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DEVELOPMENT OF WAQF PROPERTY USING ISLAMIC MODE OF FINANCE (MUDARABAH)

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Student,

Abstract:-This paper is a review of some of the studies based on the development of waqf property using one of the innovative mode of Islamic finance – Mudarabah which may be termed as Partnership contract. The development of awqaf property has always been a matter of discussion and a lot of studies have been carried out to discuss the new techniques that could be implemented to finance the awqaf properties in a manner which is compliant with the Islamic law as well as beneficial to the society. The biggest hindrance however is the lack of funds for regenerating the productivity of the waqf land, therefore financing a waqf property is a challenge that requires Shariah as well as waqf law compliance.

Keywords:innovative mode , techniques , society , history.

INTRODUCTION :-

There are various means to achieve equitable distribution of wealth in Islam. Besides zakat, waqf is another popular means to obtain equitable distribution of wealth among society. By its definition, waqf is a pious endowment of a non-transferable trust. Once a property is recognized as waqf, the usufruct or yield that will be generated from such a property is perpetual. If waqf property is financed and used efficiently, it will be beneficial to the poor and the society at large . Waqf can be in cash form or any other financial asset that can generate income and benefit to the society. The first waqf property in history is the Quba mosque in Madina (Mustafa & Norhaliza, n.d). Waqf management can be done through various modes of Islamic financing, namely Murabahah, Ijarah, Istisna, Mudharabah, Musharakah and Muzra'ah, this study explores waqf management through Mudarabah

There are many waqf properties that are not well managed. (Hassan and Shahid, 2012). One study found that in Selangor as of December 2008, 10% of the identified waqf lands are idle and undeveloped (Mustafa & Norhaliza, n.d). Due to this unfortunate state of affairs, this study seeks to explain how to manage waqf properties using Islamic modes of financing in order to develop waqf properties.

Waqf can be categorized into the following types:

- 1.Mosque, suraus, and religious school.
- 2.Land for commercial or agricultural uses
- 3.Land for mosques and religious school.
- 4.Cash or funds for waqf property management
- 5.Commercial or residential building (Abdul Kader& Dahlan, n.d)

Charity is encouraged in Islam, as evidenced in the following verses from the Qur'an.

"Those who spend their wealth (in Allah's Cause) by night and day, in secret and in public, they shall have their reward with their Lord. On them shall be no fear, nor shall they grieve."

(Surah: Al Imran, Verse: 274)

Any verses of al Qur'an that elaborates sadaqah as a loan to Allah, such loans will be returned from Allah with very a

good reward in the Hereafter.

“Verily, those who give Sadaqat (i.e. Zakat and alms), men and women, and lend Allah a goodly loan, it shall be increased manifold (to their credit), and theirs shall be an honourable good reward (i.e. Paradise).”

(Surah: Al Hadid, Verse: 18)

LITERATURE REVIEW

Waqf has been an instrument through which many Islamic organizations have endeavoured to alleviate poverty. Mustafa & Norhaliza (n.d) explained that, “the Islamic Development Bank (IDB) established the World Waqf Foundation (WWF) to promote economic and social development and to alleviate poverty, in collaboration with waqf institutions and governmental society.” Their study indicated that the most popular type of waqf (land) are under-allocated and underutilized due to insufficient funds and inappropriate categorization. Waqf lands are categorized into their respective use such as residential, commercial or agricultural. Based on their categorization of residential, commercial or agricultural use, different modes of Islamic financing such as Ijarah, Mudharabah, Musharakah, Muzara or Murabahah are used to finance those respective waqf lands. By efficiently developing waqf land using Islamic modes of financing, society will gain public benefit from those waqf properties. Many fiqh academicians have studied various Islamic modes of financings. Mohammad, Iman and Omar discussed the implications of Musharakah with waqf properties as a mode of financing in Islamic financial institutions. They focused on the concept of Musharakah equity and compared it with the concept of Mudharabah equity. Mudharabah

Mudarabah is a contract or partnership where one provides capital and the other entrepreneurship with the profit bring shared among them with a predetermined condition. Partnership in profit whereby one party (Rab al mal) provides capital and the other party (mudharib) provides labour. The term Mudharabah is widely known in classical literature as Qiradh and Muqharadhah. Both terms are derived from the word qarada which means to cut off (al-qat). This is simply because the capital provider (Rabb al-mal) needs to cut off some of his money to be utilized by the mudharib in business activities.

Types of Mudarabah:

There are two types of Mudarabah namely:

1. Al Mudarabah Al Muqayyadah: The Rab-ul-Maal may specify a particular business or a particular place for the mudarib, in which case he shall invest the money in that particular business or place. This is called Al Mudarabah Al Muqayyadah (restricted Mudarabah).

2. Al Mudarabah Al Mutlaqah: If the Rab-ul-maal gives full freedom to the Mudarib to undertake whatever business he deems fit, this is called Al Mudarabah Al Mutlaqah (unrestricted Mudarabah). The Mudarib cannot, without the consent of the Rab-ul-Maal, lend money to anyone. However, the Mudarib is authorized to behave in a manner consistent with conventional business practice. However if they want to have an extraordinary work, which is beyond the normal routine of the traders, he cannot do so without express permission from the Rab-ul-Maal. The Mudarib is not authorized to:

- a) Keep another Mudarib or a partner.
- b) Mix his own investment in that particular Mudarabah without the consent of the Rab-ul Maal.

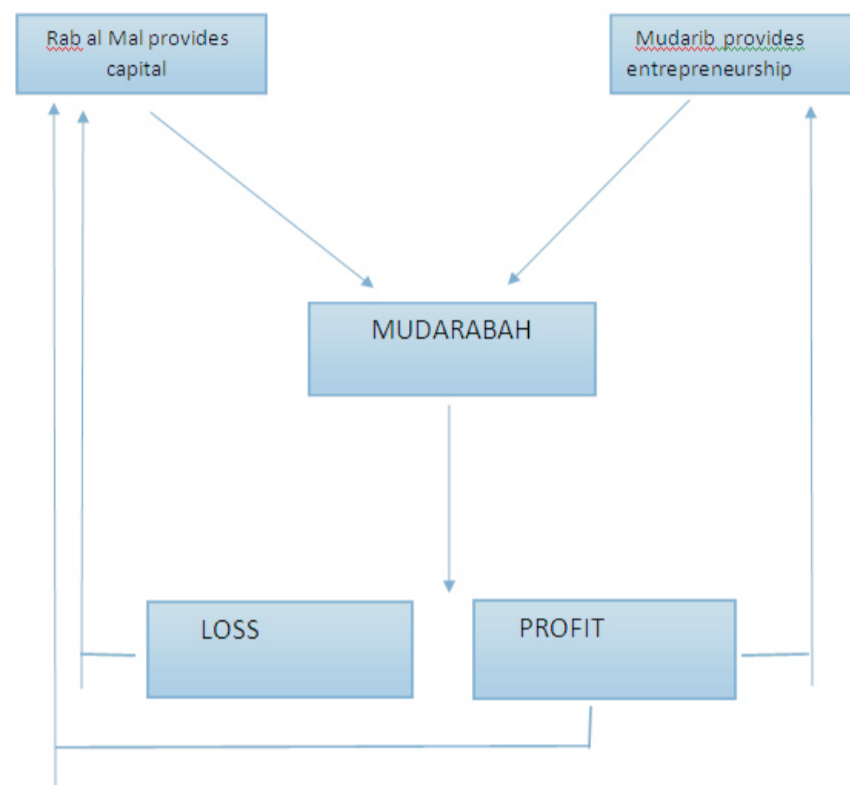


Figure: Mudarabah contract

Legality of Mudarabah : The following are the evidences in favour of Mudarabah from various Islamic sources: The Qur'an - Three different verses of the Qur'an justify the Mudarabah contract. These verses are as follows.

Translation: While others travel in the land in search of Allah's bounty (Chapter 73, Verse 20). It is claimed that, justification of Mudarabah can be proved from the initial four words. Mudarabah is derived from the word Zerab which is used in the Arabic language to mean "to beat", "to hurt", and "to struggle". On this basis, these words have the meaning of struggle. Since in the case of Mudarabah, partners struggle for the bounty of Allah, hence Mudarabah is justified (Taseen, 2002). The same reasoning applies to the two following verses

Translation: And when the prayer has been concluded, disperse within the land and seek from the bounty of God, and remember God often so you may succeed. - (Chapter 62, Verse 10).

Translation: There is no blame upon you for seeking the bounty of your Lord (ie. Profit from trade or business) - (Chapter 2, Verse 198).

Hadith

With regard to the legality of Mudarabah, Al-Marghinani says in Al-Hidaya:

"There is no difference of opinion among the Muslims about the legality of Qirad. It was an institution in the pre-Islamic period and Islam confirmed it. They all agree that the nature of the Mudarabah business is that a person gives to another person some capital that he uses in the business. The user gets, according to conditions, some specified proportion, e.g. one-third, one-fourth or even one-half."

A number of sayings of the holy Prophet (S.A.W.) and reports by his companions on the subject indicate that Muslim jurists are unanimous on the legitimacy of Mudarabah. The terms of the Mudarabah contract offered by the Prophet's uncle Abbas were approved by the Prophet (S.A.W.). Abu Musa, the governor of Kufa, wanted to remit public money to the Bayt al Mal. He gave the amount to Abdullah bin Umar and his brother, who traded with it. The Caliph's assembly treated it as an ex post facto Mudarabah and took half of the profits earned by the two brothers, because the public money in their hands was not the loan. Caliph Umar (R.A.) also used to invest in the property of orphans property on the basis of Mudarabah. This practice

was needed, since weaker members of society could not undertake long journeys for trade as was customary at the time. Al-Sarakhsi, in this regard, says:

“Because people have a need for this contract. For the owner of capital may not find his way to profitable trading activity and the person who can find his way to such activity may not have the capital. And profit cannot be attained except by means of both of these, that is, capital and trading activity. By permitting this contract, the goal of both parties is attained”.

Ijma (Consensus of the Scholars)

There is also consensus among Muslim scholars concerning the legitimacy of Mudarabah. It was narrated that Abd-Allah and Ubayd-Allah were offered some money by Abu Musa Al-Ash'ariy to buy goods in Iraq and sell them in Madinah. They kept the profit and returned the principal.

Conditions to be fulfilled in transacting Mudharabah

1. Both entrepreneur and investor must be eligible to perform their corresponding duties (providing capital and serves as fund manager).
2. Capital must be delivered to the entrepreneur.
3. Profit sharing ratios must be shown and loss is borne by the Rab-bul-mal.

Application of Asset Based Mudarabah in Waqf Property Management

The model in which the waqf institution can allow the financier to construct a building on that land and then lend it to the third party after completion was proposed by Anas al-Zarqa. The rent received is to be shared between the institution and the developer. Some of the revenue received by the institution can be used to increase its share in the building and the rest can be distributed among its beneficiaries. The waqf institution will therefore provide the land and the manager will provide the services and operational finance. This mode is suitable to finance “building” and “industrial” types of waqf lands because the cost of construction is usually high.

The proceeds from the rental of these types of buildings will be sufficient to pay for the high cost of constructing these buildings. This types of Mudarabah are generally termed as Asset Based Mudarabah whereby the waqf will provide land, the same as in Muzra'ah, and the manager will provide services and operational finance.

Application of Capital Based Mudarabah in Waqf Property Management

Another form of Mudarabah is the Capital Based Mudharabah proposed by Kahf. In this category, the Nazer assumes the role of the entrepreneurship. The management will be completely in the hands of the Nazer and he will receive funds from the financing institution to construct a building on the waqf property. As the waqf is providing the land as well as making an effort in management, the profits are supposed to be divided accordingly considering that it compensates for both. The waqf institution does not count the land part of the capital but it is considered part of expenses so that the share of waqf can be extended.

As in the first case both funds and labour are supplied by the financier and waqf institution just provides the land, which is not the case of a classical Mudarabah joint venture. According to Shafi'i jurists, even if the funds come from the waqf institution and the financial entity and the developer had the task of development, this would not meet the requirements of a Mudarabah, as trading is not involved but only services. According to them, one of the conditions of Mudarabah is that the capital owner should not work for management of the funds so Al-Zarqa's view which is based on Imam ibn Hanbal could not be included in the range of Mudarabah, as the cash, equipment and labour come from the manager itself. Such a Mudarabah is similar to Muzarah according to Ibn Qudamah. Other jurists apparently do not agree. Since the developer provides capital and services, the contract becomes service-based or asset based thus not a Mudarabah contract that is used for commercial transactions. Hence, Shafi'i and Maliki jurists would not allow it. Al-Sarakhsi considered this mode as bad ijarah amal (ijarah fiasidah) where the costs are not known. Al-Zarqa's proposal is identical to that of al-Sarakhsi, therefore, if the costs of the development are determined and the ratio of dividend are fixed according to the costs incurred, the Hanafi disagreement may not arise and hence al-Zarqa's proposal will be acceptable according to the views of Hanafi and Hanbali jurists.

Monzer Kahf also seems to have followed Ibn Qudamah when he called this transaction “output sharing mode”. His model would be faced with similar disagreement from Shafi'i and Maliki scholars, as the waqf institution does not entail trading activity.

Moreover there are many similarities between al-Sarakshi and al-Zarqa's proposals which are considered cases of bad ijarah amal (ijarah fasidah) as cost of development is not known. It is also considered a case of bad Mudarabah for reasons already stated. As a result, the waqf institution will be the owner of the land and the building while the financier will receive a fee for constructing the building. However, one may believe that if the cost of building is determined and dividend ratio is fixed accordingly, one may easily reject the Hanafi objection and accept Zarqa's proposal in line with both Hanafi and Hanbali jurists. Even if the cost of development are predetermined as pointed by the Hanafi jurists, then Zarqa's proposal would be a

complete example of a single asset joint venture between financier and land owner in the property market. The return on rental can be shared between the two accordingly (waqf and development company). Some jurists have raised the question of the proposal being practical as it is applied for awqaf (pl. waqf) development in the real sense. Mahmud Ahmad al-Mahdi supports the idea if it is applied in commercial projects in big cities whereby the waqf institution does not need to worry about the cost of development. The second crucial question that arises pertains to the ownership of the land. In Zarqa's view, the developer has ownership of the building alone. However, this is not feasible because in the case of a project failure or default, the developer might need to sell the land to pay for his loss, which is not possible as the developer does not own the land. Such projects contain uncertainty and are risky, and are hence not attractive to most developers. This is one of the major flaws in Zarqa's proposal, which needs to be reconstructed and modified.

As far as the capital based Mudarabah is concerned, it is far much stronger than asset based Mudarabah. This proposal is in a sense better than the previous as all works are undertaken by the waqf and the capital owner would solely act as the financier. However, similar to the first case, the Shafi'is consider it a bad form of Mudarabah according because it is used for trading and not services. The Hanafis' objection may be raised but supposing that the finance is exactly for the purchase of raw material and building costs, the said objection may not apply. Even so, ideally, this proposal will apply when the institution of waqf are capable developers, otherwise the project can be contracted to another party. This proposal is also silent on the ownership of the building. Nevertheless, one may presume that the building should be owned by the financier as security for its capital. Thus, the models based on Mudarabah agreements have their pros and cons but as compared to the Musharakah agreements, they are less attractive and practical in nature.

Example of Asset Based Mudarabah of Waqf Property in Malaysia

Joint Venture schemes between the Islamic Religious Council of the Federal Territory with Tabung Haji Technologies Sdn Bhd and Bank Islamic Malaysia Berhad entered into asset based Mudharabah in constructing of 34-storey building at Jalan Perak, Kuala Lumpur. This project is worth RM 151 million.

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