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“Social Corporation” The Sharia Business Entity Model: A Corporate Structure with Embodied CSR

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Abstract

Corporate social responsibility has been widely and internationally accepted as an element of good governance and one of the key factors in sustainability of a business. Nonetheless, the inculcation and practices of CSR are still subjected to discretion of the companies. In the present corporate model, CSR is still an option to be practiced rather than part of the objective of the company. Under the Sharia, it is also important for the businessmen to undertake that the main purpose or object of carrying out the business is not only for profit maximization but more importantly to ensure the utmost benefit of the society. This concept is known as “Maqasid al-Sharia”. A Sharia corporation or any Sharia business entities should put the welfare and interest of the society as the ultimate goal of the business. Such principle is seen as the best CSR model which could be practiced by all corporations be it Sharia based or conventional businesses. **Objective:** This paper discusses the concept of “Maqasid al-Sharia” and its role and significance in changing the way business to be carried out in achieving the true and effective CSR. The main objective of this paper is to highlight how CSR could be implemented directly via a business model/entity. **Results:** The principles of Maqasid and

Maslahah, reflected that Islam emphasizes on the importance of considering public interests rather than merely individual interests. **Conclusion:** the concept of Maslahah indicates the need for corporations to engage in and manage their businesses and CSR activities according to priorities.

Introduction

In Malaysia, Islamic institutions were established under respective legislations which contain express term on their status as a body corporate. Examples of these institutions are zakat institutions, Pilgrimage Board (Lembaga Tabung Haji) and Takaful Malaysia (an Islamic insurance company). All companies which run Shari'ah compliance businesses in Malaysia are required to be registered under the Companies Act 1965 which then entails them the status and attributes of a body corporate. The legal effect as a body corporate is it shall be an entity separated from its director or founder. Besides, it shall have perpetual succession and have the power to sue and be sued in such corporate name. As a corporation it may acquire, purchase, take, hold, and enjoy movable and immovable property, and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer, or otherwise dispose of, or deal with, any of those property or any interest therein. (H. Hassan, Abd Ghadas, & Abd Rahman, 2012).

The Sharia compliant business must focus on five main aspects; namely the functions of management, the process of business, corporate culture, corporate governance, and corporate social responsibility (Febianto, 2011). Corporate Social Responsibility (CSR) is a vital component in a sharia corporation framework. In the conventional corporate model, CSR is still an option to be practiced rather than part of the objective of the company. The need of CSR is still debated among companies. Some of them hold the belief that it is in business's long-term self-interest to be socially responsible but opine that CSR is an optional practices and can weaken the primary purpose of doing business. According to Milton Friedman, management has one responsibility and that is to maximize the profits of its owners or shareholders and thus social issues are not the concern of business people and that these problems should be resolved by the unfettered workings of the free market system. (Carroll & Shabana, 2010). Furthermore, if the free market cannot solve the social problems, it falls not upon business, but upon government and legislation to resolve the problems.

The Concept of Corporate Social Responsibility

The concept of CSR began in the West in the 1970s and discussions on the concept of CSR often focused on the view that is founded on the norms, cultures and beliefs of the West, especially Europe and America (Yusuf & Bahari, 2011). Western perspective of CSR or it can be referring as conventional CSR has become common practice for a corporate to run CSR programs. CSR comes in many forms and its operation is open to a great deal of interpretation. Until now, the scope of CSR has been growing continuously and integrating different approaches, depending on circumstances and needs (Abdullah, 2007).

Generally, corporate social responsibility is about companies having responsibilities and taking actions beyond their legal obligations and economic/business aims. There are many available definitions of CSR. However, in both the corporate and the academic world there is uncertainty as to how CSR should be defined (Dahlsrud, 2008). Hassan and Harahap explain in his article, the commonly accepted definition of CSR generally refers to business decision making linked to ethical values,

compliance with legal requirements, respect for people, involvement in social activities, communities, and the environment. McGuire (1963) defines CSR as the idea of social responsibility supposes that the corporation has not only economic and legal obligations, but also certain responsibilities to society such as protecting the environment, caring for employees, being ethical in trading, and getting involved in the local community. It appears that CSR refers to the obligation of the managers to choose and act in ways that benefit both the interests of the organization and those of the society as a whole (A. Hassan & Harahap, 2010).

One of the arguments against CSR is that businesses are not prepared to handle social activities. This position holds that managers are oriented towards finance and operations and do not have the necessary expertise (social skills), to make socially oriented decisions (Davis 1973). According to Hayek 1969, to adopt CSR in the business would put the business into fields that are unrelated to their 'proper aim' (Carroll & Shabana, 2010). Another argument is that, by pursuing CSR, business will make itself less competitive globally.

Supporters of CSR argued that business should engage in CSR because the public strongly supports it. According to Ashraf (2008), there are several driving forces behind the growing trend towards CSR. First, due to growing market pressure, wherein customers, employees, or capital markets believes that, in addition to its pursuits of profits, business should be responsible to their workers, communities and other stakeholders, even if making things better for them requires companies to sacrifice some profits (Bernstein 2000). The public does not only give an attention to the traditional price and brand but also towards social and ethical issues that give an effect to the market performance. Second, by increasing regulatory pressure ranging from reporting requirements to government regulations that introduce compulsory business standards by which companies of all sizes have to abide (Davies, 2003). Third, due to the increased power of communications (e.g. internet, electronic media, and others) have driven consumers and pressure groups like social activists, non-governmental organizations (NGOs) and trade unions to scrutinize the activities of companies more effectively and develop strategies that may influence companies to act in a socially responsible way. Fourth, due to the competitive advantage that company believes they can secure by being socially responsible. They foresee that by communicating effectively about their social, environmental and economic contributions, they can strengthen their brand, enhance their corporate reputation with customers and suppliers, and attract and retain a committed and skilled workforce (Wajdi Dusuki, 2008).

Corporate Social Responsibility from the Islamic Perspective

Al-Maghribi (1996) highlighted that CSR is obligatory on each Muslim community to implement it in society in any field. Farook (2007) had opinions that performing CSR by Islamic banks as fulfilling a collective religious obligation (fardh kifayah) as financial institutions. According to Yusuf, a study conducted by Ekawati (2004) was to explore the concepts zakat, CSR and community development while the concept of CSR in Islam has been done by Mohammed (2007) which concludes that social responsibility in Islam is built on four basic principles; unity, justice, free will and responsibility. (Yusuf & Bahari, 2011). Furthermore, Wan Jusoh, (2008) discuss on the status of CSR concept and the accountability of Islamic bank as a legal entity in performing CSR from an Islamic point of view. Asyraf Wajdi (2008) discusses the concept of CSR from the Islamic worldview within the context of based on

taqwa (God-consciousness) paradigm. Dusuki and Irwani (2007) disclose the effects of maqasid sharia (Islamic law purposes) and maslahah (public interest) to the concept of CSR. Using the approach of maqasid sharia and maslahah, CSR practices are divided into three categories; essentials (dharuriyyah), necessary (hajiyyah) and luxury (tahsiniyyah). Three categories of maslahah can be used by corporate or management to consider the facts and situation changes when implementing CSR which also provide a better framework for managers in dealing with conflicts of interest that may arise from stakeholders. A study done by Mustaffa, Faizah, Haslinda, Azlan, Hasan, Purwanto and Dayang Milianna (2012), views the concept of CSR based on religious values and beliefs, from the principle of 'ibadah and da'wah. (Wan Jusoh, Ibrahim, & Napiah, 2015; Yusuf & Bahari, 2011). Although the verses of Qur'an do not directly refer to CSR but there are many verses in the Qur'an which explain the obligations of individuals to bear the needs of others (Yusuf & Bahari, 2011).

Precisely, Islam is the way of life. Islam requires both individuals and organisations to be guided in the development of a moral self that may differentiates between right and wrong and never loses sight of its responsibilities towards God and mankind. (Hussein Elasrag, 2013). Generally, social responsibility in Islam is can be clearly seen from the Prophet's hadith:

'Abdullah ibn 'Umar reported: The Messenger of Allah, peace and blessings be upon him, said, "Every one of you is a shepherd and is responsible for his flock. The leader of the people is a guardian and is responsible for his subjects: a man is the guardian of his family and is responsible for his subjects, a woman is the guardian of her husband's home and of his children and is responsible for them, and the slave of a man is a guardian of his master's property and is responsible for it. Surely, every one of you is a shepherd and responsible for his flock." (Sahih Bukhari, No. 7138, 1229).

Based on the above hadith, it shows that every individual is responsible towards others regardless of his or her position. Islam had shown to us the beautiful system in that manner in order to safeguard every individual interest and consequently the rights of each party able to be protected. Farouq (2007) had identified that the three major foundational principles for Islamic Corporate Social Responsibility are the vicegerent of mankind on earth, divine accountability and the duty on mankind to enjoin good and forbid evil, (Hussein Elasrag, 2013) as above and beyond the duty of Man to worship to Allah and performing good deeds to other person as his brother. (Wan Jusoh et al., 2015).

a. Man was created by Allah to be the vicegerent in this world:

"It is He who hath made you (His) agents, inheritors of the earth: He hath raised you in ranks, some above others: that He may try you in the gifts He hath given you: for thy Lord is quick in punishment: yet He is indeed Oft-forgiving, Most Merciful." [Qur'an, Al-An'am: 165]

Hence, Man is entrusted with amanah (trust) of becoming Allah's khalifah and he has a duty and certain responsibilities to administer this world in accordance with the law that He has prescribe to ensure the justice is constantly upheld.

Being a khalifah, Muslims must always concede that Allah is the only God that deserves to worship and that all possessions, wealth, expertise, abilities, positions and power belong to Allah as mentioned in Quran:

"To Him belongs what is in the heavens and on earth, and all between them, and all beneath the soil." [Qur'an, Taha: 6]

Subsequently, Muslim's social responsibility is to manage these possessions to the best of their abilities with intention of creating benefit to the community. They are not supposed to cause corruption in any form on earth (i.e. the society and the environment).

Basically, there are a lot of verses in the Quran that prescribes the duty of the Muslim as a Vicegerent of Allah that supposed to be socially responsible towards the society. Consequently, it appears that the social responsibility concept has been embedded in Muslims way of life as early as Islam itself

b. Muslims are commanded to worship Allah as the only God to perform 'ibadah.

"Serve Allah, and join not any partners with him ..." [Qur'an, al-Nisa': 36] "... He said: "O My people! Worship Allah! Ye have no other god but Him ..." [Qur'an, al-A'raf: 59]

Besides, the most essential reason behind the creation of mankind is to worship Allah the Supreme which is by way of performing 'ibadah (ritual worship): "I have only created jinns and men, that they may serve Me." [Qur'an, Al-Zariyat: 56]

According to Ibn Taymiyyah, 'ibadah is "a collective term for everything which Allah loves and is pleased with from among the sayings and inward and outward actions." He further elaborated that enjoining good and forbidding evil are part of 'ibadah (Ibn Taymiyyah, 2005). In relation to 'ibadah, al-Qaradhwai (1985) explains that any beneficial social works are considered as: 'ibadah in Islam which provided that they are done with good intention. (Wan Jusoh et al., 2015).

c. A khalifah possess a role as a propagator (da'i) to enjoin good and forbid evil (al-amr bi al-ma'ruf wa al-nahy 'an al-munkar):

In one verse mentioned in the Quran, : "Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity." [Qur'an, Ali 'Imran: 104]

The principle of "enjoining good and forbidding evil" is a divine order an obligatory duty for a Muslim. To determine the key success of happiness as aim in the world and the Hereafter depends on whether this command has been carried out or not thus, to call people to do good and forbid evil is an obligation on all Muslims. Based on that basis, any form of social responsibility initiatives that are implemented in order to uphold Islam as a way of life are part and parcel of enjoining good and forbidding evil.

A Muslim will be rewarded simply by fulfilling his social responsibility since it is among the concept of "enjoining good and forbidding evil" and beneficial social works which are considered 'ibadah. This is what a khalifah should do in order to establish Islam on earth.

d. A khalifah owed a duty towards his or her brother.

Muslims should help each other because there are brothers, as Allah says:

"The believers are but a single brotherhood..." [Qur'an, Al-Hujurat: 10] Allah also commands Muslims to cooperate and help each other in righteousness and do not collaborate in sin:

"Help ye one another in righteousness and piety, but help ye not one another in sin and rancour..." [Qur'an, Al- Ma'idah:2]

Helping a Muslim brotherhood is a social responsibility as a Muslim thus impliedly, he has done a good deed ('amal salih) which means everything that is done for a good cause and to act in

accordance with Allah's pleasure to get Allah's blessing., Allah says that those who do good deeds are the best of created beings:

"Those who have faith and do righteous deeds, they are the best of creatures." [Qur'an, Al-Bayyinah: 7] "Those who believe and work righteousness, for them is forgiveness and a sustenance most generous." [Qur'an, Al- Haj: 50]

Obviously social responsibility is a splendid concept and a noble practice which is required in Islam, even has been embedded in Islamic teaching fundamentally. In fact, for those who apply social responsibility for the sake of Allah and are done in a right way, they will be rewarded. Undoubtedly, the khalifah concept is a general concept that can be applied to all natural persons including businessmen.(Wan Jusoh et al., 2015).

CSR in the Context of Maqasid Al-Sharia and Maslahah

The Sharia perspective of CSR can also be understood by looking into the principles that have been established in the context of Maqasid al-Sharia and Maslahah.

a. CSR in the Context of Maqasid al-Sharia

The feature of CSR has its place in Islamic jurisprudence since establishment of social justice and serving public interests are some of the important means of attainment of the Maqasid al Sharia. To reiterate this, the Qur'an says (Surah Baqarah, 2:177):

"It is not righteousness that you turn your faces towards East or West; but it is righteousness- to believe in Allah and the Last Day and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for it, for your kin, for orphans, for the needy, for the wayfarers, for those who ask; and for the freeing of captives; to be steadfast in prayer, and practice regular charity; to fulfil the contracts which you make; and to be firm and patient in pain and adversity and throughout all period of panic. Such are the people of truth, good consciousness."

It is obvious that all responsibilities mentioned in the verse including helping relatives, orphans, poor, needy, wayfarers, and freeing of captives all are relevant to the CSR.

The term Maqasid is derived from a verb qasada which means the goals and purposes. Maqasid itself means goals or objectives and when such term is attached to the word Sharia it specifically refers to goals or objectives of Sharia. According to Imam al-Ghazali, the objective of the Shari'ah is to promote the well-being of all mankind, which lies in safeguarding their faith (din), their human self (nafs), their intellect ('aql), their lineage (nasl) and their wealth (mal). The goal of sacrifice or good deeds according to Allah (S.W.T) is the sincerity and Taqwah (piety). In other words, it can be said that activities of CSR should be based on sincerity and piety. However, as is seen in the above verse, all undertakings must be done to please Allah (S.W.T), which is the common requirement for any good deed in Islam. Therefore, corporations and all business entities in an Islamic state should render their community service only for the sake of the God. The Prophet Muhammad (S.A.W) highlights the importance of giving rather than taking and everyone should do charity especially when one is self-sufficient.

b. CSR in the Context of Maslahah

The term Maslahah is derived from a verb 'saluha' which denotes a good, right, just or honest person or thing. The plural of Maslahah is 'Masalih' which means welfare, interest or benefit. Thus Maslahah

can be translated as benefit or interest. Imam al-Ghazali defines Maslahah as follows (Ahmad al-Raisuni, 1992) :

“An expression for the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it, because acquisition of benefits and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by Maslahah however, is the preservation of the Sharia’s objectives.”

Al-Shatibi (1990) defined Maslahah as a principle that concerns the subsistence of human life, the completion of one’s livelihood, and the acquisition of what his/her emotional and intellectual qualities require of him/her in an absolute sense. According to al-Shatibi and some contemporary Muslim scholars, Maslahah is divided into three types such as: Daruriyyat (the essentials), Hajiyyat (the complementary), and Tahsiniyyat (the embellishments).

(i) Daruriyyat

The essentials are the self-interests upon which people essentially depend, such as faith, life, intellect, posterity, and wealth. According to (Kamali, 2005), these elements are by definition absolutely necessary for the proper functioning of a person’s religious and mundane affairs, to the extent that their destruction and collapse would precipitate chaos and the collapse of society’s normal order.

Thus, protecting them reflects the effective way of preserving the Sharia, as outlined in its objectives. The application of Daruriyyat in CSR is to preserve and protect stakeholder’s essential needs (religion, life, intellect, posterity and property) and public good in general for example by providing them adequate prayer rooms, safety and healthy workplace to employees.

(ii) Hajiyyat

The complementary interests supplement the essentials and refer to those interests that, if neglected, would lead to hardship but not to the total disruption of life’s normal order. In other words, they are needed to alleviate hardship so that life may be free from distress and predicament. An example is seen in the sphere of economic transactions, where the Sharia validates such contracts as forward buying (Salam) and lease and hire (Ijarah), because people need them, notwithstanding a certain anomaly attendant in both. The application of Hajiyyat in CSR is to remove difficulties that may not pose a threat to the normal order’s survival for example by providing training and enhancement human quality programs.

(iii) Tahsiniyyat

The embellishments refer to those interests that, if realized, would lead to refinement and perfection in the customs and conduct of people at all levels of achievement. For example, the Sharia encourages charity (beyond the level of zakat) to those in needs and in customary matters and relations among people, urges gentleness, pleasant speech and manner, and fair dealing. The application of Tahsiniyyat in CSR is to engage in activities or programs that may lead to the improvement and perfection of public life for example by giving charity or donation to the poor and needy and offering scholarships.

Conclusion

The principles of Maqasid and Maslahah, reflected that Islam emphasizes on the importance of considering public interests rather than merely individual interests. This is seen in the advancement for the good of the public in detriment of an individual as well as the categorization of the three levels of interests by their importance. They provide a framework for making decisions and a mechanism for adapting to change, especially for corporations willing to commit to CSR. Perhaps these principles can further contribute to delineating the role of corporations in terms of their CSR. They also offer guidelines for moral judgment on the part of managers and other stakeholders, particularly in solving conflicts that may arise when pursuing CSR.

Using the framework of the three levels of Maslahah as a general guideline to an ethical filter mechanism, can thus be likened to the three levels of judgment used by managers of corporations to resolve the ethical conflicts that inadvertently emerge while applying CSR programs and initiatives. The concept of Maslahah also entails understanding the Islamic principle of preventing harm, which states that a corporation cannot harm or cause grief to others while engaging in its economic and business activities.

Under the principle of Maslahah, two major Sharia maxims are imbued, i.e. removing hardship (raf' al-haraj) and preventing harm (daf' al-darar). This concept occupies a central position in the framework of protecting the social interest, as enshrined in the Maslahah, particularly in averting social harm (Mohd Kamal Hasan, 2002).

In summary, the concept of Maslahah indicates the need for corporations to engage in and manage their businesses and CSR activities according to priorities that have evolved from a deep understanding of the Sharia's objectives such that those activities are done in a way that is in accordance with the different levels of importance and the severity of its effect.

The implication of this therefore is that adoption of the concept of CSR invariably implies implementing the noble objectives of Sharia. It can be said in the light of above discussion that Islamic institutions or Shariah Corporation are actually protecting five elements of Maslahah by promoting CSR. The Shariah Corporation which is adopting this concept has the potential of not only complying with the letter of Sharia but also fulfilling the true spirit and Sharia's objectives.

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