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A CRITICAL EXAMINATION TOWARDS THE ISLAMIC DISCOURSE ON “LIMITED LIABILITY”

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ABSTRACT

The concept of limited liability has been a very important component of the development of the global economy. However, while limited liability is currently a reality all over the world including the Islamic nations, it is not without discourse among the Muslim jurists. The debate mainly revolves around two core issues. The first issue is the concern of some jurists that the only acknowledged legal entity in Islamic law are natural persons, and that legal persons (like limited liability corporations) are ‘fictitious’. The second issue concerns how the owners of the limited liability companies have rights to residual profits of the company, but do not bear the liability towards the debt when insolvency occurs. Some jurists are concerned because the Shari’ah dictates that paying debts is a very serious matter. Using the literature research method, this article critically examined the debate between the jurists especially in the two issues mentioned earlier and determined which argument is stronger. It was found that, in the end, establishing a legal entity other than natural persons as well as barring company owners from debt liability are very

hard to justify under the Shari'ah. However, given the status-quo construct of global economics, not utilizing limited liabilities may cause devastating economic repercussions. Therefore, a new model of corporation might need to be researched and explored in order to suit the necessities of the economy as well as being consistent with the Shari'ah.

Keywords: *Limited liability, Islamic law, Shari'ah economics, Maqāṣid al-sharī'ah.*

INTRODUCTION

The modern form of cooperation is derived from the Roman concept of cooperation.⁴ Along the way, together with the advent of industrial capitalism, the development of limited liability became the heart of economic development.⁵ As history moves on towards a more globalized future, scholars argue that there will be more and more development and globalization of corporate law (including the concept of limited liability) alongside global economic development (Gevurtz, 2011).⁶ The sizes of market capitalization of public companies in some developed countries are even multiple than the size of their Gross Domestic Product (hereinafter, GDP), such as Hongkong's market capitalization is nine times higher than the GDP, and Singapore as well as Switzerland are two times higher.⁷

⁴ Kuran, T. (2005). The absence of the corporation in Islamic law: origins and persistence. *The American Journal of Comparative Law*, 53(4), 785–834., pp. 5–6; Malmendier, U. (2005). Roman Shares. In W. N. Goetzmann & K. G. Rouwenhorts (Eds.), *The origins of value: The financial innovations that created modern capital markets*. Oxford: Oxford University Press., pp. 32–40

⁵ Forbes, K. F. (1986). Limited liability and the development of the business corporation' (1986). *Journal of Law, Economics, & Organization*, 2(1), 163–177.; The key to industrial capitalism: Limited liability. (1999, December). *The Economist*. Retrieved from <https://www.economist.com/finance-and-economics/1999/12/23/the-key-to-industrial-capitalism-limited-liability>

⁶ Gevurtz, F. A. (2011). The globalization of corporate law: The end of history or a never-ending story. *Wash. L. Rev.*, 86, 475–521.

⁷ World Federation of Exchange, Bank for International Settlement, World Bank. In: Market capitalization of listed domestic companies

Therefore, corporation and limited liability are a reality of the world's economy and will always become more so as time goes by. The Islamic world is part of that world. However, much of the Islamic world are developing or even underdeveloped nations. Timur Kuran blamed this *inter alia* towards how Islamic law jurists were late to accept the concept of corporations altogether, therefore stagnating the development of the economy.⁸ However, the truth is there are many other causes which lead to the underdevelopment of the Muslim world. One may also look at colonialism which may have devastated many nations, and neo-colonialism that came after.⁹

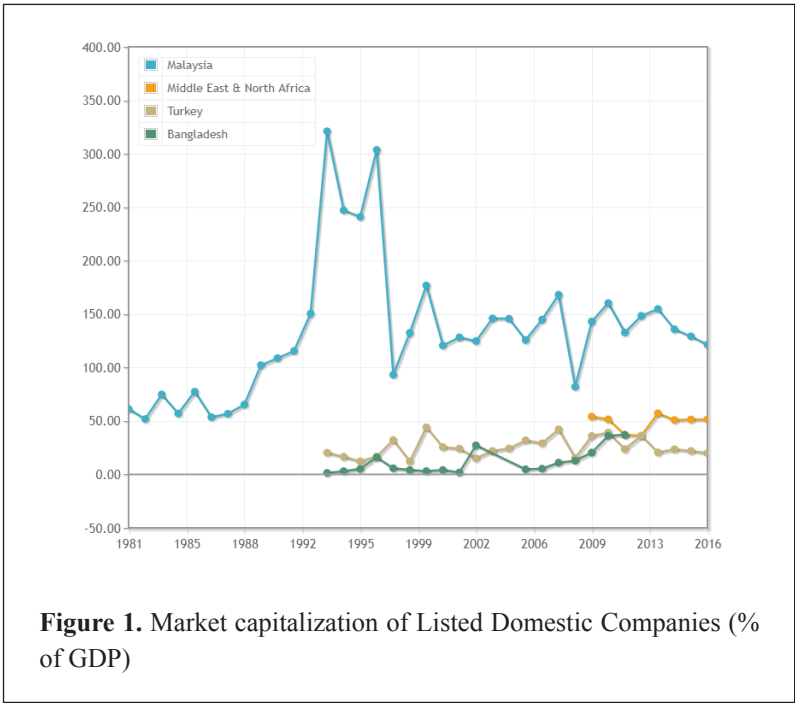
While the Islamic jurists have not accepted the concept of corporations until quite recently, the reality is that corporations and limited liabilities have been developing all over the Islamic world.¹⁰ The following is a graph indicating the market capitalization of public

(% of GDP) - Country Ranking. (n.d.). Retrieved July 26, 2019, from Index Mundi website: <https://www.indexmundi.com/facts/indicators/CM.MKT.LCAP.GD.ZS/rankings>

- ⁸ Kuran also said that *waqf* is part of the problem: Kuran, 2005, pp. 5–6. With regards to *waqf*, there seems to be overwhelming researches indicating otherwise. See: Ahmad, M. (2015). Role of Waqf in sustainable economic development and poverty alleviation: Bangladesh perspective. *JL Pol'y & Globalization*, 42, 118.; Mohamad Suhaimi, F., Ab Rahman, A., & Marican, S. (2014). The role of share waqf in the socio-economic development of the Muslim community: The Malaysian experience. *Humanomics*, 30(3), 227–254.; Zuki, M. S. M. (2012). Waqf and its role in socio-economic development. *ISRA International Journal of Islamic Finance*, 195(1014), 1–11. However, regarding corporations, it is difficult to find research on such a topic.
- ⁹ See *inter alia* the African experience: Bertocchi, G., & Canova, F. (2002). Did colonization matter for growth?: An empirical exploration into the historical causes of Africa's underdevelopment. *European Economic Review*, 46(10), 1851–1871.
- ¹⁰ See *inter alia* the Gulf experience: Baydoun, N., Maguire, W., Ryan, N., & Willett, R. (2012). Corporate governance in five Arabian Gulf countries. *Managerial Auditing Journal*, 28(1), 7–22. Its development in Indonesia seems to start after independence. See generally: Sembiring, S. (2006). *Hukum Perusahaan dalam Peraturan Perundang-Undangan*. Bandung: Penerbit Nuansa Aulia. See also: Naif, A. T., & Mohd Ali, H. (2009). Corporate Governance Developments in the Saudi Arabia and Malaysia. *UUM Journal of Legal Studies*, 10(1), 185–214.

listed companies in selected Islamic nations over the past decades. It shows an increasing trend of the growth in market capitalization over the GDP with Malaysia being significantly higher than the rest.

Yet, the Islamic discourse of corporations especially in the form of limited liabilities remains to this date. There are jurists and fatwa bodies who argue that limited liabilities are not recognized in Islam while others say that they are. Two central issues are at the heart of the discourse: (a) the question of non-natural persons as subjects of law, and (b) the problem of debt in case of insolvency.



This article explores the different opinions of the contemporary jurists and examines which opinion is stronger. However, one must also consider the significant role of limited liability in the economic system. Therefore, this article also considers those different opinions from a *maqāṣid al-sharī'ah* perspective and see the different consequences resulting from it.

RESEARCH METHOD

This article employs a normative research. It employs the doctrinal legal research method, which concerns the "...the formulation of legal 'doctrines' through the analysis of legal rules."¹¹ In doing so, this research refers to the relevant literature related to Islamic law. Based primarily on the *Qur'an* and *Sunnah*, the works of *fiqh* especially are the main sources for this article. Journals, books, and articles on other themes (e.g. general economy or corporate studies) are referred to in order to support the arguments.

THEORETICAL FRAMEWORK

Islamic Law and Subjects of Law

When one speaks of "Islamic law", one speaks of *Hukm Shar'i*. Jurists have a number of different definitions. One among those is the following: "A communication from Allah, The Exalted, related to the acts of the subjects through a demand or option or through a declaration."¹² This highlights how Allah is the only true source of law. As Allah says in the Qur'an, Surah al-An'am (6) verse 57:

إِنَّ الْحُكْمَ إِلَّا لِلَّهِ

"Indeed, the decision (*hukm*) is only for Allah."

Prophet Muhammad ﷺ is Allah's messenger, and is the authoritative interpreter of the Qur'an, so Allah commands mankind to also obey the Prophet *inter alia* in Surah *Al-Nisā'* (4) verse 59:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ ۚ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

"O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result."

¹¹ Chynoweth, P. (2008). Legal Research. In A. Knight & L. Ruddock (Eds.), *Advanced research methods in the built environment* (pp. 28–38). West Sussex: Wiley-Blackwell., p. 29.

¹² Nyazee, I. A. K. (2003). *Islamic jurisprudence*. Selangor: The Other Press., p. 47.

The above verse contains many virtues, among them are the following:

First, it shows how the Qur'an and Sunnah are the primary sources of law that nothing else may contradict. This is why jurists may only do *ijtihad* (from which to derive rules of *fiqh*) on matters not regulated specifically in the Qur'an and Sunnah, and even then, they do so by deriving rulings also found in the Qur'an and Sunnah.¹³

Second, this verse also points out the position of the authorities among the people (i.e. leaders) which must be obeyed except when they breach the Qur'an and Sunnah.¹⁴ This issue is serious. Rulers who claim to be Muslims are considered as disbelievers if they prioritize non-Islamic rules over the Qur'an and Sunnah. This is not only the view of the *mufasssirīn*,¹⁵ but also there is an *ijma'* (consensus) of the jurists that this is the case as mentioned by *inter alia* Ibn 'Abd al-Wahhāb, Ibn Abī 'Alī Al-Ḥanafī, Hamka, and so many others across different schools and creeds as documented by Abū Ṣuhayb Al-Mālikī.¹⁶

Third, in setting out this obligation, Allah starts with "O you who have believed". In setting out commands in the Qur'an, in some

¹³ See and compare: Al-Shafi'i, I. (1987). *Shafi'is Risalah: Treatise on the Foundations of Islamic Jurisprudence (Translated with an introduction, notes, and appendices by Majid Khadduri)* (2nd ed.). Cambridge: The Islamic Texts Society., p. 288; Nyazee, 2003, pp. 20, 214, 263; Philips, A. A. B. (1990). *The evolution of fiqh (Islamic law and the Madh-habs)*. Riyadh: Tawheed Publication., p. 60.

¹⁴ ibn Katsir, Ismail. (2016). *Shahih Tafsir Ibnu Katsir* (Vol. 2; S. Al-Mubarakfuri, Ed.). Jakarta: Pustaka Ibnu Katsir., pp. 562–565.

¹⁵ Al-Ḥanafī, I. A. 'Alī. (1997). *Sharḥ al-'Aqīdah Al-Ṭahāwiyyah* (Vol. 2). Beirut: Mu'assasah al-Risalah., p. 446; ibn Katsir, Imam. (2016). *Shahih Tafsir Ibnu Katsir* (Vol. 3). Jakarta: Pustaka Ibnu Katsir., p. 149 See also: Amrullah, H. A. A. (n.d.-a). *Tafsir Al-Azhar* (Vol. 3). Singapore: Pustaka Nasional PTE Ltd., pp. 1758–1760.

¹⁶ 'Abd al-Wahhab, M. bin. (2015). *Nawaqidhul Islam - Pembatal Islam (Matan dan Terjemah)*. Surabaya: Pustaka Syabab., p. 4; Al-Ḥanafī, 1997, p. 446 Imam ibn Katsir, 2016, p. 149 See also: Amrullah, n.d.-a, pp. 1758–1760 See also: Al-Mālikī, A. Ṣuhayb 'Abd A.-'Azīz ibn Ṣuhayb. (2000). *Aqwālu Al-Ā'immah wa Al-Du'āt Fī Bayāni Riddati Man Baddala Sharī'ah Min al-Ḥukkam Al-Ṭughāt*. Retrieved from http://www.ilmway.com/site/maqdis/MS_9234

places Allah begins with “O you who have believed”¹⁷ and in other parts He begins with **يَا أَيُّهَا النَّاسُ** (“O mankind”).¹⁸ Not all verses containing commands necessarily begin with these, but this is an indication that the Qur’an’s audience is humankind.

Imran Ahsan Nyazee Khan notes that *ḥukm shar‘i* has three elements: the *Ḥākim* (Lawgiver), *maḥkum fih* (the act on which the *ḥukm* operates), and *maḥkum ‘alayh* (the subject which must abide by the *ḥukm*).¹⁹ The third item discussed from Surah *Al-Nisā’* (4) verse 59 above is relevant to the third element of *ḥukm shar‘i*, i.e. *maḥkum ‘alayh*.

It seems that all works of the *fuqaha* speak of the *hukum* which are all related to humankind.²⁰ Following the previous explanation, the logic seems to be that if the audience of the Qur’an is humankind then it follows that any right and obligation contained in it would also be imposed on humankind.

A subject of law is a person who possesses legal capacity, which means the ability to acquire and perform rights and obligations (*ahliyyah*).²¹ Khan Nyazee explains that there is a requisite condition for one to have *ahliyyah*, which is *dhimmah*.²² He explains that *dhimmah* is “... the balance-sheet of a person showing his assets and

¹⁷ See *inter alia* Surah *Al-Nisā’* (4) verse 1, Surah *Al-Ma‘idah* (5) verse 1, and many others.

¹⁸ See *inter alia* Surah *al-Baqarah* (2) verse 168, Surah *al-Hajj* (22) verse 1, and many others.

¹⁹ Nyazee, 2003, pp. 45–46.

²⁰ See *inter alia*: Al-Jazayri, ‘Abdul Rahman. (n.d.). *Kitab al-Fiqhi ‘ala al-Mazahib al-Arbaah’* (Vol. 1). Beirut: Dar al-Rashad al-Hadithah.; Al-Maqdīsī, ‘Abd Allāh b. Aḥmad ibn Qudāmah. (1388). *Al-Mughni* (Vol. 6). Maktabah Al-Qahirah.; Al-Qardhawī, Y. (2010). *Fiqh Jihad*. Bandung: Mizan.; Al-Zuhaylī, W. (2011). *Fiqh Islam Wa al-Adillatuhu* (Vol. 8). Jakarta: Gema Insani Press.; Ibn Rushd. (2000). *The distinguished jurist’s primer* (Vol. 2). Reading: Garnet Publishing.; Syafi’i, I. (2004). *Ringkasan Kitab Al-Umm* (Vol. 1). Jakarta: Pustaka Azzam. See all volumes of these works of *fiqh*, and also any other work of *fiqh*.

²¹ Nyazee, 2003, p. 110.

²² *Ibid*.

liabilities, in terms of his rights and obligations” and originates from the covenant between Allah and humankind.²³ This covenant refers to the famous *alastu bi Rabbikum* covenant which is mentioned in *Surah al-A-rāf* (7) verse 172:

يَوْمَ إِذْ أَخَذَ رَبُّكَ مِنْ بَنِي آدَمَ مِنْ ظُهُورِهِمْ ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَى أَنْفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ
قَالُوا بَلَىٰ ۖ شَهِدْنَا ۚ أَنْ تَقُولُوا يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ

“And [mention] when your Lord took from the children of Adam - from their loins - their descendants and made them testify of themselves, [saying to them], ‘Am I not your Lord?’ They said, ‘Yes, we have testified.’ [This] - lest you should say on the day of Resurrection, ‘Indeed, we were of this unaware.’”

This verse signifies the covenant between Allah and humankind for the latter to worship the former.²⁴ This is why the term ‘religion’ in Arabic is *dīn*,²⁵ which means more than just ‘a system of belief in a supreme being’ like what the Oxford Dictionary defines.²⁶ The Arabic term *dīn* encompasses at least four main meanings: *indebtedness*, *submissiveness*, *judicious power*, and *natural inclination/tendency*.²⁷ One should pay special attention to the third meaning, i.e. *judicious power*. This signifies the inseparable relation between Allah as The *Hākim*, humankind, the covenant between them, and *ḥukm shar‘i*.

²³ *Ibid.* Note that the terms ‘assets and liabilities’ in this context do not mean merely material ones as understood in economics-related sciences. This refers more to the assets and liabilities of an individual before Allah.

²⁴ Amrullah, H. A. A. (n.d.-b). *Tafsir Al-Azhar* (Vol. 4). Singapore: Pustaka Nasional PTE Ltd., pp. 2596–2599; Imam ibn Katsir, 2016, pp. 720–725.

²⁵ See: Surah Ali Imran (3) verse 19.

²⁶ Religion. (n.d.). Retrieved December 12, 2019, from Oxford Dictionaries website: <https://en.oxforddictionaries.com/definition/religion>

²⁷ al-attas, s. m. n. (1995). *prolegomena to the metaphysics of islam: an exposition of the fundamental elements of the worldview of Islam*. Kuala Lumpur: Institute for the Study of Islamic Thought and Civilizations., p. 42 See also: Lane, E. W. (1968). *An Arabic-English lexicon: in eight parts* (Vol. 3). Beirut: Librairie du Liban., pp. 942–947; Mukhtār, A. (2008). *Mu‘jam Al-Lughah Al-‘Arabiyyah Mu‘aṣirah*. Cairo: ‘Alam al-Kutub., p. 796.

Maṣlaḥat, Muḍarat, and Maqāṣid al-Sharī'ah

Maṣlaḥat, which includes both (a) the rejection of harm (*muḍarat*) and (b) attainment of benefit (*maṣālih*) is the foundation and purpose of the *Sharī'ah*.²⁸ As Allah says in *Surah al-Anbiya* (21) verse 107:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

“And We have not sent you, [O Muhammad], except as a mercy to the worlds.”

Allah also says in *Surah al-Ma'idah* (5) verse 3:

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتِمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا

“This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as the religion.”

Maṣlaḥat and *muḍarat* in Islam are of two levels which are for the worldly life and for the hereafter.²⁹ However, in the Islamic *aqidah*, the world is only temporary and true success is to avoid hellfire and enter paradise (i.e. in the hereafter). This is as Allah says in *Surah Ali Imran* (3) verse 185:

كُلُّ نَفْسٍ ذَائِقَةُ الْمَوْتِ ۚ وَإِنَّمَا تُوَفَّقُونَ أُجُورَكُمْ يَوْمَ الْقِيَامَةِ ۚ فَمَن رُّجِحَ عَنِ النَّارِ وَأُدْخِلَ الْجَنَّةَ فَقَدْ فَازَ ۚ وَمَا الْحَيَاةُ الدُّنْيَا إِلَّا مَتَاعُ الْغُرُورِ

“Every soul will taste death, and you will only be given your [full] compensation on the Day of Resurrection. So he who is drawn away from the Fire and admitted to Paradise has attained [his desire]. And what is the life of this world except the enjoyment of delusion.”

It is clear that the worldly life is just a means to achieve the aforementioned true success.³⁰ *Maṣlaḥat* is explained by the *fuqaha* to have five essentials, i.e. to preserve the *dīn* (religion), life, progeny, intellect, and wealth, known also as the *maqāṣid al-sharī'ah*.³¹

²⁸ Al-Ghazālī, A. Ḥāmid M. (1324). *Al-Muṣtaṣfa Min 'Ilm al-Uṣūl* (Vol. 1). Cairo: Al-Amiriya Press., p. 286.

²⁹ ibn Abd al-Salam, M. I. (1994). *Qawaidul Ahkam fi Mashalihil Anam* (Vol. 1). Al-Qahirah: Mahfudhoh Lil Nasyir., p. 11; Nyazee, 2003, p. 202.

³⁰ Al-Jawziyah, I. A.-Q. (2010). *'Uddatush Shabirin*. Jakarta: Qisthi Press., p. 264.

³¹ Al-Atawneh, M. (2011). Wahhabi legal theory as reflected in modern official Saudi fatwas: Ijithad, taqlid, sources, and methodology. *Islamic Law and Society*, 18, 327–355., p. 348; Al-Ghazālī, A. Ḥāmid M. (1971). *Shifā' al-Ghalīl Fī Bayān al-Shabah wa al-Mukhīl wa Masālik*

However, whichever way they explain it, the preservation of the *dīn* takes primacy and becomes the soul of the other essentials.³²

Discussions of the preservation of wealth are usually at the center of *fiqh al-mu'amalah* (which this research focuses on), where a legal maxim is applied: the original rule (for matters other than ritual worship) is permissibility, unless a prohibition is found in the Qur'an and Sunnah.³³ Under this corridor, *maṣlaḥat* and *muḍarat* are the main priorities when discussing cases of financial transaction as long as no clear prohibitions are breached. This is also in line with the entire discourse of *maṣlaḥat*, which does not recognize any benefit attained in contravention of the Qur'an and Sunnah.³⁴

Additionally, this is also an area where jurists must consider customs (*'urf*) in rulings, as long as it is not in clear violation of the Qur'an and Sunnah.³⁵ There are some exceptions where certain customs are permissible despite breaching some Islamic principles, either due to explicit exceptions from the *hadith* or 'only slightly contradicting the overall objectives of Islam'³⁶ as discussed in this section.

al-Ta'līl. Baghdad: Mathba'ah al-Irsyad., pp. 159–161; Al-Shāṭibī, I. (1997). *Al-Muwāfaqāt* (Vol. 2). Al-Khubar: Dar Ibn Affan., p. 17.

³² Al-Ghazālī. (1971), p. 159; Naim, W. (2016). Protecting the religion (Maqsad Hifz al-Din) in Malaysian political Islam: A preliminary analysis. *Islam and Civilisational Renewal (ICR)*, 7(3), pp. 386–388; Nyazee, 2003, pp. 204–206.

³³ Al-Shathri, S. N. (1426). *Sharḥ Al-Manzumatu Al-Sa'diyah Fī al-Qawā'id al-Fiqhiyyah* (2nd ed.). al-Riyāḍ: Dar Kanuz Ishbiliya., p. 90; Al-'Asqalānī, I. Ḥajar. (1379). *Fath al-Bārī fī Sharḥ Ṣaḥīḥ al-Bukhārī* (Vol. 2). Beirut: Dar al-Ma'rifah., p. 80.

³⁴ Abdullah, B., & Al-Utsaimin, M. bin S. (2013). *Syarah Hilyah Thalibil Ilmi (Akhlak Pencari Ilmu)*. Jakarta: Akbar Media., p. 215; Al-Būthī, M. S. R. (1973). *Ḍawābiṭ Al-Maṣlaḥat fī al-Sharī'ah Al-Islāmiyyah*. Bayrūt: Mu'assasah al-Risalah., pp. 129, 161, and 216; Nyazee, 2003, pp. 198–199.

³⁵ Al-Zarqā, M. A. (1989). *Sharḥ al-Qawā'id al-Fiqhiyyah*. Damascus: Dar al-Qalam., p. 2.

³⁶ In some cases, there was a case of great necessity. Meaning, there will be *muḍarat* if not allowed. See: zakariyah, I. (2012). legal maxims and islamic financial transactions: A case study of mortgage contracts and the dilemma for Muslims in Britain. *Arab Law Quarterly*, 26(3), 255–285.

There are a number of ways (which must all be seen together) to see how the *maqāṣid al-sharī'ah* sees how, when necessary, to consider one priority in *maṣlaḥat* over the other:³⁷

- Hierarchy between the essentials: The five essentials of *maqāṣid al-sharī'ah* mentioned earlier reflects the hierarchy as mentioned by the jurists. Therefore, preserving the *dīn* takes precedence over preserving life, which takes precedence over preserving progeny, and so on.
- Levels of urgency: The *maqāṣid al-sharī'ah* is broken down into three levels based on urgency, i.e. *darurat* (necessity), which takes precedence over *ḥajiyat* (supporting needs), then *taḥsinīyat* (complementary needs).
- Public versus private: public interest takes precedence over private interest.
- Definitive versus probable: definitive interest takes precedence over probable interest.

The Concept of Legal Entity and Limited Liability

Corporations according to Blackstone in his commentaries are “artificial persons, who may maintain a perpetual succession, and enjoy a kind of legal immortality”.³⁸ This definition has indirectly described corporation as a separate legal entity. Having corporation as a separate legal entity was the invention of the western world, it originated from the Roman law in the first two centuries AD.³⁹ The corporation as a legal entity means it operates like a legal person with rights and responsibilities such as owning property on its own, can sue and be sued, and has a common seal.⁴⁰ The concept was developed further during the middle ages in the church and civil law. The common law then adopted this concept later.⁴¹ Recognizing the status of legal entity of a corporation eventually results in the recognition of the limited liability concept. As a legal person, the

³⁷ Nyazee. (2003), pp. 210–212.

³⁸ Blackstone, S. W. (1897). *Commentaries on the Laws of England: Books I-IV in one volume*. St. Paul: West Publishing Co., p. 157.

³⁹ Duff, P. W. (1938). *Personality in Roman Private Law*. Cambridge: Cambridge University Press.

⁴⁰ Clark, R. C. (1986). *Corporate Law*. Boston: Little, Brown and Co.

⁴¹ Avi-Yonah, R. S. (2005). The cyclical transformations of the corporate form: A historical perspective on corporate social responsibility. *Del. J. Corp. L.*, 30, 767., p. 772.

corporation is able to make decisions on its own and be accounted for the liabilities that it created by itself. The responsibilities of the liability shall not be extended to the shareholder behind the corporation as he/she is a separate legal person.

Technically, limited liability means that the investors of a corporation shall not be liable for more than the amount they investes in the corporation; they do not risk more than what they invest.⁴² For instance, a person invests \$1000 to buy a share in a company with separate legal entity. The worst that could happen is that person loses all his \$1000 investment. No creditor or other party can chase him to pay beyond the amount he invested in the company. The same goes for the managers and the workers of the firm. As they act on behalf of the corporation, they are not liable for the consequence of their actions taken under the name of the corporation. This concept was well established during Blackstone's time for royal corporations, He mentioned in his commentaries, "The debts of a corporation, either to or from it, are totally extinguished by its dissolution, so that the members cannot recover, or be charged with them, in their natural capacities".⁴³

The first form of legal entity corporation was started in the sixteenth century to limit the investor's risk in the oceanic trade which was further developed during the industrial revolution which required capital concentration and risk-sharing in the nineteenth century.⁴⁴ The first time the concept of limited liability was formally regulated under a law was in 1807 in the Napoleonic Code de Commerce, the French civil code under Napoleon I. This regulation was the starter of the adoption of limited liability throughout Europe.⁴⁵ In the United States, the adoption started in the 1830's and by the 1840's the concept was established in almost all states.⁴⁶

⁴² Easterbrook, F. H., & Fischel, D. R. (1985). Limited liability and the corporation. *U. Chi. L. Rev.*, 52, 89., pp. 89–90.

⁴³ Blackstone. (1897). p. 462.

⁴⁴ Biondi, y., canziani, a., & kirat, t. (2008). *The firm as an entity: Implications for economics, accounting, and the law*. London and New York: Routledge., p. 300

⁴⁵ Blumberg, P. I. (1985). Limited liability and corporate groups. *J. Corp. L.*, 11, 573–631.1

⁴⁶ Blumberg, P. I. (1993). *The multinational challenge to corporation law: The Search for a new corporate personality*. New York: Oxford University Press.

Biondi et al. described the characteristics of a limited liability company. First, the company is only liable within the amount of its equity; shareholders and directors are not liable for the obligation of the company. Second, the identity of the shareholders is irrelevant with regards to reciprocal relation and towards the company. Third, the equity can be divided into fungible shares which represent freely negotiable credit instruments. Fourth, the shares which used to be difficult to be disposed are now tradable in the securities markets.⁴⁷ Although the concept of limited liability has been widely used since centuries ago, the legality of limited liability under Islamic law is still debated until today. One of the main concerns of the concept is the recognition of the legal person itself and the high importance of paying debt in Islam which will be deliberated in the next part.

Debt and Loan in Islam

Debt or “*dayn*” in Arabic is defined by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) Shariah Standard as any contractual liability which arises from a loan, deferred sales, or due to benefitting from “services of a particular thing or person”⁴⁸. Some might be confused and use the term debt (*dayn*) and loan (*qard*) interchangeably. *Qard* or loan is defined by the Hanafis as a contract whereby a party gives a fungible property to the other party and the other party shall repay in the future the exact same amount of the borrowed fungible property.⁴⁹ Scholars from other schools of jurist prudence completed this definition by stating that in a *qard* contract the only party that shall gain benefit from this transaction is the borrower.⁵⁰ AAOIFI⁵¹ further explains the difference between the two as follows:

⁴⁷ Biondi et al. (2008). p. 301.

⁴⁸ *Shariah Standards for Islamic Financial Institutions, Accounting and Auditing Organisation for Islamic Financial Institutions*. (2010). Bahrain: Accounting and Auditing Organization for Islamic Financial Institutions., p. 53.

⁴⁹ Al-Zuhayli, W. (2003). *Financial transactions in islamic jurisprudence* (Vol. 1). Beirut: Dar al-Fikr., p. 370.

⁵⁰ *Ibid*.

⁵¹ *Shariah Standards for Islamic Financial Institutions, Accounting and Auditing Organisation for Islamic Financial Institutions*, (2010), p. 53.

“The relationship between a loan and a debt is that the latter is more general than the former, since every loan is described as a debt, but the converse is not true. Not all debts originate from a loan. In this sense, a loan is but one cause of the creation of debt.”

In other words, *dayn* originates from any kind of credit transaction while *qard* originates only from borrowing money or other fungible properties. Since all *qard* are considered as *dayn*, all laws and regulations pertaining to *dayn* are applicable to *qard* as well.

The general rule for *qard* or loan transaction for the borrower is permissible. Muslim jurists have reached ijma' on the permissibility of loan transaction.⁵² For the lender, giving out loans to those in need is recommended (mandub). This is as shown in a hadith where the Prophet (ﷺ) said, *“Every two loans extended by a Muslim to another count as one charitable payment.”*⁵³ There is no discourse that giving a benevolent loan is an act.

Although it is permissible for a Muslim to take a loan when the necessity arises, Islam also puts great emphasize on repaying the debt. The following are some of the hadith that stress the importance of paying debts and some are even intonated as a threat for those who fail to repay debts.

Abu Huraira narrated that there was a man who asked the Prophet (ﷺ) “If I die in Allah’s cause, will my sins be forgiven?” The Prophet (ﷺ) replied, *“Yes, if you are patient, wish for Allah’s reward, and keep moving forward and not flee (from the battle). Except for debt. That is what angel Gabriel told me.”*⁵⁴

In another narration, Prophet Muhammad (ﷺ) said, *“By the One in Whose hand is my soul, if a man were killed in battle for the sake of Allah, then brought back*

⁵² *Qard*. (2018). Retrieved from <http://www.bnm.gov.my/index.php?ch=57&pg=137&ac=517&bb=file>, p. 16

⁵³ Ibn Mājah, M. ibn Y. (2007). *Sunan Ibn Mājah* (Vol. 3). Riyadh: Darussalam., p. hadith no. 2430.

⁵⁴ al-Naysābūrī, M. ibn al-Ḥajjāj. (2007). *Sahih Muslim* (Vol. 5). Riyadh: Darussalam., p. hadith no. 4880.

to life, then killed and brought back to life again, then killed, and he owed a debt, he would not enter Paradise until his debt was paid off."⁵⁵

Another narration reads as follows: *"The soul of the believer is suspended because of his debt, until it is paid off."*⁵⁶

Islam also strongly encourages the believer to avoid taking too much debts. Even, the Prophet (ﷺ) used to make the following prayer.

*"O Allah! I seek refuge with You from worry and grief, from incapacity and laziness, from cowardice and miserliness, from being heavily in debt and from being overpowered by (other) men."*⁵⁷

The Prophet (ﷺ) also said: *"Whoever dies free from three things; arrogance, cheating and debt - will enter Paradise."*⁵⁸

Looking at these hadith, we can see how serious it is to repay debt in Islam. It could be a stone in the way of a Muslim entering paradise. Linking back to the idea of limited liability, a corporation is an extension of the shareholders who own it. The unpaid debt of the corporation is therefore indirectly the debt of its owners.

Thus, the idea of making a corporate veil in the insolvent case shall be accompanied by a strong Sharia justification as it makes the strongly condemned act of not repaying the debt become permissible. If the idea of limited liability does not prevail in the light of Sharia, the unpaid debt of the corporation could be a burden for the owners in the hereafter.

⁵⁵ Al-Nasā'ī, A. 'Abd A.-R. (2007). *Sunan al-Nasa'i* (Vol. 5). Riyadh: Darussalam., p. hadith no. 4688.

⁵⁶ Al-Tirmidhī, M. ibn 'Isā al-S. (2007). *Jami al-Tirmidhi* (Vol. 2). Riyadh: Darussalam., p. hadith no. 1078-1079.

⁵⁷ Al-Bukhārī, M. ibn I. (1997a). *Sahih Al-Bukhari* (Vol. 8). Riyadh: Beirut., p. hadith no.6369.

⁵⁸ Ibn Mājah, 2007, p. hadith no. 2412.

WHAT IS AT STAKE: THE SIGNIFICANCE OF THE ROLE OF LIMITED LIABILITY IN MODERN ECONOMY

Limited liability has been seen as one of the most important breakthroughs in the economic world and it revolutionizes the capital market to what it has become today. President Eliot of Harvard referred to limited liability as “the corporation’s most precious characteristic ...and is by far the most effective legal invention for business purpose.”⁵⁹ He further explained that the fundamental advantage of having the limited liability concept in the corporation is to enable mass and direct capital which allows corporations to multiply and become indispensable.

As President Eliot pointed out, limited liability has an important role in stimulating the flow of capital in the industry and commerce. Without limited liability, the small investors would be cautious and agitated to make investments as it they carry unlimited risk and possibility of personal bankruptcy, even when the companies are doing good and have good prospects to justify the investment.⁶⁰ The same goes to bigger and wealthier investors, the unlimited liability would deter them from making any investment as the creditors of the corporations might chase the wealthy investors as the prime targets regardless of the portion of the investment.⁶¹ The risk is just too excessive for any investor to take part in any investment. Limited liability has made funds from these worried investors become available for business.

Generally, investors are concerned of two primary attributes which are the risk and the return of the investment profile. Investors would love to maximize their returns and at the same time minimizing the risk. The effect of limiting shareholder liability is increasing the value of the investment by limiting the potential negative value of the risk by zero value.⁶² That way, the investors would be able

⁵⁹ Cook, W. W. (1920). Watered Stock Commissions Blue Sky Laws Stock without Par Value. *Mich. L. Rev.*, 19, 583., p. 583

⁶⁰ Rowley, C. K., & Ogus, A. I. (1984). *Prepayments and insolvency*. London: Office of Fair Trading..

⁶¹ Old, J. L. (1985). Some economic considerations of limited liability. *The Law Teacher*, 19(2), 84–89., p. 87.

⁶² Leebron, D. W. (1991). Limited liability, tort victims, and creditors. *Colum. L. Rev.*, 91, 1565.

to enjoy unlimited returns with risk limited only to the value the investors have invested in.

Another angle which makes limited liability attractive is that finally finance can be separated from entrepreneurship. The investors may choose to not be involved with the management of the firm as long as they are ready to risk the amount of money they have invested. Many investors do not have time for the management tasks, thus it is a perfect feature that would attract them to venturing into the capital market.

All this has and continues to increase the efficiency of the capital market and the supply of investible funds which would eventually lead to the enhancement of social welfare as a whole.⁶³ Without limited liability, many worthy companies will be left unfunded and they will not be able to expand and contribute to the economic growth.

In summary, limited liability is the heart and vein of the global economy. If a nation has previously acknowledged and facilitated the limited liability system in its economic and legal system, and then prohibits it, the economic system of that nation may collapse at the micro and macro level. Therefore, the debate on whether Islam recognizes limited liability companies is a serious matter with severe implications.

DISCUSSING THE SCHOLARLY DEBATE

Whether or not Islamic law can recognize a non-natural entity as a juridical person is the central debate in this issue. It has been explained earlier that, in principle, the juridical persons in Islamic law are only natural persons or human beings. However, contemporary jurists have argued on whether or not a non-natural juridical person can be derived from Islamic law.

This section first discusses the argument set out by Yahya Abdurrahman which seems to represent the default position of the past scholarship in response to the limited liability companies. This

⁶³ Old, 1985.

section then proceeds to discuss the opinion of Mufti Muhammad Taqi Usmani which is a landmark ruling regarding the issue of limited liability companies. Then this section continues by discussing the response of Mujlisul Ulama of South Africa (hereinafter, MUSA) Taqi Usmani. Finally, this section attempts to reflect on the implications of this debate.

The Position of Yahya Abdurrahman

Responding to the trend of limited liability companies, Yahya Abdurrahman argues strongly against the limited liability concept.⁶⁴ He proposed six arguments, which can be divided in two: (a) critics of the limited liability contract in the first and second arguments, and (b) critics related to legal personality in the rest of the arguments.

Regarding the purported problem with the contract, Abdurrahman's first argument lies on the issue of unilateral will (*iradah munfaridah*). He suggests that a corporation (*syirkah*) shall be based on a bilateral/multilateral will (*iradah munfaridah*) where there are parties who make an offer (*ijab*) and other parties to accept the offer (*qabul*).⁶⁵ Abdurrahman argues that only unilateral will (*iradah munfaridah*) happens in limited liability partnership (hereinafter, LLP), where the shareholders can decide to join the corporation by their own will by buying the shares without any agreement from other shareholders. They also argue that in LLP, there is no party that makes the offer (*ijab*) and only those who make the acceptance (*qabul*).⁶⁶

The LLP is only started with an agreed act of the corporation containing the requirements and rules of the corporation. Those who want to join may sign the agreement (*qabul*), but there is no one who makes the offer (*ijab*). Their argument on unilateral fails by the very definition of the LLP itself. LLP is established by the common understanding and agreement that anybody may be a shareholder of the company simply by purchasing the shares without the need of any approval from existing shareholders. This agreement indicates that the shareholders have agreed to accept all new shareholders that come to buy the shares.

⁶⁴ Abdurrahman, Y. (2011). Perseroan saham. *Al-Wa'ie*, XII(135), 59–61.

⁶⁵ Ibid, p. 60.

⁶⁶ Ibid.

Therefore, this contract is not a unilateral will, but rather a multilateral agreement which has been formed by the establishment of the corporations. On the matter of the missing offer (*ijab*), the fact that the agreed act is the offer to join the corporation (*ijab*) seems to have been overlooked. Thus, this argument is invalid.

In his second argument, Abdurrahman suggests that the LLP does not have the object of the contract (*al-ma'qud 'alayh*) to conduct any business out of the capital collected. The only agreement made by the shareholders is to gather capital. The agreement to conduct business means that the business shall be conducted, and the responsibility shall be directly borne by all the shareholders themselves; rather than it by the legal entity or the LLP.

However, Abdurrahman may have missed that Shariah does recognize the *wakālah* (agency) concept. The Accounting and Auditing Organization for Islamic Financial Institutions (hereinafter, AAOIFI) defines *wakālah* as “the act of one party delegating the other to act on its behalf in what can be a subject matter of delegation.”⁶⁷ *Wakālah* is approved based on evidence from the Quran, Sunnah and *Ijma'*. Among the evidence are some verses in the Quran *inter alia* Surah al-Kahf verse 19, Surah Al-Nisā' verse 35, and Surah al-Tawbah verse 60 which talk about agencies such as appointing an agent to buy food, to be the arbiter and to collect *zakāh*.⁶⁸

In *wakālah* contract, the principle may or may not pay the agent for the services. The permission to pay the agent is because the agent has done useful work in which they have the right to ask for a remuneration. When the agency service is paid, it comes under the ruling of *ijārah* (reward given for the service rendered).⁶⁹ In this case, the shareholders are allowed to appoint an agent to run the business and the day-to-day operation of the corporation. The board of shareholders appoint a Chief Executive Officer (hereinafter, CEO) to lead the corporation and pay a remuneration for the work and service the CEO provides. This is a common practice and is approved by the *ijmā'*. Therefore, this argument is also disagreeable.

⁶⁷ AAOIFI Shariah Standard No. 23 Item 2/1/1.

⁶⁸ ISRA. (2016). *Islamic financial system: Principles & operations* (M. Ahmed, Ed.). Kuala Lumpur: International Shari'ah Research Academy for Islamic Finance (ISRA)., p. 261.

⁶⁹ ISRA, 2016, p. 261.

However, the main interest is the rest of Abdurrahman's arguments which are related to the 'lack of natural persons' problem. His third argument suggests that there is no 'person' element responsible to conduct the partnership activities, arguing that that LLP only has capital element and therefore could not be regarded as a legitimate partnership in Shariah.⁷⁰ His fourth argument lies in his rejection of capital growth without the management of the parties which is highly related to his fifth argument. His fifth argument concerns legal acts (*tasharruf*) which he argues can only be done by a natural person. Finally, in his sixth argument, Abdurrahman suggests that the LLP exists permanently even after the original founding partners have passed away, while partnerships in Islam traditionally exist depending on the existence of those founding partners.⁷¹

Islamic law does not seem to traditionally recognize the existence of fictional juridical persons. Considering this assumption, Abdurrahman's argument seems to be fitting. After all, the absence of a properly recognized subject of law would make much of the law nonsensical. This is precisely the legal explanation as to why marrying a dog makes no sense, if common sense is insufficient.⁷² However, the problem with Abdurrahman's approach is that his arguments do not take into account that there are contemporary jurists that have challenged the idea that only natural persons are recognized in Islamic law.

The Arguments of Muhammad Taqi Usmani

It was in 1992 that the Islamic Fiqh Academy of the Organization of Islamic Cooperation issued a resolution which decreed, among others, the acceptance of the limited liability company.⁷³ The

⁷⁰ On a technical aspect, this argument is hard to accept considering the powers and role of shareholders such as appointing the director of the company, approving any fundamental decision, mergers and acquisition, dissolution of the company, and all other significant decision powers.

⁷¹ Abdurrahman, 2011, p. 61.

⁷² This has actually happened. See: Hosie, R. (2017, October 11). Woman who married dog eight years ago says he's "Perfect" for her. *Independent*. Retrieved from <https://www.independent.co.uk/life-style/woman-married-dog-8-years-perfect-for-her-marriage-animal-wilhelmina-morgan-callaghan-northern-a7994626.html>

⁷³ See Resolution No. 63/1/7 of 1992 at: *Resolutions and Recommendations of the Council of Islamic Fiqh Academy, 1985-2000*. (2000). Jeddah.

resolution, unfortunately, did not provide any explanation on the rationale behind it.

However, the Hanafi jurist Muhammad Taqi Usmani, who is a permanent member of the Islamic Fiqh Academy, wrote to explain why Islamic law could accept the concept of limited liability corporations. It is to his arguments that the debate seems to be centralized. He suggests that there are indications from which the recognition of non-natural juridical persons can be inferred by virtue of *qiyās* (analogy).⁷⁴

First, is the case of *waqf*, when a property is purchased from the *waqf*'s funds, it is then treated as a property of the *waqf*. Additionally, money donated to a mosque (which is a *waqf*) does not become part of the *waqf*, but is owned by the mosque. This means that the *waqf* can own property, indicating legal personality.

Second, is the case of *Bayt al-Māl*, where Muslims have rights over the funds in it but nobody is legally its owner. Further, the head of state can take money from the *zakāh* department of the *Bayt al-Māl* to pay salaries to the army and this is counted as a debt on the *kharaj* (land tax) department of the *Bayt al-Māl*. Therefore, different departments within the *Bayt al-Māl* can become debtor or creditor, indicating legal personality.

Third, is the case of Joint-Stock, where *zakāh* is levied on the joint-stock as a whole rather than on the persons proportionate to their ownership. This also indicates legal personality.

Fourth, is the case of 'inheritance under debt' (as Usmani terms it), meaning the property left by a deceased person who has a debt higher than the amount of that property. This property has no owner, and someone (heirs or executor) must manage the property and possibly buy and sell for the property. This indicates legal personality.

Fifth, is the case of Abde Mazoon, when slaves may conduct trade on behalf of their masters. Slaves are considered property, but the

⁷⁴ Usmani, M. T. (2002). The principle of limited liability. In M. I. A. Usmani (Ed.), *Meezanbank's Guide to Islamic Banking*. Karachi: Darul Ishaat., pp. 210–215.

master invests in them. If the slave is entangled in debt which cannot be paid by the wealth invested by the slave or even the wealth obtained by selling that slave, the creditors cannot press claims to the master of that slave.

Therefore, according to Taqi Usmani, there are inferences from which to conclude that Islam may potentially recognize the existence of a juridical person who is not in fact a natural person. This means that the limited liability companies can be recognized by Islam.

The Refutation by the Majlisul Ulama of South Africa

However, other jurists came forth to challenge Taqi Usmani's ruling. Majlisul Ulama of South Africa (MUSA) issued a publication on this matter, specifically meant to refute the ruling of Taqi Usmani.⁷⁵ With regards to the case of *waqf*, MUSA argues that the existence of a non-natural juridical person cannot be inferred. Rather, the rulings cited by Usmani as basis only mentions that properties purchased with the income of *waqf* are not automatically part of *waqf*.⁷⁶ It mentions nothing about the *waqf* being the owner of that property.⁷⁷ MUSA then cites that the *fuqahā* (jurists, plural) have ruled that the *waqf* and the property bought from the income is legally owned by Allah.⁷⁸ Therefore, in MUSA's terms, "*Waqf* is not a separate legal entity in the way the capitalist system regards its fictitious 'juridical man.'⁷⁹ Actions done by the Mutawalli to manage the *waqf* are an authority empowered by Allah through the medium of His *Sharī'ah*.⁸⁰

Comparing the two arguments, it does seem that it is hard to accept Usmani's proposition that the property purchased by *waqf* income is actually owned by the *waqf* itself. None among the *fuqaha* have ever

⁷⁵ *The Concept of Limited Liability—Untenable in the Shariah*. (2000). Retrieved from https://www.themajlis.co.za/books/Limited_Liability.pdf

⁷⁶ Ibid, pp. 8-9.

⁷⁷ Ibid.

⁷⁸ Ibid, pp. 9–11. This means beyond the general statement that '... to Allah belongs whatever is in the heavens and whatever is in the earth...' in Surah al-Najm verse 31.

⁷⁹ Ibid, p. 11.

⁸⁰ Ibid, p. 15.

made such a position. Rather, it seems to be more conceivable to accept MUSA's position that such property is owned (alike the *waqf* itself) by Allah. Therefore, no 'fictitious juridical person' is involved in any of this scenario.

However, one may wonder, while Allah is not 'fictitious', He may in actuality fulfil the criteria of a non-natural juridical person. He has legal ownership while He is not a natural person. Can this situation still be a basis from which to create a new type of legal personality?⁸¹

The answer to the above question is 'no'. That 'there is a juridical person other than natural persons' is as far as the above situation may infer.

The first problem with inferring anything further is that the ownership of Allah over all things has been established in the Qur'an, *inter alia* *Surah Al-Najm* verse 31. While it is true that reference to Allah's legal ownership over *waqf* (and purchased property from its income) cannot be found explicitly in the Qur'an or Sunnah, the *fuqahā* did not create this concept and assign legal personality to Allah. Rather, the concept of *waqf* has existed since the time of Prophet Muhammad PBUH (albeit developed over time), and Allah's legal ownership is how the *fuqaha* articulated the legal relations that occurred. There is no creation of new legal ownership.

The second problem is that 'using Allah's ownership over *waqf* as a basis to create a new juridical person' does sound very similar to 'creating something new alike to what Allah has'. The Qur'an and Sunnah do make reference to people ascribing attributes of Allah to other than Allah, and neither are positive (e.g. Fir'awn claiming godship).⁸² Attributing characters of Allah to a creation is a form of *tamthīl* (equating Allah to His creation) which is a form of *shirk* (associating partners to Allah, i.e. the Islamic notion of polytheism),⁸³

⁸¹ This is not Usmani's argument. Rather, this is a hypothetical argument which the authors feel might follow from the present discussion and needs to be discussed.

⁸² See *Surah Al-Qaṣaṣ*, Verse 38.

⁸³ Al-Qaḥṭānī, S. bin 'Alī bin W. (n.d.). *Sharḥ 'Aqīdah Wasīṭiyah*. Surakarta: At-Tibyan., p. 30.

and creating a new being entirely with such character is definitely worse. Surely the cases are not entirely the same, and it may be too far to claim that creating this new juridical person is a form of *shirk*. However, if anything could be inferred from this, it does not seem that Islam endorses creating something with Allah's attribute in mind as basis for that creation.

With regards to the *Bayt al-Māl* case, there are some points by MUSA regarding this issue which may be difficult to agree with. For example, they noted how it made little sense for different departments within the *Bayt al-Māl* to sue each other and even possibly declaring one department bankrupt (possibly making the Bayt al-Maal bankrupt altogether).⁸⁴ While this does seem to be the consequence of a 'contract' between parties, it does not seem that Usmani implies that the *Bayt al-Māl* or the departments are a full blown separate legal entity. Rather, it seems that Usmani simply infers that there is evidence of legal personality characteristics on the department. Therefore, this argument of MUSA seems to be misplaced.

MUSA also argues that if the *Bayt al-Māl* is analogized with a limited liability corporation, then it is bizarre for different departments to be suing other departments (anecdotally, the corporation could 'commit suicide').⁸⁵ However, as mentioned in the previous paragraph, it does not seem to be Usmani's claim that the case is entirely the same as that of a corporation. Additionally, Usmani's argument does not seem to claim that the *Bayt al-Māl* in general has its own legal personality, but rather the departments may have some of its characteristics. This argument too seems disagreeable.

However, there are other points by MUSA which must be considered. They argue that the *Bayt al-Māl* is simply a vault where wealth is stored. The ruler, in taking wealth from one department to another, does not represent the 'debtor' department in making that transaction.⁸⁶ That this activity is termed as 'lending' is simply a matter of management and organization by the ruler, and the word

⁸⁴ *The concept of limited liability—Untenable in the Shariah*, 2000, p. 21.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

‘*dayn*’ (debt) used by the *fuqahā* is not technical in the legal sense but rather a metaphor.⁸⁷

MUSA proceeds by explaining that misappropriation by the ruler is subject to petition via the Islamic Court to compel that ruler, rather than lawsuits to be made.⁸⁸ There seems to be no concept of ‘inter-departmental law suits’ as Usmani suggests.

Having said that, it is rather difficult to agree with Usmani’s inference that the departments of the *Bayt al-Māl* may have characteristics of legal personality. It may seem that the full reality of the legal construct within the activities of *Bayt al-Māl*, if attributed with the characteristics of legal personality as Usmani claims, would not make much sense.

In case of joint stocks, the case is straightforward. MUSA argues that this is a case of *khultah* (mixing of wealth), where the *fuqahā* have noted that the *zakat* is still burdened on the individuals instead of the combined wealth (in this case, the joint stocks).⁸⁹ The levying which is not necessarily proportionate to capital ownership is simply a method of calculating which is not meant to indicate an alteration of burdening.

MUSA further adds evidence to support their point. They noted that if the *khultah* is between a Muslim and a non-Muslim or between non-Muslims, then the non-Muslim(s) does not pay their share of *zakāh*.⁹⁰ Therefore, if the *zakāh* is burdened on the *khultah*, then the faith of the investors should not affect the levying. Or, if one were to insist that the *zakāh* is indeed burdened on the *khultah*, then they must also say that the *khultah* is a Muslim. This is because *zakāh* is a tenet of Islam, and being a Muslim is among the requirements for it to be levied from.⁹¹ The idea of a Muslim stock would at least raise eyebrows.

Therefore, the case of joint-stock cannot be inferred to indicate the characteristics of legal personality of fictional persons. Usmani’s argument here seems to lack merit and is therefore disagreeable.

⁸⁷ Ibid, pp. 19-20.

⁸⁸ Ibid, p. 20.

⁸⁹ Ibid, pp. 24-26.

⁹⁰ Ibid, pp. 23-24.

⁹¹ Al-Jazayri, n.d., pp. 590–591.

In the case of ‘inheritance under debt’, MUSA argues that Taqi Usmani is incorrect in claiming that the property of the deceased is owned by nobody, and that it is owned neither by the deceased or by the heir. Rather, the *fuqahā* have ruled that the ownership either remains with the deceased person until the inheritance is divided or is transferred to the heirs at the time of death.⁹² None of the *fuqahā* rule that the wealth is owned by nobody. This is the premise from which Usmani concludes that the wealth has its own existence. Therefore, when the premise (that the wealth is not owned by anyone) falls then the other conclusions that follow would also fall.

A sub-point of the ‘inheritance under debt’ case which can also be a major issue in itself is the inference that one may make from the absolution of debt in case of death. It is true that if the wealth of the deceased is insufficient to pay the debt, then the creditor cannot pursue the heirs of the deceased. However, MUSA emphasizes that this abolition of debt is simply because the heirs are not bound by any contract with the creditor.⁹³ Death is a reality which Allah has imposed upon all living souls on earth.⁹⁴ Upon death, the debtors literally cease to exist upon this earth except their corpses which are buried in the ground but their true selves (i.e. the souls) are in the *barzah* (afterlife, in the grave) realm,⁹⁵ i.e. a different (and metaphysical) plane of existence.

Having said that, it is difficult to rationalize making *qiyas* from the case of debt abolition in case of death with debt abolition in case of bankruptcy while the persons who are actually responsible for the debt are still literally walking on the earth scot-free. Section 3 above has explained how paying debts is very important. It is very difficult to imagine overriding that with the ‘death’ of an imagined fictional character.

In the case of Abde Mazoon, MUSA refutes Taqi Usmani by explaining how Abde Mazoon and Master are both real human beings and not juridical persons. Abde Mazoon is, in actuality, the

⁹² *The concept of limited liability—Untenable in the Shariah*, 2000, pp. 27–28.

⁹³ *Ibid*, p. 30.

⁹⁴ Surah Ali Imran verse 185.

⁹⁵ Surah Al-Mu’minun verse 99-100.

one who performs the trade, deal, transaction and the contract. In such a case, surely, he cannot be absolved of his debts.⁹⁶

To this extent, MUSA's argument appears to be strong. It is true that, to some extent, a slave (which an Abde Mazoon is) is considered as 'property' in the sense that the Master has some rights over the slave akin to property rights such as buying and selling a slave. However, there are various obligations of a Master resulting in the rights of that slave. This includes: rights to be fed and clothed at the same level as the master; may not be overburdened with work; may not be forced into prostitution; must be called by good names; may not be hit (penalty for the master is to free the slave), and murdering them is a crime punishable by paying *diyat* (blood money).⁹⁷ In fact, a slave is still given the burden to worship Allah.⁹⁸ Having said that, the 'property' status of the slave is not the same as a banana purchased in the market. They are human beings with diminished legal capacity since their enslavement. To analogize a slave to a fictional juridical person is difficult to agree with.

MUSA further explains that the Master is only liable to the extent of the amount invested through the Abde Mazoon. However, this is not due to any sort of creation of a non-natural juridical person. Rather, this is due to a system of *tawktl* or agent-ship between the Abde Mazoon and the Master which is also used in the case of *shirkat*

⁹⁶ *The concept of limited liability—Untenable in the Shariah*, 2000, pp. 32–33.

⁹⁷ See *inter alia*: Al-Bukhārī, M. ibn I. (1997b). *Sahih Al-Bukhari* (Vol. 1). Riyadh: Darussalam., p. hadith no. 4313-4316, 4298-4310; Al-Naysābūrī, M. ibn al-Ḥajjāj. (2007a). *Sahih Muslim* (Vol. 4). Riyadh: Darussalam., p. hadith no.30; Al-Naysābūrī, M. ibn al-Ḥajjāj. (2007b). *Sahih Muslim* (Vol. 6). Riyadh: Darussalam., p. hadith no.5874-5877; Al-Naysābūrī, M. ibn al-Ḥajjāj. (2007c). *Sahih Muslim* (Vol. 7). Riyadh: Darussalam., p. hadith no.7552-7553; Al-Sijistānī, A. D. S. ibn al-A. (2008). *Sunan Abu Dawud* (Vol. 5). Riyadh: Darussalam., p. hadith no.4361 See also: Brown, J. (2016). Slavery and Islam - Part 1: The problem of slavery. Retrieved November 12, 2019, from Yaqeen Institute website: <https://yaqeeninstitute.org/en/jonathan-brown/the-problem-of-slavery/>

⁹⁸ In addition, the slave who worships Allah and obeys her/his master is given double rewards for it. See: Al-Naysābūrī, M. ibn al-Ḥajjāj. (2007d). *Sahih Muslim* (Vol. 1). Riyadh: Darussalam., p. hadith no.387.

al-‘anān (partnership where capital and profit/losses are not shared equally) and *shirkat al-wujūh* (partnership in goodwill).⁹⁹

A Reflection Towards the Debate

While Yahya Abdurrahman’s arguments were disagreeable either due to the overlooking of relevant Islamic principles or contemporary scholarship on the subject, his work represents an important view. His views were published in the *Hizbut Tahrir*, an Indonesia-affiliated magazine, while it must be noted that the international *Hizbut Tahrir* movement holds a very strong antagonist position against Western capitalism and all its products.¹⁰⁰ It is a fitting start, considering that the limited liability concept is at the heart of the capitalist economic system.

Nowhere in the primary sources or classical scholarships is it explicitly or clearly mentioned that Islam recognizes a juridical person. Therefore, what Abdurrahman argues is a good representative of the default state of ruling. The onus is on those who claim that juridical persons can be recognized in Islam.

This is not to mention how the limited liability company would, in case of insolvency, possibly result in the violation of an important rule in Islamic law regarding debts, specifically in the rights of the creditor. As previously explained in the ***Debt in Islam*** section, this issue of the rights of the creditor is a very serious one and clearly regulated in the Qur’an and Sunnah. Therefore, despite the limited liability company being in the area of *fiqh al-mu‘amalah*, the original rule of permissibility cannot be invoked. Additionally, despite the widespread global practice of limited liability companies including in the Islamic world, ‘customs’ can no longer be invoked either.

⁹⁹ *The concept of limited liability—Untenable in the Shariah*, 2000, pp. 33–36.

¹⁰⁰ See: Irkhami, N. (2014). The economic-political concept of *Hizbut Tahrir Indonesia*: Reflection on the early Islamic thoughts. *Indonesian Journal of Islam and Muslim Societies*, 4(1), 105–134.; Zaki, I. (2013). Pemikiran Ekonomi Politik Internasional *Hizbut Tahrir*. *Jurnal Review Politik*, 3(2), 190–213.

In the scholarly dynamics, the ruling of Taqi Usmani and the refutation by MUSA seem to be at the heart of the discussion.¹⁰¹ Considering the arguments of both sides in terms of *hujjah* (basis), as shown in the previous sub-section it seems that it is more difficult to accept the argument of Taqi Usmani. MUSA does seem to show how the propositions made by Usmani do not logically and Shar‘i-wise lead to a conclusion that Islam can recognize a juridical person which is not a natural person. As a logical consequence, the limited liability company cannot be recognized either.

However, it may seem that this matter cannot be resolved simply by considering what the strongest opinion is by merely considering the *hujjah* behind both sides of the debate. As explained in Section 4, the global economic market in the current trend is highly reliant on the limited liability concept. It is difficult to access the economic activities in the world without the limited liability concept, and failing to recognize it (or worse: ceasing an existing recognition of the concept) would affect the economy of a nation very harshly.

Considering this current trend of the global economic market, it may seem that following the strongest opinion on the matter (i.e. not recognizing the limited liability concept) would cause nothing but *muḍarat*. It also seems that *maṣlaḥat*, in terms of economic gain, can only be achieved by following the weaker opinion (i.e. recognizing the limited liability concept). As explained in Section 3, *maṣlaḥat* (i.e. rejecting *muḍarat* and attaining *maṣālih*) is the foundation of the *Sharī‘ah* which seems to be more achievable by following the weaker opinion instead of the stronger opinion.

Therefore, it seems that the most appropriate way to proceed in this current time is to participate in the global economic market by recognizing the limited liability concept in order to achieve the purpose of the *Sharī‘ah*. However, it must be noted that this should not be considered as a final and ultimate permissibility. Rather, as the *qawā‘id fiqhīyyah* dictate: (a) ‘necessity is determined by the extent thereof’, (b) ‘whatever is permissible due to an excuse ceases

¹⁰¹ See *inter alia* Ayub, Z. A., Yusoff, Z. M. & Azrae, A. N. (2009). Separate Legal Entity under Syariah Law and its Application on Islamic banking in Malaysia: A note. *International Journal of Banking and Finance*, 6(2), 139–154.

to be permissible with its cessation', and (c) 'when an impediment is removed, it reverts back to prohibition'.¹⁰²

CONCLUSION

In the Islamic teachings, *rizq* or provisions are guaranteed by Allah. This is stipulated in various verses of the Qur'an including *inter alia* *Surah Saba* verse 24:

قُلْ مَنْ يَرْزُقُكُمْ مِنَ السَّمَاوَاتِ وَالْأَرْضِ ۚ قُلِ اللَّهُ

"Say, 'Who provides for you from the heavens and the earth?' Say, 'Allah.'"

However, emergency situations may arise where the unlawful may be temporarily permitted, which is also stipulated in the Qur'an *inter alia* in *Surah al-An'am* verse 119:

وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرَرْتُمْ إِلَيْهِ

"And why should you not eat of that upon which the name of Allah has been mentioned while He has explained in detail to you what He has forbidden you, excepting that to which you are compelled."

This article has explained how the arguments to not recognize the limited liability concept seem to be stronger than the arguments to recognize it. Not only that it involves conjuring fictional legal persons which is not recognized in Islam, but also potentially violates the important rights of persons related to debts which are well established in the *Shari'ah*. However, this conclusion is one that is absent of context.

The reality of current times is such that following this stronger opinion will incur heavy *muḍarat* to the Muslims at large, which is exactly the opposite of the foundation of the *Shari'ah*. Consequently, the situation seems to require the Muslims to follow the weaker opinion temporarily insofar as the global economic market is in the situation it is today.

¹⁰² Zaydan, 'Abd al-Karim. (2015). *Synopsis on the elucidation of legal maxims in Islamic law* (M. H. Rahman & A. Ismail, Trans.). Kuala Lumpur: IBFIM., pp. 81, 85, 87

However, another important Islamic teaching is *istiqāmah* which means to stand firm in observance of the *dīn* (religion), and endeavor to the furthest extent possible, to fulfil one's obligations.¹⁰³ It is the duty of the Muslim scholars to not surrender to this situation and lead the *ummah* to rise from this 'global subordination'. They must work together to not only persevere under these difficult times, but to also slowly build the economic strength of the *ummah* to one day shape a more Islamic global economic regime.

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REFERENCES

- 'Abd al-Wahhab, M. (2015). *Nawaqidhul Islam - Pembatal Islam (matan dan terjemah)*. Surabaya: Pustaka Syabab.
- Abdullah, B., & Al-Utsaimin, M. S. (2013). *Syarah Hilyah Thalibil Ilmi (Akhlak pencari ilmu)*. Jakarta: Akbar Media.
- Abdurrahman, Y. (2011). Perseroan saham. *Al-Wa'ie*, XII(135), 59–61.
- Ahmad, M. (2015). Role of waqf in sustainable economic development and poverty alleviation: Bangladesh perspective. *JL Pol'y & Globalization*, 42, 118.
- Al-Atawneh, M. (2011). Wahhabi legal theory as reflected in modern official Saudi Fatwas: Ijithad, taqlid, sources, and methodology. *Islamic Law and Society*, 18, 327–355.
- Al-Attas, S. M. N. (1995). *Prolegomena to the metaphysics of Islam: An exposition of the fundamental elements of the Worldview of Islam*. Kuala Lumpur: Institute for the Study of Islamic Thought and Civilizations.
- Al-Bugha, M., & Al-Khin, M. (2006). *Syarah Riyadus Shalihin*. Yogyakarta: Darul Uswah.
- Al-Bukhārī, M. ibn I. (1997a). *Sahih Al-Bukhari* (Vol. 8). Riyadh: Beirut.
- Al-Bukhārī, M. ibn I. (1997b). *Sahih Al-Bukhari* (Vol. 1). Riyadh: Darussalam.

¹⁰³ Al-Bugha, M., & Al-Khin, M. (2006). *Syarah Riyadus Shalihin*. Yogyakarta: Darul Uswah., pp. 181–183.

- Al-Būthī, M. S. R. (1973). *Ḍawābiṭ Al-Maṣlaḥat fī al-Sharī'ah Al-Islāmiyyah*. Bayrūt: Mu'assasah al-Risalah.
- Al-Ghazālī, A. Ḥāmid M. (1324). *Al-Muṣtaṣfa Min 'Ilm al-Uṣūl* (Vol. 1). Cairo: Al-Amiriya Press.
- Al-Ghazālī, A. Ḥāmid M. (1971). *Shifā' al-Ghalīl Fī Bayān al-Shabah wa al-Mukhīl wa Masālik al-Ta'līl*. Baghdad: Mathba'ah al-Irsyad.
- Al-Ḥanafī, I. A. 'Alī. (1997). *Sharḥ al-'Aqīdah Al-Ṭahawīyyah* (Vol. 2). Beirut: Mu'assasah al-Risalah.
- Al-Jawziyah, I. A.-Q. (2010). *'Uddatush Shabirin*. Jakarta: Qisthi Press.
- Al-Jazayri, 'Abdul Rahman. (n.d.). *Kitab al-Fiqhi 'ala al-Mazahib al-Arbaah* (Vol. 1). Beirut: Dar al-Rashad al-Hadithah.
- Al-Mālikī, A. Ṣuhayb 'Abd A.-'Azīz ibn Ṣuhayb. (2000). *Aqwālu Al-Ā'immaḥ wa Al-Du'āt Fī Bayāni Riddati Man Baddala Sharī'ah Min al-Ḥukkam Al-Ṭughāt*. Retrieved from http://www.ilmway.com/site/maqdis/MS_9234
- Al-Maqdisī, 'Abd Allāh b. Aḥmad ibn Quḍāmāh. (1388). *Al-Mughni* (Vol. 6). Maktabah Al-Qahirah.
- Al-Nasā'ī, A. 'Abd A.-R. (2007). *Sunan al-Nasa'i* (Vol. 5). Riyadh: Darussalam.
- Al-Naysābūrī, M. ibn al-Ḥajjāj. (2007). *Sahih Muslim* (Vol. 5). Riyadh: Darussalam.
- Al-Naysābūrī, M. ibn al-Ḥajjāj. (2007a). *Sahih Muslim* (Vol. 4). Riyadh: Darussalam.
- Al-Naysābūrī, M. ibn al-Ḥajjāj. (2007b). *Sahih Muslim* (Vol. 6). Riyadh: Darussalam.
- Al-Naysābūrī, M. ibn al-Ḥajjāj. (2007c). *Sahih Muslim* (Vol. 7). Riyadh: Darussalam.
- Al-Naysābūrī, M. ibn al-Ḥajjāj. (2007d). *Sahih Muslim* (Vol. 1). Riyadh: Darussalam.
- Al-Qaḥṭānī, S. bin 'Alī bin W. (n.d.). *Sharḥ 'Aqīdah Wasīṭiyah*. Surakarta: At-Tibyan.
- Al-Qardhawī, Y. (2010). *Fiqh Jihad*. Bandung: Mizan.
- Al-Shafī'i, I. (1987). *Shafī'is Risalah: Treatise on the foundations of Islamic Jurisprudence (Translated with an introduction, notes, and appendices by Majid Khadduri)* (2nd ed.). Cambridge: The Islamic Texts Society.
- Al-Shathri, S. bin N. (1426). *Sharḥ Al-Manẓumatu Al-Sa'diyah Fī al-Qawā'id al-Fiqhiyyah* (2nd ed.). al-Riyāḍ: Dar Kanuz Ishbiliya.

- Al-Shātibī, I. (1997). *Al-Muwāfaqāt* (Vol. 2). Al-Khubar: Dar Ibn Affan.
- Al-Sijistānī, A. D. S. ibn al-A. (2008). *Sunan Abu Dawud* (Vol. 5). Riyadh: Darussalam.
- Al-Tirmidhī, M. ibn 'Īsā al-S. (2007). *Jami al-Tirmidhi* (Vol. 2). Riyadh: Darussalam.
- Al-Zarqā, M. A. (1989). *Sharh al-Qawā'id al-Fiqhiyyah*. Damascus: Dar al-Qalam.
- Al-Zuhaylī, W. (2003). *Financial transactions in Islamic jurisprudence* (Vol. 1). Beirut: Dar al-Fikr.
- Al-Zuhaylī, W. (2011). *Fiqh Islam Wa al-Adillatuhu* (Vol. 8). Jakarta: Gema Insani Press.
- Al-'Asqalānī, I. Hajar. (1379). *Fath al-Bārī fī Sharh Ṣaḥīḥ al-Bukhārī* (Vol. 2). Beirut: Dar al-Ma'rifah.
- Amrullah, H. A. A. (n.d.-a). *Tafsir Al-Azhar* (Vol. 3). Singapore: Pustaka Nasional PTE Ltd.
- Amrullah, H. A. A. (n.d.-b). *Tafsir Al-Azhar* (Vol. 4). Singapore: Pustaka Nasional PTE Ltd.
- Avi-Yonah, R. S. (2005). The cyclical transformations of the corporate form: A historical perspective on corporate social responsibility. *Del. J. Corp. L.*, 30, 767.
- Ayub, Z. A., Yusoff, Z. M. & Azrae, A. N. (2009). Separate legal entity under Syariah law and its application on Islamic banking in Malaysia: A note. *International Journal of Banking and Finance*, 6(2), 139–154.
- Baydoun, N., Maguire, W., Ryan, N., & Willett, R. (2012). Corporate governance in five Arabian Gulf countries. *Managerial Auditing Journal*, 28(1), 7–22.
- Bertocchi, G., & Canova, F. (2002). Did colonization matter for growth? An empirical exploration into the historical causes of Africa's underdevelopment. *European Economic Review*, 46(10), 1851–1871.
- Biondi, Y., Canziani, A., & Kirat, T. (2008). *The firm as an entity: Implications for economics, accounting, and the law*. London and New York: Routledge.
- Blackstone, S. W. (1897). *Commentaries on the laws of England: Books I-IV in one volume*. St. Paul: West Publishing Co.
- Blumberg, P. I. (1985). Limited liability and corporate groups. *J. Corp. L.*, 11, 573–631.
- Blumberg, P. I. (1993). *The multinational challenge to corporation law: The search for a new corporate personality*. New York: Oxford University Press.

- Brown, J. (2016). *Slavery and Islam - Part 1: The problem of slavery*. Retrieved from Yaqeen Institute website: <https://yaqeeninstitute.org/en/jonathan-brown/the-problem-of-slavery/>
- Chynoweth, P. (2008). Legal research. In A. Knight & L. Ruddock (Eds.), *Advanced research methods in the built environment* (pp. 28–38). West Sussex: Wiley-Blackwell.
- Clark, R. C. (1986). *Corporate law*. Boston: Little, Brown and Co.
- Cook, W. W. (1920). Watered stock commissions blue sky laws stock without par value. *Mich. L. Rev.*, 19, 583.
- Duff, P. W. (1938). *Personality in Roman private law*. Cambridge: Cambridge University Press.
- Easterbrook, F. H., & Fischel, D. R. (1985). Limited liability and the corporation. *U. Chi. L. Rev.*, 52, 89.
- Forbes, K. F. (1986). Limited liability and the development of the business corporation' (1986). *Journal of Law, Economics, & Organization*, 2(1), 163–177.
- Gevurtz, F. A. (2011). The globalization of corporate law: The end of history or a never-ending story. *Wash. L. Rev.*, 86, 475–521.
- Hosie, R. (2017, October 11). Woman who married dog eight years ago says he's "perfect" for her. *Independent*. Retrieved from <https://www.independent.co.uk/life-style/woman-married-dog-8-years-perfect-for-her-marriage-animal-wilhelmina-morgan-callaghan-northern-a7994626.html>
- ibn Abd al-Salam, M. I. (1994). *Qawaidul Ahkam fi Mashalihil Anam* (Vol. 1). Al-Qahirah: Mahfudhoh Lil Nasyir.
- ibn Katsir, Imam. (2016). *Shahih Tafsir Ibnu Katsir* (Vol. 3). Jakarta: Pustaka Ibnu Katsir.
- ibn Katsir, Ismail. (2016). *Shahih Tafsir Ibnu Katsir* (Vol. 2; S. Al-Mubarakfuri, Ed.). Jakarta: Pustaka Ibnu Katsir.
- Ibn Mājah, M. ibn Y. (2007). *Sunan Ibn Mājah* (Vol. 3). Riyadh: Darussalam.
- Ibn Rushd. (2000). *The distinguished jurist's primer* (Vol. 2). Reading: Garnet Publishing.
- Irkhami, N. (2014). The economic-political concept of Hizbut Tahrir Indonesia: Reflection on the early Islamic thoughts. *Indonesian Journal of Islam and Muslim Societies*, 4(1), 105–134.
- ISRA. (2016). *Islamic financial system: Principles & operations* (M. Ahmed, Ed.). Kuala Lumpur: International Shari'ah Research Academy for Islamic Finance (ISRA).

- Kuran, T. (2005). The absence of the corporation in Islamic law: Origins and persistence. *The American Journal of Comparative Law*, 53(4), 785–834.
- Lane, E. W. (1968). *An Arabic-English lexicon: In eight parts* (Vol. 3). Beirut: Librairie du Liban.
- Leebron, D. W. (1991). Limited liability, tort victims, and creditors. *Colum. L. Rev.*, 91, 1565.
- Malmendier, U. (2005). Roman shares. In W. N. Goetzmann & K. G. Rouwenhorts (Eds.), *The origins of value: the financial innovations that created modern capital markets*. Oxford: Oxford University Press.
- Market capitalization of listed domestic companies (% of GDP): Malaysia, Middle East & North Africa, Bangladesh, and Turkey. (n.d.). Retrieved J from Index Mundi website: <https://www.indexmundi.com/facts/indicators/CM.MKT.LCAP.GD.ZS/compare#country=bd:my:zq:tr>
- Market capitalization of listed domestic companies (% of GDP) - Country ranking. (n.d.). Retrieved from Index Mundi website: <https://www.indexmundi.com/facts/indicators/CM.MKT.LCAP.GD.ZS/rankings>
- Mohamad Suhaimi, F., Ab Rahman, A., & Marican, S. (2014). The role of share waqf in the socio-economic development of the Muslim community: The Malaysian experience. *Humanomics*, 30(3), 227–254.
- Mukhtār, A. (2008). *Mu'jam Al-Lughah Al-'Arabiyyah Mu'aşirah*. Cairo: 'Alam al-Kutub.
- Naif, A. T., & Mohd Ali, H. (2009). Corporate governance developments in Saudi Arabia and Malaysia. *UUM Journal of Legal Studies*, 10(1), 185–214.
- Naim, W. (2016). Protecting the religion (Maqsad Hifz al-Din) in Malaysian Political Islam: A preliminary analysis. *Islam and Civilisational Renewal (ICR)*, 7(3).
- Nyazee, I. A. K. (2003). *Islamic jurisprudence*. Selangor: The Other Press.
- Old, J. L. (1985). Some economic considerations of limited liability. *The Law Teacher*, 19(2), 84–89.
- Philips, A. A. B. (1990). *The evolution of fiqh (Islamic Law and the Madh-habs)*. Riyadh: Tawheed Publication.
- Qard. (2018). Retrieved from <http://www.bnm.gov.my/index.php?ch=57&pg=137&ac=517&bb=file>

- Religion. (n.d.). Retrieved December 12, 2019, from Oxford Dictionaries website: <https://en.oxforddictionaries.com/definition/religion>
- Resolutions and Recommendations of the Council of Islamic Fiqh Academy, 1985-2000.* (2000). Jeddah.
- Rowley, C. K., & Ogus, A. I. (1984). *Prepayments and insolvency.* London: Office of Fair Trading.
- Sembiring, S. (2006). *Hukum perusahaan dalam peraturan perundang-undangan.* Bandung: Penerbit Nuansa Aulia.
- Shariah Standards for Islamic Financial Institutions, Accounting and Auditing Organisation for Islamic Financial Institutions.* (2010). Bahrain: Accounting and Auditing Organization for Islamic Financial Institutions.
- Syafi'i, I. (2004). *Ringkasan Kitab Al-Umm* (Vol. 1). Jakarta: Pustaka Azzam.
- The Concept of Limited Liability—Untenable in the Shariah.* (2000). Retrieved from <https://www.themajlis.co.za/books/LimitedLiability.pdf>
- The key to industrial capitalism: Limited liability. (1999, December). *The Economist.* Retrieved from <https://www.economist.com/finance-and-economics/1999/12/23/the-key-to-industrial-capitalism-limited-liability>
- Usmani, M. T. (2002). The principle of limited liability. In M. I. A. Usmani (Ed.), *Meezanbank's guide to Islamic banking.* Karachi: Darul Ishaat.
- Zakariyah, L. (2012). Legal maxims and Islamic financial transactions: A case study of mortgage contracts and the dilemma for Muslims in Britain. *Arab Law Quarterly*, 26(3), 255–285.
- Zaki, I. (2013). Pemikiran ekonomi politik internasional Hizbut Tahrir. *Jurnal Review Politik*, 3(2), 190–213.
- Zaydan, 'Abd al-Karim. (2015). *Synopsis on the elucidation of legal maxims in Islamic law* (M. H. Rahman & A. Ismail, Trans.). Kuala Lumpur: IBFIM.
- Zuki, M. S. M. (2012). Waqf and its role in socio-economic development. *ISRA International Journal of Islamic Finance*, 195(1014), 1–11.