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**NEGOTIATION IN ISLAMIC FINANCIAL SYSTEM:
DEVELOPING A *SHARIAH*-COMPLIANT NEGOTIATION
MODEL**



**DOCTOR OF PHILOSOPHY
UNIVERSITI UTARA MALAYSIA
2017**



Awang Had Salleh
Graduate School
of Arts And Sciences

Universiti Utara Malaysia

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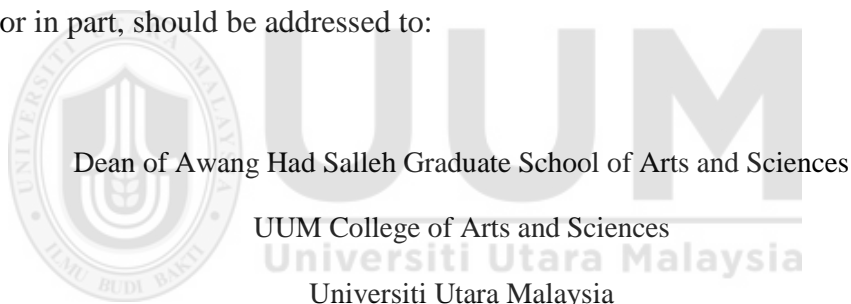
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Abstrak

Beberapa organisasi telah menerima pakai sistem pengurusan Islam untuk menguruskan organisasi mereka. Organisasi Islam ini berunding dan berurusan untuk memenuhi kepentingan dan memenuhi objektif mereka. Maka, adalah penting untuk mengetahui prinsip-prinsip Syariah yang mereka laksanakan dalam rundingan dengan pelbagai pelanggan dan pemegang taruh. Proses dan hasil berhubung perundingan telah banyak diselidik dari perspektif dan sistem nilai konvensional. Sementara kebanyakan kajian berkenaan perundingan hanya meneliti pandangan daripada sistem nilai barat, adalah penting untuk diteroka konsep dan amalan perundingan dari perspektif Islam. Oleh hal yang demikian, kajian ini meneroka dan mengenal pasti konsep, prinsip, dan amalan perundingan dari perspektif Islam. Di samping itu, kajian ini turut mencadangkan model perundingan patuh Shariah yang bersandarkan reka bentuk kajian kualitatif. Satu siri temu bual bersemuka dengan 20 orang informan daripada empat kelompok pakar telah dikendalikan. Kelompok pakar ini merangkumi para mufti, ahli akademik, pengamal, dan lembaga pengarah Shariah bank Islam. Data telah dianalisis secara analisis tematik berbantuan perisian NVivo8. Dapatan memperlihatkan bahawa perundingan dari kaca mata Islam memerlukan tiga platform percanggahan pandangan, iaitu perdamaian (*Sulh*), perbincangan (*Shura*) dan wahana komunikasi. Platform ini terhasil daripada enam prinsip teras, yakni kepatuhan pada al-*Qur'an* dan *Sunnah* keadilan, kewibawaan, kebolehlenturan, pendedahan maklumat, dan perhubungan. Kajian juga mendapati bahawa tujuan utama organisasi Islam mengguna pakai pendekatan Islam dalam tatacara perundingan mereka adalah untuk mendapatkan kepuasan rohani. Kajian turut mengemukakan model Perundingan Patuh *Shariah* sebagai panduan dalam pengendalian perundingan dalam kalangan organisasi Islam. Akhir sekali, kajian juga menyumbang kepada kosa ilmu menerusi kerangka bersistem yang dapat memberikan pandangan kepada organisasi Islam tentang cara pengendalian perundingan menerusi pendekatan Islam yang sewajarnya.

Kata kunci: Perundingan, Prinsip, Amalan, Patuh *Shariah*, Organisasi Islam.

Abstract

A number of organizations have adopted the Islamic system of management to manage their organizations. Those Islamic organizations negotiate and deal in order to satisfy their interest and meet their objectives. Hence, it is important to know the Shariah principles, which they execute in their negotiation with their various customers and stakeholders. The negotiation process and outcome have been largely studied applying different conventional perspectives and value systems. However, while the extant studies on negotiation have exhaustively focused on viewpoints that are mainly informed by western value systems, it is imperative to explore the possibility of the conceptualization and practice of negotiation from the Islamic perspective. As such, this study explores and identifies the concept, principles and practices of negotiation from an Islamic perspective. Additionally, this study proposes a Shariah-compliant negotiation model through a qualitative research design. A series of in-depth face-to-face interview were conducted among 20 informants from four different expert groups namely; Muftis, Academicians, Practitioners and Shariah Board Members of Islamic Banks. Content analysis was used via thematic Data analysis with the assistance of NVivo 8 software. Findings show that negotiations from the Islamic viewpoint provide three platforms of disagreements; reconciliation (*Sulh*), discussion (*Shura*) and communication. These platforms are based on six core principles, which are *Qur'an* and *Sunnah* compliance, justice, credibility, flexibility, information disclosure and relationship. This study also finds that obtaining spiritual satisfaction is the main purpose for adopting the Islamic approach by Islamic organizations in their negotiation conducts. Furthermore, this study recommends a *Shariah*-compliant negotiation model as a potential guide for conducting negotiations among Islamic organizations. Finally, this study contributes to the body of knowledge by providing a systematic framework, which provides insights for Islamic organizations on how to conduct negotiations with a proper Islamic approach.

Keywords: Negotiation, Principle, Practice, *Shariah*-compliant, Islamic Organization.

Dedication

This thesis is dedicated to *The Almighty Allah (SWT)*, the Most Beneficent, the Most Merciful for his compassion and mercy towards my family and me.

And to;

The soul of **my father**, who passed away in the middle of my academic journey.

And;

My mother, brother **Aboubaker** and **my wife**; for their support, love and prayers.



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In the name of Allah, Most Gracious, Most Merciful

I owe my first and greatest gratitude to Allah (SWT), who gave me the strength and good health to pursue this PhD and sent his divine guidance to mankind through His Prophet, Muhammad (PBUH), from whom humanity has learnt to deal and interact with others in the best of manners. Of utmost relevance among his (PBUH) sayings is; “He who cannot thank the people cannot thank Allah”.

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Glossary of Terms

The following terms are definitions and explanations of Arabic and Islamic terminologies, which were adopted from A Dictionary of Modern Written Arabic (Wehr, 1976).

<i>Al-Adl</i>	Fairness, straightness, straightforwardness, justice, impartiality, fairness
<i>Amanah</i>	Means honesty, trust, reliability, trustworthiness, loyalty, faithfulness, integrity. Also means fulfilling the promise, whether written or given orally, in text and spirit (to be faithful, reliable, and trustworthy)
An expert	An expert is a person with extensive knowledge and experience through practice and education in a particular field.
<i>Arkan al-Islam</i>	The five Pillars of Islam (the basic elements)
<i>As-Salem</i>	The Peace
<i>At-Tayyibat</i>	Lawful good things. <i>Tayyibat</i> ; nice, pleasant things, gustatory delights
<i>Ayah</i>	A verse quoted from the Holy <i>Qur'an</i>
<i>Da'wah</i>	To invite humankind to follow the Islamic way of life (<i>Da'wah</i> : call, appeal, bidding, demand)
<i>Diyanatan</i>	By way of religion (communication, confession, and denomination)
<i>Fiqh</i>	Islamic jurisprudence (literally: understanding and acquisition of knowledge. (understanding, comprehension, knowledge, jurisprudence in Islam)
<i>Gharar</i>	Risk, hazard, jeopardy and peril. Technically, it signifies the contract or transaction in which the object of contract or the commodity is not determined for both or either contracting parties, and thus the contract involves an element of risk and uncertainty
<i>Hadith</i>	A saying or action ascribed to Prophet Muhammad (PBUH) or an act approved by the Prophet (an ordinary Prophetic tradition)
<i>Hajj</i>	The pilgrimage to Mecca
<i>Hakam</i>	Arbitrator, arbiter, umpire, referee
<i>Halal</i>	Permissible and lawful actions or things in Islam

<i>Haram</i>	Prohibited, banned, illegal or impermissible actions or things in Islam (forbidden, interdicted, prohibited, unlawful, offense, and sin)
<i>Hudud</i>	The bounds or restrictions that Allah has placed on man's freedom of action
<i>Ibadah</i> (<i>Ibadat</i>)	Worship, adoration, veneration, devotional service, divine service. All acts of devotion and religious observances. The word linguistically means "obedience with submission". In terms of Islam, <i>Ibadah</i> is the obedience, submission and devotion to Allah (SWT), along with the ultimate love for Allah. Muslims believe that <i>Ibadah</i> is the reason for the existence of all humanity.
<i>Ibar</i>	Admonition, monition, warning, example, lesson, advice, rule, precept, (to be followed, befitting of consideration, that has to be considered, to be taken into consideration, that which is of consequence, of importance)
<i>Imam</i>	A Muslim leader and in its highest form refers to the head of Islamic state (also refers to a prayer leader)
<i>Mafasid</i>	Cause of corruption or evil, scandalous deed, heinous act. Also means dirty tricks, malicious acts, and chicaneries
<i>Maqasid</i> <i>Shariah</i>	The highest objective of Islamic law (destination, intention, intent, design purpose, resolution object, goal, aim, end, purport, significance)
<i>Masalih</i>	Requirement, exigency, that which is beneficial, helpful or promoting, advantage, benefit, interest, good, and welfare
<i>Muamalat</i>	The individual transactions and interactions (treatment, procedure, social intercourse, social life, association (with one another), behaviour, conduct (toward others), mutual relations, business relations)
<i>Mufti</i>	An Islamic scholar who is a deliverer of formal legal opinions and an official expounder of Islamic law
<i>Prophet</i>	The Messengers of Allah, such as the Prophet Muhammad (PBUH)
<i>Qadhaan</i> (<i>Qadha</i>)	To accomplish, achieve, execute, and perform (for request). Also means to satisfy, meet, answer, and discharge (for a demand or a claim)
<i>Qur'an</i>	The Holy Book of Islam; the highest and most authentic authority in Islam

<i>Riba</i>	To increase, to grow, to grow up and to exceed. Literally means increase or addition and refers to the 'premium' that is paid by the borrower to the lender along with the principal amount as a condition for the loaner OR an extension in its maturity. It is equivalent to interest, and considered <i>Haram</i> (forbidden) in Islam
<i>Sadaqah</i>	Charity in Allah's Cause, or Ma'rûf: Islamic Monotheism and all the good and righteous deeds that Allah has ordained. <i>Sadaqah</i> also means charitable gift, charity or voluntary contribution of alms
<i>Shahadah</i>	The declaration of faith
<i>Shariah</i>	The body of Islamic law based on the Holy <i>Qur'an</i> and the <i>Sunnah</i> (the <i>Shariah</i> , the revealed, of canonical, law of Islam).
<i>Shura</i>	Consultation, deliberation, taking counsel, counsel and advice (from discussion)
<i>Sulh</i>	Peace, (re)conciliation, settlement, composition, compromise, peace-making, conclusion of peace
<i>Sunnah</i>	Statements or practices undertaken or approved by the Prophet Muhammad (PBUH) and established as legally binding precedents (The <i>Sunnah</i> of the Prophet (PBUH), his sayings and actions, later established as legally binding precedents)
<i>Surah</i>	A chapter from the Holy <i>Qur'an</i>
<i>Tafsir</i>	Explanation, exposition, elucidation or commentary (exp; on <i>Qur'an</i>)
<i>Taqwa</i>	Godliness, devoutness, piety
<i>Tawhid</i>	The concept of oneness or unity of God
<i>Ulama'</i>	Scholars, savants or scientists
<i>Ummah</i>	One nation

List of Abbreviations

PBUH	Peace Be Upon Him
PBUT	Peace Be Upon Them
SWT	The Arabic words "Subhanahu Wa Ta'ala". It means "Glory to Him, the Exalted".
SCN	<i>Shariah</i> -compliant negotiation
IO	Islamic organization
IUM	International Islamic University Malaysia
ISRA	International <i>Shariah</i> Research Academy for Islamic Finance
INCEIF	International Center for Education in Islamic Finance



CHAPTER ONE

INTRODUCTION

1.1 Introduction

Yousefvand (2012) considers negotiation to be one of the oldest activities, which is used to solve human problems or disputes peacefully on a daily basis. Negotiations have been the focus of scholars from different fields and orientations, and hundreds of books and articles have been written on the subject (Rubin & Brown, 1975). The possible reason for such a great deal of attention is that in the modern world, people have come to rely on negotiations more than any other problem-solving mechanism, because the world has changed and become more interdependent (Nikolaev, 2001). As a result, different genres of negotiation have emerged.

Scholars and practitioners of different areas of human knowledge have started to recognize that the negotiation process is not as easy as it seems. Therefore, in the last few decades, scholars have devoted a great deal of attention to the negotiation process (Nikolaev, 2001). Nowadays, most of the institutions (nations, organizations, companies and people) use this process to ease strained relations, reduce hostility, and establish economic and political relations, as well as halt wars, and consolidate peace (Yousefvand, 2012). People also negotiated across different industries and explored negotiation in many different fields of studies, while solving problems specific to their areas. That is why negotiation studies do not belong to any particular field of knowledge.

Many studies have subsequently emerged from the field of negotiations, and each researcher has tried to investigate the phenomenon from his or her point of view.

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APPENDIX A

INFORMED CONSENT FOR PARTICIPATION



School of Multimedia Technology and Communication

Informed Consent for Participation in Research Activities:

Principles and Practices in Negotiation; Developing an Shariah-compliant negotiation Model

I would like to thank you for giving me the opportunity to meet with you today. My name is **ABBAS RAMDANI** and I would like to talk to you about your experiences and practices as a manger (negotiator) in your organization.

The interview should take about an hour or less. I will be taping the session because I don't want to miss any of your comments. Although I will be taking some notes during the session, I can't possibly write fast enough to get it all down. Because we're on tape, please be sure to speak up so that we don't miss your comments.

All responses will be kept confidential. This means that your interview responses will only be used for this study only and I will ensure that any information included in the report does not identify you as the interviewee. Remember, you don't have to talk about anything you don't want to and you may end the interview at any time.

Are there any questions about what I have just explained?

Are you willing to participate in this interview?

.....
Interviewee

.....
Witness

.....
Date

APPENDIX B

INTERVIEW GUIDE

Interview Question	Probing question
<p>1- Have you heard about negotiation?</p> <p>2- Do you practice negotiation in your organization?</p> <p>3- How and when do you negotiate?</p> <p>4- Have heard about Islamic negotiation?</p> <p>5- What do you understand by Islamic negotiation?</p> <p>6- What are the principles of Islamic negotiation that you know?</p> <p>7- What are the principles of Islamic negotiation that you put into practice in your organization?</p> <p>8- What is your evaluation of practicing the Islamic negotiation in your organization?</p> <p>9- What are the benefits and the shortcomings of the negotiation?</p> <p>10- What are the differences between the Islamic negotiation and the conventional one?</p>	<p>11- What is the concept of negotiation in Islam?</p> <p>12- How do <i>Qur'an</i> and <i>Sunnah</i> explain negotiation?</p> <p>13- What are the general principles of negotiation identified by <i>Qur'an</i> and <i>Sunnah</i> ?</p> <p>14- What is the importance of practicing the Islamic principles in negotiation?</p>