

ENGAGEMENT WITH OFFICERS OF ISLAMIC BANKING AND TAKAFUL
DIVISION OF BANK NEGARA MALAYSIA

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MAKING OUR CONTRIBUTION TO ISLAMIC BANKING AND SHARI'AH

By

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I welcome this “engagement” with you all. I hope it is mutual and it will be of mutual benefit. More so, I hope it will contribute, in whatever way, no matter how small, to the development of Islamic banking and *takaful* and to Malaysia’s ambition to make Malaysia the holistic hub for Islamic banking, Islamic finance and *takaful*.

In 1950’s when I was a boy, I only saw banks from a distance because it was a “*sinful place*” and a place for the rich. That was my perception. Even in 1960’s when I was a Form Six student at St. Xavier’s Institution, Penang, walking along the banking area in Penang, I did not see Malay/Muslims working in banks. Of course, besides the bank being a “*sinful place*”, the Malays especially, did not have the qualifications, even to be a clerk because they were not English educated for the simple reason that they lived in the rural areas where there were no English schools.

In 1969, when I joined the Judicial and Legal Service and had to open an account to receive my salary, I simply went to the nearest bank. Perhaps, due to necessity and without any alternative, we began to accept the services of banks as necessary and convenient. As a result we tend to forget about the *riba*’ issue.

Then the Government began to give scholarships to Malay/Muslim students to study accountancy, economics and similar subjects. Our students were drawn into it. The irony is that neither the students nor their parents, even though they could be very conservative in their religious outlook, ever objected. Neither did I hear anyone questioning where those students would work after their graduation. Perhaps, most of them did not know what subjects their children were studying and where they would likely end up working. They were too happy that their children were admitted to universities, what more abroad!

So, when those students, including law students graduated, some, like you all, joined Bank Negara, others joined the Securities Commission, yet others joined the commercial banks, *albeit* “non-Islamic banks”.

Again, as far as I know, no one ever raised an issue about the propriety of Muslims working in a conventional bank or, for that matter, Bank Negara on the ground that working in a conventional bank is outright “*haram*” and working in Bank Negara is “*syubhah*” for being involved in and facilitating the business of non-Islamic banks and insurance. (Sorry if I sound like a *Shari’ah* scholar). To me that “failure” is a blessing.

By 1970’s there were already a number of Malay/Muslims in the banks and by 1980’s some have already gathered enough experience and were quite senior. So, when the so-called “revival of Islam” began in 1970’s and some scholars began to talk about “Islamic banking”, we already had the people with enough practical

experience in conventional banking to help produce the Islamic products. I shall now repeat what I said at the Islamic Financial Services Industry Legal Forum in 2009:

“.....without their (officers working in conventional banks and takaful companies) experience in conventional banking and insurance, quite likely, until today we would still not have an Islamic bank or a takaful company. Those verses of the Qur’an on riba would probably continue to be recited melodiously by qaris and qariahs or cited by the scholars along with hadiths on gharar, maisir, riba and others in religious classes and lectures. Nothing more.”

With the introduction of “Islamic banks”, those “un-Islamic banks” became known as “conventional banks”, reducing the “sinful image” of the business. In fact, it makes “Islamic banks” look “unconventional”, an irony, really. It is like calling taking an alcoholic drink as “having a drink”.

Later, those conventional banks began to introduce their “Islamic windows” giving the option to customers to choose besides making those conventional banks “*semi-Islamic*”.

I see wisdom in having a parallel system. First, it is a clever way to develop and expand Islamic banking. We did not suddenly abolish the existing (conventional) system and replace it by an “Islamic system”. Imagine what would have happened had we done that. It was not just a question of transition from one system to another. It was a case of abolishing a fully developed existing system and “replacing” with a “new system” which was at an infancy age. Even now we still do not have a fully developed Islamic system. We are still developing it bit by bit. Even last week (on 5 April 2012) I received an email advertising a workshop on *sukuk* to be held in Kuala Lumpur. The first line reads, “*Islamic banking is still in the infancy age and is striving to compete with conventional banking.*” In the circumstances, the least that would have happened was an economic chaos.

The Shariah Division of the Pakistan Supreme Court tried to abolish *riba*’ and replace it with an Islamic system with one judgment. What happened? Officers of the Central Bank of Pakistan came here to learn from us. They went back, filed an application in the Supreme Court, supported by an affidavit explaining our system as an example and asked the Court to quash the Order. The Supreme Court quashed the Order and ordered a retrial. Until today, the case is still pending. Apparently no one wants to touch it or for it to be touched.

Of course we do not have a “great land mark judgment” to read and to praise. But, we have our economy intact and the Islamic system entrenched and developing. To me, the person who came up with the idea of having a parallel system in Malaysia, is a genius.

Secondly, with the two systems running side by side, the Islamic system has to compete to survive. The Islamic system cannot be competitive if it is not better than or, at least, as good as the conventional alternative, when it comes to the bottom line. We have to face the reality that in the modern world, merely saying that the Islamic system is not *haram* while the conventional system is *haram* is not good

enough, from the point of view of marketing, at least. People want to see the tangible benefits in this world, besides the expectation of rewards promised in the hereafter. Otherwise, what is so great about “Islamic economics”? You cannot equate investing in a *sukuk* and taking an Islamic banking facility with praying and fasting. Praying and fasting are “pure *ibadah*” while investing in a *sukuk* and taking an Islamic banking facility are economic activities. We have to show the economic benefit in this world itself.

Thirdly, to remain competitive, the Islamic system, like any other system, has to keep improving. That would lead to its development. But, what does it mean to us, in fact to all of us, bankers, lawyers, Judges, auditors, *takaful* operators, *Shariah* scholars, regulatory and supervisory authorities and even Government? It means that we have to ensure that our products are unquestionably *Shariah* compliant and competitive. It means that we have to ensure that the implementation is done in strict compliance with the conditions approved. It means that both the bankers and customers must be highly ethical befitting of the name “Islamic”. It means that the regulatory and supervisory authorities must not only have the regulations and guidelines in place, but also closely monitor what is happening in the market, and where necessary, bring the culprit to book. In short, every one of us has a role to play.

The recent global financial crisis has made some people think that the Islamic system is the only alternative to conventional system and that if you adopt the Islamic system, everything would be fine. To me, that is the usual mistake made by Muslims. They seem to think that by introducing something “Islamic”, all the evils and all the problems would disappear. They forget that even Prophet Muhammad *s.a.w.* lost the battle of Uhud because of the indiscipline of a section of the Muslim fighters. Theoretically, the Islamic system may have an advantage but it depends on how it is implemented. At a seminar at the Securities Commission a few years ago, I asked the speaker, a Professor from Australia, whether the cause of the crisis was the system or the abuse of the system. He replied, “Abuse.”

I too believe it is because of the abuse of the system. If that is so, then abuse may also happen in the Islamic system. Please do not be naïve to think that every individual, whether acting individually or for and on behalf of a corporation, who is involved in Islamic banking is a pious Muslim who fears the commission of a sin and who is equally efficient and hardworking. Many are driven by money, not piety. Remember that, in this world, there are crooks everywhere. So, merely relying on piety and ethics is not sufficient. The regulators have to play an active role. Besides, the staff of Islamic institutions may be pious and sincere but if they are incompetent, inefficient and uncommitted, they are not going to produce good results either.

Islamic banking was born in 1970’s in the conventional surrounding. To be relevant and competitive, it has to sell what the customers want. In my speech at the Malaysian Law Conference 2010, I gave the example of a pious Muslim who wants to enter into a transportation business. Do you expect him to sell horses, camels and donkeys because those were the means of transport sold by Muslim traders in Islamic history? Certainly not. Instead he would have to sell cars, buses and lorries because those are the means of transport that the customers will buy now. What is important is that the product must be *Shariah* compliant and that the original purpose

of Islamic finance, Islamic economics and the *maqasid* of *Shari'ah* itself are achieved.

So, you have to know conventional banking and insurance to be able to produce and implement Islamic banking and *takaful* products. That is where knowledge of the conventional counterpart is useful, if not necessary.

The first time I met Antonio Usama DeLorenzo, the son of the Professor Yusuf Talal DeLorenzo, the well known *Shari'ah* scholar in Islamic banking, he told me that when he told his father that he was interested to study Islamic banking, his father said: "Go and study conventional banking first."

Similarly, the *Shari'ah* trained scholars will have to understand the mechanism of Islamic banking and *takaful*, to be able to identify the *Shari'ah* issues.

But, as time goes on, both the conventionally trained and the *Shari'ah* trained groups had acquired sufficient knowledge of the other discipline. The *Shari'ah* scholars acquired greater knowledge of the products, both conventional and Islamic. The officers with "conventional" background had become familiar with the *Shari'ah* principles applicable. This led to a convergence of knowledge and experience. Today, many of them speak the same language, the language of Islamic banking, Islamic finance and *takaful*.

I think we have reached that stage. Once we are there, things become easier as they can now understand each other as well as the mechanism and the *Shari'ah* principles applicable in a product.

So, in the development of Islamic banking and *takaful*, the contribution of those who are "conventionally" trained must also be recognised along with the contribution of *Shari'ah* trained officers.

That is the beauty of Islamic banking, Islamic finance and *takaful*. Among other things, they have brought together those professionals who otherwise would not cross each other in their daily paths. That is one of the blessings ("*hikmah*") of the birth and development of Islamic banking, Islamic finance and *takaful*. I have mentioned a few more in my earlier lectures, speeches and papers. In fact, in my paper presented at the National University of Singapore in 2008, I asked the question whether "the East and the West have met", thanks to Islamic banking, Islamic finance and *takaful*?

Just look around you. Some of you are "conventionally" trained, some of you are trained as common law lawyers while others are *Shari'ah* trained. You are working together to produce the eventual "Islamic product". All of you are contributing to the development of *Shari'ah* in the modern world. All of you should be proud of what you are doing. You should consider yourselves lucky to be born and to be able to work at the right time and the right place. Unfortunately, being proud of one's job is something lacking in our culture. If you go to developed countries, you will find that even taxi drivers are proud of their profession. As a result, they do their job to the best of their ability because they want to maintain the image of the profession.

In my 12th Emeritus Professor Ahmad Ibrahim Lecture delivered last December, I mentioned the “favourable ingredients” that Malaysia has to become the holistic hub for Islamic banking, Islamic finance and *takaful*. We should strive not only to be the No.1 producer of Islamic financial products in term of size, variety, innovation, expertise and human resource, but also to make Malaysian law the law of reference and Malaysian Court and arbitrators as the forum for settlement of disputes, together with if not instead of the English law and English courts.

It is most heartening to know that the state-owned Development Bank of Kazakhstan is planning to issue Islamic bonds worth up to \$500 million, and this is what the report says:

“The bank said the sukuk would be issued in accordance with the laws of Malaysia, the world’s largest market for Islamic bonds.”
(Reuters 30th March 2012)

Let me conclude my opening remarks this morning by repeating what I said at the 2nd. International Conference on Common Law and *Shari’ah* (ISCOL) held at USIM last month:

“I am of the view that the close of the twentieth century and the beginning of the twenty first century mark the beginning of a new era in the development and spread of Shari’ah, in particular mu’amalat. And it happens because of Islamic banking, Islamic finance and takaful. The scholars, faced with new reality, are developing the Shari’ah by accepting the views of all sunni mazhabs instead of strictly following a particular mazhab. At times, they even accept isolated views of traditional scholars as well as the views of contemporary scholars even though such views may differ from the views of the traditional scholars. They consider the views of other Shari’ah Committees all over the world. They accept the current custom (urf) in financial transactions. All these will make the Shari’ah more global and current. At the same time, the Shari’ah is moving into the main stream and making its appearance in non-Muslim countries and applicable even to non-Muslims. The beauty is that it is happening without conquest and without conversion. But the irony is that it is happening not because of piety but because of money!”

It does not matter but the faith factor, the ethics and the *maqasid* of *Shari’ah* must be preserved.

Thank you.