

ANALYSIS ON METHOD OF *DHA' WA TA'AJJAL* WITH DECISION BY SECURITIES COMMISSION SHARIAH ADVISORY COUNCIL (MPS SS) IN THE CONTEXT OF ISLAMIC FINANCING IN MALAYSIA

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ABSTRACT

Malaysia Islamic financing in the context of capital markets apply the method of *dha' wa ta'ajjal* to reduce the delay when early statement is made. It is based on the requirement by the decision of the Securities Commission Shariah Advisory Council (MPS SS). Meanwhile, the *dha' wa ta'ajjal* is rejected by the majority of scholars reason that it resembles *riba al-nasiah*. Accordingly, the researchers placed the three objectives in this study. First, discuss the views of the scholars of law rules *dha' wa ta'ajjal*. Second, examine correlation methods *dha' wa ta'ajjal* with the concept of time value of money according to shariah perspective. Third, analyze the decision of the Securities Commission Shariah Advisory Council (MPS SS) that require the use of methods *dha' wa ta'ajjal* with different views of the scholars. Methodology used is qualitative research approach literature review and analysis of data retrieval. Issues that need to be refined is a term that gives the increase or decrease in value whether it is included in a usury or not. Despite the changes associated with the element synonymous with usury but it is not absolutely based on the difference of mechanisms and policies that do contract. The findings showed that the majority view of scholars who reject the rule *dha' wa ta'ajjal* is to close the door of usury, but it is not practically conclusive of all time which is constantly changing. In conclusion, the results of which requires methods *dha' wa ta'ajjal* based on the minority opinion's scholar by the basis of details of the mechanism and the basis of contracts different with *riba al-nasiah*.

Keywords: *dha' wa ta'ajjal*, time value of money, *riba al-nasiah*, Securities Commission Shariah Advisory Council (MPS SS)

DEFINITION OF *DHA' WA TA'AJJAL* ACCORDING TO ISLAMIC FINANCE

Dha' wa ta'ajjal is a process conducted by the creditor to reduce the debt on the debtor if the debtor pays the beginning of the period set. From the concept of the term as stated by the scholars are:

تَعْجِيلُ الدَّيْنِ الْمَوْجَلِّ فِي مُقَابِلِ التَّنَازُلِ عَنْ بَعْضِهِ

Meaning: "Accelerate the repayment of the debt by accepting a reduction in the delay in part".

Based on the definitions of the following terms, *dha' wa ta'ajjal* occur with 2 action, namely: -

1. Hire: reducing the deferred part of the debt to the debtor.
2. Receivables: speed up debt repayment delay of the period prescribed in the first place.

DIFFERENCE VIEW SCHOLARS ABOUT THE *DHA' WA TA'AJJAL*

The scholars of different views on the legal *dha' wa ta'ajjal* : -

- i. It is not required. This is the majority view as argument *dha' wa ta'ajjal* is compatible tricks occurrence. Their argument is that the similarity between the concept *dha' wa ta'ajjal* with an usury on the corner of the forbidden. The form of this equation is a period or periods as the size of the fixation of a price. This is clear when an extended period then the price will be increased and vice versa when a shortened period then the price will be reduced.
- ii. It is required by the view 'Abbas Ibn al-Nakha'i, Abu Thawr and a history of Imam Ahmad bin Hanbal (Ibn Qudaamah, al-Mughni, 7/21). It is required to be an alternative to release the burden of the debtor.
- iii. View scholars sect al-Shafi'i detailing the legal requirements if it so it is not legitimate because it has elements compatible tricks. But if it is not required then *dha' wa ta'ajjal* is required.

Earlier scholars also discussed the question of the time value of money in problem of *dha' wa ta'ajjal* also known as the *al-sulh al-dayn 'an muajjal bi al-ba'dih halan*. According to Ibn Qayyim, the concept of *dha' wa ta'ajjal* means a person (the creditor) has the right debt on another individual (the debtor) wants to travel to another place while the debt that has not yet arrived. Creditors are worried their rights (the debt) will not be fulfilled while he also can not claim the debt is because of its duration has not yet arrived. The result is that some creditors

want to reduce the debt while the debtor is also accelerating the payment of such debt. The jurists differ on the law *dha' wa ta'ajjal* ie whether it is required by legislation or otherwise. The difference of opinion stems from the accelerated time factor provided benefits in the form of money making it similar to usury (*riba*) theme in terms of the existence of the element of interest is the concept " give me my last pay more ". These elements give meaning to the exchange between time with money and time is not a money, which can be contracted. The fact above shows that the most important issues of the time value of money is a similarity with *riba al-nasi'ah* is forbidden in terms of the existence of the essence of *riba al-nasi'ah* in allocating the money to specific time dimension as tough time dimension and immediately. Therefore, the majority of scholars forbid methods based on the principles of drawing *dha' wa ta'ajjal* authentic as it is said to be the same as *riba al-nasi'ah* clearly in terms of mechanism or form and essence the terms "substance" or meaning of existence usury in the method.

The argument that banning *dha' wa ta'ajjal* is based on the hadith narrated by *Miqdad bin al-Aswad*:

أَسْلَفْتُ رَجُلًا مِائَةَ دِينَارٍ ثُمَّ خَرَجَ سَهْمِي فِي بَعْثِ بَعْتِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ لَهُ : عَجَّلْ لِي تِسْعِينَ دِينَارًا وَأَحْطُ عَشْرَةَ دَنَائِيرٍ فَقَالَ : نَعَمْ فَذَكَرَ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ : أَكَلْتُ رِبَا يَا مِقْدَادُ وَأَطَعَمْتَهُ

Meaning: "From al-Miqdad bin al-Aswad said: I have a debt to a man, then I have been chosen by lot to join the army sent by the Prophet, I said to him (the debtor): Pay as much as 90 dinars immediately and I will reduce it by 10 dinars. He mentioned this to the Prophet s.a.w. and he said: You have usury oh Miqdad and has fed an usury to someone else ".

Al-Sarkhasyi in his book *al-Mabsut* also include a ban:

وَإِذَا كَانَ لِرَجُلٍ عَلَى رَجُلٍ دَيْنٌ إِلَى أَجَلٍ , وَهُوَ مِنْ ثَمَنِ مَبِيعٍ فَحَطَّ عَنْهُ شَيْئًا عَلَى أَنْ يُعَجَّلَ لَهُ مَا بَقِيَ فَلَا خَيْرَ فِيهِ لِأَنَّ هَذَا مُقَابَلَةُ الْأَجَلِ بِالذَّرَاهِمِ وَمُقَابَلَةُ الْأَجَلِ بِالذَّرَاهِمِ رِبَا , أَلَا تَرَى أَنَّ فِي الدَّيْنِ الْحَالِ لَوْ زَادَهُ فِي الْمَالِ لِيُوجَّهَهُ لَمْ يَبْزُ فَكَذَلِكَ فِي الْمُؤَجَّلِ إِذَا حَطَّ عَنْهُ الْبَعْضَ لِيُعَجَّلَ لَهُ مَا بَقِيَ اهـ

From the point of *dha' wa ta'ajjal* concept is similar to the concept of usury. When deducting the value of the original debt for the accelerated period it refers to the exchange and purchase

resemble. In the concept of usury lending, there is an increase in value due to the extended period of debt. The equation that applies is the value that can be reduced or increased pegged to a reduced or extended period. This is what makes it resemble a usury as a trick that happens is that the cause of the debt value increases or decreases.

Rational argument can be categorized into two parts, namely the argument in terms of the existence of usury (meaning) and the argument of the existence of usury outwardly:

a. The existence of meaning compatible in *dha' wa ta'ajjal*:

Example 1: If the creditor requested that the debtor pay in advance, and he will drop the remainder of the debt he had actually sold the al-death with the amount of debt that has been dropped. This is because the real war is like someone selling a term with the value of the excess to be paid. When the pay period has arrived, he said: "Add to my values and my debt would extend the period of time". The situation is no different from someone who said: "reduce the time period and the payment I will reduce the debt to be paid".

b. The existence of a form of usury in the *dha' wa ta'ajjal*

Example 1: In *al-Muntaqa Sharh al-Muwatta'* it is stated that the above methods are prohibited because they are owed as much as 100 dirhams to 100 dirhams counted bought the delay from debtors who pay in advance together with the reduction of 50 dirham in cash. This condition is not lawful for two reasons, the first is existend of *riba al-fadl* and *riba al-nasi'ah* of the same type (ie dirhams).

Example 2: What can be understood from Imam Malik's opinion on this issue is the method which is compatible with the speed of a (debt) are not required to be calculated al-muqril it. He actually lend immediate of eg 100 dirhams so that he can settle the debt that the delay of 50 dirhams. And this condition is included in "قرض جر به نفعا".

Whereas the opinion of scholars who claim that the *dha' wa ta'ajjal* is required is based on the following arguments:

Hadith narrated by Ibn 'Abbas that:

أمر النبي صلى الله عليه وسلم بإخراج بني نضير من المدينة، جاءه ناس منهم فقالوا يا رسول الله إنك أمرت بإخراجهم وهم على الناس ديون لم تحل فقال النبي صلى الله عليه وسلم ضعوا وتعجلوا

Meaning: "Ibn 'Abbas that the Prophet s.a.w Bani Nadir had ordered out of the city of Medina and some of them told him: O Messenger of Allah you take them out, while there are still many people who owe them. S.a.w Prophet then said: provide debt reduction and accelerate payment " .

And the hadith:

عن كعب أنه تقاضى ابن أبي حدرد ديناً كان له عليه في المسجد فارتفعت أصواتهما حتى سمعها رسول الله صلى

الله عليه وسلم وهو في بيته، فخرج إليهما حتى كشف سجف حجرته فنادى يا كعب قال لبيك يا رسول الله قال

ضع من دينك هذا وأوماً إليه أى الشطر قال لقد فعلت يا رسول الله قال قم فاقضه

Meaning: "Ka'ab reported that he has a debt that must be fulfilled by Ibn Abi Hadrad; where they talked about the debt in the mosque and they have raised their voice to be heard by the Prophet s.a.w who were in his house. He s.a.w out to both to look curtains of his room. He cried: O Ka'ab then said: Yes, O Messenger of Allah. He said: Lessen your debt -with some thereof-- signal. Ka'ab replied: Messenger of Allah, I have done it s.a.w. The Prophet then said (to Ibn Abi Hadrad): build and settle your debt. "

Ibn 'Abbas r.a view *dha' wa ta'ajjal* required with the following argument:

أنه جائز لأنه من باب أخذ لبعض حقه وتارك لبعضه

Meaning: "It (*dha' wa ta'ajjal*) required for such a thing to take some of their rights and the release of others"

There is a response to the view that banning *dha' wa ta'ajjal*. It is expressed through the explanation by Ibn Qayyim that has strengthened the view that the group requires *dha' wa ta'ajjal* with the following conclusion: "There is no war in this issue either in terms of reality, language and custom. In reality laptop is something that increases while this does not happen in *dha' wa ta'ajjal*. Those who have been banned according the same meaning with usury, while there are significant differences between the words:

- a. "Whether you preferred payment (due to late payment) or pay debts (according to period)" - usury
- b. "I hasten to debt and as a reward, I'll cut your debt" - *dha' wa ta'ajjal*

Where are the similarities between this word? Furthermore, there is no passage, an authentic consensus or drawing, which forbids this concept. "This view has also been adopted by us in relation to the concept of debt reduction. Academi of Fiqh Islam in the 7th meeting in Jeddah has decided that this method is *dha' wa ta'ajjal* must not fall into the category of usury is forbidden. But this decision is applicable if *dha' wa ta'ajjal* only occur between creditors and debtors, not to third parties. The reason they do not allow *dha' wa ta'ajjal* use to third parties for fear it will be stuck in a reduction in the practice of conventional debt certificates (commercial papers).

APPLICATION OF *DHA' WA TA'AJJAL* IN ISLAMIC FINANCE IN MALAYSIA

Concept *dha' wa ta'ajjal* is the action part of the debt the creditor when the debtor paid the balance of the debt early. This concept is important because it is based on this principle allow Islamic bonds traded on the secondary market, where the holder of these securities will be sold at a lower price.

In general method *dha' wa ta'ajjal* is important in the development of Islamic corporate bonds in the secondary market. Islamic bonds issued is based on the concept of *Ijarah, istisna', murabaha* and *mudarabah musharakah*. In order for these bonds traded in the secondary market, the holders of these securities will be sold at a lower price based on the concept of *dha' wa ta'ajjal*.

The decision of the Securities Commission Shariah Advisory Council (MPS SS) has discussed the issue *dha' wa ta'ajjal* in a series of meetings. At its 10th meeting dated October 16 to 17, 1997, SS MPS has agreed to adopt *dha' wa ta'ajjal* to develop Islamic capital market instruments. The results of the study, believes that the concept of MPS SS *dha' wa ta'ajjal* is required. This is based on the following arguments:

Hadith narrated by Ibn 'Abbas that:

عن ابن عباس قال أمر النبي صلى الله عليه وسلم بإخراج بني نضير من المدينة جاءه ناس منهم فقالوا يا رسول الله إنك أمرت بإخراجهم ولهم على الناس ديون لم تحل فقال النبي صلى الله عليه وسلم ضعوا وتعجلوا

That is: It was narrated from Ibn `Abbas that the Prophet s.a.w has ordered Bani Nadir out of the city of Medina and some of them told him: 'O Messenger of Allah, you take them out, while there are still many people who are in debt to them'. Then the Prophet said: 'provide debt relief and expedite payments.

And hadith by Ka'ab:

عن كعب أنه تقاضي ابن أبي حدرد ديناً كان له عليه في المسجد فارتفعت أصواتهما حتى سمعها رسول الله صلى الله عليه وسلم وهو في بيته فخرج إليهما حتى كشف سجف حجرته فنادى يا كعب قال لبيك يا رسول الله قال ضع من دينك هذا وأوماً إليه أي الشطر قال لقد فعلت يا رسول الله قال قم فاقضه .

Meaning: Ka'ab reported that he has a debt that must be fulfilled by Ibn Abi Hadrad; they talked about the debt in the mosque and they have raised their voice to be heard by the Prophet Muhammad, who was in his house. Then the Prophet came out to both to look curtains of his room. He exclaimed: 'O Ka'ab!' Ka'ab then answered: 'Yes, O Messenger of Allah.' He said: 'subtract your debt.' (With a signal portion there of). Kacab answer: 'I have done it, Messenger of Allah. "The Prophet then said (to Ibn Abi Hadrad):' Get up and settle your debt. '

THE REQUIREMENT ANALYSIS MPS SS ON DHA' WA TA'AJJAL

Decisions made by the MPS SS in requires *dha' wa ta'ajjal* is based on the interpretation of the two sayings of Prophet s.a.w. First, the hadith narrated by al-Bayhaqi which tells the story of the expulsion of the Jews of Banu Nadir in which this group complained to the Prophet s.a.w that many of the people of Medina still owes them. As a solution to the problem, they (Bani Nadir) aimed to reduce the amount of debt and in consideration of the need to speed up payments owed. This situation shows that the Prophet s.a.w require *dha' wa ta'ajjal*.

This hadith, if viewed from the angle of the chain is included in the category of hadith which have weak sanad (unworthy). This is because, according to al-Haythami (al-Hafiz Nur al-Din 'Ali bin Abi Bakr) al-Zawa'id author Majma' Manba' wa al-Fawa'id all the narrators of this hadith (Abu' Abd Allah al-Hafiz, Abu Nasr Ahmad bin Sahl, Saleh bin Muhammad al-Hafiz Jazrah, Muhammad bin 'Ali, Yazid, Dawud ibn Husayn, 'Ikramah and Ibn `Abbas) is thiqah except Muslim bin Khalid al-Zinji al-Makki who are unworthy category. Dr. Wahbah al- Zuhayli also in al-Fatawa al-Mu'asarah expressed similar views.

Second, MPS SS set a concept *dha' wa ta'ajjal* based on hadith Bukhari and Muslim that indeed is in Sahih Hadith. This hadith is in fact a story of Ibn Abi Hadrad borrow money from Ka'ab bin Malik. Due to certain reasons Ibn Abi Hadrad not able to repay the loan amount. Hence, there was a bit of a fight and an argument that is heard by the Prophet and he instructed s.a.w Ka'ab reduce debt. Ka'ab explained that he had already reduced the number of these and subsequent s.a.w Prophet ordered Hadrat Ibn Abi settle the debt.

Based on the reports mentioned MPS SS had decided to require the *dha' wa ta'ajjal*. This principle is important in the development of Islamic corporate bonds in the secondary market. Islamic bonds issued in Malaysia is now based on the concept of *Ijarah, istisna', murabahah* and *mudarabah musharakah*. In order for the bonds are traded in the secondary market, holders of these securities will be sold at a lower price based on the concept of *dha' wa ta'ajjal*.

If viewed from the chain, Hadith has four different chain of narrators. Sanad first as narrated by al-Bukhari in Kitab al-Solah in Chapter Raf' al-Sawt fi al-Masjid, narrators is Ahmad (thiqah hafiz) Ibn Wahab (thiqah hafiz), Yunus ibn Yazid (thiqah), Ibn Shihab (muttafaq'ala jalalih wa 'itqanih),' Abd Allah bin Ka'ab (thiqah) and Kacab bin Malik (Awshak al-Nas and al-Sahabah). Sanad both as narrated by al-Bukhari in Kitab al-Khusumah Chapter Kalam al- Khusum Ba'duhum narrators is Harmalah bin Yahya (Saduq), 'Abd Allah bin Wahab (thiqah hafiz), Yunus ibn Yazid (thiqah), Ibn Shihab al -Zuhri (muttafaq'ala jalalih wa 'itqanih),' Abd Allah bin Kacab (thiqah) and Kacab bin Malik (Awshak al-Nas and al-Sahabah).

Sanad a third as narrated by al-Bukhari in Kitab al-Sulh Bab al-Sulh bi al-Dayn wa al-'Ayn, narrators are Ishaq bin Ibrahim (thiqah hafiz), Muslim bin 'umar (thiqah hafiz), Yunus ibn Yazid (thiqah), Ibn Shihab al-Zuhri (muttafaq'ala jalalih wa 'itqanih),' Abd Allah bin Ka'ab (thiqah) and Ka'ab bin Malik (Awshaq al-Nas and al-Sahabah). Sanad fourth as narrated by al- Muslim in Kitab al-Musaqat Bab al-Wa'd Istijab min al-Dayn narrators is Alya (thiqah crescent), Ja'far bin Rabicah (thiqah), Abd. al-Rahman bin Hurmuz (thiqah crescent), Abd Allah bin Ka'ab (thiqah) and Ka'ab bin Malik (Awshaq al-Nas and al-Sahabah).

Based on the assessment of the chain that has been done, this hadith has a good chain and no disfiguring nature of the narrators of hadith. Apart from these two traditions in the MPS SS also uses *Qawl Sahabi* as a source of support for principles require *dha' wa ta'ajjal*. Qawl selected Sahabi Ibn 'Abbas is of the opinion quoted by Ibn Qudamah which requires *dha' wa ta'ajjal*. In the fatwa, Ibn 'Abbas stated that *dha' wa ta'ajjal* required as it is included in the right to take part and drop the other part (Muhammad Yusri bin Yusof 2006: hlm.107).

But the argument based on authentic drawing is still disputed by some experts that the method requires *dha' wa ta'ajjal*. This is because for them the actual drawing is drawing about the Hadith. Therefore, Ibn Rushd concludes that the main reasons for the error in this issue is the clash between shabah with qiyas al-Hadith which is narrated by Ibn Abbas backup proposition for jurists who require the above method. Based *qiyas al-shabah* the majority equate problem *dha' wa ta'ajjal* with problems "of additional fee based on additional time" is *riba al-nasi'ah* which forbidden by the al-Quran. *Wajh al-shabah* or a similarity in this drawing is the position given in exchange rates reduced the levels of debt in return to the cash given. According to them, the situation is identical to the practice of *riba al-nasi'ah* the creditors to extend debt payment by

requiring added value of the debt. This consensus view was criticized by some former and contemporary jurists like Ibn Qayyim al-Jawziyyah, al-Shawkani, and al-Masri. The criticism put forward by them because majority view calculated a side for the time value of money is indeed recognized by legislation, particularly when the majority itself requires the sale and purchase deferred to a higher price on the grounds that the time has its value in the price of an item.

CONCLUSION

The researcher believes that the views of the majority of the inconsistencies is actually apart from not want to open the door as wide as possible thousands of practitioners usury intrinsic base is also due to legal issues debated. For example contract based on trading in Islam *al-bay'* such agreement is built on the principles of justice, while the contract based on volunter such as loan contract is built on the principle of charity. Both the principle of justice and charity are different in concept and its application in Islamic finance. Conceptually, justice refers to the completion of a rights and responsibilities of the mandatory or minimum level while charity referring to enhance the rights and responsibilities of the circumcision which exceeds the level required.

In terms of its application in Islamic financial transactions, justice principles require that financial transactions contracted ended with both parties get their rights and their exchange without any excess or deficiency. Whereas the principle of charity manifested through action in pending sale buyers such as making payments earlier than the appointed time on his own volition, while the seller is also applicable courtesy to reduce the debt on his own accord. Another example is the issue of loan, creditors are not allowed to charge additional fees if the debtor is unable to meet its debt obligations on time as promised loan is the contract that is built on the principle of charity. If a fee is charged, then the contract loan become unfunctional because they are out of principle of charity, which requires a right of circumcision performed on stage without any consideration. Based on the differences submitted, duly classified first discussed the issue of whether it is built on justice or justice. This fact can be understood from the majority opinion that requiring an increase in pending sale dimension resulting from the additional time. This requirement is still built on the principle of justice because the time incurred by the seller rewarded in the form of higher prices is borne by the buyer. Thus, the problem *dha' wa ta'ajjal*, should be specified in advance the position of a contract containing methods *dha' wa ta'ajjal* ie whether it is built on justice or charity.

Actually if *dha' wa ta'ajjal* methods applied to the debt resulting from the delay of pending sale then it should not be counted as usury does not affect the principle of justice because of the reduction of additional time followed by reduction of the debt in the form of exchanges between the time the money. Elements of this exchange showed that the method is still *dha' wa ta'ajjal* trading or an appropriate bilateral contract with bay' bithaman 'Ajil (BBA), which also is trading

and built on the principle of justice. Moreover, this situation also does not contain any element or usury prohibited without the benefit of a surplus that is said to exist in the application of the above methods in *al-bay'*. This is because the timing exchange in return for money in the form of pending sale not apply directly but it is still anchored to the price of goods contracted as will be explained later. From the point of *maqasid al-shari'ah*, implementation *dha' wa ta'ajjal* in buying and selling that involves the exchange of money between the time did not lead to an element of money making money (money begets money) because it was applied in the contract of sale which involves goods contracted. This leads to the existence of the money is not affected because the money in this situation remains the way it is technical and that purpose is required of the contracted agreement. Conversely, if the method is implemented in *dha' wa ta'ajjal* loan contract, then the money will be affected because no goods to the purpose of the contract al-qard purpose of the contract even loan is money itself. This situation will lead to money to make money, which is the effect of usury lending practices. Thus, the method comprising *dha' wa ta'ajjal* bilateral trading element cannot be adopted in the contract loan unilateral.

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