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Perbezaan antara perbankan

ISLAM DAN KONVENSIONAL

Oleh: Ustaz Mohd Hafiz Hj. Fauzi & Ustaz Mohd Fadhli Mohd Faudzi*

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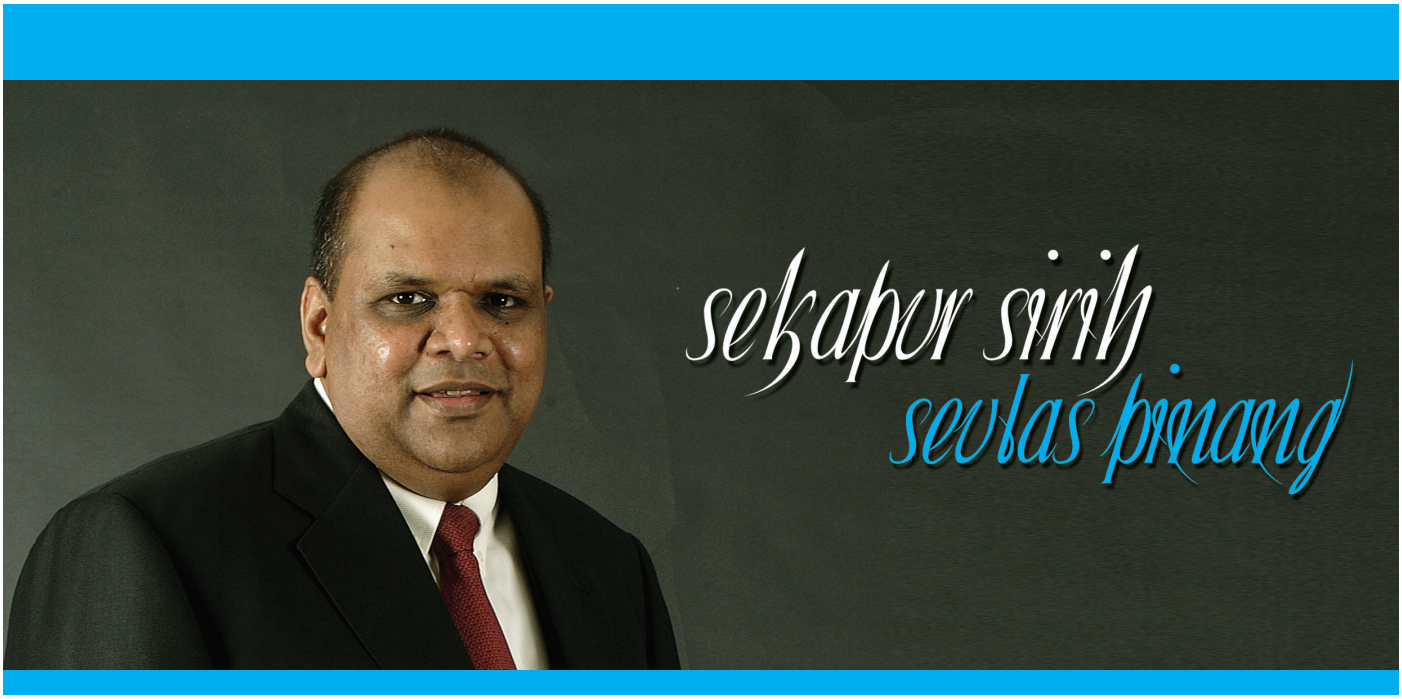


YANG BERBAHAGIA DATO' HAJI MOHD REDZA SHAH ABDUL WAHID

Ketua Pegawai Eksekutif Bank Muamalat Malaysia Berhad

Assalamu'alaikum warahmatullahi wabarakatuh dan Salam Sejahtera.

Dengan nama Allah yang Maha Pengasih lagi Maha Penyayang, puji-pujian hanya layak bagi Allah, Tuhan sekalian alam. Selawat dan salam ke atas junjungan besar Nabi Muhammad S.A.W, keluarga dan para sahabat Baginda S.A.W.

Di antara perkara yang ajaran Islam berusaha tegakkan adalah atau suasana yang solehah (al-biah al-solehah). Kewujudan persekitaran yang baik dan takwa akan mempengaruhi pembentukan jiwa dan akhlak penghuni yang berada dalamnya.

Insan apabila hidup dalam sesuatu suasana, secara kebiasaannya suasana itu akan mempengaruhinya. Jika seseorang yang kurang bijak hidup di kalangan mereka yang bijak, maka sedikit sebanyak bicara dan pendapat yang bijak dan berkualiti itu akan tempias kepadanya. Nabi S.A.W. menyebut dalam hadis yang bermaksud:

"Seseorang berada atas agama sahabat baiknya. Maka hendaklah seseorang kamu memerhatikan siapakah dia jadikan teman rapatnya." (Riwayat Ahmad, dinilai Hasan oleh al-Albani)

Di atas kepentingan membentuk atau mewujudkan suasana yang soleh ini, maka tidak hairanlah jika Allah menugaskan antara tanggungjawab kita agar memelihara iklim dan persekitaran agar dihiasi dengan perkara-perkara yang terpuji dan dipelihara dari kemungkaran yang nyata lagi mencemarkan masyarakat. Sabda Nabi S.A.W maksudnya:

"Sesiapa di kalangan kamu yang melihat kemungkaran maka hendaklah dia ubah dengan tangannya, sekiranya tidak mampu maka dengan lidahnya, sekiranya tidak mampu maka dengan hatinya. Itu adalah selemah-lemah iman".

(Riwayat Muslim)

Marilah kita bina iklim takwa.
Sekian, Wassalam.

Sejenak Bersama...

YM Al-Fadhil Ustaz Engku Ahmad Fadzil Engku Ali
Ahli Jawatankuasa Syariah,
Bank Muamalat Malaysia Berhad.

Alhamdulillah saya bersyukur ke hadrat Allah SWT kerana dengan taufiq dan izin-Nya, maka majalah al-Muamalat ini dapat diterbitkan atas usaha pihak Penyelidikan dan Pembangunan, Jabatan Syariah. Selawat dan salam ke atas junjungan besar Nabi Muhammad SAW, para sahabat, tabi' dan tabi'in serta para ilmuan yang sentiasa mencintai ilmu dan terus menerokai dan menjejakinya. Jutaan terima kasih juga kerana memberi peluang kepada saya untuk menyampaikan sepatah dua kata di dalam majalah ini.

Majalah ini merupakan wadah kepada BMMB untuk menyebarluaskan kepada kakitangan tentang fungsi dan maklumat-maklumat berkaitan perbankan Islam khasnya dan agama Islam amnya. Sebagaimana yang kita ketahui, sistem perbankan Islam di Malaysia telah berkembang pada tahap tertinggi, menjadikan Malaysia kini peneraju sistem perbankan Islam di dunia. Dengan ini, masyarakat harus bijak memilih sistem perbankan yang mampu memberi kemudahan di dunia dan akhirat.

Pencapaian di dalam sektor perbankan Islam bukanlah dicapai dengan mudah malahan ianya pasti memerlukan perancangan yang teliti dan penuh berhikmah. Peningkatan yang begitu memberangsangkan ini dapat direalisasikan melalui pendekatan yang menyeluruh sama ada dari aspek polisi perbankan dan juga perlaksanaan undang-undang yang efektif.

Akhir kalam, diharapkan majalah ini dapat menjadikan maklumat yang diperolehi sebagai sumber yang berguna untuk sama-sama dikongsi bagi memepertingkatkan lagi imej Bank Muamalat seterusnya imej Islam itu sendiri, InsyaAllah. Justeru itu, kita haruslah bergerak bersama-sama bagi meneraju perubahan yang positif bagi bank ini. Wallahu'alam.

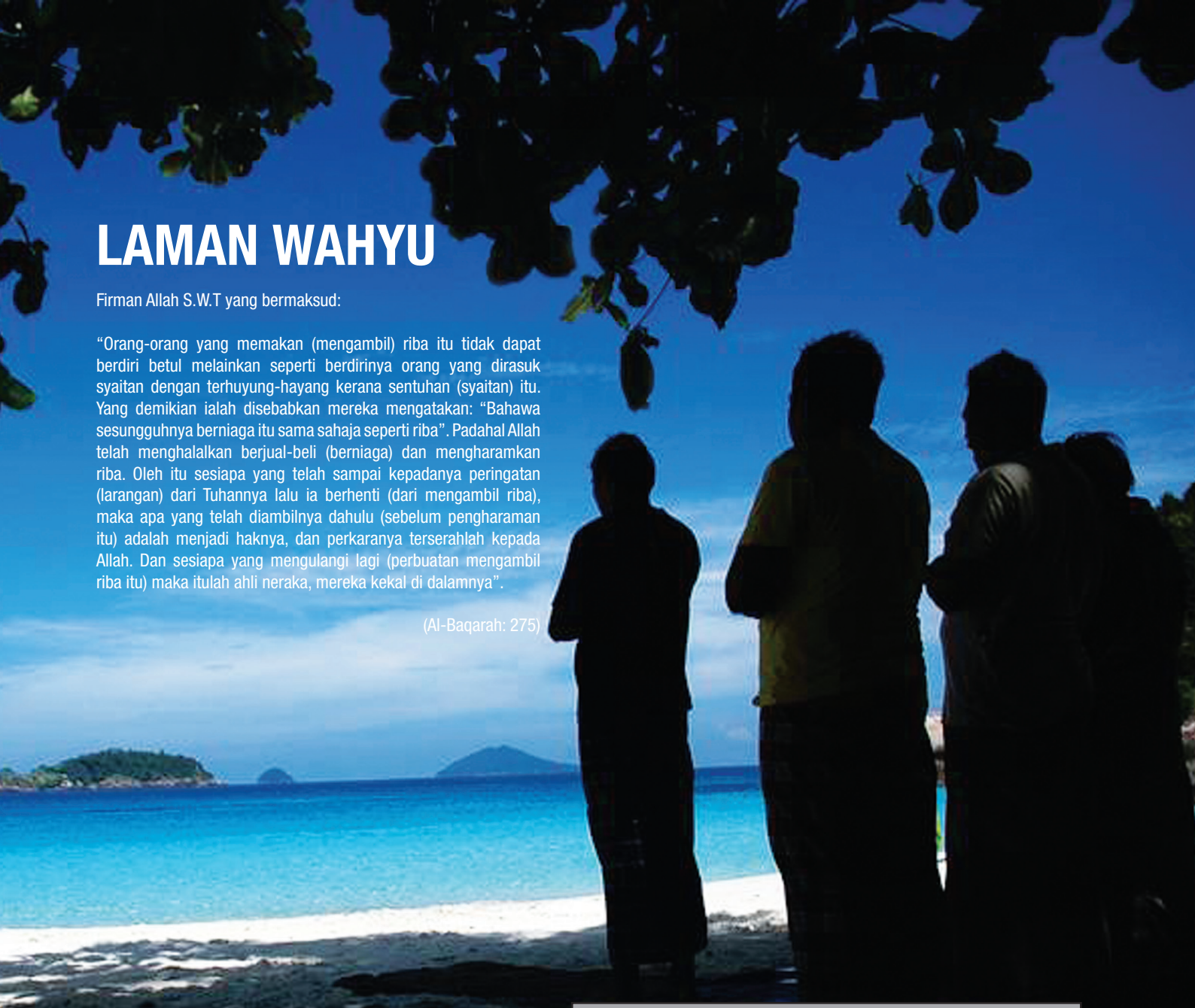
Sekian, terima kasih.

SENGAT CIK LEBAH

Di sebuah balairaya...

***La ni macam ni sheikh*, anta tak tahu belajarlah. Jangan buat-buat tahu dan jadi orang bodoh yang sombong. Dia tak tahu, dan sampai bila-bila pun tak tahu.**

***Betoi tu sheikh*, terima kasih anta ingatkan *ana*. *Ana* kena banyak rujuk kepada orang yang mahir dalam bidang dia la *sheikh*.**



LAMAN WAHYU

Firman Allah S.W.T yang bermaksud:

"Orang-orang yang memakan (mengambil) riba itu tidak dapat berdiri betul melainkan seperti berdirinya orang yang dirasuk syaitan dengan terhuyung-hayang kerana sentuhan (syaitan) itu. Yang demikian ialah disebabkan mereka mengatakan: "Bahawa sesungguhnya berniaga itu sama sahaja seperti riba". Padahal Allah telah menghalalkan berjual-beli (berniaga) dan mengharamkan riba. Oleh itu sesiapa yang telah sampai kepadanya peringatan (larangan) dari Tuhannya lalu ia berhenti (dari mengambil riba), maka apa yang telah diambilnya dahulu (sebelum pengharaman itu) adalah menjadi haknya, dan perkaranya terserahlah kepada Allah. Dan sesiapa yang mengulangi lagi (perbuatan mengambil riba itu) maka itulah ahli neraka, mereka kekal di dalamnya".

(Al-Baqarah: 275)

Pengajaran ayat:

1. Allah telah memberikan panduan kepada manusia dalam menguruskan harta kekayaan yang dianugerahkan oleh-Nya. Tidak dapat tidak, kita sebagai hamba Allah mestilah mengikuti apa yang digariskan-Nya dalam menguruskan harta.

2. Dalam konteks bermuamalah, Islam memberikan kelonggaran dan kemudahan yang luas, selagi mana ianya tidak melanggar prinsip-prinsip ataupun larangan-larangan yang ditetapkan. Larangan utama yang ditegah oleh syarak dalam bermuamalah sesama manusia ialah amalan memakan riba.

3. Terdapat banyak pilihan perbankan Islam yang wujud pada masa kini. Maka, berhentilah mengambil perbankan yang berpaksikan riba kerana ia adalah perintah Allah sebagaimana firman-Nya di dalam Surah al-Baqarah yang bermaksud, sesiapa yang telah sampai kepadanya peringatan tentang larangan riba demi Tuhannya, maka berhentilah.

Sifat-sifat Mazmumah (Tercela), menurut Imam al-Ghazali:

1. Gemar makan dan minum.
Terdapat hadis yang diriwayatkan daripada Nabi S.A.W, maksudnya:

"Yang terlebih afdhal (utama) pada (pandangan) Allah itu ialah orang yang banyak berlapar dan banyak tafakur (berfikir sambil meneliti). Dan yang terlebih benci pada (pandangan) Allah itu ialah orang yang banyak makan, banyak tidur dan banyak minum."

2. Banyak berkata yang sia-sia.
Firman Allah S.W.T di dalam surah an-Nisa':114), maksudnya:

"Tidak ada kebaikan pada kebanyakan bisikan-bisikan mereka, kecuali bisikan-bisikan daripada orang yang menyuruh (manusia) memberi sedekah, atau berbuat makruf, atau mendamaikan antara manusia."

3. Hasad, dengki dan iri hati.
Terdapat hadis yang diriwayatkan daripada Nabi S.A.W, maksudnya:

"Hasad itu memakan (memusnahkan) kebajikan, sebagaimana api memakan (membakar) kayu."

Tokoh Ekonomi Islam

PEMIKIRAN EKONOMI IBN QAYYIM

Oleh: Dr. Joni Tamkin Borhan*

Sambungan…perkara kedua daripada lima perkara utama pemikiran Ibn Qayyim dalam ekonomi…

2. Pandangan Ibn Qayyim tentang kekayaan dan kemiskinan

Penyebaran pengaruh tasawuf yang meluas pada masa Ibn Qayyim mengakibatkan masyarakat melupakan kehidupan duniawi dan menumpukan terus kepada kehidupan ukhrawi. Fahaman yang salah ini menyebabkan orang ramai hidup dalam kemiskinan dan kepapaan kerana bagi mereka harta kekayaan itu adalah kehidupan dunia yang sementara dan tidak perlu dicari. Untuk membetulkan salah faham ini, Ibn Qayyim cuma sedaya upaya supaya masyarakat Islam yang sewaktu dengannya kembali kepada ajaran Islam yang sebenarnya iaitu perimbangan antara kehidupan dunia dan kehidupan akhirat. Lebih lanjut lagi supaya masyarakat dapat menyeimbangkan antara pemilikan kekayaan dan kehidupan kemiskinan.

Ibn Qayyim berhujah bahawa kekayaan yang dimiliki oleh seseorang itu membolehkannya melaksanakan semua jenis amalan kebaikan dengan mudah seperti menunaikan haji, jihad, membina masjid dan terusan, memberikan hadiah, berkahwin, pembebasan tawanan, perbelanjaan yang wajib dan sunat dan sebagainya. Mereka yang sependapat dengan Ibn Qayyim juga berpendapat bahawa ramai contoh-contoh di kalangan sahabat dan mereka yang berkedudukan tinggi pada waktu Nabi Muhammad SAW terdiri daripada orang kaya. Dengan kekayaan itu mereka membuat pelbagai sumbangan dan penglibatan dalam jihad serta membantu orang-orang Islam yang lain.

Selanjutnya dalam hal ini Ibn Qayyim berpendapat iaitu "daripada kalangan orang kaya dan orang miskin, yang paling disukai adalah makhluk yang bertaqwa pada Allah dan dia melebihkan amanah-amanah baik. Oleh itu, orang kaya dan orang miskin adalah sama dalam asas ukuran ini." Dia juga berpendapat bahawa kekayaan dan kemiskinan adalah ciptaan Allah SWT untuk menguji hamba-hambaNya siapa yang lebih baik dalam amalan-amalannya. Kadang-kala Allah menguji seseorang dengan memberikan kepadanya kekayaan yang melimpah ruah. Pada masa yang lain seseorang itu diuji dengan kemiskinan. Kenyataan di atas adalah selari dengan prinsip asas falsafah ekonomi Islam sebagaimana yang dihuraikan oleh ahli-ahli ekonomi Islam berkenaan.

Ibn Qayyim juga mengingatkan kita supaya tidak terkeliru antara konsep kemiskinan dan kehidupan yang zuhud di dunia. Zuhud ialah antara nilai Islam yang paling penting yang disalahertikan sebagai pelepasan kekayaan dan perkara-perkara baik dalam kehidupan. Dalam penulisannya iaitu Madarij al-Salikin, Ibn Qayyim telah mengemukakan pelbagai pendapat berkenaan dengan zuhud. Beliau bertegas mengatakan bahawa zuhud bukan bererti menolak perkara-perkara duniawi. Harta benda yang banyak bukan menjadi penghalang kepada seseorang untuk menjadi insan yang warak dalam hidup mereka. Seseorang boleh mempunyai sikap membersihkan diri dan menolak perkara-perkara duniawi meskipun ia mempunyai banyak harta kekayaan, dan seseorang juga boleh memiliki sedikit sifat zuhud meskipun ia hidup dalam kemiskinan.

3. Kepentingan Ekonomi Zakat

Menurut Ibn Qayyim fungsi zakat ialah untuk membangunkan kualiti kebaikan, persaudaraan dan kebajikan. Atas alasan inilah kadar khusus zakat ditetapkan. Ia boleh mencapai tujuan ini dengan mudah tanpa menyebabkan sebarang keresahan. Jumlah bayaran zakat tidak terlalu banyak yang boleh menyebabkan pembayarnya merasa terkilan. Bayaran tersebut cukup untuk memenuhi keperluan asas golongan yang tidak berada. Jika kadar bayaran zakat itu tinggi, orang-orang yang kaya berkemungkinan mengelak dengan pelbagai cara daripada membayarnya. Jika golongan yang kaya enggan membayar zakat yang diwajibkan ke atas mereka dan golongan yang miskin tidak menerima apa yang menjadi hak kepada mereka, fungsi pembayaran zakat seperti diterangkan di atas tidak boleh dicapai.

Ibn Qayyim menulis bahawa zakat dikenakan ke atas setiap jenis harta kekayaan dan ke atas setiap barang-barang yang boleh meningkatkan pertumbuhan dan memberikan pulangan. Barang-barang untuk tujuan penggunaan seperti pakaian, rumah, peralatan, binatang tunggangan dan seumpamanya bebas daripada kewajipan dikenakan zakat. Hanya empat jenis harta sahaja yang dikenakan zakat iaitu binatang ternakan, tanaman dan buah-buahan, emas dan perak serta barang-barang dagangan.

Terdapat empat kadar zakat yang diambil berat iaitu 20% (1/5), 10% (1/10), 5% (1/20) dan 2.5% (1/40). Ibn Qayyim membincangkan dalam dua tempat dalam penulisan-penulisannya tentang kepentingan dan sebab ekonomi di sebalik kadar zakat yang berlainan. Menurut beliau, penglibatan buruh adalah pertimbangan yang diambil kira dalam penentuan kadar-kadar itu. Semakin besar jumlah buruh yang terlibat dalam sesuatu proses pengeluaran, semakin kecil kadar zakat yang perlu dibayar dan sebaliknya. Umpamanya kadar zakat ke atas tanaman yang diairi dengan air hujan ialah 10% dan 5% bagi tanaman yang diairi oleh tenaga buruh.

Selain daripada jumlah buruh yang terlibat dalam proses pengeluaran menjadi penentu kadar zakat, Ibn Qayyim juga menjelaskan faktor lain yang menyumbang kepada perkara tersebut. Antaranya ialah untuk mewujudkan konsep keadilan dalam ekonomi. Jika semua pemilikan mempunyai kadar zakat yang sama, galakan untuk berusaha dan bekerja akan hilang daripada pemilik-pemilik harta berkenaan. Juga kerana kadar peningkatan barang-barang adalah berlainan. Peningkatan dalam tanaman dan buah-buahan adalah lebih daripada peningkatan dalam barang-barang perdagangan. Kadar peningkatan yang berbeza ini memberikan kesan yang berbeza dalam cukai. Dalam kes ini cukai yang perlu dibayar oleh pengeluar barang-barang pertanian adalah lebih berbanding dengan cukai yang perlu dibayar oleh para pedagang terhadap barang-barang dagangan mereka. Pertumbuhan tanaman yang diairi oleh air hujan adalah lebih baik berbanding dengan pertumbuhan tanaman yang diairi oleh usaha manusia atau terusan atau perigi.

Abdul Azim Islahi ketika mengulas pendapat Ibn Qayyim menyatakan bahawa pendapat itu mempunyai kebenarannya pada zaman

dahulu yang hampir-hampir tidak terdapat industri berskala besar dalam bidang perniagaan. Industri yang wujud dalam industri kebanyakannya hanya dalam bentuk perniagaan kecil. Bentuk pengairan dan pertanian adalah dalam bentuk yang mudah dan tidak kompleks. Tetapi situasinya adalah berlainan dengan masa sekarang. Bentuk perniagaan domestik dan luar negara adalah dalam skala besar, dan kegiatan pertanian diuruskan menggunakan cara dan teknik yang canggih dan moden. Oleh itu, justifikasi yang dikemukakan oleh Ibn Qayyim tentang perbezaan kadar kewajipan membayar zakat adalah sukar untuk diterima.

Berkenaan dengan tempoh pembayaran zakat, Ibn Qayyim menulis bahawa zakat boleh dibayar apabila cukup tempoh satu tahun pemilikan harta kecuali pada harta kekayaan yang tidak diketahui pemiliknya, zakat akan dikenakan serta merta seperti penemuan harta karun. Sementara dalam kes zakat pertanian, ia akan dikutip pada masa hasil dituai. Tempoh satu tahu yang ditetapkan oleh syariah adalah paling sesuai dan memadai untuk kutipan zakat. Jika zakat dikutip untuk tempoh bulanan dan mingguan, ia akan menjejaskan kemaslahatan pembayar zakat. Sementara jika ia dikutip sekali sahaja sepanjang hidup, ia akan menjejaskan kebajikan dan kehidupan golongan miskin. Oleh itu tempoh haul setahun qamariyyah adalah sesuai. Dalam tempoh itu, pemilik harta berkenaan boleh menggunakan hartanya pada jalan yang produktif dan mendapatkan pulangan. Sebaliknya jika zakat dibayar setiap minggu atau bulan, ia akan menyusahkan para pembayar zakat untuk membuat taksiran pada harta mereka dan bagi negara pula pengurusan kutipan dan agihan zakat akan menjadi mahal dan sukar.

Zakat yang dikutip oleh negara akan diagihkan pada mereka yang berhak untuk menerimanya. Ibn Qayyim menjelaskan bahawa terdapat lapan golongan yang berhak menerima bahagian zakat sebagaimana yang ditetapkan oleh al-Qur'an. Beliau membahagikannya kepada dua kategori. Kategori yang pertama ialah mereka yang berhak menerima zakat mengikut keperluan iaitu fakir, miskin, riqab dan ibn sabil. Kategori kedua ialah mereka yang menerimanya untuk kegunaan sendiri iaitu amil, mualaf, orang yang berhutang untuk tujuan baik dan mereka yang berjuang fi sabil Allah.

4. Bunga – riba al-fadl dan riba al-nasi'ah

Ibn Qayyim juga membincangkan persoalan riba yang menjadi teras dalam amalan perbankan dan kewangan konvensional dan beliau menyatakan amalan riba amat bertentangan dengan amalan zakat dan sedekah. Ibn Qayyim memetik ayat 276 dalam surah al-Baqarah yang bermaksud;

"Allah SWT susutkan (kebaikan harta yang dijalankan dengan mengambil) riba dan ia pula mengembangkan (berkat harta yang dikeluarkan) sedekah dan zakat."

Beliau membahagikan riba kepada dua jenis iaitu riba al-fadl 50dan riba al-nasi'ah.51 Riba al-fadl diistilahkan juga oleh Ibn Qayyim sebagai riba al-khafi dan riba al-nasi'ah sebagai riba al-jali. Riba al-Fadl berlaku dalam urus niaga enam jenis komoditi yang ditukar sesama komoditi berkenaan secara tidak sama sukatan atau timbangan dan secara hutang. Keenam-enam komoditi tersebut ialah emas, perak, gandum, barli, tamar dan garam. Sementara riba al-nasi'ah berlaku pada transaksi hutang wang dengan wang yang dibayar secara tidak sama nilai atau jumlahnya.Umpamanya A meminjam RM100.00 daripada B dan B meminta A membayar hutang tersebut dengan jumlah yang lebih umpamanya, RM120.00.

Ibn Qayyim melarang amalan semua jenis riba kerana ia boleh member kesan buruk kepada masyarakat dan menghilangkan perasaan ihsan dan semangat tolong menolong. Sebaliknya ia boleh menimbulkan permusuhan antara individu.

5. Mekanisme Pasaran dan Penghargaan

Berkenaan dengan mekanisme pasaran Ibn Qayyim menjelaskan bahawa perjalanan pasaran hendaklah berlaku secara adil dan kerjasama terpimpin. Unsur-unsur negatif dalam pasaran yang boleh mengakibatkan kezaliman kepada para peniaga lain seperti monopoli, sorok, paksaan dan sebagainya
hendaklah diawasi oleh pihak pemerintah melalui institusi hisbah dan seumpamanya. Demikian juga dengan kes penghargaan barang-barang dan perkhidmatan di pasaran, beliau berpendapat ia hendaklah diserahkan pada pasaran iaitu berdasarkan kepada kuasa penawaran dan permintaan di pasaran.
Jika ia berjalan secara adil, kerajaan tidak boleh campur tangan membuat penetapan harga kerana ia boleh menimbulkan kezaliman kepada mereka yang terlibat dalam pasar. Sebaliknya jika unsur-unsur negatif berlaku seperti kezaliman, paksaan, manipulasi dan sebagainya yang menyebabkan harga di pasar tidak menentu, maka kerajaan harus campur tangan untuk menstabilkan harga barang-barang berkenaan untuk masalah pengguna dan peniaga.

Kesimpulan

Perbincangan di atas dapat disimpulkan bahawa sumbangan pemikiran ekonomi Ibn Qayyim adalah amat besar dalam perkembangan pemikiran ekonomi Islam. Beliau adalah seorang tokoh pemikir dan ulama terkenal dalam perbagai bidang disiplin ilmu termasuk ekonomi. Pemikiran beliau dalam ekonomi seperti pasaran, kawalan harga, nisbah dan sebagainya lebih dahulu dikemukakan daripada teori-teori ekonomi yang dicetuskan oleh para sarjana Barat seperti Adam Smith, Alfred Marshal, Maltus dan sebagainya.
Pemikiran dan teori ekonomi Ibn Qayyim seperti dijelaskan di atas masih lagi relevan untuk menyelesaikan pelbagai masalah ekonomi dan kewangan semasa.

Perbezaan Antara Perbankan Islam dan Konvensional

Oleh: Ustaz Mohd Hafiz Hj. Fauzi & Ustaz Mohd Fadhli Mohd Faudzi*

Pendahuluan

Kepekaan umat Islam mengenai kandungan makanan dan minuman yang ingin dibeli untuk dibekalkan ke dalam organ tubuh badan mereka semakin menjadi kesungguhan mereka. Rata-rata masyarakat Islam khususnya di Malaysia akan melihat tanda keramat 'Halal' yang disahkan statusnya oleh badan-badan Islam yang berautoriti seperti JAKIM. Penelitian terhadap isu-isu yang berkaitan dengan kandungan dan penyediaan makanan tersebut sememangnya dipuji oleh Islam. Hadith yang sering dijadikan hujah bagi membela pandangan tersebut ialah:

Daripada Abu Hurairah r.a. berkata, Rasulullah SAW telah bersabda: ... Seorang lelaki yang jauh perjalanan, yang kusut rambutnya lagi berdebu mukanya, menghulurkan dua tangannya ke langit (lalu berdoa): Hai Tuhanku! Hai Tuhanku! Padahal makanannya haram, minumannya haram, pakaiannya juga (dari) yang haram, dan (mulutnya) disuapkan dengan yang haram; maka bagaimanakah akan diperkenankan baginya (doanya)? (Riwayat Muslim)

Namun begitu, ada perkara yang masih menyelubungi kita apabila kesedaran masyarakat terhadap halal haram di dalam urusan kewangan dan perbankan masih di tahap yang amat lemah. Tidak kurang juga ada yang tidak dapat membezakan perbezaan yang wujud di dalam dua aliran dan fahaman yang berbeza di antara perbankan yang diasaskan atas dasar Islam dan perbankan konvensional yang tidak merujuk kepada Islam yang sudah bertapak begitu lama di dalam masyarakat dunia.

Hakikatnya, kepekaan terhadap tatacara urusniaga dan amalan perbankan sepatutnya perlu juga diambil perhatian yang serius setanding dengan kepekaan mereka dalam permasalahan makanan dan minuman. Ini kerana jika kepekaan berkaitan halal dan haram dalam aspek pemakanan diambil perhatian kerana adanya sumber-sumber dan dalil-dalil yang datangnya dari perintah dan suruhan Allah SWT dan RasulNya, begitu juga halnya di dalam aspek kewangan dan perbankan yang terdapat dalil-dalil yang datang dari sumber yang sama tadi, maka saranan tersebut perlu dilaksanakan sewajarnya supaya kita tidak kelihatan seolah-olah mendiskriminasikan suruhan-suruhan Allah SWT dan Rasulullah SAW tersebut.

Wujudkah perbezaan ?

Umum mengetahui bahawa memang terdapat beberapa perbezaan apabila berbicara mengenai cara hidup Islam dan cara hidup yang tidak berasaskan Islam. Begitu juga halnya dengan perbezaan di antara perbankan Islam dengan perbankan bukan Islam atau yang sering kita istilahkan sebagai Perbankan Konvensional walaupun pada pandangan mata kasar ianya kelihatan sama.

Perbezaan ini bolehlah juga diibaratkan sebagai perbezaan antara benar dan salah dan perbezaan antara hak dan bathil mengikut kacamata Islam. Firman Allah SWT dalam menggambarkan beberapa bentuk perbezaan adalah seperti berikut:

"Dan janganlah kamu campur adukkan yang benar itu dengan yang salah dan kamu sembunyikan yang benar itu pula padahal kamu semua mengetahuinya." (Surah al-Baqarah, ayat 42)

FirmanNya lagi:

Dan katakanlah: "Telah datang kebenaran (Islam) dan hilang lenyaplah perkara yang salah (kufur dan syirik); sesungguhnya yang salah itu sememangnya satu perkara yang tetap lenyap"
(Surah al-Isra', ayat 81)

Berikut dinyatakan beberapa perbezaan di antara perbankan Islam dan perbankan konvensional sebagai panduan kita semua, antaranya:

1. Bertunjangkan Aqidah Islamiyyah

Perbankan Islam

Perbankan Islam bertunjangkan Aqidah Islamiyyah yang jitu kepada Allah S.W.T. Ini adalah kerana kita mengi'tiraf bahawa Allah SWT sebagai Pencipta kita dan Tuhan yang WAJIB disembah dan dipatuhi. Maka, segala dasar dan peraturan yang telah digariskan oleh Allah S.W.T. dalam segenap aspek kehidupan juga adalah menjadi WAJIB untuk diikuti kerana kita tiada pilihan lain lagi.

Perbankan Konvensional

Ini sangat-sangat berbeza dengan perbankan bukan Islam/ konvensional yang seolah-olah tiada kaitan Aqidah dalam urusniaga mereka. Ianya terbukti dengan pelanggaran hukum-hukum Allah SWT yang antaranya sudah terlalu jelas telah dinyatakan di dalam dalil-dalil yang Qat'ieatu ath-Thubut (قطعية الثبوت) yang terang-terang diharamkan di dalam Islam. Jadi, ianya seolah-olah tidak mengi'tiraf Allah S.W.T. sebagai Tuhan yang membuat dasar dan peraturan kehidupan manusia.

2. Dasarnya Iman dan Taqwa

Perbankan Islam

Perkara kedua yang ingin dijelaskan di sini ialah perbankan Islam dibina di atas dasar Iman dan Taqwa kerana pelaksanaan Sistem Islam ini jika tiada Iman dan Taqwa di dalam diri, maka setiap peraturan Allah SWT akan rasa berat untuk dilaksanakan. Ini jelas dengan perangai sebahagian manusia yang banyak mereka-reka alasan demi untuk melepaskan diri daripada tuntutan dan peraturan Islam.

Perbankan Konvensional

Manakala, perbankan konvensional dibina di atas dasar pemikiran manusia yang diketahui amat terbatas dan dipimpin oleh hawa nafsu manusia yang tidak dipandu dengan nilai Iman & Taqwa. Sebab itulah kita lihat di dalam cara pengendalian perbankan konvensional, banyak perkara yang tidak senada dan sehaluan dengan kehendak Islam berlaku. Wallahu'alam.

3. Perihal Pahala dan Dosa

Perbankan Islam

Perbezaan yang ketiga íalah perbankan Islam menitikberatkan permasalahan Sam'iyyat iaitu antaranya yang berkaitan dengan permasalahan Pahala dan Dosa. Oleh kerana itulah, setiap aktiviti yang dilakukan, sebagai contoh; merekabentuk produk-produk yang baru dan merangka garis panduan sesuatu produk, BMMB misalnya akan memfokuskan persoalan Halal dan Haram sesuatu urusniaga yang ingin dilaksanakan. Ianya terbukti dengan wujudnya Majlis Penasihat Syariah dengan bantuan Sekretariat Syariah di peringkat dalaman bank yang sedaya upaya menapis segala bentuk larangan yang telah ditetapkan oleh Islam demi melahirkan sebuah produk atau urusniaga yang bertepatan dengan kehendak Allah S.W.T. yang sebenarnya yang bakal membawa natijah pengakhiran hidup kita samada menikmati Syurga Allah S.W.T. ataupun menghuni NerakaNya (Wana'uzubillah).

Perbankan Konvensional

Ini berlainan dengan perbankan bukan Islam yang tidak menilai urusniaga mereka dengan nilaian kacamata Allah S.W.T. Seolah-olah tidak menyedari bahawa segala urusniaga yang dilakukan akan dicatit oleh para Malaikat Allah S.W.T. Samada beroleh Pahala atau Dosa. Kelonggaran dalam penelitian yang sewajarnya terhadap persoalan Pahala dan Dosa ini bakal mengakibatkan kita tiada hubungan langsung dengan Pencipta kita. Ini boleh membawa kepada hilangnya kasih-sayang Allah S.W.T. kepada kita.

4. Bermatlamatkan Redha Allah SWT

Perbankan Islam

Seterusnya, perbezaan yang keempat ialah dari segi tujuan dan matlamat utama perbankan Islam ditubuhkan adalah untuk mengecapi matlamat keredhaan Allah S.W.T. semata-mata. Justeru, menyedari akan hakikat tersebut, maka setiap urusniaga yang dijalankan akan berpayungkan kehendak Islam. Jangan salah sangka pula bahawa dengan bermatlamatkan Allah S.W.T., kita tidak dibenarkan sama sekali mengecapi keuntungan sebagaimana yang difahami oleh segelintir masyarakat kita, bahkan ianya dituntut supaya dapat menyumbangkan manfaaat yang besar kepada masyarakat, namun perlulah ikut caranya sebagaimana yang telah digariskan dalam Islam.

Perbankan Konvensional

Hal ini berbeza dengan perbankan bukan Islam di mana, mereka hanya mencari keredhaan manusia yang jika tidak dipandu dengan panduan Ilahi akan membawa kepada kecelakaan di dalam kehidupan mereka. Ini terbukti dengan keengkaran dalam mentaati perintah Allah S.W.T. dalam urusniaga demi semata-mata untuk mengejar keuntungan duniawi.

5. Sumber Rujukan

Perbankan Islam

Sesungguhnya perbankan Islam menjadikan al-Quran dan as-Sunnah sebagai sumber rujukannya. Ini kerana 'manual' yang Allah S.W.T. sediakan kepada makhluq yang bernama manusia ini ialah al-Quran itu sendiri dan Nabi S.A.W. memberikan contoh bagaimana mengendalikan 'manual' tersebut sepanjang hidup di dunia ini. Maka adalah salah jika meninggalkan 'manual' yang Allah S.W.T. sudah tetapkan ke atas umat manusia dengan mengambil 'manual' buatan sendiri yang jauh menyimpang dari jalan Allah S.W.T. Firman Allah S.W.T.:

صِبْغَةَ اللَّهِ وَمَنْ أَحْسَنُ مِنَ اللَّهِ صِبْغَةً وَنَحْنُ لَهُ عَابِدُونَ

Celupan Allah (yang mencorakkan seluruh kehidupan kami dengan corak Islam) dan siapakah yang lebih baik celupannya daripada Allah? (Kami tetap percayakan Allah) dan kepadaNyalah kami beribadat.

Surah al-Baqarah, ayat 138

Nabi S.A.W. yang dikasihi juga ada bersabda:

عن ابن عباس أن رسول الله صلى الله عليه وسلم : ... فاحذروا إني قد تركت فيكم ما إن اعتصمتم به فلن تضلوا أبدا كتاب الله وسنة نبيه.

Maka ingatlah kamu semua! Sesungguhnya aku tinggalkan kepada kamu semua (suatu perkara), di mana jika kamu semua berpegang teguh dengannya, maka kamu tidak akan sesat selama-lamanya; iaitu Kitab Allah dan Sunnah Nabi-Nya.

Riwayat al-Hakim dan Sheikh al-Albani menyatakannya Hadith Sohih

Sidang pembaca yang dihormati! Bagaimana sesuatu transaksi itu menjadi Halal atau Haram adalah dengan merujuk kepada dua sumber utama tadi. Bukan melabelkan yang itu Halal dan yang itu Haram berdasarkan kepada hawa nafsu manusia. Golongan seperti ini ditempelak oleh Allah S.W.T. sebagaimana yang digambarkan di dalam Surah an-Nahlu ayat 116 :-

وَلا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلالٌ وَهَذَا حَرَامٌ لِتَفْتَرُوا عَلَى اللَّهِ الْكَذِبَ إِنَّ الَّذِينَ يَفْتَرُونَ عَلَى اللَّهِ الْكَذِبَ لا يُفْلِحُونَ

Dan janganlah kamu berdusta dengan sebab apa yang disifatkan oleh lidah kamu: Ini halal dan ini haram, untuk mengada-adakan sesuatu yang dusta terhadap Allah S.W.T.; sesungguhnya orang-orang yang berdusta terhadap Allah S.W.T. tidak akan berjaya.

Surah an-Nahlu ayat 116

Perbankan Konvensional

Tetapi bagi perbankan Konvensional, mereka tidak meletakkan al-Quran dan as-Sunnah sebagai rujukan mereka, kerana yang menjadi rujukan mereka adalah berdasarkan kepada akal dan pengalaman manusia. Bila akal dan pengalaman manusia dijadikan sebagai rujukan, maka ia terdedah dengan seribu satu macam kelemahan kerana manusia itu diciptakan dalam keadaan yang lemah. Lihat sahaja Firmanullah S.W.T. ini:

وَخُلِقَ الإِنْسَانُ ضَعِيفًا

kerana manusia itu dijadikan berkeadaan lemah.

Surah an-Nisa', ayat 28

6. Berlandaskan kaedah Fiqah Muamalat

Perbankan Islam

Perbezaan yang seterusnya ialah pemakaian kontrak yang dilaksanakan oleh perbankan Islam yang benar-benar bertepatan dengan cara pemakaian yang digariskan oleh Islam. Ini kerana Islam tidak pernah sama sekali melarang umatnya daripada mencari keuntungan, namun ia perlu dilandasi dengan cara yang betul. Dalam konteks perbankan Islam, kita tidak menggunakan cara memberi pinjaman untuk mendapatkan keuntungan kerana ia jelas mempunyai unsur riba yang sangat-sangat dilarang keras dalam Islam. Namun, Islam memberikan jalan penyelesaian dengan pemakaian kontrak seperti Kontrak Jualbeli, Kontrak Mudharabah dan Musyarakah yang boleh memperolehi keuntungan daripada penggunaan kontrak-kontrak tersebut. Walaubagaimanapun, kepatuhan Syariah terhadap sesuatu kontrak yang digunakan itu mestilah juga menjadi keutamaan bagi melahirkan produk-produk yang benar-benar Halal.

Perbankan Konvensional

Ini berbeza dengan cara perbankan Konvensional yang mengaut keuntungan yang rata-rata kebanyakannya dengan cara memberikan pinjaman. lanya memang sangat-sangat dilarang keras di dalam agama kita dan terlalu banyak nas-nas dan dalil-dalil yang melarang perkara tersebut.

7. Adil dan berkongsi manfaat

Perbankan Islam

Perbankan Islam juga menitikberatkan keadilan dan perkongsian manfaat. Istilah keadilan di sini ialah sebagaimana yang ditafsirkan dalam Islam iaitu meletakkan sesuatu di tempatnya yang betul. Keadilan di sini bukanlah dengan cara memenuhi tuntutan keadilan kepada sebelah pihak sahaja dan pihak yang lain dizalimi dan teraniaya. Keadilan dalam Islam ialah bersifat menyeluruh iaitu memenuhi keadilan ke atas semua pihak yang berkontrak. Begitu juga dengan perkongisan manfaat yang lahir daripada transaksi perbankan Islam kerana manfaat yang Allah S.W.T. kurniakan dikongsi bersama dengan pihak-pihak yang terlibat.

Ada juga dakwaan segelintir masyarakat kita yang melabelkan Perbankan Islam sebagai tidak adil dan zalim. Alasannya ialah kerana kadar keuntungan atau 'rate' yang ditawarkan oleh perbankan Islam agak tinggi. Mereka mendakwa bahawa perbankan Islam sepatutnya menawarkan kadar keuntungan yang lebih rendah atau setanding dengan kadar 'interest' yang ditawarkan oleh perbankan Konvensional. Bagi menjawab isu ini, suka ingin dinyatakan bahawa adalah memang baik

jika perbankan Islam dapat menawarkan kadar keuntungan yang lebih rendah daripada kadar yang ditawarkan oleh perbankan Konvensional dan itulah sasaran sebenar perbankan Islam bagi menakluki pasaran. Namun begitu, kemampuan untuk menawarkan kadar tersebut adalah bergantung sepenuhnya kepada kemampuan sesebuah perbankan Islam tersebut. Hakikatnya, perbankan Islam di Malaysia baru bertapak di Malaysia selama lebih kurang 20 tahun. Ini berbeza dengan perbankan Konvensional yang sudah bertapak begitu lama di dalam arena perbankan. Maka, adalah tidak adil untuk mengukur sesebuah perbankan Islam dengan neraca ukuran yang tidak tepat dan tidak munasabah.

Perbankan Konvensional

Bagi perbankan bukan Islam/konvensional pula, konsep keadilan dalam amalan urusniaga yang terkeluar dari orbit Islam menyebabkan keadilan itu tidak dapat diserlahkan. lanya terbukti dengan amalan dan praktis riba yang dilaksanakan mengakibatkan keadilan dan perkongsian manfaat itu tidak dapat dilahirkan dan dizahirkan. Selain itu, kadar 'interest' yang ditawarkan oleh perbankan konvensional adalah bergantung juga kepada Kadar Pinjaman Asas atau 'Base Lending Rate' (BLR) yang sifatnya tidak tetap.
Mengikut faktanya, tatkala berlakunya krisis ekonomi sebagai contoh sekitar tahun 1997, kadar peratusan BLR melonjak naik dengan begitu ketara sekali. Hal ini mengakibatkan, rakyat pada ketika itu hidup dalam penderitaan yang ketara akibat terpaksa membayar pinjaman dengan kadar 'interest' yang begitu tinggi sebagaimana perubahan BLR yang berlaku ketika itu. Keadilan tidak dapat ditegakkan lagi kerana 'periuk nasi' bank-bank tersebut perlu dijaga terlebih dahulu.

Sedar atau tidak, perbankan Islam yang dlabelkan sebagai 'tidak adil dan zalim' oleh segelintir masyarakat tidak sama sekali mengambil kesempatan tersebut ke atas pelanggan mereka. Ini kerana di awal kontrak lagi telah menetapkan harga jualannya, tanpa terikat dengan BLR dan tidak akan naik malah mungkin boleh turun sekiranya perbankan Islam bermurah hati memberikan rebate (ibra') apabila pihak pelanggan ingin membuat penyelesaian hutang awal 'early settlement'.

Kesimpulannya marilah kita berusaha menjadikan diri disenangi dan disayangi oleh Tuhan kita, Allah Rabbul Jalali Wal Ikram. Dan berusahalah untuk menjauhkan diri kita daripada terjebak dengan perkara-perkara yang diharamkan olehNya. Wallahua'lam.

* Ustaz Mohd Hafiz Hj. Fauzi merupakan Ketua Jabatan Syariah BMMB, manakala Ustaz Mohd Fadhli Mohd Faudzi pula sebagai Penolong Ketua Jabatan Syariah BMMB

RINGKASAN PRODUK KONSUMER

Muamalat mCash-i tawarruq

1. PENGENALAN

1.1 Produk ini ditawarkan bagi membiayai modal kerja pelanggan dan bercirikan pembiayaan pusingan (revolving). Ia berkonsepkan Tawarruq yang bermaksud penjualan sesuatu barang kepada pembeli secara harga tertangguh. Pembeli kemudiannya menjual barang tersebut kepada orang ketiga secara tunai pada harga kurang daripada harga tertangguh dengan tujuan mendapatkan wang tunai.

2. KONTRAK/PRINSIP SYARIAH

2.1 "Al-Murabahah" yang bermaksud akad jualbeli aset yang harga jualannya termasuk kos belian dan margin keuntungan Bank dan telah dipersetujui oleh kedua-dua pihak pembeli dan penjual.

3. RUKUN DAN SYARAT-SYARAT

3.1 Rukun-rukun dan syarat-syarat "Al-Murabahah"

		Rukun	Syarat-Syarat
	1.	Penjual & Pembeli	• Mestilah seorang yang baligh, berakal, waras dan siuman. • Sekiranya belum baligh, hendaklah mendapatkan keizinan daripada penjaganya untuk mengendalikan urusan berkenaan. • Mestilah seorang yang tidak bankrap (muflis)
	2.	Subjek pertukaran	• Mestilah wujud ketika 'aqad jualbeli diadakan. • Mestilah yang bernilai, bermanfaat dan halal. • Mestilah mampu, boleh atau berupaya untuk diserahkan kepada pembeli. • Tidak boleh terdiri daripada barang-barang ribawi yang sama 'illah. • Mestilah diketahui secara jelas dan tepat oleh penjual dan pembeli subjek pertukaran iaitu barangan dan harga/nilai (wang tunai). • Mestilah hakmilik penjual dan tidak disandarkan sebagai cagaran / jaminan / gadaian. Jika disandarkan sebagai cagaran / jaminan / gadaian, maka kebenaran pemegang cagaran / jaminan / gadaian adalah diperlukan.
	3.	'Aqad iaitu penawaran (Ijab) & Penerimaan (Qabul)	• Mestilah berlaku 'aqad iaitu penawaran dan penerimaan sama ada melalui ucapan (lafaz), tulisan, isyarat dan perbuatan yang jelas dan difahami oleh pihak-pihak yang berkenaan. • Mestilah wujud ketepatan dan kesekataan antara tawaran dengan penerimaan. • Mestilah tawaran dan penerimaan berlaku dalam satu majlis atau satu ruang tempoh yang munasabah. • Mestilah tawaran berterusan sah sehingga sempurna penerimaan, tiada penarikan balik tawaran sebelum penerimaan. • Mestilah tawaran merujuk kepada perkara / subjek yang dikontrakkan dan memenuhi syarat-syaratnya.

2.2 "Al-Wakalah" yang bermaksud perwakilan. Ia merujuk kepada kontrak yang memberikan kuasa kepada seseorang atau syarikat untuk bertindak bagi pihak yang memberi kuasa.

3.2 Rukun-rukun dan syarat-syarat "Al-Wakalah":

		Rukun	Syarat-Syarat
	1.	Wakil & Orang yang mewakil	• Mestilah seorang yang baligh, berakal, waras dan siuman. • Sekiranya belum baligh, hendaklah mendapatkan keizinan daripada penjaganya untuk mengendalikan urusan berkenaan. • Mestilah seorang yang tidak bankrap (muflis) • Perlakuan tersebut adalah dengan kerelaan, tiada unsur-unsur paksaan.
	2.	Perkara yang diwakil	• Hendaklah dinyatakan dengan jelas oleh orang yang mewakil semasa 'aqad. • Perbuatan tersebut hendaklah dibenarkan oleh Syara'. • Sah mewakili sesuatu perkara yang berkaitan muamalat kepada orang lain walaupun orang tersebut mampu melakukannya sendiri. Tidak sah mewakili dalam perkara solat, puasa dan mengambil wudu'.
	3.	'Aqad iaitu penawaran (Ijab) & Penerimaan (Qabul)	• Mestilah berlaku 'aqad iaitu penawaran dan penerimaan sama ada melalui ucapan (lafaz), tulisan, isyarat dan perbuatan yang jelas dan difahami oleh pihak-pihak yang berkenaan. • Mestilah wujud ketepatan dan kesekataan antara tawaran dengan penerimaan. • Mestilah tawaran dan penerimaan berlaku dalam satu majlis atau satu ruang tempoh yang munasabah. • Mestilah tawaran berterusan sah sehingga sempurna penerimaan, tiada penarikan balik tawaran sebelum penerimaan. • Mestilah tawaran merujuk kepada perkara / subjek yang dikontrakkan dan memenuhi syarat-syaratnya.

2.3 "Bai' Wadhi'ah" yang bermaksud harga jualan lebih rendah dari harga modal. Ia merujuk kepada akad jual beli dimana harga jualan adalah kurang (diskaun) daripada harga asal yang dibeli.

3.3 Rukun-rukun dan syarat-syarat "Bai' Wadhi'ah" :

		Rukun	Syarat-Syarat
	1.	Penjual & Pembeli	• Mestilah seorang yang baligh, berakal, waras dan siuman. • Sekiranya belum baligh, hendaklah mendapatkan keizinan daripada penjaganya untuk mengendalikan urusan berkenaan. • Mestilah seorang yang tidak bankrap (muflis)
	2.	Subjek pertukaran	• Mestilah wujud ketika 'aqad jualbeli diadakan. • Mestilah yang bernilai, bermanfaat dan halal. • Mestilah mampu, boleh atau berupaya untuk diserahkan kepada pembeli. • Tidak boleh terdiri daripada barang-barang ribawi yang sama 'illah. • Mestilah diketahui secara jelas dan tepat oleh penjual dan pembeli subjek pertukaran iaitu barangan dan harga/nilai (wang tunai). • Mestilah hakmilik penjual dan tidak disandarkan sebagai cagaran / jaminan / gadaian. Jika disandarkan sebagai cagaran / jaminan / gadaian, maka kebenaran pemegang cagaran / jaminan / gadaian adalah diperlukan.
	3.	'Aqad iaitu penawaran (Ijab) & Penerimaan (Qabul)	• Mestilah berlaku 'aqad iaitu penawaran dan penerimaan sama ada melalui ucapan (lafaz), tulisan, isyarat dan perbuatan yang jelas dan difahami oleh pihak-pihak yang berkenaan. • Mestilah wujud ketepatan dan kesekataan antara tawaran dengan penerimaan. • Mestilah tawaran dan penerimaan berlaku dalam satu majlis atau satu ruang tempoh yang munasabah. • Mestilah tawaran berterusan sah sehingga sempurna penerimaan, tiada penarikan balik tawaran sebelum penerimaan. Mestilah tawaran merujuk kepada perkara / subjek yang dikontrakkan dan memenuhi syarat-syaratnya.

4. MODUS OPERANDI

1. Pelanggan memohon pembiayaan MCash dibawah konsep Tawarruq di Bank A, dan menandatangani Surat Tawaran dimana Pelanggan melantik (Wakalah) Bank B sebagai wakilnya untuk:
   (i) menyempurnakan pembelian (membeli komoditi daripada Bank A);
   (ii) dan menjual komoditi kepada Pedagang Kedua.

2. Bank A membeli komoditi daripada Pedagang Pertama secara harga tunai.

3. Bank A menjual komoditi tersebut kepada Pelanggan pada harga kos ditambah margin keuntungan dan dibayar secara bertangguh. Walaubagaimanapun, penyempurnaan pembelian akan dilakukan oleh Bank B bagi pihak Pelanggan di bawah konsep Wakalah;

4. Bank B (sebagai wakil Pelanggan untuk menjual) menjual komoditi tersebut kepada Pedagang Kedua pada harga kos (dibawah konsep Wadhi'ah) secara tunai yang merupakan jumlah pembiayaan. Jumlah ini akan dimasukkan ke dalam Akaun Semasa milik Pelanggan.

SHARIAH GLOSSARY

NO.	TERM	MEANING
1	Riba	Usury, profit or gain in excess of principal loan
2	Riba al-Buyu'	It refers to riba as a result of exchange transaction i.e. exchange of riba-bearing commodities if it contravenes the stipulated rules.
3	Riba al-Fadl	It occurs in the exchange of exactly similar riba-bearing items whenever the exchanged counter values are not equal in amount/quantity
4	Riba al-Nasi'ah	It occurs / due to delay in time / increase
5	Riba al-Qurud	It arises from loan transactions as a result of delay in repayment of the loan.

Syumulnya Islam

SOLAT & PENEMUAN SAINS

“ Sesungguhnya telah berjayalah orang-orang yang beriman, iaitu mereka yang khusyuk dalam solat mereka…dan mereka yang memelihara solat-solat mereka”

(Al-Mukminun : 1-2&9)

Solat yang dilakukan secara khusyuk boleh diibaratkan sebagai meditasi yang melebihi meditasi biasa kerana ia merupakan satu ibadah untuk umat Islam. Bacaan-bacaan di dalam solat adalah pilihan Allah & Rasul dan ketenangan yang diperolehi adalah ketenangan kurnian Allah.

Pada tahun 1967, Dr Herbert Benson dari Fakulti Perubatan Harvard mendapati mereka yang bermeditasi menggunakan oksigen 17% lebih rendah daripada biasa. Ini dapat meredakan tekanan (stress) dan menjadikan seseorang lebih tenang dan ceria.

Pergerakan yang dilakukan semasa solat telah dibuktikan dapat memulihkan fungsi otot-otot dan merawat sakit pinggang. Postur dan pergerakan solat boleh digunakan sebagai salah satu rawatan pemulihan alternatif untuk menyembuhkan atau mengurangkan sakit pinggang bukan sahaja kepada penghidap sakit pinggang kronik tetapi juga kepada wanita mengandung tanpa mengira bangsa dan agama.

Semasa melakukan solat, kebanyakan otot dan sendi akan bergerak. Aktiviti yang mudah dilakukan ini mampu memberikan kekuatan kepada sistem otot dan tubuh badan. Solat juga boleh dianggap sebagai senaman fizikal semula jadi yang membuatkan badan lebih kuat.

Di samping dapat memberikan impak positif kepada fizikal dan kesihatan kita, solat juga dapat menggugurkan dosa seseorang. Solat juga menjadi penawar kepada tekanan jiwa kerana ia mengandungi zikir yang mampu mendamaikan hati.

ISLAMIC FOREX TRADING

Series Part 3

Written by: Dr Mohammed Obaidullah

2.1. A Synthesis of Alternative Views

2.1.1. Analogical Reasoning (Qiyas) for Riba Prohibition

The prohibition of riba is based on the hadith, where the holy prophet (PBUH) said, "Sell gold for gold, silver for silver, wheat for wheat, barley for barley, date for date, salt for salt, in same quantities on the spot; and when the commodities are different, sell as it suits you, but on the spot."

Thus, the prohibition of riba applies primarily to the two precious metals (gold and silver) and four other commodities (wheat, barley, dates and salt). It also applies, by analogy (qiyas) to all species which are governed by the same efficient cause ('illa) or which belong to any one of the genera of the six objects cited in the tradition.

However, there is no general agreement among the various schools of Fiqh and even scholars belonging to the same school on the definition and identification of efficient cause ('illa) of riba. For the Hanafis, efficient cause ('illa) of riba has two dimensions: the exchanged articles belong to the same genus (jins); these possess weight (wazan) or measurability (kiliyya). If in a given exchange, both the elements of efficient cause ('illa) are present, that is, the exchanged countervalues belong to the same genus (jins) and are all weighable or all measurable, then no gain is permissible (the exchange rate must be equal to unity) and the exchange must be on a spot basis. In case of gold and silver, the two elements of efficient cause ('illa) are: unity of genus (jins) and weighability. This is also the Hanbali view according to one version. (A different version is similar to the Shafii and Maliki view, as discussed below.) Thus, when gold is exchanged for gold, or silver is exchanged for silver, only spot transactions without any gain are permissible. It is also possible that in a given exchange, one of the two elements of efficient cause ('illa) is present and the other is absent.

For example, if the exchanged articles are all weighable or measurable but belong to different genus (jins) or, if the exchanged articles belong to same genus (jins) but neither is weighable nor measurable, then exchange with gain (at a rate different from unity) is permissible, but the exchange must be on a spot basis. Thus, when gold is exchanged for silver, the rate can be different from unity but no deferred settlement is permissible. If none of the two elements of efficient cause ('illa) of riba are present in a given exchange, then none of the injunctions for riba prohibition apply. Exchange can take place with or without gain and both on a spot or deferred basis.

Proponents of the earlier version cite the case of exchange of paper currencies belonging to the same country in defense of their version. The consensus opinion of jurists in this case is that such exchange must be without any gain or at a rate equal to unity and must be settled on a spot basis. What is the rationale underlying the above decision? If one considers the Hanafi and the first version of Hanbali position then, in this case, only one dimension of the efficient cause ('illa) is present, that is, they belong to the same genus (jins). But paper currencies are neither weighable nor measurable. Hence, Hanafi law would apparently permit exchange of different quantities of the same currency on a spot basis. Similarly if the efficient cause of being currency (thamaniyya) is specific only to gold and silver, then Shafii and Maliki law would also permit the same. Needless to say, this amounts to permitting riba-based borrowing and lending. This shows that, it is the first version of the Shafii and Maliki thought which underlies the consensus decision of prohibition of gain and deferred settlement in case of exchange of currencies belonging to the same country. According to the proponents, extending this logic to exchange of currencies of different countries would imply that exchange with gain or at a rate different from unity is permissible (since there no unity of jins), but settlement must be on a spot basis.

2.1.2 Comparison between Currency Exchange and Bai-Sarf

Bai-sarf is defined in Fiqh literature as an exchange involving thaman haqiqi, defined as gold and silver, which served as the principal medium of exchange for almost all major transactions.

Proponents of the view that any exchange of currencies of different countries is same as bai-sarf argue that in the present age paper currencies have effectively and completely replaced gold and silver as the medium of exchange. Hence, by analogy, exchange involving such currencies should be governed by the same Sharia rules and injunctions as bai-sarf. It is also argued that if deferred settlement by either parties to the contract is permitted, this would open the possibilities of riba-al nasia.

Opponents of categorization of currency exchange with bai-sarf

however point out that the exchange of all forms of currency (thaman) cannot be termed as bai-sarf. According to this view bai-sarf implies exchange of currencies made of gold and silver (thaman haqiqi or naqdain) alone and not of money pronounced as such by the state authorities (thaman istalahi). The present age currencies are examples of the latter kind. These scholars find support in those writings which assert that if the commodities of exchange are not gold or silver, (even if one of these is gold or silver) then, the exchange cannot be termed as bai-sarf. Nor would the stipulations regarding bai-sarf be applicable to such exchanges. According to Imam Sarakhsi4 "when an individual purchases fals or coins made out of inferior metals, such as, copper (thaman istalahi) for dirhams (thaman haqiqi) and makes a spot payment of the latter, but the seller does not have fals at that moment, then such exchange is permissible..... taking possession of commodities exchanged by both parties is not a precondition" (while in case of bai-sarf, it is.) A number of similar references exist which indicate that jurists do not classify an exchange of fals (thaman istalahi) for another fals (thaman istalahi) or gold or silver (thaman haqiqi), as bai-sarf.

Hence, the exchanges of currencies of two different countries which can only qualify as thaman istalahi can not be categorized as bai-sarf. Nor can the constraint regarding spot settlement be imposed on such transactions. It should be noted here that the definition of bai-sarf is provided Fiqh literature and there is no mention of the same in the holy traditions. The traditions mention about riba, and the sale and purchase of gold and silver (naqdain) which may be a major source of riba, is described as bai-sarf by the Islamic jurists. It should also be noted that in Fiqh literature, bai-sarf implies exchange of gold or silver only; whether these are currently being used as medium of exchange or not. Exchange involving dinars and gold ornaments, both quality as bai-sarf. Various jurists have sought to clarify this point and have defined sarf as that exchange in which both the commodities exchanged are in the nature of thaman, not necessarily thaman themselves. Hence, even when one of the commodities is processed gold (say, ornaments), such exchange is called bai-sarf.

Proponents of the view that currency exchange should be treated in a manner similar to bai-sarf also derive support from writings of eminent Islamic jurists. According to Imam Ibn Taimiya "anything that performs the functions of medium of exchange, unit of account, and store of value is called thaman, (not necessarily limited to gold & silver). Similar references are available in the writings of Imam Ghazzali5 As far as the views of Imam Sarakhshi is concerned regarding exchange involving fals, according to them, some additional points need to be taken note of. In the early days of Islam, dinars and dirhams made of gold and silver were mostly used as medium of exchange in all major transactions. Only the minor ones were settled with fals. In other words, fals did not possess the characteristics of money or thamaniyya in full and was hardly used as store of value or unit of account and was more in the nature of commodity. Hence there was no restriction on purchase of the same for gold and silver on a deferred basis. The present day currencies have all the features of thaman and are meant to be thaman only. The exchange involving currencies of different countries is same as bai-sarf with difference of jins and hence, deferred settlement would lead to riba al-nasia.

Dr Mohamed Nejatullah Siddiqui illustrates this possibility with an example6. He writes "In a given moment in time when the market rate of exchange between dollar and rupee is 1:20, if an individual purchases $50 at the rate of 1:22 (settlement of his obligation in rupees deferred to a future date), then it is highly probable that he is , in fact, borrowing Rs. 1000 now in lieu of a promise to repay Rs. 1100 on a specified later date. (Since, he can obtain Rs 1000 now, exchanging the $50 purchased on credit at spot rate)" Thus, sarf can be converted into interest-based borrowing & lending.

2.1.3 Defining Thamaniyya is the Key ?

It appears from the above synthesis of alternative views that the key issue seems to be a correct definition of thamaniyya. For instance, a fundamental question that leads to divergent positions on permissibility relates to whether thamaniyya is specific to gold and silver, or can be associated with anything that performs the functions of money. We raise some issues below which may be taken into account in any exercise in reconsideration of alternative positions.

It should be appreciated that thamaniyya may not be absolute and may vary in degrees. It is true that paper currencies have completely replaced gold and silver as medium of exchange, unit of account and store of value. In this sense, paper currencies can be said to possess thamaniyya. However, this is true for domestic currencies only and may not be true for foreign currencies. In other words, Indian rupees possess thamaniyya within the geographical boundaries of India only, and do not have any acceptability in US. These cannot be said to possess thamaniyya in US unless a US citizen can use Indian rupees as a medium of exchange, or unit of account, or store of value. In most cases such a possibility is remote. This possibility is also a function of the exchange rate mechanism in place, such as, convertibility of Indian rupees into US dollars, and whether a fixed or floating exchange rate system is in place. For example, assuming free convertibility of Indian rupees into US dollars and vice versa, and a fixed exchange rate system in which the rupee-dollar exchange rate is not expected to increase or decrease in the foreseeable future, thamaniyya of rupee in US is considerably improved. The example cited by Dr Nejatullah Siddiqui also appears quite robust under the circumstances. Permission to exchange rupees for dollars on a deferred basis (from one end, of course) at a rate different from the spot rate (official rate which is likely to remain fixed till the date of settlement) would be a clear case of interest-based borrowing and lending. However, if the assumption of fixed exchange rate is relaxed and the present system of fluctuating and volatile exchange rates is assumed to be the case, then it can be shown that the case of riba al-nasia breaks down. We rewrite his example: "In a given moment in time when the market rate of exchange between dollar and rupee is 1:20, if an individual purchases $50 at the rate of 1:22 (settlement of his obligation in rupees deferred to a future date), then it is highly probable that he is , in fact, borrowing Rs. 1000 now in lieu of a promise to repay Rs. 1100 on a specified later date. (Since, he can obtain Rs 1000 now, exchanging the $50 purchased on credit at spot rate)" This would be so, only if the currency risk is non-existent (exchange rate remains at 1:20), or is borne by the seller of dollars (buyer repays in rupees and not in dollars). If the former is true, then the seller of the dollars (lender) receives a predetermined return of ten percent when he converts Rs1100 received on the maturity date into $55 (at an exchange rate of 1:20). However, if the latter is true, then the return to the seller (or the lender) is not predetermined. It need not even be positive. For example, if the rupee-dollar exchange rate increases to 1:25, then the seller of dollar would receive only $44 (Rs 1100 converted into dollars) for his investment of $50.

Here two points are worth noting. First, when one assumes a fixed exchange rate regime, the distinction between currencies of different countries gets diluted. The situation becomes similar to exchanging pounds with sterlings (currencies belonging to the same country) at a fixed rate. Second, when one assumes a volatile exchange rate system, then just as one can visualize lending through the foreign currency market (mechanism suggested in the above example), one can also visualize lending through any other organized market (such as, for commodities or stocks.) If one replaces dollars for stocks in the above example, it would read as: "In a given moment in time when the market price of stock X is Rs 20, if an individual purchases 50 stocks at the rate of Rs 22 (settlement of his obligation in rupees deferred to a future date), then it is highly probable that he is , in fact, borrowing Rs. 1000 now in lieu of a promise to repay Rs. 1100 on a specified later date. (Since, he can obtain Rs 1000 now, exchanging the 50 stocks purchased on credit at current price)" In this case too as in the earlier example, returns to the seller of stocks may be negative if stock price rises to Rs 25 on the settlement date.

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A unique feature of thaman haqiqi or gold and silver is that the intrinsic worth of the currency is equal to its face value. Thus, the question of different geographical boundaries within which a given currency, such as, dinar or dirham circulates, is completely irrelevant. Gold is gold whether in country A or country B. Thus, when currency of country A made of gold is exchanged for currency of country B, also made of gold, then any deviation of the exchange rate from unity or deferment of settlement by either party cannot be permitted as it would clearly involve riba al-fadl and also riba al-nasia. However, when paper currencies of country A is exchanged for paper currency of country B, the case may be entirely different. The price risk (exchange rate risk), if positive, would eliminate any possibility of riba al-nasia in the exchange with deferred settlement. However, if price risk (exchange rate risk) is zero, then such exchange could be a source of riba al-nasia if deferred settlement is permitted7.

Another point that merits serious consideration is the possibility that certain currencies may possess thamaniyya, that is, used as a medium of exchange, unit of account, or store of value globally, within the domestic as well as foreign countries. For instance, US dollar is legal tender within US; it is also acceptable as a medium of exchange or unit of account for a large volume of transactions across the globe. Thus, this specific currency may be said to possesses thamaniyya globally, in which case, jurists may impose the relevant injunctions on exchanges involving this specific currency to prevent riba al-nasia. The fact is that when a currency possesses thamaniyya globally, then economic units using this global currency as the medium of exchange, unit of account or store of value may not be concerned about risk arising from volatility of inter-country exchange rates. At the same time, it should be recognized that a large majority of currencies do not perform the functions of money except within their national boundaries where these are legal tender.

Riba and risk cannot coexist in the same contract. The former connotes a possibility of returns with zero risk and cannot be earned through a market with positive price risk. As has been discussed above, the possibility of riba al-fadl or riba al-nasia may arise in exchange when gold or silver function as thaman; or when the exchange involves paper currencies belonging to the same country; or when the exchange involves currencies of different countries following a fixed exchange rate system. The last possibility is perhaps unIslamic8 since price or exchange rate of currencies should be allowed to fluctuate freely in line with changes in demand and supply and also because prices should reflect the intrinsic worth or purchasing power of currencies. The foreign currency markets of today are characterised by volatile exchange rates. The gains or losses made on any transaction in currencies of different countries, are justified by the risk borne by the parties to the contract.

2.1.4. Possibility of Riba with Futures and Forwards

So far, we have discussed views on the permissibility of bai salam in currencies, that is, when the obligation of only one of the parties to the exchange is deferred. What are the views of scholars on deferment of obligations of both parties ? Typical example of such contracts are forwards and futures9. According to a large majority of scholars, this is not permissible on various grounds, the most important being the element of risk and uncertainty (gharar) and the possibility of speculation of a kind which is not permissible. This is discussed in section 3. However, another ground for rejecting such contracts may be riba prohibition. In the preceding paragraph we have discussed that bai salam in currencies with fluctuating exchange rates can not be used to earn riba because of the presence of currency risk. It is possible to demonstrate that currency risk can be hedged or reduced to zero with another forward contract transacted simultaneously. And once risk is eliminated, the gain clearly would be riba.

We modify and rewrite the same example: "In a given moment in time when the market rate of exchange between dollar and rupee is 1:20, an individual purchases $50 at the rate of 1:22 (settlement of his obligation in rupees deferred to a future date), and the seller of dollars also hedges his position by entering into a forward contract to sell Rs1100 to be received on the future date at a rate of 1:20, then it is highly probable that he is , in fact, borrowing Rs. 1000 now in lieu of a promise to repay Rs. 1100 on a specified later date. (Since, he can obtain Rs 1000 now, exchanging the 50 dollars purchased on credit at spot rate)" The seller of the dollars (lender) receives

a predetermined return of ten percent when he converts Rs1100 received on the maturity date into 55 dollars (at an exchange rate of 1:20) for his investment of 50 dollars irrespective of the market rate of exchange prevailing on the date of maturity.

Another simple possible way to earn riba may even involve a spot transaction and a simultaneous forward transaction. For example, the individual in the above example purchases $50 on a spot basis at the rate of 1:20 and simultaneously enters into a forward contract with the same party to sell $50 at the rate of 1:21 after one month. In effect this implies that he is lending Rs1000 now to the seller of dollars for one month and earns an interest of Rs50 (he receives Rs1050 after one month. This is a typical buy-back or repo (repurchase) transaction so common in conventional banking.10 3.

The Issue of Freedom from Gharar
3.1 Defining Gharar

Gharar, unlike riba, does not have a consensus definition. In broad terms, it connotes risk and uncertainty. It is useful to view gharar as a continuum of risk and uncertainty wherein the extreme point of zero risk is the only point that is well-defined. Beyond this point, gharar becomes a variable and the gharar involved in a real life contract would lie somewhere on this continuum. Beyond a point on this continuum, risk and uncertainty or gharar becomes unacceptable11. Jurists have attempted to identify such situations involving forbidden gharar. A major factor that contributes to gharar is inadequate information (jahl) which increases uncertainty. This is when the terms of exchange, such as, price, objects of exchange, time of settlement etc. are not well-defined. Gharar is also defined in terms of settlement risk or the uncertainty surrounding delivery of the exchanged articles.

Islamic scholars have identified the conditions which make a contract uncertain to the extent that it is forbidden. Each party to the contract must be clear as to the quantity, specification, price, time, and place of delivery of the contract. A contract, say, to sell fish in the river involves uncertainty about the subject of exchange, about its delivery, and hence, not Islamically permissible. The need to eliminate any element of uncertainty inherent in a contract is underscored by a number of traditions.12

An outcome of excessive gharar or uncertainty is that it leads to the possibility of speculation of a variety which is forbidden. Speculation in its worst form, is gambling. The holy Quran and the traditions of the holy prophet explicitly prohibit gains made from games of chance which involve unearned income. The term used for gambling is maisir which literally means getting something too easily, getting a profit without working for it. Apart from pure games of chance, the holy prophet also forbade actions which generated unearned incomes without much productive efforts.13

Here it may be noted that the term speculation has different connotations. It always involves an attempt to predict the future outcome of an event. But the process may or may not be backed by collection, analysis and interpretation of relevant information. The former case is very much in conformity with Islamic rationality. An Islamic economic unit is required to assume risk after making a proper assessment of risk with the help of information. All business decisions involve speculation in this sense. It is only in the absence of information or under conditions of excessive gharar or uncertainty that speculation is akin to a game of chance and is reprehensible.

3.2 Gharar & Speculation with of Futures & Forwards

Considering the case of the basic exchange contracts highlighted in section 1, it may be noted that the third type of contract where settlement by both the parties is deferred to a future date is forbidden, according to a large majority of jurists on grounds of excessive gharar. Futures and forwards in currencies are examples of such contracts under which two parties become obliged to exchange currencies of two different countries at a known rate at the end of a known time period. For example, individuals A and B commit to exchange US dollars and Indian rupees at the rate of 1: 22 after one month. If the amount involved is $50 and A is the buyer of dollars then, the obligations of A and B are to make a payments of Rs1100 and $50 respectively at the end of one month. The contract is settled when both the parties honour their obligations on the future date.

Traditionally, an overwhelming majority of Sharia scholars have disapproved such contracts on several grounds. The prohibition applies to all such contracts where the obligations of both parties are deferred to a future date, including contracts involving exchange of currencies. An important objection is that such a contract involves sale of a non-existent object or of an object not in the possession of the seller. This objection is based on several traditions of the holy prophet.14 There is difference of opinion on whether the prohibition in the said traditions apply to foodstuffs, or perishable commodities or to all objects of sale. There is, however, a general agreement on the view that the efficient cause (illa) of the prohibition of sale of an object which the seller does not own or of sale prior to taking possession is gharar, or the possible failure to deliver the goods purchased.

Is this efficient cause (illa) present in an exchange involving future contracts in currencies of different countries ? In a market with full and free convertibility or no constraints on the supply of currencies, the probability of failure to deliver the same on the maturity date should be no cause for concern. Further, the standardized nature of futures contracts and transparent operating procedures on the organized futures markets15 is believed to minimize this probability. Some recent scholars have opined in the light of the above that futures, in general, should be permissible. According to them, the efficient cause (illa), that is, the probability of failure to deliver was quite relevant in a simple, primitive and unorganized market. It is no longer relevant in the organized futures markets of today16.

Such contention, however, continues to be rejected by the majority of scholars. They underscore the fact that futures contracts almost never involve delivery by both parties. On the contrary, parties to the contract reverse the transaction and the contract is settled in price difference only. For example, in the above example, if the currency exchange rate changes to 1: 23 on the maturity date, the reverse transaction for individual A would mean selling $50 at the rate of 1:23 to individual B. This would imply A making a gain of Rs50 (the difference between Rs1150 and Rs1100). This is exactly what B would lose. It may so happen that the exchange rate would change to 1:21 in which case A would lose Rs50 which is what B would gain. This obviously is a zero-sum game in which the gain of one party is exactly equal to the loss of the other. This possibility of gains or losses (which theoretically can touch infinity) encourages economic units to speculate on the future direction of exchange rates. Since exchange rates fluctuate randomly, gains and losses are random too and the game is reduced to a game of chance. There is a vast body of literature on the forecastability of exchange rates and a large majority of empirical studies have provided supporting evidence on the futility of any attempt to make short-run predictions. Exchange rates are volatile and remain unpredictable at least for the large majority of market participants. Needless to say, any attempt to speculate in the hope of the theoretically infinite gains is, in all likelihood, a game of chance for such participants. While the gains, if they materialize, are in the nature of maisir or unearned gains, the possibility of equally massive losses do indicate a possibility of

default by the loser and hence, gharar.

3.3. Risk Management in Volatile Markets

Hedging or risk reduction adds to planning and managerial efficiency. The economic justification of futures and forwards is in term of their role as a device for hedging. In the context of currency markets which are characterized by volatile rates, such contracts are believed to enable the parties to transfer and eliminate risk arising out of such fluctuations. For example, modifying the earlier example, assume that individual A is an exporter from India to US who has already sold some commodities to B, the US importer and anticipates a cashflow of $50 (which at the current market rate of 1:22 mean Rs 1100 to him) after one month. There is a possibility that US dollar may depreciate against Indian rupee during these one month, in which case A would realize less amount of rupees for his $50 (if the new rate is 1:21, A would realize only Rs1050). Hence, A may enter into a forward or future contract to sell $50 at the rate of 1:21.5 at the end of one month (and thereby, realize Rs1075) with any counterparty which, in all probability, would have diametrically opposite expectations regarding future direction of exchange rates. In this case, A is able to hedge his position and at the same time, forgoes the opportunity of making a gain if his expectations do not materialize and US dollar appreciates against Indian rupee (say, to 1:23 which implies that he would have realized Rs1150, and not Rs1075 which he would realize now.) While hedging tools always improve planning and hence, performance, it should be noted that the intention of the contracting party - whether to hedge or to speculate, can never be ascertained.

It may be noted that hedging can also be accomplished with bai salam in currencies. As in the above example, exporter A anticipating a cash inflow of $50 after one month and expecting a depreciation of dollar may go for a salam sale of $50 (with his obligation to pay $50 deferred by one month.) Since he is expecting a dollar depreciation, he may agree to sell $50 at the rate of 1: 21.5. There would be an immediate cash inflow in Rs 1075 for him. The question may be, why should the counterparty pay him rupees now in lieu of a promise to be repaid in dollars after one month. As in the case of futures, the counterparty would do so for profit, if its expectations are diametrically opposite, that is, it expects dollar to appreciate. For example, if dollar appreciates to 1: 23 during the one month period, then it would receive Rs1150 for Rs 1075 it invested in the purchase of $50. Thus, while A is able to hedge its position, the counterparty is able to earn a profit on trading of currencies. The difference from the earlier scenario is that the counterparty would be more restrained in trading because of the investment required, and such trading is unlikely to take the shape of rampant speculation.

4. Summary & Conclusion

Currency markets of today are characterized by volatile exchange rates. This fact should be taken note of in any analysis of the three basic types of contracts in which the basis of distinction is the possibility of deferment of obligations to future. We have attempted an assessment of these forms of contracting in terms of the overwhelming need to eliminate any possibility of riba, minimize gharar, jahl and the possibility of speculation of a kind akin to games of chance. In a volatile market, the participants are exposed to currency risk and Islamic rationality requires that such risk should be minimized in the interest of efficiency if not reduced to zero.

It is obvious that spot settlement of the obligations of both parties would completely prohibit riba, and gharar, and minimize the possibility of speculation. However, this would also imply the absence of any technique of risk management and may involve some practical problems for the participants.

At the other extreme, if the obligations of both the parties are deferred to a future date, then such contracting, in all likelihood, would open up the possibility of infinite unearned gains and losses from what may be rightly termed for the majority of participants as games of chance. Of course, these would also enable the participants to manage risk through complete risk transfer to others and reduce risk to zero. It is this possibility of risk reduction to zero which may enable a participant to earn riba. Future is not a new form of contract. Rather the justification for proscribing it is new. If in a simple primitive economy, it was prevention of gharar relating to delivery of the exchanged article, in todays' complex financial system and organized exchanges, it is prevention of speculation of kind which is unIslamic and which is possible under excessive gharar involved in forecasting highly volatile exchange rates. Such speculation is not just a possibility, but a reality. The precise motive of an economic unit entering into a future contract - speculation or hedging may not ascertainable (regulators may monitor end use, but such regulation may not be very practical, nor effective in a free market). Empirical evidence at a macro level, however, indicates the former to be the dominant motive.

The second type of contracting with deferment of obligations of one of the parties to a future date falls between the two extremes. While Sharia scholars have divergent views about its permissibility, our analysis reveals that there is no possibility of earning riba with this kind of contracting. The requirement of spot settlement of obligations of atleast one party imposes a natural curb on speculation, though the room for speculation is greater than under the first form of contracting. The requirement amounts to imposition of a hundred percent margin which, in all probability, would drive away the uninformed speculator from the market. This should force the speculator to be a little more sure of his expectations by being more informed. When speculation is based on information it is not only permissible, but desirable too. Bai salam would also enable the participants to manage risk. At the same time, the requirement

ISSUES OF IMPLEMENTING ISLAMIC HIRE PURCHASE IN DUAL BANKING SYSTEMS: MALAYSIA'S EXPERIENCE. Part 3

ISSUES IN THE OPERATION OF ISLAMIC HIRE PURCHASE

A competitive environment within the dual banking system creates a special advantage for the promotion of innovative products like the hire-purchase transaction. However, it demands close scrutiny from a Shariah perspective to ensure the legitimacy of hire purchase. Ownership, transfer of ownership, maintenance responsibility, insurance responsibility, deposit payment, penalty in case of default, and legal treatment are focal issues in this respect.

1. Ownership

In Islamic hire-purchase, the bank is required to have ownership of the asset before renting it out to the customer. Ownership is vital, as it represents the extent of rights and liabilities of the parties involved in the hire-purchase agreement. The time or stage in which original ownership is transferred to the lessee should be carefully examined, as this would result in the owner's exemption from being held responsible for matters attaching to the asset. Thus, as a consequence of holding ownership of the asset, leasing and leasing-based financing would require a bank to deviate from its basic nature as financial intermediary. To be an owner, the bank will have to become involved in purchasing the asset, which requires certain marketing expertise, maintaining the asset and bearing all costs associated therewith, and disposing of it when the asset is no longer needed. Any leasing contract that absolves the bank from all these activities will violate the Shariah principle of leasing and thus should be avoided. It also falls into the category of financial leasing, which is not permitted according to Shariah principles.

As a consequence of holding ownership, the bank will assume some rights, liabilities, and risks associated with the asset. These include the right to repossess the asset upon customer's default, maintenance responsibility, and liability to taxes. In other words, ownership results in more risks, liabilities, and responsibilities that most banks would attempt to avoid as much as possible.

In the Malaysian practice, the bank holds beneficial ownership of the asset (usually a motor vehicle), while the customer, having his name in the document of title, becomes the legal owner. The bank will usually have to register its ownership claim over the title of the asset and have it endorsed on the registration card. This practice is slightly modified from conventional hire purchase, whereby the bank holds the document of title as security for the hire-purchase loan. Upon satisfying all due payments, the bank will remove its claim, resulting in the customer becoming the absolute owner. There are only two different aspects in both transactions. First, the parties' intention and understanding when executing Islamic hire purchase is to have the asset leased and then sold in which the bank will have a beneficial right over the asset throughout the transaction, until complete transfer of ownership takes effect. Second, the bank's beneficial ownership is released by executing a sale/transfer of ownership contract. This signifies a complete transfer of ownership to the customer.

However, unless these two points are made clear to the customer and bank officer in charge of the transaction, there will be virtually no difference between Islamic hire purchase and conventional hire purchase regarding the ownership issue. By holding a beneficial ownership and having an ownership claim over the asset, the bank has a right to repossess the asset if the customer violates the contract. The registration of the ownership claim is an industry practice, which is not provided in the HPA 1967.

2. Transfer of Ownership

As stated above, Islamic hire purchase is a development of the ijarah principle. If the hirer decides to buy the leased asset, the manner of transferring ownership must be mutually ascertained and documented. An Islamic hire-purchase transaction involves two separate contracts: (1) a contract of ijarah from the beginning of the transaction and (2) a contract completing the transfer of ownership from the owner to hirer either by way of gift or sale (Al-Nashmi. 2003; Syariah Advisory Board, 2002). Affirming the two manners of executing the second contract, the Shariah Legal Opinions (Fatawa Shar'iyyah) of the Kuwait Finance House explain that the ownership can be transferred to the hirer either by means of giving the asset as a gift (hibah) or selling it when the lease period has expired, provided that all payments are made in entirety (Delorenzo, 2000). In addition to the above, there are some scholars who argue that the second contract should grant a call option to the hirer to eventually acquire the asset after completing the ijarah contract (Bughuddah, 2001; Elahi, 2000; Salleh, 1986). As to procedural matters, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOFII) Shariah Rules for Ijarah and Ijarah Muntahia Bittamleek (2000) provides that the method of transferring the title of the leased asset must be evidenced in a document separate from the ijarah contract, using one of the following methods. The first is by means of a promise to sell for a token or other consideration, or by accelerating the payment of the remaining installments, or by paying the market value of the leased asset. The second is a promise to give it as a gift (for no consideration). The third is a

promise to give it as a gift, contingent upon the payment of the remaining installments.

Similarly, the operation of Islamic hire purchase (AITAB) in Malaysia undertakes two separate contracts (Rosly et al., 2004). One is a leasing (ijarah) contract, which refers to an AITAB agreement. The content is similar to the conventional hire purchase, except with the insertion of an Islamic contractual (Aqad) letter.4 The other is a contract to purchase, which is executed either upon early settlement or at maturity of the AITAB agreement.

For practical purposes, the contracts are signed up front by the parties, 5 except for the second contract, which the bank will only sign after the first one has elapsed. However, the signing of the second contract does not make the contract automatically effective. There is a stipulation in the contract stating the manner in which the transfer of ownership must take place. For example, paying the last installment will be considered as exercising an option to purchase the asset. When the bank accepts it and gives a release letter against the ownership claim, the contract is deemed to be executed by way of conduct.6

When transfer of ownership is affected by sale, the asset is purchased at a nominal amount, which is mutually agreed upon by both parties. The price need not necessarily be based on the market condition and the real value of the property. In common practice, final payment or last installment is considered as purchase price. When a customer has paid this last installment, he is automatically exercising an option to purchase. In this situation, the valid intention of the parties at a practical level is a problem. The issue is whether they (bank and customer) are aware and understand that they are executing a sale contract when the customer completes his final payment. One of the solutions is to spell out the intention in the agreement—for instance, an intention to hire during the first period is included in the ijarah contract, and then an intention to buy is put in a separate contract of sale in the latter period. It is therefore important to stipulate in clear terms how transfer of ownership takes place, and such terms must be understood and agreed upon by both parties. In deciding the terms and conditions in the contract, consideration must be made in terms of Shariah compliancy, practicality, and convenience of the contracting parties.

3. Maintenance

The issue of maintenance in the ijarah is important, as it signifies the extent of the owner's responsibilities toward the leased asset. In an ijarah contract, the owner leases his property to the lessee for a specified period against a determined consideration. The owner in this situation still holds the ownership of the leased asset, and is fully responsible toward it. On the other hand, the hirer is granted full possession of the asset, so that he can ultimately use it according to the purpose specified in the contract within the agreed-upon period of time. During the ijarah contract, both owner and hirer bear distinct responsibilities of maintaining the leased asset. The owner is responsible to ensure that the leased property is always fit to render intended benefit to the hirer, while the hirer, who is entrusted with safekeeping the asset, shall be accountable for its proper and continuous use on regular basis. Such responsibilities can be categorized into two types:

1. Basic or Structural Maintenance
The owner shall bear all costs of major breakdown and basic liabilities attached to the leased asset. For example, in the case of renting a house, the owner is responsible for the repair of the gas boiler or heater because this is a basic feature of the house. He is also bound to pay the council tax levied annually by the government because he is a legal owner of the house. This is because maintenance is the owner's responsibility, and entitlement to the rental is a consideration to the maintenance responsibility (Ahmed, 1993).

2. Routine or Operational Maintenance
The hirer will bear all costs of routine maintenance of the leased property. This includes keeping the property in a good condition for a proper use—for example, in renting a car, he must keep it clean and tidy. In addition, he shall bear the cost of car petrol, engine oil, and other ordinary car maintenance in order to keep the car functioning well. Hence, the owner must remain liable for basic maintenance, although this term is often difficult to differentiate with clarity from operational maintenance, which is the responsibility of the hirer (Belder, 2004). Thomas and Mortimore (2001) suggested that the hirer can be asked to carry out the maintenance based upon the following:

1. To carry out the operating maintenance that is required as a result of using the leased asset and is needed in order to ensure its continuous utilization, as exemplified above;

2. Periodic maintenance, which is required to enable the asset to continue providing the benefit; and

3. Maintenance that is specified qualitatively and quantitatively in the contract or according to common practice.

The Mejelle, or Majallah el-Ahkam-I-Adliya (1880), affirms the above liabilities, which are owed by the lessor (owner) and lessee (hirer), respectively. Regarding the lessor's duty, Article 529 states, "It is the duty of the lessor to put right things that detract from the intended benefit." It explains that the repair of things detrimental to habitation, and other works connected with the building, must all be done by the owner. If the owner refuses to do these things, the lessee can leave that house. Article 532 provides the lessee's duty to keep the property in a good condition: "The removal and cleaning of dust, earth, and rubbish that has collected in the time of the lease falls on the lessee." If any repair is done by the lessee, he must inform the lessor about the damage before he starts the work. There are two situations
in this respect:

(a) If the lessee repairs something forming a substantial part of the property in which without the repair such defect will harm the lessee and cause damage to the whole property, then he can claim any cost incurred from the lessor.

(b) If the repair concerns something that is not essential to the property but is only for the lessee's personal benefit and enjoyment, he cannot recover the cost from the lessor.

The above rule is held by the Mejelle in Article 530: "If the lessee has done repairs, with the leave of the lessor if the repairs are connected with the improving of the house, like changing the tiles of the roof or with the preservation of it from harm coming to it, if there is no express condition that this expense is to be paid by the lessor, still the lessee takes the expense from the lessor. And if it concerns only the benefit of the lessee, like repairing the oven, for that so far there is no express condition, the lessee cannot recover from the lessor the expense of it."

According to the Shariah Legal Opinions of the Kuwait Finance House, the owner is responsible for maintenance related to the object that is leased, and on which the continued performance and usufruct of the object is customarily understood to depend, so long as there is no written agreement to the contrary. It is, moreover, lawful for the owner and hirer to agree that the hirer will be responsible for normal maintenance costs other than those related to the continued performance and usufruct of the leased equipment

(Delorenzo, 2000).

In the current practice of Islamic hire-purchase transactions in Malaysia, maintenance responsibility is undertaken solely by the customer, while the bank only acts as a financier, and thus will not assume any responsibility to the asset being leased and to be purchased by the customer. The bank argues that their customers' ultimate objective of engaging in hire purchase is to own an asset, particularly a motor vehicle, not merely to hire it for a certain period of time. In fact, the customer is acknowledged in the document of title as a legal owner of the asset. The bank only acts as a beneficial owner that has an ownership claim over the asset until full payment has been made.

Therefore, it is reasonable to require the hirer to maintain the asset since he is the one who uses and utilizes it. Yet, the hirer has a right to sue the bank if he finds that the asset is defective, which results in failure of rendering intended benefits to him. If the hirer repairs the defective asset, he is entitled to claim the cost of repair from the bank.

The situation would be different if the defect were caused by the hirer's negligence. In this case, he will bear the cost of repairing the asset.

The above illustrated practice in Malaysia does not seem to be 100% Shariah-compliant, because in Shariah, the owner is responsible for maintaining the leased asset. In practice, all responsibilities are passed to the hirer. Some Shariah scholars held that this condition does not nullify the contract because the practice is based on 'uruf (local custom) and market practice in Malaysia.

To resolve the above conflict of interest, Shariah advisors and scholars in Malaysia have ruled that the duty to maintain the leased property must be made clear to the contracting parties and put in clear terms in the agreement. It is unwieldy to put all maintenance responsibilities onto the owner. The responsibility can be mutually determined in a way that each party owes certain duties to make sure that the property will continuously render specified benefits, which is paramount in the ijarah contract.

4. Insurance Responsibility

The general principle enunciates that insurance coverage, or takaful, of an asset is the responsibility of the owner. This is contrary to the established practice in conventional hire purchase, where it is the hirer's responsibility. The issue of insurance responsibility has been discussed by many Islamic economists and legal practitioners, who often seem to be caught in a dilemma between the conflicting principles.

Many Islamic investors think it is necessary for the insurance of the leased assets to be the responsibility of the owner instead of the hirer as is practiced nowadays (Clode, 1996). Allawi (1986) observed that in a total economic loss, the owner must pay the insurance. But in the case of partial loss, the matter is unclear. If the owner is required to bear the insurance coverage, the amount shall be added to the cost price (Shirazi, 1993). Usmani (2002), on the other hand, stresses that if an asset is insured under the Islamic concept of takaful, it should be at the expense of the hirer. Nowadays, insurance responsibility is usually assumed by the hirer or bank customer. Some experts in Malaysia say that risks and liabilities that are not detrimental and harmless, which include insurance and maintenance, can be transferred to the hirer. Shariah Legal Opinions (Fatawa Shar'iyyah) of the Kuwait Finance House affirm that it is lawful to make the hirer responsible for insurance, if the amount is known, because it may then become a part of the lease payment (Delorenzo, 2000).

Perhaps a measure concerning insurance approved by the Board of Executive Directors of the IDB to promote ijarah can shed a light on this important issue (Parker & Dawood, 1995). In this regard, the insurance burden may be shared with the lessee/hirer. The IDB should bear the cost of insuring risks incidental to ownership, such as total damage, loss, and third-party liability exposure, while the lessee will bear the cost of insuring the risks incidental to use, such as operational hazards, accidents, and negligence. This mechanism exemplifies a balanced sharing of responsibility between the bank and customer in insuring internal and external risks associated with the use of a particular asset. The practice in Malaysia shows that insurance coverage or takaful is borne by the owner during the first year of transaction, where the cost is included in the rental payments. In the subsequent years, the hirer will undertake to pay the cost of insurance. This rule has been agreed upon by most Islamic jurists in Malaysia. Their main argument is that the purpose of taking insurance coverage is to protect oneself from any risk related to being a user of the asset. Any damages to the asset or injury to the third party caused by one's own negligence shall necessarily be his responsibility. Therefore, it is reasonable enough for the hirer to take insurance (takaful) coverage for the above purposes.

5. Deposit Payment

It has been a common commercial practice to pay a deposit before starting to use any newly acquired asset. The deposit serves as security against future loss or misconduct caused by the hirer. Accordingly, the AAOFII Shariah Rules for Ijarah and Ijarah Muntahia Bittamleek (2000) regards a deposit made by the hirer to secure the rental payments or security against loss of a leased asset caused by the misuse or negligence of the hirer.

The amount of deposit varies in different places. In Iran, the amount of deposit is a minimum of 20% of the cost price of the properties. Before entering into a hire purchase, the receipt of deposit is compulsory and considered as part of the rent for the duration of the lease. This advance payment shall be deducted from the cost price for the computation of the bank's profit (Shirazi, 1993). Similarly, in Pakistan, a deposit payment is considered as a security deposit. The customer is required to keep the security deposit at the bank. The minimum requirement is 20% of the asset value, and the maximum is 50% (Sattar et al., 2002). In the Malaysian dual banking system, a deposit payment of 10% is required for an Islamic hire-purchase transaction, which is the same requirement as in conventional practice.

However, in substance, the deposit paid by the customer to the vendor is perceived as a payment made on behalf of the bank, which creates the following contractual liabilities:

1. Between the bank (owner) and vendor (seller), the deposit is considered as a part of the purchase price of the asset paid by the bank to the vendor.

2. Between the customer (hirer) and the bank, the deposit is regarded as the first rental payment and will be accounted in determining the monthly rental payment.

The payment of deposit is not a big issue because this has been an accepted practice, and most parties involved in the transaction agree to perform this obligation. However, in an Islamic transaction, the intention and purpose of the payment must be made clearer, especially to the customer. This is to ensure that he fully understands the purpose of deposit payment and the function it serves.

6. Penalty in Case of Default

Generally speaking, an act of default in due payment signifies a

breach of contract. When two parties or more enter into a valid contract, they will be bound by terms and conditions in the contract. Breaching any of these terms will cause the innocent party to suffer a loss that needs to be compensated (Baharum, 2004). The question is whether the default has caused actual loss or damages to the bank and, if yes, whether the bank can be compensated? In the case of default in payment of installments, there are mixed reactions from the scholars. Some of them give a very strict rule that penalty for late payment of rentals is not permissible (Hairetdinov, 1998; Meezan Bank, 2004; Usmani, 2002). Their arguments are based on the following points:

1. Rentals, once due, become a debt obligation payable by the hirer and are subject to all the rules prescribed for a debt.

2. This penalty, if meant to add to the income or generate profit for the owner, is not warranted by the Shariah.

3. A monetary charge from a debtor for his late payment is exactly the riba prohibited by the Holy Qur'an. Therefore, the owner cannot charge an additional amount if the hirer delays payment of the rent.

Unfortunately, this situation has been exploited by unscrupulous customers. In order to avoid the adverse consequences resulting from the misuse of this prohibition, another alternative may be resorted to. In such circumstances, contemporary scholars have provided a solution whereby a penalty can be charged to the customer for delayed payment, though the amount recovered is only to be used for charitable purposes by the bank (Hairetdinov, 1998). In other words, late penalty charges cannot be taken as income by the bank.

In support of the above propositions, Usmani (2002) views that the hirer may be asked to undertake that if he fails to pay rent on its due date, he will pay a certain amount to a charity. For this purpose, the bank or owner may maintain a charity fund where such amounts may be credited and disbursed for charitable purposes, including advancing interest-free loans to the needy persons. The amount payable for charitable purposes by the hirer may vary according to the period of default and may be calculated at a percent, per annum basis. This arrangement, though, does not compensate the owner for his opportunity cost of the period of default, yet it may serve as a strong deterrent for the lessee to pay the rent promptly (Meezan Bank, 2004; Usmani, 2002). Allowing the above propositions, the AAOFII Shariah Rules for Ijarah and Ijarah Muntahia Bittamleek (2000) state that a lessee (hirer) who delays payment for no good reason shall undertake to donate a certain amount or percentage of the rental due in the case of late payment. Such donation should be paid to charitable causes under the coordination of the Institution's Shariah supervisory board.

On the other hand, Wohabe has a different view. According to him, it is possible to compensate the owner for any default by the lessee through increased lease payments, which represent a reassessment of the risk involved in the transaction itself (Wohabe, 1997). This is due to the fact that the bank does suffer loss if its customer defaulted, since regular payments constitute one of a bank's receivables and income. Hence, the default would necessarily expose the bank to a risk of potential loss in the secondary markets and inability to pay the shareholders and investors. In the Malaysian context, the National Shariah Advisory Council created a rule that the customer shall pay to the bank the sum equivalent to the costs incurred by the bank in the maintenance on such default amounts or such rate as prescribed by the Bank Negara Malaysia7 (Central Bank of Malaysia). The sum is calculated in the manner prescribed by the National Shariah Advisory Council and duly endorsed by the Bank Negara. The mechanisms of imposing the penalty are outlined as follows (Bank Negara Malaysia, 1998):

(a) If the default happens before the maturity period, a penalty of 1% per annum will be imposed on the overdue installments.

(b) If the default is caused after the maturity period, the rate of penalty must be based on the Islamic money market rate.

(c) The maximum penalty amount for late payment cannot exceed 100% of the outstanding balance of the purchase price. For example, if the balance purchase price is RM 50,000, the amount of the penalty cannot exceed RM 50,000.

(d) Penalty for late payment must be put into a bank account as profit and divided between the bank and investors according to the agreed-upon profit ratio.

The penalty will commence from the date of the first default until the date of actual receipt of payment by the bank. However, the bank must consider some special cases and problems suffered by the defaulters, for example unavoidable financial difficulty, or having not misused any of the financing amount for other purposes not provided by the Letter of Offer, or any case on merit disqualified from paying the costs to the bank, at the absolute discretion of the bank.

7. Legal Treatment

The current practice of Islamic hire purchase in Malaysia is based on conventional hire-purchase regulations. Despite being one of the most demanding facilities of an Islamic bank, Islamic hire purchase is unfortunately lacking in an explicit Shariah regulatory framework. Any dispute arising from the transaction of Islamic hire purchase will be referred to the conventional regulations (Ismail, 1999), as there is no written Shariah law that specifically regulates the operation of Islamic hire purchase. The only existing regulatory Shariah rules on the facility can be found in Shariah Rules for Investment and Financing Instruments, Accounting and Auditing Organization for Islamic Financial Institutions of Bahrain (AAOFII). According to the Shariah Rules (2000), the permissible ijarah muntahia bittamlik (Islamic hire purchase), is different from hire purchase as commonly practiced by conventional financial institutions certain respects. This Shariah Rules governing the operation of the Bank of Bahrain, is said to be the first written and codified rule, which becomes a main reference to other Islamic banks.

In the Malaysian context, a hire-purchase transaction is jointly governed by the Finance Ministry, Ministry of Domestic Trade, Ministry of Road Transport Department, and Ministry of Internal Affairs. Currently, there is no specific regulation governing this Islamic hire purchase; thus, any institution undertaking to offer this facility tends to impose its own rules, which are said to follow the Shariah principle and in the spirit of the Hire Purchase Act 1967 and Contract Act 1950. Although there is no specific regulatory law on Islamic hirepurchase transactions, this facility has been offered successfully by some banks. At the moment, the main reference to this practice is still the Hire Purchase Act 1967. This Act covers all consumer goods as well as motor vehicles. It is important to note that the hire-purchase scheme regulated by the Hire-Purchase Act 1967 is "not entirely contradicted" by Shariah principles (Haneef, 1997). For instance, the following provisions8 of the 1967 Act are in fact in harmony with the spirit of Shariah:

(a) the preparation and service of the Part I (Preliminary) and Part II (Formation and Contents of Hire-Purchase Agreements) statements;

(b) the preparation and execution of a written hire-purchase agreement;

(c) conditions and warranties;

(d) protection of hirers and guarantors in Part III, IV, and V;

(e) rules for repossession;

(f) insurance liability on the owner in Part VI;

(g) the formula and limitation on term charges;

(h) the avoidance of the agreement if any of the above-mentioned requirements are not met; and

(i) the imposition of penalties for violation of the above requirements.

Apart from the above, the Hire Purchase Act 1967 is lacking in some basic Shariah requirements of Islamic transactions. Intention and understanding of parties, signing of two separate documents in sequence, interest-based calculation of profit, and legal resolutions are among the crucial issues. It is observed that these matters can only be resolved by having a Shariah regulation that can provide a complete legal sanction to the hire-purchase practices. The latest development in Malaysia has witnessed an effort undertaken by the Bank Negara and other government entities9 to come up with a special regulation10 on Islamic hire-purchase transactions. This proposed law suggests some important matters, such as expanding the scope of assets to be acquired by Islamic hire purchase, defining the agreements and manner of entering into them, ascertaining rights and liabilities of the contracting parties, jurisdiction of the courts, and many more.

Recently, these government entities have decided to insert provisions of Islamic hire purchase into the existing Hire-Purchase Act 1967, instead of making it a self-governing law. The main reasons are to promote a harmonization between conventional and Islamic regulations and to avoid redundancy of laws in the Malaysian legal system. In this regard, there are mixed responses obtained from banking industries and experts in Islamic banking in Malaysia. Some of them strongly support a self-governing Islamic hire-purchase law, so that this practice can be properly implemented in the light of Shariah. Others, while supportive of the government's decision, are hoping that the harmonization will bring a positive impact to the development of Islamic law from within conventional practices. Having mentioned the above, the matter is still pending. The debate is ongoing, either to include provisions of Islamic hire purchase into the Hire- Purchase Act 1967 or allow it to exist as a separate law independently. Whatever decision is taken, the implementation of Islamic hire purchase should be properly done based on Shariah principles, without any legal impediments.

CONCLUDING REMARKS

Over the years, the Islamic banking industry has adapted many important conventional products capable of being provided subject to Shariah compliance. In many instances, as evidenced in the case of Islamic hire purchase, the Islamic financial products are repackaged along the lines of conventional financial products, while eliminating those elements that are not in compliance with the Shariah. While the adaptation will still continue, Islamic financial instruments will always have to compete with the pace of product development in a more entrenched conventional system.

In a dual banking system, it appears that Islamic hire-purchase encounters the same problems in adapting with the long-established conventional system. Some conventional practices are in conflict with Shariah principles, thus rendering those features invalid. Islamic bankers and Muslim scholars have attempted to resolve some basic and operational issues in order to make Islamic hire-purchase operation more viable and acceptable by Shariah. One of the important conditions to sustain the continued growth and product competitiveness in a dual banking system as in the case of Malaysia, is to have a comprehensive legal infrastructure for legal redress arising from Islamic financial institutions. Efforts should therefore be intensified to develop a comprehensive legal structure to resolve potential disputes arising from Islamic financial transactions. The legal structure needs to comprise both effective regulatory and substantive laws to resolve disputes relating to Islamic financial transactions.

Shariah should be viewed as a potential tool for innovation and creativity, rather than a limiting constraint. More efforts therefore, are needed to fully appreciate and maximize the true potential and wisdom of Shariah. There is a need for greater collaboration among the Shariah scholars, academicians, practitioners, and researchers to undertake in-depth studies and research in relation to the Islamic hire-purchase product. This will certainly enhance product competitiveness and viability in the Islamic financial markets. In carrying out this inspiration, the Bank Negara of Malaysia (Central Bank) and banking industries should move forward in formulating a better developed Islamic hire-purchase facility. Inviting public participation in this process would indirectly increase their understanding and awareness of the product. Conducting an extensive training program for the bankers could also help to make them better understand the difference between Islamic and conventional hire purchase. A significant role is required on the part of legal experts in resolving legal issues in Islamic hire purchase through discussion and research.

Therefore, efforts must be undertaken not only scholars, but by all individuals, and should involve the government, banking industries, legal experts, and the public at large. Government administrative ministries and judiciary bodies should endeavor to provide a wellbuilt avenue for Islamic hire purchase to be implemented efficiently by strengthening the existing legal and regulatory framework. Most important, uncertainty in the means of implementing Islamic hirepurchase regulations must be quickly resolved by the government. Bureaucratic and procedural problems that may cause delay should be put aside for the sake of having a better structured regulatory framework for Islamic hire purchase..

(TAdopted from www.isra.com , with written permission)

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