ISLAMIC FINANCE:
Developing Religious Based Business

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Introduction

Business and finance actually are parts of the people concerns in he world, urban and rural society, well educated and non educated community, muslim and non muslim, they are all involving in the business activities, and embroiled in the finance management as the goal of all those processes. Merchants are looking for margins through their serious efforts, and labours are hunting wages from their professional woks in some certain industries, and so, the government employees are waiting for monthly salaries as have been stipulated in the decree of their promotion. It is common, since early period of the prophethood, a worker was awarded fees by his employer, a merchant took margin from all sold out goods and commodities. Certainly, Prophet Muhammad has figured out the economical system by recognising individual ownership, labour system and equitably fees, and taking fairly profits from some business transactions. The Prophet Muhammad has developed an economical system preceded the other systems in the world, for instance capitalism which held up a system based upon private property, production for profit, wage labour, and a market mechanism to allocate a society's productive resource[1].

Inline with it, Hossein Askari and Roshanak Tagawi stated, that Islam espouses a capitalism economic philosophy, as it encourages adherents to work hard for economic gain, compete in business, own private property and take risk in investment. Individuals may earn a return on their investments and are encouraged to work productively in their own self-interest[2]. But in several facets Islamic economy is unlike capitalism and even contradictory, for instance in term of pricing that is always influenced by supply and demand theory and market equilibrium. By citing the statement of the Prophet Muhammad, al Ghazaly emphasised that bazaars are allowed to determine the prices and it is legitimate for each trader to set his rate according to the norm; however he instructed traders to minimise their profits to the extent possible and termed it as *ihsan* or

[1]G. R. Bassiry and Marc JonesSource:Adam Smith and the Ethics of Contemporary Capitalism: Journal of Business Ethics, Vol. 12, No. 8 (Aug., 1993), pp. 621-627 , p. 624

[2]Hossein Askari and Roshanak Tagawi,The prineiple found.tions of .n Isl. mie eeonomy,BNL Quarterly Review, vol. LVIII, no. 235, December 2005, pp. 187-205, p. 195.

benevolence on the buyer. Charging higher than the market rate from an innocent buyer is categorically illegitimate or *haram,* because the Prophet has condemned any intention of earning just for the sake of it[3]. Thus, Islamic economy is still has a great attention to all people in all social levels, and also has a great intention for distribution of welfare.

Meanwhile, Islam isn't a socialism, by mean a collective ownership, because socialism claim collective ownership as the fundamental concept in its economic system. Private capitals must be nationalised[4]. Muhammad Ayub said that socialism is the opposite of capitalism as far as the capitalisation of resources was concerned, while ownership was hypothetical and control was centralised. Due to this extremist unbalanced behaviour, it had to go after completing its short cycle of less than a century[5]. Indeed, it has gone, but the idea is still alive. Islam is coming with the idea of balance, it acknowledges private ownership but has a great attention to the social welfare. Islamic economy is one of the tools to elevate every people for being a perfect human, best conduct of morality, intellectuality, healthy, appreciating beauty, and free from all cares and wants. Muslim people are the happiest community by implementing Islamic economy.

Islamic finance is regulating all sorts of businesses upon the basic ideas to elevate human being as the ideal community in the world, upholding business relationship upon the principle to help each other, free from harm, far from speculation, clear, and transparence. So the paper will highlight a little bit about the principles of legitimated Islamic finance.

The Spirit of Islamic Finance

Some researchers of the Islamic economy and finance, concluded that Islamic regulation concerning economy and finance are parts of the islamic ethic[6], whereas, some

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[3]Omar Javaid[a] and Mehboob ul Hassan[b], A Comparison of Islamic and Capitalist Conception of Economic Justice, International Journal of Economics,Management and Accounting 21, no. 1 (2013): 1-31 © 2013. by The International Islamic University Malaysia, p. 24.

[4]Abdul Husain Muhammad, ECONOMIC SYSTEM IN ISLAM Compared with Capitalism and Socialism, World Organization for Islamic Services, P. O. Box No.11365-1545, Tehran. (IRAN, 1975, p. 18.

[5]Muhammad Ayub, Understanding Islamic Finance, John Wiley and Son, London, 2007, p.3

[6] See Usman Hayat, CFA, and Adeel Malik,Islamic Finance: Ethics, Concepts, Practice (a summary), Institute Research Foundation, 2014, p. 1

economical activities are regulated by Qur'an and the Prophet Tradition using binding assertions, order and prohibition that implies obligatory and prohibition. For instance about *riba*, deception, buying by order and so forth, are well regulated in the Qur'an and Sunah (the Prophet Tradition), and revealed by God using command and ban words. Accordingly, Islamic finance is part of the islamic doctrine that is regulated by Islamic law, not the islamic ethic. The consequences will be different, Islamic ethic is implying good and bad, while Islamic jurisprudence is implying obligatory, voluntary, forbidden and hated, or be permitted. And also, Islamic jurisprudence is implying valid and invalid.

Moreover, as long as it is regulated by syari'ah law, all business transactions will have legal certainty, and easy to evaluate the achievement of the goal by analysing the most ideal of business purposes upon the five intentions of Islamic jurisprudence, one of those objectives is nurturing wealth, maintaining and developing for the better of human prosperity. Relevance with such idea, Muhamad Wasisullah said that The goal of Islamic finance is to offer economic benefits like acquisition of wealth, increase in income, earning profit, economic growth and development to the society. Islamic finance serves an individual or an organisation by providing financial services that are more transparent, more reliable and justice-based[7]. Certainly, business for muslim is a compulsion to acquire wealth, develop properties and to maintain their own treasures. Meanwhile, as it was explained above that Islam is restricting the ways to gain profits. New wealths are acquired fairly, without harming other people, no spoliation, deception, and fraud. And also, Islamic business is prohibiting to charge the price above market norm to gain a lot of profits by a speculation. So that is why Islam is obliging all people to work hard and always enhancing knowledge, skill and capacity to improve professionalism and productivity. And in the other hand, Islam is also instructing all people to govern business honesty and truthfully and avoiding some harmful businesses.

The spirit of Islamic business, therefore, is gaining financial treasures truthfully, honesty, and developing business by helping each other, far from harming and deception. Islamic finance is managing financial treasures since gaining, developing and maintaining in a

[7] Mohammed Wasisullah, Ikram Rahman,Rafe Haneef, Dr. Nurbek Ahmed, Dr. Muhammad Al Bashir and Dr. Shariq Nisar, *Islamic banking and Finance, Principles and Practices*, Marifa Academy, 2014, p. 25.

bases of equity, solidarity and stability[8]. Therefore, Islamic finance is working the way of capitalism by obliging individual effort to gain profits through some legal businesses process, but actually it is far from capitalism principle, because the spirit of Islamic finance is equity, solidarity and stability, not to take maximum profits without caring to the other partner of business for developing their enterprise. Business and gaining financial ability is one kind of worship on God trough professional works. Thus, Islamic business is legal business to gain legal finance, by producing and trading legal goods, trough legal ways and as the obedience to God.

Some Principles of Islamic Finance

Islamic finance isn't only pertaining the regulation how to govern finance in compliance with the syari'ah law, but it is also regulating "that Islamic finance must not be involved in any activities pertaining to unlawful goods and services. These prohibited goods and services include, among others, non-halal foods such as pork, non-slaughtered animals or animals which were not slaughtered according to Islamic principles, intoxicating drinks, entertainment and pornography, tobacco-related products and weapons. Non-involvement is not only limited to buying or selling but also includes all chains of production and distribution, such as the packaging, transportation, warehousing and marketing of these prohibited goods and services"[9]. Eventually, Islamic finance is encompassing not only banking, loan, saving, and taking profit from some sorts of businesses, but also investment, acquiring wealth, developing capital and maintaining all properties, up on the principle helping each other in good and lawful businesses, while taking care the equity, solidarity and stability, and working in the professional works. All those works should be done in compliance with the Islamic law, and dedicated for the obedience to God.

Therefore, financial capital can drive a lot of businesses to gain the wealth, to develop properties and treasures, and also to maintain the capital its self. For being consistently governing finance in islamic ways, there are three principles to be nurtured, equity,

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[8]Jean-Yves Moisseron Bruno-Laurent Moschetto Frédéric Teulon,Islamic finance: a review of the literature,IPAG Business School France, 2014, p. 5.

[9]Chistie Moinudin, an Introduction Islamic Finance, Chartered Institute of Management Accountants, Guide book of CMA, p. 10.

participation, and ownership[10]. Equity means that every parties in business have the same right to find all goods they look for without any difficulties, because Islamic business is always developed under the principle of helping each other in the goodness. Hence, equity is a very important principle of Islamic finance to prevent harm in other. Base on such principle, Islamic finance regulation is prohibiting business transaction on the way of usury, because against one of Islamic business principle, acquiring, increasing and growing up wealth by rendering difficulties for other people and not engaging to productive activity[11]. Usurious transactions were classified into two categories: a) Riba al-fadl, the excess over and above the loan paid in kind. It lies in the payment of an addition by the debtor to the creditor in exchange of commodities of the same kind and b) Riba alnasi'ah, refers to the interest on loans; its prohibition essentially implies that the fixing in advance of a positive return on a loan as a reward for waiting is not permitted in Islam[12]. Actually usury by the excess over is commonly happens in the market when the trader arising the price of a goods above the market norms because of the growing of demand. While the second type of usury is doubling expense payment due to postage of paying out. This kind of usury is extremely prohibited because rendering difficulties, and growing wealth without productive activities.

Equity as a principle of Islamic finance also implies a prohibition of speculation. The ban of speculation is because of the excessive uncertainty. The calculated risk of an investment is permitted, but not the speculation[13], because of the uncertainty, and who ever is banned to be rendered to the difficulties. In practice, it relates to issues such as pricing, delivery, quantity and quality of assets that are transaction-based and could affect the degree or quality of consent of the parties to a contract. This lack of knowledge may rise from misrepresentation, mistake, fraud, duress, or terms beyond the knowledge and control of one of the parties to the contract[14]. The principle of equity and wealth distribution is also the basis of a 2.5 percent levy on cash or in-kind wealth (zakat), imposed by Shari'ah on

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[10]Mumtaz Hussain, Asghar Shahmoradi, and Rima Turk, An Overview of Islamic Finance, IMF Working Paper, 2015, p. 6.

[11] Ibid., p. 6

[12]Md Akther Uddin,Principles of Islamic Finance: Prohibition of Riba, Gharar and Maysir,INCEIF, Kuala Lumpur, Malaysia, 2015, p. 6

[13]jean-Yves Moisseron, Bruno-Laurent Moschetto, Frédéric Teulon, Islamic finance: a review of the literature, IPAG Business School, Boulevard Saint-Germain, Paris France, 2014, p. 6

[14]Md Akther Uddin, op. cit., p. 3

all Muslims who meet specific minimum levels of income and wealth to assist the less fortunate and foster social solidarity[15]. And it is imposed to all muslim because due to the basic philosophy of wealth in Islam that is asserted in the Qur'an, that there is other people right in every muslim wealth. For a certain level, such due is being a compulsory to be paid off, because a related wealth isn't their own, but are belonged to whom has rights. That is why its name is *zakat* that means to clean up.

The next principle is participation means that the principle of Islamic finance is based on partnership and sharing of risk. Interest is actually prohibited, suppliers of funds become investors instead of creditors, and the borrower become entrepreneur instead of debtor. They are parters in business. The provider of financial capital and the entrepreneur share business risks in return for shares of the profits[16]. And also in the losses, the two parties, capital providers and entrepreneurs should agree to share the risk profits and losses[17]. This principles, therefore, promote risk sharing and applying assets and enterprise in the real economy, facilitating redistribution of wealth and opportunity and social solidarity. The Islamic financial system employs the concept of participation in the enterprise, utilising the funds at risk on a profit and loss sharing basis. Participation, therefore, lies at the heart of Islamic finance, ensuring that increases in wealth accrue from productive activities[18]. Relation of investors to the entrepreneurs is partnership relationship for helping each other, joint ventures to promote the quality of their life, and to bring the country for being the prosperous nation in the future.

The last principle of Islamic finance is ownership. Muhammad Akram Khan stated, that Islam recognises the right of absolute ownership for God only. Man has been granted the right to benefit from the resources of the earth. He can earn his livelihood through lawful (halal) means. He is not totally free to consume, save or invest his earnings in any way he likes. There are definite moral limits on his right to earn, consume, save and invest. Thus, the Islamic concept of property limits human freedom to the use of the resources of the

[15] Md Akhter Uddin, op.cit., p. 6

[16] Zamir Iqbal, *Islamic Financial Systems*, at the book Finance and Development, International Monitery Fund (IMF), 1997, p. 43.

[17]Jean-Yves Moisseron, Bruno-Laurent Moschetto, Frédéric Teulon, op.cit. p. 6

[18]Mumtaz Hussain, Asghar Shahmoradi, and Rima Turk, op.cit., p. 6

earth. It holds everyone accountable to God for the proper use of those resources[19]. However, business, particularly trading needs to ensure the ownership of the object. It should exist and is being owned by seller at the time of contract. So, almost all of Islamic finance papers elaborate about ownership of goods as the object of trading.

Asyraf Wajdi Dusuki and Shabnam Mokhtar explained in their research report, that one of the fundamental conditions of a sale contract is that the object of the sale must exist and be owned by the seller at the time of the contract. This is important because the purpose of a sale contract is to transfer ownership object of the sale to the buyer and ownership of the price to the seller. If this condition is not fulfilled, the sale contract is deemed to be an invalid sale (bay' fasid). It is more specifically known as bay' ma'dum (selling something that does not exist), certain details of which have been a matter of longstanding contention amongst jurists. The issue of the buyer taking possession of the sold goods is known in Islamic jurisprudence as qabd[20]. That is the regulation of Islamic business, that object of contract must exist in the time of contract. So, one of the business paradigm in Islam is asset-based financing, that is forging a robust link between finance and the real economy. It also requires preservation and respect for property rights, as well as upholding contractual obligations by underscoring the sanctity of contracts[21]. Even that Islam is also permitting advance purchase financing, where the buyer agrees to pay in advance and the goods will be delivered in future date which is set at the time of the contract[22].

On the other hand, Islamic finance is also regulating purchasing wealth not in the prohibited goods or deeds. Islam is prohibiting gambling due to its high risk and uncertain outcome, and also Islam prohibits producing alcoholic beverages, providing prostitution service and pork consumption[23]. All those deeds are forbidden in Islam, so, it is also forbidden to facilitate such businesses, and all kinds of working activities related to all of

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[19] Muhammad Akram Khan, an Introduction to Islamic Economics,International Institute of Islamic Thought and Institute of Policy Studies, Pakistan, 1994, p. 6

[20]Asyraf Wajdi Dusuki and Shabnam Mokhtar,Critical Appraisal of SharÊÑah Issues on Ownership in Asset-Based Sukuk as Implemented in the Islamic Debt Market, ISRA Researc Paper, 2010, p. 12

[21]Mumtaz Hussain, Asghar Shahmoradi, and Rima Turk, op.cit., p. 6

[22]Md. Abdul Awwal Sarker, islamic business contracts, agency problem and the theory of the islamic firm, International Journal of Islamic Financial Services Vol. 1 No.2, 2012.

[23] Sherin Kunhibava and Shanty Rachagan,Shariah and Law in Relation to Islamic Banking and Finance, Article in Banking and Finance Law Review, Monas University, 2011, p. 553.

those goods and deeds. For instance, alcoholic beverages is forbidden for muslim, because it is intoxicating and harmful for human brain and mind. And also will ruin human behaviour among society. Alcoholic business, therefore is prohibited since early of investment, producing, distributing, retailing, and facilitating human for drinking. And so, for other prohibited goods and deeds.

Conclusion

Finally it can be concluded that Islamic finance is one of the efforts to develop religious based business. Islamic finance is covering acquiring wealth, developing properties and maintaining treasures. All such activities are parts of obedience to God, and were regulated by Islamic law, so, the legal indicators are using the five indicators of God's law, compulsory, forbidden, voluntary, hated and permitted. Hence, the result of finance governing will be indicated by lawful or unlawful. The regulations were revealed, merely, to protect the human basic needs to find wealth for earning their life, then developing and maintaining those wealths by investing to some kind of legalised business, while fortify all such business from fraud, deception and other uncertainties.

Related to such spirit of Islamic finance, the Islamic scholars have developed three principles in Islamic finance that have to be regarded in developing business, equity, participation and ownership. Equity is a principle of business that every parties in business should develop togetherness, helping each other in goodness, avoiding usury, fraud and uncertainty contract. Based on this principle, Islamic law forbidding riba, whether riba *fadhal* (usury of price surplus above market norm) or *riba nasiah* (arise in loan transaction). Then, Islamic finance is also developing the principle of participation, means that each parties in business should maintain partnership by developing contract to stickle toward the law of Profit and Loss Sharing (PLS). And the last one is ownership, means that business transaction based on the principle asset based transaction. The sellers are owning the object of the contract to be transferred for buyer, and the buyer is transferring the price. It is unlawful business of unavailable goods, and even developing contract agreement for unavailable objects.

Abstract

Islamic finance is one of a religious based business as an instrument for muslim to gain wealths, developing properties and maintaining treasures. All those business activities are being part of the muslim obedience to God. Islamic finance is regulated by Islamic law by five law indicators, compulsion, prohibition, voluntary, hated and permitted. All those regulation are elaborated in the islamic jurisprudence for being the standards of all kinds of businesses. So, the final conclusion of every transaction will be indicated by lawful or unlawful. There are three principles in islamic finance, equity, participation, and ownership. Islamic finance is regulated by a principle of equity, means that every parties of business are partners, so, it is banned to render difficulties one to another by uncertain contract. Then, Islamic finance is also developed under the principle of participation, means each parties of the contract in business should develop partnership by stickling a business principle of Profit and Loss Sharing (PLS). The last one is ownership, means that the object of the contract should be available at the time of contract, so the seller can transfer the goods, while a buyer transfers the price. Those principles are developed in islamic finance to maintain the wealth od muslim community.

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