharibun & Anor**. Briefly, the issue was whether the hibah money kept in that account will entitle the appellant to bring the case under the civil court as it concerned funds that were stored in a joint account by the deceased and his third wife (the appellant). The Federal Court judges in this case dismissed the appellant's appeal and ruled that the Shari'ah Court had authority over the law of hibah and believed it was incorrect to view the topic in the aforementioned case as a whole because according to the case's findings, there were still some matters that fell under the purview of the Shari'ah Court.

According to the aforementioned case, it was determined that the Shari'ah Court would have an exclusive jurisdiction over matters relating to Islamic law and that civil courts would not be permitted to interfere with that jurisdiction. The contested matter may appear to fall under two applicable laws, one on the side of Islamic family law and another on the side of Islamic contract law in banking transactions, or under the law of probate and administration, but the conflict of jurisdiction may still exist.

AUTHOR: NURZANA QADRIYAH BINTI ZAMZUL (1181895) (TLB 5)

TOPIC: THE CONCEPT FOR ISLAMIC BANK IN IMPOSING LATE PAYMENT CHARGE, AND HOW TEENAGER CAN AVOID FROM TRAPPED IN THIS SITUATION?

When entered into financing agreement we are obliged to settle the total amount of financing within stipulated period as has been agreed in the financing contract. In the circumstance which we defaulted to make the settlement within specified, the financial activity of the financier will inevitably be affected. The Islamic banks also need a resort in coping with this circumstance to mitigate harm suffered by them in line with Islamic legal maxim states that “Whatever harm should be removed”.

After interviewing few students in USIM, most of them didn't know the explanation on the differences of Islamic concept in imposing late payment charge with the conventional bank. This miss of knowledge may come from the less exposure to the Islamic financing concept and most of student had not so far engaged with financing contract. However, this knowledge is important to be explain so they will be wiser on how manage their financial. Can gain a better grasp of financial terms and products, avoid fraud, make decisions that are appropriate for their needs and circumstances, and stay out of sticky situations brought on by either excessive debt or inappropriate risk-taking.

The SAC through its meeting had resolved that late payment charge imposed by an Islamic financial institution encompassing concepts of *gharamah* and *ta'wid* is permissible, subject to some conditions. So, what is the explanation behind these concepts? Ta'wid concept refers to the claim for compensation arising from actual loss suffered by the financier due to the delay in payment and may recognised as income on the basis that it is charged as compensation for actual loss suffered by the institution. While *gharamah* refers to penalty charges imposed for the delayed financing settlement, without the need to prove actual loss suffered, this shall not be recognized as income and must be channeled to certain charitable bodies.

The SAC was referred to ascertain the mechanism to avoid delay in settling the judgment debt for Islamic finance case, it was decided by the SAC that the judge may impose a late payment fee on the judgement based on the methods of *gharamah* and *ta'wid* on actual

loss. The court may impose a late payment charge at the rate stipulated by the procedure of the court. But the judgment creditor (bank) is only allowed to receive *ta'wid* which a compensation rate for actual loss which SAC agreed to adopt the “weighted average overnight rate” of the Islamic money market as reference. And in the current practice, if there is balance when the actual loss is less than the applicable rate, it shall be channeled by the bank to a charitable organization as may be determined by BNM.

The permissibility of imposing *ta'wid* is based on hadith “From Abu Hurayrah who said that the prophet (s.a.w) said: ‘Delay by a rich person (in payment of debt) is a tyranny.’”. besides a fiqh maxim “Neither harming nor reciprocating harm (in Islam)”, the delay in payment by the customer will create harm to the Islamic financial institution incurring additional cost such as issuing notices, letters, and legal fees. These should be avoided to ensure the market efficiency (*istiqrar ta'amul*). In addition, late payment of a debt is analogous to usurpation has the same illah which is tyrannically obstructing the use of the property and exploiting it. For *ghasb*, the Shafi’is and Hanbalis are of the view that the benefit of the seized property is guaranteed and shall be compensated. For delayed payment, the financier also unable to utilize the fund for other business purpose. Therefore, the customer should pay compensation to the losses suffered by the financier.

Moving on to the steps that can be taken by the teenagers in avoiding late payments. There are a number of effective strategies we can adopt, we can add due dates notes personal calendar and each time we glance at our calendar, we will have a visual to our financial planning and budgeting. Besides, utilize account trackers such as the MAE Spending Tracker and regularly check them to ensure that we are not overspending. Moreover, make account management a routine, decide on a day and time to review bills and we would not have to deal with mounting bills if we made it a weekly routine. And lastly, we can authorise and schedule the automatic payments for our commitments.

In conclusion, the method of Islamic finance in imposing late payment charge has a significant difference with the conventional in the concept. Islamic financier did not make profit from late payment charge but only take it to cover losses incurred when the customer did not made repayment within stipulated time, while conventional financier has used compounding interest concept for late payment And the purpose of *ta'wid* and *gharamah* is for

the deterrence to avoid the late payment. The rulings made by the SAC ease the process of ascertaining the late payment charge and ensure clarity on the permissibility of *ta'wid* and *gharamah* which is in line with Shariah. Besides, for teenagers we need to organize our financial smartly to avoid being trapped in debt and to avoid from incurring more cost when are required to pay for late payment charge.

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THE DIFFERENCE BETWEEN TAKAFUL AND CONVENTIONAL LIFE INSURANCE

In this modern day, people had realised that they themselves need to be protected financially if any bad event happened to them. Takaful, which is sometimes referred to as "Islamic" insurance is a relatively new insurance product that is promoted as an Islamic alternative to conventional insurance. People always get confused when it comes to Takaful and Conventional insurance since the purpose of these matter is to protect the insurer. However, there are big differences between both of takaful and conventional insurance in the underlying principles and structure.

Ones could understood that a conventional insurance as an agreement whereby an insurer undertakes (in return for the agreed premium) to pay a policyholder a sum of money (or its equivalent) on the occurrence of a specified event. The specified event must contain some element of uncertainty. This uncertainty may take the form of either the fact that, while the event is inevitable given the laws of nature, it is uncertain when it will occur or the fact that the occurrence of the event depends on unintended causes, meaning that it may never occur. In contrast, Takaful is a Shariah compliant insurance option grounded in Islamic Muamalat (Islamic transactions) products. The term Takaful also refers to the concept of Islamic insurance based on mutual cooperation, where both risks and funds are shared between the insured and insurer.

Also, the Malaysian National Fatwa Council had concluded that the status for the modern conventional insurance contracts are unacceptable to Islam and also, promoted the conventional insurance is not allowed according to the fatwa. Basically, the concept of takaful is known as *tabarru'* where the funds are collectively contributed from a group of people who choose to be covered under Takaful. It must be noted that anyone can get takaful coverage and one does not need to be a Muslim to do so or even to work as a takaful agent. The Takaful industry in Malaysia is also regulated through the Islamic Financial Services 2013 act. The main body that govern the matter related to Takaful in Malaysia is the Malaysian Takaful Association (MTA).

Next, the features of the Takaful is that there is no claim clash back policy. Here, let say that the insured does not made any claim during the coverage period, at the end of the period the insured will receive certain amount of cash back from the Takaful provider for

selected Takaful products. The amount, however, is decided upon by the Takaful provider and there is no set amount to adhere to. Unlike the conventional insurance, if there is no claim made during the coverage period, there will be no return for the cashback to the insured and there will be no benefits received once the period is over. More importantly, takaful is operated with shariah compliant where it must adhere to all Islamic laws and not involve anything Haram.

Furthermore, it can be said that for the takaful, individual enters the agreement to contribute to a fund that can potentially help those experiencing the unfortunate situation. It means that if anything is occurred to the individual, all the burden will be shifted to everyone who consent to the agreement since the concept of takaful is based on tabarru' which are mutual help or mutual responsibility. On the other hand, a conventional insurance policy is purchased as a personal financial security for an individual, and the insurance company is the risk bearer.

Moreover, the conventional investment units of insurance will invest based on their assessment of what fits their profiles. Undoubtedly, there will be high chances that the investment been made by the conventional insurance involved with matters which is not within the Shariah compliance. This could not be avoided since the conventional insurance does not have Shariah compliance in their policy, so they could invest in any investment units which may seem will give high profit return. However, Takaful investments will follow strict principles. Takaful cannot invest in anything that has elements of gambling, uncertainty or the practice of lending money at unreasonably high-interest rates.

Then, if there is extra money because of low claim rates by insurers under Takaful, it will be distributed to participants. While profits made will be split between shareholders and participants. Operators of takafuls generate money by charging performance fees or by splitting the profits. However, the total payment from the excess received by Takaful operators cannot be greater than the sum paid to Takaful participants. However, in the case of conventional insurance, surplus funds and earnings are the property of the insurance company' shareholders.

In conclusion, takaful is not a new concept and it has been around for centuries. Takaful and conventional insurance are two different forms of insurance. Takaful is based on the principles of mutual cooperation and mutual support, and is guided by Islamic law. It operates as a cooperative system where policyholders contribute funds into a pool to cover each other's risks. Conventional insurance, on the other hand, is a commercial enterprise where policyholders pay premiums to an insurance company, which then assumes the risk and

provides financial compensation in case of a covered event. The main difference between the two is the underlying principles, operations, and goals.



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