

Sharia Parameters for Cash Trust Hibah Implementation in Malaysia

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Abstract

Several entities in Malaysia have offered to implement trust hibah in order to establish Muslim property management. The previous study has argued that several Sharia difficulties demand a clear explanation and answer from a Shariah perspective. As a result, the goal of this research is to propose cash trust hibah parameters to guide and improve trust hibah governance by all stakeholders. This qualitative research collected data from in-depth interviews. Data will be analysed by content analysis. The finding showed that cash trust hibah parameters should be done using conditional hibah contracts and made separately, the condition must serve the interests and welfare of the giver and the hibah's recipient, and a cash trust hibah property should be done based on a percentage rather than a fixed value. Thus, trust hibah product providers must follow Shariah parameters to boost Muslim trust.

Keywords: Shariah; Parameter; Cash; Trust Hibah

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1.0 Introduction

A trust hibah is a type of giving in which the giver of the property can continue to utilise the property after the aqad trust hibah is established during the giver's life (Halim & Bustami, 2017). This principle is demonstrated in the instance of Lee Ing Chin & Ors against Gan Yook Chin & Anor [2003] 2 CLJ 19. After the trustee appoints the trustee or appoints himself as a trustee to run the trust, the contract is fully calculated. English law has long allowed for the implementation of this trust hibah as a living trust (Halim & Bustami, 2017; Hassan & Zaizi, 2020).

The trust instrument hibah has emerged as a novel invention in Malaysia's Islamic financial industry (Rahim et al., 2018). According to Azhar (2017), a trust hibah is a gift made out of love, and the trustee will administer the property before being turned over to the recipients after the grantor's death. According to the case of *Milroy v. Lord* [1862] 4 De G.F. & J., chief justice Turner stated that a trust can transfer property to the trustee (trustee), and the trustee may also make a declaration that the property of the trust will be managed by the trustee using the concept of trust (Halim & Bustami, 2017). The creation of a trust hibah instrument is based on English law. However, the community accepts this instrument because of its *maslahah* in property management and preservation (Mohamad & Mansor, 2016). Trust hibah is based on the concept of hibah, which is one of Islam's covenants.

According to Al-Najjar's perspective, the concept of trust hibah can be seen through the Maqasid Shariah Principles (2008). This ability comprises four aspects: safeguarding the value of human life, human beings, society, and the environment. The four factors demonstrate hibah Amanah's significance in protecting property and ensuring that this instrument satisfies the perspectives of syarak (religion), safeguarding offspring, and taking care of oneself, society, and the environment. Each element is inextricably linked to the others, particularly in the chapter on the management of one's property during life through the concept of trust hibah, so that the property is preserved according to Islamic principles to ensure a good self-life, leads to an economically sound society, and ultimately lead to the environment of developing and developed countries.

In general, trust hibah may be seen as a solution to the problem of Muslim unclaimed property based on the notion of *maslahah*. Hibah trust is an *aqad* in *syara'* that is recognised and permitted. However, there are only a few *ijtihadi* issues with divergences of opinion, and the issue is not *qat'i*.

Thus, the purpose of this study was to develop a particular standard or parameter of Shariah-compliant trust hibah that meets Malaysian legal requirements as a guideline to trust institutions, the State Islamic Religious Council (MAIN), the Department of Zakat and Hajj Waqf (JAWHAR), financial institutions, and stakeholders. It also contributes to the enhancement and empowerment of trust hibah, which can impact the economic and social strengthening of Muslims, enhancing their ownership of their property through trust hibah.

2.0 Literature Review

According to Rahim et al. (2021), trust hibah instruments have begun to be created and utilised in Malaysia's financial market (Rahim et al., 2021). Permodalan Nasional Berhad (PNB) introduced this product in its offering, Amanah Saham Nasional Berhad (ASNB) (Rahim et al., 2018). This product is also used by Amanah Raya Berhad (ARB), Tabung Haji (TH), Wasiyyah Shoppe Berhad Berhad (WSB), As-Salihin Trustee Berhad (ASTB), CIMB, and Prudential BSN Takaful Berhad in addition to ANSB (Zulkepli & Bustami, 2019).

Moidin et al. (2023b) discovered confusion in the trust hibah product, specifically *aqad* hibah *ruqba*, the stipulation in *aqad* hibah, ownership and delivery of goods, acceptance after death, hibah in secured property, *aqad* in trust, acceptance of wages in trusts, and combinations of trust contracts in *aqad* hibah. Shariah difficulties with trust hibah, according to Azalan and Said (2016), also include the issue of offer and acceptance (*ijab* and *qabul*), also known as *sighah* in the contract. The legitimacy of a *sighah* hibah given by *syarie* judges is predicated on particular volumes of jurisprudence (Azalan & Said, 2016). Moidin et al. (2023a) discovered that the instrument of trust hibah involves sharia concerns with conditions on the time of ownership and conditions on the transaction of hibah property, on which jurists differ.

Following that, Asni and Sulong (2021) investigated the use of *mura'ah al-khilaf* and *ma'alat* in fatwa decisions involving conditional hibah in Malaysia. The study's goal is to examine the differences in fatwas among Malaysia's official fatwa institutions, which include the State Mufti Department (SMD), the National Fatwa Committee Muzakarah (NFCM), and the Bank Negara Syariah Advisory Council (NBSAC), on the issue of conditional hibah, and then propose a uniform fatwa by celebrating the views of all the official fatwa institutions involved.

Previous research discovered that trust hibah instruments have sharia concerns and require a parameter for implementation in Malaysia. As a result, this research aims to propose a specific parameter for cash trust hibah that may be utilised as a guide for the Islamic finance industry that manufactures cash trust hibah products.

3.0 Methodology

3.1 Research Design

For the empirical side, this study employs a qualitative approach for collecting primary data through in-depth interviews. Effendi (2013) defines qualitative research as "a practical method for describing the conduct of research studies." Furthermore, this method is unique in dealing with the subjective interpretation of textual data content by classifying, coding, and systematically identifying themes (Hsieh & Shannon, 2005).

To gain a thorough grasp of the subject of the study, this study employs a cross-sectional narrative review technique using in-depth interviews (Robertson & Samy, 2015; Gunarathne & Senaratne, 2017). This method is used because the parameters of Shariah and the law of the trust hibah product cannot be gained simply by reading paperwork; an in-depth interview is required to obtain accurate and unbiased information.

3.2 Selecting respondents, data management and analysis

A purposive sample in interviewing permits the research to meet the study's aims (Etikan et al., 2016). Researchers interviewed industry representatives, including the Head of Syariah Management at Permodalan Nasional Berhad (PNB). Furthermore, academics from Universiti Teknologi MARA (UiTM), Universiti Kebangsaan Malaysia (UKM), Universiti Teknologi Malaysia (UTM), Universiti Malaya (UM), Universiti Pendidikan Sultan Idris (UPSI), and the International Islamic University of Malaysia (UIAM) were interviewed for this study. All respondents interviewed are industry representatives and academics who are specialists in trust hibah.

Due to the fact that this is an exploratory study, interviews were performed to acquire a comprehensive understanding of the Shariah and legal parameters of trust hibah products. As primary data for this study, all interviews were recorded with an audio recorder and typed in a notebook. The interview findings were then transcribed following the methods proposed by Miles and Huberman (1994).

3.3 Validity and reliability

To guarantee the data's veracity, this study interviewed the Head of Sharia Management, Permodalan Nasional Berhad (PNB). Furthermore, academics from Universiti Teknologi MARA (UiTM), Universiti Kebangsaan Malaysia (UKM), Universiti Teknologi Malaysia (UTM), Universiti Malaya (UM), Universiti Pendidikan Sultan Idris (UPSI), and the International Islamic University of Malaysia (UIAM)

were interviewed for this study. To avoid unintended mistakes, all respondents verified all facts supplied by them. The questions were supplied a week before the interview so that they could prepare the best possible answers.

The acquired data is then analysed using the content analysis method. This method is helpful for conducting systematic and objective qualitative analysis. It also contributes to the quality and dependability of data analysis (Bengtsson, 2016). Because it begins with a discussion of the parameters of Shariah and the law of trust hibah products, this study used content analysis, in which themes are specified before and during data analysis. Content analysis is used to conceptually confirm or extend the theoretical framework (Hsieh & Shannon, 2005).

4.0 Findings Of Study And Discussion

4.1 Legal Analysis of Trust Hibah Requirements

The ruling on the permissibility of trust hibah results from the opinion of Jadid Imam Syafi'i, a number of Maliki and Hanbali scholars, who endorsed the conditional hibah aqad. The argument is that a person who gives hibah has willingly done something noble. A person who performs an aqad tabarru' can be accepted as he wants as long as it does not turn the ruling of halal into haram or haram to be halal. The saying of Allah SWT means:

"no ground (of complaint) can there be against such as do right"
(Al Taubah verse 91)

Therefore, when the grantor puts the condition, then the recipient of the hibah who is willing to accept the hibah is subject to the agreed condition of Allah SWT in Surah al Maidah verse 1:

"O ye who believe! Fulfil (all) obligations..."
(Al Ma'idah verse 1)

Aisyah reported that the Prophet Muhammad (peace and blessings be upon him):

"The Muslim is subject to the conditions they agree to as long as it coincides with the truth."
(The sahih hadith recorded by Imam al-Hakim)

The giver of hibah (grantor) should place the condition to fulfil its sanctity recognised by syarak. The practice does not cause harm to the recipient of the hibah or the community. Therefore, the Prophet Muhammad (peace and blessings be upon him) himself used to practice conditional hibah through the following hadith:

"Ummu Kalthum binti Abi Salamah reported that When the Prophet Muhammad married Ummu Salamah, he said to him. Indeed, I had given a gift to Najasyi, some jewellery and perfume containers. However, I got the news that Najasyi had died, and I felt that my gift would be returned. If the gift were returned, I would give it to you. As expected, the gift was to be returned to the Prophet Muhammad. Then he gave each of his wives a container of perfume and gave Ummu Salamah a container of leftover perfume and jewellery."
(The sahih hadith is recorded by Imam Ahmad, al Tabarani and Ibn Majah)

This is an argument that a hibah can be given *taklik* condition because the Prophet Muhammad requires Ummu Salamah that if the gift is returned, he will give it to Ummu Salamah.

Furthermore, there is a requirement for hibah practice except for benefits, i.e. *"hibah bi istithna al manfa'ah,"* compared to the necessity of buying and selling except for benefits (*bay bi istithna al-manfa'ah*). As the hadith below means:

"Amir reported Jabir reported to me that one day he was riding a tired camel and he met the Prophet Muhammad (peace be upon him). Then, the Prophet Muhammad patted the camel's feet while praying for the camel. Then the camel can move fast, not the same as before. The Prophet Muhammad said, "Sell this camel to me for four gold dinars". I said, "I do not want to sell". He said, "Sell me this camel for four gold dinars". I sold the camel, but I required that my camel first use it for me to return to the village. When we reached my village, I handed the camel to the Prophet Muhammad and paid the price. Then I left. Soon after that, he sent a messenger and delivered a message, "I am not so to take your camel. Take back your camels, and the four dinars are yours."
(Narrated by al-Bukhari)

Wajh dilalah in this hadith, Jabir sells his camel but puts the condition that the camel will be used until it arrives in Medina, then the Prophet Muhammad accepted the condition. This clearly proves that the sale and purchase are valid even if a condition binds it. (Barmu Taysir Istihna al manfa ah fi aqd al bay fi al fiqh al Islami, Majallah Jami ah Dimashq li al Ulum al Iqtisadiyah wa al Qanuniyah, 2013).

Among the reasons the majority of scholars do not allow the aqad hibah to be associated with a condition is to avoid gharar, i.e. risk or obscurity. However, *llah* this does not exist in the aqad of trust hibah if all matters have been explained in the deed of hibah and the deed of trust hibah and both the hibah and the hibah recipient agree to the stated conditions. Aqad hibah is in the category of aqad

tabarru' similar to aqad waqf. If a person is given jurisdiction to set conditions to fulfil his masalah, then the hibah should also be empowered to place conditions to fulfil his masalah.

There is a fatwa allowing the aqad hibah Amanah, which practises the conditional hibah of the Federal Territory Islamic Law Consultative Committee (Fatwa Council) in its 56th meeting on 5 October 2004, has decided on the implementation of Trust Hibah implemented by Bumiputra Commerce Trustee Berhad as follows:

- a) The hibah giver beneficiary recipient subsidises that the hibah's property is handed over and held by Bumiputra Commerce Trustee Berhad on behalf of the beneficiary.
- b) Bumiputra Commerce Trustee Berhad will physically transfer the hibah's property to the beneficiary after the hibah's death or following the terms agreed upon through the Deed of Hibah.
- c) In the exercise of hibah, the trustee may perform the functions of a mediator. This concept is consistent with the principles and conditions of Hibah, as both parties agree on the appointment of the trustee.

3.1 Shariah Parameters in the Implementation of Cash Trust Hibah

Hibah trust may be considered a ploy from one angle by some to overcome the problem of the amount of unclaimed property of Muslims. However, trust hibah is also the best solution to this problem based on the concept of *masalah*. Trust hibah is a hibah which is a recognised and permissible aqad in *syara'*. However, only a few *ijtihadi* matters are seen as having different views, and the matter is not *qat'i* (Interview with Prof. Dato' Dr Ahmad Hidayat Buang, 27 July 2022).

Several parameters have been proposed to make the cash trust hibah implementation more thorough and dynamic. Among them is trust hibah should use the aqad hibah with condition. At the same time, the condition must be in the best interests and welfare of both the giver and the recipient of the hibah. Furthermore, the contracting parties must approve the trust hibah and the terms imposed. The cash hibah rate should be calculated in percentages. A cash trust hibah property as an investment should be done based on a ratio or percentage rather than a fixed value. This is because the actual amount of hibah is determined by the future profitability of the project. As a result, hibah property cannot be decided in the form of a fixed valuation, such as RM3000, because this practice violates *muqtada aqad* and invalidates the contract signed (Rasyad, 1981; al-Sawi 1990). However, the grantor's approval is required for the ratio or percentage.

Following that, a separate contract, hibah and trust should be created. Contract hibah must be performed flawlessly first, followed by a trust contract. This is done to avoid the occurrence of two aqad in one contract and to avoid *gharar*. Contract Amanah can use aqad *wakalah* and *wisoyah* if the recipient of hibah is a person with capacity (*ahliyyah*). For those who use the concept of *wakalah* and *wisoyah*, a trustee must also be appointed by a hibah recipient who has the capacity (*ahliyyah*) of the trust hibah. If, on the other hand, the recipients of hibah are persons who lack the ability (*ghayr ahliyyah*), the trust contract must include the aqad *wisoyah* and the guardian (*wali*) can appoint a trustee.

5.0 Conclusions And Recommendations

Finally, this study investigates the management of property through trust hibah to ensure that property can be freely utilised and dispersed within a spectrum of various and extensive human wants. Trust hibah through cash assets such as savings and investment accounts is a developed and essential branch of trust hibah in today's society. This study provides cash trust hibah parameters as guidelines and enhancements to the current model in the context of trust hibah governance by all stakeholders. It can create comprehensive and dynamic trust grant instruments. There are nine parameters presented, which cover the type of contract, the establishment of conditions, the rate of property division, the willingness and qualifications of the contract parties, and how to document the cash trust hibah contract. Future research should be performed to examine property management through trust hibah from a different perspective, which is digital property, which is getting increasing attention among the community.

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Paper Contribution to Related Field of Study

This study proposes the cash trust hibah parameters, which will serve as a guideline and improvement to the existing model within the context of trust hibah governance by all stakeholders, namely trust institutions, the State Islamic Religious Council (MAIN), the Department of Zakat and Hajj Waqf (JAWHAR), and financial institutions. It is capable of developing a comprehensive and dynamic trust hibah instrument.

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