

**DEBT RECOVERY – THEORY AND
APPLICATION IN MALAYSIAN ISLAMIC
BANKING SYSTEM**

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ABSTRACT

The study is an attempt to critically analyse the Islamic theory of debt and debt recovery. The analysis focuses on the current practice of debt recovery as practiced by Malaysian Islamic banking institutions. Then, the study presented a detail discussion of the *Fiqh* views on three important issues of debt recovery which have been implemented by Islamic banks of Malaysia, namely the issue of rebate (*ibra*'), the issue of outsourcing and the issue of rescheduling and restructuring. In analysing the *Fiqh* views on the issues of debt recovery, the study uncovers that the debt recovery is a difficult task faced by both conventional and Islamic banking institutions. However, in Islamic banks' implementation of debt recovery process and procedures, the debt still cannot be fully collected. This is partly due to the implementation of methods of processing and procedures. For example, unlike the conventional banks the practice of 'in-house' recovery by Islamic banks are guided by *Shariah* principles under the Islamic Supervisory Board in their recovery process but still within the regulation of civil law. In addition, based on the data used in the study, the debt also cannot be fully collected because of the attitude of the debtors who neglect their duties to settle their debts. With respect to the issue of rebate (*ibra*'), the Islamic banks encountered a number of court cases to resolve disputes between the customers and the banks through the jurisdiction of civil law. The study suggests that the Islamic financial industry in Malaysia should have specific jurisdiction of Islamic law which supported the Islamic financial activities besides the Islamic Banking Act (IBA) 1983 and Takaful Act 1984 to ensure that all Islamic products and activities are run parallel with *Shariah*. Finally, the issue of outsourcing involves the role of collection agents appointed by the Islamic banks. It was discovered that the methods used by those agencies have caused hardship to the customers. Since the appointed agents are considered as the third party in the debt recovery process, the study suggests that the outsourcing agencies should be registered directly under BNM so that BNM has a power of jurisdiction to monitor every misact done by these agencies.

ABSTRAK

Kajian ini merupakan suatu percubaan untuk menganalisa secara kritikal teori Islam berkaitan hutang dan penyelesaian hutang. Analisa yang dijalankan adalah tertumpu kepada praktis penyelesaian hutang yang terkini yang dijalankan oleh institusi-institusi perbankan Islam di Malaysia. Seterusnya, kajian ini membentangkan secara terperinci diskusi mengenai pandangan Fiqh berkaitan tiga isu penting yang melibatkan penyelesaian hutang seperti yang telah diimplikasikan oleh bank-bank Islam di Malaysia, iaitu isu ribat (*ibra*'), isu penyelesaian hutang oleh pihak lain (outsourcing) dan penjadualan dan penstrukturran semula hutang (reschedule and restructure). Dalam menganalisa pandangan Fiqh berkaitan isu-isu penyelesaian hutang, kajian mendapati bahawa penyelesaian hutang adalah suatu tugas sukar bagi semua institusi perbankan sama ada konvensional mahupun perbankan Islam. Bank-bank Islam telah melaksanakan pelbagai prosedur dan proses penyelesaian hutang, namun hutang masih belum dapat dikumpul secara total. Perkara ini berlaku sebahagiannya disebabkan kaedah perlaksanaan proses dan prosedur penyelesaian hutang itu sendiri. Ini kerana tidak seperti bank-bank konvensional, bank-bank Islam perlu mengikuti garis panduan yang ditetapkan oleh Majlis Pemantaun Syariah dalam melaksanakan operasi penyelesaian hutang dalam bank. Selain itu, mengikut data yang diperolehi, kajian ini mendapati bahawa hutang juga tidak dapat dikumpul secara total disebabkan oleh sikap pihak penghutang yang mengabaikan tanggungjawab mereka untuk menyelesaikan hutang. Dalam isu ribat, bank-bank Islam didapati telah menghadapi pelbagai kes mahkamah melibatkan isu pertelagahan antara pelanggan dan bank-bank Islam melalui perlembagaan mahkamah sivil. Kajian ini mencadangkan agar perlembagaan undang-undang Islam yang spesifik diwujudkan bagi menyokong perlembagaan undang-undang Islam di dalam industri kewangan Islam yang sedia ada seperti Akta Perbankan Islam 1983 dan Akta Takaful 1984 agar semua produk dan aktiviti kewangan yang dijalankan adalah selari dengan Islam. Akhir sekali isu berkaitan dengan ‘outsourcing’. Aktiviti ini dijalankan oleh suatu pihak yang dipilih oleh bank sebagai wakil agen untuk mengumpul hutang. Kajian mendapati bahawa aktiviti ‘outsourcing’ tidak digemari oleh pelanggan. Oleh itu, kajian juga mencadangkan agar aktiviti ‘outsourcing’ diletakkan terus di bawah seliaan Bank Negara agar Bank Negara memiliki kuasa untuk memantau segala tindak tanduk negatif pihak ketiga ini.

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