

CONCEPT AND APPLICATION OF *IJARAH*, *WAKALAH* AND *JI'ALAH* CONTRACT IN THE PUBLIC DONATION: A COMPARATIVE STUDY BETWEEN NON-GOVERNMENTAL ORGANIZATIONS (NGOs) IN MALAYSIA

¹Khadijah Amira binti Abdul Rashid, ^{2*}Mohd Mahyeddin bin Mohd Salleh, ³Mohd Soberi bin Awang

¹Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Nilai

*(Corresponding author) email: mahyeddin@usim.edu.my

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ABSTRACT

One of the purposes of the establishment of non-governmental organizations (NGOs) is to help the needy people to get a better life. They help them by doing fundraising to the public. As they get the public donation, they are also allowed to take the commission from the donation according to the Islamic contracts that have been existed in Islam. The purpose of this study is to analyse the types of contract that have been applied by the NGOs in collecting public donation. The methodology used in this research is qualitative method by using document analysis and interview. The informants involved are from the six selected NGOs which have been registered under Companies Commission of Malaysia (SSM) or Registry of Societies Malaysia (ROS). These NGOs are chosen due to their enthusiasm, activeness and success in implementing the public donation other than based on their expertise relating to the donation collection of the organization. Besides, they cooperated very well from the beginning of the research until the end. The data obtained is analysed using content analysis. The finding shows that Islamic Relief Malaysia (IRM), Aman Palestin, Majlis Perundingan Pertubuhan Islam Malaysia (MAPIM), Cinta Syria Malaysia (CSM) and Muslim Volunteer Malaysia (MVM) apply the contract of *ijarah*, *wakalah* and *ji'alah* which comply with the law of Sharia. Yet, Serantau Muslim does not apply any contracts as they do not take any commission from the public donation. Further research needs to be done to identify the similarity of the contract applied by the other NGOs.

Keywords: *Ijarah*, *wakalah*, *ji'alah*, public donation, non-governmental organizations (NGOs)

Introduction

Fundraising is one of the main activities conducted by most non-governmental organizations (NGOs). This is because most of their involvement is based on the humanitarian aid purpose. They tend to help the needy people to overcome many problems and crises like death due to starvation because no food, death due to cold because no shelter, death due to illness because no money and so on. Thus, by doing fundraising activity, they get to help those in need.

Normally, NGOs use public donation method to get the donation. Undoubtedly, Malaysians are so kind-hearted to donate if there is any interesting campaign or mission. Because of that, most of the donation collection reaches the target set by the NGOs. For example, Muslim Volunteer Malaysia (MVM) has met their 100% fundraising target during the campaign of Misi Bantuan Ramadhan: Syria, Kami Datang! (Muslim Volunteer Malaysia, [MVM], 2018). Besides, they also succeed to get the donation in the recently campaign which is COVID-19, Relief for Unsung Heroes and the Needy. In fact, they got 108% donation from the campaign which is over the actual target (MVM, 2020).

By doing fundraising activity, it involves a few Islamic contracts as the NGOs are allowed to take the commission from the donation. The commission taken is used for their management cost. The word contract according to Cambridge Dictionary Online means a formal agreement between two people or

companies, or a legal document that explains the details of this agreement (Contract, n.d). Contract in this context means an agreement or *'aqad* which involves two parties in the *muamalah* of Islam and there is a payment or wage to one of the parties. The contract involved is whether it is *ijarah*, *wakalah* or *ji'alah*.

Therefore, this study is conducted to analyse the types of contract applied by the NGOs in collecting public donation. It can help the NGOs to get more donations compatible with the contract used by them. It is also to ensure that the contract applied is Sharia compliance.

Literature Review

Concept of *Ijarah* Contract

Ijarah is from the word *al-ajru* which means *al-'iwad* (replace). Syafie scholar stated that the terminology of *ijarah* is an agreement on a required and known benefit where it can be obtained through a certain payment for something that is required (Al-Syarbaini, 1997). *Ijarah* also means a type of contract to take a benefit by way of replacement (Sayyid Sabiq, 2008).

The Islamic ruling of *ijarah* according to *jumhur fuqaha* is *mubah* or necessary. The evidences of *ijarah* are based on al-Quran, hadith and *ijma'*. For example, Allah said;

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ...﴾ (٦)

Translation: "And if they breastfeed for you, then give them their payment"... (6)

(Surah al-Talaq 65:6)

The verse means a person should give reward or wage to those who have worked toward them.

The evidence from hadith is as follow;

عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرَقُهُ".

Translation: It was narrated from 'Abdullah bin 'Umar that the Messenger of Allah (ﷺ) said: "Give the worker his wages before his sweat dries."

(Hadith from Sunan Ibn Majah. Chapter of Pawning: Vol. 3#2443)

Meanwhile according to *ijma'*, all scholars agree that *ijarah* is permissible (Qamarul, 2011). This is because the purpose of *ijarah* is to ease the burden of the people.

Ijarah has two types which are *ijarah 'ayan* and *ijarah amal* (Sudarsono, 1992). *Ijarah 'ayan* is *ijarah* of rental in the form of thing or animal where the owner will get a reward from the tenant. Meanwhile *ijarah amal* occurs in form of service or energy. Besides, *ijarah* also can be divided into *ijarah khusus* and *ijarah musytarik* (Al-Zuhaili, 1985). *Ijarah khusus* is done by the worker. Therefore, the worker is not allowed to work with someone else. *Ijarah musytarik* is done together or through cooperation. It is permissible to cooperate with other person.

The pillars of *ijarah* can be divided into four (Sayyid Sabiq, 2008). Firstly, two parties who are in agreement which is a person who gives a job (*mu'jir*) and a person who uses the energy for a job (*musta'jir*). Secondly is *sighah* which is *ijab* and *qabul* between *mu'jir* and *musta'jir*. Thirdly is *ujrah* or wage and fourthly is benefit. Al-Zuhaili (1985) added that benefit must be something of value and can be given by the owner.

Besides, according to Sayyid Sabiq (2008), the conditions of *ijarah* are two parties must be puberty and sound mind based on Syafie and Hanbali scholars. Then, there must be willingness among them. On top of that, the benefit that becomes an agreement should be known to avoid any other problems.

Relating to the wage, it is given after the work is done. The payment of the wage needs to be paid as soon as possible based on the agreement of both parties. The wage also must be paid after getting the benefit if the *ijarah* is in term of thing. However, *ijarah* will be void if there is a defect at the goods without any delay in the duration of the contract. Next, wage also needs to be paid if there is possibility to get the benefit even though the benefit is not comprehensive (Sayyid Sabiq, 2008). Helmi (2005) added that the wage paid should be based on the position of the person and benefit given by the worker. The wage rate can be based on the custom of community. Abdul Kadir (1980) added that the sum of the wage can be set by negotiation based on the custom of the community or work done or both.

Concept of *Wakalah* Contract

Wakalah means representative work. The terminology of *wakalah* means submission of work which can be done by himself and can represent to someone else with certain *lafz* to be implemented during his lifetime (Al-Khin, Al-Bugha & Al-Syarbaji, 1992). Sayyid Sabiq (2008) stated that *wakalah* is submission of power by someone to others in the matter that can be represented.

The scholars agree that *wakalah* is permissible as long as the pillars is fulfilled and according on the evidences as follow;

Al-Quran;

﴿وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا (٣٥)﴾

Translation: “And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted (with all things)”
(Surah an-Nisa’ 4:35)

Hadith;

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، أَنَّهُ سَمِعَهُ يُحَدِّثُ، قَالَ أَرَدْتُ الْخُرُوجَ إِلَى حَيْبَرَ فَأَتَيْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَسَلَّمْتُ عَلَيْهِ وَقُلْتُ لَهُ إِنِّي أَرَدْتُ الْخُرُوجَ إِلَى حَيْبَرَ. فَقَالَ "إِذَا أَتَيْتَ وَكَيْلِي فَخُذْ مِنْهُ حَمْسَةَ عَشْرَ وَسُقًا فَإِنْ ابْتَغَى مِنْكَ آيَةً فَضَعْ يَدَكَ عَلَى تَرْفُوتِهِ".

Narrated Jabir ibn Abdullah: I intended to go (on expedition) to Khaybar. So I came to the Holy Prophet (ﷺ), greeted him and said: I am intending to go to Khaybar. He said: “When you come to my agent, you should take from him fifteen wasqs (of dates). If he asks you for a sign, then place your hand on his collar-bone”.

(Hadith from Sunan Abu Dawud. The Book of Judgments). Chapter of Regarding Authorization: Vol. 6#3632)

Based on the hadith above, Rasulullah also practice the contract of *wakalah* in various events. For example, paying the debt, represent the camel management, providing animal enclosure and others (Muhammad Syafi’i, 2001).

According to *ijma’*, the scholars agree that *wakalah* is permissible. On top of that, they are more likely to recommend *wakalah* as it is the concept of helping.

Wakalah can be categorized into two types which are *wakalah muqayyadah* and *wakalah mutlaqah*. *Wakalah muqayyadah* is an agreement of representative which has a limit or restriction to the action of the representative based on the certain conditions (Mohammad Deen, 1995). Meanwhile, *wakalah mutlaqah* is an appointment of representative without binding the representative with something and do not put certain conditions (Al-Zuhaili, 1985).

Wakalah has four pillars. Firstly, is a person who represents (*al-muwakkil*) where it should belong to the right over the thing that he wants to represents and have the right over it. Secondly is a representative which is *al-wakil*. *Al-wakil* should have the ability to carry out the act given as long as it does not violate the conditions and not contrary to the *syara*'. Thirdly is the object represented which is the agent must act in accordance with the instructions of the principal and exercise due care and skill. The object of *wakalah* also can be implemented by others. Fourthly is *sighah (ijab and qabul)* (An-Nawawi, 2003).

The conditions of *wakalah* is *al-muwakkil* shall be the person entitled and qualified in a matter that he wants to represent (Al-Jaziry, 2003). Meanwhile, *al-wakil* must be sound mind and he must know the matter which is represented to him to avoid any fraud in the contract (An-Nawawi, 2003). Besides, the thing must be permissible by *syara*' and it is belong to the *al-muwakkil* (Al-Syarbaini, 1997). On top of that, the matter also must be anything that can be represented such as property affair, collecting debt and others (Al-Zuhaili, 1985).

Wakalah with wage is permissible in Islam. It is called as *wakalah bil ajr*. It is based on the hadith as follows;

عَنْ عُقْبَةَ بْنِ عَامِرٍ . رَضِيَ اللَّهُ عَنْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَعْطَاهُ غَنَمًا يَفْسِسُهَا عَلَى صَحَابَتِهِ، فَبَقِيَ عَتُودٌ فَذَكَرَهُ لِلنَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ " ضَحِّحْ بِهِ أَنْتَ . "

Narrated 'Uqbah bin Amir: that the Prophet (ﷺ) had given him sheep to distribute among his companions and a male kid was left (after the distribution). When he informed the Prophet (ﷺ) of it, he said (to him), "Offer it as a sacrifice on your behalf".

(Hadith from Sahih Al-Bukhari. Book of Representation (or Authorization). Chapter of a partner can deputize for another while distributing things etc.: Vol 3#2300)

The hadith explains that the Prophet represented Uqbah bin Amir to divide the sheep among the companions of Prophet and the balance of a kid is given to him to be sacrificed. This is the wage received by Uqbah.

However, *wakalah* also can be done without any wage. It is voluntary for goodness and *ta'awun* that is highly encouraged in Islam (Mohammad Deen, 1995).

Concept of *Ji'alah* Contract

Ji'alah in language means salary or wage. According to Abdul Azis (1997), *ji'alah* means wage or reward given to a person as the person does or performs certain works or acts. Sayyid Sabiq (2008) also gives a meaning of *ji'alah* as an agreement for a benefit which will be rewarded as promised to a job.

Maliki, Syafie and Hambali scholars stated that the Islamic ruling of *ji'alah* is permissible based on the evidence as follow;

﴿قَالُوا نَفَقْدُ صَوَاعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ﴾

Translation: "They said: "We are missing the measure of the king. And for he who produces it is (the reward of) a camel's load, and I am responsible for it"

(Surah Yusuf 12:72)

Meanwhile, in a hadith narrated by Abu Said Al-Khudri telling that there are companions of Prophet receive gift or wage through *ji'alah* which is a number of sheep. This is because one of them managed to cure someone by reciting surah al-Fatihah. They tell this matter to Rasulullah because they are worried the gift is illegal. Then, Rasulullah laughed and said;

"وَمَا أَذْرَاكَ أَنَّهَا رُقْيَةٌ". ثُمَّ قَالَ "خُذُوا مِنْهُمْ وَأَضْرِبُوا لِي بِسَهْمٍ مَعَكُمْ".

“How did you come to know that it can be used (as incantation)? And then said: Take out of that and allocate a share for me along with your share”.

(Hadith from Sahih Muslim. Book of Greetings. Chapter of the Permissibility of Accepting a Reward for Reciting Ruqyah With Quran and Supplications: Vol 6#5733)

Ji'alah can be divided into four pillars. Firstly is *lafz*. The *lafz* is valid if it is only happen *ijab* without *qabul* because this agreement is unilateral (Abdul Azis, 1997). Secondly is a person who promises a reward. Thirdly is a type of act where the act is necessary and not something illegal. Fourth is wage or reward (Sulaiman, 1986).

Besides, the conditions of *ji'alah* are the first party who promises a reward must be puberty, sound mind and smart. Meanwhile, the second party that has been determined by the first party must perform the act. However, if the second party is not determined, it means that anyone who hears or knows about it can perform the act. Secondly, the wage or reward promised should be valuable in a clear amount. It will be void if it is from illegal thing such as liquor. Thirdly, the act being informed should have clear benefit and useful according to *syara'*. Syafie scholar added that effort and ability must exist in the act. Fourthly is Maliki and Syafie thought that *ji'alah* cannot be limited by certain time in certain issues. Fifthly, Maliki scholar opined that the result of the act done must not be too heavy although it needs to be done repeatedly (Abdul Azis, 1997). Hendi (2002) added that wage must be in terms of thing or money, suitable to what is promised as well as it is in a clear form.

In the context of wage or reward, Syafie and Hambali stated that the first party can change the amount of the wage either by increasing or reducing the amount. Syafie scholar added that as long as the act has not been completed by the second party, the first party can change the amount of the wage. Yet, the first party must follow the reasonable wage according to the custom of the community if he still wants to deduct the amount of the wage while the work is still in progress (Abdul Azis, 1997).

Research Methodology

In this research, the methodology used is qualitative approach by using document analysis and interview. According to Bowen (2009), document analysis means the documents are interpreted by the researcher to give voice and meaning around an assessment topic. For this study, the information obtained is based on the al-Quran, hadith and *fiqh* books from the easier sources. Meanwhile, interview can be meant as a qualitative research technique which involves conducting intensive individual interviews with a small number of respondents to explore their perspectives on a particular idea, program or situation (Boyce & Neale, 2006). The informants are chosen from the six selected NGOs based on their expertise relating to the donation collection of the organization. They are Islamic Relief Malaysia (IRM), Aman Palestin, Majlis Perundangan Pertubuhan Islam Malaysia (MAPIM), Cinta Syria Malaysia (CSM), Muslim Volunteer Malaysia (MVM) and Serantau Muslim.

Then, the data obtained will be analysed by using content analysis approach. It is used to identify the theme, concept and meaning other than requiring coding system related to the purpose of the research. The data collected is used to complete the objective of the research.

Findings and Discussion

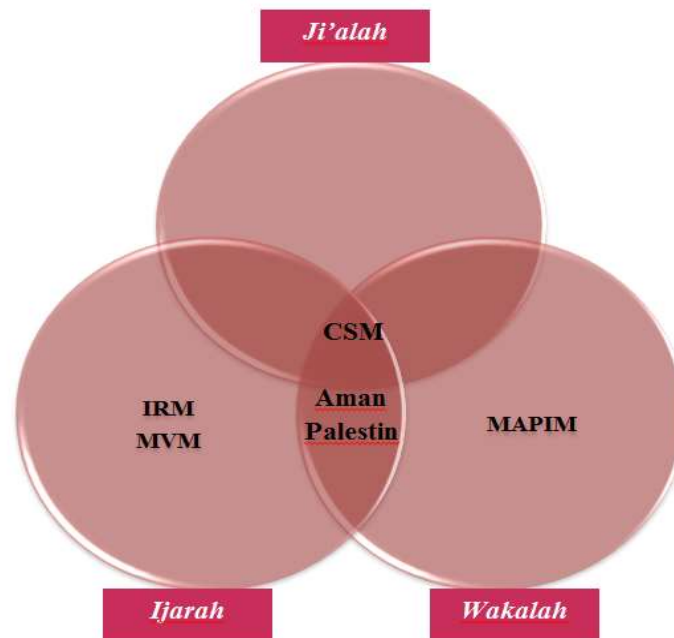


Figure 1: Contracts Applied by the NGOs

Based on the research conducted, *ijarah* contract has been applied by IRM, Aman Palestin, CSM and MVM. As this contract has four pillars, the two parties involved are the donor and the NGO. The *sighah* is a notification made by the donor relating to the donation fund donated or transferred by them to the NGOs. Then, *ujrah* is a commission or wage taken by the NGOs from the donation fund made by the donor while the benefit is the NGOs channels the donation fund made by the donor to the beneficiaries.

Wakalah contract also has been applied by Aman Palestin, MAPIM and CSM. It is because the donation collection activity is parallel to the pillars of the *wakalah* contract. In this context, the person who represents is the donor and the representative is the NGOs. The object represented is the donor represents the NGOs to channel the aid and donation to the needy people. Meanwhile, *sighah* is the notification of donation fund donated or transferred by the donor to the NGOs. For CSM, they applied this contract in the contract first service. It is applicable to the part time worker where they are expert in finance and technical marketing. Both of them will receive payment although they are not working in the CSM office. So, *wakalah* contract happens where the person who represents is the CSM and the representative is the part time worker. The object represented is CSM represents the worker to do behind the scene work according to their respective expertise in finance and technical marketing. Then, *sighah* happened when CSM gives the payment to the part time worker.

Meanwhile, *ji'alah* contract has been applied by CSM too. They recently applied this contract in the end of 2019. The contract aims to give a reward or wage to the staff of CSM for being passionate in achieving the actual target of the donation set by them. Based on the commission taken, they will provide 2% from it as the reward to the staff. For the first time they applied the contract, the staff succeed to reach the target which is RM1 million in the winter mission project. So they are eligible to receive get the reward. Besides, CSM also still allocate the reward even though they do not reach the target. Yet, the percentage of the reward is depending on how they raise the donation. For example, if they only reach 75% of the donation, they will receive 1.5% for the reward. If they only get 50% of the donation, they will receive 1.0%. Meanwhile, if they only reach 25% of the donation, they just get the reward of 0.5%. In the other words, this contract is applied when CSM promises a special reward to the staff if they reach the target in completing the fundraising of the mission or project.

However, Serantau Muslim is the only NGO that does not apply any contract. It is because they do not take any commission from the donation collected.

Based on the findings above, these three contracts are very likely suitable to be applied for all the NGOs that conduct fundraising activity. It can be stated that four NGOs have applied *ijarah* contract, three NGOs have applied *wakalah* contract and one NGO has applied *ji'alah* contract. Based on the six selected NGOs, it can be shown that some of them have applied more than one contract. In fact, CSM is one of the NGOs that applied three contracts in their organization.

On top of that, the researcher proposes a few other elements which are reasonable to be applied other than applying the contract of *ijarah*, *wakalah* or *ji'alah* so that it is more comply with the Sharia. One of the elements are the NGOs are recommended to hire the Muslim staff. Then, they are advised to take the suitable commission rate between 12.5% to 20%. NGOs also need to disclose the commission taken by them to the donor personally. Besides, they need to inform the donor about the donation that has been channeled to the beneficiaries. Lastly, NGOs need to ensure that the donation fund received should be managed by using Sharia compliant bank.

Conclusion

As a conclusion, the fundraising activity done by the NGOs are permissible according to Islam. This is because they applied the contract of *ijarah*, *wakalah* and *ji'alah* in their organization which is parallel with the Sharia principles. So, they are allowed to conduct any donation campaign and take a little commission from the donation collection. At the same time, they channel most of the donation collected to the target group of beneficiaries. As for *ijarah* contract, it has been applied by IRM, Aman Palestin, CSM and MVM. Then, *wakalah* contract has been applied by MAPIM. It is applied by IRM and CSM too. Meanwhile, CSM also has been applied *ji'alah* contract.

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