

SHARIAH COMPLIANT STRUCTURE OF BUSINESS ENTITIES

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ABSTRACT

The twentieth first century has witnessed resurgence in the observance of fundamental Islamic practices around the world. However, the fact cannot be denied that the current state of business under unbridled capitalism in the majority of cases in the Muslim world remains far from the Islamic ideal. This gap between the ideal and the reality is widening rapidly and has become a threat not only to the well being of the masses but also to the very peace and stability of Muslim societies. This paper try to describe the structure of shariah compliant business entities. It presents the basic understanding of the concept of business in Islam and its business characteristics. It also explore the classical as well as the modern form of shariah complaint business entities. This paper discussion shows that the principles of Islamic business ethics are not the result of a reaction to external problems; rather they are rooted in the teachings of the Qur'an and the practice of Prophet Muhammad and are a natural component of the Muslim way of thinking and intellect.

Keywords : *Shariah Compliant Business Entities, Musharakah, Mudharabah*

1. INTRODUCTION

We all agree that every human being needs capital to accomplish all their goals. Because of that, man will always try to get that capital. One of the ways is through working, while one of the ways to work is doing business.

Islam has give obligation to every Moslem, especially the one that has dependent, to work. Working is one of the main reasons that make possible for human to get wealth. To make possible for men to work, Allah has provided them with all kinds of facilities that can be use by them to get prosperity.

Islam advocates productive work and efficiency, and regards them as virtues. It encourages the physically capable to work and earn their living by being productive members of the society. In order to motivate the people to work hard and enjoy the fruits of their labor, Islam recognizes the profit motive, private ownership and the market. But the pursuit of wealth is subject to moral and ethical standards as it is guided by the criteria of Halal (permissible) and Haram (prohibited). What is beneficial and just, is permissible and what is harmful and unjust is prohibited. These criteria are drawn from Islamic Law (Shariah), which includes the Qur'an, Sunnah (the practice of Prophet Muhammad), and further opinions and deductions and logically applied principles from Islamic experts and adherents to the faith. Thus Shariah is at the root of Islamic business ethics.

Islamic business ethics recognizes profit as a motive for production, but production and profit making are not the end, but rather a means to achieve the objectives of Islamic law. The Shariah aims at achieving society's well being as defined by Maslahah (public interest). Public interest in Islam is regarded as seeking or promoting something which is useful, or removing something which is harmful. The objective of Islamic law is to protect and promote public interest by ensuring the preservation of the following five things: religion, life, reason, descendants, and property. If the nature of a business activity, product or service is such that it harms any of the above five, then it is considered to be harmful and unjust and is therefore prohibited, while a product, service or activity which protects and preserves the above five is permissible. Thus Islamic business ethics evaluates all the business decisions and activities on the criteria of public interest.

From the above explanation, Islamic business can be defined as all kinds of business activities that can not limited (in terms of quantity) the ownership of goods or services including the profits, but can be limited in terms of the way it get and the way it use (according to Shariah law).

2. BASIC PRINCIPLES OF BUSINESS IN ISLAM

According to Shariah law, wealth is defined as everything that can be used, legally, to Shariah law, such as business, debt, consumption, and gift. Based on this definition, we can say that everything, whether they are goods or services, that can be used by men in life is basically wealth.

Shariah law in Islam is a core value that becomes guidance, strategically as well as tactically, for business organization. With the guidance of Shariah, business is to get four main things (Yusanto and Widjajakusuma, 2002):

- target result: profit-material and benefit-nonmaterial,
- growth,
- continuity,
- Allah blessing.

Target Result: Profit-Material And Benefit-Nonmaterial.

The company goals should not just to gain highest profit, but also should have to get and give benefit nonmaterial to the internal company organization as well as external (environment), such as brotherhood working condition, social careness and so on.

What we mean by benefit is not just to give value to material, but also to give value to something nonmaterial. The management of the company can give benefit in terms of humanity action through working opportunity, social aid and other kind of aid. The values of noble attitude is a must that should appear in all kind of company activities, so it can create Islamic brotherhood relationship, not just functional or professional relationship. All those actions were meant as part of worship to Allah.

Growth

While profit material and benefit nonmaterial has been achieved according to company target, company will try to achieve growth or constant development from those profit as well as the benefit. The outcome of the company should always growing and developing

every year. This process of growing should be in line with the corridor of Shariah. Such as, in increasing the amount of production to be balance with market expansion, innovation development, to create new product and so on.

Continuity

The management of a company is not yet perfect if it's stop in just achieving target result and growth. That is why, it always need to increase the target result that has been achieved, so that it can maintain the continuity in long term. All activities to maintain that continuity should be in line with the corridor of Shariah.

Allah Blessing

The factor or orientation to gain Allah blessing is the highest contentment for every Muslim. If they achieved this, it remarks the accomplishment of two condition for every men action, which are the element of sincerity and the way or the process that in line with the corridor of Shariah. That is why all business managers should consistently put this orientation of blessingness, so that the achievement of all orientations will always be in line with Shariah that guarantee the blessingness from Allah.



Figure 1.1: Islamic Business Anatomy

Source: adaptation of Yusanto, M. Ismail and Widjajakusuma, M. Karebet. (2002).

Menggagas Bisnis Islami. Jakarta: Gema Insani Press.

3. BUSINESS CHARACTERISTICS

Islamic business that controlled by Shariah law are pretty much different with non Islamic business, in terms of the way to get wealth and how to use it. With secularism as foundation which consist of material values, non Islamic business does not concern with Shariah law in every planning, executing and all effort that has been done to reach business goals.

From this secularism foundation, all the buildings of non Islamic business character are being directed to material things, while at the same time avoiding religious value and connectivity of businessman to the rules that was born from transcendental values. Even if there are rules, it's only in terms of ethical which has got nothing to do with reward and punishment from Allah.

The commitment of Islamic business ethics to the criteria of public interest and justice leads to the distinction between the ends and the means. In a market economy where the invisible hand is sovereign, the pursuit of profit maximization knows no bounds and may even lead the business to undertake economic activities that are harmful to public interest. On the other hand, in an Islamic economy, where the invisible hand is guided by the objectives of Shariah, the market will channel the business to pursue profit-maximization through only those economic activities that are in line with public interest. Thus Islamic business ethics accepts the profit motive as the goal of the producer but rejects all those means (to achieve this goal) that may harm the public interest in any way. The protection and promotion of public interest as the criteria of economic activities elevates the business entities from being (potentially) reckless profit-seekers to socially responsible profit-seekers.

Hence, Islamic business ethics holds that it is not enough to have good goals; the means adopted to achieve those goals must also be right (i.e. permissible). If the means adopted to achieve noble goals are not permissible, then the project will not be implemented. On the other hand, if both the goals and means to achieve them are permissible, then the

effort spent to achieve those goals in its importance and usefulness, is ranked next only to the duty of worship. In Islam, the importance of earning a living through Halal means goes to the extent that acceptance of one's prayers is conditional upon Halal earnings.

Through the table below, we can see the differences of business characteristics between Islamic and non Islamic business.

Islamic	Business Characteristics	Non Islamic
Transcendental value	Foundation	Secularism (material value)
Here and hereafter	Motivation	Here in this world only
Profit and Benefit (non material), Growth, Continuity, Allah blessing	Orientation	Profit, Growth, Continuity
High, business is part of worship to Allah	Work Ethos	High, business is only daily needs
Productive, manifestation as a muslim	Mental Attitude	Productive and consumptive at the same time, part of self actualization
Skillful, consequences from obligation as muslim	Skill	Skillful, consequences from reward and punishment motivation
Trusty and responsible, ends does not justify the means	Trust	Depend on the willingness of individual (capital owner), ends justify the means
Halal (according to Shariah law)	Capital	Does not care about Shariah
Based on working	Human Resource	Based on working

agreement		agreement or based on capital owner decision
Halal (according to Shariah law)	Resources	Does not care about Shariah
Vision and mission of the organization are interconnected with the mission of men's creation in the world	Strategic Management	Vision and mission of the organization are based on material interest only
Halal guarantee for every input, process and output. Prioritize productivity in Shariah corridor	Operation Management	There is no Halal guarantee for every input, process and output. Prioritize productivity in benefit corridor only
Halal guarantee for every financial input, process and output	Financial Management	There is no Halal guarantee for every financial input, process and output
Marketing in corridor of Halal guarantee	Marketing Management	There is no Halal guarantee in marketing
Professional Human Resource and have Islamic personality. Responsible to himself, employer and Allah.	Human Resource Management	Professional Human Resource. Responsible to himself and employer

Figure 1.2: Business Characteristics

Source: adaptation of Yusanto, M. Ismail and Widjajakusuma, M. Karebet. (2002).
Menggagas Bisnis Islami. Jakarta: Gema Insani Press.

4. THE CLASSICAL FORM OF SHARIAH COMPLIANT BUSINESS ENTITIES

Early jurists devoted a lot of attention to studying the complexities of organizing business entities among individuals. The classical form of business entities could be classified broadly into: state enterprise, sole trader, partnership and commenda (El-Ashker, 1987).

4.1. The state's business enterprise

This form of enterprise appeared in Islamic history when some landlords deserted their land following their conquered leaders after the Islamic conquests. The new Islamic state assumed the ownership of this land and ran it on an economic basis. Though this was the case in the early Islamic state, state enterprise grew widely from the Ummayyad dynasty onward. (El-Ashker, 1987).

Muslim scholars agree that the state is entitled to have its own economically-run business enterprises. The state may be involved in business activities in order to guarantee the supply of certain goods and services, to enhance economic development and/or to use it as a tool for implementing its economic policies. But Muslim scholars have widely stressed that the expansion of the state's business enterprise should not be at the expense of the interest of the private sector. A violation of this kind would lead to a violation of the institution of private ownership, which is well established in the Islamic philosophy. (El-Ashker, 1987).

The ownership of the state enterprise could be a pure state ownership and/or a mixed ownership between individuals and the state. In the mixed type of ownership a dominant state ownership is not necessarily envisaged. In the modern Islamic world examples of non-dominant state portions of mixed ownership are portrayed, for example, in the state's share of the capital of the Islamic Kuwait Finance House, 49 percent; and of Dubai Islamic Bank, 20 percent. As for the state's surveillance role of its enterprises, the state is regarded as fully responsible for their running, and as accountable for their results to the community at large (represented by the constitutional body).

4.2. Sole trader

Private ownership is well established in the Islamic economics whereby individuals may be involved in owning their own private enterprise and running them on a commercial basis. Within the general philosophy of Islamic ownership (ownership by God's trusteeship) the sole trader owns the enterprise capital, has the full control over his business, hires whoever he wants to hire (on the hire contract basis), and runs his business the way he sees fit. He has personal reward for his energy and initiative, profit, as well as being fully liable for the enterprise's financial liability. All economic activities are widely open to the sole trader and he is treated, or should be treated, on equal footing with other forms of business enterprises either privately or government owned. With the exception of trading in prohibited goods and services (pork, spirits, gambling and Islamic immoral services) and the prohibition of interest, the sole trader in the Shari'a is very similar to his counterpart in the capitalist system. (El-Ashker, 1987).

4.3. Partnership

Medieval jurist divide partnership (also known as Musharakah) into two main types: proprietary partnership and contractual or commercial partnership. While the former is not connected with business activities, and may arise as a result of involuntary factors such as inheritance, or voluntary reasons such as buying a property jointly, the latter is connected with business activities, and arises as a result of voluntary action established on a contractual business relationship. (El-Ashker, 1987).

Contractual or commercial, partnership is divided into two main types: 'mufawada' partnership, which could be translated as unlimited-authority partnership, and 'inan' partnership, which could be translated as limited-authority partnership. By understanding that 'authority' in the translation is the authority given to partners by their mutual consent, we realize that the relationship between partners in the 'mufawada' partnership is based on the principles of mutual surety and mutual agency. Meanwhile, the relationship in the 'inan' partnership is based on the principles of agency only. (El-Ashker, 1987).

4.3.1. The Conditions for the Distribution of Profit and Loss

- a. The profit receivable by each partner should be known and clearly specified in the partnership contract.
- b. The profit assigned to a partner should be a proportion of the actual profit gained by the business. It is not allowed to fix an amount to a partner.
- c. The profit should be proportionally assigned to the partners. According to the Maliki and Shafii Schools it is necessary for the validity of musharakah that each partner gets the profit exactly in the proportion of his investment. For e.g. if A has invested 40% of his capital, he must receive 40% of the profit. Any agreement, which gives him more or less, is invalid. These Schools argue that the ratio of the share of a partner in profit and loss must both conform to the ratio of his investment. But according to Imam Abu Hanifah and Imam Ahmad, the ratio of the profit may differ from the ratio of investment and could be decided based on the agreement between the partners.
- d. All the Muslim jurists are unanimous that each partner shall suffer the loss exactly according to the ratio of his contribution to the Musharakah capital. The losses are paid first out of the profit made by the partnership. If there is no profit or the profit made is not enough to cover the losses then the capital of the partnership is used to pay for the losses. However, if the capital is not sufficient to cover the losses the partners must pay, in proportion to their shares in the capital, out of their own private means.¹

4.3.2. Management of Partnership

In partnership, every partner has the right to take part in the management of the partnership. However, the partners may also agree upon a condition that the management shall be carried out by one or some of them, and no other partners shall work for the musharakah.

¹ From various sources

The partners, who manage the partnership, act as an agent for other partners. Thus all rights and obligation that may arise in the ordinary course of business are attributed to all the partners and not to him personally.

A partner or partners who are entrusted with the management of the business are considered trustees (*amin*). As a trustee he is not legally liable to pay damages if the damage occurs in the normal course of running the business. However, if he intentionally transgress the musharakah property, performs his duties negligently, or goes beyond the terms of the contract, he will be held personally responsible.

4.4. The Commenda

The commenda is an arrangement in which an investor or a group of investors entrusts capital or merchandise to an agent manager, who is to trade with it and then return to the investor(s) the principal and a previously agreed-upon share of the profit (Udovitch, 1970). As a reward for his labour, the agent receives the remaining share of the profits. Any loss resulting from the exigencies of travel or from an unsuccessful business venture is borne exclusively by the investor(s); the agent is not liable for a loss of this nature, losing only his expended time and effort (Udovitch, 1970).

While this definition applies to the unilateral commenda, the agent-manager in the bilateral commenda may also participate in the commenda's capital and becomes one of the investors (as well as being the agent-manager). The agent in such a case will be entitled to two portions of profit (not necessarily equal), one from his investment (capital contribution) and the other from his work. (El-Ashker, 1987).

The commenda, which originated indigenously in Arabia before Islam (Udovitch, 1970), is referred to in Arabic by three different terms: Mudaraba, Qirad and Muqarada. The three terms, however, mean the same thing; the difference is semantic and is related to linguistic derivation influenced by geographical locations. The pre-Islamic commenda was approved by the Prophet and became an Islamically acceptable form of business. (El-Ashker, 1987).

Mudharabah is derived from the word dharaba which means traveling for trade. It is a type of contract where one of the parties provides capital and the other expertise, labour, and entrepreneurial skill to conduct a particular business where both parties would share profit. There are people who have capital but do not know how to use it or where to invest it. There are others who have the entrepreneurial skills and business acumen but have no capital. Mudharabah enables both parties to make profit. The owner of the capital benefits from the experience and skills of the mudharib and the mudharib benefits from the capital which he invests in a profitable way. Both parties share the profit. The practice was common among pre-Islamic Arabs. The Prophet Muhammad himself before his Prophet-hood entered into such a contract with Khadijah (r .a.) After the coming of Islam Mudharabah was not disallowed but was approved and continued to be practised. Caliph Umar (r.a). and other companions used to invest the properties of the orphans in business to avoid zakat consuming them. They traded these properties in the form of Mudharabah transactions.²

4.4.1. Pillars of Mudharabah

According to the Hanafees, Mudharabah has two pillars of offer and acceptance. Mudharabah is concluded when the parties use words that clearly indicate the contract of Mudharabah in their offer and acceptance. According to the majority of the Fiqh Schools, the contract of Mudharabah has three pillars. They are the parties that consist of the owner of the capital (Rabb al-mal/ Sahib al-mal) and the manager of the fund (mudharib or ‘aamil), the subject matter of the contract which include the capital, the efforts, and the profit, and expression which is made of offer and acceptance.

4.4.2. Conditions of Mudharabah

1. The parties should have the competence to become agents (wakil). The manager while investing the capital of the Sahib al-mal represents him.
2. The capital should be dinar, dirham, or currencies that are commonly in circulation. It is not allowed for the Sahib al-mal to contribute in the form of

² From various sources

goods or other immovable properties. The majority of the Fiqh schools argue that it may lead to uncertainty as to the real amount of capital and the profit. This is because the price of the goods may fluctuate. An opinion from Imam al-awza'ee and ibn Abi-laila argues that it is possible to conclude Mudharabah on goods provided the price of the goods is known at the time when the contract is concluded. This they argue removes the possibility of gharar.

3. The amount of the capital should be known. It is important as it may lead to a clear distinction between the capital and the profit.
4. The capital should be present. It is, for instance, not allowed for a creditor to enter into a Mudharabah with his debtor.
5. The capital should come to the complete possession of the mudharib.
6. The division of the profit should be clearly defined on the basis of proportionality such as $\frac{1}{2}$, $\frac{1}{3}$, $\frac{1}{4}$. It is not allowed to agree on a fixed amount.
7. In a Mudharabah all losses must be paid for out of the capital. Even if the profits are to be divided equally no losses will be charged to the mudharib. The losses should be solely born by the Sahib al-mal. Any condition that makes mudharib liable for the losses or distributes losses jointly on the parties is void. The condition is void while the contract remains valid.³

4.4.3. Division of the Profit

Distribution of profit in mudarabah can only take place after the losses have been written off and the capital of the Rabb al-mal has been fully restored. Any distribution of profit before mudhrabah comes to an end is considered as an advance taken from the profit. If a loss has been incurred in one period or business and profit is made in another period or business the profit should be used to offset the loss until the entire loss has been written off and the capital sum has been restored to its original level. The balance, if any, would be distributed between the parties in accordance with the agreed ratio. This may be done in one stroke or in instalments depending upon circumstances and the understanding of the partners. It would be desirable to build reserves from profit to offset automatically any loss that may be incurred in future. (Chapra, 2000).

³ From various sources

5. THE MODERN FORM OF SHARIAH COMPLIANT BUSINESS ENTITIES

The form of business enterprise, in the modern Islamic world relies entirely on the principles provided in the Shari'a. Modern Islamic bank operations, for example, are based on the mudaraba, the commenda contract. (El-Ashker, 1987). Sole trader, partnership, private limited company, public limited company, co-operative, and state enterprise are various forms of business enterprise established on the principles of Shari'a. Even with some companies that bear new terms not known to the medieval Muslim jurist, such as joint-stock company, the Shari'a seems to have provided principles that accommodate these companies in the commenda contract.

Some administrative arrangements are necessitated, however, by the increasing complications of economic activities in the new world, which did not have the intention of early jurists.

5.1. The number of members

While the minimum number of members in a partnership, and in all types of business association, is specified in the Shari'a as at least two, the maximum number is not specified. Flexibility in determining the maximum number in a partnership, and in a private limited company, as well as the minimum number in a public limited company, should be given to the state administration. This should not necessarily be described as impairing Islamic unanimity or a breach of Islamic rule. In different Islamic countries, the maximum/minimum number may vary depending upon the country's economic and administrative conditions; and to suit the countries economic environment.

5.2. Company registration

Though Muslims are ordained to record their credit transactions, with some variations depending upon the type of debt and the presence of witnesses (Qur'an 2:282-3), the

medieval Muslim jurist did not specify a detailed procedure for company registration in the manner known in present finance acts.

However it is very likely that the medieval Islamic government did keep business records of some kind. This could be deduced from the writings of medieval jurists when they discussed the role of the state in organizing the business sector in the country. For example, Ibn Taimiya (1262-1328), in outlining the surveillance role of the state over the business sector, indicated that the state had the duty to organize trade and professional occupations in such a way as to purge trade from unlicensed intruders and to guarantee the correctness of commercial deals (Ibn Taimiya, 1982). This would not have been feasible unless the state had a kind of registration system. (El-Ashker, 1987).

In the modern Islamic world, governments exercise a company registration system, in line with the practice of the modern world in general. However, the level of registration in relation to the form of business may vary from one country to another. Once again, the variations should not be interpreted to mean that Islamic countries are not Islamically unified in their systems. It is designed to suit the administrative system in the country as well as the level of cost involved in registration.

5.3. The financial liability of shareholders in limited companies

The financial liability of investor(s) in commenda is limited to the amount of capital which he has subscribed to the business, provided there is a stipulated condition in the contract that the agent-manager must not increase the level of credit to the level of the capital. In modern joint-stock companies, either a similar condition can be stipulated, or if not and the investor has subscribed to the company's capital under the belief (custom, convention, general principle) that the shareholder's liability in joint-stock companies (especially the public limited company) is limited to the amount of share he owns, his liability should be so treated. In order to make this point absolutely clear in the shareholder's mind, it can be suggested the detailed legal requirements for the formation of business enterprises in the Shari'a should be modified to accommodate contemporary needs. (El-Ashker, 1987).

Furthermore, it should be noticed that the size of the financial liability of an Islamic company is unlikely to be of the same relative size of that of a Western style company. This is mainly because the relative size of borrowed funds in an Islamic company, if there are any borrowed funds, is expected to be lower than that of a Western style company.

6. CONCLUSION

The above discussion shows a healthy tradition of business ethics both in theory and practice in the Islamic civilization historically. Thus the principles of Islamic business ethics are not the result of a reaction to external problems; rather they are rooted in the teachings of the Qur'an and the practice of Prophet Muhammad and are a natural component of the Muslim way of thinking and intellect. Islamic business rationality, rooted in the Shariah, is committed to the preservation and promotion of public interest, and is a 'mature rationality' under the Shariah guided market paradigm.

The intellectuals of other great religions are realizing that there are unbridled capitalism is violating their religious ideals of business ethics as well, resulting in a dilution of those values that are the very core of the peace and stability of their societies. These concerns are common across the contemporary civilizations, and there is an urgent need for the concerned citizens of these civilizations to cooperate with each other for common causes. Otherwise, growing commercialism will cause the rapid deterioration of our environment, values and moral institutions and inflict irreparable damage that future generations will have to bear.

Today, in the modern economic and business daily life, the shariah compliant business model are mostly practice by the Islamic financial institution eventhough it still relatively limited to the transaction or finance part, not in the business model as a whole. We should move further to other part of business aspects such as human resource management,

marketing management, operational management and other part of business management from the perspective of Islam teachings.

This paper are still at the early stage of conceptualizing a business entities that can meet shariah requirement. A further empirical studies needs to be done to develop more comprehensive model on this matter, especially in the modern world where there are many challenges and issues that need to be solved.

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Internet Resources

- <http://www.irti.org>
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