

VIEWPOINTS

Ethical Dimensions in Islamic Finance: The Way Forward

*Tun Abdul Hamid Mohamad**

At a seminar organised by the Securities Commission about two years ago on the financial crisis in the West, I asked a professor from Australia whether the crisis was a result of the system itself, or of the abuse of the system. He replied, “Abuse.” Then I said, “Well, if it is abuse, then abuse may also happen in the Islamic system.” He agreed, but argued that there was a difference because the Islamic system is faith-based.

Islamic finance is faith-based, but it is a big mistake to think that because of that all players will be religiously ethical. If the prohibition partaking of the *haram* (that which is prohibited) is in practice breached much of the time, even by Muslims ourselves, what ethical behaviour might one expect when money is involved?

In Malaysia we read about customers, allegedly assisted by someone from within, cheating Al-Rahnu and a non-Muslim CEO of a company allegedly fraudulently obtaining funds from an Islamic bank and leading to the default of millions of ringgit. We have seen employees of Tabung Haji being charged for criminal breach of trust. We have seen both Muslim and non-Muslim customers who have defaulted to raise a defence that the transaction was not Shariah-compliant, hoping to avoid the obligation to pay their debts. Crossing the border, we have seen a bank that had offered a Shariah-compliant product turn around to say that it is not Shariah-compliant, in an attempt to avoid the obligation under the contract.

There is a tendency amongst Muslims to assume that if they do something which they believe to be “Islamic” and in the name of Islam, everything will turn out fine: Allah Most High will take care of everything. They forget that “*sunnatullah*” applies to all and that you have to do the right thing to get the right result. They forget that even the Prophet and his troops lost the Battle of Uhud, not because of lack of piety or wavering intention, but because the archers deserted their positions and prematurely rushed for the spoils of war.

When it comes to Islamic finance, why do things happen such as those that I have mentioned?

Thirty years is not a very long time in the history of banking and finance. The first Islamic bank in Malaysia was established to provide non-riba (non-interest yielding) based banking to pious Muslims. At that time both the bank

and the customers were concerned about compliance with the Shariah in their transactions. However, within a short period, Islamic banking and Islamic finance have grown into a trillion-dollar business.

As a result, people and banks that otherwise would have nothing to do with anything “Islamic” became interested in Islamic banking and Islamic finance. Non-Muslim customers joined in, attracted by the fact they would not be subject to penalties and compound interest. Competition amongst the industry players and the desire to increase profits to levels comparable with the conventional counterpart adds, ultimately, to the dilution of the faith factor.

We have to be realistic. We must remember that we are dealing not just with pious customers, employees or bankers. We are also dealing with crooks. We should not be naïve.

What is this “Islamic ethics” that we are talking about? Muslims are very fond of using the word “Islamic” as a brand name. Hence we have Islamic banking, Islamic finance, Islamic clinic, Islamic medicine, Islamic kindergarten, Islamic beard, Islamic tooth brush and so on – and the West has added others: Islamic bomb, Islamic terrorist, and Islamophobia.

Ethics boils down to two words: honesty and fairness. These cut across all religions, and a fair portion of them have been covered by the existing law that we have. It is a matter of implementation.

There may be areas not covered by civil or criminal law which we should be looking into. The focus should be on both parties: the Islamic financial institutions and their customers / investors must both be ethically accountable.

We should not waste our time trying to define Islamic ethics.

What do we do? We require people with experience and expertise from all relevant disciplines to sit together and formulate rules, regulations and guidelines. And consider how to best achieve compliance.

I think we should start working.

Note

- * Tun Abdul Hamid Bin Haji Mohamad read law at the University of Singapore and graduated with LL.B (Hon) in 1969, then joined the Malay Judicial and Legal Service for twenty one year in numerous capacities until his appointment in 2007 as the Chief Justice of Malaysia. He retired on 18 October 2008. Tun has served as Judge in all the courts in the country, Civil as well as Shari’ah, writing a total of 567 judgments on all aspects of law for the Superior Courts. He delivered the Abdul Razaq Al-Sanhouri Lecture at Harvard University in November 2008. Still active as Chairman of the Law Harmonizing Committee of Bank Negara Malaysia, and a member of the Shari’ah Advisory Council of Bank Negara and the Securities Commission, he is also a member of the Judicial Appointments Commission. In 2011 Tun was awarded an Honorary degree of Doctor of Philosophy in Shari’ah and Judiciary by Universiti Sains Islam Malaysia (USIM).