

DIGITAL ECONOMY TRANSITION: BRUNEI VISION 2035 MANIFESTATION

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Abstract

The objective of this article is to look at the challenges and the extent to which the potential of technology (digital economy) can accelerate the country's dynamic and resilient economic growth as incorporated in the Brunei's third Vision 2035. This article consists of a few subtopics which begins with an introduction; a brief overview on Brunei's economic development, followed by discussions on the development of the technological knowledge, the development and impact of technology, and the transition to the era of the Industrial Revolution 4.0, all of which were discussed from the Islamic perspective, especially Brunei as an Islamic country that adheres to the philosophy of Malay Islamic Monarch (MIB). The next sub-topic will provide a review on the challenges faced in realizing the third goal of Brunei's Vision 2035 and its potential to use the digital economy as a solution. The author has used relevant data such as world reports, government reports, His Majesty's Titah, and etc. to support his argument. This article finds that Brunei has a great opportunity to tap into the potential of the digital economy and apply it to all aspects of the economy. However, technological advances are still at a minimum that calls for more efforts by the relevant parties to ensure the country's vision is realized.

Keywords: *Digital Economy, Brunei Darussalam, Brunei Vision 2035, Industrial Revolution 4.0, and Islamic Economy.*

Introduction: A Brief Overview on Brunei's Economic Development

Brunei is a small independent country, located in the Southeast Asia that is populated by a majority of the Malays who are Muslims and ruled by a Muslim king i.e. the Sultan, and a country that adheres to the philosophy of Malay Islamic Monarchy (MIB).

Brunei wealth is due to its vast reserves of oil and gas, and this can be traced back all the way to 1929 when commercial oil was first discovered. For 90 years, the oil and gas industry has built Brunei's economy and Brunei continues to supply oil to many countries.

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According to nation's central economic planning organisation, the Department of Economic Planning and Development has recorded that Brunei's economy grew 1.3 per cent in 2017 after a decline in 2016.² In the first quarter 2018, Brunei recorded 2.5 per cent economic growth equal to BND4.38 billion.³ In the World Bank Ease of Doing Business 2018 and 2020 reports, Brunei ranked 66 out of 190 economies, scoring 69.9 in 2019 and increased to 70.1 in 2020.⁴

Marching towards Brunei Vision 2035 – that emphasizes three key aspects namely; education, quality of life and sustainable economy – Brunei strives to diversify its economy. Among the most important aspect in economic diversification is turning its attention to the government and private sectors' efforts to digitalise the economy and transform the country into a physical and digital business gateway to ASEAN.

The Government of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni al-Marhum Sultan Haji Omar 'Ali Sifuddien Sa'adul Khairi Waddien, Sultan and Yang Di-Pertuan of Brunei Darussalam, has embarked on the E-Government Strategy 2015-2020 driven by the goals of Vision 2035.

To realise the vision of Digital Government Strategy 2015-2020, six focus areas and six programmes have been identified. The focus areas are service innovation, security, capability and mindset, enterprise information management, optimisation and collaboration and integration. The programmes are: advancing digital services, implementing universal access

² Department of Economic Planning and Development. "Annual Summary Data". *National Accounts*. Retrieved on Friday, 2nd October 2020. <http://www.deps.gov.bn/SitePages/National%20Accounts.aspx>.

³ Borneo Bulletin Yearbook 2019. "Investment Potential". *Economic Environment*. p.43.

⁴ See: The World Bank Doing Business. "Ease of Doing Business". Brunei Darussalam. Retrieved on Friday, 2nd October 2020. <https://www.doingbusiness.org/en/data/exploreconomies/brunei>.

for government systems, strengthening security output, enhancing stakeholder engagement output and optimising digital assets output.⁵

Islamic Perspectives on Technology Development

In reference to the Qur’anic verses, *Allāh Subḥānahu wa Ta’ālā* has elevated human dignity to the highest – over all other creations – a Caliph who is given the task and trust to govern, manage and prosper the earth conforming to the limits and demands set forth by the Islamic Law.

In order to enable these tasks and responsibilities to be carried out more efficiently, *Allāh Subḥānahu wa Ta’ālā* has given humans great power so that they can subjugate all beings of *Allāh*’s creation in this universe. This is expressed in a sentence:

وَسَخَّرَ لَكُم مَّا فِي السَّمَوَاتِ وَمَا فِي الْأَرْضِ جَمِيعًا مِّنْهُ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ ﴿١٣﴾

“*And He has disposed for you (for your benefit and use), all that is in the heavens and on the earth; (as a gift and bounty) from Him. Surely there are signs in this (proving His generosity and power) for people who think*”⁶ – [Sūrah al-Jāthiah, (45): 13].

Subjugation of other beings by human power would not be possible without “knowledge and reason (intellect)”. Thus, *Allāh Subḥānahu wa Ta’ālā* has endowed man with the advantages of knowledge and intellect that make him the most noble and great being. *Allāh Subḥānahu wa Ta’ālā* says:

⁵ Borneo Bulletin Yearbook 2019. “Investment Potential”. *Digitalising the Economy*. p.55.

⁶ All Qur’anic translations in this article are taken from Sheikh Abdullah Basmeih (Translator and Commentary). 2007. *Tafsir Ar-Rahman: Interpretation of the Meaning of the Quran*. Department of Islamic Development Malaysia: Malaysia.

وَمَا أُوتِيتُمْ مِنَ الْعِلْمِ إِلَّا قَلِيلًا ﴿٨٥﴾

“Little indeed is the knowledge granted to you” – [Sūrah al Isrā’, (17): 85].

Although the knowledge given to humans by *Allāh Subḥānahu wa Ta’ālā* is limited, it can be developed by reasoning, thinking, observing and in-depth research. With the development of knowledge and intellect, people are able to transform their lives from hard to easy and easily achieve things through their expertise in various fields including technical by producing a wide range of advanced tools that contribute to the global well-being.

Therefore, there is no doubt about the need for the creation and use of technology in Islam. The ultimate goal behind this discovery is to meet the demands of the people and improve their daily lives and not to meet personal interests based on worldly desires. This is due to the fact that in the Islamic economy, human personality requires a balanced gratification of both material and spiritual aspects. The achievement of these balanced human needs must be given priority at the optimum level because humans invent technology and not vice versa.

In *al-Qur’ān al-Karīm*, there are numerous verses that suggest Muslims should use all of *Allāh*’s creations in their daily lives, including the verse:

أَلَمْ تَرَوْا أَنَّ اللَّهَ سَخَّرَ لَكُمْ مَّا فِي السَّمٰوٰتِ وَمَا فِي الْأَرْضِ وَأَسْبَغَ عَلَيْكُمْ نِعْمَهُ ظَهْرَةً وَبَاطِنَةً ﴿٢٠﴾

“Do you not see that *Allāh* has subjected to you all that is in the heavens and in the earth and lavished on you both His visible and unseen favours?” – [Sūrah Luqmān, (31): 20].

In another verse, *Allāh Subḥānahu wa Ta’ālā* says:

اللَّهُ الَّذِي خَلَقَ السَّمٰوٰتِ وَالْأَرْضِ وَأَنْزَلَ مِنَ السَّمَاءِ مَاءً فَأَخْرَجَ بِهِ مِنَ الثَّمَرٰتِ رِزْقًا لَّكُمْ ۗ وَسَخَّرَ لَكُمُ الْفُلُوكَ

لِتَجْرِيَ فِي الْبَحْرِ بِأَمْرِهِ ۗ وَسَخَّرَ لَكُمُ الْأَنْهَارَ ﴿٣١﴾

“It is Allāh Who created the heavens and the earth, and sends down water from the sky with which He produces fruits for your sustenance. And it is He Who made the ships subject to you so that they may sail the ocean in your service by His leave. And the rivers also He has made them subject to you (so that you can get benefit from them)” – [Sūrah Ibrāhīm, (14): 32].

Realizing this fact, Islam fundamentally supports the development of science and technology. However, such development must be beneficial and not harmful to mankind that it changes the nature of human beings and enslaved by their own technology products handiwork that bring disasters to the world.

This is reminded in a *Ḥadīth* of Ibnu ‘Abbās which states that *Rasūlullāh Ṣallallāhu ‘Alayhi wa Sallam* has said:

لَا ضَرَرَ وَلَا ضِرَارَ

“Not harmful (to yourself) and not harmful (to others)” – [Aḥmad, Mālik, Ibnu Mājah, al-Dāruquṭnī and al-Ṭabarānī: *Ḥadīth Ḥasan*].


In other words, the obligation to create and use technology must be in accordance with demanded values by *Allāh* and must be in tandem with the nature of human creation itself.




Technology Development and Its Impact

Technology is regarded as a creative innovation, achievement and advancement of human life on this earth resulting from the development process of knowledge and the intellect. As a result of the new technology discovery, human civilization continues to grow rapidly.

In modern times, the development of human civilization can be categorized into three phases of transition known as the Industrial Revolution (IR) era. In summary, the transition of the IR era can be illustrated in the following diagram:

Figure 1:
Transition Era of the IR 1.0 to IR 3.0



| | | | |
|---------------|-------------|--|---|
| IR 1.0 | 1784 | Increased productivity in the textile industry as a result of the invention of steam engines |  |
| IR 2.0 | 1870 | Production of mass production such as iron, oil, electricity products, cars and so on using electricity |  |
| IR 3.0 | 1969 | The discovery of machines that can move and think automatically namely computers, robots, the internet and information and communication technologies |  |

Source: See: Ning Rahayu, *Warta Ekonomi*. "Perspektif Baru Bisnis & Ekonomi". *Portal Berita Ekonomi*. <https://www.wartaekonomi.co.id/read226785/mengenal-revolusi-industri-dari-10-hingga-40>.

Generally, the creation of technology is universal where it can be used by anyone regardless of religion, race, gender or age. Undoubtedly, the creation of technology certainly has an impact – whether it is directly and indirectly or good and bad – on human life. The proper use and purpose will bring *maṣlahah* (good), while the incorrect use and purpose will bring *mafsadah* (misery). From this explanation, it can be understood that the most important thing about technology creation is its use and purpose.

As an example, the creation of computers when used for the purpose of developing a *ḥalāl* business venture would in fact have a positive and good impact on consumers as well as improve the economy. On the contrary, if it is used for the purpose of spreading slander and provocation, especially for the purpose of spreading false propaganda about Islam, it would in fact have a devastating impact on human lives.

Another example, global development has transformed IR 3.0 to IR 4.0 and led to significant impact to financial industries. Financial technology (FinTech) revolution has showed tremendous momentum and certainly not showing signs of slowing down. Survey conducted by Ernst & Young Advisory Services Sdn. Bhd. (EY) in 2018 showed that financial institutions in the ASEAN region were more interested with FinTech particularly in Singapore

(investment in 2017: US\$141M, i.e. +68% year over year), Philippines (investment in 2017: US\$78M, i.e. 13 times increase year over year) and Malaysia (investment in 2017: US\$75M, i.e. 15 times increase year over year).⁷ Overall, in 2017, investments in the ASEAN FinTech market jumped 45% to US\$366m compared to US\$252m in 2016.⁸ According to the survey, majority of FinTechs aspire to offer better and more effective solutions to the customers, fit for purpose and give greater convenience and enhanced user experience as respective value-plays.⁹

From that point on, the technological advances achieved by human civilization today must contribute to the lives of human beings worldwide. No matter how much such technological advancements are achieved, but if they are not used to uplift human dignity, they will certainly bring disaster to the world and its inhabitants. Moreover, if the use of technology is not based upon divinity and faith, it is regarded as conceitedness and arrogance which inevitably leads to evil and destruction. As human endeavours and achievements in science and technology escalate, it should give a strong cognizance and belief to each individual in the clear evidence of the existence of *Allāh* the Almighty, Creator of the universe and its whole being.

The Transition to the Era of the Industrial Revolution 4.0

It is a fact that the world is changing from time to time, and we cannot resist it, but rather we must accept it with an open heart and mind, and be prepared to face all the challenges ahead.

In line with the development of science and the maturity of thoughts, human civilization continues to evolve over time. Now the whole world is talking about the transition of the IR

⁷ See: Ernst & Young, 2018. *ASEAN FinTech Census 2018*. “FinTech Snapshot: ASEAN”. EYGM Limited: Singapore. p.4.

⁸ *ibid.* “Investment”. p.25.

⁹ See: Ernst & Young, 2018. *ASEAN FinTech Census 2018*. “Profiling of Respondents”. Op.Cit. p.17.

3.0 era to the IR 4.0 era that combines automated technology with cyber technology. These include cyber-physical systems, Internet of Things (IoT), cloud computing, cognitive computing, digital and biological.¹⁰

The sophistication of new technologies in the era of the IR 4.0 is expected to lift up human civilization to a higher and more advanced stage of development, including those related to the rapid increase in service trends and efficient low cost production, product innovation, less dependence on human resources, big data offerings to manufacturers, energy source offerings and new consumer culture.

The IR 4.0 should not be viewed as a daunting transition of human civilization, but rather should be accepted as a time-shifting one that provides ample opportunity for all peoples to contribute to their national economy. These trends change many areas of life, including the economy, the world of work, and even the human lifestyle. The advent of the IR 4.0 enabled the creation of new innovations, new ventures, new jobs, and unprecedented new professions.

The good opportunities offered by the IR 4.0 should rather be taken as opportunities to serve as a tool for strengthening and reaffirming the human position on earth as the *Khalīfatullāh*. In other words, technological achievements in the era of the IR 4.0 should have a pure mandate of enhancing social status by providing a solution to the current and future challenges and humanitarian issues, such as economic crisis, unstable economic growth and development, gaps between the rich and poor, changes in social behavior that are against nature, food security, health, hunger, unemployment, security, justice, equality, environmental pollution, racial discrimination, unethical technology use, and so on.

¹⁰ See: Ning Rahayu, Warta Ekonomi. "Perspektif Baru Bisnis & Ekonomi". *Portal Berita Ekonomi*. Retrieved on Monday, 17th February 2020. <https://www.wartaekonomi.co.id/read226785/mengenal-revolusi-industri-dari-10-hingga-40>.

This is the discussion and deliberation among economists around the world to realize the global Sustainable Development Goals (SDGs) by 2030.

Figure 2:
Global Sustainable Development Goals 2030



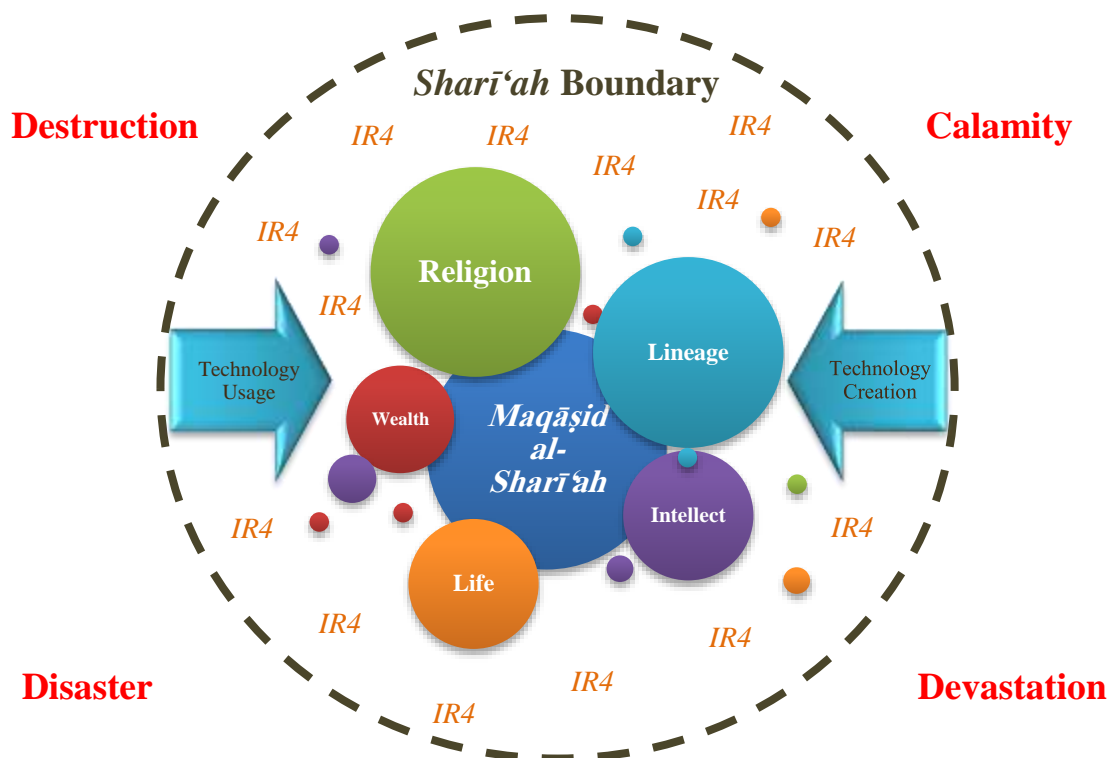
Source: Kate Donald. "Promising the World: Accountability and the SDGs". *Center for Economics and Social Rights*. <https://www.cesr.org/promising-world-accountability-and-sdgs>.

Well-known Islamic scholars such as al-Imām al-Ghazālī (1111 AD), al-Imām al-Shāḥibī (1388 AD), Ibnu ‘Āshūr (1973 AD) and many others have come a long way in discussing sustainable life development by maintaining the quality of human life through the preservation and strengthening of *Maqāṣid al-Sharī‘ah* (Objectives of Sharia), namely: preserving religion, intellect, lineage, life and property.

As a nation that adheres to Islamic teachings, *Maqāṣid al-Sharī‘ah* should be the foundation for thinking and acting. It is a hallmark for the sustainable Islamic development due to its universality, relevant and dynamic nature that drives the current globalization of modernization and encompasses all the goals that SDGs want to achieve.

An overview of the IR 4.0 in the context of preserving and strengthening *Maqāṣid al-Sharī‘ah* can be illustrated in the following diagram:

Figure 3:
IR 4.0 in the Light of Maqāsid al-Sharī'ah



Source: Author's own.

Figure 3 above explains that the creation and use of man-made technology in spurring the development of the IR 4.0, must always be within the permissible limits of Islam and contribute to the preservation of the five main components contained in the *Maqāsid al-Sharī'ah*. This is to ensure that the development efforts actually contribute to the better life and thus enhances the quality of human life on this earth. Any behavior that is outside the limits and not supported by Islamic Law is an act of vice and defection that will surely invite disasters, calamities, destructions and devastations to the whole of life. The following is described in the Qur'anic verse:

وَمَا أَصَابَكُمْ مِّنْ مُّصِيبَةٍ فَبِمَا كَسَبَتْ أَيْدِيكُمْ وَيَعْفُوا عَنْ كَثِيرٍ ﴿١٠٤﴾

“If a misfortune (or disaster) befalls you, it is because of what you have committed (of faults and sins); but (meanwhile) Allāh forgives most of your sins” – [Sūrah al-Shūrā, (42): 30].

Brunei Vision 2035 and Future Challenges

In 2004, His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, the Sultan and Yang Di-Pertuan of Brunei Darussalam approved the set-up of the Long Term Development Planning Council which was tasked to shape Brunei's future vision and present a detailed account of the technical, financial and strategic plans needed to be materialised.¹¹

Thenceforth, a long-term vision called the “Brunei Vision 2035” was launched. The first report of the Council in 2007 contained a number of recommendations that paved the way for the establishment of the Supreme Council of Brunei Vision 2035. The main role of the Council was to provide intensive and systematic support towards the implementation of initiatives by government agencies to realize Brunei Vision 2035.¹²

Brunei Vision 2035 focuses on the achievement of three main goals, namely:

- 1) Education: the accomplishments of its well-educated and highly-skilled people as measured by the highest international standard.
- 2) Quality of life: that is among the top 10 nations in the world.
- 3) Dynamic and sustainable economy: with income per capita within the top 10 countries in the world.

¹¹ See: “Wawasan Brunei 2035”. *Portal Rasmi Kerajaan Brunei Darussalam*. Retrieved on Friday, 21st February 2020. <https://www.gov.bn/bm/Wawasan%20Brunei%202035%20-%20bm.aspx>.

¹² *ibid.*

13 strategies have been developed and identified to ensure that all aspects of development are implemented appropriately and effectively, they are:

- 1) Education strategies to prepare the people for more competitive and knowledge-based employment opportunities;
- 2) economic strategies to create new jobs for the people and expand business and business opportunities through the promotion of foreign and domestic investment, in downstream industries and economic clusters outside the oil and gas industry;
- 3) security strategies for maintaining political stability and maintaining national sovereignty as well as linking defense capabilities with diplomatic capabilities and preparing the country to address the threat of illness and natural disasters;
- 4) institutional development strategies to improve administration and leadership quality in the public and private sectors, high quality public services, modern and pragmatic legal and regulatory frameworks, and efficient government with minimal bureaucracy;
- 5) local business development strategy to enhance the opportunity for small and medium enterprises (SMEs) and facilitate the Brunei Malays to become leaders in business and industry through a competitive strength;
- 6) infrastructure development strategies to ensure continued government investment and through Public-Private Partnership (PPP), in the development of world-class infrastructure with priority in education, health and industry;
- 7) social security strategies to ensure that the country continues to prosper and that every citizen will always have the proper attention;
- 8) environmental strategies to ensure the preservation of the natural environment and the perfect cultural atmosphere. This will maintain health and safety standards in line with international best practices;

- 9) land-use strategies to ensure optimal land use in line with the aspirations for viable asset management and land resources that contribute to the country's economic growth;
- 10) health strategies to improve the health and well-being of the people and the population through the healthcare system of high quality, comprehensive, efficient, responsive, affordable, equitable and accessible to all;
- 11) religious strategies to ensure the preservation of national identity in accordance with the concept of *MIB*, to regulate Islamic values based on faith and piety towards balanced development;
- 12) communication infrastructure and Information and Communications Technology (ICT) strategies to maintain relationships that facilitate the movement of people, goods and services to drive economic growth by creating economic space, enhancing economic sustainability and promoting economic competitiveness; and
- 13) the human resource planning strategy is to provide a workforce equipped with the appropriate skills in line with the demand for economic development.

In order to implement all these well-planned strategies, it requires high commitment from all parties to ensure success. The implementation of the Brunei Vision 2035 agenda will only be achieved successfully if the spirit of cooperation and unity between the government, the private and the public sectors can be nurtured and maintained through consensus, relevant and timely delivery.¹³

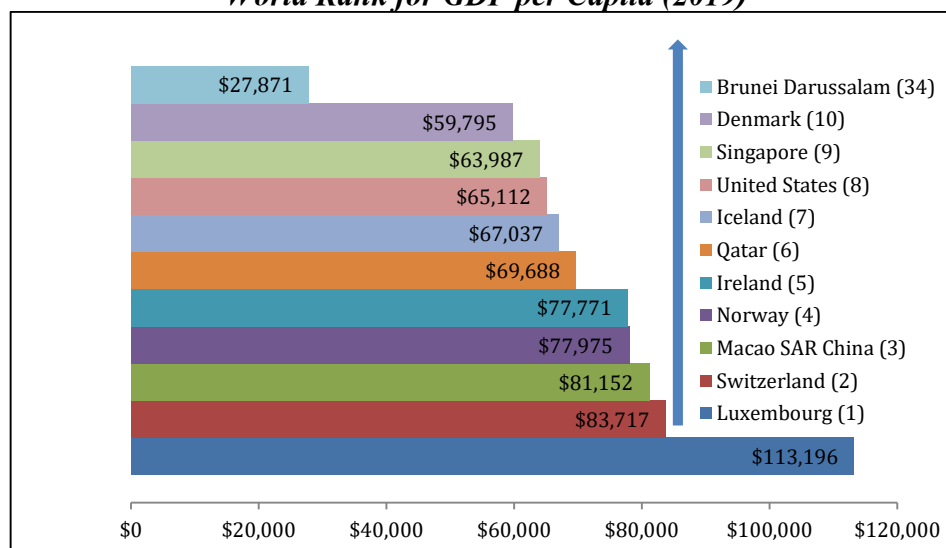
¹³ See: Titah: "...kita diperlukan terlebih dahulu, untuk bersatu padu. Jangan berpecah-belah. Pastikan, semua usaha yang dibuat adalah secara muafakat, relevan dan menepati peredaran masa. Inilah rahasia atau kunci kejayaan bagi Wawasan Negara 2035. Ini, meliputi untuk semua, sama ada sektor kerajaan mahupun swasta adalah mustahak untuk memupuk kerjasama dan persefahaman, dalam makna, semua kita adalah dikehendaki untuk bekerja dalam suatu pasukan tanpa melakukan perkara-perkara yang menyalahi peraturan atau undang-undang." Prime Minister Office. "His Majesty's Titah in Conjunction with Brunei Darussalam 33rd National Day,

Optimal and sustainable economic development plays an important role in spurring the growth, development and well-being of the people. Recognizing this fact, economic strategy has been placed as the second most important strategy in achieving Brunei Vision 2035.

To make Brunei Darussalam a world-class dynamic and sustainable economy when measured from the top 10 countries in the world in terms of income per capita, requires hard work, high level of creativity and innovation. With the current minimal economic growth process, Brunei is facing great challenges in achieving this goal.

In the light of recent global developments, Brunei Darussalam is still far behind as compared to the developed countries in terms of per capita income. According to International Monetary Fund (IMF) statistics, in 2019 Brunei is ranked 34th in the world with Gross Domestic Product (GDP) per capita of USD27,871.¹⁴ The following figure indicates Brunei Darussalam's position in terms of income per capita compared to the top 10 countries in the world:

Figure 4:
World Rank for GDP per Capita (2019)



2017.” *Titah*. Retrieved on Friday, 21st February 2020. <http://pmo.gov.bn/Lists/TITAH/NewDispform.aspx?ID=270&Source=http%3A%2F%2Fpmo.gov.bn%2FPMO%2520Pages%2FTitah%2DView%2Easpx%23InplviewHash5642f11d%2Df053%2D4824%2D9967%2D9160220e5d9e%3DPaged%253DTRUE%2Dp%5FYear%5Fx0020%5Fof%5Fx0020%5Fthe%5Fx0020%5FAR%253D2017%2Dp%5FID%253D274%2DPag eFirstRow%253D81&ContentTypeId=0x0100422E821587FC974C9DFFAF38C117CE34>.

¹⁴ International Monetary Fund (IMF) World Economic Outlook. “World GDP Per Capita Ranking”. *MGM Research*. Retrieved on Friday, 21st February 2020. <https://mgmresearch.com/world-gdp-per-capita-ranking>.

Source: See: International Monetary Fund (IMF) World Economic Outlook. "World GDP Per Capita Ranking". MGM Research. <https://mgmresearch.com/world-gdp-per-capita-ranking>.

Assuming that the top 10 countries reach their GDP growth of 3% per annum, hence the GDP income per capita for Brunei Darussalam must at least grow at 8.1% per annum to occupy the top 10 ranking (over Denmark) by earning over USD96,000 per capita by 2035.

Table 1:
Top 10 World Rank GDP Growths of 3% per Annum from Year 2020-2035

| Year | 3% Growth per Annum | | | | | | | | | | 8% Growth per Annum |
|---------------|---------------------|-------------|-----------------|-----------|-----------|-----------|-----------|---------------|-----------|----------|---------------------|
| | Luxembourg | Switzerland | Macao SAR China | Norway | Ireland | Qatar | Iceland | United States | Singapore | Denmark | Brunei Darussalam |
| Baseline 2019 | \$113,196 | \$83,717 | \$81,152 | \$77,975 | \$77,771 | \$69,668 | \$67,037 | \$65,112 | \$63,987 | \$59,795 | \$27,871 |
| 2020 | \$116,592 | \$86,229 | \$83,587 | \$80,314 | \$80,104 | \$71,779 | \$69,048 | \$67,065 | \$65,907 | \$61,589 | \$30,129 |
| 2021 | \$120,090 | \$88,815 | \$86,094 | \$82,724 | \$82,507 | \$73,932 | \$71,120 | \$69,077 | \$67,884 | \$63,437 | \$32,569 |
| 2022 | \$123,692 | \$91,480 | \$88,677 | \$85,205 | \$84,982 | \$76,150 | \$73,253 | \$71,150 | \$69,920 | \$65,340 | \$35,207 |
| 2023 | \$127,403 | \$94,224 | \$91,337 | \$87,762 | \$87,532 | \$78,434 | \$75,451 | \$73,284 | \$72,018 | \$67,300 | \$38,059 |
| ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| 2032 | \$166,232 | \$122,941 | \$119,174 | \$114,509 | \$114,209 | \$102,339 | \$98,446 | \$95,619 | \$93,967 | \$87,811 | \$76,716 |
| 2033 | \$171,219 | \$126,629 | \$122,750 | \$117,944 | \$117,636 | \$105,409 | \$101,399 | \$98,488 | \$96,786 | \$90,445 | \$82,930 |
| 2034 | \$176,356 | \$130,428 | \$126,432 | \$121,483 | \$121,165 | \$108,572 | \$104,441 | \$101,442 | \$99,690 | \$93,159 | \$89,647 |
| 2035 | \$181,646 | \$134,341 | \$130,225 | \$125,127 | \$124,800 | \$111,829 | \$107,575 | \$104,486 | \$102,680 | \$95,953 | \$96,909 |

Source: Author's own.

This assumption of GDP growths can be illustrated in the following graph:

Figure 5:
GDP per Capita for Brunei Darussalam by 2035



Source: Author's own.

In order for the GDP to grow rapidly, it is crucial to expand and diversify the country's economy. Efforts to increase domestic product need to be multiplied and accelerated.

Looking at the growth of the world today, there is no more efficient way to rapidly increase GDP in this era of Revolution 4.0 except by leveraging the latest technologies to the optimum level as the technology is believed to easily penetrate the global market while reducing costs efficiently.¹⁵

In line with the *titah* of His Majesty the Sultan and Yang Di-Pertuan of Negara Brunei Darussalam which emphasize that one of the key factors in achieving Brunei Vision 2035 should be timely in delivery. Therefore, a sound economic strategy should be aligned with the modern development trends of the IR 4.0 era where the use of cyber-space technology has become dominant in every aspect of the people's lives today.

One of the sustainable solutions that the world uses today to improve economic competitiveness is through the empowerment of the digital economy. Recommendations to explore the potential of the digital economy have been self-addressed by His Majesty the Sultan and Yang Di-Pertuan of Negara Brunei Darussalam in conjunction with Brunei Darussalam's 34th National Day 2018.¹⁶

¹⁵ See: Titah: "...peningkatan pertumbuhan ekonomi boleh dicapai dengan memberi keutamaan kepada peningkatan produktiviti, melalui penyelidikan dan penggunaan teknologi terkini. Ini turut diyakini mampu untuk membantu mengurangkan unit kos pengeluaran, di sampingitu juga akan membolehkan kita menembusi pasaran antarabangsa dengan menawarkan produk dan perkhidmatan kita. Dengan berlakunya ini, bererti, keluaran dan eksport kita adalah tumbuh, yang dengan sendirinya, akan meletakkan ekonomi kita juga berada di tahap berkembang dan tumbuh." Prime Minister Office. "His Majesty's Titah in Conjunction with 2016 New Year". *Titah*. Retrieved on Sunday, 23rd February 2020. <http://pmo.gov.bn/Lists/TITAH/NewDispform.aspx?ID=244&Source=http%3A%2F%2Fpmo%2Egov%2Ebn%2FLists%2FTITAH%2FAIItems%2Easpx%23Inplvi ewHash78a3a00b%2D8364%2D4c42%2Daaa7%2D552ba55696b0%3DPaged%253DTRUE%2Dp%5FYear%5 Fx0020%5Fof%5Ffx0020%5Fthe%5Ffx0020%5FAR%253D2017%2Dp%5FID%253D274%2DPageFirstRow%2 53D81&ContentTypeId=0x0100422E821587FC974C9DFFAF38C117CE34>.

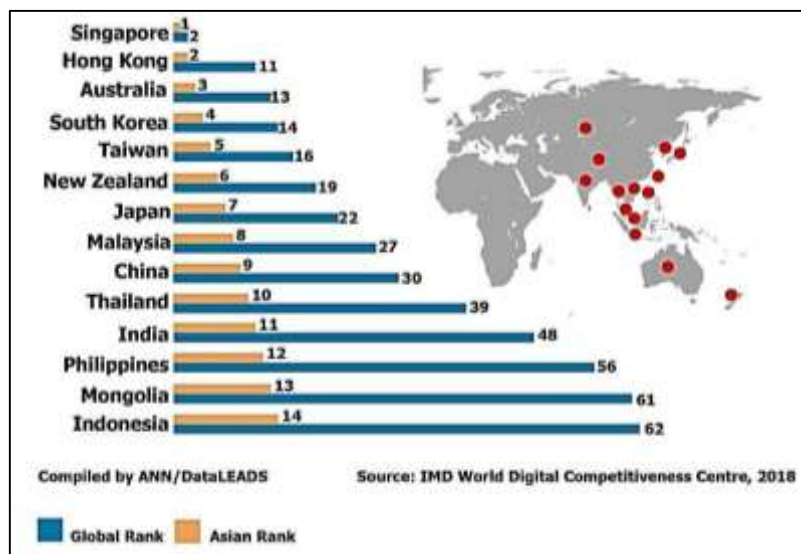
¹⁶ See: Titah: "Di era baru ini, penggunaan teknologi maklumat semakin meluas dan memainkan peranan yang sangat penting. Ia juga tidak syak lagi, turut mengalihkan fokus ke arah ekonomi digital yang terbuka luas untuk diceburi". Prime Minister Office. "His Majesty's Titah in Conjunction with the 34th Brunei Darussalam National Day, 2018". *Titah*. Retrieved on Friday, 21st February 2020. <http://pmo.gov.bn/Lists/TITAH/NewDispform.aspx?ID=301&Source=http%3A%2F%2Fpmo%2Egov%2Ebn%2FPMO%2520Pages%2FTitah-View%2Easpx&ContentTypeId=0x0100422E821587FC974C9DFFAF38C117CE34>.

Digital Economic Potential in Brunei Darussalam

The digital economy is a new phenomenon that is increasingly playing a strategic role in the global economic development. Geographical boundaries are no longer relevant as the digital economy has been able to break the boundaries between continents in a very short time by using only the finger tip. Consequently, the size of the small market is no longer appropriate to serve as a reason to restrict GDP growth.

According to current world developments, Singapore has led other countries in making the digital economy the most important platform for sustainable economic development. Singapore today ranks first in Asia and second in global rankings.

Figure 6:
The Digital Economic Landscape in Asia



Source: DataLEADS. "Singapore Has the Most Competitive Digital Economy in Asia". *Asia News Network*. <http://annx.asianews.network/content/singapore-has-most-competitive-digital-economy-asia-75691>.

The IR 4.0 has the potential to create opportunities while also creating new challenges for all sectors in Brunei Darussalam, leading to a more competitive digital economy

transformation. The potential of the digital economy is to be explored as it is closely linked to the third goal of Brunei Vision 2035, a dynamic and sustainable economy.

The use of the digital economy offers many benefits and positive impacts from many angles. First, the creation of new jobs, in which the digital economy greatly influences the growth and development of micro, small and medium enterprises (MSMEs). Second, the financial benefits, in which the digital economy has the potential to increase the per capita monthly income to the family or nation, especially the Malays who dominate the population of Brunei Darussalam. Third, buying benefit, where market prices of e-commerce products or services are generally much lower than offline market sales. Fourth, social equality, in which the digital economy can create gender equality in terms of economic growth and other social issues.

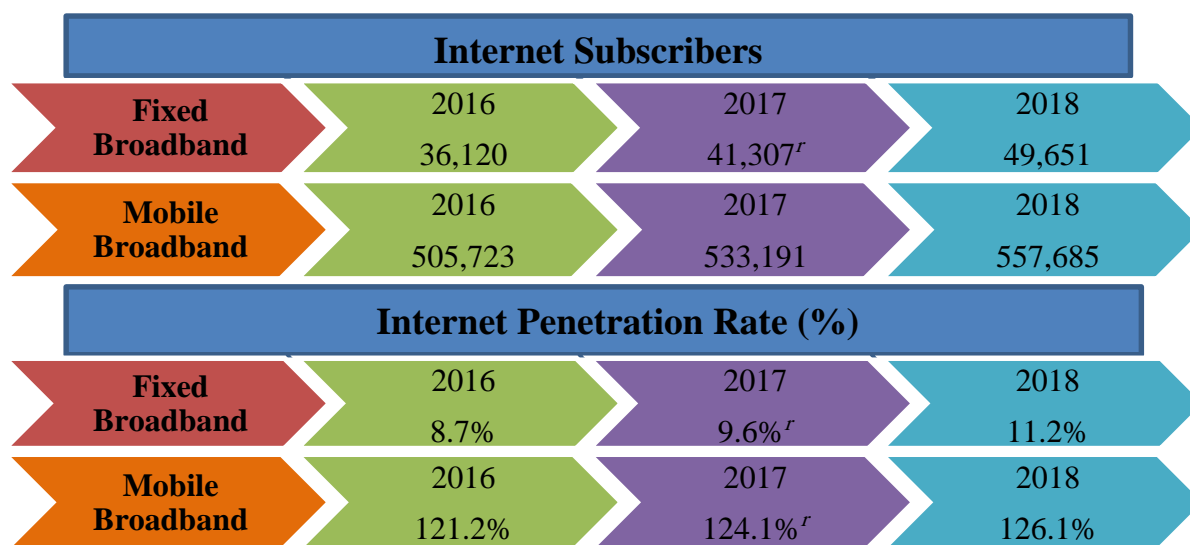
An example of recent national developments in digital economy is the emergence of ride-sharing system transportation services introduced by Brunei DART Company. The DART service represents positive growth which is expected to reach 1,000 drivers over the next five years. Since its launch in May 2017, DART applications have been downloaded 32,000 times with approximately 30,000 users and the company has received more than 120 applications to become a DART driver.¹⁷

This proves that the development of the ICT sector is critical to creating an ecosystem which supports Brunei's long term digital transformation and the aims of Brunei Vision 2035. Official statistics released in 2018 by the Department of Planning and Economic Development (DEPD) show that the growth of broadband usage among Brunei Darussalam residents is encouraging.

¹⁷ See: Jabatan Majlis-Majlis Mesyuarat, Jabatan Perdana Menteri. "Majlis Mesyuarat Negara 20 Mac 2019 (Pagi)". *Berita dan Laporan*. Retrieved on Friday, 21st February 2020. [http://www.councils.gov.bn/JMM%20Images/laporan2019/Laporan%20Penuh\(Hansard\)%20Hari%20Rabu,%2020%20Mac%202019%20\(Pagi\).pdf](http://www.councils.gov.bn/JMM%20Images/laporan2019/Laporan%20Penuh(Hansard)%20Hari%20Rabu,%2020%20Mac%202019%20(Pagi).pdf).

Latest figures of national broadband coverage show that approximately 80 per cent of homes in the country are now High-Speed Broadband (HSSB) ready with Fibre to The Home (FTTH) connections, with 60 per cent of homes already connected to broadband services and counting.¹⁸ Here are the latest statistics on broadband development in Brunei from 2016 to 2018:

Figure 7:
Development of Broadband in Brunei Darussalam, Year 2016-2018



^r = revised

Source: See: Department of Statistics. Department of Economics Planning and Development. "Communication". **Brunei Darussalam Key Indicators 2018**. Ministry of Finance and Economy: Brunei Darussalam.

The positive growth of broadband usage among consumers shows Brunei Darussalam has the potential to further explore digital economic opportunities and strengthen its use in various corners of the country's economic activities. The digital economy provides a new hope for Brunei Darussalam's economy in achieving its ambitious goal of becoming a country that uses ICT and technological advances to address the issue of sustainable economic growth.

¹⁸ Borneo Bulletin Yearbook 2019. "Business Sectors". *Information & Telecommunications Technology*. p.109.

According to Telekom Brunei Berhad (TelBru), connectivity [nowadays] is a necessity and not a luxury anymore. It is also key in helping to boost productivity which in turn helps to increase Brunei's GDP output per capita by between 0.8-1.5 per cent for every 10 per cent of citizens connected, and helps more small and home based offices and businesses.¹⁹

What is important in exploring the potential of this digital economy is the availability of specific platforms that are key to the growth of the network and the use of big data. Therefore, the development of the ICT sector is important in the transformation of the digital economy ecosystem that will make Brunei Darussalam a Smart Nation status without compromising *MIB's* national philosophy. To this end, His Majesty the Sultan has approved the establishment of the Brunei Digital Economic Council to drive broadband accessibility to all users and to enhance the value, quality and service capabilities and optimum broadband usage.²⁰

Based on this brief observation, it can be concluded that the development of the digital economy in Brunei Darussalam is still at an early stage which requires special attention and more serious efforts from all relevant parties. With the strengthening of the digital economy, it is hoped to create competitiveness, innovative and diversified economic opportunities, positive economic growth, value creation, equitable distribution of wealth, creative product and service creation, expansion of entrepreneurial activities from local youths, enhancement of per capita income, opening up employment opportunities and simultaneously transforming Brunei's

¹⁹ See: Borneo Bulletin Yearbook 2019. "Business Sectors". *Information & Telecommunications Technology*. p.110.

²⁰ See: Titah: "Potensi ekonomi digital juga perlu diteroka. Lalu ke arah ini, Beta telahpun memperkenalkan penubuhan Majlis Ekonomi Digital. Beta difahamkan, satu Plan Induk Ekonomi Digital sedang diungkayahkan, bagi tujuan, untuk menjadikan negara ini sebagai sebuah negara Smart Nation". Prime Minister Office. "His Majesty's Titah in Conjunction with His Majesty's 73rd Birthday". *Titah*. Retrieved on Friday, 21st February 2020. <http://pmo.gov.bn/Lists/TITAH/NewDispform.aspx?ID=337&Source=http%3A%2F%2Fpmo%2Egov%2Ebn%2FPMO%2520Pages%2FTitah%2DView%2Easpx&ContentTypeId=0x0100422E821587FC974C9DFFA-F38C117CE34>.

quality of life to a “new look”, in addition to the emergence and growth of other digital industries such as e-education, e-medicine, e-transportation, and IoT.

Conclusion

To become a renowned nation globally, a country with dynamic and sustainable economy as one of the goals to be achieved in Brunei Vision 2035 is certainly not an easy task. There are many challenges to be faced, various issues to be addressed, many efforts to be worked hard on, diligently and meticulously, innovation and creativity need to be improved.

The volatile economic conditions of the world may have affected Brunei Darussalam’s macroeconomic performance which leads to the vision being “a mere intellectual rhetoric, beautifully mentioned in words” and eventually, a memory.

As the modern era of the Revolution 4.0’s advanced, the sophistication of cyber-space technology should be leveraged to achieve the nation’s visionary goals. The digital economy has been identified as an effective means of achieving the desired direction. With the current efforts, Brunei is seen as a great opportunity to tap into the potential of the digital economy and to deploy it as a key platform in expanding the country’s economic scope.

However, in the spirit of achieving the goal of materialistic economic development, Islamic boundaries, the demands of *Maqāṣid al-Sharī’ah* and the concept of *maṣlaḥah* must be maintained, fulfilled and not neglected and must go hand in hand with Brunei Vision 2035. The balanced development of the material and the spiritual will further highlight Brunei’s unique Muslim nation as a developed Muslim nation with the motto “always do good deeds with the guidance of *Allāh*”.

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**NATURE AND SCALE OF CONVERSION
 FROM CONVENTIONAL BANKING TO ISLAMIC BANKING IN SELECTED
 ASEAN COUNTRIES:
 RECENT CONVERSION MODELS & MAJOR CHALLENGES¹**

Makhtar bin Abdullah²
 Dr Abdul Nasir bin Haji Abdul Rani³

Abstract

Based on an extensive literature review and discussion with professionals and experts in the field of knowledge, this paper (a portion from the wider coverage thesis) will highlight some challenges faced by the industry players – approaching conversion – focusing on ASEAN countries namely Malaysia, Brunei, Indonesia, Thailand and Philippines, from Shari’ah, regulatory, and corporate perspectives. Conversion from conventional banking to Islamic operation is one of the approaches taken in financial industries in Middle East, South Asia and Asia Pacific since 1990s. Malaysia, Brunei, Indonesia, Thailand and Philippines are among ASEAN countries adopting the same approach. Financial institutions approach conversion in different ways based on their priorities, ecosystem and reasons. This article will cover conversion from regulatory perspectives, Fiqh perspectives and several reported conversion cases in ASEAN. Since there is no “absolute and correct” way of conversion, the industry players, the regulators and academicians will have to appreciate the uniqueness of each conversion exercise from conventional into Islamic operations. The demand for more Islamic financial institutions will provide better services and offer wider coverage based on technology advancement towards digital banking era. Conventional financial institutions focuses on Environmental Sustainable and Governance (ESG) products while Islamic financial institutions highlights the embedded Maqāsid al-Sharī’ah in Islamic Mu‘āmalāt long before United Nation declaration.

Keywords: Conversion models, challenges, ASEAN, conventional banks, and Islamic banks.

Introduction

Islamic banking needs to expand and continue competing with conventional banking for wider reaching. Islamic capital market needs to go face-to-face with Environmental Sustainable and

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Governance (ESG) products before the later takes the lead. Conversion from conventional to Islamic banking is one of the trend and path taken in some jurisdiction towards more *Sharī'ah* compliant services, meeting the regulatory requirement, and satisfying stakeholders' needs as well as commercial expansion. This paper will share a few conversion models taken by conventional banks to become Islamic banks or to provide Islamic banking services and products.

Findings expressed that conversions are acceptable models in ASEAN, but there is no fixed one model suitable for all institutions, jurisdiction and ecosystem. Conversion can be done in many forms including conversion via mergers and acquisition, absolute conversion, and staggered conversion. In addition to this, there are limited available guidelines for conversion which are still subjected to adoptions as well as criticism.

Conversion from Conventional to Islamic Banking Operation

Operationally, conversion from conventional to Islamic cut across (among others) from the original conventional institution corporate structure, the management, the human resource, the products & services offering, the workflow process, the risk and governance as well as the financial reporting, auditing and IT system. The behaviour will have to take into consideration *Sharī'ah* governance and risks on top of the normal financial institution prudential operational risk exposures.

New component in the organisational chart will include the *Sharī'ah* Advisory Board/ Committee, as an additional organ that will issue fatwa, endorsement and guideline for the converted institution. Another component of the *Sharī'ah* department or unit imbedded in the new organisation chart will ensure the implementation of their *Sharī'ah* Board/ committee decision. The units will also be observing the operation's ensuring compliance according to

Shariah ruling as stated in Islamic *Fiqh Mu'āmalāt* (Islamic Transaction) and the applicable laws and regulations in that particular jurisdiction.

There will be *Shari'ah* Audit and *Shari'ah* Review side-by-side with normal internal and external audit as previously conducted before the conversion. In Malaysia, Bank Negara Malaysia (BNM) provides the requirement under *Shari'ah* Governance Framework (SGF) 2013. The *Shari'ah* governance structure in Malaysia readjusted accordingly with the issuance of *Shari'ah* Governance Procedure 2019.

List of products offered will be tailor-made according to Islamic transaction in form and substances, not only eliminating the word “interest”, “loan” and other conventional components but also avoiding a Non-*Shari'ah* Complaint (NSC) provision adopted by each respective jurisdiction.

Board directors and management will have to consider all angles and chart a comprehensive plan to execute pre, on-going and post conversion impacts. Dedicated team are normally set-up with specific timeline and milestones to ensure smooth conversion success. Regulator will closely monitor the conversion progress and process based on the submitted schedule or planning. Impact on the cleansing mechanism, return to the shareholders, human capital readiness and resistance are among major internal challenges shared by some successful conversion team in Malaysia.

Sharing his experience during Session 2 Muzakarah KLIFF 2017, Ustaz Ahmad Suhaimi Yahya highlighted the importance for the converted entity, at least, to address issues related to:

- a) Conversion schedule.
- b) Transaction relationship between the converted entities with other institutions.

- c) The right of the converted entity shareholders in relation to liabilities or commitment (with their conventional clients, products or services) before the conversion.
- d) Treatment of liabilities, saving, current and investment account based on “conventional interest” before, during and after the conversion.
- e) Treatment for non-*Shari‘ah* compliant securities, collateral, debentures and charges.
- f) Cleansing mechanism on tainted income (especially during and after conversion).
- g) *At-Tadarruj* (stages) during conversion.
- h) *Zakāh* obligation before conversion decision, during conversion process (gradual conversion) and after conversion. Obligation in relation to conversion via mergers and acquisition (M&A) and internal conversion are different also.

The above components are good to be observed as references and to be adopted on a case by case basis in each conversion exercise. The listing may varies depending on the reasons and the initiators (internal or external etc.) of the conversion. Top bottom approaches are much faster comparing to the request from the staffs. Some steps maybe shortened due to initial measures taken way before the final decision to convert announced to the public. Few conventional financial institutions stop offering conventional products two (2) or three (3) years before they announced their final deadline for conversion to Islamic. Some even prioritised Islamic products over conventional to cleanup their financial statement. Staggered conversion is good so that the organisation especially the staffs can start to adopt Islamic products and the Syaraih requirements. The IT sytem will start be aligned with *Shari‘ah* compliant processes and reporting. Furthermore, direct conversion (in a shorter timeline) mat require external consultant to support the project management catching up with the targeted time given.

Conversion from Regulatory Perspective

Regulators will have to look at the conversion from their perspective. Gradual (stage-by-stage) conversion may not be applicable in jurisdiction that only issues either conventional or Islamic banking license like Brunei (in ASEAN). Converting entity will have to stop their conventional operation (maybe surrender their licence) and start fresh with Islamic banking license in a fresh operation. Some country⁴ insists on a fresh *Shari'ah* comply capital.

Gradual conversion will take time and the converting entity may have to offer conventional products and services while undergoing their conversion exercise. If conversion is acceptable in that particular jurisdiction, there will be changes from the laws and regulations that the conventional institutions were subjected to before the conversion and after the conversion has completed. The converted institution may carry different set of license and are subject to different compliant, risk and reporting rules.

Bank of Pakistan (BOP) and Bank Indonesia (BI) are the only central banks that has issued specific guidelines for conversion in 2017 and 2009, while other regulators either refer to the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) Standard Guideline No 6 or taking their own approaches on a case-by-case basis.

As regulators, ensuring smooth and successful conversion while addressing relevant risks should always be their top priorities. They need to avoid negative impact to all relevant stakeholders of the institution and their respective financial industry. Based on the trend in Malaysia, Indonesia and Brunei, the regulators, among others, will be looking at the conversion purposes, reasons, timeline, execution plan, interval checkpoint and post conversion compliant in order to satisfy their regulatory roles.

⁴ For example, Brunei.

Bank Negara Malaysia (BNM) has no specific guideline on conversion but have no objection as BNM *Shari'ah* Advisory Council's (SAC)⁵ general ruling in their meeting No. 107 addressed the issue of conversion (from conventional products into Shari'ah compliant products)⁶.

The regulators realised their important roles in promoting more Islamic banking within their financial industry. Encouraging new set up from new investors is not how a new financial institution is born today. Encouraging foreign Islamic bank to come to their jurisdiction will risk their local players. Promoting conversion is always a better option out of the three mentioned. In order to encourage the conversion, dedicated guidelines or at least available supports would encourage institutional efforts to convert their existing conventional operation to Islamic. Dealing with familiar industrial players and to provide more options to Muslim without depriving non-Muslims consumers is a good visibility for a regulator especially in Muslim dominated countries in ASEAN like Malaysia, Indonesia and Brunei. Similar encouragement of conversion will bring good image for the regulator in Muslim centric location like Southern Thailand and Muslim dominated island in Philipines.

Conversion from Fiqh Perspectives

This issue was discussed during the last *Muzākarah* (Scholars Dialogue) session at the 2017 Kuala Lumpur Islamic Finance Forum (KLIFF), held on October 5th in Kuala Lumpur. Apart from BOP and BI guidelines, the other dedicated *Shari'ah* guideline available from an Islamic perspective is the Standard No. 6 that was issued by AAOIFI. Several scholars including Dr

⁵ BNM SAC is a dedicated counsel appointed by the Malaysian King (Yang Di Pertuan Agong) to assist BNM in addressing, issuing guideline and monitoring the Islamic banking and takaful operation in Malaysia. Securities Commission (SC) SAC addressed similar issues for capital market products and services.

⁶ Presentation in Session 2 Muzakarah Kuala Lumpur Islamic Finance (KLIFF) 2017, Oct. 5, 2017 by Dr Suhaimy Yahya (Bank Negara Malaysia)

Sheikh Abu Sattar Abu Ghuddah and Sheikh Hussien Hamid Hassan elaborated on some considerations on conversion. Other Islamic finance scholars like Sheikh Nizam Yaquby, Dr Sheikh Ali Al Ghari had also shared their thoughts on the same topic. Due to the limited *fatwā* or guideline that is suitable for all conversion needs, *Shari'ah* boards, either at national level or institutional level including those in ASEAN, will have to make their own *ijtihad* approaching their own conversion exercise. Hence, several conversion models were taken place in the last few years.

Provision in AAOIFI Shari'ah Standard No.6

This is among the early Shari'ah standard issued by AAOIFI back in 2002 which is currently the under process of being reviewed⁷. The standard was issued based on the mode of Islamic banking products and services offered then. References were also made on on-going conversion exercises in various countries especially in the Middle East and Pakistan around early year 2000.

Conversion exercises reportedly started back in 2002 in Sharjah (UAE), Bahrain, Kuwait and Kingdom of Saudi Arabia.

This AAOIFI standard can be divided into three (3) components ⁸, namely:

- i. Internal process within the banks involved. Few changes need to be made in order to comply with *Shari'ah* requirements.
- ii. Impact on the bank assets (including the receivables, liabilities, investments etc.).

⁷ AAOIFI to Re-Issue a New Shari'ah Standard on "Conversion of Conventional Banks and Financial Institutions to Islamic Banks and Financial Institutions". (n.d.). Retrieved January 16, 2018, from AAOIFI website:

<https://aaoifi.com/announcement/aaoifi-to-re-issue-a-new-shariah-standard-on-conversion-of-conventional-banks-and-financial-institutions-to-islamic-banks-and-financial-institutions/?lang=en>

⁸ Presentation in Session 2 Muzakarah Kuala Lumpur Islamic Finance (KLIFF) 2017, Oct. 5, 2017 by Prof. Dr. Engku Rabiah Adawiah (SC SAC member & Senior Lecturer IIUM)

- iii. External process in relation to external entities (including other banks, financial and non-financial institutions).

The coverage will include their dealing with their regulator, their central bank and other institutions that they are dealing with.

AAOIFI encourage total immediate conversion (*Fauriyyan*) and not conversion by stages⁹. This approach may be suitable in some conditions. In cases where the conversion is based on the request by the regulator, conversion will have to be executed as soon as possible. Available data and reports showed that the previous conversion from conventional to Islamic takes around one (1) to two (2) years, however three (3) to four (4) years is a very practical duration. The converting bank will have to prepare a solid timeline after robust fact findings and data collection. Continuous engagement with all stakeholders started way before the conversion announcement was made. Some institutions persevered at the last ten (10) to twenty (20) percent towards the end of their conversion journey due to operational and technical reasons.

The AAOIFI guideline is not suitable in all Islamic finance available jurisdictions including in ASEAN. Almost all conversion in ASEAN went through staggered, stage by stage conversion. That AAOIFI Standard (6) is under stages of review stages and would foresee major changes in the permissible methods and solution by taking into consideration the success conversion stories in ASEAN as well as countries of AAOIFI members.

SME Bank in Malaysia slowly increase their Islamic financing portfolio from RM2.3 billion in 2012 to RM4 billion in 2017 and announced their conversion attempt in 2017. They

⁹ Discussed during AAOIFI Al-Muktamar al-Khamis lil Haiat al-Syariyyah Iii Muassat al-Maliyah in 2005. Sheikh Dr Husin Hamid Hassan and Sheikh Dr. Abdul Sattar Abu Ghuddah presented Two (2) specific papers on conversion.

have not completed their 100% conversion as at today¹⁰. SME Bank was targeted to achieve 90% Islamic financing portfolio by December 2015, and they started with 15% when the bank was set up in 2005¹¹.

EXIM Bank Malaysia aims to be a full-fledged Islamic development financial institution by 2025. It was reported in their annual report that 45% of its business was *Shari'ah*-compliant in 2017¹².

Some stakeholders prefer to take staggered conversion due to operational readiness and sustainability. Starting from window and then into Islamic subsidiary and full-fledged Islamic banking are the normal routes taken in most of the conversion exercised. Information of around thirty (30) conversion cases are available but are not provided in detail for general public.

Provision in Nadwah Dallah al-Baraka No. 16¹³

Dallah al Baraka has been issuing various fatwa on Islamic finance and the pronouncement was widely referred to and used in Islamic finance industry. Unlike AAOFI's conversion guideline, Dallah al Baraka encouraged conversion by stages and to be flexible (*At-Tadarruj*). The decision also includes the requirement to collect amounts due from their customers before the conversion is subjected to appropriate *Shari'ah* compliant treatment. Different treatments were proposed for the principal and the "conventional interest" stipulated prior to the conversion as well as the manner for related cleansing process.

¹⁰ SME Bank set to become full-fledged Islamic Bank (2017, March 31), *The Malaysian Reserve*. Retrieved from www.themalaysianreserve.com

¹¹ SME Bank Target 90% Islamic financing portfolio by year-end (2015, June 18), *The Star*. Retrieved from www.thestar.com.my

¹² Malaysia's EXIM Bank appoint new CEO (2019, June 28), *Salaam Gateway*. Retrieved from www.salaamgateway.com

¹³ Fatwa Dalal al_Baraqah meeting no 16, 8 June 1999.

Between the different process of conversion, the option to convert by stages is the most ideal. Out of the 27 (twenty seven) conversion cases discovered, this format was widely adopted by the majority of the converted financial institutions. The human resources involved were better prepared, the consumers accepted the steps they have to follow and the market (in their respective jurisdiction) accepted the impacts of a new Islamic financial institutions in their ecosystem. The reputation of the respective converted financial institutions are almost intact among all their customers regardless Muslims or Non-Muslims.

Islamic Finance Scholars views on conversion

Sheikh Hussein Hamid Hassan¹⁴ encouraged flexibility because the impact on conversion is equally important apart from the rigid process and guideline. *Maṣlahah is better than Mafsadah*. The rigid rule may discourage and delay conversion; that will expose Muslims to less option of Islamic finance products and services. Sheikh Dr Abu Sattar Abu Ghuddah shared his thoughts in his paper, “*Taḥawwul al-Bank al-Taqlīdī Ilā al-Maṣraf al-Islāmī*”¹⁵. Sheikh Nizam Yaquby and Sheikh Dr Ali Elgari, in their papers, reminded on the importance of proper preparation for conversion to avoiding post conversion impact.

The above mentioned four (4) reputable Islamic finance scholars who has contributed a lot in the development of Islamic finance in Middle East as well as globally. They were among the pioneer scholars who has provide guidance to new establishment, conversion and expansion of Islamic banking in Middle east from late 1980s to early 1990s. These scholars possess wide

¹⁴ Attached below is Attachment 1, it was a section taken from his case study on conversion of Sharjah Islamic Bank in “*Khuttah Tahawwul al-Bank Islami, Mutatollubat Hazihi Al-Khuttah wa Hulul Musykiltiha, Tajdid Masraf Al-Syariqah al-Watani*”.

¹⁵ The paper was used as a guideline by AAOFI in discussion and issuance of AAOIFI Standard no 6 and it was produced inside a book titled “*Dirasat al-Ma’ayir al-Syariah*”

view on what will work and what is difficult to be executed in modern financial system. They also supported conversion by stages in their articles, lectures and opinions.

Ustaz Ahmad Suhaimi Yahya (Chief *Shari'ah* Officer, Hong Leong Islamic Bank, Malaysia) had also shared a wider perspective of the *Fiqh* approach also during KLIFF 2017. He highlighted the conversion as part of “*Aslamat al-Mu'āmalāt*” which includes avoiding *ribā* based on *Sūrah al-Baqarah: 275*.

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ ط

He also shared his valuable experience on the conversion of Sharjah Islamic Bank when the *Shari'ah* Committee of Kuwait Finance House (one of Sharjah Islamic Bank shareholders (20%) allowed the conversion process to be completed in over 3 years¹⁶.

Among Islamic finance practitioners, KFH is well known for being very strict in the *Fiqh Mu'āmalāt* applications. They are well aware that any decision or stand they make will be referred too or be adopted by Islamic finance industry. KFH's decision to allow three (3) years conversion for Sharjah Islamic Bank is a solid precedent after considering all angle.

From a *Fiqh* perspective, either the conversion is by stages or total conversion (at once), several criterions will differentiate one from another, namely:

- i. The timing of the conversion.
- ii. The products conversion process.
- iii. Management and operational re-structuring.
- iv. Establishment of *Shari'ah* Advisory committee.
- v. Human capital transformation and readiness.

¹⁶ Kuwait Finance House (KFH) Shariah Committee Resolution no 1078, 1079, 583 & 612 presented by Ustaz Ahmad Suhaimi Yahya – Session 2, Muzakarah KLIFF 2017.

- vi. *Shari'ah* compliant operation and governance component.
- vii. Cleansing mechanism for tainted income.

The conversion project team must be prepared to adopt their own calibration in the adopted suitable components and preparation in addressing each conversion hurdles.

Reported Conversion Cases in ASEAN

Malaysia

In Malaysia, the first full-fledged Islamic banking started with Bank Islam Malaysia in 1983. The Malaysian financial authority, Bank Negara Malaysia (BNM), also allowed Islamic window operation (a unit under conventional bank) until 2004 when BNM issued a policy¹⁷ for the establishment of Islamic bank subsidiary under conventional banking operators.

Malaysia has colourful conversion experiences. There are window operations, which upgraded into subsidiary while the conversion was also executed via mergers and acquisition of entities. BNM has appropriate guideline for window operators as well as criteria for *Shari'ah* compliant operation. There are eight (8) criteria¹⁸ for consideration including the aim to comply with *Shari'ah* requirements.

Among the examples of successful conversion stories in Malaysia are:

- a. Bank Kerjasama Rakyat, Malaysia.

This bank was established back in 1954 under Cooperative Ordinance 1948 until it was governed under the BNM Development Financial Institution Act (DFIA) in 2002. The

¹⁷ BNM policy 2004.

¹⁸ BNM Guideline for Shariah Compliant operation.

bank was founded as a result of a merger with 11 union banks and it was based in Penang before moving to Kuala Lumpur in 1964¹⁹. In May 1993, Bank Rakyat started its *Shari'ah* compliant/conversion by introducing Islamic banking products at four (4) of its branches. The process completed in 2002 and became a full-fledged Islamic cooperative bank. To date, 147 branches offer Islamic banking facilities to its customers.²⁰

b. Bank Pertanian or Agrobank, Malaysia.

It is a very unique transformation and conversion exercise²¹. It was established as Bank Pertanian Malaysia Berhad (BPMB) in 1969 becoming a 100% Malaysian government owned entity under Ministry of Finance (MOF) with purview of Ministry of Agriculture and Agro-Based Industry (MOA). BPMB provided financed agriculture activities driven by policies set forth by MOA. Starting with 2 branches in 1970, it went on to have 49 branches throughout Malaysia by 1985. It was corporatized in 2008 with a paid capital of RM1 billion and was allowed to operate as a commercial bank for agricultural sector under the new name Agrobank.

The entity started introducing Islamic financial products back in 1997 with 2 officers in their Islamic Banking Unit. Three (3) types of *Shari'ah* compliant products were offered, namely Savings (*Wadi'ah*), project financing (*Bay' Bithaman A'jil*) and fixed deposit (*Mud'arabah*). The unit was upgraded into a department and contributed

¹⁹ Bank Rakyat: Corporate Info Milestones. (n.d.). Retrieved January 18, 2018, from Bank Rakyat website: <https://www.bankrakyat.com.my/c/about/corporate/milestones-14>

²⁰ Bank Rakyat: Legacy. (n.d.). Retrieved January 18, 2018, from Bank Rakyat website: <https://www.bankrakyat.com.my/c/about/corporate/legacy-3>

²¹ Agrobank: Charting a New Path to Sustainable Growth. (n.d.). Retrieved January 18, 2018, from Cambridge IF Analytica website: www.cambridge-ifa.com

a lot to Agrobank profits and Islamic banking assets by 1991. *Al-Rahnu* (Islamic pawn broking) product was offered in 2002 through a strategic understanding with Bank Rakyat. Conversion was re-initiated in 2009 and accelerated in 2012 (targeting January 1, 2014) under the new President and CEO Dato Wan Mohd Fadzmi. By January 2015, the bank had successfully converted 96% of its existing non-*Shari'ah* loans. The other 4% was addressed accordingly. Some non-compliant facilities (pork livestock and agriculture products such as tobacco) went through transfer arrangement with Hap Seng Credit.

Agrobank received various international recognition awards and was recorded as the largest financier for Malaysia's primary agro food segment. They achieved the highest growth rate of 9.2% in 2015 with an average 5 years in growth of 6% per annum. The President and the CEO described the achievement as a "*barakah*" and decided to take another challenge in August 2017²².

c. Bank Muamalat Malaysia

This bank is the second full-fledged Islamic bank in Malaysia. Established in 1999 after a merger process of Islamic banking windows of Bank Bumiputera Malaysia Berhad, Bank of Commerce (M) Bhd and BBMB Kewangan. The first two (2) banks were conventional banks operating Islamic window. Their Islamic asset and liabilities were transferred into a newly set-up entity, Bank Muamalat Malaysia.

²² Dato Wan Mohd Fadzmi shared his experience during the panel discussion in Bank Negara Malaysia (BNM), Conversion Process towards becoming an Islamic Financial Institutions program, 18-20 September 2017, Sasana Kijang, Kuala Lumpur.

d. MBSB Bank

The most recent conversion in Malaysia, which completed in less than two (2) years. It was a mergers and acquisition between MBSB and Asian Finance Bank (AFB). The approval from MBSB Building Society Berhad shareholders was approved on January 23, 2018 to acquire the entire stake in AFB for RM644.95 million. The application for merger was submitted to Bank Negara Malaysia (BNM) on June 2017. BNM on December 2016 was given the green light for MBSB, which was 65.56%-owned by Malaysian Employee Provident Fund (EPF) to hold a merger talk with AFB. The merger exercised converted MBSB into MBSB Bank into a full-fledged Islamic bank on February 2018²³.

Unlike Bank Muamalat and MBSB who went on corporate conversion root, Bank Rakyat and Agrobank went through an organic conversion stages by stages.

Brunei

Brunei Darussalam had a very early inclusion in the Islamic finance fraternity with the establishment of Tabung Amanah Islam Brunei (TAIB) in 1990s. Two (2) Islamic banking entities were converted from the conventional in Bandar Seri Begawan before 2007.

Before the establishment of the Autoriti Monetary Brunei Darussalam (AMBD) in 2011, all financial activities in Brunei was regulated by their Ministry of Finance. Financial operation can be conducted either with conventional or Islamic compliance license, however Islamic window operation is still not allowed until today. There are (1) one Islamic, five (5)

²³ MMSB-Asian Finance Bank merger completed (2018, February 7), *The Sun Daily*. Retrieved from www.thesundaily.my

conventional bank and other related financial operations in Brunei. The setup of Brunei Stock Exchange has been announced back in 2015.

Bank Islam Brunei Darussalam (BIBD), Brunei Darussalam.

Bank Islamic Brunei Berhad's (BIBD) banking journey dated back over 32 years ago, from its humble beginnings as the conventional Island Development Bank in 1981, which was then renamed International Bank of Brunei. This was subsequently converted to the nation's first Islamic Bank, Islamic Bank of Brunei (IBB). IBB merged with the Islamic Development Bank of Brunei (IDBB) in 2005, to form BIBD²⁴ in 2007.

IBB started as Bank of Philippines Island Limited before it became International Bank of Brunei Berhad and then Islamic Bank of Brunei (IBB). IDBB was the Economic Planning Unit (EPU) under Ministry of Finance Brunei before it was transformed.

BIBD's source of capital issue was settled before the merger in 2007, as IBB and IDBB were already "Islamic banking entities" via their own conversion exercise.

Autoriti Monitori Brunei Darussalam may consider converting their other local financial players namely Tabung Amanah Islam Brunei (TAIB) and Baiduri Bank. TAIB is talking about converting into banking institution before 2009.

Indonesia

The development of Islamic finance in Indonesia started with the establishment of Bank Muamalat Indonesia in 1992. After the issuance of Banking Act No. 10/1998, some conventional banks run Islamic bank unit as part of their operations. Indonesian Bank regulation

²⁴ BIBD Press release on June 26, 2013 – a „Bruneian at Heart“ banking experience has been launched by BIBD today introducing a new brand.

no.8/3/PBI/2006 on 30th January 2006 permitted the Islamic unit under conventional banks to open counters in their branch. Their Act No. 21/2008 permitted conventional banks to have Islamic units before converting to a full-fledged Islamic banking system. Some units grew into a subsidiary with some conversion taking place after that²⁵.

Since setting up of new Shari'ah bank is very costly and requires at least 25% of Rp 1 trillion (as pay up), conversion via merger and acquisition was the vital option in Indonesia for certain shareholders. By the end of 2007, the Central bank requires a bank in Indonesia to hold a minimum capital of Rp 100 billion which forced some banks to add capital, merge or be sold by the owners.

a. Bank BUKOPIN, Indonesia

In November 2008, Bank Bukopin converted into a full-fledged Islamic bank. Their asset size in 2005 was about Rp 2 billion but made a substantial loss in 2009 due to bigger operational expenses. They made a significant recovery in 2011.

b. CIMB Niaga, Indonesia

In 2008-2009 LippoBank merged with CIMB Niaga (formerly known as Bank Niaga) which completed on May 18, 2009, 4 months ahead of the schedule. Upon merger, by June 2009, CIMB Niaga transformed into:

- 5th largest Indonesian bank by assets; 655 branch outlets & 1,261 ATMs throughout Indonesia.
- 3rd largest in terms of Shariah financing.

²⁵ Dodik Siswanto. (2012). The conversion effects of Islamic unit to full fledged system Islamic banks in Indonesia. *Australian Journal of Islamic Banking and Finance*, (2), 55-63.

- CIMB Niaga Indonesian consumers have direct linkages to CIMB. Group, Southeast Asia 5th largest bank.

CIMB (the shareholder of CIMB Niaga) is a unique Malaysian “Universal Bank” platform with international presence in Indonesia, Singapore and several other countries. The complex merger requires Malaysian and Indonesian stakeholders’ approval. The merger had also established a unique dual banking operator (conventional and Islamic banking) with “leverage model” operation.

The merger consolidated CIMB Niaga’s *Shari’ah* unit with ex-LippoBank Salam entity and created Indonesia’s 3rd largest Islamic financial institution in Indonesia in 2009. By the end of year 2009, 500 conventional CIMB Niaga branches had *Shari’ah* windows.

CIMB Niaga was also moving towards universal dual banking status by converting their branches into full *Shari’ah* services branch. The target was to have 14 *Shari’ah* branches by 2010, from the initial 9 in 2009.

The 15 months mergers exercises involved, among others, massive IT integration, entailing the reconciliation of more than 1.4 million customers or approximately 1.7 million accounts and training more than 8,000 staff within 10 months with 99.97% success rate²⁶. The 2008 conversion drive by market capitalization and establishment of a conventional bank also offers Islamic window services.

²⁶ CIMB Niaga, Merger Closing Report, November 2009.

c. Bank Rakyat Indonesia (BRI), Indonesia

BRI *Shari'ah* unit had almost Rp 8 billion assets in 2005. BRI chose to merge and went full-fledged in 2008. BRI acquired PT Bank Jasa Artha in October 2009 for Rp 61 billion and spin-off BRI *Shari'ah* Business Unit into BRI Shari'ah. Technically, the conversion (via merger and acquisition) was driven by the expensive fresh new bank and capital requirement imposed by the regulator in 2007.

d. PT Bank Aceh Syariah, Indonesia.

NV Bank Kesejahteraan Atjeh (BKA) was established back in November 1958. The name was changed for the fourth time into PT Bank Aceh until it was converted to PT Bank Aceh *Shari'ah* in September 2016 (PBI No. 11/15/PBI/2009).

Their first *Shari'ah* branch was established in November 2004. An Extraordinary General Meeting (EGM) which was held in May 2015 and the final conversion initiatives started with a dedicated team under the close supervision of the Central Bank Indonesia (OJK). The permission to convert was issued by OJK (OJK No. KEP-44/D.03/2016) on September 1, 2016 which was announced publicly on 19, September 2016.

Almost 230 million Muslims or around 87% of population in Indonesia would welcome more Islamic banking players to serve their needs. Converting some of their existing conventional bank is something that is encouraged by their regulators and government. Specific guidelines on conversion demonstrates their seriousness.

Thailand

Based on the key indicators of population and housing in Thailand from 1990-2010, about 4.9% of 66 million population in Thailand are Muslims. Islamic finance still remains developing after Islamic Bank of Thailand Act B.E.2545 was enacted in 2002 as well as the establishment of Islamic Bank of Thailand (majority owned by the government of Thailand).

Muang Thai Life Insurance started establishing *Takāful* products since 2011; general life *Takāful*, personal accident *Takāful* and in 2018 collaborated with Islamic Bank of Thailand to issue savings *Takāful*. These products allow long-term savings and life planning, similar to common savings insurance but adhere to Shari'ah principles. Other insurance operators, South East Group and Philips Life Assurance are also involved in offering *Takāful* products. Hopefully we can see conversion steps taken in conventional insurance Thailand towards becoming *Takāful* operators²⁷.

Islamic cooperative structure is more acceptable in Thailand since the first establishment of Islamic Co-operative of Pattani Limited (ISCOP) in 1987. As at 2012, there are 42 active Islamic cooperatives in Thailand²⁸.

In 2014, Thailand has three (3) Islamic banks, one (1) full-fledged (Islamic Bank of Thailand) and two (2) Islamic windows under conventional operators (the Government Savings Bank and the Bank for Agriculture and Agricultural Cooperatives). A review on Thailand's double taxation laws, wider product offering (to capture non-Muslims customers) and human capacity readiness would render a conversion in Thailand catering to the 620 million populations potential demand.

²⁷ Chaiyasri, A. (2018, June 20). Islamic Finance in Thailand: Prospects and Challenges. *ZICO law*. Retrieved from www.zicolaw.com

²⁸ Access to finance: The case of Muslim Minority in Southernmost Provinces of Thailand. (n.d.). Retrieved January 19, 2018, from The World Bank website: <https://documents.worldbank.org>

Conversion may be possible if adjustment is also made on²⁹ the Islamic Bank of Thailand Act (2002) for more financial liberalisation. Thailand should allow investors (local and foreign) to open another full-fledged Islamic bank there.

Philippines

There has been positive updates from Manila after the first Islamic bank started operating in 1973 (Development Bank of the Philippines' subsidiary Al Amanah). On August 22, 2019, Republic Act No 11439 (Islamic Banking Act) was signed and provides for the regulation, organisation and power to established Islamic banks in Philippines. A well-defined law will boost confidence in domestic and foreign stakeholders to deal with Bangko Sentral ng Pilipinas ("BSP" ; the Central Bank of the Philippines). Apart from establishing a full-fledged Islamic bank, this new provision allows conventional banks to participate in offering Islamic banking products via Islamic banking units. This could create a path for future conversion like many other conversion roots taken globally as at today.

Another opportunity for conversion was also made available when the foreign banks allowed new banking entry under the Republic Act No.7721 (Liberalisation of Entry and Operations of Foreign Banks). Foreign bank could be owning up to 100% of voting stocks of an existing Islamic bank by establishing an Islamic bank subsidiary or a branch there. The requirement for setting up a dedicated *Sharī'ah* Advisory Councils shows that BSP is adopting the best market practice standard adopted in many Islamic jurisdiction³⁰.

²⁹ Sarntisart, S. (2014, September 10). Are Thailand's Islamic financial institutions ready for the AEC?. *The Nation Thailand*. Retrieved from www.nationthailand.com

³⁰ Sy, F. (2019, November 25). Islamic Banking Act passed in the Philippines. *ZICO law*. Retrieved from www.zicolaw.com

A series of legislation was approved subsequent to Act No. 11439, including BSP Circular No. 1069 (Guideline on the Establishment of Islamic Banks and Islamic Banking Units) and BSP Circular No. 1070 on Shari'ah Governance Frameworks³¹. The country has 45 universal banks with 10% Muslim population³².

Conversion Models

Information on conversion exercises and challenges are not openly shared with the public. Most of the academic papers shared their information based on surveys conducted. Based on the above success stories and available report on conversion in ASEAN, several methods prevail:

- a. Integral / full conversion.
 - i. Change of license.
 - ii. Mergers and acquisition.

- b. Partial / gradual conversion / staggered.
 - i. Gradual conversion by branches.
 - ii. Gradual conversion by scheduling (timing)

- c. Conversion via window and subsidiary.
 - i. Fresh set-up of new Islamic Subsidiary (s)
 - ii. Fresh set-up of new Islamic window (s).

³¹ Sy, F., & Santos, R. B. (2020, February 5). Philippine Central Bank passes Shari'ah Governance Framework. *ZICO law*. Retrieved from www.zicolaw.com

³² Alegado, S., & Lopez, D. B. (2019, October 28). Philippines plans to allow banks to set up Islamic Banking Units. *Bloomberg*. Retrieved from www.bloombergquint.com

Major Finding

Conversions (from conventional to Islamic operation) are acceptable models in several countries including ASEAN. There is no fixed one (1) model suitable for all institutions, jurisdiction and ecosystem. *Shari'ah* Scholars will have to make *ijtihad* (suggestion on solution) on acceptable model suitable for issues presented to them and the *fatwā* (resolution) may vary from one another. There are available guidelines for conversion but they are subjected to adoptions as well as criticism.

There is a specific need to focus on this topic in assisting the stakeholders to consider conversion as their vital option. Available data and literatures are limited in relation to this topic. Islamic finance components are facing stiff challenges in this 20th Century in order to survive the next financial industry era.

Contributions or Solutions

The findings highlight (among others):

- a) Islamic banking services are not offered only by full-fledged Islamic banking institutions. There are several models of Islamic banking service providers in a form of window and subsidiary.
- b) There should be positives moves to encourage conversion from pure conventional to window providers and from window or subsidiary to full-fledge Islamic banking.
- c) The conversion can come in many forms including conversion via mergers & acquisition, absolute conversion and staggered conversion.

- d) The findings will remind Islamic finance regulators and *Shari'ah* scholars to provide necessary guideline and references to assist the conversion, which will then increase Islamic finance presence.
- e) Converted entity must cover all angles in conversion process and timeline.
- f) Human Resources readiness is an important factor to avoid resistance in conversion exercise, hence, structured and targeted training and capacity building must be part of the conversion milestone.
- g) Product development and product replacement must be ready to offer new services to their clients.
- h) Appropriate policies and procedures (including accounting, system and workflow) must be prepared for smooth guidance to all levels of the entity stakeholders.

Conclusion

Conversion in any form is a vital option with available eco-system. Adoption for digital banking would be much easier due to operational strength, established ready products and wider customer range (Muslim and Non-Muslims).

Several converted financial institutions positioned themselves well in their respective jurisdiction post conversion exercise. Continuous efforts to convert will make Islamic finance in ASEAN more vibrant. All stakeholders will have to play their part in converting more Islamic financial institutions and reach out beyond ASEAN. More Muslim ummah globally are looking for options to participate in Islamic finance in ASEAN due to political and economic stability, unlike in Europe and Middle East in current economic situations. Superb internet connectivity and wide offering internet banking products will be an easy sales for more Islamic banking from ASEAN region.

NOTES

Attachment 1

- Part of Sheikh Hussien Hamid Hasan case study on conversion of Sharjah Islamic Bank in “ Khuttah Tahawwul al-Bank Islami, Mutatollubat Hazihi Al-Khuttah wa Hulul Musykiltiha, Tajdid Masraf Al-Syariqah al-Watani”.
- Fatwa Dalal al_Baraqah meeting no 16, 8 June 1999
- AAOIFI Shariah Standards No 6.

وقد أكدت خطة التحويل لبعض المصارف الحكم بالعمو عن الفوائد المقبوضة باعتبارها جزءاً من حقوق المساهمين بأصل اعتبار المال في الشريعة الإسلامية، ومقتضى هذا الأصل أن الأفعال يحكم عليها شرعاً بما تتول إليه من مصالح أو مفسد، فدخل الفوائد المقبوضة في ملك البنك، وإن كان ظاهره المنع لما يترتب عليه من مفسدة أخذ الربا، إلا أنه يحقق مصلحة أهم، هي تحول البنك الربوي إلى مصرف إسلامي، وتخليص المجتمع من التعامل بالربا، ويدفع مفسدة أشد، هي عدم تحول البنك واستمرار تعامله بالربا في حالة ما إذا رفض المساهمون التخلي عن حقوقهم التي تكونت من الربا

Sheikh Husein Hamid Hasan

1) Nadwah al-Barakah ke-16 :

16/7 : التدرج في تطبيق التحويل للالتزام بالشريعة
لا مانع من التدرج في تنفيذ المتطلبات الشرعية للتحويل للالتزام بالشريعة إذا اقتضت الظروف الواقعية للمؤسسة، لتجنب حالات التعثر أو خطر الانهيار. ولا بد في التدرج للتحويل من المحافظة على الصفة الشرعية (من تحريم أو كراهة أو بطلان أو فساد) للممارسات التي أوجب إلغاءها بسبب خطة التدرج.
ومستند ذلك أنه قد يكون وسيلة معينة لتحقيق هذا المقصد الشرعي، وأن نجاح التحويل يتطلب كثيراً من الإجراءات التي تحتاج إلى إعداد، فضلاً عن إيجاد البدائل لما يستبعد من تطبيقات متنوعة وتأهيل الطاقات البشرية لتنفيذ الصحيح.

2) AAOIFI – Piawaiian No.6

2- المدى الزمني للتحويل
2/1 يجب تنفيذ ما تتطلبه الشريعة لتحويل البنك التقليدي إلى مصرف والالتزام بأحكام ومبادئ الشريعة الإسلامية، في جميع العمليات الجديدة عقب التحويل. أما العمليات غير المشروعة المبرمة قبل قرار التحويل فالأصل التخلص منها فوراً ولا يجوز التأخير إلا فيما تقتضيه الضرورة أو الحاجة مراعاة للظروف الواقعية للبنك، لتجنب خطر الانهيار أو حالات التعثر على أن يتم التخلص من آثارها وفقاً لهذا المعيار.
2/2 إذا لم يقرر البنك التحويل الكلي الفوري طبقاً للبند 2/1 ولما قرر التحويل مرحلياً فإنه لا يعتبر بنكاً متحولاً، ولا يدرج بين المصارف الإسلامية إلا بعد إتمام التحويل، ويجب على مالكي البنك الإسراع في التحويل للتخلص من إثم الاستمرار في الأنشطة المحرمة. ويسترشد بهذا المعيار في خطوات التحويل.

**THE PANDEMIC COVID-19 AND HOW IT IMPACT THE ISLAMIC FINANCE
 INDUSTRY IN BRUNEI DARUSSALAM: AN OVERVIEW¹**

Awg Zulkhairi bin Awg Hj Mohd Noor²
 Qaisar Ali³

Abstract

Brunei Darussalam is one of the countries affected by the Coronavirus Covid-19 which has also affected most countries around the world. The effect of the Pandemic has disrupted and affected the economy around the world and have infected and caused the death of millions of people. This paper aims to discuss the policies implemented by the Government of Brunei to curtail the spread of Covid-19 and measures to revive the economy including the Islamic finance Institutions which are comprised of the Islamic Bank, Takāful, Islamic Capital Market, Islamic Finance Companies and other licence Moneychanger and Money Remittances Companies. This paper will discuss on the current immediate impact of the pandemic and due to uncertainty suggest future actions for improvement.

Keywords: *Pandemic Covid-19; Government of Brunei; Islamic Finance institutions, Brunei Darussalam.*

Introduction

Currently, the global economy including the Islamic finance face uncertainty due to the effect of the Pandemic Covid-19 which were said to effect more than the global financial crisis happened decade ago, including the biggest downfall of shares in the stock exchange and the biggest drop of oil prices and huge number of businesses are affected and become not sustainable and many people lost their job or businesses. It has affected the economy of even the developed countries and as a result of less activity in the market due to restrictions in people

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going outside and social distancing the whole world economy including businesses, trade and companies suffer badly and this also affect the Islamic finance industry.

Indeed, the economic impact of this pandemic outweighs the impact of other events that were considered turning points in the course of human history like the Great Depression, World War II, and the global financial crisis which took place more than decade ago. It can be said that the effects will be long-term and likely to outlast the pandemic itself as the economic harm caused by the Covid-19 pandemic in a few weeks is greater than that caused by the global financial crisis in 2008 over the course of three years and the world will need years to recover.⁴ The purpose of the study is to find out how the Pandemic Covid-19 has affected the various types of Islamic Financial Institutions In Brunei on short term and how best these financial institutions can deal with these impacts and how to handle and avoid any similar future event. In this paper, it is important firstly to understand how the Pandemic Covid-19 came to Brunei Darussalam and what actions have the country been taken so far and in relation to understanding how it affect the overall Islamic Financial institutions in Brunei Darussalam.

The Background of Covid-19 in Brunei Darussalam

The reason the event and actions will be detailed here is because through the actions of the government of His Majesty the Sultan and yang Di-Pertuan of Brunei Darussalam in tackling the Pandemic Covid-19 and the country's ability to have the virus under control domestically, it will have a direct effect on the operations of the Islamic Financial Institutions in Brunei Darussalam. The successful handling of this Pandemic Covid-19 will have a heavy impact on

⁴ Hajjar, B.H. E. (2020). Covid-19 and Micro, Small and Medium Enterprises, Saving the Global Economy from the Pandemic. Retrieved April 16, 2020, from <https://www.isdb.org/news/president-of-the-islamic-development-bank-group-covid-19-and-micro-small-and-medium-enterprises-saving-the-global-economy-from-the-pandemic>

the Islamic Financial Institutions and thanks to the effort from everyone including the government the virus has been under control locally⁵, resulting the industry only suffer minimal impact and it could have been a lot worst.

Brunei Darussalam first positive Covid-19 was on the 9th March 2020, when the Ministry of Health confirmed that preliminary coronavirus tests had returned positive for a 53-year-old male who had returned from gathering in Kuala Lumpur, Malaysia on 3 March 2020.

There are 70 people from Brunei Darussalam who also attended the same gathering and four are still unknown. Among those people, only 66 people came forward for testing and by using the recently amended Infection Disease Act Order, the Police have been allowed and successful in tracing the remaining people where they could be charge if not tested following the Directives of Director-General of Ministry of Health. The contact tracing begun for the newly-confirmed COVID-19 cases with close contacts such as family members, co-workers, or anyone who has been in the company of an infected person will be contacted by the authorities where Ministry of Health (MoH) will collect samples for COVID-19 testing and a quarantine order will be issued.⁶

Brunei was among the first nations to introduce travel restrictions on affected countries and temperature screenings for inbound travellers. By early February, authorities began readying quarantine shelters capable of accommodating more than a thousand potential patients. Brunei's handling of the pandemic has been robust and transparent, despite the adoption of the necessary drastic but necessary measures during the time of crisis such as freedom of movement which also affect privacy right. Once the first cases were reported,

⁵ At the time of writing, last patient infected domestically was since 6 May 2020.

⁶ Biz Brunei. (2020). COVID-19 business updates: Fourth round of de-escalation starts July 27. Retrieved August 13, 2020, from <https://www.bizbrunei.com/2020/04/covid-19-brunei-business-updates/>

Brunei quite impressively and professionally handled the situation and have been putting into action best practices.⁷

Great Leadership by His Majesty the Sultan as a Ruler of the country

His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, in a televised speech addressing the Covid-19 situation on March 22 has called on the public to remain calm and exercise responsibility to prevent wider spread of the pneumonia-like illness. As believers, said His Majesty, Bruneians are required to undertake prayer and devotional acts while at home rather than at mosques to curb the contagion's spread. "This is where our culture is different, we know this pandemic does not exist by itself but comes from our creator. Nobody among us knows why it came". Brunei Darussalam has also expedited the opening of a new national virology laboratory to conduct molecular tests for Covid-19, which His Majesty has said will increase testing capacity tenfold.

All Bruneians returning to the country are required to take a coronavirus swab test and undergo mandatory isolation at a quarantine facility as soon it become apparent later that there were also confirm positive cases for people coming from overseas. To ensure compliance with virus-curbing rules, penalties for violators have been ratcheted up. Offenders face fines of B\$10,000 or six months in prison (amendment of the order).⁸ This swab and quarantine requirement have led to Brunei only have imported cases since May 2020 and since then there are no community spread.

⁷ Bowie, N. (2010). *Devout at a distance in contagion-hit Brunei*. Retrieved April 19, 2020, from <https://asiatimes.com/2020/04/devout-at-a-distance-in-contagion-hit-brunei/>

⁸ Bowie, N. (2010). *Devout at a distance in contagion-hit Brunei*. Retrieved April 19, 2020, from <https://asiatimes.com/2020/04/devout-at-a-distance-in-contagion-hit-brunei/>

Since the pandemic, life has definitely changed in many aspects, especially in terms of freedom of movement. There is a need for social distancing which has acted as a catalyst for Brunei to start using online services and the government has advised the public to use its online services portal for tasks like applying for business licenses and paying road taxes rather than visiting service counters. All public and private school are closed and in accordance with social distancing students are currently only taking classes online.⁹

Brunei's Response to Covid-19

Below are the important actions and initiatives taken by the government for tackling the Covid-19:

Legal action against those not complying with coronavirus directives

The government has amended the Infection Disease Act to increase the penalty for those who do not comply with official directives issued on the Covid-19 outbreak such as the requirement to carry out medical examinations or medical treatment, self-isolation and quarantine. The maximum penalty for a first offence is \$10,000 or six months in jail, up from \$200. The swift actions in amending this Order is crucial to the stopping of spread of the Covid-19 through community spread as previously the Director-General has no such power of enforcement.¹⁰

⁹ Ibid.

¹⁰ Bowie, N. (2010). *Devout at a distance in contagion-hit Brunei*. Retrieved April 19, 2020, from <https://asiatimes.com/2020/04/devout-at-a-distance-in-contagion-hit-brunei/>

Travel restrictions

All residents in Brunei, including foreigners, are barred from leaving the country starting from March 16 to help curb the spread of Covid-19 and tourists will be allowed to leave, but all other residents will require approval from the Prime Minister's Office. This ban has also led to the opening of Temburong Bridge for public use starting from March 17.¹¹

Closure of public places

In order to ensure social distancing measures cinemas, gyms, bowling centres and golf clubs was ordered to close and dining in at all food premises in Brunei were banned starting on March 19 and only takeout and food deliveries were allowed.

Fiscal financial support packages

On March 19, as initiated by Brunei's central bank Autoriti Monetari Brunei Darussalam (AMBD) with the support of the Ministry of Finance and Economy (MOFE) and the Brunei Association of Banks have agreed to defer financing and loan repayments for up to six months for four sectors to help mitigate the financial impact of the Covid-19 outbreak. The deferment on principal repayments applies to businesses within the sectors of tourism, hospitality/event management, food and beverage (restaurant/cafes) and air transport as well as importers of food and medical supplies. Interest or profit rates still apply and the minister added that all bank fees and charges related to trade and payment transactions for companies in these sectors

¹¹ Ibid.

would be waived for six months. Local interbank transfer fees will also be waived for six months for all customers.¹²

Support structure for businesses

On March 21, a second set of interim measures was introduced by MoFE and centered around tax, utility and social security deductions and deferments to help Brunei's private sector amidst the Covid-19 outbreak.¹³

The new measures effective April 1, 2020 for six months include:

1. A six-month deferment on Employees Trust Fund (TAP) and Supplementary Contributory Pension (SCP) for micro, small and medium enterprises (MSMEs) with employees earning less than \$1,500. The government will continue monthly contributions to ensure that the annual dividend payments to employees are not affected. MSMEs need to apply for the deferment and are to repay the contributions within a year after the final month of deferment.
2. The government will provide the full SCP contribution for the self-employed. The self-employed SCP scheme carries a survivorship benefit which includes a \$400 monthly pay-out to dependents for up to 15 years in addition to receiving the SCP already paid up if the participant passes away before 60-years-old.
3. For the sectors of tourism, hospitality (including hotels and registered lodging houses), food and beverage as well as air and water transport there will be a 30% discount on

¹² The full measures are further detailed in the effect on Islamic bank below with press release statement from AMBD

¹³ Biz Brunei. (2020). *COVID-19 business updates: Fourth round of de-escalation starts July 27*. Retrieved August 13, 2020, from <https://www.bizbrunei.com/2020/04/covid-19-brunei-business-updates/>

rental rates for government buildings for MSMEs, 50% discount on corporate tax for companies for 2020 and 15% discount on water and electric bills.

4. Up to six months extension for i-Ready apprentices for trainees whose contracts are ending before September 2020.¹⁴

Prohibition of foreigners entering Brunei

As of March 24, Brunei will not allow foreigners to enter the country to reduce the risk of importing Covid-19 cases. The ban applies to all entry points and includes foreign transit passengers. All foreign workers were banned from entry to Brunei starting March 21 and will only give exemptions for foreigners who are required for essential services in Brunei.¹⁵

Financial relief for businesses and MSMEs

On March 28, MoFE has unveiled a third set of economic measures to help the private sector mitigate the impact of Covid-19 outbreak, including paying 25% of MSME employees' salary for three months. The latest measures focus on upskilling and supporting graduates, employees and local businesses with subsidies, training, grants and paid apprenticeships. Micro, small and medium enterprises (MSMEs) is defined as businesses with less than 100 employees, can claim 25% in salary subsidies for three months for their Bruneian employees with salaries less than \$1,500.¹⁶

¹⁴ Ibid.

¹⁵ Biz Brunei. (2020). *COVID-19 business updates: Fourth round of de-escalation starts July 27*. Retrieved August 13, 2020, from <https://www.bizbrunei.com/2020/04/covid-19-brunei-business-updates/>

¹⁶ Ibid.

Assessing Brunei's Response to Covid-19

The way the handling of the Pandemic Coronavirus Covid-19 in Brunei is commendable, where due to it being a national agenda and the whole of nation approach being implemented in which through the leadership of His Majesty the Sultan and the whole government and ministries are working together to tackle the Covid-19. The initiative was spearheaded by the Ministry of Health but also involve other Ministries such as Ministry of Finance and Economy, Ministry of Home Affairs, Ministry of Religious Affairs, Ministry of Education, Ministry of Foreign Affairs, Ministry of Primary Resources and Tourisms and Ministry Transport and Info-Communications and other relevant department and government agencies.

The initiative also involved statutory bodies as well as the private sectors. Due to the issues being regarded as a national agenda and use of the whole of nation approach and the swift actions by His Majesty's Government, Brunei is one of the first in the ASEAN region with a number of positives of more than one hundred who manage to contain successfully the Covid-19 virus and it must be commended that the actions and implementation are world class and can be considered as a success story for Brunei Darussalam. However currently, Brunei Darussalam is not 100% free from the pandemic at the time of writing but without the co-operation and collaboration of the whole of Brunei including from His Majesty's Government and private sector, this achievement will not be possible.

Since June, 2020, there have been a number of de-escalation initiatives by the Government as advised by the Ministry of Finance with the approval of His Majesty such as the opening on a stage by stage basis of restaurant, mosque, amusement park, cinema and other sport facilities. The success of the Pandemic Covid-19 handling in Brunei has a direct effect on its impact to the Islamic financial institutions in Brunei as their operations are not directly affected

especially in local market sector and as one of the country which have no community spread of Covid-19 since 6 May 2020 and it would be anticipated generally Brunei Islamic Financial Institutions are not affected greatly with this pandemic compare to with most other countries around the region.

Impact of Covid-19 on Islamic Financial Institutions in Brunei

The immediate effect on the Islamic Financial Institutions are further discussed below-

Islamic Bank

Bank Islam Brunei Darussalam (BIBD) is the only Islamic Bank in Brunei and licensed under the Islamic Banking Order 2008. As Brunei's flagship Islamic bank and largest financial services provider, with around 900 employees and more than ten billion worth of assets under management and serve more than 200,000 customers. Its valued customers include retail, corporate as well as international clients and offer to customers convenience through solutions such as internet and mobile banking. BIBD due to its strong position has not been affected greatly with this Covid-19 and due to this online banking will benefit from a lot of purchases as social distancing restrictions are in place and BIBD even manage to provide stimulus relief package.¹⁷

As has been explained above there have been a relief package which affect BIBD with the full detail as follows:¹⁸

¹⁷ Bank Islam Brunei Darussalam (BIBD). (2020). *Corporate profile*. Retrieved April 19, 2020, from <http://www.bibd.com.bn>

¹⁸ Autoriti Monetari Brunei Darussalam (AMBD). (2020). Ministry of Finance and Economy press statement on Additional Interim Measures by the Banking sector. Retrieved April 19, 2020, from <https://ambd.gov.bn>

Banking sector interim measures

1. In view of the ongoing COVID-19 pandemic, AMBD, working closely together with MoFE, has been in close consultation with the financial industry and stakeholders to address the current impact of Covid-19 on the local businesses. Together with the Brunei Association of Banks, interim measures to alleviate the financial burden on specific sectors have been agreed.

2. In supporting the impacted sectors and minimizing disruption to economic activity, under the guidance of MoFE, AMBD and Brunei Association of Banks recognise the important role of the banking industry and agreed on the following measures effective from 1st April 2020 for a period of six months:
 - i. To support the business sectors in the form of six months deferment on principal repayments of financing/ loan for the following sectors:
 - a) Tourism
 - b) Hospitality/ event management
 - c) Restaurant/ cafes (food and beverages)
 - d) Air transport

 - ii. In addition, this deferment will also be extended to Food and Medical Supplies importers to support the higher cash flow requirements to meet the surge in demand.

 - iii. All bank fees and charges, except third party charges, related to trade and payment transactions for companies in these sectors will be waived for a period of six

months. This will help businesses to self-sustain and we encourage these savings be transferred to the public.

3. In an effort to encourage social distancing and minimize visits to banks, online local interbank transfer fees and charges will also be waived for 6 months for all customers.¹⁹ The general public is encouraged to utilize existing digital payment platforms offered by the banks and other payment system providers.
4. Banks have also been encouraged to review their lending rates in the prevailing environment.
5. Every bank has its existing Corporate Social Responsibility (CSR) initiatives, and the banks are currently expanding these activities further.
6. With all the various stakeholders coming together, taking the whole of nation approach, it is expected that the private sector, with all these relief measures, to also play their part by retaining their existing workforce.
7. AMBD would like to assure the general public that the banking sector remains resilient, strong and well-capitalized. AMBD will continue to monitor the development and work

¹⁹ The waiver is extended for another 6 months and will end on 31st March 2021.

together with the financial institutions, and implement additional measures as and when necessary.²⁰

BIBD commitment

BIBD has given huge commitment to support different sectors of the community in Brunei Darussalam. BIBD has a strong balance sheet and strong liquidity and in its effort for a sustainable future BIBD has step up digitalisation efforts, such as use of NEXTGEN Services GO campaign and recently introduced the Virtual Market Place (Micro-Small Biz).

Virtual Market Place

BIBD has just launched its latest corporate social responsibility (CSR) initiative, Community for Brunei, a virtual market place designed to help small local businesses while highlighting social and charitable causes at the same time where through the platform www.CommunityForBrunei.com it leverages technology to bring the community together by providing an online ecosystem with an integrated digital payment gateway. It is in part with the financial institution's efforts to nurture a digitalised society in Brunei powered by a cashless economy.²¹

Through this Virtual Market Place, Community for Ramadhan, the project is aimed to be a virtual '*Gerai Ramadhan*' that enables members of the public to purchase food and drinks from

²⁰ Autoriti Monetari Brunei Darussalam (AMBD). (2020). Ministry of Finance and Economy press statement on Additional Interim Measures by the Banking sector. Retrieved April 19, 2020, from <https://ambd.gov.bn>

²¹ Wasil, W. (2020). *BIBD's Virtual Market Place Community for Brunei Is Now Live*. The Bruneian- April 18, 2020. Retrieved April 19, 2020, from <https://www.thebruneian.news?bibds-virtual-market-place-community-for-brunei-is-now-live/>

vendors who normally participate in the yearly Ramadhan stalls as *Bazaar Ramadhan* only by online.²²

Covid-19 relief

For this Covid-19 relief, BIBD has agreed to provide the following:

a) Corporates-

For Corporates, the relief are-²³

1. Deferment of financing principal payment up till 31 March 2021.
2. Restructuring (case to case).
3. Local transfer fee waivers up till 1 October 2020.
4. Trade and payment transaction fee waivers except for 3rd party charges for businesses in the 6 sectors.
5. BIZNET onboarding & monthly subscription fee waivers up till 1 October 2020.

The relief are focus on the 6 sectors, namely, Tourism/Hospitality/Restaurants & Cafes/ Aviation & Transport/ Importers of food/ Importers of Medical items. For Business sectors is applicable for Companies Partnerships, Sole Proprietors & Micro Small and Medium Enterprises.²⁴

b) Individual

The relief for individual are which include financing and credit card-

²² Ibid.

²³ Khokhar, M. (2020). *Economic Relief Package*. Retrieved April 14, 2020, from <http://www.bibd.com.bn/media-centre/economic-relief-package/>

²⁴ Ibid.

1. Applicable to all individuals affected by Covid-19 including self-employed.
2. Deferment of financing principal payment.
3. Option to restructure.
4. Credit card balance conversion to term financing.
5. Local transfer fee waivers up till 1 October 2020.
6. Processing fee waivers up till 30 December 2020.²⁵

c) Financing relieves

1. Personal and car financing:
 - Deferment of financing principal payment up till 31 March 2021; or
 - Restructuring up to 10 years
2. Mortgage Financing
 - Deferment of financing principal up till 31 March 2021
3. Credit Card
 - Conversion of credit card outstanding balance to term financing up to 3 years.²⁶

d) Nation-

1. Overall stimulus

For the overall package, through MoFE and AMBD, BIBD and Bank Association of Brunei has given stimulus relief package for a total of \$250 Million for a period of one year.

²⁵ Khokhar, M. (2020). *Economic Relief Package*. Retrieved April 14, 2020, from <http://www.bibd.com.bn/media-centre/economic-relief-package/>

²⁶ Ibid.

2. Caring & Inclusive society

- Practising precautionary measures
- Encourage volunteerism
- Upskilling students (e.g. Hospitality & Tourism IBTE)
- BIBD also provide for public donation for Covid-19 Relief Fund (latest figure \$6.2 million on 5pm 16th April 2020).²⁷

Tabung Amanah Islam Brunei (TAIB)

TAIB have also provided relief packages similar to the banking sector interim measures. However, since TAIB is not an Islamic Bank and have very limited Islamic banking products and facilities such as not having mastercard or credit card where during the early stages of Covid-19 there are high increase in number of usages with online purchases such as when all the restaurant were closed and customer can only bought food through delivery. TAIB also affected during the early period of the Covid-19 in Brunei where due to social distancing requirements, there were only limited number of customers at their branches and they do not provide services for online payment for purchase of products such as food and other things which have been greatly increase during Covid-19.

Takāful

The *Takāful* Companies are licensed under the Takaful Order, 2008, namely Takaful Brunei Sdn Bhd and Insurans Islam TAIB with both *Takāful* have a separate General and Family

²⁷ Ibid.

Takāful. As the treatment in Brunei for Covid-19 patient including for tests are free so there is no relief package for *Takāful* /insurance for the cost of medical treatment.

So far there have not been any relief measures for *Takāful* participants and in my view there should have been a relief for general and family *Takāful* as has been practised in BNM in particular relief measures for affected policyholders and *Takāful* participants among others-

1. Deferment of payment of family *Takāful* contributions;
2. Extension of flexibilities to reinstate or preserve family *Takāful* protection;
3. Flexibility to meet general *Takāful* contributions.²⁸

The coronavirus outbreak is unlikely to have a big negative impact on the *Takāful* industry in Brunei Darussalam. In fact, it might even spur the uptake of health insurance/ family *Takāful*. While health insurance/family *Takāful* may see increased demand due to the outbreak, one line of business that may see dampened business is travel insurance/*Takāful*, due to various countries' imposition of travel bans. In addition, there could be less demand for General *Takāful* for Motor Vehicle due to the restriction of number of vehicles registered daily and less demand for family *Takāful* due to less income from the public especially from the private sector. However, the restrictions on the number of vehicles registered have been lifted since early June and this will not affected the supply of registered vehicles daily.

²⁸ Bank Negara Malaysia (BNM). (2020). *Additional Measures to Further Support SMEs and Individuals Affected by the COVID-19 Outbreak*. Retrieved April 20, 2020, from https://www.bnm.gov.my/index.php?ch=en_press&pg=en_press&ac=5022&lang=en

Takāful products during Covid-19

Takaful Brunei Keluarga (TBK) Sdn Bhd also announced it has now included coverage for Covid-19 in its medical products, *Takāful As-Syifa'* and *Takāful Group Hospital & Surgical*. TBK is providing Covid-19 coverage for its *Takāful Aman*, *Takāful Aman Plus* and *Takāful Student Care*, where Brunei student who currently still abroad that in the event that they are diagnosed with Covid-19, they will have 50 per cent coverage for their medical inpatient treatment.²⁹

An existing income protection plan available with a monthly payment programme to provide financial protection, *Takāful Aman* lessens the financial burden of the participant, in the event of an accident or illness that prevents them from earning income with its basic coverage for death and total permanent disablement due to accidents. As for the *Takāful Aman Plus*, customers are also given the convenience in the form of monthly payments, which are also payable through the TBK Call Centre and online payment which allows customers to pay for their protection plans without having to go to any counters.³⁰

Capital market

YB Dato Dr Hj Mohd Amin, the Minister of Finance and Economy II cum the Minister at the Prime Minister's Office said the establishment of the exchange would act as a catalyst for economic growth and business development by making alternative financing available for businesses in the country. He added that an active securities market would open up more business opportunities with other bourses in the ASEAN region. The development of a

²⁹ Mohamad, L. (2020). COVID-19 Brunei: Insurance protection for COVID-19. Retrieved April 19, 2020, from <https://3g.modasys.net/index.php/news-events/around-brunei/local-news/38852-covid-19-brunei-insurance-protection-for-covid-19-2020.html>

³⁰ Ibid.

securities market will not only facilitate regional integration but also expand national capital markets and create more foreign investment opportunities.³¹ Brunei Darussalam has yet to launch the stock exchange and it might be beneficial to launch only if the market has been stable due to the uncertainty due to Covid-19 especially during its initial stage.

For *sukūk*, the effect of the Covid-19 should not be greatly affected as most of the *sukūk* issuance are open only to Corporate entities such as banks and since it is more a type of investment it is only paid during the issuance of *sukūk* and the only possible effect is the freeze of any issuance of new *sukūk* due to the uncertainty due to Covid-19. Therefore, there is no need for a relief in Brunei for Islamic Capital Market Industry as there is no immediate effect of the Covid-19.

Finance companies

The Ministry of Health has advised the public with regard to the social distancing, during the early period of Covid-19, the Land Transport department only allowed the registration of car road tax and vehicle licence via drive through or online. Furthermore, temporary new measure only allowed every car dealer to register 3 cars every day and certainly this will affect the Islamic finance companies where this will certainly affect the number of car financing which has taken the most of the bulk of financing in finance companies in Brunei Darussalam. However, since June this restriction has been lifted and therefore the effect is only temporary. There are only 2 finance companies in Brunei and the only Islamic Finance company in Brunei Darussalam is BIBD At-Tamwil which is also the subsidiary of BIBD which also offer some

³¹ Haris, N. (2020). Brunei Stock Exchange a work in progress. *The Scoop- March 14, 2020*. Retrieved April 19, 2020, from <https://thescoop.co/2020/03/14/brunei-stock-exchange-a-work-in-progress/>

relief for individual affected by the Covid-19 in car financing which is a deferment of financing principal payment up till 31 March 2021 and restructuring up to 10 years.

Money changer and money remittances companies

The reason these two industries are included is because they are included in the definition of “financial institution” in section 2 of the AMBD Order 2010 and that their operation are not contrary to *Hukum Shara* ‘ as having no involvement with any interest (*ribā*).

Due to the travel restrictions imposed by the Government of Brunei which apply to Bruneian travel outside as well people coming to Brunei, clearly these will affect these two industries as the number of money remittance transactions will be less and the affect will be more felt by the money changer as there will be hardly any transactions for money changer due to the travel restrictions which resulted in some money changer having to close temporarily for business. Only businesses using online transactions will be less affected.

Summary of impact to Islamic Financial Institutions

The effect of the Covid-19 in Brunei Darussalam to the Islamic Finance institutions can be summarised as follows:

1. Islamic Banks are less affected due to the sound position in terms of assets and capital and have even give relief package. Benefit also with digital banking, more online banking business and payment through bank transfer.
2. *Takāful* with less car financing means less *Takāful* for vehicle, less travel package and offer other Covid-19 Package.
3. Islamic Capital Market with stock exchange not yet launched and *sukūk* not affected greatly.

4. Islamic Finance companies suffer initially with the restrictions on the number of new cars registered (only 3 per motor company) less income and even offer relief to individual and only affected temporarily.
5. Money Remittances have less income as there is less foreigners in Brunei due to shut-down of borders to foreigners.
6. Money Changer are worst affected since there is lack of demand and some business are temporarily closed and their income greatly reduced similar to the tourism sector.

Future Recommendations

Below are some of the recommendation to alleviate or ease the impact of Covid-19:

Consider digital transformation

As the coronavirus continues to spread around the world, more and more enterprises will miss their financial targets because of supply chain disruptions and dampened customer demand. What is clear is that Covid-19 will drastically impact most businesses for months, probably years. With this mindset, it's imperative for enterprises to build in the necessary operational resiliency to survive this new reality. The Covid-19 pandemic has showcased the value of IT and digital transformation and organisations should use this time to accelerate the transition.³² Businesses that can shift technology capacity and investments to digital platforms will mitigate

³² Nicolls, D. (2020). *COVID-19: a call for digital transformation*. Retrieved April 16, 2020, from <https://www.fintechfutures.com/2020/04/coronavirus-exposes-gaps-in-innovation/>

the impact of the outbreak and keep their companies running smoothly now, and over the long term.”³³

In Brunei Darussalam, there have seen a surge in e-learning, streaming and online shopping and payment never seen before. Volumes have greatly increased with significant upticks in banking and financial services and over the last few weeks further proof that the pandemic events can be a boon to businesses that are prepared to seize the opportunity. For companies which still require users to visit a store or branch office to create a new account or to perform routine transactions and increasingly, this is going to be a difficult due to social distancing.³⁴ At the same time with many people paying by online transactions, the move towards becoming a cashless society could be further improved where some people also fear of using the normal currency due to it possibly becoming contaminated with the virus Covid-19 although this has not been scientifically proven that it can be transmitted by cash handling.

Digital banking

Organisations that have web enabled their businesses are in much better position to weather this pandemic, both in the short and long term. Digital transformation covers a lot of territory, but starting with identity verification makes practical sense as it enables modern companies to streamline the customer onboarding journey. This enables their users to create new accounts and transact from their smartphones and computers without ever having to set foot within a branch office. For the past few years, digital account opening has been at the top of the list of

³³ Nicolls, D. (2020). *COVID-19: a call for digital transformation*. Retrieved April 16, 2020, from <https://www.fintechfutures.com/2020/04/coronavirus-exposes-gaps-in-innovation/>

³⁴ Ibid.

technologies organisations intend to add or replace, but Covid-19 is pushing digital transformation to the front of the line.³⁵

The importance of supporting MSMEs

The damage caused by Covid-19 incurred by MSMEs is mainly due to the great economic downturn, the drop of global and local demand due to travel and movement restrictions, as well as the large scale confinement imposed by law in most countries. This has led a to total or partial halt of many MSMEs' activities and was exacerbated by the violent waves that hit global supply chains that are essential to any production, manufacturing, or transformation process. Therefore, MSMEs are fighting for survival.³⁶

Despite shrinking economic activities, they are required to find resources to cover their constant and changing operating expenses, such as salaries, rent, and other expenses. They are obligated to fulfil their undertakings toward financing facility to the financial institutions and without any sort of relief such as deferment of monthly payment there would certainly an increase in non-performing payment for financing facility for the Islamic finance institutions. Without this relief package, reconstruction may take a long and difficult period of time in order to overcome the ensuing impacts of large-scale bankruptcy and unemployment and in this regard the relief package given by BIBD and BIBD At-Tamwil is very welcome by the MSMEs.

³⁵ Ibid.

³⁶ Hajjar, B.H. E. (2020). *Covid-19 and Micro, Small and Medium Enterprises, Saving the Global Economy from the Pandemic*. Retrieved April 16, 2020, from <https://www.isdb.org/news/president-of-the-islamic-development-bank-group-covid-19-and-micro-small-and-medium-enterprises-saving-the-global-economy-from-the-pandemic>

Findings

As can be shown above different types of Islamic Financial Institutions have been affected differently from the Covid-19 and all Islamic financial institutions must be well prepared for these type of pandemic in any future event so they will not be severely affected by these pandemics. The most notable importance of digital banking and online transactions have been increased greatly.

Therefore, in summary the future recommendations in general for every Islamic financial institutions so that it will not be greatly affected by the Pandemic is to have in place if possible all of the following:

1. To be digital and be ready as there are more online business.
2. Prepare for any contingency and more adaptable to any crisis.
3. Opening up different type of sector not just one dimensional.
4. Regulatory compliant such as capital adequacy and assets ratio of Islamic Bank/*Takāful* must be strong and sound and not greatly affected by this crisis.
5. Help and support from the Government and AMBD in terms of regulatory requirement and others.
6. Need to support the whole economy especially the private sector including MSME which will increase the demand and purchasing power of Islamic finance product and for future development.

Conclusion

There is nothing assured of what the future will happen to Brunei Darussalam in terms of what happen to its economy including the Islamic Finance industry however it can be certain that the success of the Islamic Finance Institutions will also related and depended on how well the

economy perform as there will be less demand for Islamic finance product if the economy is not doing well. It seems that for large size Islamic Financial Institutions such as Islamic Bank, *Takāful* Companies and Islamic Finance companies such as having been able to invest in digital transaction, innovation and others will not severely affected as compare to the small size institution such as money changer even though all their profits will be greatly reduced during this Covid-19.

Without doing anything or without greater effort we will not change for the better in the future. Brunei Darussalam need to improve the overall economy especially affected due to the effect of the Covid-19 and the huge drop in the oil prices as well as there is very high number of unemployment especially among the youth and even graduates and hence the development of Islamic finance and make Brunei Darussalam as international hub has been earmarked as one of the area which could contribute to the development of the whole economy through various financial activities and can create a lot of employment opportunities.

At the moment the Global economy including the Islamic finance face uncertainty due to the effect of the Pandemic Covid-19 which were said to effect more than the global financial crisis in 2008 and the Asian crisis in 1997, including the biggest downfall of shares in the stock exchange and if the whole nation work together towards this vision of becoming an international hub for Islamic finance and using the whole of nation approach with the ways how the Pandemic Covid-19 was handled in the country then everything is possible.

The effect on the Pandemic Covid-19 discussed here are only the immediate and current effect and the overall and long-term effect is still unknown and need to be further assessed. Beyond the operational actions already taken, Islamic financial institutions must remain hypervigilant and they need to also actively consider the short-and medium-term financial, risk,

and regulatory compliance implications that are resulting from the continuing uncertainty around Covid-19.

At the time of writing, this pandemic has not been totally eliminated and thanks to the great effort by His Majesty's Government and other sectors as have been highlighted before, Brunei Darussalam can be said not to suffer greatly not only in terms of the number of people infected and the number of deaths³⁷ but also insofar there has not been any lockdown in the country where all the operations of the Islamic financial institutions able to continue as normal. However, the whole country must be vigilant to keep it this way until there is a vaccine for this Covid-19.

Moreover, most of the operations and Islamic Finance products segment in Brunei Darussalam are traded and comprised in the local market sector, as having still continue operation and this will not have a significant impact on the Islamic finance industry and the most affected will be in the international market sector. The lesson learned from this to increase the building capacity around the 4th generation of industrialization that uses science and technology to prevent global value chains disruption under such pandemics which has shown us that our survival on this planet depends also on who much we keep investing in science, technology and innovation.³⁸

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³⁷ At the time of writing, 148 positive and 3 death from Covid-19

³⁸ Hajjar, B.H. E. (2020). *Covid-19 and Micro, Small and Medium Enterprises, Saving the Global Economy from the Pandemic*. Retrieved April 16, 2020, from <https://www.isdb.org/news/president-of-the-islamic-development-bank-group-covid-19-and-micro-small-and-medium-enterprises-saving-the-global-economy-from-the-pandemic>

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الوعد وأثره في المعاملات المالية:

المشاركة المتناقصة نموذجاً

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الدكتورة الحاجة مس نورعيني الحاج محي الدين⁽²⁾

ملخص البحث

الوعد عبارة عن الإخبار بإيصال الخير في المستقبل. وتبرز أهمية الوفاء بالوعد والالتزام به في هذا العصر الذي شهد ولادة ألوان وأشكال كثيرة من المعاملات المالية القائمة على أساس الوعد كالمشاركة المتناقصة التي تختص بوجود وعد من الطرفين: وعد من أحد الشريكين بأن يبيع حصته لشريكه، ووعد من الشريك الآخر بشراء حصة شريكه كلها أو بعضها في عقود متلاحقة أو متتابعة وفق الشروط التي يتفقان عليها. ويهدف هذا البحث إلى إبراز حكم الوفاء بالوعد وأثره في المشاركة المتناقصة وبيان إشكالات الواردة فيها. والباحثان سيعتمدان في دراستهما على المنهج الوصفي التحليلي للخروج من خلاله بأهم النتائج والتوصيات. وقد خلص البحث إلى جواز اقتران صيغة المشاركة المتناقصة بالوعد، فمن حق المتعاقدين أن يتواعدا، كما من حقهما أن يضعوا شروطاً تناسب العقد، وتلائم مقصوده، ولا تصادم نص كتاب أو سنة أو قياساً أو عرفاً معتبراً.

الكلمات المفتاحية: الوعد، أثر، المعاملات المالية، المشاركة المتناقصة

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**THE EFFECT OF WA 'D IN FINANCIAL TRANSACTION:
DIMINISHING MUSHĀRAKAH AS THE MODEL**

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Abstract

Wa 'd (promise) is a statement of delivering goodness in the future. The importance of keeping promise in this era has witnessed the emergence of many colours and forms of financial transactions based on a promise, such as diminishing mushārahah, which concerns the existence of a promise from both parties: a promise from one of the partners to sell his share to his partner, and a promise from another partner to buy his partner's share, in whole or in part, in successive or consecutive contracts according to the terms that they agree upon. This study aims to highlight the effect of the promise on the diminishing mushārahah, in order to know the rule of promise and to clarify the problems surrounding it. Hence, the researchers are required to elaborate on this matter based on the descriptive and analytical approaches to get the most important results and recommendations. It is incumbent to note that the diminishing mushārahah contract may be associated with the promise. It is the right of the contracting parties to make a promise to each other as well as they are entitled to set conditions that are suitable for the contract and fits its intended purpose, and not to collide with the Qur'ān, Ḥadīth, Qiyās or 'Urf.

Keywords: *Wa 'd (promise), Effect, Financial Transaction, Diminishing Mushārahah*

المطلب الأول: تعريف المشاركة المتناقصة وصورها

أولاً: تعريف المشاركة المتناقصة

من المناسب قبل الحديث عن ماهية المشاركة المتناقصة، بيان اللفظين الذين تتركب منهما المشاركة المتناقصة

(المشاركة والمتناقصة).

المشاركة على وزن مفاعلة، مشتقة من الفعل ((شرك))، والمشتق ((مفاعلة)) يطلق دائما على التفاعل الذي يحصل بين طرفين أو أكثر⁽⁵⁾، ومنه المضاربة والمزارة والمرابحة ونحوها. ففي هذه المشتقات تحدث المفاعلة بين طرفين أو أكثر. وتطلق المشاركة في اللغة على عدة معان، منها⁽⁶⁾:

- الاختلاط ومخالطة الشريكين. يقال اشتركنا بمعنى تشاركنا، وقد اشترك الرجلان وشارك أحدهما الآخر.
- النصيب. قال رسول الله صلى الله عليه وسلم: "من أعتق شركا في عبد..."⁽⁷⁾، أي حصة ونصيبا فيه.
- كما يطلق لفظ ((الشركة)) على عقد الشركة نفسه وإن لم يوجد اختلاط النصيبين، لأن العقد سبب الخلط، وذلك من باب المجاز المرسل المتمثل في إطلاق اسم المسبب وإرادة السبب⁽⁸⁾.

وأما الشركة في اصطلاح الفقهاء فقد اختلفت عباراتهم في تعريفها، حيث عرّفها فقهاء الحنفية بأنها ((اختلاط نصيبين فصاعدا؛ بحيث لا يعرف أحد النصيبين من الآخر))⁽⁹⁾. وأما فقهاء المالكية فالشركة عندهم ((إذن من اثنين

(5) ابن منظور، محمد بن مكرم بن علي، أبو الفضل، جمال الدين الأنصاري. (1414هـ). لسان العرب. بيروت: دار صادر. ج10. ص448. الزبيدي، محمد بن محمد بن عبد الرزاق الحسيني. (د.ت.). تاج العروس من جواهر القاموس. د.م.: دار الهداية. ج27. ص223.

(6) ابن منظور. (1414هـ). لسان العرب. المرجع السابق. ج7. ص99-101. الزبيدي. (د.ت.). تاج العروس. المرجع السابق. ص28.

(7) ابن حنبل، أبو عبد الله أحمد بن محمد بن هلال بن أسد الشيباني. (1421هـ/2001م). مسند الإمام أحمد بن حنبل. شعيب الأرنؤوط - عادل مرشد، وآخرون (محقق). بيروت: مؤسسة الرسالة. ج10. ص150. رقم: 5920. (صحيح على شرط مسلم).

(8) الزيلعي، عثمان بن علي بن محجن البارع فخر الدين الحنفي. (1313هـ). تبين الحقائق شرح كنز الدقائق. القاهرة: المطبعة الكبرى الأميرية. ج3. ص312.

(9) محمد البابرتي، أكمل الدين أبو عبد الله ابن الشيخ شمس الدين ابن الشيخ جمال الدين الرومي. (د.ت.). العناية شرح الهداية. بيروت: دار الفكر. ج6. ص152.

أو أكثر في التصرف لهما مع أنفسهما))⁽¹⁰⁾. ونجد في كتب الشافعية تعريفات متعددة تكاد تكون متشابهة في شكلها ومضمونها، حيث عرّف الشرييني الشركة بأنها عبارة عن ((عقد يقتضي ثبوت الحق في شيء لاثنين فأكثر، على وجه الشروع))⁽¹¹⁾. وأما السادة الحنابلة فقد عرّفوا الشركة بأنها ((الاجتماع في استحقاق أو تصرف))⁽¹²⁾.

هذه هي تعريفات الفقهاء للشركة، وتوحى هذه التعريفات التي أوردناها بأن المشاركة هي استقرار ملك شيء له قيمة مالية بين مالكين فأكثر، لكل واحد أن يتصرف فيه تصرف المالك.

وأما التعريف العام للمشاركة في علم الاقتصاد الإسلامي الحديث فهو: ((الاتفاق بين طرفين أو أكثر بمقتضى عقد معين على القيام بعمل تجاري أو نشاط استثماري وفق مقاصد الشرع يشتركان فيه بأموالهما أو أعمالهما أو جاههما أو المال من أحد الطرفين والعمل من الآخر على أساس أن يقتسما الربح والخسارة وفق ما اشترطاه))⁽¹³⁾. وأما لفظ المتناقصة فهو على وزن متفاعلة مشتقة من الفعل ((نقص))، والنقص: الخسران في الحظ. والنقص: الضعف. والنقصان: الذهاب بعد التمام، والنقصان: هو الاسم للقدر الذاهب من المنقوص. النقصان: العيب. وانتقصه، وتنقصه: أخذ منه قليلاً، واستنقص المشتري الثمن: استنقصه⁽¹⁴⁾.

(10) خليل، ابن إسحاق بن موسى ضياء الدين الجندي المالكي المصري. (1426هـ/2005م). مختصر العلامة خليل. القاهرة: دار الحديث. ص178.

(11) الشرييني، شمس الدين محمد بن أحمد الخطيب. (1415هـ/1994م). مغني المحتاج إلى معرفة معاني ألفاظ المنهاج. بيروت: دار الكتب العلمية. ج3. ص221.

(12) ابن قدامة، موفق الدين عبد الله بن أحمد بن محمد المقدسي. (1388هـ/1968م). المغني. القاهرة: مكتبة القاهرة. ج5. ص3. ابن قدامة

(13) الصحري، محمد. (2013م). الاقتصاد الإسلامي رؤية مقاصدية. د.م.: دار إحياء للنشر الرقمي. ص40. انظر أيضاً: غربي، عبد الحلیم عمر. (2013م). مصادر واستخدامات الأموال. حماة: دار أبي الفداء العالمية. ص40. إرشيد، محمود عبد الكريم أحمد.

(1421هـ/2001م). الشامل في معاملات وعمليات المصارف الإسلامية. الأردن: دار النفائس. ص32.

(14) ابن منظور. (1414هـ). لسان العرب. المرجع السابق. ج7. ص100. الزبيدي. (د.ت.). تاج العروس. المرجع السابق. ج18. ص187.

تعريف المشاركة المتناقصة: وقد عرّف الباحثون في مجال الاقتصاد الإسلامي المشاركة المتناقصة بتعريفات عدة متقاربة في معناها والمقصود منها، وهي: "اتفاق بين طرفين أو أكثر على أساس اشتراكهما في رأس مال معلوم على أن يكون العائد بينهما حسب الاتفاق والخسارة بحسب رأس المال مع التزام أحدهما بنقل حصته للطرف الآخر؛ بشروط مخصوصة"⁽¹⁵⁾.

ثانياً: صور المشاركة المتناقصة

صورة هذه المشاركة؛ أن تشارك جهة، سواء أكانت مؤسسة، أم بنكا إسلاميا، أم فردا عاديا، بجزء من رأس المال، مع شريك أو أكثر لإنشاء شركة تجارية، أو مصنع، أو بناء شقق سكنية، وغير ذلك، ويعد أحد الطرفين شريكه الآخر بأن يبيع له نصيبه من الشركة، وأن يحل محله في ملكيتها دفعة واحدة أو على دفعات، حسبما تقتضيه الشروط المتفق عليها.

وهذه الصيغة الاستثمارية صالحة للتطبيق على العقارات، وعلى المنقولات وإن كان قطاع المباني أكثر المجالات مناسبة لاستثماره بهذا الأسلوب الاستثماري، فيستطيع كل صاحب مشروع أن يتعامل مع البنك الإسلامي -مثلا- على هذا الأساس، وذلك بأن يمّول له البنك الإسلامي المشروع تمويلًا كليًا أو جزئيًا بحسب الحالات على

(15) الصاوي، صلاح محمد. (1410هـ/1990م). مشكلة الاستثمار في البنوك الإسلامية وكيف عالجه الإسلام. المنصورة: دار الوفاء. ص 619. صوان، محمود حسن. (2008م). أساسيات العمل المصرفي الإسلامي. ط2. عمان: دار وائل للنشر والتوزيع. ص 146. شبير، محمد عثمان. (1427هـ/2007م). المعاملات المالية المعاصرة في الفقه الإسلامي. الأردن: دار النفائس. ص 334.

أساس نسبة معينة من الربح، ثم يتفق البنك بعد ذلك على أنه متى سدد له قيمة مشاركته تنازل له البنك عن حصته في المشروع⁽¹⁶⁾.

وفي الواقع العملي لدى البنوك الإسلامية، توجد صور متعددة للمشاركة المتناقصة، وفيما يلي أبرز تلك الصور:

الصورة الأولى: المشاركة في عين مع الوعد بالبيع

وذلك بأن تتفق المؤسسة المالية مع العميل على تحديد حصة كل منهما في رأس مال الشركة وشروطها. ويكون بيع حصص العميل إلى البنك بعد انتهاء المشاركة بعقد مستقل، بحيث يكون له الحق في بيعها للمؤسسة أو غيرها، وكذلك الأمر بالنسبة للمؤسسة بأن تكون لها حرية بيع حصصها للعميل أو غيره، فلكل منهما الحق في بيع حصته للآخر أو لطرف ثالث⁽¹⁷⁾. واقترح بعض الباحثين تسمية هذه الصورة بـ"المشاركة المتناقصة الحرة" لما يتمتع به الشركاء فيها من حرية اختيار الموعد الذي يتم فيه انتقال ملكية الشركة إلى الشريك، وكذلك حرية اختيار من يشتري حصة المؤسسة المالية أو شريكها (العميل)⁽¹⁸⁾. ولكن هذه الصورة من صور المشاركة المتناقصة التي أقرها مؤتمر المصرف الإسلامي بدبي، قد لا تنتمي إلى المشاركة المتناقصة، فهي أقرب إلى المشاركة الثابتة، حيث يقوم البنك

(16) حمود. سامي حسن أحمد. (1411هـ/1991م). تطوير الأعمال المصرفية بما يتفق والشريعة الإسلامية. ط2. القاهرة: دار التراث.

ص429. مشهور، أميرة. (1411هـ/1991م). الاستثمار في الاقتصاد الإسلامي. القاهرة: مكتبة مدبولي. ص265.

(17) هذه هي الصورة الأولى المذكورة في توصيات وقرارات مؤتمر البنك الإسلامي بدبي. انظر: عزي، فخري حسين. (1993م). صيغ تمويل

التنمية في الإسلام. جدة: البنك الإسلامي للتنمية. ص142. وانظر: العمراني، عبد الله بن محمد بن عبد الله. (1427هـ/2006م). العقود

المالية المركبة. الرياض: دار كنوز اشبيليا للنشر والتوزيع. ص234.

(18) الكواملة، نور الدين عبد الكريم. (1428هـ/2008م). المشاركة المتناقصة وتطبيقاتها المعاصرة في الفقه الإسلامي. الأردن: دار النفائس.

-أو المؤسسة المالية- فيها بالتمويل جزئيا، وتتم تصفية المشاركة بعد انتهائها بعقد مستقل، وذلك بقيام أحد الطرفين: البنك أو العميل ببيع حصته للآخر أو لأي طرف ثالث بالتراضي.

الصورة الثانية: المشاركة المتناقصة بالتمويل المشترك

في هذه الصورة، تتفق المؤسسة المالية مع عميلها على المشاركة في التمويل الكلي أو الجزئي لمشروع ذي دخل متوقع، وذلك على أساس حصول المؤسسة على حصة نسبية من صافي الدخل المحقق، مع حقها في الاحتفاظ بالجزء المتبقي من الإيراد أو أي قدر منه يتفق عليه، ليكون ذلك الجزء مخصصا لشراء حصة المؤسسة المالية في المشاركة، ممثلة بأصل ما قدمته المؤسسة من التمويل (رأس المال)⁽¹⁹⁾. ففي هذه الصورة يتم سداد بعض قيمة الحصة من الغلة التي يدرها المشروع، حيث تعتمد طريقة توزيع تلك الغلة على مشاع نسبي. وفي حين يأخذ كل شريك نصيبه من الغلة (الربح)، تكون آلية شراء الشريك (العميل) لحصة المؤسسة؛ عن طريق اقتطاع نسبة معينة، أو قدر محدد مسبقا من حصة العميل في الربح أو زيادة على حصة المؤسسة في الأرباح. وحين يتم دفع ما قدمته المؤسسة من رأس المال كاملا، يكون الشريك قد اشترى نصيبها، وتكون المؤسسة قد خرجت من هذه الشركة بعد أن استرجعت مالها، ومقدار الربح فوقه⁽²⁰⁾.

الصورة الثالثة: المشاركة المتناقصة بتمويل مشروع قائم

(19) هذه هي الصورة الثانية التي أقرها مؤتمر البنك الإسلامي بديبي. انظر: عربيات، وائل محمد. (1430هـ/2009م). المصارف الإسلامية

والمؤسسات الاقتصادية. عمان: دار الثقافة للنشر والتوزيع. ص46.

(20) الكواملة. (1428هـ/2008م). المشاركة المتناقصة. المرجع السابق. ص53.

وذلك بأن يقدم الشريك (العميل) للبنك أو المؤسسة المالية أعياناً يعجز عن تشغيلها، كمن يملك مصنعا لا يستطيع شراء معداته، أو الحرفيين الذين يحترفون صنعة معينة، وتنقصهم بعض الأجهزة، أو يرغبون في تطوير آلاتهم وتحسينها، فتدخل المؤسسة شريكة معهم بقيمة المعدات أو الأجهزة عن طريق المشاركة المتناقصة بتمويل مشروع قائم، فتأخذ حصتها من الربح، وحصّة لتسديد مساهمتها في رأس المال. ويتفقان على أن تباع المؤسسة المالية أو البنك حصته دفعة واحدة أو على دفعات، فتتناقص ملكيته لصالح الشريك حتى يتم له الملك بسداد كامل الحصّة⁽²¹⁾.

الصورة الرابعة: المشاركة المتناقصة باقتناء الأسهم

والأسهم تمثل الحصّة التي يقدمها الشريك في رأس مال الشركة، كما يطلق لفظ السهم على الصك الممثل لحصّة المساهم في رأس المال. وتتصف الأسهم بتساوي قيمتها، فلا يجوز نظاماً أن يكون لبعض الأسهم قيمة أعلى من قيمة البعض الآخر. والتساوي في القيمة يترتب عليه التساوي في الحقوق والالتزامات، سواء من حيث توزيع أرباح الشركة، أو موجوداتها بعد تصفيتها، أو تحمل الديون والالتزامات المترتبة على الشركة⁽²²⁾.

وأما صورة تطبيق المشاركة باقتناء الأسهم، فذلك بأن يحدد كل من نصيب المؤسسة المالية ونصيب شريكها في الشركة على صورة أسهم تمثل مجموع قيمة الشيء موضوع المشاركة - سيارة أو عقاراً مثلاً - ويحصل كل من الشريكين (المؤسسة والعميل) على نصيبه من الإيراد المتحقق من العقار، ويمكن للشريك أن يشتري الأسهم المملوكة للمؤسسة على دفعات سنوية، بحيث تتناقص الأسهم الموجودة في حيازة المؤسسة، وبالتالي ينفرد العميل بامتلاك

(21) العمراني. (1427هـ/2006م). العقود المالية المركبة. المرجع السابق ص234.

(22) عبد الرحيم، ثروت على. (2000م). شرح القانون التجاري المصري الجديد. ط3. القاهرة: دار النهضة العربية. ص572-573.

المشروع (موضوع المشاركة) في نهاية الأمر⁽²³⁾. ففي هذه الصورة قد يتفق الطرفان على تحديد فترة مناسبة لكليهما، يتم بانقضائها انتقال ملكية الشركة إلى الشريك (العميل) بعد أن يشتري كامل الأسهم، إما من العائد الذي يدره عليه المشروع أو من أي مصدر خارجي. فإذا كان الشريك يرغب في دفع الثمن على مدى عشر سنوات مثلا، جعلت حصة المؤسسة عشر شرائح، وكل شريحة تمثل 10%، ويتفق الطرفان على شراء الشريك لشريحة واحدة كل سنة⁽²⁴⁾. وهذه صورة التملك التدريجي لحصة البنك، وهي أكثر الصور انتشارا، فإن الشريك المتعامل يدفع إلى البنك ثمن حصته دوريا من العائد الذي يؤول إليه، أو من أي موارد خارجية أخرى، وذلك خلال فترة مناسبة يتفق عليها، وعند انتهاء عملية السداد يخرج البنك من المشروع، ومن ثمَّ يمتلك الشريك المتعامل المشروع الاستثماري كله، محل المشاركة.

الصورة الخامسة: المشاركة المتناقصة مع الإجارة

تعرف الإجارة في اصطلاح الفقهاء بأنها عبارة عن: ((عقد على منفعة مقصودة معلومة قابلة للبدل والإباحة بعوض معلوم))⁽²⁵⁾. وأما صورة تطبيق المشاركة المتناقصة مع الإجارة فذلك بأن يتم التعاقد بين المؤسسة المالية والشريك على إقامة المشروع مع وعد من الشريك باستئجار العين لمدة محددة، وبأجرة المثل، فيكون حاله شريكا مستأجرا،

(23) هذه هي الصورة الثالثة التي جاءت ضمن توصيات وقرارات مؤتمر المصرف الإسلامي الأول بدبي المنعقد عام 1979م. عزي. (1993م).

صبيغ تمويل التنمية في الإسلام. المرجع السابق. ص142.

(24) لا بد أن يتفق العاقدان على أن يكون بيع الأسهم بسعر السوق، وإلا، يكون هذا العقد مثل أقساطا ربوية.

(25) الشرييني. (1315هـ/1994م). مغني المحتاج. المرجع السابق. ج3. ص438.

وتوزع الأرباح حينئذ وفق طريقة المشاركة المتناقصة حسب اتفاقهما⁽²⁶⁾. هذه الصورة تشمل -بالإضافة إلى عقد المشاركة- عقد الإجارة المؤقتة، وهو عقد منفصل عن عقد المشاركة. وعقد الإجارة هذا مبني على أساس وعد ملزم من الشريك للمؤسسة المالية باستئجار العين موضوع المشاركة.

الصورة السادسة: المشاركة المتناقصة بطريقة المضاربة

عقد المضاربة في صورته البسيطة الأولى اتفاق ثنائي بين من يملك المال ومن يملك الخبرة لاستثمار هذا المال وتنميته، ثم يتقاسمان أرباح المشروع بنسب شائعة من الربح ومتفق عليها. أما الخسارة ففي رأس المال فقط، حيث يكفي العامل خسارة جهده⁽²⁷⁾. وأما صورة تطبيق صيغة المشاركة المتناقصة مع المضاربة فذلك بأن يدفع البنك الإسلامي كامل رأس المال لمشروع معين، ويقدم الشريك العمل، والربح بينهما، مع وعد من البنك بتمليك المشروع للعميل بطريقة المشاركة المتناقصة. ففي هذه الحالة، ينبغي أن يلتزم بشروط وضوابط المضاربة، فإن لم يتحقق ربح فلا شيء للمضارب والخسارة على رب المال (البنك) في رأس المال، ويخسر المضارب جهده. وعند تحقق ربح يقسم بينهما حسب اتفاقهما، ويتملك المضارب المشروع إذا وفي بقيمته تدريجياً، مع نصيب رب المال من الربح،

(26) العمراني. (1427هـ/2006م). العقود المالية المركبة. المرجع السابق. ص234. الكواملة. (1428هـ/2008م). المشاركة المتناقصة. المرجع السابق. ص28.

(27) والمضاربة بهذا المعنى وبهذه الصورة تختلف عن المضاربة المتعارف عليها في الاقتصاد الوضعي والتي تتم بصفة خاصة في سوق الأوراق المالية، حيث يضارب الأفراد على الصعود، أو على الهبوط في أسعار السندات، أو في سلعة معينة، بهدف تحقيق ربح من تغير أسعارها، فهي مضاربة على فروق الأسعار، وليست استثماراً فعلياً، أو حتى رغبة حقيقية في شراء السلعة أو الأوراق المالية. انظر: مشهور. (1411هـ/1991م). الاستثمار في الاقتصاد الإسلامي. المرجع السابق. ص293.

ولو أن المضارب سلّم رب المال الربح كله فصورته إِبضاع، وحقيقته أن المضارب يدفع جزءاً هو ربح رأس المال، وجزءاً هو نصيبه من الربح، أو شراء لحصة البنك الإسلامي (28).

المطلب الثاني: الوعد وأثره في المشاركة المتناقصة

بالتأمل في تعريف المشاركة المتناقصة وصورها التي أوردناها سابقاً، يتبين لنا أن طبيعة عقد المشاركة المتناقصة تقوم على تداخل بين مجموعة عقود يأخذ بعضها برقاب بعض، فهناك عقد شركة يقوم بين الشريك وطالب التمويل في مشروع معين، وهناك وعد من البنك يلتزم فيه ببيع أجزاء من حصته بشكل تدريجي بقدر المال الذي دفعه لإقامة المشروع على أساس نسبة من الدخل الذي يتحقق من المشروع. بناء على هذا، فما هو أثر الوعد وحكمه في عقد المشاركة المتناقصة؟

أولاً: حكم الوفاء بالوعد

الوعد لغة: كلمة صحيحة تدل على تَرْجِيَةٍ بقول، والوعد لا يجمع (29)، قال أبو البقاء: ((وأصل الوعد: إنشاء لإظهار أمر في نفسه يوجب سرور المخاطب، والوعد يستعمل في الخير حقيقة وفي الشر مجازاً)) (30).
وقد عرف ابن عرفة المالكي الوعد بقوله: ((إخبار عن إنشاء الخبر معروفاً في المستقبل)) (31).

(28) عريبات. (1430هـ/2009م). المصارف الإسلامية. المرجع السابق. ص 53.

(29) ابن فارس. (1411هـ/1991م). معجم مقاييس اللغة. المرجع السابق. ج 6. ص 125.

(30) أبو البقاء. (د.ت). الكليات. المرجع السابق. ص 939.

(31) عليش، محمد بن أحمد بن محمد أبو عبد الله. (د.ت). فتح العلي المالكي في الفتوى على مذهب الإمام مالك. د.م: دار المعرفة. ج 1. ص 255.

وعرف الفقيه الحنفي بدر الدين العيني الوعد بقوله: ((هو الإخبار بإيصال الخير في المستقبل))⁽³²⁾.

والعلماء متفقون على أن من وعد بشيء منهى عنه شرعاً، فإنه لا يجوز له الوفاء بوعدده، بل يجب عليه

إخلافه⁽³³⁾. قال ابن حزم: ((من وعد بما لا يحل - فعله - أو عاهد على معصية، فلا يحل له الوفاء بشيء من ذلك

كمن وعد بزنا أو بخمر أو بما يشبه ذلك، فصح أنه ليس كل من وعد فأخلف أو عاهد فغدر مذموماً ولا ملوماً ولا

عاصياً، بل قد يكون مطيعاً مؤدياً لفرض))⁽³⁴⁾.

كما اتفقوا على أن من وعد بشيء واجب شرعاً، كأداء حق ثابت، أو فعل أمر لازم، فقد وجب عليه إنجاز

ذلك الوعد. قال ابن حزم في الإحكام: ((من وعد بأداء دين واجب عليه وأداء أمانة قبله ثم أخلف فهي معصية نعوذ

بالله تعالى منها))⁽³⁵⁾.

ثم اختلف الفقهاء فيمن وعد بشيء مباح أو مندوب إليه إلى أربعة أقوال:

القول الأول: إن الوعد يكون ملزماً ديانة؛ غير ملزم قضاء، إلا أنه يكره إخلافه، ويستحب الوفاء به استحباباً

شديداً

(32) العيني. (د.ت). عمدة القاري. المرجع السابق. ج.1. ص220.

(33) النووي، أبو زكريا محيي الدين يحيى بن شرف. (1414هـ/1994م). الأذكار. عبد القادر الأرنبوط (محقق). بيروت: دار الفكر للطباعة والنشر والتوزيع. ص317. ابن حزم، أبو محمد علي بن أحمد بن سعيد الأندلسي القرطبي. (د.ت). الإحكام في أصول الأحكام. الشيخ أحمد محمد شاكر (محقق). بيروت: دار الآفاق الجديدة. ج.5. ص21. ابن حزم، أبو محمد علي بن أحمد بن سعيد الأندلسي القرطبي. (د.ت). المحلى. بيروت: دار الفكر. ج.8. ص29.

(34) ابن حزم. (د.ت). المحلى. المرجع السابق. ج.8. ص29.

(35) ابن حزم. (د.ت). الإحكام. المرجع السابق. ج.5. ص21.

ذهب إلى هذا الرأي جمهور الفقهاء من الحنفية والشافعية والحنابلة، والمالكية في قول⁽³⁶⁾.

جاء في روضة الطالبين: ((الوفاء بالوعد مستحب استحباباً مؤكداً، ويكره إخلافه كراهة شديدة، ودلائله في

الكتاب والسنة معلومة...))⁽³⁷⁾.

وقد أجاب ابن عابدين رحمه الله تعالى عن شخص وعد بإعطاء غلة أرضه، فقال: ((لا يلزمه الوفاء بوعد

شرعاً، وإن وُفِّيَ فيها ونعمت...))⁽³⁸⁾.

القول الثاني: إن الوعد ملزم ديانة ويقضى به

وقد ذهب إلى هذا القول ابن شبرمة، وهو قول عند المالكية⁽³⁹⁾ واستدلوا على ذلك بأدلة، منها:

قوله تعالى: ﴿يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لِمَ تَقُولُونَ مَا لَا تَفْعَلُونَ ﴿٣٩﴾ كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لَا

تَفْعَلُونَ ﴿٤٠﴾ وقوله تعالى: ﴿يَتَأْتِيهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ ﴿٤١﴾.

(36) ابن عابدين، محمد أمين بن عمر بن عبد العزيز عابدين الدمشقي الحنفي. (د.ت). العقود الدرية في تنقيح الفتاوى الحامدية. د.م: دار المعرفة. ج.2. ص321. البهوتي. (د.ت). كشف القناع. المرجع السابق. ج.3. ص275. النووي. (1412هـ/1991م). روضة الطالبين. المرجع السابق. ج.5. ص390.

(37) النووي. (1412هـ/1991م). روضة الطالبين. المرجع السابق. ج.5. ص390.

(38) ابن عابدين. (د.ت). العقود الدرية. المرجع السابق. ج.2. ص321.

(39) عليش. (د.ت). فتح العلي. المرجع السابق. ج.1. ص254.

(40) سورة الصف 61 : 2-3.

(41) سورة المائدة 5 : 1.

ولحديث رسول الله صلى الله عليه وسلم: ((أربع من كن فيه كان منافقاً خالصاً، ومن كانت فيه خصلة منهن كانت فيه خصلة من النفاق حتى يدعها: إذا حدث كذب، وإذا وعد أخلف، وإذا عاهد غدر، وإذا خاصم فجر))⁽⁴²⁾.

القول الثالث: إن الوفاء بالوعد ملزم قضاء؛ إذا ارتبط الوعد بسبب، وإن لم يدخل الموعد بسبب العدة في شيء.

هذا قول المالكية. جاء في تحرير الكلام: ((وقيل يقضى بها إن كانت على سبب، وإن لم يدخل الموعد بسبب العدة في شيء؛ كقولك أردت أن أتزوج، أو أن أشتري كذا، أو أن أقضي غمائي، فأسلفني كذا، فإن ذلك يلزمه، ويقضى عليه به؛ ما لم تترك الأمر الذي وعدك عليه...، ولا يقضى بها إن كانت على غير سبب، كما إذا قلت أسلفني كذا، ولم تذكر سبباً))⁽⁴³⁾.

القول الرابع: أن الوعد ملزم إذا كان متعلقاً بسبب، ودخل الموعد بسبب هذا الوعد في الشيء

وهو المشهور في مذهب مالك. لأن العدول عن الوفاء بالوعد فيه إضرار بالموعد، والضرر ممنوع في الشريعة⁽⁴⁴⁾. وهذا القول الأخير هو الراجح، وذلك لعموم الأدلة الموجبة للوفاء بالوعد، ولأن القول بعدم الوجوب يؤدي إلى الإضرار بالموعد إذا دخل في التزام بسبب الوعد، والشريعة جاءت بنفي الضرر. وبهذا القول الأخير، أخذ مجمع الفقه الإسلامي في دورته الخامسة المنعقدة في الكويت عام 1988م؛ حيث جاء في قراره: "الوعد: (هو الذي

(42) البخاري. (1422هـ). صحيح البخاري. المرجع السابق. ج1. ص16. رقم 34.

(43) الحطاب، شمس الدين أبو عبد الله محمد بن محمد بن عبد الرحمن الطرابلسي المغربي. (1404هـ). تحرير الكلام في مسائل الالتزام. عبد السلام محمد الشريف (محقق). بيروت: دار الغرب الإسلامي. ص154. عيش. (د.ت). فتح العلي. المرجع السابق. ج1. ص254.

(44) عيش. (د.ت). فتح العلي. المرجع السابق. ج1. ص254.

يصدر من الأمر أو المأمور على وجه الانفراد) يكون ملزماً للواعد ديانة إلا لعذر، وهو ملزم قضاء إذا كان معلقاً على سبب، ودخل الموعد في كلفة نتيجة الوعد، ويتحدد أثر الإلزام في هذه الحالة، إما بتنفيذ الوعد، وإما بالتعويض عن الضرر الواقع فعلاً بسبب عدم الوفاء بالوعد بلا عذر⁽⁴⁵⁾.

ثانياً: أثر الوعد في عقد المشاركة المتناقصة

إن المشاركة المتناقصة هي شركة مع وعد من الطرفين: وعد من الممول بأن يبيع حصته لشريكه، وفق الشروط التي يتفقان عليها، فهذه الاتفاقية (المشاركة المتناقصة) تتألف بحسب المفاهمة الممهدة لإبرامها من مجموعة عقود ووعود والتزامات مترابطة متتالية، تهدف إلى أداء وظيفة تمويلية محددة، تواضع طرفها على تركيبها على الشكل التالي⁽⁴⁶⁾:

- الاشتراك في شراء مشروع أو عقار ذي ريع، أو غير ذلك من الأصول المنتجة.
- يتواعد الطرفان على الاشتراك في تأجير ما اشترى لطرف ثالث، بحيث يستحق كل واحد منهما ما يقابل حصته في الملك من بدل الإجارة، أو على تأجير الطرف (الممول) حصته للعميل (الشريك).
- كما يتواعد الطرفان على أن يقوم الشريك (العميل) بشراء حصة شريكه (الممول) تدريجياً، وفق جدول زمني يتفقان عليه، وكلما زادت حصة العميل في المشروع أو العقار، نقصت حصة الممول بقدر تلك الزيادة، ونقص

(45) "الوفاء بالوعد، والمرابحة للأمر بالشراء". مجلة مجمع الفقه الإسلامي. جدة: مجمع الفقه الإسلامي. (العدد 5). ج2. ص754، و965.

(46) حماد. (1428هـ/2007م). في فقه المعاملات المالية. المرجع السابق. ص83.

تبعاً لها نسبة نصيبه في بدل الإجارة، إلى أن يتم خروج الممول، ويحل العميل محله بالكامل في حصته من ذلك الملك المشترك، ولا مانع من ذلك شرعاً؛ لأنه يبيع ما يملكه. وقد عقد ابن عابدين مطلباً فيما إذا اشترى أحد الشريكين جميع الدار المشتركة من شريكه، قال: ((... علم من هذا ما يقع كثيراً، وهو أن أحد الشريكين في دار ونحوها يشتري من شريكه جميع الدار بثمان معلوم فإنه يصح على الأصح بحصة شريكه من الثمن وهي حادثة الفتوى فلتُحفظ، وأصرح من ذلك ما سيأتي في المراجعة في مسألة شراء رب المال من المضاربة مع أن الكل ماله))⁽⁴⁷⁾. وجاء في "المغني": ((وإن اشترى أحد الشريكين حصة شريكه جاز؛ لأنه يشتري ملك غيره))⁽⁴⁸⁾. وجاء في "مجموع فتاوى ابن تيمية": ((يجوز بيع المشاع باتفاق المسلمين كما مضت بذلك سنة رسول الله صلى الله عليه وسلم))⁽⁴⁹⁾.

- يؤجر الطرفان الملك المشترك إلى طرف ثالث بعقد إجارة مستقل، ويقتسمان الأجرة بحسب حصة كل منهما في الملك، أو يؤجر الطرف (الممول) حصته للعميل ببديل معلوم في عقد إجارة منفرد، ولا حرج شرعاً في تحديد الأجرة عند المواعدة على تأجير الممول حصته للعميل؛ لأن المواعدة الملزمة على التأجير في المستقبل ببديل محدد معلوم هي في حقيقتها إجارة مضافة إلى المستقبل⁽⁵⁰⁾، وإن صيغت بلفظ الوعد، والإجارة المضافة إلى المستقبل جائزة شرعاً في قول جماهير الفقهاء - الحنفية، والمالكية، والحنابلة -⁽⁵¹⁾. جاء في بدائع

(47) ابن عابدين. (1412هـ/1992م). رد المحتار. المرجع السابق. ج. 5. ص. 57.

(48) ابن قدامة. (1388هـ/1968م). المغني. المرجع السابق. ج. 7. ص. 167.

(49) ابن تيمية. (1416هـ/1995م). الفتاوى الكبرى. المرجع السابق. ج. 29. ص. 233.

(50) والمثال للإجارة المضافة إلى المستقبل: ((لو استؤجرت دارٌ بكذا نُفُودًا لكذا مُدَّةً اعتباراً من أول الشهر الفلانيّ الآتي تنعقد حال كونها إجارة)).

وانظر: حيدر. (1411هـ/1991م). درر الحكام. المرجع السابق. المادة (408). ج. 1. ص. 444.

(51) لم يجز الشافعية إضافة إجارة العين للمستقبل كالبيع، جاء في "مغني المحتاج": ((ولا يجوز ولا يصح إجارة عين لمنفعة مستقبل، كإجارة الدار

السنة المستقبلية أو سنة أولها من الغد)). انظر: الشرييني. (1315هـ/1994م). مغني المحتاج. المرجع السابق. ج. 3. ص. 451.

الصنائع: ((...جوزنا الإضافة في الإجارة دون البيع للضرورة؛ لأن المنفعة حال وجودها لا يمكن إنشاء العقد عليها، فدعت الضرورة إلى الإضافة...))⁽⁵²⁾.

- تبرم بين الشريك الممول والشريك العميل عقود متتالية لحصص الممول، وفقا للآجال المتواعد عليها مسبقا، حتى يتم انتقال ملكية نصيب الممول بكامله إلى العميل بموجب تلك العقود المتعددة المتعاقبة المنفصلة عن بعضها في الإنشاء والتنفيذ والآجال.

وفي صدد الحديث عن المشاركة المتناقصة ينبغي التأكيد على أمرين، يتجلى من خلالهما أثر الوعد الذي يشكل حجر الأساس لهذه المعاملة الحديثة:

أولاً: تعتبر المفاهمة والمواطأة السابقة على إبرام اتفاقية المشاركة المتناقصة مرتبطة بها وجزءاً منها، وذلك لعدم قابلية تلك المنظومة المترابطة للتفكيك والتجزؤ، باعتبارها موضوعاً لأداء وظيفة تمويلية مستحدثة محددة مقصودة من طرفها.

ثانياً: وكذلك تعتبر الوعود التي تشتمل عليها تلك الاتفاقية ملزمة للطرفين، إذ لو لم تكن كذلك لكان القصد والهدف من إبرامها احتمالياً غير مؤكد التحقيق، ولما أقدم عليها الطرفان، لأنها في حقيقتها وبالنظر إلى الغرض منها عبارة عن معاهدة واحدة مركبة من أجزاء مترابطة وفقاً لشروط تحكمها كمعاملة واحدة، وهذا ما جرى عليه العرف التجاري والبنكي المعاصر.

(52) الكاساني. (1406هـ/1986م). بدائع الصنائع. المرجع السابق. ج4. ص203. وانظر أيضاً: حيدر. (1411هـ/1991م). درر الحكام. المرجع السابق. المادة (408). ج1. ص444.

وبناء على ما تقدم، نرى أنه يجوز اقتران صيغة المشاركة بالوعد، فمن حق المتعاقدين أن يتواعدا، كما من حقهما أن يضعوا شروطاً تناسب العقد، وتلائم مقصوده، ولا تصادم نص كتاب أو سنة أو قياساً أو عرفاً معتبراً. وبالنظر في هذا الوعد نجده من جنس الوعد الذي لا يخالف أمر الله ولا أمر رسوله مبنى ومعنى، كما أنه لا ينافي مقتضى العقد ولا مقصوده، ولذلك فإن اقتران العقد به يعد أمراً مشروعاً جائزاً، لا محذور فيه البتة، ولطرفي العقد أو أحدهما مصلحة ومنفعة في اقتران العقد به، وما كان كذلك من الوعد والشرط، فلا محذور في اقتران العقود به، سواء اشترطه العميل أم اشترطه البنك⁽⁵³⁾.

فالوعد الصادر من الشريك بتمليك شريكه حصته في المستقبل، لا يمس جوهر التعاقد، بل إن فيه مصلحة للطرفين، ولا يخل بنظام الشركة ومسيرتها، ولا يعكر وجودها إذا قام الشريك الآخر بشراء حصة شريكه كلها أو بعضها، في عقود متلاحقة أو متتابعة.

المطلب الثالث: الإشكالات الواردة على وجود الوعد في المشاركة المتناقضة

وقد ورد على وجود الوعد في المشاركة المتناقضة إشكالان: مشابهة بيع الوفاء، ومشابهة بيع العينة.

الإشكال الأول: مشابهة بيع الوفاء

قبل بيان الشبه، أو عدمه لا بد من بيان صورة بيع الوفاء عند الفقهاء.

(53) سانو، قطب مصطفى. "المشاركة المتناقضة وضوابطها الشرعية". مجمع الفقه الإسلامي. الدورة الخامسة عشرة 6-11/3/2004. بحث

غير منشور. وانظر أيضاً: الكواملة. (1428هـ/2008م). المشاركة المتناقضة. المرجع السابق. ص109.

الوفاء لغة: ضد الغدر⁽⁵⁴⁾، ويقصد ببيع الوفاء اصطلاحاً أن يبيع شيئاً بكذا أو بدين عليه، بشرط أن البائع متى رد الثمن إلى المشتري أو أدى الدين الذي عليه يرد له العين المبيعة وفاء، ولقد اشتهر هذا البيع في الفقه الحنفي، ويسميه المالكية ((بيع الثنيا)) والشافعية ((بيع العهدة))، والحنابلة ((بيع الأمانة)) ويسمى أيضاً ((بيع الطاعة)) و ((بيع الجائزة))، ويسمى في بعض كتب الحنفية ((بيع المعاملة)). ولقد ذهب المالكية والحنابلة والمتقدمون من الحنفية والشافعية إلى أنه فاسد؛ لأن البيع غير مقصود، والمقصود هو الربا المحرم، وذهب بعض المتأخرين من الحنفية والشافعية إلى جوازه، بحجة أن هذا الشرط سببه الفرار من الربا، ومنهم من اعتبره رهناً، بحجة أن العبرة في العقود للمعاني لا للألفاظ والمباني⁽⁵⁵⁾.

وقد شبه بعض الباحثين المشاركة المتناقضة ببيع الوفاء؛ ذلك أن هناك توافقاً على أنه متى ما رد له رأس ماله في الشركة فإنه يرد إليه المبيع، فيتنازل عن نصيبه متى ما رد إليه العميل رأس ماله، ويستفيد من حصته إلى حين تسديد الشريك الآخر ثمن تلك الحصصة⁽⁵⁶⁾، فتكون بذلك مثل بيع الوفاء، والذي ينتفع فيه البائع (المقرض) بالسلعة إلى أن يرد المشتري (المقرض) الثمن.

(54) الفيروزآبادي. (1426هـ/2005م). القاموس المحيط. المرجع السابق. ص1343.

(55) وزارة الأوقاف والشؤون الإسلامية. (1404هـ). الموسوعة الفقهية. المرجع السابق. ج9. ص262. الزحيلي، وهبة. (1405هـ/1985م). الفقه الإسلامي وأدلته. المرجع السابق. ج7. ص5203.

(56) الصاوي. (1410هـ/1990م). مشكلة الاستثمار. المرجع السابق. ص625. شبير. (1427هـ/2007م). المعاملات المالية. المرجع السابق. ص336. مشهور. (1411هـ/1991م). الاستثمار. المرجع السابق. ص289. الزحيلي. (1423هـ/2002م). المعاملات المالية المعاصرة. المرجع السابق. ص436.

المناقشة: يمكن الرد على هذا الإشكال من وجهين⁽⁵⁷⁾:

1. أن البائع في البيع الوفاء لم يقصد بيعاً في الحقيقة ولم تتوجه إرادته إلى ذلك، وإنما عقد قرضاً بضمان الشيء المبيع، وأمكن المشتري من فائدة المبيع وثماره مقابل انتفاعه بالقرض فهو قرض مستتر في صورة بيع صوري غير مقصود، أما في المشاركة المتناقصة، فقد توجهت الإيرادات حقيقة إلى الاستثمار، فالبنك يأخذ أموال الناس ليستثمرها في مشاركات شرعية، لا ليقرضها قروضاً ربوية.
2. أنه يوجد شرط في (بيع الوفاء) يلتزم المشتري بمقتضاه أن يرد المبيع عند رد الثمن، وعلى ذلك فإنه يكون مالكا وغير مالك، فهو مالك بمقتضى العقد، وغير مالك بمقتضى الشرط الذي يلزمه برد المبيع إلى المدين عند سداد الدين. بينما في المشاركة المتناقصة لا يوجد شرط، وإنما هو وعد غير ملزم في هذه الحالة، والشريك مالك لنصيبه دون شرط يقضي بخلاف ذلك.

الإشكال الثاني: مشابهة بيع العينة

1. تعريف بيع العينة

(57) المرجع نفسه.

قال الشريبي: ((وبيع العينة، وهي بكسر المهملة وإسكان التَّحْيِيَّةِ وبالنون أن يبيعه عينا بثمن كثير مؤجل ويسلمها له ثم يشتريها منه بنقد يسير ليبقى الكثير في ذمته))⁽⁵⁸⁾ وقال ابن عبد البر: ((وأما بيع العينة، معناه: أنه تحيل في بيع دارهم بدراهم أكثر منها إلى أجل بينهما سلعة محللة))⁽⁵⁹⁾.

2. حكم بيع العينة

اختلف الفقهاء في حكم بيع العينة إلى قولين:

القول الأول: أن البيع لا يجوز وهو باطل. وبه قال الحنفية، والحنابلة في المذهب، والمالكية⁽⁶⁰⁾.

واستدل أصحاب هذا القول بأدلة، منها:

- بما روى غندر عن شعبة، عن أبي إسحاق السبيعي، عن امرأته العالية: عن عائشة رضي الله تعالى عنها: أنها سمعتها وقد قالت لها امرأة كانت أم ولد لزيد بن أرقم: "يا أم المؤمنين، إني بعت من زيد عبداً إلى العطاء بثمانمائة، فاحتاج إلى ثمنه فاشترته منه قبل محل الأجل بستمائة، فقالت عائشة رضي الله تعالى عنها: بثمنا شريت، وبثمنا اشتريت، أبلغني زيدا أنه قد أبطل جهاده مع رسول الله صلى الله عليه وسلم إن لم يتب، قالت: أرأيت إن تركت وأخذت الستمائة دينار؟ قالت: نعم. فمن جاءه موعظة من ربه فاتهى فله

(58) الشريبي. (1415هـ/1994م). **مغني المحتاج**. المرجع السابق. ج2. ص396.

(59) ابن عبد البر، أبو عمر يوسف بن عبد الله بن محمد. (1400هـ/1980م). **الكافي في فقه أهل المدينة**. الرياض: مكتبة الرياض الحديثة. ج2. ص672.

(60) ابن عابدين. (1412هـ/1992م). **رد المحتار**. المرجع السابق. ج5. ص325. ابن قدامة. (1388هـ/1968م). **المغني**. المرجع السابق. ج4. ص133. ابن عبد البر. (1400هـ/1980م). **الكافي**. المرجع السابق. ج2. ص672.

ما سلف⁽⁶¹⁾. ووجه الدلالة: أن عائشة رضي الله عنها جعلت جزاء مباشرة هذا العقد بطلان الجهاد مع رسول الله صلى الله عليه وسلم، وأجزية الأعمال لا تعلم بالرأي، فكان مسموعاً من رسول الله صلى الله عليه وسلم، والعقد الصحيح لا يجازى ذلك، فكان عقداً فاسداً. قال الشوكاني: ((وفيه دليل على أنه لا يجوز لمن باع شيئاً بثمن نسيئة أن يشتريه من المشتريء بدون ذلك الثمن نقداً قبل قبض الثمن الأول، أما إذا كان المقصود التَّحْيِيلُ لأخذ النقد في الحال ورد أكثر منه بعد أيام فلا شك أن ذلك من الربا المحرم الذي لا ينفع في تحليله الحيل الباطلة))⁽⁶²⁾.

- التجارة في كلام الله ورسوله، ولغة العرب، وعرف الناس إنما تنصرف إلى البياعات المقصودة التي يقصد فيها الثمن، والمثمن. وأما ما تواطأ فيه على الربا المحض، ثم أظهرها بيعة غير مقصود لهما البتة، يتوسلان به إلى أن يعطيه مائة حالة بمائة وعشرين مؤجلة، فهذا ليس من التجارة المأذون فيها، بل من الربا المنهى عنه⁽⁶³⁾.

(61) الحديث في إسناده العَالِيَةُ بِنْتُ أَبِي قَعْقَعٍ، وقد رُوِيَ عن الشافعي أنه لا يصح وقَرَّرَ كلامه ابن كثير في إرشاده. انظر: الشوكاني. (1413هـ/1993م).

نيل الأوطار. المرجع السابق. ج 5. ص 244.

(62) المرجع نفسه.

(63) ابن قيم الجوزية، محمد بن أبي بكر بن أيوب بن سعد شمس الدين. (د.ت.). إغاثة اللهفان من مصايد الشيطان. محمد حامد الفقي

(محقق). الرياض: مكتبة المعارف. ج 2. ص 104.

القول الثاني: أن البيع جائز لا شيء فيه، وبه قال أبو يوسف من الحنفية، والشافعية، وهو وجه عند الحنابلة إذا لم يقصد التحيل إلى الربا⁽⁶⁴⁾. واستدلوا بأدلة، منها:

- قوله تعالى: ﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾⁽⁶⁵⁾. وجه الدلالة: أن الله تعالى أحل لنا البيع الصحيح المتضمن للإيجاب والقبول، فالبيع حلال بنص القرآن، ولم يأت تفصيل تحريمهما في كتاب الله ولا سنة رسوله صلى الله عليه وسلم، وقد توافر الإيجاب والقبول الصحيحان، ولا عبرة في إبطال العقد بالنية التي لم يصرح بها، فيكون هذا البيع في ظاهره صحيحا، ولم يكن لنا طريق إلى تمييز مقاصد الناس ولا إلى تفصيل قصودهم وأغراضهم، والعبرة بعموم الحل، ولا مخرج للحل إلى التحريم⁽⁶⁶⁾.

المناقشة: أن عموم هذه الآية مخصوصة بما ثبت من أدلة في تحريم بيع العينة، هذا إذا سلم بالعموم، فإن الآية مطلقة. ثم إن البيع الذي أحله الله تعالى هو المتضمن للإيجاب والقبول الحقيقيين اللذين لا حيلة فيهما للتوسل للمحرم، وفي بيع العينة هناك تحيل، فكان الإيجاب والقبول صوريين.

(64) انظر: ابن عابدين. (1412هـ/1992م). رد المحتار. المرجع السابق. ج5. ص325. ابن قدامة. (1388هـ/1968م). المغني. المرجع السابق. ج4. ص133. النووي. (د.ت). المجموع. المرجع السابق. ج10. ص155.

(65) سورة البقرة 2 : 275.

(66) انظر: ابن قدامة. (1388هـ/1968م). المغني. المرجع السابق. ج4. ص133. النووي. (د.ت). المجموع. المرجع السابق. ج10. ص155.

- بما رُوِيَ عن أَبِي سَعِيدٍ الْخَدْرِيِّ وَأَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اسْتَعْمَلَ رَجُلًا عَلَى خَيْبَرِ فَجَاءَهُمْ بَتَمْرٍ جَنِيْبٍ⁽⁶⁷⁾. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَتَمَّرُ خَيْبَرَ هَكَذَا. فَقَالَ لَا وَاللَّهِ يَا رَسُولَ اللَّهِ إِنَّا لَنَأْخُذُ الصَّاعَ بِالصَّاعَيْنِ وَالصَّاعَيْنِ بِالثَّلَاثَةِ. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا تَفْعَلْ بَعِ الْجَمِيعَ بِالدَّرَاهِمِ ثُمَّ ابْتِعْ بِالدَّرَاهِمِ خَبِيْبًا⁽⁶⁸⁾. وَجِهَ الدَّلَالَةُ: أَنَّهُ يَدُلُّ بِعَمُومِهِ فِي قَوْلِهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "بِعِ الْجَمْعِ" عَلَى صِحَّةِ بَيْعِ الْعَيْنَةِ وَجَوَازِهِ؛ لِأَنَّ مَنْ اشْتَرَى مِنْهُ التَّمْرَ الرَّدِيءَ هُوَ نَفْسٌ مِنْ بَاعِ عَلَيْهِ التَّمْرَ الطَّيِّبَ، فَرَجَعَتْ دَرَاهِمُهُ إِلَيْهِ، وَلَمْ يَفْصَلْ بَيْنَ أَنْ يَشْتَرِيَ مِنَ الْمَشْتَرَى أَوْ مِنْ غَيْرِهِ. فَقَدْ أَرَشَدَهُ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى الْخِلَاصِ مِنَ الرِّبَا بِذَلِكَ وَإِنْ كَانَ الْمَقْصُودُ تَحْصِيلَ الْجَنِيْبِ بِالْجَمْعِ⁽⁶⁹⁾.

المناقشة: أن الاستدلال بهذه الحديث على جواز بيع العينة وصحتها، فهو عموم غير مسلم لأن اللفظ غير عام، بل هو لفظ مطلق، والأمر المطلق إنما يقتضي البيع الصحيح، لأن البيع الباطل غير مأذون فيه. وعلى اعتبار صحة القول بالعموم فإنه مخصوص بالأدلة الصحيحة على تحريم بيع العينة.

- القياس كما لو باعه من غير البائع بأقل من الثمن أو منه بمثل الثمن الأول، أو أكثر بجامع قيام الملك في كل⁽⁷⁰⁾.

(67) التمر الجنيب هو الطيب، وقيل هو الصلب، وقيل هو الذي منه حشفه ورديته، وقيل هو الذي لا يختلط بغيره. انظر: الصنعاني. (د.ت). سبل السلام. القاهرة: دار الحديث. ج2. ص53.

(68) المرجع نفسه. ج2. ص52.

(69) انظر: النووي. (د.ت). المجموع. المرجع السابق. ج10. ص155. الشوكاني. (1413هـ/1993م). نيل الأوطار. المرجع السابق. ج5. ص246.

(70) الرافعي. (د.ت). فتح العزيز. المرجع السابق. ج8. ص232. ابن قدامة. (1388هـ/1968م). المغني. المرجع السابق. ج4. ص133.

المنقاشة: وهذا قياس مع الفارق؛ لأن ما ذكره لا يتحقق فيه معنى الملكية إلا مع حصول التحيل، وأن قيام الملك لا يبيح المحظور.

الرأي الراجح: الرأي الراجح في هذه المسألة هو القول بتحريم بيع العينة، وذلك للأمور التالية:

- أن أدلة القائلين بالتحريم صحيحة ثبوتاً وصريحة دلالة على تحريم بيع العينة، وأن أدلة القائلين بالجواز لا تخلو من الضعف كما تقدم.
- أن حقيقة بيع العينة قرض في صورة بيع أريد به التوسل إلى حل الربا، وأن السلعة وسيلة للتوسل للقرض المؤدي للربا.
- "فإنه من المعلوم أن العينة من يستعملها إنما يسميها بيعاً على حقيقة الربا الصريح قبل العقد عدا إلى المعاملة، وصورتها إلى التبايع الذي لا قصد لهما فيه البتة، وإنما هو حيلة ومكر وخديعة لله تعالى. فمن أسهل الحيل على من أراد فعله أن يعطيه مثلاً ألفاً إلا درهما باسم القرض ويبيعه خرقه تساوي درهما بخمسمائة درهم، وقوله صلى الله عليه وآله وسلم : ((إنما الأعمال بالنيات)) أصل في إبطال الحيل، فإن من أراد أن يعامله معاملة يعطيه فيها ألفاً بألف وخمسمائة إنما نوى بالإقراض تحصيل الربح الزائد الذي أظهر أنه ثمن الثوب، فهو في الحقيقة أعطاه ألفاً حالة بألف وخمسمائة مؤجلة وجعل صورة القرض وصورة البيع محللاً لهذا المحرم. ومعلوم أن هذا لا يرفع التحريم، ولا يرفع المفسدة التي حرم الربا لأجلها بل يزيد

قوة وتأكيدها من وجوه عديدة منها: أنه يقدم على مطالبة الغريم المحتاج من جهة السلطان والحكام إقداماً لا يفعله المرابي، لأنه واثق بصورة العقد الذي تحيل به⁽⁷¹⁾.

هذا، وقد أورد بعض الباحثين أن المشاركة المتناقضة ما هي إلا نوع من بيع العينة المنهي عنها شرعاً، وذلك لأن هناك تواطؤاً على أن يعيد المشتري بيع الأصل الذي اشتراه إلى نفس البائع المالك الأصلي، وهذه نفس حالة عقد المشاركة المتناقضة فتكون من بيع العينة، إضافة إلى أن المقصود من هذا العقد التمويل والقرض من جهات متخصصة في منح الائتمان، عن طريق شراء السلع ثم إعادة بيعها بالأجل، فتكون من باب (بيعتين في بيعة)، و (بيع السلف)، فتؤول إلى الربا⁽⁷²⁾.

المناقشة: يمكن أن نجيب على هذا الإشكال كالتالي⁽⁷³⁾:

1. صيغة المشاركة المتناقضة عبارة عن صيغة تمويل، بمعنى أن أحد طرفي المشاركة لا غرض له في الاستمرار في الشركة، بل غرضه تمويل الطرف الآخر، للأصل الذي هو محل الشركة بطريقة مشروعة، بينما في بيع العينة يتم الشراء من الطرف الممول نسيئة، ثم إعادة العين عليه.

(71) الشوكاني. (1413هـ/1993م). نيل الأوطار. المرجع السابق. ج.5. ص.245.

(72) فهمي، حسين كامل. "عقد المشاركة المتناقضة". مجلة مجمع الفقه الإسلامي. العدد الثالث عشر. ج.2. ص.639، 667.

(73) العمراني. (1427هـ/2006م). العقود المالية المركبة. المرجع السابق. ص.247. الكواملة. (1428هـ/2008م). المشاركة المتناقضة.

المرجع السابق. ص.28.

2. أنه لا يسلم أن المشاركة المتناقضة من بيع العينة؛ لأن البنك والعميل يشتريان أصلا من طرف ثالث، يشتركان فيه، وليس البنك يشتري من العميل، ثم يعيد البيع عليه بالأجل. بمعنى أن بيع العينة في أغلب أحواله المحرمة، يُبرم بين طرفين، بينما تقع المشاركة المتناقضة بين عدة أطراف.
3. أنه يسلم احتمال أن تؤول صيغة من صيغ المشاركة المتناقضة إلى العينة، مثل أن يشتري البنك من عميله بالنقد، ثم يعيد عليه البيع بالأجل، ولكن ليس هذا هو التطبيق المنتشر في البنوك الإسلامية؛ لأن البنك والعميل يشتريان أصلا من طرف ثالث، يشتركان فيه، وليس البنك يشتري من العميل، ثم يعيد البيع عليه بالأجل.
4. ويمكن أن يناقش أيضا بأنه يسلم قوله بالتحريم في حالة اشتراط عقد في عقد، أو الوعد الملزم بثمان معين، ولكن لا يسلم في حالة الوعد المزم بسعر السوق أو الوعد غير الملزم.

وهكذا يتضح أن قياس المشاركة المتناقضة على بيع العينة وبيع الوفاء، يكون قياسا مع الفارق، وبذلك تكون المشاركة المتناقضة مشروعة إذا التزم فيها العاقدان بالأحكام العامة للشركات وروعت فيها الضوابط الآتية: (74)

(74) الزحيلي. (1423هـ/2002م). المعاملات المالية المعاصرة. المرجع السابق. ص436. أبو عدة. "المشارك المتناقضة وضوابطها الشرعية". مجمع الفقه الإسلامي. المرجع السابق. ص26-29. النشمي. "المشاركة المتناقضة وضوابطها الشرعية". مجلة مجمع الفقه الإسلامي. المرجع السابق. ص16-23. وانظر أيضا: "قرار رقم 136 (15/2) بشأن المشاركة المتناقضة وضوابطها الشرعية"، <http://www.iifa-aifi.org/2146.html>، استعرض في 30/04/2020.

1. لا بد من أن تتوفر في المشاركة المتناقضة الشروط العامة في الشركة المعهودة المتفق عليها، وهي: أهلية كل من الشركاء للتوكيل والتوكّل؛ أن يكون رأس مال حاضراً فلا يجوز أن يكون غائباً أو ديناً؛ أن يكون مقدار الربح معلوماً ويكون جزءاً شائعاً في الجملة، كالنصف، أو الربع، ولا يجوز أن يكون معيناً.
2. أن لا يتضمن هذا العقد شرطاً يقضي برد الشريك إلى البنك كامل حصته في رأس المال، بالإضافة إلى ما يخصه من أرباح، لما في ذلك من شبهة القرض بفائدة ربوية.
3. أن لا تكون المشاركة المتناقضة مجرد عملية تمويل بقرض. وبيان ذلك، أنه لا بد من وجود المشاركة الفعلية من قبل طرفي المشاركة، وأن يتحمل الطرفان عبء الخسارة، كما يحق لهما المشاركة في الربح المتفق عليه في أثناء المشاركة.
4. أن يمتلك الطرف الممول - وهو البنك على الأغلب - حصته في المشاركة ملكاً تاماً، وأن يتمتع بحقه الكامل في الإدارة والتصرف، ومراقبة الأداء ومتابعته.
5. يجوز أن يقدم البنك وعداً لشريكه بأن يبيع له حصته في الشركة إذا قام بتسديد قيمتها، ويجب أن يتم البيع بعد ذلك باعتباره عملاً مستقلاً لا صلة له بعقد الشركة.
6. إذا تم الاتفاق على شراء الشريك حصة المؤسسة المالية الإسلامية تدريجياً فيجب تقدير الحصة بقيمتها السوقية يوم البيع، وليس بقيمة المشاركة حذراً من الغبن والضرر الذي قد يقع فيه أحد الطرفين، ومثل ذلك لو رغب الطرفان بفض الشركة قبل أوانها، فإن الشريك يشتري نصيب المؤسسة بالقيمة السوقية.
7. عدم اشتراط تحمّل أحد الطرفين مصروفات التأمين أو الصيانة وسائر المصروفات، بل تحمّل على وعاء المشاركة بقدر الحصص.

8. الفصل بين العقود والالتزامات المتعلقة بالمشاركة.
9. يجب أن يقدم كل من الشريكين حصة في موجودات الشركة، سواء كانت مبالغ نقدية أو أعياناً يتم تقويمها مثل الأرض التي سيقام البناء عليها، أو المعدات التي يتطلبها نشاط الشركة. وتعتمد حصص الملكية الخاصة لكل طرف لتحميل الخسارة إن وقعت، وذلك في كل فترة بحسب تناقص حصة أحد الشريكين وتزايد حصة الشريك الآخر.
10. يجب تحديد النسب المستحقة لكل من أطراف الشركة (المؤسسة والعميل) في أرباح أو عوائد الشركة، ويجوز الاتفاق على النسب بصورة مختلفة عن حصص الملكية، ويجوز استبقاء نسب الأرباح ولو تغيرت حصص الملكية، ويجوز الاتفاق بين الطرفين على تغييرها تبعاً لتغير حصص الملكية دون الإخلال بمبدأ تحميل الخسارة بنسبة حصص الملكية.
11. يجوز إصدار أحد الشريكين وعداً ملزماً يحق بموجبه لشريكه تملك حصته تدريجياً من خلال عقد بيع عند الشراء وبحسب القيمة السوقية في كل حين أو بالقيمة التي يتفق عليها عند الشراء، ولا يجوز اشتراط البيع بالقيمة الاسمية.
12. تجوز المشاركة المتناقصة مع إعطاء المؤسسة للشريك حق الخيار في تملك العين في أي وقت يشاء على أن يسدد التزاماته كاملة.
13. لا تنتقل الملكية من المؤسسة المالية الإسلامية إلى الشريك إلا بعقد مستقل بعد الوفاء بالتزاماته، ويكون البيع بسعر السوق.

خاتمة:

تشتمل الخاتمة على نتائج البحث والتوصيات

أولاً: النتائج

يمكن ذكر أبرز نتائج هذا البحث فيما يأتي:

1. إن طبيعة عقد المشاركة المتناقصة تقوم على تداخل بين مجموعة عقود يأخذ بعضها برقاب بعض، فهناك عقد شركة يقوم بين الشريك وطالب التمويل في مشروع معين، وهناك وعد من البنك يلتزم فيه ببيع أجزاء من حصته بشكل تدريجي بقدر المال الذي دفعه لإقامة المشروع، على أساس نسبة من الدخل الذي يتحقق من المشروع
2. إن في الوعد الصادر من الشريك بتمليك شريكه حصته في المستقبل مصلحة للطرفين، ولا يخل بنظام الشركة ومسيرتها
3. أنه يجوز اقتران صيغة المشاركة بالوعد، فمن حق المتعاقدين أن يتواعدا، كما من حقهما أن يضعوا شروطاً تناسب العقد، وتلائم مقصوده، ولا تصادم نص كتاب أو سنة أو قياساً أو عرفاً معتبراً.

ثانياً: التوصيات

يوصي الباحثان بما يأتي:

1. التوسع في استخدام عقد المشاركة بصفة عامة والمشاركة المتناقصة بصفة خاصة لدى البنوك الإسلامية، والتقليل من الاعتماد على عقود المداينات لما فيها من مساعدة المستثمرين، وأصحاب الحرف، والمهارات

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- الكواملة، نور الدين عبد الكريم. (1428هـ/2008م). المشاركة المتناقضة وتطبيقاتها المعاصرة في الفقه الإسلامي. الأردن: دار النفائس.
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