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The Need to Establish a Body or Agency for Monitoring and Supervising Commercial Hibah Products in Malaysia: A Literature Review

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Abstract

There are numerous Islamic-property planning and management agencies or companies that offer various commercial hibah products in the market at the moment. Nevertheless, the diversity of commercial hibah products offered by various agencies or institutions need monitoring and supervision in order to meet Syariah law standards and to avoid disputes and confusion that can invite negative perceptions about hibah instruments among the Muslim community. Thus, this literature review aimed to examine the need for certain bodies or agencies to monitor and supervise the existence of various commercial hibah products in the Malaysian market. This qualitative study used the content analysis research design with data acquired through document analysis methods and then analysed descriptively. Findings indicate that many studies had commented on matters related to hibah from different perspectives that focused on the significance of hibah instruments, legitimacy of hibah, hibah products, hibah procedures and jurisdiction of hibah in the Syariah Court, however, there are no studies on the need for supervising and monitoring commercial hibah products in Malaysia by certain local bodies or agencies. The implication of this study is a need to conduct an in-depth study related to the need for monitoring and supervising hibah products offered by property planning institutions or agencies, which are growing rapidly in the market today, by a body or agency established based on the hisbah concept.

Keywords: Commercial Hibah Products, Agency, Monitoring, Supervision, Hisbah

Introduction

According to Al-Fayyumi (2000); al-Jurjani (1998), hibah is an Arabic word that refers to *tabarru'*, which means giving something without expecting anything in return. From a terminology aspect, hibah means a contract that grants ownership rights (*tamlik*) of a property or goods based on *tabarru'* without expecting anything in return while the grantor is still alive (Al-Ghamrawi, 1933). Hibah is made voluntarily (without coercion) Al-Khatib (1997) and differs from a will because ownership bequeathed in a will occurs after the death

of the testator (al-Qalyubi & Umairah, d. u). Hibah is an instrument related to property distribution that is benevolent (Ahmad & Ibrahim 2002) and used as a platform to manifest feelings of love and strengthen relationships, while the grantor will be rewarded by Allah SWT (Ahmad, 2021; Ahmad & Laluddin, 2010).

The rigorous offering of various commercial hibah products in Malaysia today has fuelled development and competition among Muslim property planning and management companies, agencies and institutions that aim to assist the Muslim community in planning and managing for their property. Among the various companies, agencies and institutions involved in the planning and management of Muslim property are trust companies, law firms, state Islamic Religious Councils, including Amanah Raya Berhad (ARB), CIMB Trustee Berhad, Wasiyyah Shoppe Sdn. Bhd, as-Salihin Trustee Berhad, Warisan Mukmin Sdn. Bhd, Zar Perunding Pusaka and others, who create various types of commercial hibah products as an instrument for planning and managing the property of Muslims in Malaysia.

Until recently, there were no uniform guidelines that could be used as a reference in the implementation and management of hibah products (Khairuddin, 2016). This can indirectly expose hibah products to negative outcomes. Among the commercial hibah products offered in the market are trust, conditional, absolute, *pri*, *'umra* and *ruqba* hibah as well as various other forms of hibah products.

Previous research has raised various issues related to the variety of commercial hibah products offered in the market that require monitoring and supervision so that they are Syariah-compliant, especially in the context of the product's legality if there is a dispute in the courts. Therefore, a product should not be used arbitrarily, not to mention the potential to invite confusion and negative perceptions on the planning and management of Muslim property, especially community members who are less knowledgeable about hibah instruments. According to Yusof (2006), the creation of a hibah product that acts as a criterion for change of ownership would only materialize after the death of the owner. Another issue is related to differences in the principles of hibah products offered by CIMB Trustee Berhad and Amanah Raya Berhad (Abdullah, 2012). According to Rahmat (2009), the management and implementation procedures concerning commercial hibah products by planning and property management companies, agencies and institutions differ among one another.

Therefore, this study aims to explore the gap that exists based on the analysis of previous studies to justify the need to create a body or agency for monitoring and supervising the variety of commercial hibah products that are expanding in the current market and to identify the monitoring and supervision concept according to Islamic principles that can be used as a model to achieve the goal.

Research Methodology

This qualitative study is based on a content analysis research design that uses the document analysis method involving books, scholarly literature, journal articles and related proceeding papers for gathering data regarding the need for monitoring and supervision of diverse commercial hibah products marketed by Muslim property planning and management institutions and agencies in Malaysia. All information and data obtained were analysed descriptively to achieve the outlined objectives.

Literature Review

The focus of this article is on the need for monitoring and supervision of commercial hibah products marketed by Islamic property planning and management institutions and agencies

in Malaysia through a specific body or agency besides looking at the hibah institution concept from an Islamic perspective that can be used as a guide and reference to fulfil this requirement. Therefore, in order to obtain reliable and confident research findings, this study examined and analysed several previous studies related to this issue that were classified into three main themes.

a) Various Commercial Hibah Products Offered by Companies, Agencies and Institutions That Help Plan Muslim Property

There are various commercial hibah products in the market offered by companies, agencies and institutions that help manage the property of Muslims, which include trust, conditional, absolute, *pri*-, *'umra* and *ruqba* hibah products as well as various other forms of hibah products. According to Yaacob (2008), a hibah trust product involves 'marrying' the hibah with a trust. Trust Hibah is the bequeathing of immovable or movable property to heirs or next of kin in return for love and affection, and held by a Trustee, which is then transferred to the Beneficiary by the Trustee after the death of the Grantor or as agreed between the parties. According to Awang (2004), this hibah product was first offered by Bumiputra-Commerce Trustee Berhad (BCTB) in 2001. BCTB was then taken over by CIMB in 2006 and the name changed to CIMB Trustee Berhad. Among the hibah products offered is Amanah Hibah Harta (Hibah Property Trust). CIMB Trustee Berhad acts as a trustee that manages the hibah property and provides all the necessary documents to complete the hibah process (Sa'afie & Muda, 2018; Abdullah, 2012).

Amanah Raya Berhad (AmanahRaya) offers two products, namely Normal and Amanah Hibah. Amanah Raya Berhad was appointed as a trustee and will fully manage the hibah property before it is presented to the hibah recipient (Azhar, 2017). A total of 21 types of hibah products are offered at Wasiyyah Shoppe for the public to choose from, including real estate, Tabung Haji Savings Account, Takaful Benefit, Gold, Stock, Vehicle, Absolute, Hinah Amanah, Conditional Compensatory and Secured Property hibah (Muhammad Fadzil 'Athif, 2017).

According to Azhar et al (2014), among the hibah products at as-Salihin Trustee Bhd. is a document, *pri* and declaration hibah. In *Pri*-Hibah, the property owner will hand over the property he wishes to endow to the Trustee. Thus, if the owner of the property dies, the property does not need to go through the distribution (*faraid*) process and can be handed over directly to the beneficiary as mentioned in the declaration hibah. The change of ownership is legally made after the condition(s) set in the declaration hibah has been satisfied.

b) The Significance of the Needs of Agencies That Monitor and Supervise Commercial Hibah Products

There are many companies that offer commercial hibah products as an instrument for managing the property of Muslims in Malaysia alongside other property management products. Commercial hibah products offered by property planning institutions and agencies in the market today are far too numerous and vary in name and form.

Companies, agencies and institutions that actively offer this service include Amanah Raya Berhad, Wasiyyah Shoppe Sdn. Bhd., as-Salihin Trustee Berhad and several others (Hazira, 2009). Among the hibah products offered are absolute, *pri*-, trust, conditional (*'umra* and *ruqba*) hibah and various other forms (Muhamad, 2015).

It is obvious that most commercial hibah products offered in the market are supported by *ruqba* conditions (Muhamad et al., 2017), combined with trust (Khairuddin, 2016), *'umra* conditions and others. Thus, the creation of a variety of products based on the hibah concept as mentioned above, has sparked questions regarding its necessity for society (Said, 2014). This situation shows that the companies, agencies and institutions involved use various methods for implementing and administering hibah products (Naiimi, 2016) which also raises questions about Shariah compliance. According to Khairuddin (2016), there are no uniform guidelines that can be used as a reference in the implementation and management of hibah products. Buang (2007) stated that there is concern whether commercial hibah products being offered are Shariah compliant. Likewise, another concern is whether there is a guarantee that the product offered can be subjected to civil legislation in the event of a dispute.

In other words, the diverse nature of commercial hibah products offered in the market requires monitoring and supervision in order to be Syariah compliant, especially in the context of its validity in case of a dispute in court, especially if it involves the heirs of the (rightful) grantor. Therefore, it is very important to create an official body, such as the Ministry of Domestic Trade and Cost of Living, Bar Council, Registrar of Companies or MACC, to control and monitor these activities.

There are issues that can potentially cause confusion and negative perceptions about Muslim property planning and management products, for example, issues related to differences in hibah principles adopted by CIMB Trustee Berhad and Amanah Raya Berhad. According to Abdullah (2012), there are six hibah principles in CIMB Trustee Berhad's products and four principles in Amanah Raya Berhad's products. This shows the existence of a different number of hibah principles in the hibah products offered by various institution. There are six hibah principles in CIMB Trustee Berhad's product, with the two additional principles pertaining to giving up possession as well as accepting and taking possession, apart from the four hibah principles suggested by the *jumhur ulama*, which are the grantor, hibah recipient, property involved and *sighah*. On further scrutiny, the two additional principles are actually hibah conditions. This shows that there is a mix between hibah principles and conditions, which tends to confuse the community regarding the hibah principles.

According to Azhar et al. (2014), there is an inconsistency in management procedures involving hibah documentation in Islamic property planning institutions. Hibah documentation is a special and important procedure that the grantor is encouraged to settle during his lifetime. Documentation management, legislation and technical aspects need to be coordinated so that the hibah benefits the grantor and grantee.

Therefore, monitoring and supervision of commercial hibah products available in the market should be carried out because of the variety of issues that have arisen, which can confuse the public and have a negative impact on the hibah instrument. Abdullah (2012) suggested that a survey should be carried to determine the need for establishing a monitoring and supervision agency that functions to regulate hibah products implemented in all institutions so that their products are always Syariah-compliant and monitored. This suggestion is consistent with that of Muda (2008), who stated that when there is a variety of hibah products, institutions and hibah documenting agencies will find ways to expand the scope of hibah. Meanwhile, Ibrahim (2007) stated that in order to avoid the public's confusion about hibah products, it is necessary to establish a monitoring agency to reduce confusion and uphold the authority of the Syariah Court; thus, strengthening its credibility in the community when deciding on issues related to hibah. This statement is supported by

Muhamad (2015), who opined that the monitoring and supervision initiative should be centralized through an established agency. Apart from 'internal' monitoring through Shariah advisors (Shariah experts appointed by companies or parties providing services), centralized Shariah monitoring also needs to be established in the hibah industry, such as in Islamic banking and takaful, which is regulated by Bank Negara Malaysia's Shariah Advisory Council (SAC)

c) Basic Concept of Institutional Monitoring and Supervision in Islam (*Hisbah*)

In Islam, the concept of monitoring is based on the concept of the verse *al-amr bi al-ma'ruf wa nahy 'an al-munkar*, which is the call to do good and abstain from evil, known as *hisbah*. Al-Nabhani (1986) provided a more detailed definition of *hisbah*, which is a supervisory and monitoring body that is given the responsibility by the Islamic government to carry out the function of overseeing and checking all human needs that could be harmful to humans if not monitored.

According to Ibn Khaldun (1996), *hisbah* plays a role in controlling and investigating evil deeds, providing lessons, and imposing punishment on those involved to ensure that the country's public interest is preserved. In addition, according to Yaacob (1996), *hisbah* accords the *muhtasib* the responsibility to control the quality of goods, determine the form of credit, control production and supply, monitor market prices for the people's welfare and create a balance between the production sectors in order to achieve an optimal economic level and guarantee justice.

Hisbah is a form of monitoring and supervision that has existed in the Islamic kingdom from the time of Caliph al-Rasyidin until the Ottoman Empire (Makhsin, 2008). *Hisbah* was originally implemented to meet the demands of Islamic law taught by the Prophet SAW and commanded by Allah SWT, as exhorted in surah al-Taubah, verse 71, meaning:

The believers, both men and women, are guardians of one another. They encourage good and forbid evil, establish prayer and pay alms-tax, and obey Allah and His Messenger. It is they who will be shown Allah's mercy. Surely Allah is Almighty, All-Wise.

During the time of the Prophet SAW, *hisbah* did not exist as an institution but it was a practice to monitor one's obedience to Allah SWT and abstinence from that He prohibits. The Prophet SAW has educated Muslims so that they carry out various life activities that touch on aspects of honouring agreements and maintaining healthy business practices (Ibn Qayyim, 1992). In addition, Muslims also need to observe etiquettes and prohibitions when conducting business activities. These business activities are part of the guidance and supervision provided by the verse *al-amr bi al-ma'ruf wa al-nahy 'an al-munkar*. Thus, it is clear that the practice of *hisbah* has taken root since the time of the Prophet SAW. This task is known as 'Market Supervisor' (Sahib al-Suq) or 'Officer at the market' (al-'Amil fi al-Suq), who is responsible for overseeing and monitoring the course of business in the market and determining the proper use of weights and measures in everyday transactions (Ma'tuq, 1982).

One famous ruler known for his prowess in leadership was Saiyidina 'Umar ibn al-Khattab (13-23H/ 634-644AD), who had established several departments to help manage his government, including the *hisbah* institution. He was also a *muhtasib* who always used a walking stick and monitored the situation in the market while giving warnings, instructions and listening to complaints from the community (Al-'Arifi, 1987). When the Ottoman Empire

established itself in Turkey, the hisbah institution was systematically implemented. When the Ottoman Turkey, Empire fell, the hisbah institution was eliminated and many Muslims today in this area do not understand the true role of the hisbah institution (Makhsin, 2008).

Ibn al-Ukhuwwah (1938), in his book *Ma'alim al-Qurban fi Ahkam al-Hisbah*, explains the guidelines pertaining to a *muhtasib's* duties during the Mamluk period in Egypt, where there are 70 sections related to the *muhtasib* in the context of monitoring business and trade conditions in the Muslim community at that time. The duties start with supervising the preparation of products, either food or goods, and monitoring of the processing facility, which has been highlighted to illustrate the duties and roles of *muhtasib*.

Meanwhile, Abdullah (2000) focuses his writing on Islamic management and elaborates on the role of hisbah institutions widely based on the writings and historical works of previous scholars. The function and jurisdiction of the *muhtasib* are also explained to show that this institution has its own authority and privileges to oversee economic activities. He also described the difference between Islamic and Western management concepts practiced by most organizations in the world today.

In the context of today's Malaysian administrative machinery, although the hisbah institution does not actually exist, numerous institutions do practice the hisbah principles, such as the Enforcement Unit of the Ministry of Domestic Trade and Cost of Living, which is responsible for protecting the rights and interests of consumers, Public Complaints Bureau (BPA) which handles community complaints about their dissatisfaction with government administration and services, and the Malaysian Anti-Corruption Commission (MACC), which safeguards public interest by eliminating all forms of corruption.

Findings of the Literature Review

Based on the literature review of previous studies, generally not a single study examined the needs of agencies that monitor and supervise commercial hibah products in Malaysia. However, there is no denying that there are several studies and writings that elaborate on issues related to hibah from different aspects, such as Shariah-compliant hibah products, property planning agencies, implementation of hibah and jurisdiction of the Syariah Courts.

Conclusion

This study concluded that the need to establish a body or agency for monitoring and supervising hibah products in Malaysia based on the hisbah concept is important so as to ensure that commercial hibah products offered in the market are Shariah-compliant and fulfil the needs of Muslims in Malaysia. Besides, this body or agency can strengthen their confidence regarding commercial hibah products and act as one of the platforms for solving problems related to their wealth planning. The related institutions need to up the initiative and draw-up action plans to establish a credible monitoring and supervising body or agency for regulating hibah products offered by companies, agencies or Islamic property planning and management institutions.

Hence, a specific and comprehensive study should be conducted in relation to the need to create a body or agency to monitor or supervise the offering of commercial hibah products that are increasingly expanding in the current market.

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