

Hibah As A Way of Islamic Wealth Management

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Abstract

Islamic wealth management is one of the most indispensable fields that every people should be aware of especially among the Muslims in Malaysia. There are many Islamic wealth instruments suggested in Islam such as *faraid*, *wasiyyah* and also *hibah*. This paper attempted to discuss on several contemporary issues with regards to the implementation of *hibah* in Malaysia by analysing literature reviews provided by previous researchers on the matter. This is relevant where *hibah* is becoming one of the major Islamic wealth management tools being used among the Muslims in Malaysia and several issues arise which triggered the need to address this matter. This concept paper tried to analyse the issues arise from different perspective provided by previous researchers. Results from the literature analysing found that several issues need to be solved to improve the current *hibah* implementation in Malaysia such as lack of *hibah* awareness, the similarity between *hibah* trust and conventional living trust, the absence of uniform law on *hibah* procedure and many more. Hence, this concept paper contributed towards addressing the Islamic wealth management issue as in *hibah* where it may help as a guide for future researches.

Keywords

Islamic Wealth Management, HIBAH, HIBAH Issues.

Introduction

Islamic wealth management is one of the most integral parts in the field of Islamic management. Our life is engaged with day-to-day management beginning from the smallest aspect until the most important part in our life. This can include daily activities management at home, activities as a student as well as the management in an

organization. Wealth management can be defined as a service of advisory for investment where the advisor will obtain the information of wants from the client and advise on strategies on utilizing appropriate financial products or services (Investopedia, 2020). As for Islamic wealth management, it can be understood as managing wealth by using Islamic instruments such as *wakaf*, *zakah*, *sadaqah*, *faraid*, *hibah* and many more. It was reported in news and also media on the issue of wealth management where the properties or assets are not being utilized efficiently and remain uncirculated. This is because there are still ignorant people who prefer to be silent on this matter and thus, the wealth that can be used to improve the life of other people are not being distributed fairly to the needy.

As mentioned before, there are several instruments used in managing the wealth Islamically and we are going to focus on *hibah*. *Hibah* literally means gift or a voluntary gift. *Hibah* can also be defined as a transfer of ownership of an asset without any consideration. According to *Kamus Dewan* Fourth Edition, *hibah* is the action of giving off rights voluntarily to another person with a good intention; to give them at the time the donor is still alive. Wahbah al-Zuhayli gives the Shariah definition of *hibah* as a contract that delivers the consequences of ownership transfer of an asset from the original owner to other people during his lifetime without the need for any consideration. The legitimacy of *hibah* is portrayed in al-Quran, Surah an-Nisa', verse 4 which means, "...but if they choose of their own accord to make over to you a part of it, then you may enjoy it with pleasure and good cheer." This verse tells us that it is compulsory for the men to give dowry to the women, however, if the women choose to give a part of the dowry to the men, then they can enjoy it with pleasure. The act of the women to give a part of the received dowry to the men is called as *hibah*. *Hibah* is widely practiced in the takaful industry as well as other modern practices in Islamic finance and banking. In the takaful industry, a participant can nominate anybody, be it his family members or other people as his beneficiary to receive takaful benefits which are granted as *hibah* after his death. *Hibah* is also being used as an alternative for *faraid*, which is the distribution of wealth to the heirs in accordance with Islamic law.

Nowadays, people are more keens toward *hibah* to distribute their wealth to their loved ones instead of doing it by way of *faraid*. This is because there are too many issues in managing wealth according to *faraid*. Examples of the issues are some of the heirs of the deceased failed to give cooperation due to daily commitment or also dissatisfaction among them due to the amount distributed for each of them. The issue worsens when the proceedings of the court need to be postponed until every one of the children presents on the day of the court hearing. This could delay the wealth distribution to the children that maybe live in hardship and is in immediate need of the wealth to continue their life and

therefore abuse the rights that should be obtained by each heir. Therefore, people are opting for *hibah* as an alternative to *faraid* in managing their wealth to avoid these negative consequences. This is because the proportion of the wealth to be distributed can be determined by the donor and no one initially can challenge *hibah*. However, recent studies provided by some scholars show that there are some disputes in the management of *hibah*. This has become the main problem statement as originally *hibah* cannot be challenged, but the recent evolution of *hibah* indicates significant issues resulted from the legal perspective which leads to difficulties in distributing the wealth or the assets. So, this study will analyze the literature review provided by some scholars on *hibah*'s implementation and provide findings from related researches.

Literature Review

This part will discuss on relevant and significant studies on *hibah* as a way of Islamic wealth management provided by previous researchers in the related field. Mohd Said and Saad (2016) stated in their paper that three major factors contribute towards the *hibah* giving behavior among Muslims in Malaysia. The three factors are religious value, attitude and service quality. According to Ani et al (2020), they found three determinant factors that enable the success of a *hibah* service provider which are *hibah* service quality, *hibah* cost and also *hibah* procedure. All these factors have a positive relationship with the *hibah* service provider. A study provided by Ahmad et al (2019) research on the awareness of *hibah* among the people in Raub, Pahang and concluded that the data collected show that the people do have the knowledge on *hibah* and will undertake it in the future.

Kamarudin, Zaman and Meor Razak (2019) in their paper mentioned on the need for *hibah* law in Malaysia. They agree that *hibah* law is needed as a guideline and constraints for the asset owner to give their assets as *hibah* to the recipient. A study on the awareness and level of understanding on *hibah* among the people was carried out and the researchers found that *Hibah* Package Information Richness, *hibah* education coverage, *hibah* program frequency and knowledge of *hibah* agent contributes in increasing awareness among the people regarding *hibah*. This is because *hibah* is considered as one of the most indispensable tools in managing Islamic estate in Malaysia (Abdul Rahman et al, 2020). The major issue in the field of Islamic wealth management is that there were many Muslims still have low knowledge on how to manage their assets and the researchers proposed that there are many tools that can be used and one of them is *hibah* (Basah & Tahie, 2019). Zainol et al (2019) addressed the issue of undistributed properties among the Muslims and they suggest that *hibah* or inter gift can be a good tool

in mitigating the disputes and problems in distributing the wealth to the heirs. Al-Aidaros, Ishak and Wan Mahamud (2018) citing from Alias, Fauziah, Azam, & Hafiz, 2014; Noordin, Ismail, Abd Rahman, Haron, & Abdullah, 2016; Rashid & Ahmad, 2013 provide studies on the absence of clear framework on *hibah* awareness and other related elements. Zulkepli and Ahmad Bustami (2019) mentioned some issues on the implementation of *hibah* such as the possibility of injustice and disagreement among the legal heirs, the dangers from the money laundering perspective, and the dispute between Shariah court and civil court over the *hibah* jurisdiction.

According to Mohd Yusof and Ahmad (2013), they stated that the cases of *hibah* being tried in the Shariah court is based on juristic opinions from the Muslim scholars, namely Hanafi, Maliki, Syafie and Hanbali. They said that it may result in difficulties and conflicting opinions among the judges, the Shariah court administration, and relevant agencies who manage the *hibah* documentation on behalf of the donor. This is because there are no detailed or specific laws and regulations with regards to the *hibah* management and may result in disputes among the said parties. Ahmad et al (2017) in their paper mentioned over the last five years, there were cases in the court on issues that arise among the beneficiaries and the heirs with regard to the transfer of inheritance by way of *hibah*. They added that the increasing number of cases in the court related to *hibah* indicates that there exists the feeling of dissatisfaction among the family members on the wealth distribution by way of *hibah*.

In another study provided by Noordin (2016), they discuss on the evaluation of *hibah* trust and found that the practice amounts to the conventional living trust where the benefactor had the freedom to transfer the inheritance of his wealth by abandoning the interest of the living heirs under *faraid*. Azhar and Md Nor (2019) highlighted some issues on the implementation of *hibah*. For example, the issue of no specific law governing the practice of *hibah*, the issue of poor understanding on the concept of *hibah* and also the complexity of *hibah* process which involve Shariah and civil administration and also the conflicting juristic opinions regarding *hibah*. Nor Muhamad et al (2019) in their paper entitled “Islamic Intervivos Law Challenges in Malaysia” outline the *hibah* cases in Malaysia in the form of a table by inserting the column Type of *Hibah*, Example Cases, Issues and Courts involved. This table showed that there are issues arise in the implementation of *hibah* although it is seen as an alternative to *faraid* (inheritance distribution in Islamic perspective).

Methodology

In this section, the study provides a summary of methodologies and findings on related literature. Based on this part, we will analyze the methodologies used and discuss the findings in relation to the issues in *hibah*.

In Mohd. Yusof & Ahmad (2013), the study was conducted by analyzing the case study of the application of *hibah* with emphasis on its application in Melaka Tengah. Relevant statutory and statistics on the registered *hibah* cases in Shariah courts in Melaka Tengah were also taken in for revision to further understand the application. The researchers also discuss the views of authoritative individuals in the related field. The researchers found that most reported *hibah* cases were very minimal in which proven that most Muslims did not realize of its existence and importance although it can be the best recourse for them to administer the distribution of their assets rather than adopting for *wasiyyah* (will) and *faraid*. The authors suggest that there be a standard procedure or regulations in *hibah* to solve its issues.

A study was done by Ahmad, Ab Majid, Abdullah, Noor Minhad and Ismail (2017) used a collection of secondary data which consists of *hibah* cases from the Melaka Syariah Court and Amanah Raya Berhad Melaka is used. Besides, interviews, telephone and email correspondences were conducted to further understand the issues concerning *hibah* cases and their reasoning. The highest number of registered on *hibah* cases was recorded in 2015, increasing from 2013. The data result shows that there are more than 20 cases recorded in Melaka except only 12 cases in 2013. Due to the increasing number of cases regarding *hibah*, it shows that citizen of Melaka is still low in understanding the concept and implementation of *hibah*.

As for Noordin, Ismail, Abd Rahman, Haron and Abdullah (2016), a thorough and critical review of relevant literature on Islamic wealth management and estate distribution is made. They also used the information gathered from the publications and direct consultation to evaluate the current practice and application of *hibah* trust by the Malaysian trustee companies such as Amanah Raya Berhad and As-Salihin Trustee Berhad. Based on the analysis done, it was found that *hibah* trust is almost similar and amounted to the conventional living trust under the factor of giving a high degree of freedom for the donor to deliver his assets or wealth by discarding the interests and legal rights of the heirs under the *faraid* concept. Despite that, it was concluded that *hibah* trust practices would offer the benefits of shortening the long process of wealth distribution in

the *faraid* method, reducing the governmental costs as well as averting the legal barriers and inheritance tax.

Nor Muhamad, Kamarudin, Abdullah, Sholehuddin, Abdul Hamid, Muhidin and Abdul Karim (2019) determined relevant materials such as the Malaysian Federal Constitution, National Land Code 1965, Islamic Religious Administration Enactment and Syariah Court Enactment for analysis purpose. This study also analyzed several cases related to *hibah* to understand current legal issues and practices. The authors found out that there is a need for specific *hibah* law to be introduced to ensure the issues can be handled efficiently. They also summarized the importance of having a comprehensive and uniform *hibah* law.

Implications and Recommendation

Based on the above past researches, we can understand that the practice of *hibah* in Malaysia is still being debated and discussed in terms of the awareness of the people on *hibah* as well as its application in monitoring the management of the wealth of the Muslims. The most important thing in addressing these issues is that the society should be provided with sufficient resources and knowledge regarding the basic concept of *hibah* itself, the procedure and the advantages of managing wealth distribution through *hibah* procedure, the do's and don'ts when deciding the proportion of wealth distribution and other related information. The people or individual needs to have a crystal clear understanding of a particular subject when they intend to practice it especially in important management aspects such as Islamic wealth management. Thus, we encourage that the *hibah* service provider such as Amanah Raya Berhad and As-Salihin Trustee Berhad and other related authorities to joint together in educating the Malaysian, be it the Muslims or the non-Muslims on the basic and essential knowledge of *hibah* so that they know what they are doing. This effort in our views will result in a more cautious and knowledgeable society and can avoid the issues of injustice in the distribution of wealth to the related parties.

In another issue which is the absence of *hibah* law, we noted that this occurred due to the presence of contradict views among the Muslim scholars with regards to the basic condition and also the implementation of *hibah* according to the four majority school of thoughts namely, Hanafi, Maliki, Shafie and Hanbali. The contradict views result in the different judgments provided by the Shariah court and the Civil court where the number of cases of *hibah* disputes will increase. Therefore, as suggested by previous researchers regarding this matter, we also agreed that a standard and uniform law or procedure

of *hibah* should be established by looking at several important aspects and the feasibility of the rulings in Malaysia whereby the Shafie's school of thought is the most prevalence sect being applied in this country. We believe that with the standardization of *hibah* law being practiced and adopted by every state across the country, then the level of disputes and issues can be mitigated to achieve the best outcome from the implementation of *hibah* as one of the best tools or methods in the field of Islamic wealth management.

Conclusion

From this paper, we can conclude that *hibah* can be practiced as one of the Islamic wealth management methods as it contributes towards the benefits of public society. However, based on the *hibah* cases analyzed in Malaysia, it is proven that there are problems in the implementation of *hibah*. One of the major concerns is due to the absence of specific law or procedure of *hibah* governance and as till now, the judges and other authoritative bodies and agencies only depends on the general information from the *hibah* standard and also juristic opinions which are conflicting between each other. Therefore, the study suggests that authoritative bodies should develop a comprehensive and standardized law regarding *hibah*. This is important to ensure no complicated issues in *hibah* will occur in the future and even if it does occur, there is a complete reference for the authority to make a good judgment that benefits all members of the involved parties. We believe that by adopting the recommendations, *hibah* can be one of the most trusted and efficient methods in solving the disputes and improve the wealth distribution method towards contributing the benefits to all mankind.

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