

The Innovations of Hibahasan Instrument of Islamic Finance and Islamic Estate Management in Malaysia

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Abstract

The application of hibah as an instrument in estate management is gaining popularity among the Muslim community in Malaysia. “Hibah is a unilateral contract” that elevate welfare and charity. The Islamic financial institutions in Malaysia, including Islamic banks as well as Islamic wealth institutions apply varieties of hibah instruments in the products accessible by them. Hibah is a cooperating shariah contract in the Malaysia’s Islamic banking and financial framework. The aim is to incentivize clients for storing their cash into the institution as well as remunerate for clients to pay their financing by agreeing planned. The use of hibah is based on the stated fundamentals and objectives of the “Shariah Advisory Council (SAC) of Bank Negara Malaysia”. Nowadays, hibah instrument has been applied in various forms using Islamic financial institutions especially in Malaysia. This article discusses and analyzes in general the application of contemporary forms of hibah such as Trust Hibah (Hibah Amanah), Conditional Hibah (Hibah Mu'allaqah), Hibah with discussion (Hibah Bi al-Thawab), hibah in saving account (Wadiah) and rental (al-Ijarah) accounts and hibah in Takaful benefit.

Keywords

Innovations, Hibah, Islamic Banking and Finance, Islamic Estate Management.

Introduction

Wealth is one aspect of Allah's sustenance for all mankind. Islam allows people to create wealth so far as it is compliant with Shariah, not from a questionable source and follows the traditional halal requirements. Acquiring Islam must be in completely fair way, must

be overseen in a profoundly capable way to advantage all and must not divert Muslims in any manner from their faith confidence in Allah S.W.T. Therefore, all muslims is considered as a “trustee” and is accountable on wealth formation, wealth growth and wealth distribution. At the same time, the money gained must always be spent in the best, as Allah S.W.T has specified in “Surah Al-Baqarah, verse 261 and 274 which mean”:
“*The parable of those who spend their substance in the way of Allah is that of a grain of corn: it growth seven ears, and each ear Hath a hundred grains. Allah giveth manifold increase to whom He please: And Allah care for all and He knows all things. (2:261)*”
“*Those who (in charity) spend of their goods by night and by day, in secret and in public, have their reward with their Lord: on them shall be no fear, nor shall they grieve. (2:274)*”.

Basically, there are four instruments in wealth planning in Islam; namely *faraid*, *wasiyyah*, *hibah* and *waqf* (Azman, 2013). *Faraid* known as Islamic inheritance dissemination strategy to legitimate beneficiaries following the end of a Muslim related on Islamic law (Ab Aziz & Nordin, 2015). It plays a very important role in wealth planning in Islam. It is important, which “Prophet S.A.W” exhorted us not only to learn but also to teach the knowledge of *faraid* to others. He furthered declared that the knowledge of *faraid* to be half of knowledge and the first knowledge to be uplifted. Related to this, Prophet S.A.W said in a hadith (Al-Hakim, 1998) which means: “*Learn the Qur’an and teach it to the people, acquire the knowledge of faraid (laws of estate distribution) and teach it to the people, for I am a person who has to depart this world and the knowledge will be taken away and turmoil will appear to such an extent that two people will not agree in regard to a case of estate distribution and find none who would decide between them*”.

The second instrument of Islamic wealth planning is *wasiyyah* or testamentary disposition. A *wasiyyah* or will means an *iqrar* individual’s favor of or benefiting from his property during his lifetime For charitable activities or for some other cause that is morally acceptable under Islamic law after his death (Muslim Wills (Selangor) Enactment 1999, s. 2(1)). *Waqf*, another instrument of Islamic wealth planning implies charities that have persistent and consistent, so that people will profit from them for decades. This mean that *waqf* property is kept intact and only the residual income that is derived from it is used for the specific purpose (Azman, 2013).

Another instrument is *hibah*, which considered like one of those dominant instruments in the management of Islamic estate. This is a method of conferring a property to another contingent and effective immediately in the life of the donor (*al-wahib*). The use of *hibah*

in the management of estate is gaining popularity among the Muslim community in Malaysia because of its unique characteristics such as it ensures that the specific beneficiaries will be the recipient of the hibah, the assets are also certain and determined and it does not fall under faraid distribution (Amir, 2014). Hibah is a one-party (unilateral) and charity (*tabarruat*) contract. Islamic banking institutions typically follow the principle of hibah in the Islamic financial system, in order to honour *wadi`ah* and *qard* depositors. There is also a practice of granting a hibah to a client in certain cases such as a hibah to a customer making a payment on a regular basis. Takaful companies also practise the giving of hibah benefits to their clients. This paper focuses the discussion of hibah from the overview of fiqh and its application in several Islamic banking and finance institutions as well as an Islamic estate management product in Malaysia.

The Concepts of Hibah

The Hibah contract is among the under the classification of *tabarru`at* (charity) other than *waṣiyyah*, *waqf*, *ariyah* and *qard*. *Tabarru`at* means a contract that amplifies property or its profit to others, promptly or in the coming years, without appealing to a stipend and also with the intent of performing a devoted act. In other word *tabarru`at* are the acts of piety and charity (Al-Mausu`ah Al-Fiqhiyyah, 1988). The spirit in *tabarru`at* is to spread the wealth & support someone out of passion and not of individual benefit.

Literally, hibah is an Arabic term which comes from the root word "*wahaba*" means expressing a benefit to others without any expected possibility of return (IbnManzur, 2003, Al-Qunawi, 2004).

Technologically characterize hibah as a "voluntary agreement which outcomes in an unpaid change of ownership among living persons" define the jurists of the Shafi'i and the Hanafi jurists. The Hanbali jurists have a more precise description that is hibah could be a contract started with a qualified party to exchange possession and transferred properties without remuneration. The properties may be specified or unspecified, the offered can be formed as gifts conventionally, and the wording of the contract must indicate whether it is a blessed gift or shifting, etc (Al-Zuhaily, 2007). Such concepts are based on people as benefactors. It was the hone in the early days, but it also played a critical role in the current hone rather than individuals, organizations and institutions. (*al-wahib*).

The word hibah can be viewed from two viewpoints as per the jurists of "Shafi'I school" of thought. From a general viewpoint, hibah is a gift that includes rewards (giving aim to glorify someone), alms (giving in expectation of the reward of Allah) and *ibra'* (relief of

the creditor's debts). The second part refers to a specific one which knows the giving of one possession to another without repayment and subject to certain rules and regulations (Al-Nawawi, 1985; Al-Qalyubiwa'Umayrah, n.d.). In more detail, hibah known as an act of person who gives away property to another entity or another without intentional return (*iwadh*) amid lifetime, not anticipating reward in the hereafter or seeking people's magnificence by using the terms of *ijab* and *qabul*. The gift during lifetime by the donor (*al-wahib*) may also include other forms gifts such as *hadiyyah* and *sadaqah* (al-Nawawi, 1985).

Some scholars differentiate the terms *hibah*, *hadiyyah* and *sadaqah*. Hibah is to willingly give without a slight expectation to receive anything in return; *hadiyyah* is a gift to another person for a particular reason or commemoration courtesy or honour, while *sadaqah* is a type of gift that is given for the sake of "Allah S.W.T" or what were given with desire of obtaining recompense from "Allah S.W.T" (Amir, 2014). In short, based on the above definitions, we can conclude that hibah should have the following characteristics:

- i. A deal to transfer land ownership to another.
- ii. The hibah asset is a real property (*ain mal*) not a debt or benefit.
- iii. It is made without any recourse or consideration (*iwadh*)
- iv. It is effective during the life of the donor (*al-wahib*).
- v. It is by own deed and voluntary (without coercion by anyone)
- vi. It is not intended to earn any reward or honoring certain people.

Shari'ah promotes the art of hibah among Muslims. The principle of awarding a hibah in all its ways including gifts & *sadaqah* is recommended based on the arguments of the Quran, sunnah and ijmak (al-Zuhaily, 1989). Verses of the Al-Quran, which showed of hibah "Allah s.w.t." has mentioned:

"But if they give up willingly to you anything of it, then take it in satisfaction and ease."
"(Surah An-Nisa: verse 4)"

The above verse argues that the gift a wife makes from her dowry to her husband is permissible and it is considered by the majority fuqaha as a hibah (al-Qurtubi, 2002). The Prophet S.A.W encouraged people to mutually exchange gifts among one another. He said in a hadis:

"Mutually exchange gifts, you will love one another"(al-Bukhari, 1987,4/174)

The above hadith clearly shows the encouragement of the “Prophet S.A.W” that the exchange of gifts with each other can strengthen their fellowship and friendship. This encouragement clearly indicates the permissibility of making hibah. According to Ibn Rusyd (1988), the encouragement to make hibah has also been acknowledged byijmak as it falls into the category of charity.

The Practice of Hibah among Early Muslim Community in Malaysia

The concept of hibah as it is known and practiced today is already well known among the Muslim community in Malaysia in the past. The practice of distributing property and estate especially to the family members and relatives has long existed despite not being as systematic in practice as today. Malay community in the past practised hibah in the form of helping their children to begin a married life. In this case, the parents or mother will help to provide their children’s wedding needs such as dowry, wedding ceremony as well as lands and houses. The hibah (gifts and help by parents) was seen as an effort by the parents to ensure the stability of the new couple's life after living apart from them (David J. Banks, 1976).

The custom (*urf*) of giving gifts to the brides hosted a ceremony to celebrate the birth of a new member in the family and also in circumcision ceremony was the custom prevailing among the early Malay Muslim community in our country. The term used by muslim scholars to describe such a gift is *al-nuquth*. It is a gift to a bride and groom or any gift in conjunction with certain events namely moving to a new house with intention of receiving a reward from the recipient. The custom of *al-nuquth* is associated with the gift given in conjunction with the wedding ceremony which obliged the recipient to repay the gift (Al-Kasani, 2003). The gifts at the circumcision ceremony were also a custom passed down through generations among Muslim community in Malaysia and even among the Arabs. The practice of donating money or gifts of food ingredients such as oil, sugar, rice, etc among the locals has become customary habits and practices in the community for a long time (Mohd Rofaizal et.al, 2017).

The discussion above indicates that hibah (gift) is a practice that has long been practiced and has become an important estate planning mechanism among the Muslim community in Malaysia. However, recent developments show that the principles of hibah today is not merely seen in terms of 'giving' in families only, but it is a concept in fiqh that is applied in matters that may be considered as commercial. Currently, hibah is broadly utilized within the advancement of Islamic financing items. A few of the modern applications of hibah have been subject to the criticism as to whether they are meet the objective of the

contract. In this regard, hibah nowadays applies not only in Islamic banking industry, but in the takaful, capital markets and Islamic estate planning industries too.

The Application of Hibah in Islamic Banking, Takaful and Islamic Estate Industries

Hibah is considered as “supporting shari‘ah principles” in the decisions of the “Shari‘ah Advisory Council (SAC) of Bank Negara Malaysia”. Hibah usually serves as a selling point for particular products given by Islamic banks in Malaysia (Nasrul Hisyam, 2010).

Hibah in Islamic Banking Products

Originally hibah was implemented as a unilateral contract. On the other hand, Islamic banks' decisions propagate the hibah either as a "supporting principle" or only in agreements where it can be beneficial for the institutions. The transition from the original hibah to the new application of hibah would assure that the extension of charitable acts is not affected by it. The discussion below is about the application of hibah as a supporting contract in Islamic banks in Malaysia.

i. Al-Ijarah Thumma Al-Bay' (AITAB)

The term “*al-Ijarah Thumma al-Bay'* (AITAB)” is a hybrid of 2 contracts namely *al-ijarah* (rental) and *al-bay'* (sale). The word *al-ijarah* derives from the word *al-ajr* that knows reward or remuneration (Ismail, 1997). Technically, although the definitions by the jurists were different in terms of words and sentences but it has similarities in meaning. *Al-ijarah* is defined as “a agreement of exchange to assure control of certain utility or services for payment (al-Jurjani, 1988, al-Syarbasi, 1981). It indicates the sale of a profit, use or function for a price that may be either floating or fixed. The most important element in the meaning of *al-ijarah* is benefit. As per the majority of jurists, *al-ijarah* applies more to benefits rather than the object itself. This is because the main purpose of *al-ijarah* is to obtain its benefits instead of owning the object (al-Ansari, n.d). Al-Bay' means "exchange of property with property in a certain way" (Al-Ansari, n.d).

AITAB applies, by implication, to leases or rents or leases terminating with sales (Khiret al., 2008). In Malaysia, AITAB are also known as “*al-Ijarahwal-Iqtina* or *al-Ijarah Al-Muntahiyah bi al-Tamleek*”. This incorporates a rent and trade deal in one trading agreement, but deals must be operated separately: first, the leasing agreement would perform that the lessee must pay the lessor a recurring rent over a defined term. Next, the hirer has the option to enter into a moment deal at the expiration of the leasing term to purchase the products from the owner at El-Din and Abdullah, 2007).

Islamic banks in Malaysia offers hibah in “*al-Ijārahthumma al-Bay‘* contract (AITAB)” as one of the incentive to the customers to pay their monthly rent based “prescribed schedule”. Islamic banks offer hibah to customers and in the 1st year they must make monthly rent payments without interruption as agreed on. On the 13th month, 1 percent of the investment will be credited to the qualified customer account (Bank Negara Malaysia, 2007). In the Quran and Hadith, the foundation of this SAC policy was the sharing of presents. This is surely regarded as a positive deed.

ii. Wadi’ah Yad Dhamanah (Saving Account)

The word wadiah derives from the verb "wada'a, meaning to quit, stay or deposit" (Al-Farabi, 1987). Technically, as per Shafi'i authors, wadiah is specifically given in a precise way to retain possession of reputable private goods (Syarbini, t.t). Sabiq (1999) stated that *wadiah* is keeping something or known as safeguard, and deliver back on the request. “*Wadiah yad dhamanah* is the grouping between guarantee (*dhaman*) and safe-keeping (*wadiah*)”. This type form of deposit facility is commonly used in the framework of Islamic banks, deposits are the main sources. The few features: the safekeeper is entitled to trade or some other reason using the deposit capital. He is thus entitled to take genuine advantage of the use of the asset and is often wholly responsible for any harm (ISRA, 2013).

The element of guarantee (*dhaman*) is significant because of the bank is permitted to use the stores at its own risk. In any case in the event that the investors inevitably choose to pull back their cash; the bank has to guarantee, which money is made accessible upon request. The benefit from the utilize of the deposit money goes to the bank alone. The bank can still freely opt to share the income received with the depositors as a means of flexibility in the form of “discretionary hibah”. (Antonio, 2001). The Islamic banks in Malaysia provide hibah to the *wadi’ah* depositors as a suggestive recognition for their contribution in the organizations. This hibah is “permissible” with a condition that this contract procedure should not similar with *wadi’ah* deposit contract.

iii. Qard Contract (Saving Account)

Qard is to trade ownership of possession in exchangeable wealth to an individual upon whom it is official to return wealth comparable to it. The purpose of qard is to provide one who can benefit from this act with the wealth or properties upon loan. By offering, the receiving party hires and uses it in fulfilment of its purposes, and then returns the equal interest (Irsyid, 2007). In *qard* structure applies by Islamic banks, the depositor is deemed

as a lender to the bank and the bank guarantee in return even if there is negligence or loss of wealth (ISRA, 2013). In this case, the depositors earn hibah from the bank as a lender.

The SAC resolution referred to this procedure as "permissible" on the situation that this procedure (giving hibah) would not become common and identical as a situation in the *qard* based contract.

Conditional Hibah (*Hibahmu'allaqah*)

A conditional hibah is a grant that is required (suspended) by the occurrence of something. Based on this concept, grant is only implemented when the conditions are set. There are two views among the scholars in regard with conditional hibah:

i. Shafi'i scholars, a view from Hanbali scholars and Zahiri: hibah with any future terms or conditions is unlawful (invalid) hibah could be a contract that will ended up invalid since of jahalah (ignorance). Thus, hibah must be unconditionally (to certain occasion in future) and typically comparative to the restriction of a contractual sale deal (to some event in the future); (Al-Syarbini, n.d.). According to IbnQudamah (1997), "hibah, which is conditional on terms, is invalid since hibah is a grant of ownership (transfer of property) to a single beneficiary in his lifetime, so that hibah can not be conditional as a contract of sale (which can not be conditional)."

ii. Maliki and Hanafi scholars and some of Hanbali scholars specifically the opinion of "Ibn Taimiyah and his disciple Ibn al-Qayyim": Hibah with conditions is valid. There is a legal maxim attributed to the Hanaf is which goes as follows: "المواعيد بصورة التعاليق تكون لازمة" which means "promises in the form of *ta'liq* (condition) is binding" (IbnNujaym, 1999). According to Maliki school of thought, hibah with requirements to be met in the future is legitimate because ambiguity (*gharar*) has no effect on the validity of the hibah contract. According to "Imam Malik," "whoever undertakes to do any good is dedication to act except in death or in insolvency" (al-Qarafi, 1998; al-Kharshi, 1997).

Among the products of Islamic banking and finance that operate using conditional hibah (*hibahmu'allaqah*) are as below:

i. Sahabat Agro (AgroPrima S) by Agro Bank

The Sahabat Agro instrument is a marketing program offered by Agrobank Malaysia that uses the Saving, Reference and Gain Reward concept for AgroPrimaS product. "AgroPrimaS is specially designed Term Deposit-*i* Account based on existing Agrobank's

Term Deposit-i Account (FRIA-i)” that promoted under Sahabat Agro Program which applies *tawarruq* contract. Depositors of AgroPrimaS can earn reward (hibah by bank) by referring their suggested customers to the Bank with certain conditions to be fulfilled.

This product applies the Shariah concept *hibahmu'allaqah* or conditional hibah where the reward or grant will be given to a member who successfully meets the Bank's terms and conditions (<https://www.agrobank.com.my/product/sahabat-agro/> 25.4.2020). The basic requirements and conditions that members must adhere to in order to receive the reward (in the form of a hibah) are:

- i. Members must maintain at least RM 500.00 in AgroPrimaS Term Deposit Account throughout membership (12 months).
- ii. Members shall refer the suggested customer to Agrobank and the customer must open an AgroPrimaS Term-Deposit Account-i with a minimum deposit of RM 500.00.
- iii. Members are entitled to gain reward (hibah) for each referral (new customer) in their network as long as the member and referral complies with the terms and conditions of the SahabatAgro Program.

This product offers by Agrobank after obtaining the approval of Shariah advisors of the bank in term of conditions and operations.

ii. Takaful Benefit

Family takaful offered mutual interest and each participant's responsible to contribute in the investment, or known as a demand or insurance from a risk account collected from a tabarru portion of the applicant (Bank Negara Malaysia, 1984). Takaful proceeds are usually associated with the longevity of the individual and the maturity of the program. If the participant still alive after the takaful plan maturity, the participant obtained the takaful benefit eventually and it will happen the other way round if the participant dies prior to the issuance of the takaful certificate, the person named by the participant shall receive takaful benefit. (Md. Habibur Rahman, et.al, 2019).

According to IFSA, Schedule 10, Para 1 &2 (2013), The main issue regarding to the appointment is the status of the nominee are whether he is the sole beneficiary or simply the executor. In the event if the nominee happen to be as an executor, they are responsible to ensure takaful benefits will only receive upon maturity according to the pertinent and appropriate legacy laws. When the candidate is named as the primary beneficiary, the takaful applicant, under the principle of conditional hibah (gift), she / he allowed to accept

the takaful benefit. The condition of this hibah for the candidate to become the primary recipient of the takaful benefits happen only when the applicant dies before the nominee and before the maturity takaful plan. This will mean that the takaful benefits would not be contained in the candidate's properties, but would instead be the applicant's sole property. (Mohd Kamil & Joni, 2017).

Based on the analysis, the researcher concludes that the practise of *hibahmu'allaqah* to the beneficiaries in takaful benefits conjuncted to the death of the takaful participant is similar to the concept of *hibahruqba* as discussed by fuqaha in classical fiqh books. *Ruqbais* a gift contract limited to the lifetime of sender or receiver. Anyone dies early will benefit contribution to the other side (Amir, 2014). In truth, *ruqba* means holding up for the other to die. The implementation of hibahumra and ruqba in the takaful industry is approved by some of the scholars today (Al-Qurradaghi, 2004).

iii. Shariah-Compliant Retirement Annuity Plan

Annuities have been viewed as financial back-up measures during retirement age, and as a way of reducing the chance of mortality when an person loses their savings. The annuitant tries to secure stable retirement payouts by exchanging liquid lump amounts in exchange for a sequence of installments before he / she dies (Soulhi, 2017). Annuity (a Latin word meaning yearly) is a contract in which an insurance / takaful company agrees to provide the customer / contributor with a lifetime income, in return for the premiums paid at once (Mohammad Mahbubi et.al, 2014). Annuity Plan would be retirement product is the most common mechanisms for managing age-related risks, known as longevity risk (Ismail.F, 2016). The annuities effectively have a constant income of a fixed amount for the entire annuity period.

A few entities such as Amanah Raya proposed a sharia-compliant “Public Mutual Private Retirement Scheme (PRS)” that contributed in together of sukuk and stock investments as a technique to revitalize in returns in stock market instability. HSBC Amanah has given a non-pledge annuity up to age 75 (<https://cdn.hsbcamanah.com.my/takaful-retirement-plan-regular.pdf>/ 30 April 2020). In general, this instrument was marketed under the PRS which is permitted to provide insurance firms, takaful operators, banks and unit trusts (Soulhi, 2017).

Shari’ah compliant annuity framework model is based on the “wakalah (agency) and hibahmu'allaqah (conditional gift)” principles. The wakalah thought focuses at managing and investing an annuity fund (wakalahbilistismar), thus accrued quantities of

contributions and investment profits will be deposited in *tabarru's* fund, and then process of annuity payment through *hibahmu'allaqah* will begin. To meet the hibah deal, the participants must bring their accrued sums of donations and benefit profits from investment into *tabarru'* fund at *wakalah* maturity contract. Then all hibah contract applicants have the right to obtain the rewards of the *tabarru* contract, which is the monthly revenue source before their death. (Mohammad Mahbubiet.al, 2014).

Hibah Trust (Hibahamanah)

Hibah faith is a combination of the features of hibah and trust itself. In common, it will be a gift from the benefactor to the recipients in the course of his life that the resources would be kept by a specified trustee for a particular period of time and may, as it were, be transferred to the recipients following the death of the donor in accordance with the agreement of the parties in the Trust Deed (Alias, 2017). The major various between direct hibah and hibah trust is that the possession of the asset is fully passed to the hibah recipient in a direct hibah; thus, the beneficiary no longer has any interest or privileges towards the asset. In comparison, in hibah trust, even if the asset has been passed to the beneficiaries either legitimately or constructively, the donor will still receive the asset's benefits after receiving the beneficiaries' consent (written in a divide agreement) (Nazrul et. al, 2016).

In Malaysia, “hibah trust, or frequently referred as hibahamanah, trust hibah or hibahharta” has recently gained considerable prominence in Islamic estate planning since Hibah Amanah was introduced by Permodalan Nasional Berhad, a substantial Malaysian fund management company through Amanah Saham Nasional Berhad (ASNB), By this concept, its members can hibah their investment under ASNB products to their beneficiaries. ASNB becomes the appointed trustee in the structure of hibah trust by PNB (Amir, 2014). Other hibah trust products introduced in Malaysia include:

- i. Hibah Harta Trust by CIMB Islamic Berhad (2016).
- ii. Pri-Hibah by CIMB-Principal Asset Management Berhad.
- iii. Pri-Hibah (2016) by As-Salihin Trustee Berhad.
- iv. Hibah Amanah Raya (2016) by Amanah Raya Berhad, and
- v. Hibah Amanah TH (2017) by Lembaga Tabung Haji.

Hibah with Consideration (Hibah bi al-Thawab)

The use of *hibahmu'allaqah* in some of the products discussed above should be related to the discussion of *hibah bi al thawab* (hibah with consideration) which is a gift or grant

that targets return (benefits). Al-Kharshi (w.d) defines “*hibah bi thawab*” as a contribution made to obtain future financial benefits. Generally they are of two views on the validity of “*hibah bi al-thawab*”. Firstly, *hibah bi al-thawāb* (gift with expected compensation) valid and effective; this view is agreed by majority of Muslim jurists from the four schools of thought, i.e. “Hanafi, Maliki, Shafi’i and Hanbali” (Al-Zuhaily, 1989). Secondly, is agreed by some Muslim jurists of the Shafi’i school that such form of hibah is null and void. The Shāfi’i school distinguished between known and unknown consideration (*thawabma lumwamajhul*). If the factor is unknown they make the hibah deal. The Shāfiis hold two views in relation to the established concern. First conclusion it isn't allowed, since they clearly indicate a requirement to account for a known consideration restricts the initial purpose of hibah. Their second opinion coincides with the opinion they have given regarding unknown consideration (Al-Nawawi, n.d).

The researcher concludes that the modern applications of hibah mostly often under context of hibah with consideration (*hibahbi al-thawāb*) including the above mentioned products namely Sahabat Agro, takaful benefits and Shariah compliant retirement annuity plan. According to jurists, the implementation of *hibah bi al- thawab* would change the concept of tabarru' from the bilateral contract to the bilateral contract. In other words, if the gift is made in return for potential claims, then the gift ruling is equal to the selling principles (Muhammad, 2010). On the other hand, some jurists conclude that hibah bi al-thawab is viewed as a unilateral contract with all its provisions and consequences, such as genuinely a gift, and is lawful. (Al- Qurrahdaghi, 2004).

Conclusion

Hibah is considered as supporting contracts to major shariah contracts in the Islamic banking and financial system in Malaysia. The application of hibah in Islamic banking products is more about providing incentive to encourage and motivate customers to pay their monthly rent in compliance with the "prescribed schedule" or as a token of gratitude for their faith in the entities. Based on current practice of Islamic banks in Malaysia, hibah is applied in the products based on the contract of *wadiahyad al-dhamanah*, *al-qardh* and *al-ijarahthumma al-bay'*. The application of *hibahmu'allaqah* (conditional hibah), *hibahumra* and *ruqba*, *hibah* trust and *hibah bi al-thawab* in Islamic finance and Islamic estate planning products such as the Sahabat Agro Programme, takaful benefits, Hibah Trust TH and PNB and Shariah-compliant Retirement Annuity Plan are the innovations in the practise of hibah currently. It is obvious the use of hibah variation forms may support the long and complicated strategies of inheritance prodedures, diminish regulatory costs and dodge legitimate hindrances. The practice of *hibah* also preserves several Islamic

characteristics in terms of avoiding interruptions in the processes of distribution of property but there are still arguments and debate around this issue. In general, most of the contemporary scholars allow such practice as long as this does not infringe the original hibah concept.

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