Islamic Finance: Debt versus Equity Financing in the Light of Maqasid al-Shari'ah

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1.0 INTRODUCTION

The Islamic Economic system aims to address the issues of poverty and equality. It is an economic system which advocates for the raising of man in all aspects as well as Economic justice for all. Wealth concentration has been strongly condemned by both the Quran and Sunnah. A community in which there exists a high level of inequality is doomed in the long run, this is clear if we just look into history, were many societies have collapsed and many revolutions have taken place due to the mass gap between the rich and poor. Sadly it seems that man never learns from history. It is reported that the Prophet (saw) said that 'a town in which a man goes to sleep hungry and wakes up hungry, loses the promise of protection from God" (Musnad). Today unfortunately there are many places within the Muslim world in which not just a man, but many men go to sleep hungry and wake up hungry.

Islam is a system for all of mankind and the Prophet (saw) has been sent as mercy not just to Muslims but to the whole of mankind. Yet unfortunately today many of our present practices in Economics have no trace of any mercy only traces of greed. Many people are strongly opposed to PLS Sharing, and are not willing to go into Shirkah or partnership with their fellow men. The feeling of brotherhood seems to have vanished

Having said this there are solutions given in the Islamic economic system. Such tools utilize profit and loss sharing instruments to channel funding to the poor. It was expected by many that such instruments would be implemented due to the advent of Islamic banks. However this has not been the case. The percentage of PLS contracts as compared to Debt based contracts is minimal. Are these debt based contracts a viable alternative with regards to fulfilling the Maqasid Shariah and economic justice or are they just mirror images of conventional debt financing products having negative implications on society? We attempt to answer this question in this particular paper.

This paper is divided into sections. After the introduction, it is followed by problem statement as well as objective of the study. After that, section 4 briefs the research questions for answering the analysis in this paper. Section 5 deals with discussion obtained from literature review which highlights important issues regarding Maqasid Al-Shari'ah in term of justice and equality vis-à-vis the current practice as well as ideal model of Islamic banking and finance. Finally, this paper ends up with conclusion.

2.0 PROBLEM STATEMENT

The central point of discussion throughout this paper is current practice of modern Islamic Banking & Finance which is debt-based financing in light of objective of shari'ah as well as socio-economic justice. Besides, this paper also scrutinizes what is the way forward for Islamic banking and finance has to do with their financing in order to achieve justice and equality enshrined in Maqasid Al-Shari'ah at the end of the day. Whilst some may argue, there is no doubt that Equity Financing is more in line with the Objectives of Shariah as it is just, provides equal opportunities and is more beneficial for society.

3.0 OBJECTIVE OF THE STUDY

To obtain various scholars' point of view pertaining the advantage of equity financing over debt financing in the modern and current application of Islamic Banking & Finance for achieving justice and equality enshrined in the objective of Shari'ah.

4.0 RESEARCH QUESTIONS

4.1 What is definition of Maqasid Al-Shari'ah?
4.2 What is the importance of justice and equality in Maqasid A-Shari'ah?
4.3 What is the current modern practice of Islamic Banking and Finance?
4.4 What are the socio-economic implications of that current practice towards justice and equality?
4.5 What is the ideal Islamic banking and finance from Maqasid Al-Sahri'ah perspectives?

4.6 What are the misgivings on profit-loss sharing mechanism to be put forward in Islamic banking and finance?

5.0 LITERATURE REVIEW & DISCUSSION

5.1 Definition of Maqasid Al-shariah

The prime objectives of Maqasid al-shariah is centralized on the objective of accomplishing the development of both the spiritual and socio-economical well-being of Muslims. As Kamali (2007) explains that the purpose of the Shariah is to benefit and protect mankind as in the Quran Allah tells us that he has not sent the Prophet (saw) except to be "a mercy to the worlds" (al anbiyah,;21:107).

The author further goes on to explain that Adl or Justice is another very important principle and objective of the Shariah and its purpose is to create and maintain equilibrium within a society.
The author defines Al-Ghazali's classification of the Maqasid as being ranked into three; Daruriyyah (essential), Hajjah (complementary) and the Tahsiniyyah(desirable). The Darurriyah are divided into 5 which are Life, Intellect, Faith, Lineage and property. Destruction of these items leads to chaos within a society. The Hajjah seek to protect and promote the first category, with the Hajjat difficulty and hardship tends to be removed i.e concessions in Shariah such as the shortening of prayer for a traveler. The Tahsiniyyah are refinements in society e.g the encouragement for the wearing of perfume to the Friday prayer or voluntary sadaqah. The Shariah also encourages good conduct in mans behaviour i.e ihsan, gentleness and pleasant speech.

Zanki (2008) discusses the definition of Maqasid from other Scholars perspectives. He explains how Fakhruddin al Razi believed that first Maqasid elements should be produced, and then elevated before eventually being preserved. Other scholars added other objectives to the 5 elaborated by Shatibi and Ghazali, such that also Mans dignity should also be protected, as in the Shariah slanderous accusation was also punishable.

Shatibi discusses the identification of Maqasid and how to provide proof that it is actually an objective. He split this into two categories which were subjective ways and methodological ways. He was in favor of reasoning to determine the objectives of the Shariah.
Kamali is of the view that the used of the Maqasid is essential in today's modern context as it is free form juritic problems found in other tools of Usul fiqh such as Ijma. Hence he feels that Maqasid is free from these difficulties and thus are viable options for the development of many issues currently facing the Ummah.

Furthermore, as quoted by Shidiqi (2004), according to Al-Fasi (1963), "The goal of shari'ah is the good (maslahah) of human being as vicegerent in the society he lives in, accountable to Allah who made him in charge for establishing justice and fairness, ensuring intellectual and social wellbeing and psychological contentment for every member of the ummah."

While according to Ibn 'Aashur (1879-1893), "objective of shari'ah is meant for maintaining order in the world and preserving its goodness by ensuring the goodness of those who are ruling over in which it indicates reforming (islah) in this world and eradicating corruption (fasad) from it."

5.2 Importance of Equality and Justice

Establishment of justice is one of the three pillars of objective of shari'ah. Justice is important for achieving sustainable economic development because everyone has the same opportunities to contribute the capital for achieving desired outcome. Justice must be carried out with equality for giving out the same opportunities to everyone. Equality is such a check mechanism in order to ensure everyone gets what they deserve as well as avoiding bias and discrimination in term of race, color, age, sex, nationality.

As being pointed out by Chapra (2008), Justice and human brotherhood which encompass equal treatment among individuals are the perquisite of spiritual needs fulfillment. We as a human, besides the fulfillment of material needs pursued by our effort, we also need spiritual fulfillment for having peace and comfort state of mind. This spiritual fulfillment cannot be attained by material means rather by immaterial means that cannot be valued by materials. The immaterial means can be pursued by fulfilling our obligation as khilafah as well as having equal treatment among individuals. The fulfillment of justice can bring social and moral uplift in the society in which there is no crime, life security, honors that could bring peace in the society.

In light of Shari'ah perspective, Shari'ah advocates equality for all. In the eyes of Allah a rich man and poor man are equal and the only thing that distinguishes them is taqwa or piety. However with debt based financing there is no equality in opportunity so thus there is a separation between the poor and rich. The poor have no access to the funds generally whereas the rich can borrow as much as they like. This goes against the objectives of the Shariah. In contrast to this equity gives equal financing opportunities to all whether rich or poor. The investor will be more concerned with the expected profitability of the project rather than collateral available as is the case with debt financing. These philosophical frameworks of justice are an important yardstick to measure the development of modern practice of Islamic Banking and Finance today.

5.3 Current Practice of modern Islamic banking and finance

Evidence on current practice by Islamic banks worldwide suggests that the majorities of financing operations are not based on equity but rather takes the form of debt-like instruments (Aggarwal and Yousef 2000; Wajdi and Irwani 2006; Mehmet 2007). This is because according to Mehmet (2007), Islamic banks and financial institutions have opted for profitable Islamic financing such as murabahah instead of musharakah (musharakah is equity-finance oriented and murabahah is debt-financing). This phenomenon is described by Farooq (2006) as *murabaha* syndrome since the Islamic Banking and Financial Institutions overly use debt-based financing as their products.

This is proven when Mehmet (2007) quoting Hasan's recent data while studying the Malaysian case as stated:

> The percentage share of musharakah declined from 1.4% in 2000 to 0.5% in 2003. Evidently, it seems that the major modes of Islamic financing are in the form of bay bi thaman al-ajil and ijarah thumma al-bay with 47.4% and 27.9% respectively in 2003 (p.5).

As we can see from that evidence, the products offered by Islamic banks are not promoting justice or in other words it is not yet fulfilling the objective of shari'ah. Islamic banks just focus on the form rather than substance itself as an attempt to meet shari'ah compliant. However, the attempt itself or approach used by Islamic banks as being argued by Syed Ali and Ahmad (2007), Rahman (2007) is not shari'ah compliant because the approach used by Islamic banks just a disguise of the attempts used by conventional banks since a long time ago. It means that Islamic banks are still using debt-based financing contract when they give out the financing facilities to the customers. As a result, it does not fulfill justice and criteria in the contract as reflected in mudharabah contract.

Because of that, the poor have not really benefited as well as such a killing and discrimination for those in direly needs financing from the presence of Islamic banks as the implementation of PLS contracts such as Mudharabah and Musharakah implementation is very limited. Rahman (2007) also explains that the Prophet saw was once a poor trader and eventually became successful due to PLS contracts he conducted with his wife khadijah. It is in line with Rosly (2005) that banks give out the financing to the customers based on 5C's criteria which are credibility, character, capital, collateral, and capacity. Based on this fact, there is clearly no justice and equality inherited in the financing contract which causes income gap between for those who have access in financing and for those who are being barred for doing financing.

In addition, the current practice of collateral in the prevalent banking system favor net worthy corporate clients and businesses based on strict evaluation/due diligence for doing financing. However, the profit-loss sharing mechanism desired in the Islamic banks promotes Small and Medium Enterprises (SME) as well as micro financing with a viable business (Wajdi & Abozaid, 2008), Rahman (2007). Therefore, equity based financing is more desired as compared to debt-based financing and also necessities of Islamic banks helping the poor people should be the main focus since 291 million or 24% of the total OIC-LDCs population suffers from human poverty (SESRTCIC, p.41).

5.4 The Implication of Debt Financing on Socio Economic Justice

The focal objectives of Islamic financial industry are geared to ensure resource allocation optimality and efficiency via extinction of debt based financing. One of the greatest conundrums or trickery that has adulterated the embodiment of conventional financial industry is “riba” or interest. This has placated the norms of exploitations, injustice and speculation as the central norm of the operations of the conventional financial industry which has huge socio-economic justice implications in society. Therefore, the implication of riba/debt based financing can be sought from micro as well as macro perspective.

From the micro perspective, we can see that in many instances debt based financing is unjust especially to the poor. According to Soumik Majumdar (2008), under the present banking scenario in order for the transaction to occur there needs to be trust between the borrower and lender which is mostly dependant on the availability of collateral, something which the poor don’t have! Therefore the poor cannot borrow. This lack of access to funds sometimes leads the poor to borrow from unscrupulous lenders. This can be seen in Malaysia i.e. Ah Longs. This is not just or fair as these people take advantage of the poor and charge them exorbitant rates of interest, this goes against many Islamic principles especially as Islam condemns exploitation.

This is the same reason why Muhammad Yunus opened the Grameen Bank in Bangladesh, as poor had no access to financing due to their lack of collateral. In other words the poor were Unbankable (Yunus, 2007). This is blatantly unjust as in Islam everyone should have equal opportunities no matter their background.

The famous Muslim scholar Nizam Al Mulk was of the opinion that for society to be stable it is a requirement that even the poor have access to the same economic opportunities. This is not the case with debt based financing as the majority of the time the poor have no access to this type of financing due to the absence of collateral hence the injustice occurs. The Maqasid Shariah aims to protect life, every year millions of poor people die due to the limited opportunities presented to them to climb out of poverty.

As we saw from our definition of Maqasid some scholars have included in their definition that mans dignity should be protected. Hence we can see that mans dignity depends on his ability to survive and his ability to put bread on the table for his family. In order for man to achieve this dignity especially the poor, it is essential that they have access to financing on a fair basis so that they have the opportunity to attain dignity in the society by becoming successful entrepreneurs. If they are given this opportunity they will not have to rely on Handouts and charity and thus this is better for the society at all levels. There is a famous Chinese proverb in which it is stated "give a man a fish you will feed him for a day, teach a man how to fish and you will feed him for a lifetime' we can relate this to our present scenario, if we give a poor man financing on Mudharabah or Musharakah he becomes independent rather than depending on charity.

As Muslims we have to critically analyze the effects of an action before undertaking it. One may ask what is the actual affect of debt financing on society and is it in conflict with the basic principles of the Maqasid. According to Nazrol Kamil (2005) debt has many negative implications on our society and therefore should not be encouraged. If we look at the Maqasid we see that one of the main aims is protection of the family unit and societal well being. With debt financing man is encouraged to live beyond his means (credit cards) and thus this has detrimental effects on the society. A man is forced to work extra in order to pay of his debts and thus has no time for his family. Clearly this is against the objectives of the Shariah. In contrast to this when Equity is used as the basis of financing this does not happen as both partners are made to look out for one another and thus not one individual will bear the responsibility.

Another effect on the society is that due to lack of access of funds sometimes the poor can stay poor while the rich become a lot richer. This can lead to the breeding of hatred and enmity in a society. When the inequality worsens there can be loss of life and destruction of property such as the race riots in Malaysia (1969). This goes against the Maqasid of Shariah, as the protection of property and life are some of the core principles of the Shariah.

Regarding the macro perspective, it can be seen from the impact to the overall performance of economy, as being pointed out by Shidiqi (2006) that debt-based financing under conventional system is really terrible since it would prompt speculation which would leads into the instability to the overall economy. Instability itself harms to the real sector in the economy such as unemployment, poverty, inflation although there is no contribution from financial sector into real sector at the first phase. It is interesting to note that under conventional system there is separation between real sector and financial sector in the economy in which the debt-based financing is merely backed by financial asset and the flow of money just runs within the financial sector. But tragically, adverse effects of financial sector are felt by real sector in the economy. Actually, it can be referred to the current financial crisis in which just because of the greediness as well as misconduct of Wall Street peoples, all peoples in the U.S economy are affected badly such as high unemployment, housing foreclosure, etc. Thus, it is clearly injustice for those peoples who do not have access of financing in the financial sector feel the bad impact from the peoples who have access of financing in the financial sector.

However, under the Islamic financial system desired by Islamic economists and shari'ah scholars, through the equity financing or profit-loss sharing agreement, there will be clearly no distinction at all between the financial sector and real sector in the economy since whatever the financial sector does will contribute to real sector since the equity financing is backed by real assets rather than financial asset prevalence in the financial sector. Due to that reason, it will stimulate the employment in the economy which would lead to eradication poverty as well as hinder speculation in the economy which is bad evil in the conventional system. Hence, the Islamic financial system which is based equity financing promotes the expansion of the economy and also stability in the economy. Besides, it creates socio-economic justice among the peoples in the economy which meets Maqasid of Shari'ah requirements.

5.5 Ideal Islamic Banking & Finance from Maqasid Shariah Perspective

Based on the aforementioned facts regarding the bad evil in debt-based financing, it is important for Islamic Banking and Finance hold on Maqasid Al-Shari'ah as Siddiqi (2004) and Mehmet (2007) point out that the Islamic finance should take into consideration the systemic and dynamic understanding of "Maqasid Al-Shari'ah" (objective of the Shari'ah). Furthermore, they emphasized that the understanding of "maqasid al-Shari'ah" not only covers on individual oriented objectives but also include broader measures ensuring welfare in order to achieve justice and equity. Thus objective of Islam as a whole and "Maqasid al-Shari'ah" (objective of the

Shari'ah) should be differentiated clearly because objective of Islam involves aspects of personality and society that the latter does not cover (Mehmet, 2007 p.9).

Shidiqi (2004) and Mehmet (2007) share the same views that banks should play its role by serving social objective, not only an individual objective. The noble vision to promote social-welfare of the society is in need to develop a welfare economics oriented paradigm, and he also believes that the social justice and ethical norms can be exercised. Despite that fact, Wajdi and Irwani (2006) also think that Islamic banks are equally expected to play a leading role in promoting social-welfare. Their opinion are supported by the majority of the Muslim economists who posit that Islamic banking is much more than offering Shari`ah compliant products. It is a system which aims at making a positive contribution to the fulfillment of the socio-economic objectives of the community at large Wajdi and Irwani (2006). Besides, Mehmet (2007) stress the importance of Islamic economics aims in creating homoislamicus individuals since it is also the aims of Islam. By introducing new paradigm and changing the behavioral norms of individuals, this could avoid the individuals from becoming homoeconomicus

Even non-Muslim scholars such as Rodney Wilson (2005) are proponents of equity financing;

> Equity financing can be conducted in a very moral manner and the principles of risk sharing and co-operation through participation is certainly preferable to the conflict of interest which often exists between borrower and lender in a debt financing situation (p. 75-79).

Rodney Wilson further goes on to state that;

> The limitations of debt finance are increasingly evident at both the micro and macro level, especially given the growth of bad debt as far as business is concerned, and the problem of national indebtedness involving many Third World countries. Borrowing has its uses of course, but inevitably leads to problems if it is used as a means of financing risky ventures or projects which are of a long term nature. In contrast, equity finance means that it is the provider of capital who takes on the risk. The fact that there is flexibility in the pay-off, which is related to

> the project being backed, actually serves to reduce risk and enhance the likelihood of successful outcomes (p. 75-79)

In order to achieve the social welfare of society or economic welfare paradigm propagated by those Muslim scholars even the non Muslim scholar, the equity financing is the way forward for achieving that stage of paradigm as enshrined in Maqasid Al-Shari'ah. Due to that reason, equity financing is such a dream of shari'ah advisors as well as academicians that has to be achieved in the Islamic Banking and Finance because equity financing encompass on profit-loss sharing basis based on the contribution of capital in the project or investment. Besides, equity financing is also not camouflage of debt-based financing contract prevalent in the conventional banking. Thus, at the end of the day equity financing can achieve the objective of shari'ah which is fulfillment of justice in the society.

Equity financing fulfills the essence of shari'ah requirement in Islamic Banking and Finance as it fulfills the counter value (iwadh') as Saiful Azhar Rosly (2005) and Monzer Kahf (2006) encompass that for a contract to be valid there should be Iwadh or counter value present. Three elements of iwadh that should exist are risk (ghorm), work and effort (ikhtiar) and liability (Daman). One may ask that in debt financing are these elements present? With the majority of debt financing contracts one or more of these elements of Iwadh are missing. If this is the case and in reality for a particular contract (debt) there is no risk, effort and liability then no way by any stretch of the imagination could such a contract be considered to contain any element of justice. In contrast to this however equity financing such as Musharakah and Mudharabah contain these elements of risk, effort and liability hence surely it is clear for all to see that these equity financing contracts are more just and hence more in line with the Maqasid or objectives of Shariah.

Profit loss sharing is more favorable from shari'ah perspective as being argued by Dar and Presley (2004), in Islam it is considered unjust when debt based financing the fee is guaranteed. It is fairer for both creditor and debtor that they each have a share of profits or losses; a profit share, for example, may exceed the market rate of interest and be more in keeping with the input of the creditor. Therefore profit shares not only serve the debtor more fairly but also the creditor.

This point of view is strengthened by Zamir Iqbal (1997) who states that, “Social justice demands that borrowers and lenders share rewards as well as losses in an equitable fashion”. Hence we see that even to the investor equity is more in line with justice! Usmani (2005) holds the same view with them when he states that; “if the debtor suffers a loss it is unjust on the part of the creditor to claim a fixed rate of return, and if the debtor earns a very high rate of profit, it is injustice to the creditor to give him only a small proportion of the profit.” From this we can tell that Equity based financing is more just as both the borrower and lender share both profits and losses as compared to the case of debt financing where one party is made to take all the risk.

Monzher Kahf (2006) states that in a case debt-based financing, “preventing finance that is provided solely on the credit worthiness of the user of funds regardless of the purpose of their use creates a better social justice environment than personal financing.” Because of that Pramanik (2003) argues for the PLS model when he states that; “the PLS system helps in fostering co-operation, fellow-feeling, unity friendship, interdependence and above all universal brotherhood by involving everyone in both production and investment’. So we see that in order for brotherhood and societal well being to be established in an economy we need equity not debt.

One of the examples of equity financing application is Musharakah in which a partnership contract which is much more compliant with the greater Maqasid Shariah. According to Dzuljastri and Meera (2005) equity contracts such as Musharakah Mutanaqisah are more beneficial then debt based contracts such as BBA. This is because it does not burden low income people like BBA does and also promotes the welfare of the people. They further go on to say that Musharakah contracts can make the economy more stable due to the fact they promote partnership rather than debt which is beneficial for society. It is in line with Taqi Usmani (2005) that Musharakah is fairer as; “the financier in a Musharakah contract can suffer loss”.

Given the emphasis on equity rather than debt, Akacem and Gilliam (2002) quoting Iqbal and Mirakhor when they argued that an interest-free banking (IFB) model would lead to:

> More varied and numerous investment projects for which financing is sought; more cautious, selective and perhaps more efficient project selection by the suppliers of funds; and greater involvement

> of the public in investment and entrepreneurial activities, particularly as private equity markets develop, than in the traditional fixed interest-based system (p.126).

Islam very much encourage profit that come from trade and productive investment, while fixed predetermined payment is prohibited since it is not a function of the profits and losses incurred in a venture (Akacem and Gilliam 2002). This is among the reason why many scholars hold the views that unless Islamic banking institutions resolve to PLS financing instruments, the socio-economic justice as envisioned by the Islamic banking system would never happen. Therefore, an ideal Islamic banking model is reflected through its balance sheet structure that is dominated by profit and loss sharing (PLS) on both assets and liabilities sides. That is why most of the Islamic economics writers believe that PLS is the only principle representing a true spirit of Islamic banking system which departs significantly from the interest-based system Wajdi and Irwani (2006).

The equity based system which is an ideal model to be implemented in Islamic Banking and Finance helps to create more value added in the economy and indeed contribute to economic growth. Therefore, since equity and profit sharing financing is considered to be superior compared to debt-like financial instruments in Islamic economics, the evidence of current practice indicates that the Islamic banks have deviated from the aspiration stand of Islamic economics (Mehmet 2007).

Thus we see that there are many reasons why Equity financing is more in line with the objectives of the Shariah, justice and equality. If we look at the broader economic benefits we will see that the only way that global poverty can be solved is through the implementation of PLS sharing equity contracts. The debt based system has been tried and has dismally failed. One only has to read the paper to see that we are currently experiencing a global financial crisis that has affected many people and one of the main causes was debt based financing. Nevertheless, sadly the internalization of shari'ah requirement in the current practice of Islamic Banking and Finance development is not yet fully adopted. If shari'ah requirement is fully internalized by Islamic banks to promote objective of shari'ah, Islamic banks can be the pioneer of establishment of socio-economic justice in the society (Abozaid, 2008).

5.6 Misgiving on profit and loss sharing (PLS)

The most common arguments against theoretical and empirical issues regarding profit and loss sharing (PLS) are discussed by Iqbal and Molyneux (2006) when some economists such as Stiglist and Weiss (1981) held perception that sharing arrangement such as profit and loss sharing are less efficient. A system that emphasis on partnership becomes an equity-based system with no debt and when the depositors become shareholders is deemed to be risky. Among the arguments that being highlighted are such as problem of asymmetric information and the cost involved in reducing it, the problems of moral hazard, adverse selection problem, the agency costs and the need for monitoring the counterparties' behavior. Some of the Islamic banks have these kinds of perceptions towards the sharing arrangement such as profit and loss sharing may argue that agency problem could not be avoided under the behavioral assumption of self interest. This is because the agent may not spent their best effort since they are not using their own money but others, therefore it is very risky.

However, whilst this position has it supporters, their arguments are untenable because in examining the argument that PLS financing is too risky for banks to adopt, Iqbal and Molyneux (2006) found two fallacies in this line of arguments. First, the variability in the rate of return is not the only risk involved in financial contracts. Second, the so called 'fixed return' contracts, like interest based contracts may not in fact yield a fixed return.

Besides, many writers such as Siddiqi, Obaidullah, Chapra, Khan, Ahmed, Dar and Presley come to agreement that Islamic banks exposed to greater risks if the variation of the rate of ultimate return to the banks of their investments is greater and resulted from large scale resorting to PLS instruments could pose much more serious risk and hazards (Asyraf and Nurdianawati, 2006). However, Akacem and Gilliam (2002) and Mehmet (2007) thinks that profit sharing concept may approach to market solution because it requires direct involvement of civil society, managerial skills and expertise in overseeing different investment projects from the banks. The banks need to have a correct perception in considering the superiority of equity financing compared to debt-like instrument. Therefore, they concluded that the argument that PLS contracts are too risky for Islamic banks to adopt is not convincing. Thus they think further research and discussion is needed in order to provide continued support to the practice of PLS.

6.0 CONCLUSION

As we know Islamic banking is an investment and financing system which expands globally. The Islamic banks have only been established for some 30 years but the banking system is based on long-going traditions within Islamic finance. The system is founded on ethical values and emphasizes the well-being of society as a whole.

A bank that uses its functions and operating modes based on Shari'ah principle is obviously difference than manmade principles. Islamic banks are meant to become finance institutions to help Muslims avoiding riba and other prohibited elements present in commercial and banking transactions. All other Islamic banks, the Islamic Development Bank (IDB) and also the General Secretariat for the Organization of Islamic Conference (OIC) has accepted the definition of Islamic banking as a financial institution whose statutes, rules and procedures expressly state its commitment to the principles of Islamic Shari'ah and forbids of the receipt and payment of interest on any of its transaction.

However, its main purpose may not merely focus to what stated above. As what stated in his famous book *Al-Fiqh Al-Islami wa-Adillatuh*, Wahbah Al-Zuhayli believes that Islamic banks must be sensitive to the needs of the society since its primary goal is not profit making but rather to endorse social goals of socio-economic development and alleviate poverty. This could be achieved if Islamic banking able to handle macroeconomic shocks by reliance on equity rather than debt.

Having said that, this paper has deliberated on the challenges encountered by Islamic banking and finance in meeting justice and equality outlined in objective of shari'ah. These challenges emerge from the current practice of Islamic banking and finance flooded by debt based financing contract in the name of "efficiency" without acknowledging the shari'ah requirement in the contracts. This deviation of shari'ah requirements has tremendous impact to the individuals in the society which leads into deterioration of performance overall economy in which it is clearly against the spirit of Islam, particularly objective of shari'ah. Therefore, for realization of justice and equality for meeting Maqasid Al-Shari'ah can be achieved by shari'ah compliant products which emphasize on equity financing.

After a deep deliberation on foregoing arguments, in order for there to be justice and equality in our economic endeavors it is essential that the poor are given access to funds based on equity, if this is done then it will develop a society and economy of stability, one in which the Maqasid Shariah can be realized in its fullest sense. A society in which there exist gross inequalities can never be stable. This can be seen in many countries of the world today in which due to there being a lack of justice and equality in financing, there has been erosion of Maqasid. Loss of life is a daily occurrence as people struggle to survive and some resort to violence in order to meet there daily expenses. In other parts of the world property is destroyed as people riot due to their dismal state and this is the complete opposite of what the Maqasid adovocates. Hence in order for Maqasid to be achieved it is essential that equity contracts are introduced.

In order for Islamic banking to establish itself as being an effective alternative it is vital that there is actually a difference in substance not only in form as currently witnessed. Many Muslims are reluctant to put their faith in Islamic banking as they see that it is very similar to conventional banking, and only boasts of a difference in form not in substance. In order for Muslims to wholly embrace Islamic finance it is very important that the substance of the contracts change and we begin to use our own unique equity contracts such as Mudharabah and Musharakah.

Actually, now is the right time for Islamic Banking and Finance having a paradigm shift in the way we view financing and we should all urge for the stronger implementation of equity PLS sharing contracts to be implemented on a mass scale. This clearly will benefit poor peoples particularly farmers will have access to funds hence our productivity and output will increase, our problems of poverty can be eliminated, and society will become more stable these are just some of the benefits that the global economy can experience if there is a full implementation of Equity financing.

As part of that, the arena of micro-financing has emerged as a new alternative for Islamic financial institutions to exploit in order to expand the horizons of their operations. This mode of financing is projected to be to have the capacity to compliment the socio-economic developmental objectives of Shariah since it targets potential entrepreneurs who are relatively economically or financial deprived and handicapped. This mode of financing seeks to induce commercial innovation, entrepreneurship and risk sharing among aspiring entrepreneurs that are not endowed with the financial resources to realize their commercial potentials. Importantly, this mode of financing would immune scale entrepreneur from the exploitation of conventional financial institutions. In the same vein, it would also encourage the channeling of funds to entrepreneurs who otherwise would face upheaval task in their quest to access funds to realize their commercial or entrepreneurial aspirations.

In a nutshell, for resolving the current financial debacle faced by many countries surfaces as a result of reckless risk taking and lack of financial discipline that the whole spectrum of shariah frown upon, the Islamic banks have to be far away from debt based financing because it is such a tool that lead economy into deep crisis. Thus with the proliferation of Islamic financial instruments done by Islamic banks, the objectives of shariah would be universally realized. Thus the central objective of asset based as professed by Islamic financial industry is geared to eradicate "riba" or interest and established the norms of socio-economic justice and equality that conventional financial industry is greatly lacking. At the end of the day, if Islamic banking and finance put serious effort to counter what conventional financial industry is greatly lacking, we believe that Islamic banking and finance can be institutions epitomizing the objective of shari'ah in the whole economy.

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