

FRAUD: AN ISLAMIC PERSPECTIVE

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ABSTRACT

The objective of this paper is to analyze fraud from Islamic perspective and its occurrence in the muslim community. A literature review on various types of fraud since the early era of Islam were identified and discussed. Occurrence of fraud in Islamic based institutions such as zakat, waqf, sadaqah and other charities were analyzed. Despite the noble intention of these philanthropic institutions, elements of fraud due to unsystematic management, lack of good governance, unethical behaviors and lack of knowledge were the main determinants influencing the likelihood of fraud. This study reveals that fraud led to the rights of recipients being denied, wastage, inefficiency and rampant white collar crime if left unchecked. Hence, the study proposes several treatments in minimizing fraud. This include effective and efficient human resource management using advance technological system, establishing of good governance by introducing a group of committee and board of directors and other determinants that can be imply by the institutions in minimizing an occurrence of fraud cases to be occurred in managing those Islamic Philanthropy (IP) funds.

Keyword: *Fraud, Zakat, Waqf, Sadaqah, Islamic Philanthropy*

Introduction

The primary function of Islamic charities is to help the communities in providing a better life to those in needs. In a sense, Islamic charities provide Muslims with an opportunity to put into practice the commands of God and fulfill their duties as Muslims. Allah s.w.t says, "take sadaqah (obligatory alms) out of their wealth through which you may cleanse and purify them" (al-Taubah 9:103). IP ranges from mandatory such as zakat to encourage such as waqf and sadaqah.

Al Quran and Al Hadith dictate that zakat is one of the five basic pillars in Islam and Allah made it compulsory for Muslims to contribute a specific percentage of amounts of their wealth to a needy with main objective of achieving socioeconomic justice. Ahmad Akgunduz (2010) in his study notes zakat as a bridge whereby the Muslim helps his brother Muslim.

Another source of IP funds is waqf. Md. Mokhter Ahmad and Md. Safiullah (2009) also acknowledge waqf as an important part of Islamic institution. It is one of the greatest sources of charity devoted for the overall development of the Muslim society. The role of waqf contribution is to nourish and flourish various educational, economic, social, and cultural dimensions of Islam. Abul Hassan and Mohammad Abdus Shahid (2010) refer waqf as a gift of money, property or other items of charity, which have been held and preserved for the confined benefit of certain philanthropy. Thus waqf property is prohibited from being used or disposed of outside of the specific purpose for which it is held. This type of properties includes real estate, stocks, cash money, books, and chattel etc.

With respect to sadaqah, it is define as a voluntary charity, charitable act, charitable giving or money given in charity with the intention of seeking the pleasure of Allah s.w.t. Allah's Messenger (PBUH) said, "Every act of goodness is sadaqah." (Muslim)

Robert Looney (2006) mentioned in his study that Islamic charities provide a visible example of how Islam can be put to work to improve society and alleviate socioeconomic stagnation. Ariff Hidayat Ali (2009) also mentioned that an application of the concept of "charity" or "benevolent" in Islamic Philanthropy fund will give rise to several implements in Islam. However in ensuring benefits of Islamic philanthropy are realized fully, it is critical that they are well governed. Lacking in governance will prelude to mismanagement and fraudulent activities in IP.

Study such as Sarea (2012) advocates that IP plays a significant role in growth of the economy. By paying zakat, for example implies growth of faith, which in turn contribute to an increase of zakat fund and if properly administered will lead to economic growth, redistribution of income and wealth and reducing the phenomenon of inflation as well as reducing the poverty and other social and economic problems. As such, it is crucial for zakat fund to be effectively and efficiently managed.

Similarly, with respect to waqf fund, the management and development of waqf fund have been a tremendous concern for the Muslim scholars. Despite the success of waqf in the Muslim world, it

has also its own share of mismanagement that can be discerned across history through misuse, mismanagement, looting, encroachment, and unlawful seizure of awqaf properties.

This paper will discuss and highlights some cases of fraud, determinant of fraud and how to minimize fraud cases in managing and distributing of IP funds.

Fraud from Islamic Perspective: Review of the Literature

Definitions and Concepts

In Islamic legal texts fraud (*tadlis or khilaba*), lesion or misrepresentation (*ghabn*), gross misrepresentation (*ghabn fahish*), deception (*shushsh*), imbalance (*gharar*), and trickery (*taghrir*) are used interchangeably as to mean fraud. Besides there are few words that also refer to fraud but less commonly used such as *khallab*, *khiyanah*, *ihiyal*, *tahayul*, *tadlil*, *iham*, *nasb*, and *khadi'a* which all vary in meaning from fraud, trickery, deception, lesion, misrepresentation, swindling to imbalance. *Taghrir* is defined as the act of deceiving another by deploying misleading means in the form of actions or words, thus, inducing the other to transact where he would not have transacted had such means not been deployed. In other word *taghrir* can either be the deceptive act or statements. From this definition, *taghrir* can be divided into two types that are *taghrir fi'li* such as false act and manoeuvres and *taghrir qawli* such as lying (Abdul Jabbar, 2012).

Tadlis can also be defined as fraud. It causes misrepresentation or *lesion (ghabn)* and leads to a contractual imbalance (*gharar*) between the contracting parties. *Tadlis* as a legal term means a dishonest and deliberate action leading the contracting party to commit a mistake thereby convincing him to enter into a contract. Islamic scholars associate fraud with its consequence when judging it as a defect. The consequence should indicate *ghabn* or lesion on one of the parties' concerned otherwise fraud simply has no effect. In other word, the fraud must have caused *ghabn* or loss to the contracting party and the loss incurred must come from the act of the fraud (Benjelayel, 2012).

Besides that, the term *gharar* also refer to fraud. *Gharar* is uncertainty, hazard, chance or risk. Islam prohibited *gharar* in terms of uncontrollable risk because it can lead to speculation. *Gharar* can be further defined as "where there is a matter that is concealed by one party, where it (this concealment) can raise a sense of inequality as well as tyranny to another party" (Che Yaacob & Abdullah, n.d). In business, *gharar* exist when a party undertakes a venture blindly without sufficient knowledge or to undertake and excessively high risky transaction. The presence of *gharar* element in the contract makes the outcome not known or hidden which may lead to a fraud (*Ibid*, n.d).

Legal Evidence Related To the Action of Fraud

Al-Quran

"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]" (al-Baqarah 2:188)

This verse provided the general meaning of fraud where Allah s.w.t has prohibited Muslim to consume other's wealth unjustly. Therefore, any activities that lead to such action are considered as fraud. Islam prohibits every type of fraud and deception, whether the fraud in activities of buying and selling or in any other matter between people. All Muslim are urged to be honest and truthful in all situations in everything they do.

"Woe to those who deal in fraud, those who, when they have to receive by measure from men, exact full measure, but when they have to give by measure or weight to men give less than due. Do they not think that they will be called to account on a Mighty Day, a Day when (all) mankind will stand before the Lord of the Worlds?" (Al-Mutaffifin 83: 1-6)

Based on the above verse, Islam condemns those who are fraudulent with greater punishment. Among them are the people who are insincere when gives measurement. The act of giving a less weight than due or giving a less amount than one should receive is considered fraud and who engage in it will face severe punishment.

Al-Sunnah

Prophet Muhammad (PBUH) once said in his hadith as reported by al-Hakim and al-Bayhaqi, *"It is not permissible to sell an article without making everything (about it) clear, nor is it permissible for anyone who knows (about its defects) to refrain from mentioning them"* (Yusuf al-Qaradhawi, 2001)

Once, when passing by a grain merchant, the Prophet's curiosity was aroused. He thrust his hand into the heap of grain and found it wet. "What is this, O merchant?" he asked. "It is because of rain," the man replied. The Prophet (peace be on him) then said to him, "Why did you not put it on top so that the people could see it? He who deceives us is not of us." (Reported by Muslim)

In this hadith, the Prophet Muhammad (PBUH) forbade sellers to hide any defects in business transactions. The act of hiding the defects by sellers may lead to a fraud and injustice. That is why the Muslims of earlier times strictly observed the practices of exposing defects of what they sold, telling the truth and giving good advice. Examples of that action are as followed: When Ibn Sirin sold a sheep, he told the buyer, "I would like to tell you about a defect it has: it kicks the fodder." And when al-Hassan bin Salih sold a slave girl he told the buyer, "Once she spat up blood." Although she had done this only once al-Hassan's Muslim conscience required that he mention the fact, even if it resulted in his receiving a lower price. (Al-Qaradhawi, 2001)

Among the act of fraud is market manipulation or *najash*. Ibn 'Umar explained that *najash* signifies someone's bidding for an item in excess of its price without having any intention of actually buying it, but merely in order to induce others to bid still higher. Many times this is pre-arranged for the purpose of deceiving others (Al-Qaradhawi, 2001). Besides prohibiting market manipulation, Prophet Muhammad (PBUH) also forbade people from going out of town to buy merchandise which was on its way to the market; instead, telling them to wait until it was brought to the marketplace (Reported by Muslim). This prohibition is relevant to make sure that the seller is not defrauded by the lack of knowledge about the current price of his merchandise. If anyone does buy some of his merchandise in this manner, the seller has the option of cancelling the transaction after arriving at the marketplace. (Reported by Muslim)

The Prophet forbade any kind of transaction which is uncertain or which involved an unspecific quantity to be exchanged or delivered. This includes the sort of transaction in which there is no guarantee that the seller can deliver the goods for which he receives payment. Accordingly, the Prophet forbade accepting money for a stallion's or male camel's covering, for fish in the water or birds in the air which one has not caught, or for the offspring of a camel still in the womb, since there is an element of uncertainty as to the outcome in all such transactions. The reason for the prohibition is to avoid quarrelling over who was to bear the loss if occurred among the seller and the buyer. Therefore, the sales of goods and items that already exist during the transaction can avoid such issues. (Al-Qaradhawi, 2001)

Types of fraud

There are a few types of fraud that can be relate to the institutional malpractice such as dishonesty, falsehood and breach of pact/promises, disloyalty (*khiyanah*), and bribery (*al-rishwah*). Besides that, other acts such as the sale of *al-gharar* items and hoarding (*ihhtikar*) are considered fraud.

Dishonesty

Literally dishonesty means lack of honesty or integrity which is disposition to defraud or deceive. A dishonest act is equivalent to fraud. Dishonesty is one of the worst forms of fraud. A dishonest person is always prone to defraud others whenever and wherever possible. Among the dishonest act or fraudulent activities are embezzlement, misappropriation, misapplication, destruction, removal, or concealment of property, alteration or falsification of paper or electronic documents, including the inappropriate destruction of paper or electronic documents, false claims and/or misrepresentation of facts, theft of an asset, trade secrets or intellectual property, inappropriate use of

computer systems including hacking and software piracy, bribery, kickbacks, or rebates, conflict of interest or commitment.

Falsehood and Breach of Pact/Promises

Falsehood can be defined as an untrue statement, an absence of truth or accuracy and the practise of lying. Falsehood is strongly condemned in Islam as mentioned in Holy Quran,

“O ye who believe! There are indeed many among the priests and anchorites, who in falsehood devour the substance of men and hinder (them) from the way of Allah. And there are those who buy gold and silver and spend it not in the way of Allah. Announce unto them a most grievous penalty.” (Al-Taubah 9:34)

In this verse, Allah gives a warning to those who devouring people the wrong way with a severe punishment. Falsehood or misstatement about merchandise or services will harm the customer along with the producer and the trader as well (Khan, 2011). The person who falsified the truth in zakat collection for example, will lead to mismanagement in zakat distribution.

Khiyanah (disloyal)

Khiyanah can be derived as treachery, infidelity or disloyal. *Khiyanah* involves deception breach of agreements and promises and failing a trust as well as infidelity. *Khiyanah* is an immoral characteristic. It may occur in regard to money or as a violation of trust. It may occur in regard to honor, power, or position. Allah said in Holy Quran,

“No prophet could (ever) be false to his trust. If any person is so false, He shall, on the Day of Judgment, restore what he misappropriated; then shall every soul receive its due, - whatever it earned, - and none shall be dealt with unjustly”. (Surah Ali Imran 3:161)

“O ye that believe! Betray not the trust of Allah and the Messenger, nor misappropriate knowingly things entrusted to you.” (Surah Al-Anfal 8:27)

“If thou fearest treachery from any group, throw back (their covenant) to them, (so as to be) on equal terms: for Allah loveth not the treacherous.” (Surah Al-Anfal 8:58)

All the verses above show that act of *khiyanah* are condemned in Islam and the treacherous will face severe punishment in hereafter. *Khiyanah* can be considered as fraud because it will harm the people who put their trust to the person or on the contract signed.

Bribery (*al-rishwah*)

Bribery is an offer or promise of whatever nature given to someone in order to influence him or persuade him to do something which is unlawful in the circumstances in favor of the giver. It can also be understood as an incentive that is illegally given to someone in position of authority to influence his sense of justice, due process and discretion (Arowosaiye, 2008). Prophet Muhammad (PBUH) said in his hadith as narrated by Ahmad al-Tibrani (Yusuf al-Qaradhawi, 2001),

"Allah has cursed one giving bribe and one receiving bribe as well as the go between".

The practice of bribery is strongly condemned in Islam because it has a tendency to encourage dishonest practices. Giving of gifts to people who occupy public office or position of authority, by the consensus of scholars are not to be accepted because it can be part of bribery as said by Caliph Umar to all his governors "Beware of gifts because they form part of bribe". (Arowosaiye, 2008)

Sale of *al-gharar* (uncertainty, risks, speculation)

The sale of *gharar* in Islamic terminology refers to the sale of a commodity or goods which is not present at hand, or the sale of an article or goods which the consequence is not yet known, or a sale involving risks or hazard where one does not know whether at all commodity will later come into existence. This type of sale is prohibited in Islam because it may give rise to dispute and disagreements between the concerned parties (Khan, 2011). The contract that involved uncertainty that can harm the consumers also prohibited in Islam. Examples of sale of *al-gharar* as stated in prophet Muhammad saying are the sale of birds in the air, the of fish in the sea, the sale of fruits and grains that still not harvest yet.

"Ibn Umar (Allah be pleased with them) reported Allah's Messenger (may peace be upon him) as saying: Do not buy fruits (on the trees) until their good condition becomes clear. In the hadith transmitted on the authority of Shu'ba it was stated that Ibn Umar (Allah be pleased with them) was asked what good condition implied. He said: When (the danger of) blight is no more". (Reported by Muslim)

Hoarding (*ihlikar*)

Literally hoarding mean an accumulated store hidden away for future use. Technically hoarding means the purchase of large quantities of a commodity with the intent of pushing up the price. An investor hoping to increase the price of a commodity can do so by leveraging his or her demand for it, and buying physical inventory as well as purchasing futures contracts for that commodity. The activity of hidden the commodity with intend to manipulate the price is severely condemn in Islam. A very important hadith concerning hoarding and manipulating prices has been narrated by M'aqal bin

Yassar, a companion of the Prophet (peace be on him). The Umayyed governor, 'Ubaidullah bin Ziyad, came to visit M'aqal when he was bedridden due to a grave illness. After inquiring about his condition, 'Ubaidullah asked him, "Do you know of any instance of my having wrongfully shed someone's blood?" M'aqal replied that he did not. "Do you know of any instance," 'Ubaidullah continued, "in which I interfered with the prices of the Muslims' goods?" M'aqal again replied that he did not know. Then M'aqal asked the people to help him to sit up, which they did. He then said, "Listen, O 'Ubaidullah, and I will tell you something which I heard from the Messenger of Allah (peace be on him). I heard the Messenger of Allah (PBUH) say, as reported by Ahmad and al-Tibrani in their *kitab* (Yusuf al-Qaradhawi, 2001),

"Whoever interferes with the prices of the Muslims' goods in order to raise them deserves that Allah should make him sit in the Fire on the Day of Resurrection." "Did you hear this from Allah's Messenger (peace be on him)?" asked 'Ubaidullah, and M'aqal replied, "More than once or twice"

"Ma'mar (Allah be pleased with him) reported Allah's Messenger (may peace be upon him) as saying: He who hoards is a sinner. It was said to Sa'id (b. al-Musayyib): You also hoard. Sa'id said: Ma'mar who narrated this badith also hoarded". (Reported by Muslim)

According to the above hadith, scholars concluded that hoarding is prohibited under two conditions: first, that hoarding at a given time is injurious to the people of that country, and two, that the hoarder's aim is to force the price up in order to make more profit (Al-Qaradhawi, 2001). Therefore any activities that lead to such action are strictly forbidden according to Islamic law

Occurrence of Fraud in Philanthropy Funds

Noble intentions do not necessarily ensure noble practices. The following illustrates some example of fraud that involved IP funds especially zakat and waqf.

Table 1: Examples of Fraud in Involving IP

	Type of fraud	Source
Malaysia	Usage of zakat fund for building of a state Islamic Religious Complex	Auditor General Report, 2009
	Unlawful occupation of waqf land	
	Doubtful collection of charities	
Pakistan	Unauthorized transfer from a personal account to a zakat foundation account	Money Jihad, Feb 6, 2012

Bangladesh	Waqf properties neglected, underdeveloped or rent out for nominal charges	Siasat News, March 20 th , 2013
India	Irregular transfer of waqf land to private entities by waqf administrators	Two Circles.net, August 4 th , 2010
	Unlawful occupation of waqf land	

Fraud does not occur naturally, it is a result of absence of systematic management, inefficiency and lack of governance. Furthermore, with the current concern on international terrorism, additional difficulties are posed for genuine IP activities. Looney (2006) address the concern of the US government the likelihood of IP funds being channeled to finance terrorist activities.

Determinants of Fraud in IP Fund

Based on the above-mentioned cases of fraud in Table 1, this section highlights some of the determinants in fraud cases.

Lack of human resource is one of the main obstacles in the management of IP fund since there are shortage of staff and experts in the institution relative to the numerous tasks under their responsibilities. This limitation provides opportunity of fraudulent activities due to lack of supervision, enforcement and monitoring.

Besides that, an enforcement issues also shall be a determinant for a fraud to be occurred as when there is no rigid enforcement of law and regulation in managing those funds, people who have the authority toward those fund will take this opportunity to manipulate, mismanage or taking an advantage towards the amount of fund. Yusof Rawa (2001) highlighted the issues of the enforcement also is too flexible and not rigid as such it presented a window of opportunity to mismanage the fund that have been entrusted to the institution.

A systematic and efficient system influenced positively towards the management of IP funds. It is because; a good system will be able to detect any defect or mismanagement of those funds. This requires systematic and organized collection of data. For example in managing of waqf land, Abdullah (2009) indicates that the problem is when the authority body who inherit the waqf property but without any inventory with the management done by unqualified mutatawali or supervisors. The waqf lands are even managed by non-Muslims, many are left idle and there are waqf properties given out orally without any registration and documentation, thus affecting its development. Similar problems involving identifying zakat recipients led to some of the poor incidentally left out from receiving zakat (Hairunnizam Wahid et. al, 2008).

Minimizing Fraud

Minimizing fraud essentially requires enhance management of the institutions involved. Central among them are the need to be more systematic, efficient and improved corporate governance.

Abd. Wahab & Abdul Rahman (2012) indicates that in order to improve its efficiency, respective institutions do not necessarily need to hire more staff with unnecessary number of staff. However, the quality and qualification of staff should be paid more attention by the institutions. Thus, the institutions may arrange training sessions for its officers and employees to orient them about the basic Shariah and modern rules & regulations of IP fund management. A variety of technical training programs may be launched to assist the unskilled labor force to ensure they have a knowledge on managing those particular funds and to focus on integrating the Islamic principles, moral and ethical aspect following to the shariah which to avoid any mismanagement or fraud cases to be occurred. It is because, this scenario of fraud cases can create dissatisfaction among the society at large with regards to the zakat management in Malaysia and subsequently it jeopardizes the reputation of the institution in the country (Yusof Rawa, 2001).

Usage of appropriate technology in managing Islamic Philanthropy fund for collection, distribution or management are vital issues that need to be solved in minimizing fraud or mismanagement. Technology must be improved whereby the system is needed to control and monitor the operational process of managing those particular funds, as such minimizing human involvement and errors. For example, zakat collection and distribution system, improvements in the technology has widely been used by higher-technology applicants especially in urban states like Selangor and Kuala Lumpur. For instance, Selangor, the state that offers the highest number of zakat payment system, ease the zakat payers to pay zakat online. A total of 11 zakat payment systems were offered in Selangor, including the internet banking, short-messages-services (SMS), ATM machine, kiosk machine, credit card, phone-banking and e-debit system. Furthermore, people in Kuala Lumpur and Selangor can also be considered as the most technology-literate in Malaysia. Hence, zakat collection and distribution in Selangor is among the highest in Malaysia. An updated and integrated system of technology shall track or monitor the operational process and ensuring the standard operation of procedure is being followed by the staff and it will lessen fraud cases or mismanagement.

Minimizing fraud requires adherence to corporate governance. A study by Hsu and Petchsakulwong (2010) reveals that the corporate governance does influence performance efficiency of institutions. Existence of audit committees can minimize mismanagement or fraud cases in managing Islamic Philanthropy fund. Audit committee contributes towards increasing efficiency and accountability of an organization. However, existences of audit committee are still new in zakat and waqf institutions.

Conclusion

Islam promotes just distribution and ethics in any transactions. Those practicing fraud or mismanagement should be penalized and those who are ethical in managing this fund shall be rewarded for their credibility and good value which is to ensure the effectiveness and efficiency of managing those funds for the benefit of the society. However further studies are required to further examine the determinants and methods to minimize fraud.

Robust models that could explain provide guidance for improved management of the institutions. Proper implementation management of IP funds will ultimately improve the socio economic and the life of Muslim society itself.

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