

THE CONTRIBUTION OF MAJALLAH AL-AHKAM AL-'ADLIYYAH IN THE MALAY CIVILIZATION: PAST AND PRESENT

Mariam Saidona Tagoranao *

Abstract

The Malay civilization had succeeded to achieve its glory by embracing the all aspects of Islam in matters of its legal jurisprudence, trade and commercial industry, governance, cultural progress, and in assimilating the Islamic values to the socio-religious life of the people. In its heyday, the Ottoman Empire seems to have had contributed to such development and transformation. It had spread widely its greatest influence through the incorporation of the Majallat al-Ahkam al-'Adliyyah in the Malay customary laws. In Malaysia, the Majallah, being the version of the Qadri Pasha's Hanafi code was translated into the Malay local language and eventually became known as the Ahkam Shariyyah Johor. This influence is not only relevant in the past but it was also enforced in the 21st century by Malay scholars and experts in developing the Islamic wealth management, particularly in the Islamic global financial system. This particular paper will discuss the Majallah's important role in the Malay world legal systems and the relevancy of its provisions in fostering the fast growth and sustainable development of the global Islamic financial marketing in Malaysia, Indonesia, Philippines, and Singapore. In conclusion, this effort is mainly addressed to show the current Muslims excellent achievement and the reawakening of the Islamic golden era.

Introduction

Civilization has gone through several phases of development in different times and places. It is not an exaggeration to state that Islamic civilization golden days and ages never pass and disappear in man's history. It has its own downfall in the past, but then such, has been gradually shadowed by the rapid growth of the global Islamic financial institutions. As Yusuf Al Qaradawi² asserted that the advantage of civilization, is that, it does not stand still, rather it keeps on moving from one phase to the other.

We are not in a position permitting us to enumerate the different stages of the rise and fall of Islamic civilization or to refute the crises and its clashes to other civilizations. But suffice it here to lay down that Islamic civilization able to survive the test as "Islam is viable medium to deal with the needs of modern life"³. In fact, Islam is compatible with the new world order of which the West countries claimed themselves to be dominant. Islam able to address the relevance of its teachings at all times but some people ignored its legitimate concern because of material things and worldly greed. Beyond the minute details of this work, the complexities and problems facing the Muslim *Ummah* is based on lack of serious attention to examine and learn from the past, particularly how Islam succeed and the reasons for its declined power.

* Dr. Universiti Sains Islam Malaysia. Faculty of Syariah and Law, e-mail: mariam@usim.edu.my

² Yusuf Al Qardawi. 1998. *Islam the Future Civilization*. Cairo:El Falah Foundation. p. 20.

³ Yusuf Al Qardawi. 1998. *Islam the Future Civilization*. Cairo:El Falah Foundation. p. 20.

The modest objective of this paper is twofold: 1) to discuss the greatest influence of the Ottoman in the Malay civilization; and 2) to show the important contributions of *Majallah Al Ahkam Al Adliyya* (herein referred to as *Majallah*) to the Malay regions not only in the past but also in the present time. The result of this endeavor will show the remarkable application and achievement of this compendium not only in the Muslim community but also in the modern world.

For the purpose of this paper, it is understood that the Malays strong connection with Islam in the Middle East played an important role in the formation of Malay world culture and religious identity. However, during the colonial era, the Malays relied on the great Islamic power of the Ottoman Empire to resist colonialism. With this link, the Turkish influence had been widely established with the Malay kingdoms. The Sultan of Johor adopted the *Majallah* and renamed it as "*Ahkam Shar'iyah*" as part of the Malay legal systems. Absolutely, the *Majallah* shows to have contributed in developing the practice of Islamic law in the Southeast Asia nations.

In discussing the present contribution of *Majallah*, it is clear that the provisions have been relevant in understanding the application of *Shariah* principles in developing the strong growth of Islamic wealth management. It has been used as part of knowledge based factors in developing the Islamic global economy. It goes to show that challenges in applying *Shariah* law in modern times does not require secular innovation. As unveiled that through compliance with the *Shariah* rules, the Islamic finance receives an impressive growth supported by a strong demand. If one looks at the Western financial institutions, most of them have their own Islamic subsidiaries or Islamic products which have been subscribed not only by Muslim but also the non-Muslim clientele. It shows that the financial system of these companies are compatible with Islamic laws. In fact, aside from the Citibank, there is now even a Dow Jones Islamic market index.⁴ In reality, the global Islamic finance sector and the Islamic banking sector in particular were able reach the total Islamic financial assets amounting to about \$ 1.6 trillion during the end of 2012.

Malaysia is one of the pioneers of the modern Islamic banking system. The Malaysian Muslim scholars and economists have exerted much effort that the financial system must be in compliance with the *Shariah* principle. The Commerce International Merchant Bankers (CIMB) introduced the world first Islamic profit rate swap in 2007. Thus, the Islamization of the financial system, in cases of ambiguities, the provisions of the *Majallah* have played an important role in providing the maxims which are in line with the pillar of *maqasid al Shariah* (objectives of Islamic law). With the Islamic financial system flexibility, the financial sector continues its strong growth in 2013.

Islam and the Malay Civilization

The Malay civilization has been categorized into different stages: the early Malay or Champa civilization which ended in 1823. It was followed by the Sri Vijaya in South Sumatra which was then defeated by the Madjapahit Empire in 1377. Madjapahit was able to reach its glory and

⁴ Wade, Ibrahim. 200. "*The Propet and Profits*", Le Monde Diplomatique, September.

prosperity by having 98 tributaries and extended its territorial power from Sumatra⁵ to New Guinea or East Timor. Its downfall led Islam to gain foothold in Java. Islam spread faster and weakened the Hindu-Buddhism, the main religion embraced by the people. The Malacca Sultanate was established and then followed by other kingdoms in Southeast Asia.

The Islamic influences to Malays were brought by Arab missionaries and traders. The presence of the Turks and their trading activities with the region has also been noted. As a fact, those influences brought by them made Malaysia⁶ as the firm ground of which Islam was adopted and practiced. Learning Islam gave them the dynamic energy to spread and propagate its teachings, as well as integrating the Islamic culture with their own *adat* or custom and traditions. As Hooker⁷ pointed out that, Islam has left an extensive legacy in literature, philosophy and law to the Malays. There is no dispute that the cultural belief and religious identity of the Malay regions has been strong as in other Muslim countries in Asia.

Islamic classical texts were brought and introduced to the Malays. In the Philippines, the primary sources of the Muslim Filipinos' jurisprudence were the *Luwaran* Code of Maguindanao and the *Diwan Tausog* of Sulu. The Maguindanao historians ascribed the genesis of the Luwaran to the reign of Sultan "Faqih Maulana" Hamza Khair ud-Diin (1710-1778) who was a known jurist.⁸ The copy found in the hands of Datu Mastura bears the date about in 1886. It is believed that the Luwaran adheres basically to the teaching of the Shafii School, which is quite popular in other parts of Malay lands. On the other hand, the *Diwan Tausog* was promulgated as the principal personal law codex of Sulu under the suzerain authority of the Sultan of Sulu. The contents of this code includes sexual offences and *hadd* law concerning theft, abduction, false claims and murder. The majority leaders and officials of Sulu in 1878 A.D recognized this code. Another code, the New Sulu Code, based on this was made in 1902, but it appears that it did not meet the general approval of the datus and chiefs of the state.

In Malaysia, some of the Islamic classical texts and laws in force with a high proportion of Shariah are: the Malacca Digest (*Hukum Kanun Melaka*) which contained several elements of Islamic law, particularly on the law of marriage, sale and procedure and criminal law; in Kedah, a digest dated 1605 laid down the port rules and other laws which were greatly influenced by Islamic law. The Perak laws consist of the Ninety Nine Laws of Perak, the Malay Legal Digest and the Malay Legal Miscellany which were promulgated as the law of the state⁹. We have to add the Johore laws which are based on the *Risalah Hukum Kanun of Malacca*¹⁰. It may be as well to state that the 1895 Johore Constitution became the first written constitution of Malaysia. According to Article LVII of this Constitution, Islam is the religion of the state. It is important to note that the *Majallat al-Ahkam al-'Adliyyah* of the Ottoman Empire was translated in Malay and it was adopted as the *Majallah Ahkam Johore*.

⁵ presently divided into Indonesia, Singapore, Malaysia, Brunei, southern Thailand, Sulu Archipelago and Manila

⁶ it refers to Malaysia, Singapore, Southern Thailand, Indonesia and Philippines before the colonial era

⁷ Hooker, M.B. 1984. *Islamic Law in South-East Asia*. Singapore: Oxford University Press.

⁸ Mastura, M.O. 1987, "Shari'ah and Codification: Islamic Legislation in Relation to Legal Reforms in the Philippines," *Shari'ah Law Journal* (International Islamic University, Malaysia) Vol. 4, January.

⁹ Hooker, M.B. 1976. *The Personal Laws of Malaysia: An Introduction*. Kuala Lumpur: Oxford University Press, p. 492

¹⁰ Ahmad Ibrahim. 1981. "Islamic Law in Malaysia," *JMCL*, Vol. 8., p. 23

In Indonesia, particularly in Aceh, there were thousands of Islamic legal texts related to Islamic knowledge and mysticism (Sufism). Some of these Islamic manuscripts are: the *Mir'at al-tullab*, dated 1764, a work on law by 'Abd al-Rauf bin 'Ali al-Jawi, composed in the 17th century during the reign of Sultanah Tajul Alam (AD 1641-1675); the *Sirat al-Mustaqim*, composed between AH 1044-1054 (AD 1634-1644) by the Gujerati theologian Nur al-Din al-Raniri, who spent long periods in Aceh in the early 17th century¹¹. These manuscripts have been kept as part of Indonesian cultural heritage.

Aside from the legal text, Islam has been used in legitimizing the status of the leaders as Sultan, the vicegerent or head of Islam in their respective kingdom. Some of the Malay-Muslim texts, in fact, include genealogies relating the texts' patrons to famous, ideal rulers of that area. In the Philippines, the Maguindanao book of royal descent (*tarsila*) narrates that Sharif Kabungsuwan was the son of Jusul Asiqin of Johore and Sharif 'Ali Zain al-'Abidin who came from Mecca and settled at Johore¹². According to Agoncillo's finding¹³, Kabungsuwan converted many tribes to his religion and, having married into an influential family, made himself the first Sultan of Mindanao. His political alliance with the local datus and chiefs explained the introduction and expansion of Islam in Southern Philippines.

With the new religious inspiration, there were Muslim capable leaders in the Malay world who were able to travel in Europe and Middle East to find more about Islamic culture and Shariah legal practices. That was during the period were Muslim leaders, who patronized the importance of religion had a high degree of theological understanding on Islam. They were able to establish relationship with the rulers in the Middle East countries and other parts of Europe.

The Turks and the Malays: Past and Present

The Turks had contributed in the Islamization process which was manifested in the Malay archipelagoes. It is a fact that back to the 12th century, the Turks were among those traders and merchants who have expanded and propagated the teachings of Islam in the Southeast Asian region. Ibn Batuttah¹⁴, a Muslim traveller from Africa confirmed the existence of the Turks particularly the custom and traditions of the Sumatra Sultanate which was clearly the same with the practices of the Turkish in India.

The link between the Ottoman Empire and the Malay world was established at the end of the 13th century through cultural and religious influences. An example of this was the adoption of Turkish Memluki sultans' names and titles by some Sultans like Malik al-Salih, Malik al-Zahir and Malik az-Zahir. But among the sultanate kingdoms in Southeast Asia, Aceh or Dar us Salaam was the first one to establish her close relationship with the Ottoman Empire from the 16th-19th centuries through commercial, diplomatic and military purposes. History shows that Aceh, the most powerful kingdom in the Malay archipelago in 16th century had a direct contact with Sultan Suleyman the Magnificent. After the arrival of the Portuguese colonialist

¹¹ Gallop, A. T. (2013) *List of Islamic manuscripts in Aceh from the British Library*. Tarmizi Ahmad, Memelihara Warisan Indatu Website. January 21, 2013.

¹² Mastura, M.O. 1987. "Shari'ah and Codification: Islamic Legislation in Relation to Legal Reforms in the Philippines." *Shari'ah Law Journal* (International Islamic University, Malaysia) Vol. 4, January.

¹³ Agoncillo, T.O. 1990. *History of the Filipino People*. Manila: R.P. Garcia Publishing Co., p. 23

¹⁴ Ismail Hakki GÖKSOY. 2007. *Ottoman-Aceh Relations According to the Turkish Sources*. A paper presented in the First International Conference of Aceh and Indian Ocean Studies., February.

and the tensions that followed regarding the control of spice trade, the Acehese Sultan Alauddin al-Kahar (1539–71) sent an embassy to the Ottoman Sultan Suleiman the Magnificent in 1564, requesting Ottoman support against the Portuguese Empire. The Ottomans then dispatched their admiral Kurtoğlu Hızır Reis, he set sail with a force of 22 ships carrying soldiers, military equipment and other supplies. According to accounts written by the Portuguese Admiral Fernão Mendes Pinto, the Ottoman fleet that first arrived in Aceh consisted of a few Turks and largely of Muslims from the ports of the Indian Ocean¹⁵.

But the close relationship between the Turks and the Malays was noted in 1866 when Sultan Abu Bakar from the state of Johor visited Sultan Abdülaziz in Turkey. History recorded that their relationship was strengthened when the Sultan presented Ruggyyah Hanum, a Circassian princess to Sultan Abu Bakar as a gift. Ruggyyah Hanum married Ungku Abdul Majid the brother of Sultan Abu Bakar after she arrived to Johor, and later remarried Dato Jaafar, the first chief Minister of Johor, after Ungku Majid's death¹⁶.

Johor and Turkey had good relations since 19th century and this link became more tight when Johore allowed to accept a Turkish adviser. The Turkish adviser was a Muslim scholar of Turkish descent. He was a prominent and outstanding Muslim scholar and served as a religious adviser to the Sultan. Malay states other than Johor which also accepted Turkish advisers were Terengganu and Perak. According to Mohamad, some Turkish advisers were appointed as muftis and among them was Syed Sheikh al-Hadi¹⁷. They had a good relation and linked with Sultan Abdul Hamid of Turkey in particular and the Government of Turkey in general. However, the good relations between Turkey and Johor became weak and damaged when Turkey was governed by Kamal Ataturk. Kamal Ataturk abolished the Turkish Caliphate in 1924 and the subsequent reforms brought in by him put an end to the Johor–Turkey connection. In the case of Indonesia, Turkish influence remained strong in the 20th century as Sukarno regarded the founder of modern Turkey, Atatürk, as a model¹⁸.

In the Philippines, the evolution of the Turks started from 1869 after opening her port to international trade. The Ottoman subjects have contributed to the socio-economic changes of the Filipinos by developing the Middle Eastern communities. They became pioneers in manufacturing and trade in the 1900 s.

At the present, Turkey has been highly successful in engaging with the Muslims in Southeast Asia, particularly in offering itself as a progressive model in the Islamic world by further enhancing trade, halal cooperatives and promoting education. It is a great attempt for Turkey in renewing its powerful influence among the Muslim countries by initiating an educational programs and by sending prominent scholars who can draw lights on various aspects of life or disciplines – such as economics and cultural forces. Islamic conferences held in Turkey also serve to function as a productive platform for networking with contemporary Muslim scholars. It also serves as an interesting reflections on how the Muslims made Islam ruled the world in the past.

¹⁵ Azyumardi, Azra. 2006. *Islam in the Indonesian world: an account of institutional formation*. Mizan Pustaka, p.169

¹⁶ Mehmet Ozay, 1990:28

¹⁷ Syed Sheikh al-Hadi, 2012:1757

¹⁸ Kadi, Ismael Hakki et al., 2009. *Islam, Trade and Politics Across the Indian Ocean*. British Academy Review, Issue 14, November.

The memory of the Turkey-Malay close relationship in the past has been kept alive in their respective flag as shown below:



Turkey Flag



Johor Flag



Aceh Sultan's Flag



Aceh Flag



Royal Sultanate of Sulu flag

(The two-bladed sword refers to the swords of the Prophet called *Dhu al-Faqar* which was used in Ottoman war flags and pilgrim banners)

The Majallah al-Ahkam al-Adliyyah

After the Islamic golden age, legal activities had lapsed in the era of sterility which led to the non-compilation of the Islamic jurisprudence. Referring to judicial rules and precedent brought hardship to parties in disputes having many legal opinions on various books on jurisprudence. Muslim scholars have been clamouring for preserving the heritage of Islamic jurisprudence, a dynamic *fiqh*, through codification. Mahmasani asserted that the Shariah laws remained officially uncodified until the days of the Ottoma¹⁹. Writers used to have credited the systematic application of Shariah law to the Ottoman due to the codification of Majallah. This codification signifies the conveniency, flexibility and vitality of Islamic law to legal administrators and

¹⁹ Al-Mahmasani, Sobhi Rajab. 1987. *The Philosophy of Jurisprudence in Islam*. (Farhat J. Ziadeh, Trans.) Malaysia: Penerbitan Hizbi. p. 39

concerned parties. However, codified or uncodified laws should not be a radical innovations in the application of *Sharia* law.

The *Majallah* was codified in 1293 A.H (1876 A.D.) based on an attempt to prepare a book on juridical transaction which would be correct, easy to understand, free from contradictions, embodying the selected opinions of the jurists and easily readable by everyone²⁰. This is in accordance with the written reason for codifying given by the Ottoman appointed Committee that “the science of jurisprudence is an infinite sea with no shore to it. The deductions of the most worthy opinions for the solution of juridical problems requires considerable intellectual skill and thorough grasp of the subject, particularly so in the Hanafi school where many interpreters of varying calibre have given conflicting opinions. Despite this fact no attempt has been made, as in the Shafi’i school, to shift and crystalize the subject matter. It is very difficult to discover the correct rules and to apply them to specific cases. Moreover, the changing times give rise to problems that must be built upon custom or usages²¹.” Even Muslim contemporary scholars have recognized the *Majallah* as a compedium which contents an integrated juristic collection applicable to both substantive and procedural sides of Shariah. Although, the *Majallah* does not provide for the Islamic personal laws on marriage and divorce and other ancillary reliefs, it embodies a comprehensive set of Islamic rule on transaction including sale, hire, guarantee of suretyship, transfer of debt, pledges and mortgages, deposit and trusts, gift, wrongful appropriation and destruction, interdiction, constraint and pre-emption, joint ownership or partnership, agency, settlement and release. In addition, there are also provisions related to the rules on admission, evidence, administration of oath and administration of justice by the court.

Significant Roles of Majallah in the Malay World: The Past

The *Majallah* was the most interesting and influential civil code during the Ottoman which was then introduced as part of the Malaysians legal statutes. It was considered as the only Sunni text codified in its time and find its way in the early phase of the Malay Islamic Civilization. It was indeed welcomed by the Malays, particularly in Johor, because it showed development in practicing the Islamic law which is flexible in the modern legal thinking. They referred to *Majallah* as *Mejelle*, translated into Malay and enforced as a civil code for a time being. The *Majallah* served as the primary binding judicial reference by courts particularly on Muslim civil cases.

The *Majallah* was imported by Sultan of Johor when he visited Turkey and met Sultan Abdülaziz. It was timely adopted when the Government of Johore was soliciting for codified laws from Islamic countries which can serve as a model to apply and enforce in the state. As Mohamad correctly observes that other than the *Majallah al-Ahkam al-Adliyyah*, the Sultan also acted to bring *Kitab al-Ahwal al-Sakhsyyah* of Egypt which was translated into Malay and used as a main reference for Muslim family law in Courts in Johor²². The *Majallah* was implemented

²⁰ Al-Mahmasani, Sobhi Rajab. 1987. *The Philosophy of Jurisprudence in Islam*. (Farhat J. Ziadeh, Trans.) Malaysia: Penerbitan Hizbi, pp. 42-43

²¹ Al-Mahmasani, Sobhi Rajab. 1987. *The Philosophy of Jurisprudence in Islam*. (Farhat J. Ziadeh, Trans.) Malaysia: Penerbitan Hizbi, pp. 43

²² Mohamad, A.B.2012. *The Influence of Turkey on the State of Johore: A Study on Majallat al-Ahkam al-Adliyyah*. *Journal of Applied Sciences Research*, 8(3). 1757-1764, p.1763

as the Civil Code of Johor in 1913. It was put into effect for the purpose of providing a good administration of Islamic law for the Muslim populace in the state of Johor.

The content of *Majallah Ahkam Johor* was almost the same with the provisions of *Majallah Al Ahkam Al Adliyyah* as both of them comprise of 1,851 articles. The only difference was the language used, the original *Majallah* was written in Arabic while the *Majallah Ahkam Johor* was written in Malay except the following Arabic words: *Ijarah, khiyar, hiwalah, hibah, hijr, ikrah, wakalah, ikrar, ibra', bayyinah, tahlif, tawatur, ayn, tazkiyah, hammam, etc.*²³ There were terms and instances from the original texts which had been changed based on the local circumstances such as, by changing the 200 qirsh (piastres) to 200 ringgit ²⁴

Important Contributions of the Majallah in the Contemporary Financial Transaction Practices: The Present

The leading sources for Islamic wealth management are the Qur'an and Sunnah. Absolutely, the rules provided in the *Majallah* are clearly derived mainly from them. But the *Majallah* does not cover everything, it only dominates the Sunni laws on transactions as it provides practical answer from a jurist's point of view. The maxims have been used by the Muslim scholars in the absence of a ruling to a certain issue. Based on flexibility, the *Majallah* has the ability to address contemporary legal problems. In fact, its provisions are particularly relevant to the idea of the Islamic economic system in establishing the Islamic bank and other financial institutions. The credibility has been accepted and agreed upon by the Muslim scholars. The Muslims in the Southeast Asia region (Malaysia, Indonesia, Thailand, Singapore and Philippine) have relied on the relevancy of the *Majallah* provisions in interpreting the financial systems for *Shariah* compliance.

Malaysia has been dubbed as the centre of Islamic finance in banking system in Southeast Asia. In fact, the *Majallah* has been recognized by the Muslim economists as one of the essential reference in the *fiqh* of commerce. The fast increasing growth of Islamic financial institutions motivated the Muslim scholars and economists to examine and develop thoroughly the Islamic wealth management based on the standard provided by the Islamic legal sources. This motivation resulted to a strong collaboration among Muslim countries including the Muslim minorities in Southeast Asia.

It is appropriate to mention that the Malaysian Global Islamic Finance network has in fact published online the important provisions of the *Majallah* which are relevant for financial transactions. This network has contributed much by means of explaining the *Majallah's* legal maxims²⁵ in simple words. The seven chapters in Book I of the *Majallah* on the law of contract of sale have been published to guide the parties who are involve in Islamic financial banking, investment, wealth and business management. In addition to this, the provisions of the *Majallah* have been relevant to the following financial transaction practices:

²³ Mohamad, A.B. 2012. *The Influence of Turkey on the State of Johore: A Study on Majallat al-Ahkam al-Adliyyah*. Journal of Applied Sciences Research, 8(3). 1757-1764, p. 1763

²⁴ Article 255

²⁵ Article 2- 100

1. General Application of Contract

One of the purposes of creating a financial institution is to increase wealth and economic growth through a develop Islamic wealth management to ensure an equitable distribution of properties. Financial transaction has legal effect if it arises from a contract. If there are issues on its validity, Muslim scholars and economists used to refer to the following maxims:

- Article 103. Contract is what the parties bind themselves and undertake to do with reference to a particular matter. It is composed of the combination of offer and acceptance.
- Article 3. In contracts, effect is given to meaning and intention, and not to words and forms. (Intention and Acts on Contractual Obligations)
- Article 4 "With doubt certitude does not fade." (Doubt as to a probable discharged of debt)

2. Insurance

The Malaysian has its own experience in the Islamization of insurance through the institution of *takaful*, which is developed as an alternative and not a substitute for the still available conventional insurance²⁶. This issue has been debated because of its inherent uncertainty on the insured happening event and its speculative characteristic. However, the Committee which was set up by the Government of Malaysia to form the Islamic Insurance Company recommended the validity of the system of *takaful* as based on brotherhood, solidarity and mutual assistance, whereby, the participants mutually agree to contribute for that purpose and the business of *takaful* is conducted in accordance with the principles of *Shariah*²⁷. The *Takaful* Insurance in Malaysia is governed by the *Takaful* Act 1984. Some of the special features are: i) it completely avoids *riba* at every stage of its business ; ii) No business participation is undertaken directly or indirectly in things prohibited by the *Shariah*; and iii) The *takaful* contract attempts the clearest possible determination of the terms of contract so as to minimize ignorance and uncertainty²⁸. However, in case of some unavoidable uncertainties, the Muslim scholars based its legality on the doctrine of necessity (*darurat*). According to the accepted principle of *usul al-fiqh* (Islamic jurisprudence), "necessity" (*darurat*) renders prohibited things permissible. This is in conformity with the following provisions of the *Majallah al-Ahkam-al-Adliyah*:

- Article 21. Necessity (*darurat*) makes forbidden things harmless;
- Article 22. Necessities are estimated according to their quantity.
- Article 32. Whether a want (*hajat*) be general, or whether it be special, it is reduced to the degree of the necessity (*darura*);"

3. *Hiwala* Financing

Hiwala is a concept used by the bank for mitigating the accounts before litigations on non-performing loans. The Malaysian Securities Commission Shariah Advisory Council defined *hiwala* as "debt assignment contract"²⁹. Islam allowed the financiers or the bank to formulate such settlement to ease hardship on the part of customer. Such relief is clearly stated in the Qur'an to the effect that "...and if he (the debtor) is poor, he must be given respite till he is well off."³⁰

²⁶ Syed Khalid Rashid. 1993. *Islamization of Insurance A Religio Legal Experiment in Malaysia*. Religion and Law Review, Vol-2, Issue-1.

²⁷ Committee Report, 1984

²⁸ Syed Khalid Rashid. 1993. *Islamization of Insurance A Religio Legal Experiment in Malaysia*. Religion and Law Review, Vol-2, Issue-1. p. 24

²⁹ Azahari, F. 2008. *Rehabilitative Measures for Islamic Fionancing: Hiwala Financing*. Islamic Finance News Asia. August 22, p. 24

³⁰ Surah 2:280

Hiwala is a legal rights and the parties relied on its validity which is simplified in Article 17 of the *Majallah* that, "Hardship (*meshaaqqat*) causes the giving of facility." For equitable relief, in case of business hardship, latitude and indulgence are allowed, to the effect that Article 18 states, "Where a matter is narrow, it becomes wide." *Hiwala* has been used as a successful financial instrument by transferring the debt from one person to the other. According to Article 673 of the *Majallah*, " *Hiwala* is to make a transfer of a debt from one account to the debtor account of the other".

4.Contract of *Ijarah* + (*Ijarah Thumma Bai*)

Contract of *ijarah* is a widely used concept primarily based on the objective of *Shariah* and it is unanimously accepted by Muslim jurists as a form of Islamic financial instrument. In Malaysia, it is used for vehicle financing and certain trade financing instruments. It has been used as an exchange between *mal* (property/asset) and *manafaah* (usufruct/benefit), whereby a person can avail himself of the services of another via the benefit of utilizing a property for a certain rental rate and for a fixed duration³¹. This is based on Article 420 of *Majallah* that, "In letting the subject matter of the contract is the benefit from a thing (*menafaat*)". Muslim scholars used to refer to Book II of the *Majallah* which contains the rules on hiring or *ijarah* on issues related to it.

In recent financial transactions, *Majallah* has gained more attention in the development of halal industries, right of ownership and other financial cases. Aside from this, *Majallah* has been used as one of the main references or sources of the study of Islamic law in the institutions of higher learning.

Conclusion

From the foregoing discussion, it can be concluded that in justifying the importance and indispensability of the contemporary Islamic financial system, the provisions of *Majallah* have been quoted and recommended as one of the main references, particularly, in the absence or non-availability of principles in line with the *Maqasid Shariah*. Acceptance of Islamic financial institutions becomes worldwide and it becomes the topic of interest not only in the Malay world but also in other Muslim and non-Islamic countries. Their rapid growth becomes an instrument or tool in meeting the fears and whatever defeat and diseases against the goals and objectives of Islamic civilization. It goes to show that *Shariah* offers dynamic forms of financing envisaged for every situation and seeks to provide solutions for each circumstances. The current Islamic global economic progress and development helps us better to understand the significance of *Shariah* compliance in marching for the future to achieve a successful contemporary civilization. Although, Islamic countries at the modern era initially proved to have commercial failures, but with the development of financial banking products in the global market, the *takaful* insurance system and the halal industries, new hope is eventually permitting the Muslim world to create and dominate the global economy.

³¹ Islamic Finance News Asia, 2006:11

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