

VISIT TO INCEIF
2 November 2011
Remarks by Chairman of LHC

I did not realize that my chance meeting with brother Daud at KLIFF 2011 which lasted for only a few minutes would lead to this meeting and, I am sure, greater “collaboration” between INCEIF and the Law Harmonizing Committee (LHC) in future. I thank brother Daud and INCEIF for inviting me here and all of you for making time to be here.

Islamic finance in its modern form has been around for about forty years. It was not only born but also grew up within the conventional finance and common law or continental law framework. At conferences I used to hear suggestions that we should apply *shari'ah* completely. In other words, not only the products should be in conformity with the *shari'ah*, but the laws applicable to it, e.g. in the documentation as well as in the settlement of disputes, must also be the *shari'ah*.

Unfortunately, except for some work done by the Law Review Committee established by Bank Negara in 2003, nobody really looked at the laws and identified the areas that are contrary to *shari'ah* and produce the *shari'ah* alternative or a draft of a complete set of laws based on *shari'ah* to replace the existing laws. The reason, I think, as I have said many times is that, those who know civil (common) law do not know Islamic law. Those who know Islamic law do not know civil (common) law. Those who think they know both do not practise law.

What it means is that, we have to pool people with different and relevant expertise to work together for this purpose.

In July last year Bank Negara had taken the lead to establish the LHC and I have been entrusted to chair it. The Committee consists of representatives from Bank Negara, Securities Commission, Attorney General's Chambers, practicing lawyers, ISRA and the Association of Islamic Banking Institutions Malaysia (AIBIM). (Encik Yusri will tell you more about it.)

The first thing I did was to write letters to *shari'ah* committees of the financial institutions, Government Departments, institutions, organizations, law and *shari'ah* faculties of the universities etc for their assistance to identify the laws that are applicable to Islamic finance which are contrary to *shari'ah* and

for their proposal of the *shari'ah* alternatives. I thought that there must have been researches done on the subject and that we could just pick them up and proceed with the drafting of the proposed laws and pass them to the relevant authorities for legislation. Unfortunately, we did not receive any response.

So, we tried to identify them ourselves and found a few. We have also established a Land Law Sub-Committee chaired by a lawyer who does Islamic finance work. (Again, Encik Yusry will tell you more about it.)

I find it hard to believe that what we have identified are the only issues. If they are, then it looks as if we have been afraid of the unknown. So, we will have to find out more.

Here, I seek your help and your expertise. Some of you might have done some research on a certain area. Let us have them, together with your proposal, if any. Or, you may want to undertake to do a research in a certain area familiar to you. We can discuss it so that it does not overlap with what we are already doing.

After attending the Ethics Roundtable at KLIFF 2011 on 5th. October 2011, I have an idea. I want to propose it to you to think whether it is suitable or not and whether you would like to take it up or not. It is about Ethics. Assoc. Prof. Dr Asyraf Wajdi Dusuki has already done some work on it. We now have papers by Dr. Daud Bakar and Prof. Hashim Kamali. IBFIM has also produced a guideline. Let me say this, a research paper or a conference paper, no matter how learned it is, will remain so and later forgotten, unless it is put to practical use. To do a research without putting the result to a practical use is like conceiving without delivering.

I wonder whether you would consider to undertake the task of listing down the ethics in Islamic finance? I think it is easier to list down what they are than to try to define what it is.

Then, consider how to enforce them. To me, the argument that Islamic ethics are part of the religion and therefore they would be complied with is not a valid argument. This is because, **first**, even the prohibited are breached by Muslims every day, including ourselves, sometimes. What more ethics!

Secondly, the people who are involved in Islamic finance now are no longer just the pious who are motivated by the fear of committing a sin. The not-so-pious-Muslims and the non-Muslims have also joined in, not out of fear of committing a sin but to make money. It is naïve to think that the members of the Board of Directors, the share holders, the employees of those institutions ,and I would add, the customers, to be as knowledgeable and as pious as the paper writers on Islamic ethics.

So, having determined the ethics, we should consider whether there is a need and the possibility to codify them, to have a supervisory and a disciplinary body to enforce them, something similar to the Advocates and Solicitors Legal Profession (Practice & Etiquette) Rules 1978

May be a Sub-Committee on Ethics, like the Sub-Committee on Land Law, should be established. Think about it.

Thank you.