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The First Topic: The Ruling on Lending Some of The Zakat Funds

Presenter: Prof. Dr. Aznan Hasan

Statement of the Problem:

Is it permissible for a zakat foundation to offer interest-free loan from Zakat funds to eligible Zakat beneficiaries?

Summary of the Study:

The research examined the concept of *Qard* (loan) in the Arabic language and Islamic jurisprudence. It also mentioned some of the most explicit texts on the virtues of offering loan and its importance in human society. After that, the researcher examined the existing models of lending from zakat funds, which the researcher limited to the following three models:

1. The Zakat Foundation shall allocate a portion of Zakat funds for *qard,* on the recommendation of the Shariah Board prior to the distribution.

2. The Zakat Foundation shall allocate, on the recommendation of the Shariah Board, the surplus zakat after the immediate distribution of zakat to the *asnaf* (eligible zakat beneficiaries).

3. Zakat Foundation may provide, upon the approval of its Shariah Board, a *qard hasan* to the *non-asnaf* who need it.

The researcher explored the opinions of contemporary scholars on the subject of *al-Qard al-Hasan* from Zakat, whereby some of them are proponents, and others are opponents of the practice. The proofs presented by each of the opposing parties were discussed. Subsequent to discussing and analyzing their respective proofs, the researcher preferred the opinion that permitted giving loans from zakat to the eligible beneficiaries, subject to conditions and controls that must be taken into account upon implementation. This preference is based on the decision of the Islamic Fiqh Academy, which favoured the permissibility of investment of zakat funds subject to certain conditions, and its unanimous decision on collective ownership by the *asnaf* of zakat commercial projects without individual ownership. The researcher also pointed out that his preference was based on the Resolution of the Islamic Fiqh Academy No. 25 (3/3) of 1986 and Resolution No. 165 (18/3) of 2007 which provides among others, *the permissibility to delay zakat distribution* of zakat *if it is occasioned by maslahah.* According to the researcher, this may allow the zakat authority to give a portion as a *qard hasan* to the eligible *asnaf*.

The opinion of the Ulama that participated in this conference on lending a portion of the Zakat Funds:

The zakat institution may lend zakat funds to zakat recipients because the obligation of the zakat payer has been discharged by paying it to the institutions and because the licensed zakat institutions are considered to be the representatives of the ruler and, thus, have the authority to do what is most beneficial.

Some of them held the opinion that this is not permissible due to the difference in the legal reality between zakat and a loan. The ownership of zakat is transferred to the poor without obligation to

pay any corresponding consideration, unlike a loan in which the money must be returned. If, hypothetically, the zakat money is loaned to the poor with the obligation to repay it, then it will be either a valid loan from the payer's money that has nothing to do with zakat, or it will be valid zakat that has nothing to do with a loan, and the poor will not be obligated to return it because he is its owner. If we consider charitable organisations to represent the ruler, then it is not correct for the ruler to adopt anomalous opinions. And if the organisations are representatives of the payer, it is also a fortiori, not valid. Also, the ruler's custody [of the money] is fiduciary custody for paying it to those entitled to it; it is not the custody of an owner; thus, it is not valid for him to dispose of it as an owner would, and this includes lending it.

The jurists' difference of opinion as to whether zakat must be paid immediately or can be delayed does not change the reality of zakat: that its ownership must be transferred to the deserving recipients without any obligation upon them to repay it.

Some of the attendees argued that the zakat institution may allocate a portion of the debtors' share of the pooled zakat funds to lend zakat to the poor for the purpose of investing it in economic projects that will bring them out of poverty.

Some of other scholars that were present took the view that lending zakat money is based on whether zakat must be disbursed immediately or can be deferred. If we say it can be deferred, it is permissible to lend from the zakat money and it becomes debt liability on the lender. There is no difference between the lender being an individual or an institution, nor the borrower being rich or poor, because the money is a liability on the zakat payer that lent it. The difference only manifested with regard to calculating such loan that was taken out from zakat to be a debt on the zakat fund.

The Second Topic: The Application of Deemed Consent in Islamic Financial Institutions

Presenter: Dr. Nik Abdul Rahim Nik Abdul Ghani

Dr. Tuan Badrul Hisyam Tuan Soh

Statement of the problem:

Is it permissible to adopt tacit consent to conclude contracts in the transactions of Islamic banks? What is the validity of implicit acceptance in Islamic jurisprudence?

Summary of the Study:

The research examined the concept of *implied acceptance* in contracts, the concept of consent in contracts and the opinions of the scholars and their respective evidence from the Glorious Quran and the Prophet's Sunnah. Also, Shariah concept of *al-sighat* (the format of a contract/ the statement of offer and acceptance) was examined being one of the pillars of a valid contract. Thereafter the researcher zoomed into the linguistic and technical definition of *implied acceptance*. The concept of acceptance in the law was also examined whereby it was found that they divided acceptance into three types: Explicit or express acceptance, Implied acceptance, and conditional acceptance.

The researcher then looked at the impact of silence on the validity of acceptance while presenting what silence is in Islamic jurisprudence and its circumstances, and divided it into four circumstances:

1. A silence that is deemed to be a verbal statement without any doubt.
2. A silence that is deemed to be a verbal statement in the most correct opinion.
3. A silence that is not deemed to be a verbal statement without any doubt.
4. A silence that is not deemed to be a verbal statement in the most correct opinion.

The researcher pointed out that silence in Islamic jurisprudence in general is not deemed to be a statement except in some circumstances and situations. That is, an absolute or abstract silence does not imply meaning. This is the original position in transactions. The jurists refer to it in the following legal maxim:

"لا ينسب لساكت قول"

[the original presumption is that] "A statement cannot be attributed to the Silent person"

The researcher pointed out that it is not permissible to say that silence in banking transactions is considered absolute acceptance; rather there should be circumstantial evidence and jurisprudential principles that regulate the commercial transactions of Islamic banks.

After that, the forms of implied acceptances in Islamic banks were discussed, and accordingly jurisprudential principles were proposed for the application of implied acceptances in Islamic banks, which are as follows:

1. The application of implied acceptance does not hurt the contracting parties, nor does it cause harm to them.
2. There must be prior understanding or prior interaction between the contracting parties, and there must be a period agreed upon between them before the contract is created, including implied acceptance.
3. There should be a specific and reasonable period of time that is customarily recognized by Islamic banks.
4. In the absence of prior understanding, there must be special permission from the Central Bank for the application.
5. If there occurs an express objection after a period or an appropriate period, it supersedes the implied acceptance.

Resolution on The Application of Deemed Consent in Islamic Financial Institutions:

Implicit consent may be taken into account in cases of converting conventional banks into Islamic banks by sending a notification with the details of the date that the [new] practice will start. The notice shall state that if [the recipient] does not object to it within a specified period it will be [considered] his acceptance of this conversion and the provisions it entails.

It is permissible to consider silence as an implicit acceptance of the offer issued by the bank if there was a previous agreement between the bank and the customer on the means of communication and the period during which, if the customer did not object, he would be

considered accepting [of the bank's offer]. The effects of this acceptance shall arise and it shall become binding upon the expiry of the period if the customer does not express his objection. If the customer proves after the expiry of the specified period, and by a final court ruling, that he did not have knowledge of the bank's offer, the contract shall not be concluded.

The Third Topic: **The Format of Diminishing *Mushārakah***

Presenter: Prof. Dr. Azman Mohd Noor

Statement of the Problem:

The research discussed the problems of the diminishing partnership format, whether it is jurisprudentially adapted to *Sharikat al-milk* (partnership formed for co-ownership) or a *sharikat al-'aqd* (partnership formed as a co-venture) and legal consequences and effects in its implementation. Also, the research examined formats of applying diminishing partnership in the financing of real estate and assets operated for income generation, and financing of working capital and preference shares.

Summary of the Study:

The purpose of this research is to find a format for financing Small and Medium-sized Enterprises, considering the aspect of collateral, preservation of rights and risk mitigation. This is because Small and medium-sized enterprises need the financial resources and guarantees that enable them access to debt-based financing. Hence, the diminishing partnership comes as a response to this need and bridges this gap.

The two researchers delved into the concept of *sharikat* from a linguistic and jurisprudential point of view, and then particularly studied *Sharikat al-milk (partnership formed for co-ownership) or a sharikat al-'aqd (partnership formed as a co-venture)* and presented the most important differences between them in terms of formats and goals.

The concept of diminishing partnership and its juristic adaptation were then discussed. Consequently, the researchers mentioned four *takyif fiqhi* (jurisprudential adaptation) of diminishing partnership: that it is part of *sharikat al-'aqd*, which is *sharikat al-inan*; that it is *Sharikat al-milk;* that it sometimes shares similarity with *Sharikat al-milk* and some other times it shares similarity with *sharikat al-'aqd*, and fourthly, that the intent of the contracting parties determines the type of *sharikat,* either as a *Sharikat al-milk* or *sharikat al-'aqd*. The researchers preferred the fourth opinion that, the jurisprudential adaptation is best determined by the intent of the contracting parties and the characteristics of the nature of the project of the partnership and the mode of the financing or investment structure.

The discussion then took its direction to the applications of diminishing partnership in the purchase of the real estate in Malaysia, where three phases of the application of diminishing partnership in Islamic banks were presented. The problems affecting diminishing partnership in financing real estate or income generating assets were also presented. Also discussed was the Shariah issue regarding subjecting of trade to be contingent on action or event before it can be executed in sale;

a promise made by the partner in the diminishing partnership to acquire share from the shares of his partner. In addition to these, issue of the requirement for guarantee in the diminishing partnership, the division of the debt and the guarantee by the partner in the *musharakah* was examined. Finally, the experience of financing a commercial project through a diminishing partnership that ends with transfer of ownership in Malaysia was discussed. In this regard, the researcher also discussed working capital financing and *musharakah* through the issuance of preference shares.

In conclusion, the research recommended that further research on the following issues is needed:

1. Finding a legitimate format or structure through which *sharikat al-aqd* could be transformed into *sharikat al-milk*.
2. Division of the debt and its relationship with guarantee in sukuk and its circulation.
3. Waiver of own right before the right is established and prior *ibra* (rebate) its mechanisms and applications.

Resolution on Diminishing *Mushārakah*:

The essence of diminishing partnership does not differ from the partnership recorded in the books of *fiqh*. It is permissible, according to the agreement of the contracting parties, either for it to be a type of limited contractual partnership (*shirkat al-ʿinān*) or voluntary joint ownership (*shirkat al-milk*). Each type of partnership has its own established provisions in terms of establishment, purpose, liability, profit, etc.

The Fourth Topic: Parameters for Participation in Exchange Traded Funds (ETFs)

Presenter: Dr. Abdulaziz Al-Qassar

Statement of the Problem

To what extent is it lawful to participate in ETFs whose prospectuses do not contain any statement that indicates that they operate in accordance with the provisions and principles of the Shariah? Also, to what extent is it lawful to invest and contribute to equity funds in general, and ETFs with the application of these Shariah standards to equity funds that are not stipulated in their prospectuses or not that they are Shariah compliant? Is it possible to set parameters for participation in equity funds?

Summary of the Research

The introduction of this paper dealt with the concept of investment funds and their most important Shariah rulings. The paper is divided into two parts:

1. Explanation of concept of the funds and their main players as parties, with the jurisprudential adaptation.
2. Shariah rules on contributing and participating in Equity Funds, specifically in ETFs and the parameters.

The first part dealt with the definition of investment funds in terms of the legal nature of the fund, the purpose of its establishment, the form of management in it and the form of contribution and participation. This was followed by an examination of the nature of the relationships among the parties to the fund and the jurisprudential adaptation of investment funds. For example, the relationship between shareholders themselves and the relationship of shareholders with the investment manager. Thereafter, the paper delved into a discussion on the various types of investment funds, which are divided into various forms according to the type of activity such as securities funds, real estate funds, currency trading funds, or according to the Islamic regulatory framework such as Islamic investment funds and conventional investment funds.

The second part of this paper dealt with the ruling on participation and taking equity in ETFs. The researcher began by addressing the jurisprudential ruling on participation in equity funds in general and traded funds in particular. The various points of view on the matter were also explained and elaborated, and they are based on two opinions:

1. It is not permissible to participate and contribute to equity funds, including exchange-traded funds, whose articles of association do not stipulate that they operate in accordance with the Shariah.
2. It is permissible to contribute and participate in these funds, as there is no objection from the jurisprudential point of view to apply Shariah standards for compliance with the acceptable parameters.

After that, the researcher dealt with the parameters for investing in equity funds, which are as follows:

1. It is not permissible to participate in Investment funds for securities with pure and explicit prohibited activities that are not hybrid, such as bond funds and usurious stocks, as also not permitted to use conventional derivatives in the trading of equity fund units.

2. As for the trading of funds of gold companies, the tradability must adhere to buying on-spot payment, that is instantaneous taking of delivery by both parties and not to defer one or both of the items in sale. However, there is no objection to adopting (T2) known in the financial markets to be considered as an immediate sale and not a deferred.

3. Is it required that among the components of the fund there should be no shares that are explicitly and exclusively forbidden which have only single commercial activity and not hybrid, that is the conventional banks?

The researcher then discussed the third parameter by extrapolating the opinions of the scholars and limited those opinions into two:

The first opinion is to prohibit from components of the share fund any stock that is exclusively prohibited, such as the conventional banks, in any proportion whatsoever, even a small one.

The second opinion is the permissibility of the above, opposite of the first opinion. That is, it is allowed to apply the Shariah parameters even if the components consist of riba-based banks. This is the opinion preferred by this research.

Resolution on Parameters for Participation in Exchange Traded Funds (ETFs):

There are various cases of participation in ETFs:

The first case: If all components of a fund are shares of companies that comply with the parameters of investment in shares stipulated in the AAOIFI standards, it is permissible to invest and participate in such ETFs, and what applies to them individually applies to them in aggregate.

The second case: If a fund's components are all shares with permissible activity, but there are some companies that have deviated from the parameters of the AAOIFI standards, it is permissible to invest in it and apply the criteria to the total value of the fund based on the fact that ETFs are like single partnerships.

The third case: If one of the components of the fund is prohibited shares, such as banks, then the attendees differed, having two opinions: the view that it is prohibited, and the view that it is permissible with the application of the standards to them. Some attendees suggested deferring this issue for further discussion and study in a future symposium.

It is permissible to establish ETFs for trading in gold and silver, but spot receipt must be adhered to; the deferred sale is not permissible. There is no objection to adopting (T2), which is well-known in the financial markets, because it is considered an immediate taking of delivery and not a deferred sale.

The Fifth Topic: *al-Sulh* (Conciliation) According to The Jurisprudential Schools of The *Ibadis* And the Twelve-Imams *Shiites*, and Its Impact on Bank Deposits

Presenter: Dr. Aflah Ibn Ahmad Al-Khalili

To what extent can reconciliation be relied upon in the Ibadis, Zaidi and Imamate Shiites in solving the problem of the depositor's entitlement from previous wadiah transactions before the *mudharabah*, especially since the funds have turned into debts? The following questions emanate from the statement of the problem:

1. What is reconciliation and what is its jurisprudential adaptation to the three schools of thought?
2. What are the considerations for deposits on reconciliation?
3. What are the proposed way-outs?

Summary of the Study:

The importance of the study lies in answering the questions through the statement of reconciliation and its jurisprudential adaptation in the three schools; verifying the possibility of way-outs for

bank deposits on reconciliation and indicating some of the proposed way-outs. The researcher came up with the following:

1. The adaptation of reconciliation is however around being independent or dependent on the contracts that produce its result, and this does not necessarily imply from the first extrapolation that it has violated the rules of those contracts.
2. The adaptation of bank deposits as *mudharabah* is not sufficient to explain the ownership of the assets represented by the deposit at the beginning of the deposit, nor the mechanism of transfer of ownership in its termination or end.
3. The adaptation of bank deposits on reconciliation consists of many problems.
4. Solving the issue requires deepening real consideration by specialists in multiple fields.

The researcher recommends a painstaking study of the *takyif fiqhi* (jurisprudential adaptation) of investment deposits. Does it compose of a single contract or multiple contracts? If it composes of multiple contracts, what are the parameters for the composition?

Resolution on Conciliation According to The Jurisprudential Schools of The Ibadis And the Twelve-Imams Shiites, And Its Impact on Bank Deposits:

Conciliation is subject to the provisions of the contracts that come under it, and it is not valid to classify bank deposits on its basis even according to the Ibadis and the Twelve-Imams Shiites.

The Sixth Topic: The Return of The Sold Item to The First Seller in Banking *Tawarruq*

Presenter: Prof. Dr. Salah Abu Al-Haj

Statement of the Problem

What is the ruling on bank *tawarruq* based on the Hanafi School's principles? What are the formats of *bai' al-inah* (buy back sale) in view of the Hanafi scholars and their exceptions?

Summary of the study:

The research began with the definition of *bai' al-inah* and delved deeper into its meaning in the Hanafi school and then proceeded to the evidence of the prohibition of the *bai' al-inah*, in which he presented some of the evidence of the jurists in the prohibition. The researcher then presented the extrapolated views on *bai' al-inah* and focused on the statements of Imam al-Kasani, the Qadh of the Khan province, which is related to the formats of the permissible *bai' al-inah*, the prohibited formats and the formats that are disputed among the jurists because of its consisting of the general format and its possibility of being an acceptable replacement to others.

After that, the researcher presented the jurisprudential discussions, whereby some of the jurists upheld it permissibility and others upheld the prohibition of some forms of *bai' al-inah* while clarifying the accurate answer. The researcher argued that the forbidden *bai' al-inah* is to sell on spot payment at a price lesser than what you bought it from the seller at a higher price and on deferred payment, while he is now indebted by a price higher than the price at which he bought. I

consider it to be attached to usury, because there is suspicion of *riba* in it, and the suspicion in the door of *riba* is attached to the truth of usury.

The researcher opines that it is possible for some Islamic financial institutions to resort to the *Tawarruq* instrument in their financial transactions. If a person comes to apply for a loan, the Islamic financial transaction may sell him a commodity such as corn oil, for example, in deferred installments, and then this person through an intermediary company sells this commodity at an immediate price, and he gets the amount that he needed. Usually, there exists a relationship between the bank and this intermediary company to facilitate the process, but the buyer has a choice between selling through it or others, or he keeps the commodity under his own custody for a while, for example. Therefore, this format is permissible.

Resolution on The Return of The Sold Item to The First Seller in Banking *Tawarruq*:

It is permissible to return the sold item to the seller, even if it is customary to do so, as in banking *tawarruq*, provided that it is not stipulated in the contract. This is the view of *Abū Yūsuf*; it is the approved view in the *Ḥanafī* School, and the view advocated in most of their books, the reasoning being that it avoids falling into usury. It is also the *Shāfiʿī* position, and it is more appropriate.

The return of the sold item in banking *tawarruq* goes to the seller to the bank, which is the first seller. The sold item is returned to him for a spot price equal to what he initially sold it for. This first party sells it to the bank for a spot price, and the bank sells it to the customer on *murābaḥah* at a deferred price. After the commodity has been sold to a fourth party at a spot price equal to the purchase price of the bank, the fourth party sells it to the first seller at a spot price equal to the price at which he bought it. (It is the price at which the commodity was disposed of by the first seller).

There is no *ʿīnah* in this return, and there is no problem with it in itself.

Some of the attendees were of the view that it is not permissible in banking *tawarruq* to return the sold item to the first seller, even if it is by custom or verbal agreement outside the contract, because both custom and verbal agreement are tantamount to stipulated conditions. Thus, the multiple sales of the same item become fictitious and meaningless, irrespective of however many they are. Therefore, what is considered is what the seller disposed of and what came back to him, thus making the *tawarruq* ending up in the form of two-parties *ʿīnah* according to the classification by the AAOIFI standard on *tawarruq*.

It was agreed to hold a symposium specifically to discuss the Sharīʿah issues that hinder the correct application in the international commodity markets.

The Seventh Topic: The Ruling on Selling a Specific Item That is Not Owned by The Seller

Presenter: Prof. Dr. Waleed Al-Shawish, Prof. Dr. Djeddi Abdelkader

Statement of the Problem

The problem of the research is to examine the possibility of validating the sale of what the seller does not own in a non-*salam* contract as being attributed to Imam Malik in *al-Utbiyyah*? How true is the attribution of this report to Imam Malik? Is what has been attributed to Imam Malik in *al-'Utabiyah* contradict what he has argued in other sources such as *al-Mawata'* and *al-Mudawwnah*? What is Ibn Rushd's position on clarifying and explaining this report?

Summary of the Study

In order to address the above research problem, the research delved into the definition of sale and the meaning of ownership in the sale, mentioning the views of jurists on the issue of the condition of ownership of the sold item, and that it is not every property that accepts being owned by every person. However, there are properties as follows:

1. What its ownership cannot be transferred or to be owned in any case
2. What does not accept ownership except by Shariah justification
3. What could be owned, and its ownership may be conferred at all costs without restriction

The research then touched on the objectives of the sales contract, the most important of which is the marketability of properties, and blocking the means that lead to disputes, conflicts between contractors, clarity and repelling of excessive uncertainty.

The researcher then took a direction to the issue regarding clarifying the Maliki school in relation to the ownership of the commodity and subsequently discussed a list of effective causes that the Maliki school observed in sales contracts that will make the contracts result in breaches and further explained the prohibition in selling what you do not have as follows:

•Fear of *al-Istihqaq* (claim of entitlement by another person): *al-Istihqaq* is the upliftment of ownership of something due to another ownership that preceded the second one.

• impossibility of having ownership of something or the likelihood or *gharar* (excessive uncertainty). That is, the subject of the contract cannot accept ownership.

• Inability to clear the sale or ignorance or excessive uncertainty.

• Non-authorization of others: It is the sale by an unauthorised person; it is valid but subject to the approval of the rightful owner. If the owner does not authorize it, it is void for both the parties, the seller, and the buyer.

Al-Inah: to sell something at a deferred payment and in turn buy it at a cash payment lower than he sold.

The research reached the following results:

• The sale is a contract that yields the transfer of ownership to the buyer. This is why the jurisprudence established the conditions that actualize this purpose, which facilitates the transfer of the sold item to the buyer without risk or probability, or dispute.

Ownership of the commodity is a condition stipulated by the Maliki School's resources. It is a general guideline with some exceptional cases. It is some offshoots whose effective causes are wisdoms (*hikam)* that are connected with it as already mentioned in the research.

• However, it is confirmed that is a derivable understanding that Imam Malik validates some formats of sales that are devoid of ownership of the sale prior to the conclusion of the contract due to the slimness of uncertainty in them, or the guarantee of the ability to deliver.

• The reasons for preventing the sale of an item before owning it are not due to the lack of ownership itself but due to descriptions of the corpus of the commodity, which is the fear of third party's claim of entitlement, and *bai' al-inah*, the inability to secure the commodity, and the lack of authorization by another party in selling the unauthorized item.

Resolution on The Ruling on Selling a Specific Item That Is Not Owned by The Seller:

The attending scholars agreed that the effective cause of the prohibition of selling what is not owned is *gharar*, and they differed regarding the ruling on selling a specific item that is not owned by the seller. They held two views:

The first view: the sale is not valid because it entails considerable *gharar*, and if it occurs and it is not possible to return the counter-values to their original owners, then the profit shall be given to charity.

The second view: The sale is valid because the *gharar* is slight; it is permissible, especially in bank transactions as disputes are rare in them.

Some of the attendees referred to Imam Mālik's view regarding the inability to return the defective contract sold in a defective condition. It should either be purified by giving alms of what exceeds the going market price, not the profit, or the named price should be ratified and the contract corrected by transferring the liability to the buyer. It is desirable to abstain from taking the profit in consideration of the controversy within the Mālikī School.

The Eighth Topic: Debt Restructuring Via a Transaction

Presenter: Dr. Amjad Rashid

Statement of the problem

The problem of the research is to observe the reasons for the prohibition of debt restructuring in the Maliki school, considering that the Maliki school does not authorize debt restructuring in order to block the means that will lead to the dissolution of debt for another debt that is higher than the previous one, while the rest of the jurists do not authorize it because of the insolvency of the debtor, and therefore the following are considered:

1. Is the effective cause in the Maliki school due to *sadd al-dhariah* (blocking the means) only or do they have other effective causes? Is the Maliki's prevention of debt restructuring on the ground of *haram* or *karahah* (abhorrence)?
2. Have any other schools of Islamic jurisprudence adjudged the effective cause to be considered as means that lead to usury or based on the compulsion to wait for the debtor till his time of solvency?

Research Summary:

The researcher divided the research into two parts. The first part is about formats of debt restructuring and its rules. The researcher concluded that the creditor must postpone the payment deadline for his insolvent debtor and may not claim it until the time of his ease and cannot compound the debt by taking profit from it through the additional amount he wants the debtor to pay over and above the original amount. If he does, then the insolvent has the right to sue him and retrieve the increase. Even on the Shafi'i Madhhab's principles that permit the gift of the debtors" and *bai' al-inah,* which are devoid of pre-condition, it is not permissible to profit from the insolvent, and if the "debt restructuring occurs with him, all the increases generated by the restructuring transaction are to be refunded.

As for the second part of the research, the researcher dealt with the jurisprudential analogues close to the restructuring of debt and dealt with them in two issues namely: "The gift from the debtor or the borrower and the second sale of the transaction" or "borrowing by profit."

The paper concluded with the following results:

1. Debt restructuring through transactions occurs in the following three:
   a. Debtor's buy a commodity from the creditor upon debt maturity or near the maturity with a deferred price higher than the price that constituted the first debt with the objective of the postponement of the settlement of the first debt in consideration of proportion to the increase in the price of the commodity.
   b. The debtor purchases a commodity from the creditor at a deferred price in excess of the current price with the intention of paying off all or part of the first debt from the sale price of the commodity, and this form consists of dissolving a debt for another debt with excess.
   c. The debtor who is in arrears in the payment of his debt purchases a commodity from the creditor at an expedited price in excess of the market price with the intention of compensating the creditor for the period of delay in settlement.
2. If one of the forms of "debt restructuring occurs" without any express term, namely: the purchase by the debtor from the creditor without requiring him to be given the postponement of the first debt, the settlement of the first debt or compensation for late payment, the jurists disagree as to what can be deemed as an express agreement.
3. The closest jurisprudential stance that is analogous to the question of debt restructuring are the "gift from the debtor." The jurists in the " gift from the debtor" followed the same way as they did in the debt restructuring. Consequently, all the jurists forbade it if it was by the

explicit condition, and they differed if it was otherwise as they differed in the debt restructuring.

4. From the Hanafi jurisprudential analogues that are close to the" debt restructuring": formats of *bai' al-muamalat*.
5. The invalidity of the claim to differentiate between the solvent debtor and the insolvent debtor in the ruling of debt restructuring and its effective cause, and that the Maliki School prevent the debt restructuring in order to block the means leading to *riba*, and that the majority only prevents it against the insolvent.
6. The text of Shariah standard on "sale of debt" which consists of the debtor's permission to repay his debt or some of it to the bank through Murabaha of goods, and allows the bank to receive such payments, is a practical authorization of the forbidden form of the debt, which leads to the increased in the debt restructuring with addition to the debt, and runs contrary to the same standard which prevents debt exhibition for another debt with increase.

Resolution on Debt Restructuring Via a Transaction:

The attending scholars unanimously agreed on the prohibition of debt restructuring that would result in an increase in the first debt if that is explicitly stipulated as a condition in the second transaction; for example, if he is required to pay his debt from it, or [the payment of the original debt] is deferred because of it, or there is compensation for the delay in payment.

If this happened without an explicit stipulation, the attendees had three differing views about it:

The first opinion: It is not permissible; it is the view of the *Mālikīs* and some *Ḥanbalīs*, such as Ibn *Taymiyyah* and *Ibn al-Qayyim*, and it is consistent with the principles of some *Ḥanafīs* and some *Shāfiʿīs* who consider a clearly established custom tantamount to an articulated condition.

The second opinion: It is permissible to restructure the debt with a new, voluntary transaction, provided that the contract does not include a condition stating that the debtor is obligated to pay off the previous debt from the money of the current transaction. That is because the *ratio legis* of the prohibition is the obligation to give the insolvent more time to pay; thus, if he desires a new, voluntary transaction, there is no objection to it due to the absence of the *ratio legis*, and this is the view of the majority of scholars.

The third opinion: It is permissible as per the conditions of AAOIFI's Sharīʿah Standard No. (59) on the sale of debt.

Some of the attendees suggested deleting the term (*qalb al-dayn*) "debt restructuring/refinancing" and limiting it to *murābaḥah* sales. Some of the attendees pointed out that it is necessary to look at the conditions accompanying the debt conversion and its impact on the *murābaḥah* sale. It was agreed to discuss it in an independent symposium.

The Ninth Topic: Depositing in Conventional Banks and Spending the Interest in Charity

Paper presenter: Sheikh Dr. Nizam M.S. Yaquby

Summary
How legitimate is it to deposit funds in usurious banks when compelled? Should it be deposited in the current account? What is the ruling on taking and disposing of interest?

Summary of the Research
The research examined the doctrines of scholars about depositing money in usurious banks and how to dispose of their interest. The opinions of a group of scholars who went on to leave bank interest to the banks themselves if these banks paid them to the owners of the money were discussed even if the Muslim had to deposit his money with these banks to save his money or so, in the absence of Islamic banks or their weakness and inadequacy and the lack of spread of their branches. On the other hand, a group of scholars of the time issued a fatwa - in favour of not leaving these interests to those interest-based banks and to be distributed in the areas of righteousness, charity and the interests of Muslims, which is what some collective *Ijtihad*.

Resolution on Depositing in Conventional Banks and Spending the Interest in Charity:

If there are no Islamic banks, or if they exist with poor solvency, then the attending scholars had two differing opinions regarding the ruling on depositing in conventional banks:

The first view: The basic rule is not to deposit with interest in usurious banks, but if the need arises, it is permissible on the condition that the interest be spent on charitable causes. That is in order to prevent the combination of compensation and subject matter, to reduce the evil effect of usury, and to achieve the interests of Muslims.

The second opinion: It is not permissible to deposit with interest bearing banks because it is prohibited usury, and the public interests sought by doing so have no recognition in Sharīʿah law in light of the continuous engagement in usurious operations.

The Tenth Topic: Fiqh Adaptation of The Common Fund Pool

Presenter: Dr. Osaid Muhammad Adeeb Al-Kailani

Statement of the problem:
Clarification reason for guaranteeing the bank what it sells off the debts of the common fund to the holders of the sukuk, and is the common fund of the bank a *Sharikat al-milk* or *sharikat al-aqd*? What is the legal effect of the guarantee?

Summary of the paper:
The research began with the definition of the common fund or general portfolio of the Islamic bank, and the explanation of the relations of the parties to the fund, who are the owners of investment accounts and represent the owners of capital in the *mudharabah* with the bank, partners among themselves, partners with the bank, and the bank is a *mudharib* with them and a partner with them. The researcher established that whether the common fund is *sharikat al-milk* or *sharikat al-aqd* is immaterial in the guaranteeing of the common fund.
The researcher pointed out that the fact that the common fund of the bank is a *sharikat al-milk* or *sharikat al-aqd* contract has no effect on the provision of the bank's guarantee on the debt it sells. However, this research is outside the subject of this guarantee in all its aspects. The researcher

pointed out that in the process of selling cash debts to sukuk holders, the bank sells to them some of these debts from the assets of the common fund, specified in the transactions arising from them, and with the contract of sale, those debts become the property of the sukuk holders. With such a sale, sukuk holders do not become partners in the common fund, nor do they develop a partnership with the bank or any of its parties.

The researcher then touched on the statements of Maliki School and Hanafi in the matter of the sale of debt, and concluded that the permissibility of requiring the guarantee of the bank that the holders of the sukuk meet the debt that it sold to them is worthy of jurisprudential consideration, which is what article 4/7 of Sharia Standard No. 59 adopted.

In conclusion, the researcher posed a number of problems in the form of questions that need to be studied, considered and reflected on, namely:

Is it permissible to stipulate the guarantee of the bank for the debt it sold to the holders of the sukuk from the debts of the common fund to prepare them as a binding promise to buy it from them or to buy what remains of it? Does the guarantee of debt from its seller affect the provision for the sale of sukuk holders to it?

Resolution on Fiqh Adaptation of The Common Fund Pool:

First: The classification of the partnership between the investment account holders and the bank in the common fund pool of the Islamic bank is a [profit-seeking] contractual partnership (*shirkat al-ʿaqd*). It does not become a joint ownership of property (*shirkat al-milk*) by conversion of its assets into debts.

Some of the attendees took the view that they are converted into a joint ownership of property (*shirkat al-milk*), based on what was stated in the Ḥanbalī *Majallah*:

> Jointly owned debt is the debt owed to two or more parties by a third party due to a single cause. A jointly owned debt is a joint ownership of property (*shirkat al-milk*). If, however, there are multiple causes for the entitlement, then it is not jointly owned. If a person dies while a debt is owed to him, his heirs become partners in it in proportion to their inheritance shares as *shirkat al-milk*. The same holds true for a limited contractual partnership (*shirkat al-ʿinān*).

Second: If the bank sells from the assets of the common pool the debts of specific transactions to the *ṣukūk* holders, then it is permissible to stipulate that it guarantee the value of the debts sold. It is a condition that is consistent with the conditions for preventing *gharar* that the Mālikīs stipulated for the permissibility of selling debt. It is not permissible to sell a cash debt for cash; it may be sold for a specific commodity or a usufruct whose source has been specified, as per the conditions stipulated by the Mālikīs.

Third: The stipulated guarantee shall be returned to the common fund pool because the bank is its representative in the sale. It is not permissible for the bank to offer the guarantee independently nor to guarantee more than its share of the debt sold. Some of the attendees held the view that it is permissible on the grounds that dividing the debt makes the bank an extraneous party.

Fourth: If the guarantee is stipulated, it dispenses with the mandate of the bank to collect the secured debt. If the agency existed before the guarantee, the latter invalidates the former due to their incompatibility and the fact that the guarantee is stronger.

The topics that were not discussed were postponed to another seminar