

Study on the Concept of Sustainable Development: Focusing on Islamic Banking and Role of Precautionary Principle

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Abstract: One of the legal framework approach under the concept of sustainable development is the precautionary principle. The precautionary principle plays an important role in the area of environmental law and governance. The used of the precautionary principle in the area of environmental law and governance is largely in respond to the inevitability of every human being around the globe to protect environment from being polluted in their surroundings. As for the Islamic banking is concerned, the bank may created an essential mechanism to achieve sustainable development. Therefore, this study examines the use of the precautionary principle in Islamic banking with relation to the environmental law and governance by identifying actions and cases which deal with environmental protection. This study is also identifying the relation between the Islamic banking which applied the precautionary principle and Rio declaration as a means to protect mother nature.

Key words: Sustainable development, Islamic banking, precautionary principle, machanism, legal framework, globe

INTRODUCTION

Banking institution is a very important to the nation. Bank plays an essential role to the development of a country. Bank serves many products which include saving and investment in order to increase capital, subsequently generate wealth. Even though, bank is very essential to the nation, however to what extent, bank especially Islamic banking ready to accept legal framework, the concept of sustainable development with one of the approach under the precautionary principle. Therefore, this study will find the answer. Basically, the banking system can be divided into two types of banking system. The first system is known as conventional banking. Meanwhile, the 2nd system is known as Islamic banking or also be known as syariah banking. The conventional banking system introduced by the West as for the Islamic banking system that is based on the teachings of Islam refers to the Al-Quran and Hadith.

ISLAMIC BANKING

Islamic banking is based on the banking activities according to Syariah law called Fiqh transactions, Regulation of the transaction. Rules and practices

derived from the Al-Quran and Sunnah and other secondary sources of Islamic as agreed in the collective opinion among scholars Syariah (Ijma), analogy (Qiyas) and personal reasoning (Ijtihad). Application of Islamic banking can be seen in the practical through the development of Islamic economics. Islamic banking is free from riba. This is because Syariah prohibits the payment or receipt of interest by the interest from loans and investing in businesses that provide goods or services is considered contrary to the principles. At the end of the 20th century, Islamic banks become famous bank on the growing awareness and to maintain harmonious Islamic community itself. Today, Islamic banking is not only applicable if the muslim community but also non-muslim communities, mostly prefer to use Islamic banking services.

ISLAMIC BANKING FINANCIAL TRANSACTIONS

According to Lee and Detta (2007), Islamic banking financial transactions can be divided into several parts:

- Bai' Al Inah (sale and purchase agreements)
- Bai' Bithaman Ajil (deferred payment)

- Bai' Muajjal (credit sale)
- Musyarakah (joint-venture)
- Mudarabah (partnership)
- Murabaha (sale price which includes a profit margin agreed by both parties)
- Musawamah (negotiating the sale price between two parties without any reference by the cost or ask the seller a good price)
- Bai salam (means a contract in which money is printed for the goods delivered in the future)
- Hibah (this is a sign that is given voluntarily by the debtor to the creditor in return for loans)
- Ijarah (means lease, hire or reward)
- Sukuk (Islamic bond)
- Wadiah (saving account)
- Wakalah (will occur when a person becomes a representative to conduct a transaction on behalf of the owner of the account with approval by the owner's of the account)
- Takaful (Islamic insurance) (Lee and Detta, 2007)

Islamic banking system is a direct engagement with the practice financial but it is based on Islamic Syariah and Fiqh method. Easily between Islamic principles to be observed is the elimination of riba, the prohibition of any form of gharar, the prohibition of gambling, the focus of the activities and commodities are lawful and focus on the concept of justice. In addition, there are other principles of Islamic banking in such a God as the absolute owner, people as caliph, the integration of moral values, profit sharing and positive attitude towards the economy and pay the zakat.

THE CONCEPT OF SUSTAINABLE DEVELOPMENT

The concept of sustainable development has been defined by the world commission on environment and development as development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs. The above said concept covers two essential scopes, i.e., environment and social aspects.

This concept of sustainable development has been highlighted in the 1992, United Nations Conference on Sustainable Development in Rio de Janeiro as the results, Agenda 21 and Rio declaration has been established. According to Sands (1995, 2003), Agenda 21 emphasises the following matters which include sustainable human settlement, population, consumption pattern, poverty and human health. On the other hand, Mensah (1996) stated

that the Rio declaration addresses on mankind entitlements and rights which include health and productive life. Basically, this concept of sustainable development has been an element in the international legal framework, since early as 1893. According to the case of United States of America vs. Great Britain in 1893, 1 Moore's Int. Arb. Awards 755, well known as pacific fur seals arbitration where in this case, the United States of America has stated that a right to make sure the appropriate and lawful use of seals and to protect them for the benefit of human beings from meaningless destruction (Razman *et al.*, 2009b, 2010c; Emrizal and Razman, 2010). Sands (1995) indicated that this concept of sustainable development is perhaps the greatest contemporary expression of environmental policy, commanding support and presented as a fundamental at the Rio Summit, Rio declaration on environment and development in year 1992. According to Article 33 of the Lome Convention 1989 states that in the framework of this convention, the protection and the enhancement of the environment and natural resources, the halting of deterioration of land and forests, the restoration of ecological balances, the preservation of natural resources and their rational exploitation are basic objectives that the African-caribbean-pacific (ACP) states concerned shall strive to achieve with community support with a view to bring an immediate improvement in the living conditions of their populations and to safeguard those of future generations (Razman *et al.*, 2009c; Emrizal and Razman, 2010). The above-mentioned Artical 33 introduces into legal framework of the concept of sustainable development with one of the approach under the precautionary principle.

PRECAUTIONARY PRINCIPLE

According to Article 38 (1) of the Statute of the Global Court of Justice, sources of the global law are:

- Global conventions
- Global custom as an evidence of a general practice accepted as law
- The general principles of law recognised by civilised nations
- Judicial decisions of the Global Court or Tribunal

It is clearly that the general principles of law are being considered as the sources of the global law. Basically, there are seven general principles of law that concern with global environmental protection which is shown as (Sands, 1995):

- Precautionary principle
- Preventive principle
- Polluter-pays principle
- Good neighbourliness and global co-operation principle
- Common but different responsibility principle
- Principle 21 of the stockholm declaration and principle 2 of the Rio principle

Therefore, this study will concentrate and discuss one of the above said general principles of law which is the precautionary principle and this study will look into the role of the principle in protecting the environment in order to achieve sustainable development based on the global legal perspectives. The precautionary principle gives direction and assistance in the development and appliance of the global environmental law where there is scientific doubt (Sands, 2003; Razman and Azlan, 2009; Razman *et al.*, 2010c). This principle derived from the traditional approach in dealing with global environmental protection. According to the traditional approach where all parties concerned have been called and these parties created their institutions in order to adopt and apply decisions that are found upon scientific evidences or knowledge and information accessible at that particular occasion (Harris, 1991; Sands, 1995; Razman *et al.*, 2010b) This traditional approach has been highlighted in the following global conventions. Global conventions that required scientific evidence in taking actions are shown as (Sands, 1995):

- Global Whaling Convention (1946)
- Antarctic Seals Convention (1972)
- World Heritage (1972)
- London Convention (1972)
- Bonn Convention (1979)

Basically, this traditional approach put forward that act shall only be taken where there is scientific findings that noteworthy environmental harm is taking place and on other hand in the absence of the scientific evidence therefore, no action may be necessary.

However, in middle 1980's where a change of the traditional approach has been shown. Example of a change of the traditional approach has been shown include ministerial declaration of Global Conference on the protection of the North sea in 1984 which allows states to take action without the scientific evidence of damaging effects, since the damage of the marine environment cannot be remedial or irreversible for a short period (Sands, 2003; Razman *et al.*, 2010b; Sulaiman and Razman, 2010). In addition, the Montreal Protocol, 1987 which

applies precautionary principle approach rather than the traditional approach where allows states to take action without the scientific evidence of damaging effects in dealing with controlling emission of (Chlorofluorocarbon) CFCs.

In 1990, the Bergen ministerial declaration on sustainable development in Economic Commission for Europe (ECE) region was the first instrument to link with the sustainable development principle and the precautionary principle (Mensah, 1996; Sands, 1995; Razman *et al.*, 2010a). According to paragraph 7 of the Bergen ministerial declaration on Sustainable Development, 1990 states that:

In order to achieve sustainable development, policies must be based on precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where, there are treats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation

Since, the above said declaration, there are a number of the environmental treaties that have adopted the precautionary principle into those instruments. Bamako Convention (1991) has linked and put together the precautionary principle and the traditional approach where this formulation in Bamako Convention does not need to be irreversible or serious and lesser the entrance at which scientific proof might need action. According to the Article 4 (3) (f), Bamako Convention (1991) states that:

The preventive, precaution approach to pollution which entails, inter alia, preventing the release into the environment of substances which may cause harm to humans or the environment without waiting for scientific proof regarding such harm. These parties shall co-operate with each other in taking the appropriate measures to implement the precautionary principle to pollution prevention through the application of clean production method

As for parties involved in the Transboundary Watercourses Convention, 1992 agreed upon to adopt the same approach in Bamako Convention (1991). Based on the Article 2 (5) (a) of the Transboundary Watercourses Convention, 1992 provides that:

By virtue of which action to avoid the potential transboundary impact of the release of the hazardous substances shall not be postponed on the ground the scientific research has not fully proved a causal link between those substances, on the other hand and the potential transboundary impact on the other hand

Some environmental treaties do not specifically express in adopting the precautionary principle as part of their instruments but these environmental treaties noted the precautionary principle in their Preamble. For an example, the Biodiversity Convention, 1992 does not expressly specifically adopt the precautionary principle but in the Preamble of the Biodiversity Convention, 1992 provides that:

Where there is a threat of significant reduction or loss of biological diversity, lack of full, there is a scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat

Moreover, the Earth Summit at Rio de Janeiro in the year 1992 has adopted the precautionary principle. It is clearly that shown and highlighted in the principle 15 of the Rio declaration. The principle 15 of Rio declaration states that:

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as reason for postponing cost-effective measures to prevent environmental degradation

ROLE OF THE PRECAUTIONARY PRINCIPLE AND ISLAMIC BANKING IN ORDER TO ACHIEVE THE CONCEPT OF SUSTAINABLE DEVELOPMENT

Based on the earlier discussion according to paragraph seven of the Bergen ministerial declaration on Sustainable Development, 1990 states that inter alia, where there are treats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. It is clearly that the above said provision tries to emphasize to adopt precautionary principle by using the words of should not be.

On the other hand, the principle 15 of the Rio declaration provides that inter alia where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as reason for postponing cost-effective measures to prevent environmental

degradation. This provision of the Rio declaration has highlighted that the application of the precautionary principle as mandatory based on the words of shall not be. An additional essential transformation would be adopted by an interpretation of the precautionary principle, increasingly extensively held that would shift the burden of proof (Sands, 1995; Razman *et al.*, 2009a; Sulaiman and Razman, 2010). Based on the current approach that is the precautionary principle approach would shift the burden of proof and need the project proponent who intends to develop a project to bring evidences which the said project will not cause harm to the environment in order to attain sustainable development (Sands, 1995; Razman *et al.*, 2010c). Whereas, the traditional approaches indicate that the burden of proof is on the shoulder of the party who oppose a development project. Later the oppose party to the said development project is required to bring evidences to proof that the said development project is likely to cause harm to the environment (Sands, 2003; Razman *et al.*, 2010b). As for Malaysia is concerned, the Environmental Quality Act, 1974 has adopted the precautionary principle approach, especially based on section 34A. According to section 34A (2) of the Environmental Quality Act, 1974 states that:

Any person intending to carry out any of the prescribed activities shall before any approval for carrying out such activity is granted by the relevant approving authority, submit a report to the Director General. The report shall be in accordance with guidelines prescribed by the Director General and shall contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment

Clearly that the previously said provision requires the project proponent to bring evidences in the form of a report which indicate that the development project will not cause harm to the environment in order to achieve sustainable development and if the project is likely to harm the environment, the project proponent is required to proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment (Razman and Azlan, 2009; Razman *et al.*, 2010a).

According to Malaysian experience on environmental impact assessment which also Islamic banking in Malaysia also looking at this provisions in considering the project proponent loan application where, it is clearly

shown as the state practice to attain sustainable development. The state practice has adopted precautionary principle approach in order to achieve sustainable development. Based on Article 38 (1) (b) of the Statute of the International Court of Justice identifies state practice as the international customary law and this international customary law being classified as one of the sources of the international law. Finally, the precautionary principle approach may be considered as one of sources of the international environmental law as the principle position as a general principle of law and also an international customary law in order to attain sustainable development which include urban region where the banking institutions as well as Islamic banking also taking part on regards this matter.

CONCLUSION

In this study, it is suggests that the Islamic banking has incorporated the precautionary principle. The precautionary principle plays an important role in the area of environmental law and governance. The opportunity to enhance the growth of the precautionary principle has been show in the some practices in Banking institutions as well as Islamic banking.

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