

Muhammad bin Ibrahim: Shariah issues and Malaysia's Islamic financial sector

Speech by Mr Muhammad bin Ibrahim, Deputy Governor of the Central Bank of Malaysia (Bank Negara Malaysia), at the "Muzakarah Cendekiawan Syariah Nusantara Ke-9", Jakarta, 10 June 2015.

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I would like to express my gratitude to Allah Almighty for His grace that the 9th Regional Shari'ah Scholar Dialogue could be held here in the city of Jakarta. This is the second time the Dialogue is held in Jakarta since 2009.

I would like to congratulate the organizers; Universitas Islam Negeri Syarif Hidayatullah (UIN) Jakarta and the International Shariah Research Academy for Islamic Finance or ISRA for their initiatives in organising this Dialogue.

This Dialogue was initiated in 2006 by Bank Negara Malaysia and subsequently led by ISRA. Our sole intention has always been to promote mutual understanding and close collaboration among Islamic scholars in this region on issues relating to fiqh muamalat and Islamic finance. Through this platform, the vision is to generate new ideas and views among scholars in an atmosphere of tolerance and mutual respect, irrespective of our different cultures, economic and political structures.

Today, I would like to share my views on the following three areas: -

- i. Strengthening the role of Shariah scholars;
- ii. Fostering the dynamism of *ijtihad* in a contemporary setting; and
- iii. Cultivating the spirit of mutual respect within the diversity of Shariah interpretations.

Strengthening the role of Shariah scholars

The Islamic financial landscape today has undergone various transformations and progress over the last 10 years. This transformation can be testified in the increase of global banking assets that had reached nearly USD1.5 trillion, total outstanding sukuk amounting to USD295 billion, Islamic fund assets amounting to USD76 billion as well as the takaful contributions of USD21 billion (Source: IFSB: 1H 2014). In addition, there has been a marked increase in the participation from non-Muslim jurisdictions in Islamic finance, particularly in sukuk issuances, reflecting the increasingly positive reception of Islamic finance among the global community. The sukuk instrument, in particular, is among the most innovative instruments and favoured by governments and multinational corporations.

In response to these developments, the role of and the expectation on Shariah scholars will be more challenging in finding solutions to emerging new Shariah issues that require immediate responses from the Shariah fraternity. To me, changes in the Islamic financial landscape should be viewed as a golden opportunity for the Shariah experts to demonstrate the dynamism of the Islamic religion as perpetually modern and evolving through time. Therefore, it is my hope that the role of the Shariah scholars could be further enhanced and not confined solely to only ensuring and monitoring the Shariah compliance aspects.

In relation to this, I am also of the opinion that researches and thorough deliberations on Shariah need to consider other fields of disciplines in order for the *ijtihad* (reasoning) or Shariah decisions to be comprehensive, inclusive and practical. This will become increasingly important when it involves strategies and positioning of the "*ummah*" in the economic sector. Shariah assessments that include input and findings of multiple disciplines as well as variations of insights will provide more added values to a particular Shariah research. This effort can be implemented through active involvement of professionals in the

process of researching Shariah issues. I am confident that through this approach, we will be able to formulate a collective *ijtihad* that is comprehensive, in comparison to *ijtihad* that is peripheral and exclusive.

In the Malaysian context, we have decided to encourage the combined expertise and experience between Shariah members and professionals through the Shariah committees of Islamic financial institutions. In fact, we also encourage qualified Shariah scholars to be appointed as members of Board of Directors at Islamic financial institutions, specifically to form a “bridge” or point of connection between the Board and the Shariah Committee members, and to allow them to gain greater exposure to the operational situation in the management of Islamic financial institutions. The process of knowledge sharing and discussions on Shariah as well as on other realms of Islamic knowledge among the Board members of a particular financial institution will enrich the justifications of a particular deliberation before a decision is made.

Another key aspect is the importance of Shariah scholars to thoroughly understand the impact of *ijtihad* on the growth of the Islamic finance industry and society at large. Every *ijtihad* should always be geared towards fostering harmony and not widening the differential gaps. If a gap exists even in the matter of perception, it may raise doubt and reduce the effectiveness of a Shariah decision. In this context, the majority of the Shariah Committee members in the Islamic financial institutions in Malaysia are currently undergoing the Shariah Leadership Education (SLE) programme that commenced early this year. This programme aims to provide exposure to the Shariah members on the fundamentals of finance and to foster greater understanding on their roles and responsibilities in shaping the direction of Islamic finance in Malaysia. The objective is also to ensure that all operational, legal and Shariah aspects are taken into consideration before any Shariah decision is made.

Aspect of Ijtihad in a contemporary setting

The second point that I would like to share is on the aspect of *ijtihad* in a contemporary setting. In line with the maturity of the Islamic financial industry, issues relating to Shariah have also becoming increasingly complex and challenging. Fundamentally, the *ijtihad* formed by the Shariah experts need to be based on the rules and principles of Islamic law. At the same time, the Shariah Committee members need to also examine and understand the contemporary environment that is constantly changing especially in the field of communication technology.

I would like to cite the following legal maxim:

الحكم على الشيء فرع عن تصوره

“*al-hukmu `ala al-syai`, far `un `an tasawwurihi*”

which means “the law on a matter depends on the perspective on the matter.”

لا يتكرّر تغير الأحكام بتغير الأزمان

“*la yunkar taghoi yuru al-ahkam bi taghoi yuri al-azman*”

states that “the law may change over time, place and background.” The application of this method is more evident in matters relating to *ijtihad* where the preservation of the benefit of the society is paramount. I always believe that when the contemporary environment and current reality are taken into consideration in any Shariah research, the *ijtihad* will be more substantive and mature while not compromising with the principles of Shariah.

It is also important to stress on the need to document the decisions and resolutions of the Shariah in a structured and orderly manner, supported by the richness of the debates in arriving to the decisions. This is integral as a starting point to facilitate discussions among Shariah experts, either domestically and internationally to encourage greater understanding and clarity of this treasure of knowledge. It can also serve to provide guidance and culture of knowledge that can be inherited by future generations. And more importantly, opinions and justifications for a particular deduction must be documented.

The spirit of mutual respect within the diversity of Shariah interpretations

The third point that I wish to share is fostering mutual respect in dealing with diverse Shariah interpretations. Differences in views and opinions among scholars are inherent in the area of Shariah, particularly in fiqh. In *ibadah* (worship), there are times when differences of opinions become a blessing as they provide us a way out of a difficulty in performing a particular act of worship. In addition, specific act of worship deals with our relationship with Allah. Even in the history of Islamic civilisation, the differences in opinions and views were the main reasons for the Islamic civilisation to progress rapidly.

In the context of the *muamalat*, differences of views would be more prevalent due to the diversity in the background, culture, and society that will inevitably result in various interpretations on a particular issue. On one hand, this could be deemed positive as it broadens the scope for Shariah scholars to make references and to understand the reasons and wherefores of the Shariah law. On the other hand, in the context of *muamalat*, it may lead to difficulties in managing transactions given that different interpretations may hamper parties to contract seamlessly. This is particularly evident in an Islamic financial system that is regulated by the central bank that usually places emphasis on standardising in its policies and market practices as to ensure consistency in compliance among the financial institutions.

In this regard, I would like to suggest the following points which could serve as basis for the solutions to the impediments that I have mentioned earlier: -

- i. This Dialogue should strive for all scholars to agree on important Shariah issues that can be used as basis and guidance for the industry practitioners. For example, all jurists in the region could agree that the *tawarruq* contract can be used in certain circumstances, and cannot be used in other circumstances;
- ii. This Dialogue could agree to disagree on specific Shariah issues, and not only taking respect those of different views, but also to defend the right of a jurisdiction in the region using arguments that may be seen controversial to others. Let's assume Malaysia allows the use of Bai 'Dayn in certain circumstances, but another jurisdiction disagrees with this decision. Nevertheless, the decision made by the Malaysian jurists to allow Bai 'Dayn is respected and in the spirit of Nusantara, will defend Malaysia's right to use such contract as it is made in accordance with the culture, tradition as well as existing economic system and legislation.
- iii. This Dialogue should explore a collaborative approach to develop a Shariah framework that is standardised at the regional level. Malaysia has embarked on this initiative with the development of 13 Shariah standards. It would be desirable if other countries in the region can also develop equivalent standards that could eventually be consolidated as Shariah standards that are applicable to the whole region and to even serve as benchmarks to other Muslim countries.

Conclusion

The rapid transformation of the Islamic financial sector will certainly affect the ascertainment of Islamic law on contemporary issues. This change requires the readiness of Shariah scholars to play a greater role and to interact with others from various disciplines to enrich and enhance *ijtihad* with new perspectives, against the backdrop of a contemporary

landscape. This innovation will only be generated through the openness of minds and a paradigm shift, based on sound understanding of the Shariah objectives. As the vanguard of Islamic finance, it is the responsibility of Shariah scholars to promote best practices in the Shariah fraternity through an inclusive and contemporary *ijtihad*, in line with the rapidly evolving operating environment.

Finally, I pray that the discussions will run smoothly and will achieve the intended objectives. On this note, I end my speech with the words of Imam Ibn Taymiyyah,:

“Surely among the main thrusts in a religion is the union of hearts, the unison of views and easing of disputes conducted in a good way.”

Wabillahi taufik wal hidayah. Assalamu’alaikum warahmatullahi wabarakatuh.

Thank you.