

A Comparative Analysis of Tanazul and Conditional Hibah in Preference Shares

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Abstract

Conditional hibah has been proposed to be practiced in preference shares as an alternative to *tanazul* which has triggered some of the shariah issues in recent practice. Although the use of *tanazul* is permissible, some of the shariah issues that arise in the practice of *tanazul* made it improper to practice. In a sequence, a conditional hibah has been proposed as an alternative. Thus, this study attempts to compare between the application of *tanazul* and conditional hibah in the preference shares. This article will compare both (*tanazul* and conditional hibah) through five aspects specifically definitions, utterance of offer and acceptance, pillars and conditions, results and transfer of ownership. This study is a qualitative study using content analysis method. The data was analyzed using descriptive and deductive techniques. The findings showed that although *tanazul* and conditional hibah are seen to be similar and have the same ultimate effect of nullification of rights, however the terms and elements used between them are different.

Keyword: Preference Shares, Conditional Hibah, Tanazul

Introduction

The conditional hibah and *tanazul* concept almost have similarity in term of transfer of proprietary rights. However the conditional hibah is different from the *tanazul* in some situations. The reason of prohibition of using *tanazul* in the preference shares was not caused by the *tanazul* contract is not Shariah compliant, however due to the current practice adopted in *tanazul* which is discordant to the law of *Ibra'* (rebate), which is the urgency of the existence of the subject of contract to eliminate the irrelevant right. Despite of the opinions that allow the use of *tanazul* in the Preference shares, however the current practices carried out in the contract of preference shares has triggered shariah issues that need to be considered.

Thus, the debate over the comparison of conditional hibah and *tanazul* is very important in order to make the conditional hibah may overcome the shariah issue existed in *tanazul*, which is prohibited in Islam. Therefore, this study does not imply a hibah that produces the same effect, diversely the conditional hibah intended in this study defined as two separated contracts that not deliver the same effects.

Although the Malaysian Securities Commission allows *tanazul* in the Preference shares (Securities Commission Malaysia, 2007), somehow the *tanazul* that practiced at the beginning of the Preference shares contract had contributed to the shariah issues. *Tanazul* done in the beginning of the contract involving the nullification of rights for something that has yet to exist and then causing the *gharar* in *tanazul* and the collision of essence of contract (*muqatada caqd*). *Gharar* is among the element that are not allowed in Islam and in all Muamalat contracts including the usury (*riba*) and *maysir* (gambling). The sequence of the existence of *gharar* (uncertainty) in *tanazul* and the collision *muqatada caqd* in *tanazul* applications, therefore *tanazul* contract not qualified to apply in preference shares. Hence, the purpose of this study is to compare between the application of *tanazul* and conditional hibah in the preference shares contract.

The main difference in the concept of *tanazul* currently practiced in Preference shares and conditional hibah is the existence and the absence of the *aqad* subject. The practiced of *tanazul* undertake in exterminating the proprietary of right that has not existed (Marina 2014). While the conditional hibah abort something that already exists, because it was two isolated contracts. In fact, conditional hibah that was proposed in this study take place at the end of the contract, which is in the second contract after generating the profit or loss. This is in line with the saying from the Hadith of Rasulullah saw *عتق ولا تملك فيما ، تملك فيما إلا طلاق لا*. Conditional hibah is irrelevant and unreliable between two locked contracts. Conditional hibah only engage in terms of promise. Islam strongly urged its followers to fulfill the mutual promise.

Tanazul is also different with a conditional hibah in terms of the conditions and the occurrence time during transferring the ownership rights. In the situation of conditional hibah, the requirements to transfer the ownership rights is at the end of the formality event, after the existence of the subject of contract and after generating profit or loss, while in *tanazul*, nullification of rights happen in early *tanazul* that is when the early contract been locked before subject of contract exist.

Therefore, it can be concluded that a conditional hibah is different from the *tanazul* from period aspect of the rights nullification. This is because in *tanazul*, the nullification period occurs at the beginning of the contract when the subject of contract does not exists yet. This matter has affected the existence of shariah issues that are prohibited in Islam. Hence, the next section will be explained in detail some aspects of the comparison between both conditional hibah and *tanazul*.

Comparison between Tanazul and Conditional Hibah by its Definitions

Conditional hibah in preference shares refers to two contracts carried out by a party that promised to give a hibah to the other party by concerning the requirement of certain matters. For example, promise to give hibah towards profit or loss. The two contracts must separate and have no relation to each other. The hibah also committed between the two parties as a guarantee that the plaintiff will fulfill his promise. Conditional hibah in preference shares only refers to two separate contracts made by the two parties to implement *aqad* hibah in the future. The first contract is the only promise to sign the hibah contract in the future. While

the actual hibah will only occurred once the offer and acceptance is completed at the end of the event, once the profit or loss generated.

The definition of a conditional hibah is different from *tanazul*. *Tanazul* defined as nullification of rights on allegation (Securities Commission Malaysia, 2007) or been waived on someone's rights (Bank Islam Malaysia Berhad, 2010). The right in the context of preference shares is referred to profit or loss. The rights that been released (cancelled) was given to someone other than the original owner of the rights concerned (Wizarat al-Awqaf wa al-Shucun al-Islamiya, 1986). *Tanazul* Agreement took place in early signing of the contract (Aznan, 2011). The principle of *tanazul* practiced in Preference shares as only a condition of the contract to waive those rights (Wizarat al-Awqaf wa al-Shucun al-Islamiya, 1986). With this, it can be concluded that conditional hibah in the Preference shares is different with *tanazul* because conditional hibah is just a notification of the promisor about his desire to do hibah grant in the future, whereas *tanazul* is consent at the beginning of the contract that binding and executed contract between the two parties.

Based on the comparison of conditional hibah and *tanazul* by its definition, it can be concluded that the first contract in the conditional hibah is a promise that will bound in the future. While *tanazul* is a contract which takes place at the beginning of the contract. The first contract, which is valid in conditional hibah only a promise to accomplish hibah, rather than the establishment of a hibah contract itself. The primary goal of conditional hibah in preference shares is to establish a hibah (execution) in the future. While the initial goal of *tanazul* in Preference shares is to give ownership, means that, to give proprietary rights of common holders became Preference shares holder or vice versa. Therefore, conditional hibah in the preference shares cannot be associated with *tanazul* because the definitions for both are different.

Table 1

Comparison Analysis Between Conditional Hibah Bersyarat and Tanazul In Term of Definition

Features	<i>Tanazul</i>	Conditional Hibah
Two different contract	X	√
Contract that nullify the proprietary rights	√	√
Tranfer of the ownership occured	√	√
With conditions	X	√
Promise to bind contract in future	X	√
Contract endorsed at the early of contract bind	√	X
Sealed contract occured when certain condition been fulfilled	X	√
Once it bind cannot be invalid	√	√
Granting the subject (good/item) of the aqad directly	√	X
It is compulsory to deliver the subject (good/item) of the aqad at the beginning of the contract	√	X
The possession of the subject of the aqad took by the recipient	√	√

Comparison Tanazul and Conditional Hibah According to the Utterance of Offer and Acceptance

There are several conditions in offer and acceptance to form a valid contract. Among them, offer and acceptance must reflect the wishes of contracting parties (subject aqad). Offer and acceptance should be clear and known to both parties as well as must affirm and complement to each other (Zaydan, 2005).

When a conditional hibah in a preference shares is made, the hibah contract is still pending. Though, is just a binding agreement. The actual hibah contract will only apply when the profit or loss of the company had generated as agreed at the beginning of the contract. The actual hibah contract should had a valid ijab and qabul. Since the proclamation of the agreement had done at the beginning of the contract which bind in the future, then that proclamation is still not considered as a contract.

There are examples involving three situations. The first situation, the common shareholder, said to Preference shares shareholders that "I promise to grant my right (to do hibah) to get a profit by allowing the shareholders from Preference shares gain in advance the profit on a certain basis". The second situation, a shareholder from Preference shares said to ordinary shareholders that "I promise to grant my right (to do hibah) to gain profit more than the prescribed rates". The third situation, the common shareholder, said to the shareholders of Preference shares that "I promise to grant my rights right (to do hibah) as a" winding-up "situation by prioritizing priority shareholders from Preference shares to regain their contributed capital.

The utterance "I promise I will grant the hibah" it shows that something will be occurred in the future. Then the utterance of the offer and acceptance made at the beginning of the contract did not endorse the hibah contract even during the proclamation of offer and acceptance. This is because, the contract will not happen beside an utterance or an agreement to perform something in the future (al-Hattab, 2000). In fact, it is impossible if the utterance of word "will" show the immediate action, because the word "will" refer to an act in the future. Thus, the hibah is absolutely be implemented in a next period as prescribed, either during generating a profit or a loss.

The promise should be made using utterance that shows it will happen in the future. If the utterance shows it happen now, therefore it is not a promise. The time to fulfill the promise is in the future. Therefore, if it already happens or still currently happen so it considered that the promise still not been fulfilled. Thus, the promise is not an agreement (aqad), but then it is not necessary to do ijab and qabul (ISRA, 2010). In the context of Preference shares, promises that are declare at the beginning of the contract give a meaning of a future. So, it is merely a promise to do hibah in the future instead of during the time of an agreement being endorsed.

This is different with the utterance of the offer and acceptance in the *tanazul* because *tanazul* occurs when the utterance of the offer and acceptance been uttered. The utterance of the offer and acceptance in the *tanazul* give immediate effect which is *tanazul* or nullify the rights that occur during the utterance of the offer and acceptance. This shows that conditional hibah varies with *tanazul* due to the implementation of aqad in *tanazul* is mandatory at the beginning of the contract been completed.

In addition, *tanazul* is not valid if it is associated with any condition. This is because, *tanazul* must be done immediately and cannot be deferred (Ibn al-Hummam, 2003). Thus, with the resignation the conditions, it show there is no *tanazul* aqad immediately, otherwise will only occur once the matter is in the certain condition had been fulfilled. For example, if

party A says I *tanazul* my right to the B with condition after the company earned a profit and then give priority to party B in advance to earn the profit. Or the B says: I *tanazul* my excess profit right to the A, with condition after the company earned a profit by limiting it at specific rates only.

This kind of contract in *tanazul* is invalid because it is associated with certain conditions. In fact, such contracts will only occur in the future which is not allowed in the contract of *tanazul* (al-Buhuti, 1983). Whereas the *tanazul* aqad should take effect immediately during signing the contracts without any delay. In contrast, hibah remain valid even if certain conditions are placed or associated with a specific reason (Ibn Rushd, 1415H). Such hibah are called or known as a conditional hibah.

When the conditional hibah contract is done, the hibah did not take place yet. Hibah will only occur if there is subject matter, after the existence of the requested condition. This is because the consent of conditional hibah is made at the beginning of the contract is merely a promise to do hibah in the future, not during the time the promise was made. The agreement between ordinary shareholders and Preference shares shareholders are only promises to conditional hibah only, instead of showing the formation of the hibah contract. Therefore, the use of utterance that gives a meaning in future in *tanazul* contract is invalid because *tanazul* contract must be done immediately.

Table 4.2 shows the comparison analysis between *tanazul* and conditional hibah from the aspect of utterance of ijab and qabul:

Table 2 Comparison analysis between *tanazul* and conditional hibah from the aspect of utterance of ijab offer and acceptance

Conditional Hibah	<i>Tanazul</i>
Uttered: "I promise to do hibah"	Utterance of offer and acceptance in <i>tanazul</i> made <i>tanazul</i> happened immediately
Phrase "will" refer to some action will be done in future	<i>tanazul</i> occurred during the utterance of offer and acceptance been uttered not in future
Hibah contract is valid with the proposition of any condition in utterance	Invalid if there is proposition of condition in the utterance that change the contract will occur in future.
Utterance of contract that will occur in future is allowed	The utterance should show that the contract occur immediately

Comparison between Tanazul and Conditional Hibah According to Pillar and Condition

The pillars and conditions are an important element for establishing a contract (al-Qarafi 2001). Any contract endorsed should have the main doctrines such as contracting parties, the subject of the contract and offer and acceptance (al-Suyuti, 1983, al-Sharbini, 2000; Ibn Juzay, n.d). Each pillar also has certain requirements that are binding together. All the pillars and conditions should be fulfilled to ensure that the contract is valid in term of Islamic law. If one of the pillars or the conditions are not met, then the contract will be invalid.

Pillars and conditions for *tanazul* will refer to the pillars and conditions in *ibra'* because *tanazul* in fiqh known as *isqat*. While the term of *isqat* is closely related to the concept *ibra'*. Thus, the discussion of pillars and conditions of *tanazul* will refer to the *ibra'* as both is closely related. While the pillars and conditions for the conditional hibah will also refer to the basic pillars and conditions in hibah because conditional hibah is a part of the hibah contract.

Thus, both hibah and conditional hibah applies the same pillars and conditions, however the difference is the deployment of the conditions stipulated in the conditional hibah.

There are four pillars in *ibra'*; first is *mubarri'* which is refers to the party that gives *ibra'*, second is *mubarra'* which is refers to the party receiving the *ibra'*, third is *mubarra' minhu* which is refers to the thing that been *ibra'*, and fourth is *ṣighah* which is refers as offer and acceptance of *ibra'* (Ibn cAbidin, 2003; al-Dardir t.th; al-Buhuti, 1983). While the pillars of hibah is *al-wahib* that is the giver of hibah, *al-mawhub* is the one that is the recipient of a hibah, *macqud calayh* namely property that is eligible and *ṣighah* consists of the ijab and qabul (al-Qarafi, 1994; al-Rafici, 1997; al-Ardabili, 2006; al-Sharbini, 2000; al-Hajjawwi 2002; Ibn Ḍawayyan t.th).

The party who is giving the *ibra'* is known as *mubarri*, must be a qualified based on the given terms. They have the right to *ibra'* and do the it voluntary (Ibn cAbidin 2003; al-Dardir t.th; al-Buhuti 1983). Meanwhile, the contract in hibah, the party who is giving the hibah known as *al-wahib*. They must be qualified from the terms that been set; such as wise (sensible), matured, judicious, and allowed to manage their own property, as well as valid owner of the property (Ibn Rushd, 1415H; al-Sharbini, 2000; al-Qarafi, 1994; Niẓam t.th; al-Buhuti, 1993). Secondly, the party receiving the *ibra'* is known as *mubarra'*; must be a creditible person (al-Suyuti, 1983; al-Buhuti, 1983). Meanwhile, the recipient of the hibah or *al-mawhub* is able to do *qabḍ* on the property under hibah offered to him. Therefore, the hibah given to underage children is a valid, however, *qabḍ* should be practiced by those have the credentials such as his guardian (al-Sharbini, 2000; al-Zarkashi, 2009).

Thirdly is the subject of the contract. The *ibra'* or *mubarra' minhu* must be clear. It is invalid process for the *ibra'* if the amount not clearly stated (al-Qalyubi, 1956). Moreover, the things that been *ibra'* must be existed when *ibra'* is complete. This is because, it is an impossible to eliminate the right that does not exist. The procedure of *ibra'* is invalid if been aimed for the future time (al-Buhuti, 1983).

In addition, *macqud calayh* must be existed during the procedure of *hibah* (al-Kasani 2003; Niẓam t.th; al-Shirazi, 1996; al-Nawawi, 1991; Ibn Qudamah, 1997; al-Mardawi, 1956). However, the Maliki judgemented that, as a valid grant of property which *majhul* and unknown. This is because the existence of the element of *gharar* in the hibah which is a contract without retaliation is behove, which is not nulify the contract of hibah (al-Qarafi 1994; al-Hattab 2010; al-Zarqani, 2002). In addition, items that been use as hibah must also belong to the donor (al-Kasani 2003). Beside that, the item must be valuable. There are items that cannot be granted as hibah; such as alcohol (al-Kasani 2003). Other than that, the item must be separated and cannot be connected with the property that is not included in the hibah (al-Kasani, 2003; Ibn cAbidin, 2003; al-Samarqandi, 1984). Then, the procedure must be proceed with the process of *qabḍ* for the hibah (al-Samarqandi, 1984; al-Kasani, 2003; al-Sarakhsi t.th; Qaḍi Zadah, 1315H; al-Shirazi, 1996; al-Rafici, 1997; al-Nawawi, 1991; al-Sharbini, 2000; Ibn al-Mundhir, 2005).

Finally is *ṣighah* referred as offer and acceptance. *Ṣighah* is very important for contract process that showed the offer or acceptance for the particular individual (Faizah, 2000). *Ṣighah* also described the process of the agreement to sealed the contract (al-khafif, 2009; al-Khayyat, 1994). *ṣighah* can be in different situation such as utterance, documentation, and action (al-Khayyat, 1994).

Ṣighah can be done in form of documentation within the rules of the contract for Preference shares. The implemented *ṣighah* only concealed a promise for the future because both parties whether the common share holders or the Preference shares holders in *ṣighah* that hibah can

only be completed based on the profit or loss of the company. For example, the holder of the common shares make a bid in the *ṣighah* such as “I promise to give hibah and agree to the terms and will hand over the possession of this profit to you with prioritize you for the profit rate has been set”. Then, this procedure is followed by the *ṣighah* for acceptance from the holder of the prior shares such as “I agree with conditions and will take the possession”. Even though *ṣighah* done in the beginning of the contract procedure, hence the the actual hibah only occurred after the condition been fulfilled. *Tanazul* is differed to *ṣighah*, because *ṣighah* been done in the beginning of the contract while *tanazul* is occurred immediately after the acceptance of the person.. For example, “I have *tanazul* the right profit with prioritize you earn profit in advance”. Then followed with *ṣighah* of acceptance “I accept”.

These four elements should be presented in the formation of *tanazul* and conditional hibah, it is clear that the the principles of conditional hibah is more appropriate to be practiced in Preference shares compared to the principles of *tanazul*. The proposed for the conditional hibah will only be completed in the final piece of the contract where the subject of the contract that is already existed. This thing is laterally with the hadith of the Prophet Muhammad which became the main policy in this study that is لا طلاق إلا فيما تملك ، ولا عتق إلا فيما تملك.

Indirectly, the principles of conditional hibah is also able to overcome the issue of shariah occurred during the application of *tanazul*. Shariah issue is among the elements that are not allowed to be occurred in sealed contract. Because, the existence of the shariah issue would nullify the sealed contract. Table 3 shows the comparative analysis between the conditional hibah and *tanazul* based on its pillars and conditions:

Table 3

A comparative analysis between the conditional hibah and tanazul from the aspect of the pillars and conditions

Aspects Comparison	Of Conditional Hibah	<i>Tanazul</i>
The grantor	<p><i>al-Wahib</i></p> <ul style="list-style-type: none"> - qualified the terms (wise or sensible, matured, judicious) - allowed to manage their own property - valid owner of the property 	<p><i>Mubarri'</i></p> <ul style="list-style-type: none"> - qualified the terms (wise (sensible), matured, judicious) -have the right to granted <i>ibra'</i> -voluntarily do the <i>ibra'</i>
The recipient	<p><i>al-Mawhub lah</i></p> <ul style="list-style-type: none"> -should not be required as (wise or sensible, matured, judicious) - the receiver of the hibah must be able to do the <i>qabd</i> on the property -for underage children, the <i>qabd</i> should be practiced by those have the credentials such as his wali or guardian 	<p><i>Mubarra'</i></p> <ul style="list-style-type: none"> - known and identified
Subject of akad	<p><i>Macqud cAlayh</i></p> <ul style="list-style-type: none"> -existed (from the view of Maliki hibah is valid from unknown property or <i>majhul</i>) -belong or own by the hibah grantor 	<p><i>Mubarra' Minhu</i></p> <ul style="list-style-type: none"> -the existence is recognized -existed during the process of <i>ibra'</i> - <i>ibra'</i> which is aimed for future time is invalid

- valuable from the view of *syara'*
- splitted and not connected with the property not included in hibah process
- existence of *qabd* on the property been hibah

Offer and Acceptance	Utterance of offer such as "will" affect the on the hibah process for the future time	Utterance of offer that be used affected the <i>tanazul</i> for the meantime
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Comparison of *Tanazul* and Conditional Hibah According to Corollary

Other aspects that distinguish between *tanazul* and conditional hibah is; *tanazul* affected immediately. *Tanazul* immediately will happen after the sealed contract at the beginning of the contract between both parties. *Tanazul* is valid as soon as the completion of *ijab* and *qabul*. Therefore, if *tanazul* done on a delay period or aimed to do in future period is invalid. Thus, *tanazul* done by the qualified person on identified as well as the ownership status on the property would immediately disqualified his right to a other person, also on the ownership of the property.

Hence, the conditional hibah is the act of delaying the act of hibah for the future time purpose and does not bind directly at the present time. Conditional hibah only act as a notification and consent for the future period. Thus, the effect of hibah will occur in the future not during the sealed contract process.

Contract of *tanazul* and conditional hibah differ in term of the outcome, where the outcome for the conditional hibah will happen in future perion, while *tanazul* will happen in present period of time. The outcome of the conditional hibah on the subject of the contract does not occur unless in future period time as agreed. This contrasted with the outcome of the *tanazul*; which is happen for the present period. *Tanazul* can not be aimed for the future period because if *tanazul* been delay, there would be element of *gharar* because of the uncertainty to happen or not. In fact, this will lead to invalid the act of *tanazul*. Therefore, *tanazul* only valid for the purpose of present period of time.

Conditional hibah in the first contract is referred as pledge where the offer and acceptance has not yet occurred, as well as the act of hibah. Conditional hibah is a pledge for the purpose of hibah contract in the form of *tabarruc*. This procedure did not form the contract of hibah. Even though the sealed contract is occurred between both parties, but the consequence is only going to happen in the future period time. Then the obligations of the consequence of promises made also only will happen in the future.

Table 4

Analysis on comparative between conditional hibah dan tanazul from the aspect of contract's consequence

Corollary Contract	Nulifacation of right	Transformation of ownership	Time of occurred	Delaying/ immediate	Number of contract
Conditional Hibah	√	√	Final contract (second contract)	delay	Two separated contracts (preliminary/ final)
Tanazul	√	√	Preliminary contract (first contract)	immediate	One contract (preliminary)

Comparative of *Tanazul* and Conditional Hibah Based on The Transfer of Ownership

Tanazul in the context of prior share referred as the act of nullification of the right to gain profit either in full or half or in loss condition. (Aznan 2011). The nullification of the right in *tanazul* will lead to transformation of the ownership from one party to another party. This process cannot be delayed or for the future period of time. This mean that, ownership transformation must be done in the present time without time delaying. Thus, the person that been nullified of his right will own the subject after the sealed contract of *tanazul*.

There is no transformation of property ownership happen in conditional hibah act, and there is no obligation on the ordinary shareholders or major shareholders to nullify their rights because the contract of the hibah did not occur in the first contract (preliminary). The contract of conditional hibah only completed in second contract (final contract) with the completion of the terms. This thing is laterally with the hadith of the Prophet Muhammad which became the main policy in this study that is لا طلاق إلا فيما تملك ، ولا عتق إلا فيما تملك.

The agreement at the beginning sealed contract is meaningless, thus there is no transformation of the subject of contract happen. In conditional hibah, the subject of contract did not have to transfer yet, where the situation is differ in act of *tanazul*. Thus, if the first agreement is meaningless, there is no ownership transformation occurred. Nevertheless, the ownership transformation for the subject of contract will not occurred unless the terms is contended.

Based on the discussion, it can be concluded that conditional hibah is differs with *tanazul*. Therefore, the principle of conditional hibah can be study in further to enable it to be structured in Preference shares and indirectly able to develop products of the Islamic capital market to be more innovative and competitive products compared to conventional capital market.

Table 5

Analysis on comparative between tanazul dan conditional hibah from the ownership transformation aspect

Conditional hibah	<i>Tanazul</i>
Did not immediately sealed	Immediately effected
Delaying the act of hibah for the future period of time	Happen in the beginning of contract
Valid with the terms for the future time purpose	Invalid for the delaying and future time
Only act as announcement and agreement to conclude the obligations for the future	Nullification of the rights or immediately extrication of the rights at the beginning of the contract
hibah only happen in future time (the transformation of the ownership also will happen in future)	There is instant ownership transformation of the property

Table below concluded the analysis on the comparative between conditional hibah and *tanazul*.

Table 6

Conclusion based on the analysis comparative between conditional hibah and tanazul

Apect comparative	od Conditional Hibah	<i>Tanazul</i>
Definition	Agreement to do hibah for the future time purpose; when the stated condition happen	Agreement between partnerships to do the <i>tanazul</i> on his rights either to half or fully extricate on profit or loss during the extrication
Utterance of offer and acceptance	Sealed for the future time purpose with the use of utterance "will do the hibah"	Utterance of <i>ijab</i> and <i>qabul</i> for immediate time purpose not for the future
Decree and condition	<i>al-Wahib</i> <i>al-Mawhub lah</i> <i>Macqud cAlayh</i> <i>Şighah</i>	<i>Mubarri'</i> <i>Mubarra'</i> <i>Mubarra' Minhu</i> <i>Şighah</i>
Implementation of contract	Contract for conditional hibah did not yet effective, the agreement at the beginning of the contract only for act as binding agreement. The actual contract for conditional hibah will effective after the all the terms been completed	<i>Tanazul</i> effective during the sealed contract after the utterance of offer and acceptance between two parties at the beginning of the contract
Ownership transformation	There is no transformation of the ownership because the contract of hibah did not effective yet. Will be	There is ownership transformation happen during the contract of <i>tanazul</i>

	effective when the discussed terms and condition fulfilled based on the at the beginning of the agreement	
Consequence	Did not bind immediately, the outcome only occurred for the future time purpose	The outcome will occurred after <i>tanazul</i> been sealed. The valid <i>tanazul</i> is the one immediately effective

Conclusion

Based on the previous discussion on the comparative aspects, the application for the conditional hibah is more suitable to be implemented in Preference shares compared to *tanazul* application. This is can be concluded based on the discussion on the definition, utterance of *ijab* and *qabul* (offer and acceptance), pillars and conditions. In addition, the aspects of comparative that have been discussed also able to overcome the Shariah issues occurred in *tanazul* which is prohibited in Islam. Hence, it can be concluded that implementation of conditional hibah is more suitable to be applied in Preference shares compared to *tanazul*.

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References

- Al-Ardabili, Y. I. (2006). *al-Anwar li Acmal al-Abrar*. Jil. 2. Kuwait: Dar al-Ḍiya'.
- Aznan, H. (2011). Pelaksanaan Tanazul di dalam Kontrak Berdasarkan Musharakah: Perspektif Syarak. <http://irep.iium.edu.my/id/eprint/24734>, Iium repository (IREP). Seminar Isu-Isu Shariah dalam Musharakah dan Mudarabah. Anjuran Majlis Penasihat Syariah, Bank Negara Malaysia dan Majlis Penasihat Syariah, Suruhanjaya Sekuriti Malaysia. Lanai Kijang. 15 November.
- Bank Islam Malaysia Berhad. (2010). *Application of Shariah Contracts in Islamic Banking Products and Services*. Kuala Lumpur: Bank Islam Malaysia Berhad.
- Al-Buhuti, M. Y. (1983). *Kashshaf al-Qinac can Matn al-Iqnac*. Jil. 3, 4 & 5. Beirut: calam al-Kutub.
- Al-Buhuti, M.Y. (1993). *Sharh Muntaha al-Iradat: Daqa'iq Uli al-Nuha li Sharh al-Muntaha*. Jil. 2. Beirut: calam al-Kutub.
- Al-Dardir, A. M. (N.d.) *al-Sharh al-Ṣaghir cala 'Aqrab al-Masalik 'ila Mazhab al-'Imam Malik*. Jil. 3 & 4. Qaherah: Dar al-Macarif.
- Faizah, I. (2000). *Asas-Asas Muamalat dalam Islam*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Al-Hajjawi, S. (2002). *Al-Iqnac li Talib al-Intifac*. Jil. 3. Riyad: Darah al-Malik cabd al-caziz.
- Al-Hattab, A. (2010). *Mawahib al-Jalil fi Sharh Mukhtasar Khalil*. Jil. 6. N.p: Dar al-Riḍwan.
- Al-Hattab, K.T. M. (2000). Al-Qabḍ wa al-Ilzam bi al-Wacd fi caqd al-Murabahah li al-Amir bi al-Shira' fi al-Fiqh al-Islami. *Muctah li al-Buhuth wa al-Dirasat* 15(1): 233-259.
- Ibn al-Humam, K. M. (2003). *Sharh Fath al-Qadir cala al-Hidayah Sharh Bidayat al-Mubtadi*. Jil. 6 & 7. Beirut: Dar al-Kutub al-Ilmiyyah.
- Ibn al-Mundhir, A.B.M. (2005). *al-Ishraf cala Madhahib al-cUlama'*. Jil. 7. UAE: Maktabah

- Makkah al-Thaqafiyah.
- Ibn cAbidin, M. A. (2003). *Hashiyah Ibn cAbidin: Radd al-Muhtar cala al-Durr al-Mukhtar Sharh Tanwir al-Abşar*. Jil. 4, 6, 8 & 9. Riyad: Dar cAlam al-Kutub.
- Ibn Dawayyan, I. (N.d). *Manar al-Sabil fi Sharh al-Dalil*. Jil. 2. Dimashq: Dar as-Salam.
- Ibn Juzay, A. Q. (N.d). *al-Qawanin al-Fiqhiyyah fi Talkhis Madhhab al-Malikiyyah*.
- Ibn Qudamah, A. M. (1997). *al-Mughni*. Jil. 6, 7 & 8. Riyad: Dar cAlam al-Kutub.
- Ibn Rushd, M. (1415H). *Bidayah al-Mujtahid wa Nihayah al-Muqtaşid*. Jil. 3 & 4. Qaherah: Maktabah Ibn Taymiyyah.
- ISRA. (2010). *ISRA Compendium for Islamic Financial Terms: Arabic-English*. Kuala Lumpur: International Shariah Research Academy for Islamic Finance.
- Al-Kasani, A. D. (2003). *Bada'ic al-Şana'ic fi Tartib al-Shara'ic*. Jil. 4, 6, 7 & 8. Beirut: Dar al-Kutub al-cilmiyyah.
- Al-Khafif, A. (2009). *Al-Syarikat fi al-Fiqh al-Islami Buhuth Muqaranah*. Qaherah: Dar al-Fiqh al-carabi.
- Al-Khayyat, A. A. (1994). *Al-Sharikat fi al-Sharicah al-Islamiyyah wa al-Qanun al-Wađci*. Jil. 1. Beirut: Mu'assasah al-Risalah.
- Al-Mardawi, A. D. (1956). *Al-Inşaf fi Macrifat al-Rajih min al-Khilaf*. Jil. 7. N.d: Matbacah al-Sanah al-Mahmudiyyah.
- Marina, A. B. (2014). Wacd bi al-tanazul dalam amalan saham keutamaan menurut perspektif Islam. Disertasi Ijazah Sarjana, Jabatan Syariah, Universiti Kebangsaan Malaysia.
- Al-Nawawi, A. Z. (1991). *Rawđat al-Talibin*. Jil. 5. Beirut: al-Maktab al-Islami.
- Nizam. (N.d). *Al-Fatawa al-Hindiyyah*. Jil. 4. Beirut: Dar Şadir.
- Zadah, Q. S. A. (1315H). *Takmilah Sharh Fath al-Qadir: Nata'ij al-Afkar fi Kashf al-Rumuz wa al-Asrar*. Bulaq: Matbacah al-Kubra al-Amiriyyah.
- Al-Qalyubi, S., Cumayrah, S. A. (1956). *Hashitan*. Jil. 2 & 3. Meşir: Muştafa al-Babi al-Halabi wa Awladuh.
- Al-Qarafi, A. I. (2001). *Kitab al-Furuq: Anwar al-Buruq fi Anwac al-Furuq*. Jil. 2, 3 & 4. Qaherah: Dar al-Salam.
- Al-Qarafi, S. A. (1994). *Al-Dhakhirah*. Jil. 6 & 7. Beirut: Dar al-Gharb al-Islami.
- Al-Rafici, A. Q. (1997). *Al-caziz Sharh al-Wajiz*. Jil. 5 & 6. Beirut: Dar al-Kutub al-cilmiyyah.
- Al-Samarqandi, A. (1984). *Tuhfat al-Fuqaha'*. Jil. 3. Beirut: Dar al-Kutub al-cilmiyyah.
- Al-Sarakhsi, S. (N.d). *Al-Mabsut*. Jil. 12. Beirut: Dar al-Macrifah.
- Securities Commission Malaysia. (2007). *Resolutions of the Securities Commission Shariah Advisory Council*. 2nd Ed. Kuala Lumpur: Securities Commission.
- Al-Sharbini, S. M. (2000). *Mughni al-Muhtaj Ila Macrifah Macani al- Alfaz al-Minhaj*. Jil. 2, 3 & 4. Beirut: Dar al-Kutub al-cilmiyyah.
- Al-Shirazi, A. I. (1996). *Al-Muhadhdhab fi Fiqh al-Imam al-Shafici*. Jil. 3. Damsyik: Dar al-Qalam.
- Al-Suyuti, J. A. (1983). *Al-Ashbah Wa al-Naza'ir fi Qawacid wa Furuc Fiqh al-Shaficiyyah*. Beirut: Darul Kutub al-cilmiyyah.
- Al-Zarkashi, S. A. (2009). *Sharh al-Zarkashi cala Matan al-Khiraqi*. Jil. 2. Makkah: Maktabat al-Asadi.
- Al-Zarqani, A. (2002). *Sharh al-Zarqani cala Mukhtaşar Khalil*. Jil. 7. Beirut: Dar al-Kutub al-cilmiyyah.
- Zaydan, A. K. (2005). *al-Madkhal li Dirasah al-Sharicah al-Islamiyyah*. Beirut: Mu'assasah al-Risalah.