

# Islamic Law Principles in Islamic Business Activity

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Islam provides solutions to all kinds of complicated problems, which are faced by human beings such as materialism, nationalism, race, ethnicity, and religion. Islam has its own way to solve these problems, especially in case of economy and business activity. This paper aims to discuss the application of Islamic law principles towards economic and business activity. This paper uses descriptive research methodology by gathering data from books and the Quran. Islamic Business includes norms or values within Islamic law that prohibit usury, dishonest trade, unjust treatment, and all forms of oppression and discrimination. Islam provides guidance for economic and business activity. Thus, Islamic business activity has to apply the basic principles of Islamic law in order not to break Islamic law.

**Key words:** *Islamic law principles, Fiqh, Islamic business.*

## Introduction

Generally, Islamic Law is commonly known as *Sharia*, derived from the word ‘*hukm* (law)’ and ‘*Shari* (rule)’. In addition, *sharia* has three main elements, which are (Nyazee, 2000):<sup>1</sup>

1. *Al-Hakim*: Allah as the human being’s creator also revealed law as their guide.

2. *Mahkumfih*: an action in accordance with law from the *al-Hakim*

*Mahkumalaih*: the law to obey *Al- Hakim* law particularly. These three elements consist of two main groups. Those are human (*syakhshiahthabi’iyah*) and law institutions (*syakhshiahi’tibariyahhukmiyah*). Human, is the subject of law and has been regulated in Al-

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<sup>1</sup> Nyazee, in his work “The term *hukm* (plural *ahkam*)” translated into English in different ways: injunction, command, prescription and shari’ah value, stated that the *hukm shar’i* in its literal sense conveys the meaning of a rule of Islamic law. It comes into being through the operation of its three elements (*arkan*) these elements are, 1.the true source from which the *hukm* originates. The original source for Islamic law is the *Hakim* (judge) or the law giver, Allah Almighty. 2. The *mahkum fiqh* or the act on which the *hukm* operates-also called the *mahkum bih*, and, 3. The *mahkum alayh* or the subject (legal person) for those who conduct the *hukm* is stipulated”.

Qur'an; *Q.S. Al-Jatsiyah (18)*<sup>2</sup>, *Q.S. Adz-Dzariyat (56)*<sup>3</sup>, *Q.S. Al-Baqarah (207) and (265)*<sup>4</sup>. However, there are requirements that must be fulfilled by humans, including the ability and acceptance to act based on the Law (*Ahliyah*), and the ability owned by the law subject from adulthood until death (Anwar, 2007).

Sharia study (Thalib, 2013)<sup>5</sup> has revealed several laws containing rights and obligations because Islam considers rights and obligations as interrelated. The first foundation stated above, shows that Allah the Almighty is the source of all law in Islam. This shows also that implementing the sharia is the same as enacting Allah's command. The second foundation also explains the obligation or right based on the sharia. The third is related to the law's subject obeying the sharia. Therefore, sharia generally encircles the guidance of *aqidah* (faith), and *muamalat* (social interaction). Simply, the sharia law is the rule for humans to interact with one other as the creation of Allah the Almighty.

### Islamic Law Principles

Law, in Arabic, is "*hukm*," which literally means a command and technically means rule of all aspects of life. Thus, sharia, in simple terms, has several important points:

1. Law or rule essentially is a communication between human beings and their creator, which is absolute. Somehow, a different communication occurs among human beings or between rulers and citizens.
2. The communication between human beings and their creator is related to any action from the law subjects (*mahkum alayh*), which should be obeyed based on the Islamic law. For instance in *Q.S., Al-Isro (32)* said "Nor come nigh to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils)." The verse mentioned previously is one of the examples of the communication between human beings and the creator, in which Allah forbids human to commit adultery because it is a vile act.
3. Law can be described as guide to do or not to do either binding or non-binding acts. It is also the guidance to do *ijab* (obligations) and *nadb* (recommendation). Meanwhile, the

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<sup>2</sup> Q.S. Al-Jatsiyah verse 18 "Then We put thee on the (right) Way of Religion: so follow thou that (Way), and follow not the desires of those who know not."

<sup>3</sup> Q.S. Adz-Dzariyat verse 56 "I have only created Jinns and men, that they may serve Me."

<sup>4</sup> Q.S. Al-Baqarah verse 207 "And there is the type of man who gives his life to earn the pleasure of Allah. And Allah is full of kindness to (His) devotees." Verse 265 "And the likeness of those who spend their substance, seeking to please Allah and to strengthen their souls, is as a garden, high and fertile: heavy rain falls on it but makes it yield a double increase of harvest, and if it receives not Heavy rain, light moisture sufficeth it. Allah seeth well whatever ye do."

<sup>5</sup> Sharia, in Al-Qur'an, is mentioned as *syir'ah* which means the true way, the clear way from Allah to humankind. This explicitly means the champion way to a better living. The Sharia term is known as Allah and Rasul's law revealed in Al-Qur'an and *Hadits*. A more detailed sharia could be stated as Allah and Rasul regulation which is guidance, commandment or prohibition to improve human life in the world and hereafter. In this perspective, sharia has the same meaning as *Din Al-Islam* (Islam), somehow the *fiqh* and Islamic scholars always use the sharia term to emphasize Islamic law understanding.

guidance not to do something binding will cause *tahrim* or a ban. However, when the act is non-binding, it causes *karahah* or rejection.

4. Law may also give an option to do or not to do an act. This means humans have a right to what he desired or wanted as long as it does not violate the sharia. These are the human rights from God to enjoy the life based on Q.S. Al Maidah verse 87<sup>6</sup>, Q.S Al A'raf verse 32<sup>7</sup>, and Q.S. Al Mu'min verse 64<sup>8</sup>. Those verses indicate that God gives provisions to enjoy the life. Therefore, God forbids people to forbid anything that has been justified for humans because it is their right to enjoy this life.
5. Those communications can be translated by a real act. In this case, those actions can reflect a communication between humans and their creator.

Based on the statement above, Islamic law can be divided into two categories: *taklifi* law and *wad'i* law. *Hukm taklifi* is a guidance to do something or not to do something which guides people to do something beneficial or leave something unbeneficial. Therefore, *hukm taklifi* is divided into five stages, including obligation (*ijab*), recommendation (*nadb*), refusal (*karahah*), prohibition (*tahrim*) and allowance (*ibahah*) (Nyazee, 2000).

Therefore, *hukm taklifi* has several main principles, such as (Supriyatni, 2011):

1. A freedom to choose to do or not to do something.
2. A suggestion to do something because it is beneficiary.
3. A suggestion not to do something because it is unbeneficial.
4. An obligation to do something.
5. A prohibition not to do something.

The second type is *hukm wadi'i*. It is the Islamic Law underlying the reasons to do something with certain requirements and obstacles to do something. Basically, *hukm taklifi* and *hukm wadi'i* have some differences. *Hukm taklifi* has a purpose to regulate an allowed or forbidden act. Meanwhile, *hukm wad'i* does not have a purpose. In this case *hukm wadi'i* leads more to the reason, the requirement and the obstacles within the act. *Hukm taklifi* is an action affected by the law subject (*mahkumalayh*), meaning that they have full authority to do or not to do something. *Hukm wad'i* is not related to the law subject at all.

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<sup>6</sup> Q.S Al Maidah verse 87. "O you who have believed, do not prohibit the good things which Allah has made lawful to you and do not transgress. Indeed, Allah does not like transgressors.

<sup>7</sup> Q.S Al A'raf 32 Say (O Muhammad): "Who has forbidden the adoration with clothes given by Allah, which He has produced for his slaves, and *At-Taiyibat* [all kinds of *Halal* (lawful) things] of food?" Say: "They are, in the life of this world, for those who believe, (and) exclusively for them (believers) on the Day of Resurrection (the disbelievers will not share them)." Thus We explain the *Ayat* (Islamic laws) in detail for people who have knowledge.

<sup>8</sup>Q.S Al-Mu'min 64 It is Allah who made for you the earth a place of settlement and the sky a ceiling and formed you and perfected your forms and provided you with good things. That is Allah, your Lord; then blessed is Allah, Lord of the worlds.

It is important to bear in mind that even though the form of law is divided into two categories (*hukm taklifi* and *hukm wad'i*), they complete each other as the united one. Regarding the *hukm taklifi* and *hukm wad'i*, Nyazee stated (Nyazee, 2000):

*“The aim of the hukm taklifi is to create an obligation for the commission or omission of an act or to grant a choice between the commission or omission of the act. the hukm wad'i has no such aim. its purposes is to either inform the subject that a certain thing is a cause of, condition for or obstacle to a hukm or it is to explain the relationship that exist between two rules or to provide the criterion for judging whether an act performed is valid or void...The act or event that is affected by the hukm taklifi is within the ability of the subject with respect to its commission or omission. the act affected by the hukm wad'i may or may not be within the ability of the subject with respect to commission or omission. in other words, it is always possible for the subject to commit or omit an act affected by the hukm taklifi, but it may not be possible for him to commit or omit all acts that fall within domain of the hukm wad'i”.*

Therefore, philosophically, sharia has several main principles: (Praja, 1995)

1. *Tauhidillah* principle, which is philosophical principle with two main characteristics, including:

a. *Ilmun tabiun infi'aliyyun.*

It is an objective science which does not require human knowledge. In other words, the object existed by itself without any knowledge of the object. Through this, the existence of God can be trusted.

b. *Ilmun fi'liyyun matbu'un.*

It is a subjective science which depends on the subjective objects known.

2. *Al-rujuila Quran waal-Sunnah* principle, a principle toward to the *Al-Quran* (Moslem's Holy Book) and *As-sunnah* (the guidance from Moslem's Prophet). This principle is based on the natural tendency theory (*fitrah*), which stated that *fitrah* is the inherent potencies (*alquwwah*) within humans from their birth. This includes the following:

a. *Quwwatal-aqli.*

It is a potency which functions to introduce and to love the oneness God (monotheism).

b. *Quwwatal-syahwah.*

It is a potency with a function to induce the pleasant objects.

c. *Quwwatal-ghadhob.*

It is a potency whose function is to defend against any distraction.

3. *Muwafaqat al-sharihal maqullisahih al-ma'qul* principle is a principle of relevancy between *Shorih* divine revelation (a divine revelation obtained through data transmission structured in Al-Quran) and *Ulum Al-Hadits*. This principle emphasises that logic and revelation cannot be separated but can be differentiated. Hence, logic and revelation need a measurement as the boundary of each. Thus, logic is not the basic element to determine a revelation truth of because revelation has been the truth. Therefore, revelation does not need human thought. However, logic can use revelation to perfect logical thought. Hence, logic is the foundation of Islamic thought.
4. *Al-adlal mizan al-qisth* principle is a principle understood as moderation and balance, a balancing between the ideal and the actual in human's life which is *das sein* and *das sollen*. It could be more clearly explained that al *qisth* is justice to the right path, the compatibility between heart, utterance and deed. The *al-adl* term is an abstract concept of *al-qisth* while *al-mizan* is a measurement to show the balance between its concept and practice, idealism and empiricism. Thus, it is also the basic relative measurement to produce other principles.
5. *Alhaqiqah fi al-a'yan la fi al-adzhan* principle is the true principle located in the actual and not in thought. This principle introduces the five senses that produce Islamic sharia through *al-siyasah al-syar'iyah*, which is the Islamic political law applied in Islamic values through daily life. This aims to be the ideally empirical real life which later created the term of *malayudrakukulluhlayutrokukulluhu* (do not leave anything that cannot be done).
6. *Inna ushuladdin wa furu'ahaqad bayyanaha al-Rasul* principle is a principle that explains the main things of religion and its branches, which was explained clearly by Muhammad (Peace Be Upon Him). In other words, the basic principles of religion should not be debated anymore by logical reasoning because it has been stated clearly by those who lived in Mohammad's era. If there is no explicit definition about religious teaching, then it will refer to the natural tendency. This case is caused by corrective resources inside the natural tendency introducing right or wrong.

Based on the sharia principles described above, the main principles in Islamic business activity can be described as followed (Hadi, 2005):

1. Justice principle, the principle which include all the aspect of life. This is based on the *Q.S. An-Nahl (90)*<sup>9</sup>, *Q.S. Al-Maidah (8)*<sup>10</sup>, and *Q.S. Al-Hasyr (7)*<sup>11</sup> that commanded humans to be fair to others.
2. *Al-Ihsan* principle, the principle which suggest one do good acts such as providing benefits to other people rather than insisting the right.
3. *Al-Mas'uliyah* principle is an accountability principle which includes individual (*mas'uliyahal-afrad*), social (*mas'uliyaha-daulah*) or governmental responsibility (*mas'uliyah al-daulah*).
4. *Al-Kifayah* principle (sufficiency) is the principle which fulfils the primary requirements for all societies and decreases the poverty.
5. *Al-Wasathiyah* principle (balance) means a balance between the individual and society determined by *Sharia* including individual rights with certain limitations. Those are based on the *Q.S. Al-Isra (27-29)*<sup>12</sup>, *Q.S. Al-Furqan (67)*<sup>13</sup> and *Q.S. Al-An'am (141)*<sup>14</sup>.
6. The truth and honesty principle is part of righteousness for business activity. These principles consist of:
  - a. The prohibition to conduct obscure transaction. In other words, the transaction must be firm, clear and certain in terms of both the agreement's goodness and price.
  - b. The prohibition to conduct harmful transactions ourselves or with the other parties involved.
  - c. Prioritising social interest does not emphasise only individual interest.
  - d. Each transaction must be beneficial or advantageous.
  - e. Prohibition to conduct any transaction involving usury.
  - f. Any Sharia Business should include *An-taradhim* principle, that is, the willingness of both parties.

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<sup>9</sup> Q.S. An-Nahl verse 90 Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded.

<sup>10</sup> Q.S. Al-Maidah 8 O you who have believed, be persistently standing firm for Allah , witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is acquainted with what you do.

<sup>11</sup> Q.S. Al-Hasyr 7 and what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for [his] near relatives and orphans and the [stranded] traveler - so that it will not be a perpetual distribution among the rich from among you. And whatever the Messenger has given you - take; and what he has forbidden you - refrain from. And fear Allah; indeed, Allah is severe in penalty.

<sup>12</sup>Q.S. Al-Isra (27-29) Indeed, the wasteful are brothers of the devils, and ever has Satan been to his Lord ungrateful. And if you [must] turn away from the needy awaiting mercy from your Lord which you expect, then speak to them a gentle word. And do not make your hand [as] chained to your neck or extend it completely and [thereby] become blamed and insolvent.

<sup>13</sup> Q.S. Al-Furqan (67) And [they are] those who, when they spend, do so not excessively or sparingly but are ever, between that, [justly] moderate

<sup>14</sup>Q.S. Al-An'am (141) And He it is who causes gardens to grow, [both] trellised and untrellised, and palm trees and crops of different [kinds of] food and olives and pomegranates, similar and dissimilar. Eat of [each of] its fruit when it yields and give its due [zakah] on the day of its harvest. And be not excessive. Indeed, He does not like those who commit excess.

- g. A free principle, which means that everyone is free to determine the contract without any compulsion.

The explanation above emphasises that any Islamic Business should include norms or values within Islamic Law. In other words, any individual must also consider the commandment and the prohibition mentioned in Al-Qur'an and *As-sunnah* since those two are the main law sources in Islam (*ultimate source of law*). In case of understanding Sharia Business doctrine, it is as a re-actualisation sequence doctrine about the implementation of the economy in various businesses. Sharia business doctrine emerged in the 20<sup>th</sup> century and aimed to build economic activity through a proposed free interest system based on the revelation and tradition (Alqaoud and Lewis, 2003).

Sharia business essentially tries to direct business doers and society to fulfil their needs without harming others. Therefore, sharia business must pay attention to several main guidelines in business activity, those are (Shomad, 2012):

1. The available resources, considered as God's gift, are used efficiently and optimally in any business activity because responsibility is necessary.
2. Islam considers ownership with certain limitations as long as it does not violate the other's right.
3. The main power in business activity is teamwork within certain contracts in the business.
4. The ownership of wealth should be viewed as the productive capital to improve the national product and public welfare. Therefore, private ownership can not only be owned by certain people (elites).
5. Islam guarantees society's ownership and its usage.
6. Islam does not support extravagant profit, dishonest trade, unjust treatment, discrimination and oppression.
7. Islam obligates to pay *zakat* (obligatory payment made once a year under Islamic law which is used for charity and religious purposes).
8. Islamic forbids the practical of usury.

Therefore, the main characteristic in sharia business is free of usury. It is because Islam explicitly prohibits usury, *gharar*, *maysir* and cheating in conducting business.

### **The Business Fundamental in Islam**

Islam has ruled that the ideal business ethic guide not violate any party involved (Ali, 1977). Islam always prioritises justice and the right-obligation principle in each business activity. It is based on *Al-Baqarah* 188 (*And do not consume one another's wealth unjustly or send it [in*

*bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]).*

From the financial *fiqh* perspective, the term business is called *tijarah*. It is to find profit which does not primarily concern only the material but also the creator. Therefore, sharia business essentially has to be based on Al-Qur'an and As-sunnah. However, it does not only encircle the material but also the immaterial (Fauroni, 2006).

In regard to the agreement between parties and the law, every business activity will automatically lead to the good way (*minhaj*) and prohibition (*hudud*). Thus, it will indirectly lead people to differentiate *Halal* (things allowed) and *Haram* (things forbidden). Sharia business aims to give guidance and direction to find profit in the right way and to look for Allah's pleasure. It has been regulated in Q.S. Al-Jatsiyah verse 18, "*Then We put you, [O Muhammad], on an ordained way concerning the matter [of religion]; so follow it and do not follow the inclinations of those who do not know.*"

The superiority of Islamic business is always based on Islamic law principles produced from the development results of relevant trade agreements. It is caused by trade agreements based on Al-Qur'an and As-sunnah as the main source of regulation in Islam. Al-Qur'an and As-sunnah is the absolute truth because they are textual (*manthuq*), created to do an action, and contextual (*mafhum*). Therefore, the important point in Islamic business is doing the *ijtihad*, *ijma* and *qiyas* as the interpretation of both law sources in Islam (Burhanuddin, 2011).

The most significant thing in business is effort because anything needs effort to be achieved, as mentioned in Q.S. Al-Baqarah (267), "*O you who have believed, spend from the good things which you have earned and from that which we have produced for you from the earth. And do not aim toward the defective there from spending (from that) while you would not take it (yourself) except with closed eyes. And know that Allah is free of need and Praiseworthy*". This paragraph explains that business can be categorised as an activity to fulfil the livelihood. Sharia Business can be defined as a human effort to get a livelihood through the right ways, as regulated in Q.S. Al-A'raaf (10)<sup>15</sup>, Q.S. Az-Zukhruf (32)<sup>16</sup>, and Q.S. Al-Lail (4)<sup>17</sup>.

Hence, Islamic business globally has certain characteristics, including: (1) all human resources are a gift from God, therefore, humans must use it efficiently and optimally in all activities to

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<sup>15</sup> Q.S Al-A'raaf verse 10 It is We Who have placed you with authority on earth, and provided you therein with means for the fulfilment of your life: small are the thanks that ye give!

<sup>16</sup> Q.S. Az-Zukhruf verse 32 Do they distribute the mercy of your Lord? It is We who have apportioned among them their livelihood in the life of this world and have raised some of them above others in degrees [of rank] that they may make use of one another for service. But the mercy of your Lord is better than whatever they accumulate.

<sup>17</sup> Q.S Al-Lail verse 4 Indeed, your efforts are diverse.





find welfare for themselves and other people, (2) Islam considers any private ownership which encircles all devices and productions based on society's interest, and (3) Islam refuses to get revenue or income based on invalid sources, whether they are buyer, sellers, wage recipients, profit makers, distributors and so on. Simply, all parties must hold on to Al-Qur'an and As sunnah.

### **Conclusion**

Private wealth ownership on Islamic business activity may have a productive role in increasing society prosperity. Hence, Islamic business systems always restricts the wealth accumulation of certain people (the elites). Thus, it is opposes a capitalist business system that enhances the industrial ownership of certain people. Islamic business must guarantee the social ownership and its usage has to be planned for society's interest. Therefore, Islamic business doers must submit themselves to Allah as the creator of universe. Hence, Islam prohibit usury, dishonest trade, unjust treatment, and all forms of oppression and discrimination.



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