

The 'Urf of Hibah on Deposits: An Analysis in the Light of New Trends in Islamic Financial Industry in Malaysia

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Abstract

This paper explores the role of 'urf (custom) in Islamic finance, particularly when it becomes *fāsīd* (invalid). While 'urf is among the *Sharī'ah* sources in *mu'āmalāt* (commercial activities), some of the cases may need to be reviewed. Based on library research, the findings of this study reveal the roles of 'urf in Islamic finance as follows: (i) interpreting rulings on *Sharī'ah* texts; (ii) establishing rulings in areas that have not been clarified by *Sharī'ah*; and (iii) reconsidering the change of financial practices. As for the case of *hibah*, it is known that BNM has issued a special regulation to reconsider the practice of *hibah* in *wadī'ah* among Islamic banks to avoid the element of 'urf *fāsīd* on that matter. This approach has been followed by Tabung Haji by replacing its *wadī'ah* with *wakālah*. While this study may be considered as a conceptual paper, it still provides an analysis on the real practice of *hibah* on Islamic deposit in Malaysia.

Keywords: 'Urf, Hibah, Wadī'ah, Islamic Finance.

عرف الهبة على الودائع: دراسة تحليلية في ضوء الاتجاهات الجديدة في الصناعة المالية الإسلامية في ماليزيا

ملخص البحث

هذه الدراسة تستكشف دورا هاما للعرف في المالية الإسلامية خصوصا إذا أصبح العرف فاسدا. لقد أصبح العرف مصدرا من مصادر الشريعة في المعاملات، ولكن بعض الأعراف تحتاج المراجعة. بناءً على البحث المكتبي، نتائج هذه الدراسة تظهر دور العرف في المالية الإسلامية كما يلي: (i) تفسير الأحكام في نصوص الشريعة، (ii) وضع الأحكام في المجال الذي لم توضحه الشريعة، و (iii) إعادة النظر في تغيير الممارسات المالية. أما بالنسبة لمسألة الهبة، لقد أصدر البنك المركزي لائحة خاصة لإعادة النظر في ممارسة الهبة في الوديعة بين البنوك الإسلامية لتجنب العرف الفاسد في هذا الأمر. ثم اتبع هذا الأمر في صندوق ادخار الحاج (Tabung Haji) باستبدال الوديعة إلى الوكالة. مع أن هذه الدراسة تعتبر ورقة مفاهيمية، إلا أنها تقدم تحليلاً حول الممارسة الحقيقية للهبة في ماليزيا.

كلمات مفتاحية: العرف، الهبة، الوديعة، المالية الإسلامية.

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1. Introduction

Since their first establishment in 1963, Islamic financial institutions have become a part of modern financial intermediaries like their conventional counterparts. In this regard, Islamic institutions are actively involved in various sectors of financial activities including resource allocation, investment, and financing. In most Muslim majority countries, these institutions are fiercely competing with conventional financial institutions in

order to attract customers to their services. In fact, utilizing the name of 'Islam' requires them to strictly ensure that all of their financial activities are complying with *Shari'ah* rulings and principles.

It is noted that *Shari'ah* rulings are established from Islamic sources. While the Qur'an and the Sunnah are considered the highest authorities in *Shari'ah* matters, other secondary sources are needed in order to support the implementation of *Shari'ah* rulings. In fact, many rulings mentioned in both the Qur'an and the Sunnah are in the form of general principles or rulings which need detailed explanation. In this case, secondary sources, which were derived from the Qur'an and the Sunnah, have been systematically developed by scholars. Among them is 'urf (custom), which represents a matter that is well-known and widely practiced by the overwhelming majority of people (Abū Zahrah, 1958:274). Recognizing 'urf as a *Shari'ah* source that facilitates people's daily life is a

blessing for them. In contrast, neglecting this element might cause unbearable problems since they are forced to behave against their habits (Ishak, 2020:80).

Concerning Islamic finance, *Shari'ah* allows commercial activities to be initiated by people as long as these activities are not contradicting with *Shari'ah* principles. If the Qur'an and the *Hadith* do not provide sufficient details in financial practices, '*urf*' becomes the subsequent reference. Since '*urf*' has played a significant role in determining matters related to finance and wealth, its authority is proven (Che Abdullah & Ab Ghani, 2014:404). During the time of revelation, several financial activities were already being practiced by the Arab society as their '*urf*'. Later, the Prophet Muhammad SAW had recognized most of them. Such activities were called *mudarabah* (silent partnership), *musharakah* (partnership), and *salam* (forward selling). Nevertheless, '*urf*' may render any practice *fasid* (invalid) and no longer comply with *Shari'ah* (Ahmad Sufyan, Ab Mumin, 2008:403).

On this subject, Islamic finance must ensure that its current practices are free from '*urf fasid*' which eventually affects their status. Therefore, this paper aims to explore how '*urf*' plays a significant role in modern Islamic finance. To be more practical, the issue of *hibah* (gift) on *wadi'ah* (saving) is to be studied extensively under the topic of '*urf*'. In general, Islamic financial institutions have offered deposit services for their customers based on *wadi'ah*, but they cannot guarantee any additional return. However, some of them grant *hibah* to depositors as a token of appreciation, which is a practice that is allowed as long as the *hibah* is not bound between contracting parties. Nevertheless, over time, giving *hibah* to depositors has become a norm among Islamic financial institutions. This has subsequently changed the concept of *wadi'ah* into an interest-based practice.

2. Literature Review

Even though this study is considered as a conceptual review in which its data is solely based on literature, this section has been provided in order to explore current related research as well as to identify the gap in the area of this study. In general, this study involves two main areas: the role of '*urf*' in Islamic finance and

the issue of *hibah* in saving practice. To begin with, *Shari'ah* allows financial activities to be initiated by people as long as they are complying with *Shari'ah* principles. As a result, '*urf*' has become one of the main references particularly to establish rulings and practices in more detail. As for this, Che Abdullah and Ab Ghani (2014:442) view that the role of '*urf*' is not limited to analyzing only opinions from previous scholars, but it also supports the application of the Qur'an and the *Sunnah* into current circumstances. At the same time, Hasbullah and Mahad Musa (2018: 285) believe that since many *qawaid fiqhiyyah* (Islamic legal maxims) based on '*urf*' are applied in *bay'*, *wakalah* and *ijarah*, it indicates a significant impact of '*urf*' in the area of finance.

With the matter of deposit saving practice, S. Bello and R. Hassan (2013:72) have identified that both conventional and Islamic banks offer their deposit products based on '*urf*'. These include current, saving and investment account. Therefore, it is very crucial to carefully examine the underlying structure of Islamic deposit so that it is not influenced by the conventional practice. In this issue, it has been identified that three main deposit products are applied by Islamic banks: *wadi'ah*, *qard* (loan) and *mudarabah* in which they must be free from *riba*, injustice and earning a return without taking risk (S. A. Bello et. al., 2015:41). Nevertheless, since the capital of *mudarabah* cannot be guaranteed, *tawarruq* (commodity *murabahah*) seems to be a new alternative (A. G. Ismail, Nik Abdul Ghani, & Mat Zain, 2016:389).

In connection with this, this study explores the role of '*urf*' in reconsidering the practice of *hibah* in Islamic finance in Malaysia. While many studies have explained the role of '*urf*' in establishing Islamic rulings, this present study, in contrast, will identify a practice that is no longer be considered as *Shari'ah* compliant because of '*urf*'. In the case of *hibah* in the saving practice in Malaysia, involving Islamic banking industry and Tabung Haji has been selected since both institutions have changed their policies due to *Shari'ah* issues, as it is believed that these issues have a strong relationship with '*urf*'.

3. 'Urf in Islam: An Overview

'Urf literally means to know, while its technical meaning can be defined as a matter that is known and practiced consistently by the overwhelming majority of people (Abū Zahrah, 1958: 274). Since 'urf has a significant impact in people's life, it is considered as one of the *Shari'ah* sources as long as it does not go against *Shari'ah* principles.

In fact, a word or a practice can be declared by people as their 'urf only when it benefits them. Therefore, not surprisingly, many *Shari'ah* rulings have been built based on 'urf since the time of the Prophet Muhammad SAW. Respecting guests and avoiding conflicts due to the holy months are among some of the examples (Al-Zaidān, 1968:205). At the same time, 'urf is characterized with flexibility since it can change because of the change of time and place. Moreover, since 'urf is inherently active, open-ended and will always remain susceptible to further refinement, it proves its significant role in people's life (S. A. Bello & R. Hassan, 2013:72).

In terms of its authority, the Qur'an and the *Sunnah* support the position of 'urf in Islam. These include the word 'urf that is mentioned in the Qur'an: "Take what is given freely, enjoin 'urf, and turn away from the ignorant" (Al-'Araf: 199). According to *tafsir*, some scholars refer the meaning of 'urf in this verse as *ma'ruf*, which means anything that is good (Ibn Kathīr, 2000:812). Since practicing 'urf brings many benefits, it is recognized by the Qur'an. Meanwhile, it was reported that Hind bint 'Utba, the wife of Abu Sufyan, came to the Prophet Muhammad SAW to complain about her husband: "O Allah's Messenger! Abu Sufyan is a miserly person. He does not give adequate maintenance for me and my children, but (I am constrained) to take from his wealth (some part of it) without his knowledge. Is there any sin for me? Thereupon the Prophet SAW said: No, take from his property what is 'urf which may suffice you and your children" (Al-Bukhāri, 1989, 7: 5359) This *hadith* clearly shows how the Prophet Muhammad SAW provides a guidance of *nafaqah* (maintenance) for wives as its amount should be counted according to the current 'urf. This can be understood as the role of 'urf as the main reference in matters that are ambiguous and have little or no details in the *Shari'ah*.

In general, 'urf can be categorized into several types, chiefly in terms of how 'urf is expressed. In this case, 'urf can be divided into word based-'urf and practice based-'urf. As for the former, this 'urf refers to a new meaning of a term. Because the new meanin has been widely utilized by people, as a result, it has become more dominant than the original meaning of the term. For example, the word *riyal* in Kelantan and Terengganu refers to Malaysian Ringgit currency, not other official *riyal* currencies like *riyal* Qatar or Saudi. Thus, if a person refers the original meaning of *riyal*, it must be highlighted (Ismail & Rahman, 2013:180). As for practice based-'urf, it represents a common current practice followed by a large number of people, as it has been strongly accepted in their daily life. An example would be *bay' ta'ati* (the give and take sale) that is normally concluded without utterances of offer and acceptance (Al-Zaidān, 1986:252).

Furthermore, 'urf can also be categorized in terms of its coverage: general 'urf and specific 'urf. As for the former, it is known as 'urf *ammah* among the people. The coverage of this 'urf could reach at an international level. As a result, it can be adopted as an official ruling, which is almost known by everyone. For example, the copyright is considered as a special right which belongs to writers or inventors. Thus, it should not be copied without permission from its owner. This concept is based on 'urf of the people around the world. For specific 'urf or 'urf *khassah*, it is practiced in a particular area, which is only well-known by people who live there, not by outsiders (Al-Zaidān, 1986:252). For example, distributing *mahr* (dowry) in two parts: prompt *mahr* and deferred *mahr*. This 'urf is widely practiced by Arab society. However, this practice is not well-known by other Muslim countries like Malaysia, Pakistan and Indonesia. Also, specific 'urf refers to a practice of a particular profession like 'urf *tijari* which refers to a specific 'urf for traders (Al-Zaidān, 1986:253).

Nevertheless, the most vital categories of 'urf in Islam are *sahih* (accepted) and *fasid* (rejected) (Che Abdullah & Ab Ghani, 2014:403). In fact, a matter can be claimed as a recognized 'urf, if it complies with *Shari'ah*. Over the period, scholars have underlined special parameters to ensure the validity of 'urf. Such parameters are the following: (i) 'urf must not be in

conflict with the Qur'an and the *Sunnah*, (ii) it must be widely spread and dominant since it becomes a reference for the people, (iii) *'urf* must not contravene with a written agreement because it is a weak source (Kamali, 2016:251).

Based on the concept of *'urf*, it is crucial for scholars to consider both *Shari'ah* sources and actual circumstances, including understanding matters that are being considered by the people as their norms, so that scholars are not too rigid by over-focusing on the text. Without knowing *'urf* in certain areas, even though scholars have a strong knowledge in *Shari'ah*, their approach may cause more harm than benefit (Al-Qayyim, 2006:1:167).

4. The Role of *'Urf* in Islamic Finance

In fact, the role of *'urf* in Islamic finance can be summarized as follows:

1. To interpret *Shari'ah* texts on *Shari'ah* rulings

Shari'ah texts relating to financial rulings must be understood based on the context of *'urf* at the time of revelation. This is vital to obtain the exact meaning of those rulings as well as the issue behind them (Al-Shātībī, 2004:265). For example, without deeply understanding the background of the verse: "O you who have believed, do not consume *riba* (interest), doubled and multiplied, but fear Allah so that you may be successful" (3:130), it might be misunderstood that charging a small amount of *riba* is permitted. However, this verse refers to a special *riba* known as *riba jahiliyyah* (pre-Islamic *riba*) that became an *'urf* among Arabs at that time, whereby the amount of debt would be doubled if the debt was extended (Ibn Kathīr, 2000:399).

Also, neglecting *'urf* may affect the credibility of *fatwas* related to financial practices. For example, there are a few groups who refuse to accept fiat money, as they argue that only the *dinar* (Roman Byzantine gold coins) and *dirham* (Persian silver coins) are solely recognized in *Shari'ah* because both currencies are clearly mentioned in the Qur'an and the *Sunnah*, and were utilized at the time of the Prophet Muhammad SAW as a monetary unit since Arabs did not mint their own coins at that time (Meera & Larbani, 2006:17).

Nowadays, all modern countries have declared fiat money as their official currency. In fact, such *fatwa* could lead to negative consequences as those who own a lot of money might escape from paying the *zakah*, and arguing their money is not recognized according to Islam (Al-Qarḍāwī, 2010:59-60). Also, charging interest on a monetary transaction could be justified if fiat money is not considered as the true money like the *dinar* and *dirham* (Shibīr, 2007:166).

2. To establish rulings in the area that is not clarified by *Shari'ah*

In general, there are two areas of *Shari'ah*, namely *ibadat* (worship) and *muamalat*. Both areas are applied with two different principles. As for *ibadat*, the basis of worship is ritual and obedience (Al-Shātībī, 2004:399). Based on this principle, it is prohibited to innovate a new concept of *ibadat* as well as to add any new element to the current practice of *ibadat*. For example, adding the number of *solah* (prayer), or increasing the time of *siyam* (fasting) is not allowed. This principle is derived from the *Hadith*: "If anyone introduces in our matter something which does not belong to it, it will be rejected" (Al-Bukhāri, 2001, 3: 2697).

In contrast, the (innovation) in *muamalat* is permitted, unless there is evidence of its prohibition (Shibīr, 2007:18). Unlike *ibadat*, financial activities are more flexible in Islam, as all practices are allowed except for what are clearly prohibited (Al-Shātībī, 2004:402). In more details, any form of contract or any condition in financial dealings is allowed without the need of a special permission from Islamic sources, as long as it is not against *Shari'ah* rulings. Moreover, the verses of the Qur'an and the texts of *Hadith* usually come in the form of general principles, rather than in detailed descriptions on this area (Shibīr, 2007:19). Therefore, *Shari'ah* does not restrict financial activities among the people; instead it broadly opens the doors of creativity and innovation for humans to develop their economic activities in fulfilling their needs (Ishak, 2020:52).

Since *'urf* is a part of human daily activities including matters relating to business, finance and economy, its role in these areas should be recognized. In fact, many financial practices at the time of the Prophet Muhammad SAW had been adopted from the

'urf of society. For example, *mudarabah*, a partnership contract, had been widely practised among the Arabs before Islam. Even the Prophet Muhammad SAW acted as a *mudharib* for Khadijah's investment as he managed her trading in Syria (ISRA, 2010:112). This contract was a popular commercial association among the Arabs when it was applied as a long-distance trade in previous times, which later had become more recognized by Islam (Rahman, 2018:35). After the emigration to Medina, the Prophet Muhammad SAW noticed that *salam* (forward selling) had been widely practiced in the agricultural sector among the people there. Therefore, he had accepted this 'urf but with several conditions including weight and delivery time must be clearly determined (Al-Nawāwī, 1999:6:119).

3. To reconsider the change of financial practices

Over a period of time, 'urf played a significant role in matters related to finance, wealth management, and business. Any ruling that was established according to 'urf would change if the latter changes. In other words, 'urf needs to be reviewed due to the change of time and place (Zakariyah, 2012:97). Since 'urf reflects the people's needs in a particular place or time, it becomes an indicator that determines their acceptance to change. For example, in the past, charging for teaching and religious matters was prohibited, because both were considered as charitable works. However, with the change of time, it became more difficult to find volunteers for those matters. Therefore, modern scholars now allow charging a certain payment for those works (Shibīr, 2007:48).

With respect to modern times, since financial practices have dramatically evolved, Muslim scholars must be aware of the current circumstances, including what is considered as 'urf. In fact, *Shari'ah* has recognized the special 'urf with a well-known principle that said "what is generally recognized amongst merchants is similar to what is stipulated among them" (Laldin et. al., 2013:142). For example, a cross-border currency exchange transaction that usually cannot be carried out immediately, rather, its process takes two days, called as T+2 settlement. This would be against a general *Shari'ah* ruling: the exchange of currencies must be carried out on the spot. Nevertheless, to overcome this difficulty, an exception is needed since

this situation is inevitable as it is a part of 'urf in finance (BNM, 2010:138).

5. A Case Study: Reconsidering Hibah on Saving Practices in Malaysia

The term *hibah* is derived from the word *wahaba - yahabu - hibatan*, which linguistically can be defined as giving or granting something (Ma lūf, 1975:387). As for its technical meaning, *hibah* is the act of granting without any consideration upon the ownership of a valuable property by a generous person to another person (al-Kāsānī, 1987). Also, *hibah* is understood as the voluntary alienation of property without any condition that the property is ascertainable (Oseni & Kasri, 2016:10-14).

In terms of its status, Muslim scholars unanimously agree that *hibah* is considered as a *Shari'ah* contract. In fact, it is strongly encouraged to be practiced in a form of charity. For this matter, the Qur'an says: "But if at the time of division, other relatives or orphans or poor persons are present, feed them out of [the estate] and speak to them words of kindness and justice" (Al-Nisa': 8). Meanwhile, as for the *Sunnah*, it was reported that the Prophet Muhammad SAW said: "Exchange gifts so that you may love one another" (Al-Bukhāri, 1989: 594).

However, *hibah* must fulfill several conditions. They are: (i) it must be *halal* (lawful), (ii) it must be valuable, (iii) it must belong to the donor, either wholly or in part (i.e.: co-owned), (iv) its ownership must be transferable, (v) it must truly exist at the time the *hibah* deed is being concluded, and (vi) the property must not be connected to the *hibah* provider's property in such a way that it cannot be separated; for example, a tree or a building on a piece of land (Al-Zuhaili, 2006:5:4076).

In general, the practice of *hibah* in modern time can be classified into two categories. The first *hibah* is the subject of wealth management which is not part of this study. The second *hibah* refers to financial instruments offered by Islamic banking institutions and *Takaful* companies. The latter may differ with the topic discussed by classical scholars because its main purpose is to serve as an instrument in Islamic financial system. Thus, it is also known as commercial *hibah* (Hassan & Mohamad Zaizi, 2020:229).

As more details, *hibah* is commonly practiced under deposit-taking products including current and saving accounts. Since the first emergence of Islamic banking, most of its institutions offered deposit account based on *wadi'ah* contract. Nevertheless, this *wadi'ah*, which is different from its original concept, occurs when Islamic banks, as the custodian, utilize their depositors' money, with the condition of immediate return when it is requested. Also, the return of the money must be guaranteed. As a result, *wadi'ah* has become *wadi'ah yad dhamanah* (guaranteed safekeeping), whereas in its original concept, it should be treated as *qard* from depositors to Islamic banks (Lahsasna, 2014:34).

In fact, Islamic banks would either invest or provide financing from their deposit. Since they enjoy the advantage of the deposited money for their own business and general purposes of liquidity, Islamic banks should, at their absolute discretion, award *hibah* to their depositors as a token of appreciation for the trust given. This is the exact same practice that is being applied by Islamic banks when they sometimes give *hibah* to their depositors in a way that makes their product look more attractive (Oseni & Kasri, 2016).

From *Shari'ah* perspective, several Islamic bodies issued their opinions. *Shari'ah* Advisory Council (SAC) of Bank Negara Malaysia (BNM), Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), and Dallah Al-Baraka (DAB) view that this practice is permissible with conditions. SAC of BNM and AAOIFI for example, require *hibah* practice on deposit to not become a norm or a stipulate condition. Meanwhile, DAB adds more details that this action should not be considered as an obligation for the bank and that customers have no right to ask for it. Also, the distribution of *hibah* must be varied and the distributed amount should be taken from the profit of the shareholders. In contrast, Kuwait Finance House (KFH) and Dubai Islamic Bank (DIB) rejected this practice by arguing that the one who bears responsibility is the one who deserves the profit based on the principle "*al-kharaj bi al-daman*" (revenue goes with responsibility). In other words, when the customer has no responsibility for the loss, the bank should not give *hibah* on the deposit of its customer (Laldin et. al., 2012:24).

With reference to Malaysia, since the first emergence of Islamic financial institutions in this country, most of them have offered a savings account based on *wadi'ah yad dhamanah* with granting *hibah* as a token of appreciation to depositors. However, after a period of time, it is argued that giving *hibah* to depositors had become habitual and became justified as *maslahah* (public interest) in respect of the progress of Islamic banks. As a result, it could change the practice of *wadi'ah* when it becomes a habit or a norm among Islamic banks (Lahsasna, 2014:36).

As a response, in 2018, BNM had issued a special guideline on *qard*, which required Islamic banks to not use the words *wadi'ah* or *wadi'ah yad dhamanah* for deposit products that are structured based on *qard*. Moreover, Islamic banks must ensure that the value of *hibah* must be based on the actual *hibah* rate. Also, Islamic banks must provide a clear disclaimer that a customer may or may not receive any *hibah* for *qard* deposits. In addition, they must avoid from providing historical *hibah* in which it is referred as an indicative or prospective rate of return (Oseni & Kasri, 2016:15). Since *wadi'ah* concept is based on *qard*, it should be clear that any loan which begets an advantage is part of *riba*. The action from BNM, as a regulator, is in line with the *Shari'ah* principles and was done in order to avoid this practice which may become '*urf fasid*' among Islamic banks, specifically when this situation could result to no difference between the Islamic and conventional practice.

Like Islamic banks, another popular saving institution in Malaysia: Tabung Haji used to utilize *wadi'ah yad dhamanah* as the underlying contract of its saving instrument. This institution has a long history which led Muslims to choose it as their first choice to save their money for the sake of *hajj* planning and investment. This contract has been perceived as *qard* in which depositors lend their money to Tabung Haji for investment purpose (Suhaini et. al., 2016:49). Likewise, there is a *Shari'ah* issue related to the distribution of *hibah* to Tabung Haji's depositors. Even though Tabung Haji is not obliged to pay *hibah* continuously to its depositors, the payment of *hibah* has turned to be Tabung Haji's commitment, in which it would be construed like the dividend paid out by conventional financial institutions (Hisyam, 2018:85).

Even the worst is that this practice has become a misconception among depositors as they view *hibah* as a necessary return given by Tabung Haji every year. As a result, giving *hibah* has become an 'urf between Tabung Haji and its depositors.

In respond to this situation, in 2019 Tabung Haji has announced a replacement of contract from *wadi'ah yad dāmanah* to the *wakalah* (agency) (Tabung Haji, 2019). In more details, *wakalah* is an act of one party delegating the other to act on its behalf (Dusuki & Abdullah, 2011). Through this new practice, the relationship between Tabung Haji and its depositors is no longer considered as lenders-borrowers *qard*, instead it became their agent to invest money. Also, the term of return has changed from *hibah* to dividend. As a result, depositors have the right to earn their yearly return from Tabung Haji if the investment gains profit. However, if the result of investment happens oppositely, then depositors would bear the loss. Nevertheless, the loss would not cost any negative implication towards depositors, since Tabung Haji investment is guaranteed by the Government of Malaysia (Tabung Haji, 2019).

Based on *wakalah*, the annual declaration of dividend is now solely based on Tabung Haji's performance and is no longer based on *hibah*, which was their previous practice. So now the dividend is only given, if there is profit gained from the investment, as a token of appreciation by the Tabung Haji. Also, the profit is distributed after the deduction of administration cost and *zakah*.

6. Conclusion

As a conclusion, 'urf is widely recognized in *Shari'ah* as one of its main secondary sources. Since the concept of *muamalat* in Islam is flexible, 'urf fills the gap between revelation and reality. Based on library research, it is found that the roles of 'urf in Islamic finance are the following: (i) interpreting *Shari'ah* texts on *Shari'ah* rulings, (ii) establishing rulings in areas that are not clarified by *Shari'ah*, and (iii) reconsidering the change of financial practices. As the reality is constantly changing, the act of considering 'urf in Islamic finance should be reviewed periodically.

Regarding the issue of *hibah* on *wadi'ah* practice in Malaysia, it is found that BNM has issued a special regulation on deposit practice among Islamic banking institutions in Malaysia. This regulation is vital to prevent the current practice from becoming 'urffasid which is similar to conventional saving. This approach has been followed by Tabung Haji by replacing *wadi'ah* based deposit with a new concept of *wakalah*. Thus, it can be concluded that *hibah* on *wadi'ah* is no longer being practiced by Islamic financial institutions in Malaysia.

Finally, since this paper is based on secondary data, it is worthy for future researchers to conduct an empirical analysis on this topic

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