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THE RELEVANCY OF HISBAH (ACCOUNTABILITY) IN THE MODERN ERA: A BRIEF ANALYSIS

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Abstract

The concept of hisbah has been proven to be a significant notion of upholding justice and combat evil, as well as the implications as a medium of enforcement units in Islam. The genuine concept of hisbah (accountability) aims to enjoin good and forbidding evil, which refers to the Islamic organizational system's administrative affairs accordingly. This institution has been evolved progressively in terms of the organizational structures, even to the appointed officers' basic scope of duties. It has been recorded that during the medieval Islamic era, the institution of hisbah has developed excellently and recognized as a blessing to the Muslim ummah. On the other hand, there are specific criticisms about its efficiency within the modern world's ambit. Thus, this paper would like to explore this institution's brief analysis as to its validity and relevancy in this modern era. Besides, throughout this paper, it is hoped that a better understanding could be gained of the development, as well as prospects of hisbah holistically.

Keywords: hisbah, ombudsman, modern & accountability

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INTRODUCTION

The term "*hisbah*" denotes some Arabic words of "*ihtisaba*", "*yahtasibu*", and "*ihtisaban*" denote several meanings; firstly, it refers to a reward from Allah (*talab al-ajr*). Besides, it also indicates banning any wrongful acts which are against the syara'. Ibn Manzur (1966:17) stated that *hisbah* is "*masdar*" (a derivational word) from the word "*ihtisaba*" (hoping for some rewards from Allah SWT). In this context, he elaborated that the term "*ihtisab*" refers to the situation of looking closely into administering, overseeing, preventing or refraining from doing evil deeds. Concerning this matter, Ibn Khaldun (1930) opined that *hisbah* is a religious task, including doing good and struggling against harmful deeds.

On the other hand, from the word "*ihtasaba*", "*yahtasibu*" refers to the acts of thinking any possibilities which may be materialized. Besides, it refers to the acts of making calculation or estimation of something. On the other hand, *hisbah* also derived from the verb "*hasaba*", "*yuhasibu*", and "*muhasabah*", which carries the meaning of evaluating himself or examining one's conscience. To illustrate this situation, it has been narrated from the incident of Umar Al-Khattab, who has ordered Hatib ibn Abi Balta'ah to raise the price of the good sold by him or otherwise, he has to leave the place. Later, Umar has reviewed the order made by him (*hasaba nafsah*) and asked Hatib for his wrongful order previously. Technically, most medieval Islamic jurists generally opined that the concept of *hisbah* refers to the act of enjoining good and forbidding evil (*al-Amar bi al-ma'ruf wa al-nahy an al-munkar*). It is a collective responsibility of whole Muslims as prescribed in the Holy Quran. In this context, Al-Juwaini opined that the whole parts of the Islamic Syariah principles are rooted in the duties of enjoining good and forbidding evil. Similarly, Ibn Taimiya also emphasized that the most apex achievement in executing Islamic institutions' public duties is to upheld goodness and get rid of evil.

In a nutshell, by defining the term *hisbah* as "enjoining good and forbidding evil", it visualized the whole Islamic-oriented institutions and the public inclusively to accomplish such duties. Hence, it can be observed thoroughly that this kind of responsibility does not merely lie on the muhtasib per se, but rather on the whole individual Muslim as a whole. It is a mechanism of control or supervision of personal matters, family members, society well - being, good governance of an organization, or even the country affairs inclusively.

LEGAL INJUNCTIONS

Al- Qur'an

There are numerous verses in the Holy Quran, as well as narrated Hadith, which vehemently emphasized its significances:

O ye who believe! Make not unlawful the good things which God hath made lawful for you, but commit no excess; for God loveth not those given to excess.

Eat of the things God hath provided for you, lawful and reasonable; but fear God, in Whom ye believe.

Not all of them are alike: Of the People of the Book are a portion that stands (for the right): They rehearse the Signs of God all night long, and they prostrate themselves in adoration (Al-Maidah: 87 – 88).

They believe in God and the Last Day; they enjoin what is right and forbid what is wrong, and they hasten (in emulation) in (all) good works: They are in the ranks of the righteous.

(Ali – Imran: 113 – 114)

The Believers, men and women, are protectors one of another; they enjoin what is just and forbid what is evil: they observe regular prayers, practise regular charity, and obey God and His Apostle. On them will God pour His mercy: for God is Exalted in Power, Wise.

(Al-Taubah: 71)

Ye are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in God. If only the People of the Book had faith, it was best for them; among them are some who have faith, but most of them are perverted transgressors.

Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity.

(Ali-Imran: 104)

As-Sunnah

There should be no single person in the Muslim ummah who has acknowledged there is sinful act has been committed and has the power to stop it. However, he does not take any action (if it happens), then Allah's wrath is total with him (Narrated by Ahmad).

If anyone of you has seen any wrongful acts have taken place, then you must stop it with your hands, if you are not able to do so, and then use your tongue, and if you still not able, then use your heart to hate it. It is the weakest faith of you” (Reported by Muslim).

That the Messenger of Allah (peace be upon him) passed by a pile of food. He puts his fingers in it and felt wetness. He said, "O owner of the food! What is this?" He replied: "It was rained upon O Messenger of Allah." He said, "Why not put in on top of the food so the people can see it?" Then he said: "Whoever cheats, he is not one of us". (Narrated by Muslim, No. Hadith 1315, At-Tirmidhi, 2007:114)

By referring to the above hadith, it has been explained by the Prophet that it is an obligation imposed upon every individual Muslim to prevent the commission of any sinful act by using any means, including with the power that we have. If not, we can advise him or even by giving such a warning not to do so. Finally, the last resort that can be applied is through heart, for instance, by not giving any help or cooperating to get involved, which indicates our disagreement with that evil. Nevertheless, this action has been perceived as the lowest degree of iman in the process of implementing the notion of Islamic teachings against any kinds of mischief. Similarly, the Prophet also has ordained the necessity of upholding truth and fighting against any evil. Hence, with regards to the plenty of hadith above, it can be understood that hisbah is recognized as been part of the Syariah injunctions to be enforced as an obligation, respectively.

The Companions' Tradition

In the Khulafa' al-Rasyidin, Saidina Umar has struggled for the betterment of this concept to function correctly. He has ensured that any kinds of business transactions that involved weight, measurement, and the quality and quantity of the goods sold, must be freed from any elements of cheating and oppressiveness. More interestingly, it has been reported that he once has split down a jar of milk on the ground because it has been mixed up with water deceitfully. Besides, he also has burnt the house of Rashid Al-Thaqafi because it was used to sell liquor.

Also, Saidina Umar's consistencies in improving this kind of concept have been proved whereby he has appointed several officers (muhtasib) to ensure that this institution could run effectively, based on their respective expertise and scope of duty accordingly. To illustrate this, he has appointed al-Saib bin Yazid, together with Abdullah bin Utbah bin Masud, to supervise Madinah's business activities. On the other hand, instead of appointing men, he also has entrusted Syedah Al-Syifa and Al-Syedah Samra binti Nahik as the muhtasib at Madinah.

HISBAH IN THE CONTEMPORARY ERA: ITS DEVELOPMENT

From the Islamic historical dimension, according to Al-Tabari, the Prophet has visited a market and found that there were plenty of deceptions committed by the traders for the sake of getting profit deceitfully. Besides, during the Prophet's lifetime, he has appointed Sa'id bin Sa'id bin al-As to supervise the markets. Indeed, the Prophet has introduced the concept of hisbah due to its effective practices throughout the various fields (Ridwan, 1990; 35) initially.

During the period of Khulafa' Ar-Rasyidin, it has been reported that the implementation of hisbah has begun back to the reign of Khulafa' (11-41H); followed by the Umayyad period (41-132H), Abbasiyah (132-656H); as well as during the Uthmaniyyah ruling (680-1342H).

Once, Saidina Umar al-Khattab has penalized a trader who has cheated in the business. Moreover, he also has assigned al-Sa'id bin Yazid and 'Abd Allah bin 'Utbah bin Mas'ud with the duties to take in charge of the business places at Madinah. It has also been reported that al-Harith bin al-Hakam has been appointed by Uthman bin 'Affan to become an enforcement officer at Medinah to supervise the business activities accordingly. During that period, the appointed officers are assigned to maintain the transactions at markets known as *amil ala-suq*. It is undeniably true that the essential principles of *hisbah* are to monitor the vices throughout

the transactions or dealing take places such as at marketplaces, shops and others. (Mawardi, 2002:39).

Besides, the term '*Arif*' refers to the officer whose scope of duty is similarly equated to the earlier one. Later, changes were made about the other appointed officers like zakat collector and district governors. Concerning this, Saidina Umar has institutionalized the evolution of hisbah properly during his leadership.

Similarly, during the periods of the Umayyad and Abbaside reigns, the rulers also have given such great emphasis on this institution's effectiveness. Furthermore, the roles of the muhtasib also have been extended to ensure that the management and administration system of the government could run smoothly, following Islamic principles.

During this modern era, hisbah is necessary due to several justifications; for example, it promotes transparency and integrity throughout its appointed officers' implementation. With this context, hisbah is verily adopted in the banking institution since the enforcement of banking operations due to the fiduciary relations. On the other hand, it is undeniably true that those appointed officers are chosen among the qualified candidates based on the standard procedures and strict conditions; including the individual must be *mukallaf* Muslim, *baligh* (age of puberty), mentally sane, male, knowledgable, free and other relevant criteria to be fulfilled first.

Regarding the institutions of hisbah in Malaysia, the Department of Religious Affairs functions is generally similar respectively for each state, aiming for the enjoining good and forbidding evil. This is due to the establishment of the Religious Enforcement Division. This division's function is to enforce the share laws about the criminal cases following the standard procedures stated.

On the other hand, the Hisbah Commission's establishment by the State Legislative Assembly of Terengganu in 2000 under the Hisbah Enactment 2000. The governance and enforcement of this Commission duly significant in Malaysian history because it was the pioneer in Malaysia (Auni bin Abdullah, 2000: 17-39). It is pertinent to be shared here that this Commission once has played its roles and objectives of establishment due to the number of cases resolved.

In Kelantan, the remarkable idea of indulging the Hisbah Commission is for; among other things, to protect and promote the values of kindness and eradicate evil, to initiate an investigation into complaints by citizens of the Sultan against the State or any relevant body, thirdly is to protect the rights of individuals; as well as to review the actions or decisions of State officials in the matter and take appropriate action to correct any wrongful act or negligent behaviour that neglects. About this context, the Muhtasib Am will be appointed to serve as an Officer Hisbah Commission and will be assisted by Muhtasib in each district, whereas his scope of rights and duties shall be determined saved following the law. Such Muhtasib is allowed to act within his discretion or by applying relevant information and records of any department or agency of the State Government that has to do with it, and the officials concerned shall provide appropriate assistance to fulfill his request.

CONCLUSION

Hisbah promotes good practices and portrays good governance that covers various economic affairs, political institutions; even ibadah matters. Even though the concept of *hisbah* has been

well - established and celebrated considerably such a long time before, namely during the early stage of the Prophet's lifetime, but the concept and philosophy are rooted in it are duly relevant to be applied within the ambit of the contemporary situation. Furthermore, by analyzing the current situation nowadays, many countries have indirectly adopted the institution of *hisbah*, which is known as the ombudsman, to seek the betterment of their administrative system. Indeed, the theoretical concept of *hisbah* is basically for human benefits, which could be developed gradually towards its excellent function in society. It is undoubtedly true that the *hisbah* institution plays a vital role in forming civilized humans and civilized civilization.

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