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Hibah of Collateral Property in Islamic Perspective and the Implementation in Malaysia

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Abstract

The Islamic wealth planning industry is progressing with the offerings of various conceptual hibah products. Collateral hibah or securitized *hibah* asset has been one of *hibah* products in the market involving intangible asset such as real estate. However, the implementation of collateral *hibah* raises questions of its compliance as the property is held by the financial institution in the form of a collateral. Furthermore, there are diverse decisions of the Syariah High Court judges in substantiating the compliance of collateral *hibah*. Hence, this article aims to examine the views of the relevant fuqahas on the subject of collateral *hibah* and to analyze the tendency of judges in adopting the views of these *fuqahas* in their ruling on collateral hibah. Data of this study is obtained from a comparative study of the relevant sects (*mazhab*) and collateral *hibah* cases rulings in the Syariah High Court. The findings show that there are views of the relevant sects that allow collateral *hibah* on the condition of obtaining consent from the collateral holder and this view has been adopted by the judges. Knowing the views of these *fuqahas* (that allow the concept of collateral *hibah*) and realising the inclination of the judge's decision on this issue, thus supports the industry offering the product to be implemented according to the Islamic *shariah* perspective that agrees to the court's decision.

Keywords: Hibah, Collateral, Real Estate, Fuqaha, Judge.

Introduction

The Islamic wealth planning industry is progressing offering various products in the market with the objective to solve critical adverse issues of Islamic inheritance escalating each year. Until 2016, a total of RM60 billion of the estates were unclaimed and 90 per cent of the total assets belong to Muslims comprising homes, land and cash. The Department of Director General of Land and Mines recorded more than one million properties have yet to be claimed and to be handed over to the eligible heirs (Muhammad, 2011). This should be immediately

curtailed because it will not only have negative social and economic impacts on the Muslims, but will also tantamount into creating a bad perspective on the Islamic wealth management and planning system particularly in Malaysia.

Among the solutions that are seen to be very significant in addressing this problem are through *hibah* instruments. The conceptual product of *hibah aqad* (contract) has been widely marketed by the industry whether it is in the asset management or in the Islamic financial system. One of the forms of *hibah* products offered is the collateral *hibah* or securitized *hibah* asset. Most intangible asset such as land, homes etc. owned by the community today through loan financing from the financial institutions. It is rarely heard among the community, especially Muslims with average income earning buying properties in cash (Muhammad, 2011). Hence, if it is evidenced that securitized *hibah* is able to resolve the adverse issues of Islamic estates and inheritance involving intangible assets in particular, the implementation should be expanded thus making sure that the issue of Muslim's unclaimed property will be reduced.

However, the implementation of the *hibah* as collateral assets raises the question of its validity in *shariah* law perspective. This is because the asset is still in the form of collateral of the financial institution and the buyer does not have the absolute freedom in the transactions of debt that has not been fully repaid. First and foremost, a *hibah* asset needs to be fully owned by the participant (a person who awards *hibah*) and not bound on the rights of others for any transaction to be made on the assets. The sharing of rights between buyers and banks against securitized *hibah* asset raises questions on the validity of implementation. Furthermore, there are diverse decisions of the *Syariah* High Court in deciding the case relating to securitized *hibah* asset. The tendency of the judges to choose the views of the *fuqaha*s to substantiate a *hibah* grant with differing interpretations is worsen by having no specific law as guidance and reference (Ghazali, 2010). The question arises is what is the *fuqaha*'s view on the *aqad* of securitized *hibah* asset as well as which views shoud be adopted by the *Syariah* High Court judges in deciding the case relating to securitized *hibah* asset.

As such, this article will reveal the fiduciary rights of the *fuqaha*s on securitized *hibah* asset and analyze the decisions of the *Syariah* High Court judges in making decisions on the matter and to ascertain a *shariah* compliance implementation by the industry and decision of the authorized party in accepting the product.

Definition of *Hibah*

Hibah is literary an award (Al-Jurjani, 2012), whether the award is in the form of *'aynn* or otherwise such as a property benefit. According to al-Ramly (1967) *hibah* originates from the Arabic verb of *habba* which means the transfer of ownership from one person to another. It also means awakening as it is an act of awakening to make good after neglects. Generally, the definition of *hibah* in linguistic term contained in it some other definitions namely gifts and alms. These three terms of giving or awarding are of similar forms but what distinguishes them is the purpose they are being made. Al-Nawawi (2012) explains the difference between these three terms depending on the giver's intentions. If a person gives ownership of the property with the intention of glorifying the recipient, it is considered a gift. While alms, it is meant to draw closer to Allah SWT and to give to the poor and the needy. It can therefore be concluded that every alms or gift can be a *hibah* but not all *hibah* are alms or gifts.

Meanwhile, *hibah* according to *shariah* term is the granting of possession without any immediate recompense (Al-Wizarah, 2002). The *fuqaha*s have their own definition of *hibah*

among which according to the *Shafi'i* sect, *hibah* is a voluntary possession of *'aynn* without any consideration made during the life of a person (Al-Sharbini, 2009). According to al-Bahuti (1982), *hiba* is a voluntary grant of property ownership made while living without any exchange that allows the recipient to make transactions on the property awarded whether it is known or not by the owner/giver. While the *Hanafiyyah* sect defines *hibah* as granting property without repayment (Ibn Hamam, 2003). Similarly, Ibn Rushd (2004) defines *hibah* as a grant of possession while living without recompense.

Based on the definition of the *fuqaha*s, it can be concluded that there is a consensus among the *fuqaha*s that *hibah* is a grant of property ownership made during life without any exchange or expecting any return. This definition distinguishes *hibah* with other asset management instruments such as wills which will only take effect after the death of the property owner. According to Said (2014) even though *hibah* is defined as a voluntary grant of property to another person while living without expecting any return from the *hibah* recipient, the Civil Laws of Egypt, Syria and Jordan allow *hibah* to be granted with conditions on the obligation of the recipient to return the gesture. In additional, *hibah* is also seen to have advantages over other mechanisms of asset management and planning, thus to be implemented in line with the changing livestyless of the current Islamic society.

Among the advantages, *hibah* can be awarded to anyone including the eligible heirs of inheritance. According to Muhammad (2013), *hibah* has the privilege to allow an heir to provide parts of his/her inheritance to another heir(s) who are more in need economically and financially. According to Nasrul, there are situations where the daughter(s) of the family carry most of the responsibilities in taking care of the parents than the son(s), then a bigger share of *hibah* can be awarded to the daughter(s). The laws of *faraid* stipulates only one half share of inheritance will be given to a woman compared to one share for a man (Muhammad 2013). Hence, a *hibah* provision of inheritance will ease the burden of the heirs in performing obligations for the family and in times of difficulties especially when death happens. Absolute *hibah* that meets the rules and conditions affects the transfer of assets to *hibah* recipient with immediate effect, indefinitely and with unlimited period of time thus removing the proprietary rights of the giver over the *'aynn* and the benefits. The property that has been given as *hibah* no longer belongs as part of inheritance since the ownership goes to the recipient even before the death of the giver (Othman, 2017).

Another advantage is that the implementation of *hibah* has no restrictions on individuals especially when it comes to religious beliefs. The positive development of Islamic *da'wah* with more non-Muslims to embracing Islam (reverts) however putting limits to inheritance eligibility due to different religious pratices and beliefs (Muda & Awang, 2006). According to Islam, the reverts are no longer able to donate their property to families who have not yet embraced Islam. In the Islamic spirit of maintaing family ties despite differences in religious beliefs, *hibah* is therefore an instrument to be applied in this situation.

Unlike with the case of inheritance, there is no limitations and specific quantum for *hibah*. One can bestow a huge share of wealth to another of his choice either from among the eligible heirs or not. Intangible assets such as houses and lands are of economic value today, thus without early planning in ensuring these assets continue to grow economically after demise of the owner may result in the property being divided smaller and uneconomically (Muhammad 2011). This would be detrimental to the heir's benefits and country in general. Hence, the instrument of *hibah* in asset management and planning is essential in ensuring

economically viable and continuous utilization of the assets which will benefit the heirs in long term.

However, according to Ahmad (2004) that it has become an *'urf* practice among the Malaysians to resort to loan financing over cash payment when purchasing a property (Muhammad, 2011). Therefore, the implemetation of *hibah* concept on the collateral assets in the financial institutions needs to be carefully assessed as the concept of *hibah* is bound to become an effective alternative in Islamic asset management and planning development particularly to the Muslim community for a long time.

Concept of Collateral Asset

Collateral is one of the *aqad* under the *Shariah* laws. Collateral *aqad* are made as guarantee to debt when it can not be repaid by the borrower. Islamic scholars define collateral as making something of value as a debt guarantee in the event of failure in debt repayment (Al-Ramly, 1967). In another word, a collateral asset will be a collateral and guarantee to creditors to guarantee repayments. If the chargor (debtor) were to fail in settling the debt within the stipulated period, Islam allows the chargee to sell the collateral in order to recover his/her rights and the sale balance will be returned to the chargor (Taher et al., 2010). This clearly demonstrates that the security arrangements made are intended to safeguard the interests of both creditors and debtors.

The issue of collateral asset ownership was shed by the *fuqaha*s as quoted by Al-Kasani (2000) narrating from Imam *Shafi'i* that the custodian (chargor) was the sole owner of his collateral asset whether *ruqba* owhership, benefits and the authoritative rights. He argues with the *hadith* narrated by al-Bukhari the Prophet (peace be upon him) said

> "There is no loss of ownership of the mortgaged property by the owner to which it is incurred, for him the profits and losses from such property" (Al-Bayhaqi, *Sunan al-Bayhaqi al-Kubra.* The Book of al-Rahnu. Chapter Ma Ruwiya fi Ghalaq al-Rahnu. No. *Hadth*, 11347).

The hadith clearly indicates that the custodian or chaftor still owns the property of the collateral asset despite being in the custody of the security holder. Even the above *hadith* affirms that any profit or loss resulting from such property is the responsibility of the debtor. If the security of the collateral does not belong to the custodian then he has no such right or advantage as mentioned in the above *hadith*.

Ibn Qudamah (2004) states that it is not for the chargee of collateral to perform *tasarruf* on the collateral assets without the permission of chargor because *tasarruf* contracted is made against the property not the possession. A growth in collateral asset (such as appreciation) and its benefits are the asset of the custodians and no one can make any claim on the asset without consent of the custodians thereof, however the custodians share the property rights of the collateral asset with the chargee as mentioned by the *fuqaha*s (Al-Wizarah, 1993). It is also said that according to al-Qalyubi (2008) that possession on the collateral assets after *aqad* is made belongs to the chargee and the chargor shall not recover it unless with a consent from the chargee or after the debts have been amortized.

From the debate of the *fuqaha*s, it is understandable that when a collateral *aqad* is performed, there is a sharing of rights between chargor and chargee. The rights of the chargor as the property owner prevents the chargee from performing any transaction on the collateral

asset without the consent of chargor vis. a vis. This arrangement allows the chargee to have guarantee against repayment of debts. Hence, even though the custodian is the owner of collateral asset, the sharing of the rights limits the freedom for the collateral to be transacted.

In today's context, *aqad* collateral is an agreement or contract made primarily in dealing with purchases through loan financing of financial institutions such as banks. According to Mujani et al (2012), when a collateral is pledged by the financial institution for the purpose of repayment of loan, one does not have any access to the collateral and any devolution on the property is void unless it is approved by the bank. The bank also does not allow any transfer transactions to be made during the debt tenure or debt not fully repaid. This gives the perspective that the policy practiced by the bank has yet to offer a transfer-related collateral asset. It can therefore be seen that the banks make every purchase of property made through loan financing as collateral during the loan repayment that has yet to be fully repaid. This is to ensure the interest of the bank to recover their money if the debt can not be settled by the borrower within the agreed period. For example, a 30-year repayment period for a home purchased through a financial institution loan repayment, the house will be pledged by the bank as a collateral until the repayment has been fully settled. If the borrower failed to settle the loan within the agreed period, the bank reserves the right to reposses the house based on the policy set by them.

Looking at the willingness of financial institutions in allowing the transfer of property to be made through *hibah* or other instruments, it can be concluded that the banks as collateral holders and creditors have the right to the collateral assets as a guarantee of repayment. Although ownership of the collateral asset belongs to the chargor, after which collateral has been charged, the rights of creditor as security holder has been formed as described above. Hence, the chargor must submit to the rights and no longer be allowed to have his will with regards to the further use of the collateral. As such, there is a question on the status of the *hibah* of the collateral asset, whence *hibah* is a form of ownership that voids the right of the security holder to hold the asset as a guarantee to repayment of debt.

Hibah collateral asset according to view of the *fuqaha*

The *fuqaha*s differed in views in substantiating *hibah* collateral assets. They divide *aqad* on *hibah* collateral into two conditions as follows:

i. Before *al-qabd* or handing over of collateral to collateral holder.

If the transaction of *hibah* is made before the handing over of collateral to the chargee, whether the chargee is a third party or the creditor himself, there is no dispute among the *fuqaha*s as the third party is legally appointed as creditor's representative because neither the contracting parties believe in each other (Al-Wizarah 2002), the majority of *Hanafiyyah*, *Shafi'iyyah* and *Hanabilah* sects are with the view that the *tasarruf* made by the custodian is complete (*nafadh*) without the need for authorization of the collateral holder because at that time the property has not yet bound with any right of the collateral holder (Al-Zuhayli 2012). Al-Nawawi (2012) also said that if a chargor performs *tasarruf* that can void his ownership of the property such as selling, liberating (slavery), making it a dowry, rental, granting *hibah* that translate to *al-qabd*, then the *tasarruf* performed is a form of withdrawal from *aqad* against the collateral.

Similarly, the Maliki School thinks that a collateral is made possible with the validation of *ijab* and *qabul* (Al-Zuhayli, 2012). As long as *al-qabd* does not occur, it is permissible for the chargor to make any transaction against the property (Al-Zuhayli, 2012). Similarly,

Ibn Qudamah (2004) shares views with al-Nawawi that is a chrgor pledges commitment for *tasarruf* against the collateral asset before *al-qabd* of either *hibah*, sale, liberation (slavery), making it as a dowry or securing it for a second time, the collateral that has been made is void, regardless of *qabd*. This is because the form of *tasarruf* performed inhibits application of the property as a guarantee to debt consolidation.

In conclusion, the situation of *al-qabd* will determine eligibility of *hibah*. It is an important element in every contractual agreement as well as in the case of securitized assets. As long as the property has not been handed over to the depository there is no barrier for the chargor to withdraw the collateral or to perform *tasarruf* against it whether to give as *hibah* or sell it without the authorization of the creditor. This is because the property right has not been transferred and is still not formed. Hence, a *hibah* made prior to *al-qabd* is valid on the part of the *fuqaha*s regardless of the creditor's consent or not. However, this is not the case with *hibah* collateral assets in Malaysia where every property purchase is made with the consent of both contracting parties to make the property as collateral upon the receipt of *al-qabd* by the buyer. In addition, it is common practice for the Malaysian community to award their property as *hibah* after the completion of all purchase procedures including property handing over and change of name.

ii. After receipt of collateral asset by the chargee or *al-qabd* is performed

Generally speaking, *fuqaha*s do not differ in opinion saying it should not be for the chargor to perform *al-tasarruf* that can void ownership of collateral after the contract has been signed (*luzum*) such as sales agreement, *hibah*, *waqf*, charge or contract which can reduce the value of collateral property but with the permission of the collateral holder (Al-Wizarah, 2002).

The Hanafi sect argues that *al-tasarruf* pledged by chargor depends (*mawqufah*) on the authorization of the collateral holder (Al-Zuhayli, 2012). If the creditors justify the agreement, either *hibah* or *ijarah* contract, then the *aqad* is valid (al-Zuhayli, 2012). Ibn 'Abidin (1992) emphasizes in *al-kifayah* that the origin of every *tasarruf* that revocates the right of the collateral holder is not executed (*nafadh*) but with the permission of the collateral holder. If the contract is made to celebrate the rights of the security holder then the *tasarruf* performed is executed by obtaining the consent of the collateral holder, however if the transaction performed denied the rights of the security holder, the consent granted would invalidate the right of the security holder (Ibnu 'Abidin, 1992).

Similarly, the *Maliki* sect says that it should not be for the chargor to sell and award *hibah* on the collateral property except with permission of the creditor (Ibn Rushd, 2004). According to some of the Malikiyyah sect, if *tasarruf* is performed such as selling, *ijarah*, *hibah*, alms, *ia'rah* or the likes then the contract ceases on the creditor's consent (Al-Zuhayli, 2012). Creditors are entitled to authorize the contract or cancel and resume the charge (Al-Zuhayli, 2012).

As for the *Shafi'i* sect, it is in the view that if a mortgagor conducted a transaction that terminates ownership such as a sale, *hibah*, *waqf* or a contract that reduces the value of the property, the transaction ceases on the authority of the chargor (Al-Ansari 2008). This is because the transaction may make void the debt guarantee rights to the collateral holder. Therefore, transactions made without the chargee's consent are void. However, according to Al-Ramly (1967), if the transaction is a contract that does not have the

exchange of such *hibah* and *waqf*, the contract is valid but the collateral made is invalid because the collateral holder has the right to hold the collateral asset (*al-mahbus*) however authorization thereof causes the right to be revoked.

The ultimate opinion of the *Maliki* sect also says that the contract is null and void once the creditor allows the transaction to be made against the property of the collateral even though the transaction had not been performed by the chargor (Al-Zuhayli 2012). This group argues by saying that the consent given by the chargee is a form of withdrawal against the *aqad* (Al-Dusuqi, 2012). Similarly, Al-Kasani (2000) quotes a story from Abi Yusuf saying that the chargor has no right to perform *hibah* or alms without the consent of the creditor. The status of the transaction depends on the authorization of the creditor. If the creditor allows the contract to be made then the transaction is valid but the collateral *aqad* will be void as the property is no longer in its possession.

According to *Hanbali* sect, if the chargor performed *tasarruf* without consent of the creditor such as sale, *hibah*, *waqf*, collateral or as such, the transaction is nullified as it denies guarantee right of the creditor unless a consent has been obtained (Ibn Qudamah, 2004). However, *hibah* on the collateral asset is valid but this invalidates the *aqad* since *hibah* is a transaction involving the exchange of property ownership. Al-Bahuti (1999) mentions that if a creditor allows *tasarruf* such as *hibah*, *waqf*, sale and purchase, charge (a second time) and as such, the *tasarruf* is valid even though it is still bound by the rights of the security holder as any authorization thereof abolishes those rights. However, the transaction will invalidate *aqad* on the collateral as its authorization is a form of barrier to the formation of the collateral agreement at the outset.

If the scrutiny of the *fuqaha*s disputes in substantiating collateral *hibah* asset is intended to safeguard the right of the repayment of loan of the security holder. The argument and reason of each sect only revolves around the security status of chargee. The dispute on the form of consent is also with the intention to protect the both contractual parties concerned especially the right of collateral holders. Thus, it can be concluded that in the event of a transaction causing the denial of the right of collateral holder such as collateral asset value depreciation or change of property ownership, the *jumhur fuqaha*s argue that the transactions made may result in the void of collateral *aqad*. On the contrary, if rights of collateral holders are guaranteed even though the *tasarruf* is performed, researchers are with the opinion that there is no problem to perform *tasarruf* against the collateral asset including granting it as *hibah*. This is in line with the *fiqh* method which states (Al-Zarqa 1989):

"Whence the disappearance of a barrier then the prohibited matter is permissible"

In the current context of hibah collateral asset implementation, the repayment right guarantee against the collateral holders is secured. This is because in the current situation of loans financing (especially) housing, MRTA (Mortgage Reducing Terms Assurance) and MRTT (Mortgage Reducing Terms Takaful) are included (Muhammad, 2011), which guarantees repayment of loan debts in accordance with agreed agreements. Therefore, if the buyer were to *hibah* the property which is still under collateral and protected by the MRTA and MRTT, there is no issue on guarantee of repayment. The financial institutions also do not care about what happens to the property that is secured during the repayment of loan by the buyer (chargor). However, there is an issue on the extent of financing provider's willingness in giving permission to their clients for *hibah* to be performed on the property (Muhammad, 2011).

The difference in opinion of the *fuqaha*s in this issue actually provides convenience to Muslims and to the authority to adopt the views deemed appropriate and in line with the needs and conditions of the local community in confirming the collateral *hibah* asset. This is in line with the holistic religious concept of Islam covering and complementing whole aspect of human life as well as to fulfill the importance of property management according to the *maqasaid shariah* so that the property continues to circulate in the economy and to benefit and enjoyed by future generation.

Analysis on decisions of collateral *hibah* asset case in *syariah* court

Looking at the diversity of the decision of the Syariah Court judge in determining the case relating to securitized or collateral *hibah* property, it seems that diverse views of the judges adopts the views of the *fuqaha*s and are not only tied to particular selected sects as the case of *Fadhlan Chong bin Abdullah v Noor Badlina Basri* (10100-044-0242-2013). The court found that the house that was awarded as *hibah* was still in the charge of Public Bank Berhad based on Form 16A National Land Code. The judges argue that property to be awarded as *hibah* must be owned by the giver of *hibah* and thus can not make *hibah* on property that belongs to another prior obtaining permission from the legal owner of the property. There was also no submission to the Court any form of authorization from the Public Bank granting the consent to the plaintiff to make a *hibah*. Similarly, a hibah was made against a Mercedes Benz and a Honda Accord car where the two cars were still under the bank's authorization when the *hibah aqad* was made. As such, the *Syariah* High Court in this case decides that the plaintiff's pledge for *hibah* against a house in Perak, a Mercedes Benz car and a Honda Accord car is illegal. The element of bank's concent and authorization recognized by the court in this case proves that the *Syariah* High Court judges in this case are more likely to incline to the view of the *fuqaha*s in granting *hibah* against secured property on condition of obtaining the consent of the bank or the security holder.

While in the case of Yati Suraya bt. Yazid v Supiah bt. Abu, Yati Syuhaida bt. Yazid, Sufian Hadi bt. Yazid, Sufian Naji b. Yazid, and Sufian Rushdi b. Yazid (05100-044-013-2011) the *Syariah* High Court Judges decided *hibah* as valid on a collateral property in the form of Aerobek Hero car. *Hibah* granted by the court is legal as it fulfills all the pillars of *hibah* both giver and receiver, the property of *hibah* and the element of *ijab qabul* and *qabd* by the applicant and the validity of the applicant without the reference to the views of the *fuqaha*s which requires that consent from the collateral holder to be obtained i.e. the bank for *hibah* to take effect. Similarly, in the case of Mohd Pauzi b. Ibrahim v Nor A'liah b. Ibrahim (06100-044-0306-2015), the *Syariah* Court has confirmed land for *hibah* is still under the collateral of Maybank Islamic Berhad. The Court argued that the land is the property of the mortgagor i.e. the applicant and it is the right of the mortgagor to manage the property in any form including to grant it as *hibah*. According to the court, the mortgagee cannot make any arrangement to manage the collateral so as to sell it or the likes without permission from the mortgagor.

After reviewing the arguments and reasons of the *Syariah* Judges in deciding some cases relating to securitized *hibah* property, the decisions made by the judges were not merely focused on one sect but at the same time adopting the views of sects other than the *Shafi'i* which is the practice of most Muslims in Malaysia. The need for consent from the bank as a security holder to grant the property in charge is to ensure that the rights or interests of the security holder are safeguarded, which guarantees the debtor's debt is amortized. If there is a security or a guarantee from *uruf* perspective or legislation which can guarantee the right

of the security holder is protected, then the views of the *fuqaha*s that allow *hibah* on the assets put up as collateral can be implemented in order to preserve the interests of Muslims in this country.

Conclusion

Hibah is one of the property developments instruments that is increasingly being developed as a preliminary measure of property management in order to prevent the freeze of property due to death, especially on property that is still under collateral. The concept of secured property has indeed been shed by the previous *fuqaha*s jurisdictions and has been adopted and applied in most financial systems today. In the securitized arrangement, the collateral assets is owned by the property owner or chargor even though the property has been handed over to the security holder as a guarantee of debt consolidation. The sharing of rights formed as a result of collaterals formation prevents the chargor in conducting *tasarruf* at will. It is important to guarantee the right of collateral holders in order to guarantee return of repayment. Consequently, the *fuqaha*s differ in opinions in confirming the implementation of securitized *hibah* peroperty because the a *hibah aqad* involves the transfer of ownership which can deny the right of the security holder. For those who require *hibah* to be made on collateral assets, they are of the view that the authorization of collateral holders can be obtained after the agreement is made because the grant of *hibah* is valid depending on the consent and authorization of the collateral holder and in this context, the financial institution. Whereas, those who are of the opinion that securitized *hibah* property is invalid unless with the permission of the security holder, the consent of the security holder is to be obtained as when the contract is made. The *fuqaha*s dispute in this issue is not a burden but a blessing to the community as it facilitates in choosing the views that are deemed to be appropriate at that time.

Diverse decisions of the *Syariah* Court on the issue of securitized *hibah* asset summarized the tendency of the *Syariah* Judges to adopt the views of the *fuqaha*s. The selection of views varies according to the circumstances and situation of a case. This also happens due to the absence of specific laws relating to *hibah* as guidance and reference to judgment. Hence, a law on *hibah* should be formulated in order for its implementation to be regulated and to be reference by the *Syariah* Judges in deciding on *hibah* cases in Syariah Courts. Companies offering *hibah* based products also need to ensure that products offered are *shariah* compliance which will indirectly conform with the judges' decisions.

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