

THE CRIMES OF BRIBERY AND BREACH OF TRUST AMONG THE COMPANY DIRECTORS: IDENTIFYING THE REASONS AND SOLUTIONS UNDER SYARIAH

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Abstract

Problems pertaining to bribe and criminal breach of trust in Malaysian society cannot be denied. Cases are reported in the medias from time to time. Bribe and breach of trust are closely related where most of the acts of bribery occurred by reason of breach of trust. Both crimes are seen to be committed by various categories of individuals including the company directors. From the criminal law aspect, both crimes may be charged under the Penal Code as well as other related Acts. The laws are there. Thus those who had been caught will be brought before the court of law. Cases reported show that the crimes are committed continuously and involve a great sum of money. Very seldom for us to hear serious talks held within the society on why the said crimes are committed and how to solve the problem at early stage. Does this mean that the crimes cannot be controlled or minimised? Thus, this working paper attempts to discuss the crimes of bribery and criminal breach of trust committed by company directors under the light of civil and Islamic law. Under syariah, a strong believe that Islam is based on 3 main principles; aqidah, ibadah and akhlak is detected to be an effective defence from committing crimes or wrongdoings. The installation of these principles in a company director's self may assist in reducing the crimes especially amongst Muslim company directors.

Introduction

The crimes of bribery (corruption) and criminal breach of trust are frequently reported in the local Medias. Both crimes are categorised as criminal acts under Malaysian law. Observation shows that both acts always come together where usually the act of giving or receiving bribe is caused by the breach of trust. The crimes of bribery and breach of trust do not only occur in the business field, but also in other types of fields ranging from politics, management, administration in organisation to sports and education as well. Similar with the act of bribery which does not relate to a particular job or office held, the breach of trust also is seen to be committed by those who have interests on properties trusted to him. According

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to 2006 crime statistics, breach of trust is the second most committed crime after fraud with a total number of 1,498 cases.

Below are some of the recent instances which have been reported in the Malaysian newspapers:

“Pengaruh wanita didakwa pecah amanah”

Klang 11 Jun - Seorang isteri yang kini dalam proses bercerai, dihadapkan ke Mahkamah Sesyen di sini hari ini atas tuduhan melakukan pecah amanah RM671,249.30 wang milik syarikat ... (Utusan Online, 12 Jun 2008)

“Director charged with breach of trust involving RM16 million”

(Star Online, 19 Jun 2008)

“Pengaruh syarikat lanskap didakwa atas 6 tuduhan rasuah”

Shah Alam 21 Julai – Seorang pengarah sebuah syarikat lanskap mengaku tidak bersalah di dua Mahkamah Sesyen Shah Alam atas enam tuduhan menerima rasuah berjumlah RM63,000 daripada seorang pengarah sebuah syarikat lain...(Utusan Online, 21 Julai 2008)

The above reports showed that the scenario of breach of trust and bribe are not an extra-ordinary thing in the society. The scenario is much afraid of due to the fact that the consequences from the commission of the crimes not only destroying the morality of an individual but also capable to threaten a nation's economy.

Meaning Of Bribery And Breach Of Trust Under Syariah And Civil Law.

Under Syariah, Al-Ahkam defines bribery as something which is given to a *mazalim* (person with authority) to take the rights which are not belonged to him or to extinguish a right from the rightful owner either made under the motive of revenge or fraud and to obtain a status/position which he does not deserve it or a post which he is not qualified to hold.

Thus, from this definition, the act of bribe can be categorised into 3 types, namely:

- i. Taking of something which is not by right ie to give something to another person with authority for the purpose of obtaining something, for example where a foreigner gives money to the authority to get his visa and reside in the country.
- ii. Giving something for the purpose of extinguishing the rights of the owner as a revenge. For instance, due to jealousy of his rival, Z, in business, X has given money to a particular person to set aside (mengeneipikan) a project which Z entitled.
- iii. Giving something for the purpose of gaining something either in the form of post, place, job, tender, project or contract.

According to Law Encyclopedia, bribe is defined as “crime of giving a benefit (eg money) in order to influence the judgment or conduct of person in a position of

trust". Oxford Law Dictionary defines corruption as "offences relating to the improper influencing of people in certain positions of trust.

According to English language, the giving and receiving of bribe has been defined differently, where the act of giving bribe is defined as "bribery" while the act of receiving bribe is defined as "corruption". Meanwhile, breach of trust means the act of breaching the trust given which gives rise to prejudice or loss to other persons.

It is undeniable that bribery and breach of trust relate closely to one another whereby usually a person who is charged with bribery will also be charged with breach of trust. This is due to the fact that bribery involves the element of breach of trust. Normally a company director who is in breach of trust will involve in bribery and likewise the act of giving and receiving bribe is due to the failure of a person to hold on the trust given to him.

The Position and Duties of A Company Director.

When one talks about the practice of bribe and breach of trust among the company directors, it is important to firstly examine the position and duties imposed on the director of a company. A director is an officer who is given the power to act on behalf of the company. He acts as an agent for his company to carry on business between his company and other parties.

Section 4 of Companies Act 1965 (hereinafter referred to as "the Act") defines director to include any person occupying the position of director of a corporation by whatever name called. It also includes director as one of the officers of an organisation other than secretary and employee. The provision furthermore states that "an officer of a company includes... company director..".

There appears to be a misunderstanding on the position of a director in a company or what is the relationship between a director and the company which he manages. Most people believed that a director is the owner of the company.

Besides the director, the Board of Directors plays the role as a body to carry out all of the company's dealings such as to make loan, to manage company's financial matters, to sign cheques and others. It also has the power to make decision on behalf of the company besides supervising the company's officers and staffs in doing their jobs. In other words, the company directors are responsible to ensure the company's running in accordance with the laws.

All of the above show that a director is a worker or an officer who is given the highest position in a company and entrusted by its members to lead and represent the company.

The Act further outlines several elements which can cause a person to be disqualified to hold the office of a director, for example an undischarged

bankrupt, person who aged above 70 (subject to section 129(6) of the Act) and had been found guilty of an offence relating to company management.

In this context, section 130 of the Act provides that a director who has been found guilty with a particular offence is not qualified to manage the company for the period of 5 years except ordered otherwise by the court. Among the related offences are offences relating to fraud or dishonesty whereby section 132 of the Act requires a director to act honestly at all times in the performing of his duties and not to misuse any information received to gain benefit to himself. Examples of fraud and dishonest act are theft (section 378 of the Penal Code), misappropriation of company's property (section 403 of the Penal Code), breach of trust (section 405 of the Penal Code) and fraud (section 415 of the Penal Code).

Generally, the responsibilities of a director comprise of 3 categories, namely; fiduciary duties, duties of skill, care and diligence and statutory duties:

- i) Fiduciary duties is a duty imposed under the common law which is applicable to Malaysia subject to local circumstances. Section 132(1) of the Act provides that "A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office".

Here, the company director must always act honestly and show reasonable diligence in order to safeguard the interests of the company and should not let his own interest in conflict with his duties. He should not gain any benefit for himself in any transaction entered where he acts on behalf of the company. If he gain any benefit secretly, he must disclose it to the company. This principle shows that a director is a trustee for his company. A clear example is where a company director acts as a director of a competing company. The case of *IDC v. Cooley* [1972] 2 All ER 162 clarifies that in such situation, the director has to choose which company he should resign from being a director. A case from Malaysia, *Avel Consultants Sdn Bhd & SL v. Mohamed Zain Yusof & YL* [1985] 2 MLJ 209 provides that it is a clear law that a director has fiduciary duties towards his company and therefore he must not act which would cause a conflict between his own personal interest and that of his company.

The fiduciary duties also require a director to act in good faith (*bona fide*) in the performing of his duties in the interests of the company. If the director prefers the interests of other party than of his company, he is regarded to be in breach of the duties and thus has committed a breach of trust. Therefore, a director is bound to perform his duties honestly (*Re Smith & Fawcett Ltd.* [1942] 1 All ER 542).

Section 131 of the Act requires a director to make an immediate disclosure of any of his personal interest to the company in the case where there occurs a conflict of interest between his own interest and that of the company. If he fails to do so, he will be in breach of his fiduciary duties, thus punishable to a maximum of 3 years imprisonment or a fine up to RM10,000.

Raja Azlan Shah J in the case of *Raja Nong Chik v. Pendakwa Raya* [1971] 1 MLJ 190 has made an important remark whereby the company directors are expected by the society at large to possess a good morality in any transaction involved. Directors must show a respectable attitude in their relationship involving shares. They may sell or purchase shares in their companies by way of ordinary transaction and it does not matter if they have extra knowledge pertaining to their companies compared to other persons. However, when they sell or purchase such shares, they must inform it in writing to the company within the period of seven days of the transaction.

Besides that, there are several other provisions which provide for specific duties of a company director relating to the duties to act honestly such as :

- a. Section 132C - approval from the company for the disposal of company's property by the director
- b. Section 135 - general duty to make disclosure

Under the fiduciary duties, a director should not use the power given arbitrarily but instead use it for the right and appropriate purposes.

- ii) Duty to display skill, care and diligence is one of the director's responsibilities to show his ability in managing the company pursuant to his knowledge and experience. However, he does not have to go beyond the reasonable level which is expected from an ordinary person who has similar knowledge and experience. The Act does not lay down any minimum educational qualification to be a director. Thus, a person does not need to possess any specific qualification to hold the office of a company director.

A director also must not be negligent in the performing of his duties which is measured from reasonable act expected from an ordinary person. The court held in the above mentioned case that a director should act with reasonable care. If the duty is breached by the director, the company may take an action against him for damages. (Section 132(3)).

- iii) Statutory duties are subject to the provisions of the Act. Generally, a director is responsible to ensure the running of the company is consistent with the laws. Section 131 of the Act requires the director to disclose any potential conflicts of interest to the company. Section 135 of the Act lists down those information which should be disclosed such as particulars of interests in shares, debentures, options, contracts, interests in company's shares, secret benefit and so on. Upon failure, the director may be punished with a maximum imprisonment of 3 years or fine up to RM15,000.

Bribery and Malaysian Anti-Corruption Act 1997

Bribery is a crime under the criminal law of Malaysia. An act has been enacted specifically for this type of crime namely, Anti-Corruption Act 1997 (ACA 1997). The purpose of this Act is to provide for provisions relating to the prevention of corruption and related matters.

There is no specific definition for bribery in the ACA 1997 nor the term "corruption" is used in defining corruption. Instead, the word "gratification" is being used to indicate corruption. The ACA 1997 outlines the circumstances which are categorised under the meaning of gratification. Section 2 of ACA 1997 defines gratification to mean:

- (a) Money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, or any other similar advantage;
- (b) Any office, dignity, employment, contract of employment or services, and any agreement to give employment or render services in any capacity;
- (c) Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) Any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;
- (e) Any forbearance to demand any money or money's worth or valuable thing;
- (f) Any other service or favour of any description, such as protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
- (g) Any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f);

Part III of ACA 1997 provides for provisions pertaining to the offences and penalties of bribery. Section 10 of ACA 1997 provides a clear explanation on the offences of receiving or giving gratification which may be committed by any person, either by himself or through a representative or with other person. The section provides:

"Any person who by himself, or by or in conjunction with any other person-

- (a) Corruptly solicits or receives or agrees to receive for himself or for any other person; or
- (b) Corruptly gives, promises or offers to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or a reward for, or otherwise...shall be guilty of an offence".

Section 11 of ACA 1997 provides offences which may be committed by an agent, whether agree to give, receive or obtain any gratification as a reward for another act done. The act of giving or receiving the gratification is considered as an offence even though the act has not yet been successfully committed as intended (section 12 of ACA 1997). Among the categories of acts which may be related to

the offence of corruption which are specifically mentioned in ACA 1997 are; obtaining or withdrawal of tender (section 13 of ACA 1997), bribery of officer from public body (section 14 of ACA 1997) and using office or position held for gratification (section 15 of ACA).

Observation shows that the provisions relating to bribery in ACA 1997 are not specifically aimed to a specified category of office or specified field, but also cover all kinds of offices and matters as well. Besides ACA 1997, there are other acts which provide for provisions relating to the offence of bribery, for example Banking and Financial Institutions Act 1989, Betting Act 1953, Copyright Act 1987, Custom Act 1967, Dangerous Drugs Act 1952, Dangerous Drugs Act (Forfeiture of Property) 1988 and Explosives Act 1957.

The elements of bribery thus include the committing of the act secretly, the involvement of breach of trust, the gaining of benefit or personal interest, the misuse of power and misappropriation of property. Bribery may be done either through persuasion, force or threat. Any person who is found guilty of the offence of bribery may be punished with imprisonment ranging from 14 days until maximum of 20 years and fine amounting to 5 times of the sum or value of the gratification or RM10,000, whichever is higher. (section 16 of ACA).

In recent development, ACA 1997 is now replaced by the Malaysian Anti-Corruption Commission Act 2009 (in force from 1st January 2009) with the purpose to establish the Malaysian Anticorruption Commission to make further and better provisions for the prevention of corruption and related matters. This step shows the serious effort taken by the government to overcome the problems of corruption in Malaysia.

Breach Of Trust Under The Malaysian Penal Code

Provisions on criminal breach of trust may be found in the Malaysian Penal Code (PC) under sections 405 to 409. Besides that, another provision ie section 403 of PC provides for the dishonest of misappropriation of company's property.

Section 402A of PC defines the terms of an agent, company, director and officer. According to this section, "an agent includes.... any corporation or other person acting or having been acting or desirous or intending to act for on behalf of any company...whether as agent, partner, co-owner, clerk, ...director, manager...". This provision means that company directors are regarded as agents of the company because they act on behalf of the company. The definition seems to be consistent with the definition given under the Companies Act 1965.

With regard to the breach of trust, section 405 of PC provides *inter alia* that any person entrusted with property dishonestly misappropriates, converts the property to his personal use or disposes the property in violation of the prescribed laws is regarded as committing criminal breach of trust. Upon the finding of guilt, the person will be punished under section 406 of PC where he will be imprisoned for a term of not exceeding 10 years and whipped and shall also be liable to fine.

This provision shows that the criminal breach of trust may lead the offender to receive 3 types of punishment simultaneously ie imprisonment, whipping and fine.

Under the Companies Act 1965, there are several provisions which are indirectly enacted to prevent the breach of trust amongst the company directors. For example, section 132C of the Act requires any act to obtain or dispose of the company's property by the director must be done with prior approval from the company. Because of the fact that breach of trust may be done by the company director at any time, this provision is seen to be able to prevent the greedy company director from managing the company's property arbitrarily.

Bribery and Breach of Trust From Islamic Perspective

Bribery or *risywah* is literally defined as a connector to achieve certain purpose by offering things or property. Islam strongly prohibits the act of bribery because it is one of the elements of cruelty and oppression which may lead to the destruction of a government or nation. In this context, Allah says in verse 188 of Surah al-Baqarah which means:

“And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property”.

In a hadith, the Prophet p.b.u.h. warns that the giver and receiver of bribe will be thrown into the hell. Tarmizi, Ahmad and Ibn Majah narrated that Abu Hurairah conveyed that the Prophet p.b.u.h. once said: “Allah curses the giver and receiver of bribe”.

In another hadith narrated by Ahmad, Tarmizi and Ibnu Hibban, it is reported that Allah curses the giver of bribe, the receiver of bribe and the middle person between them (agent).

Thus, it is clear that not only the giving of bribe is prohibited (*haram*), but the receiving as well. The sin of committing bribe is not limited to the giver of bribe and its receiver only, but it also extends to the third party who acts as a middle man.

A gift to somebody who holds certain office in administration may also form a part of bribe. An officer who has duty to collect jizyah and tax imposed by the government should not receive any gifts from the members of the society because it is regarded as receiving bribe. In this context, the Prophet p.b.u.h. had trusted Abdallah bin Luthbiyyah to collect tax from Bani Sulaim. In his report, Abdallah said: “This amount of money had been collected as zakah, while the remaining was given as gifts”. Upon hearing this, the Prophet p.b.u.h. said: “If you reside in your mother's or father's house, would somebody give you the gift if you are truly honest?” In another hadith narrated by Muslim, it is reported that the Prophet once

stood on the pulpit in a mosque and said: “Nobody among you who takes gifts unless in the Hereafter he will come carrying the gifts on his shoulder while on his neck there is a camel or goat with heavy voice”.

Therefore it is clear that the above kind of gifts cannot be received and if it is received, it must be handed over to the baitulmal for the benefit of the society at large. Imam Nawawi in “*Sahih Muslim Bi Syarhin Nawawi*” explained that the hadith carries the meaning of *haram* (prohibited) due to the office held by the person. If the gift is a routine which is usually given before the person hold the office, then the receiving of the gift is considered as *harus* (permissible).

During the period of governance of Khalifah Abu Bakar, Khalid bin al-Walid had imposed jizyah on Hirah people in Syria. The people are impressed with the practice of justice among the Muslims, their close relationship and good attitude. Thus the Hirah people were determined to send gifts to Khalifah Abu Bakar. Khalid al-Walid could not stop them from doing so. However, the Khalifah received the gifts as part of the tax imposed and he decreased the total sum of the tax payable and sent them to baitulmal.

Khalifah Umar al-Khattab once had reminded all his ministers: “Be careful with gifts because gifts may form part of bribe”. However, in modern society, bribery seems to be widely practised and acceptable as a form of gift.

Khalifah Umar bin Abdul Aziz refused all gifts in order to protect himself from being involved in bribery. A man once had come to see him and told that the Prophet had accepted gifts. However he replied: “That is truly a gift for the Prophet, but for us, it is a bribe. The gifts were given to him because the people wanted to get close to him for his prophecy and not for his governance, whereas they wanted to get close to us for our status or office held”.

In this context, the Prophet p.b.u.h. had accepted the gifts to be given to the poor. The people who brought the gifts had no other underlying purposes. According to him, gifts may help to set aside the feeling of hate and strengthen the feeling of love.

In another hadith, the Prophet p.b.u.h. reminded: “The time will come when bribery becomes permissible (*halal*) in the society through gifts and murder through advisor”.

Therefore, the awareness on the danger of bribe has been long recognised by Islam where bribe is totally prohibited (*haram*) without any compromise due to its serious consequences to all including the individual himself, his family, even to the religion and nation.

Relating to the issue of bribery by the company directors, one cannot deny that the company directors are the closest persons to the company, thus making them at high risk to be exposed with bribe. A Muslim company director should treat bribery as a big sin which is punishable both in this world and Hereafter.

With regard to the breach of trust, Islam outlines that as a Muslim, a duty is a trust. A company director does not only hold a high status in the eyes of the society, but also carries a heavy responsibility in executing the trust given. A company director who has been trusted either with company's duty or property should hold the trust and never breaches it. A director who does not perform his duty with honest and full responsibility will be regarded as a *munaḥik* (hypocrite). In Sahih al-Bukhari, it was narrated by Abu Hurairah that the Prophet p.b.u.h. once mentioned about the three signs of a *munaḥik* ie firstly, when he speaks he lies, secondly, when he makes promise he breaks it, and thirdly, when he is given a trust he breaches it (he proves to be dishonest).

In one hadith narrated by Imam Ahmad, the Prophet p.b.u.h. said: "Be informed! Those who breach of the trust given are not among the believers". Although there are no specific Quranic verses relating to the breach of trust, but the abovementioned hadith has made it clear that the act of breach of trust should not be committed by anybody who admits to be a Muslim.

The Causes Of Bribery And Breach Of Trust And Solutions Under Islam

A question arises as to why a Muslim company director is willing to commit bribe and breach of trust. Is it because of the lack of their knowledge on the Islamic teachings? What about the civil laws then? Any reason on lack of knowledge seems to be impossible to be accepted because the issue is being reported by the media from time to time.

From social aspect, several causes of bribe and breach of trust have been identified *inter-alia* dishonest, greedy, placing priority on getting profits and unable to differentiate between personal interest and duty. In other words, the person has lost accountability. The notion that a company belongs to the director also contributes to the fearless conduct of the director to embezzle company's money and properties. A question that arises here is why all of the abovementioned characteristics exist? From Islamic perspective, the answer may be traced back to the non-existence or decreasing value of good moral and ethics as well as lack of understanding on Islamic teachings in oneself. Undeniably this leads to the misappropriation of properties and powers which later give rise to corruption or bribery among the company directors.

Another issue which arises is why the crimes of bribe and breach of trust are still on the rise with a surprising number of cases despite of Malaysia's effort in enacting laws and rules to overcome the problem including the passing of sentences against the criminals? The answer is simple. Let's make a comparison in order to clarify the problem. The crimes of murder and drug trafficking are well known for the maximum penalty of death sentence but unfortunately, these cases still occur from time to time. Whereas, the crimes of bribe and breach of trust only provide for the sentences of minimum imprisonment of 14 days or 1 year, whipping and fine. In this context, the benefits gained from the act of bribery or breach of trust is much more than the sentence imposed. Thus, it seems that the

sentences provided under the civil law are not effective to handle the problem. Thus, another mechanism is needed to ensure that these crimes do not become a routine among the company directors.

It is undeniable that early education plays a vital role to ensure that the future company directors have been thought with Islamic knowledge in terms of good moral and ethics. Due to the seriousness of the act of bribe and the importance of education on this matter, the Malaysian government, through by-law "*Pekeliling Ikhtisas Bil. 17/1998*", has inserted the element of anti-corruption in the Curriculum of Schools and Institution of Higher Learnings. Besides that, at the Higher Learning level, courses like Ethics and Moral and also Basic Culture of Entrepreneurship have been introduced as compulsory courses at universities whereby all students are required to register them.

Thus, the solution under Islam is that a Muslim has to return to the true teachings of Islam itself. A Muslim has to understand and agree that Islam is built on 3 main basis ie '*aqidah*, '*ibadah* and '*akhlak*.

i. '*Aqidah (tauhid)*

From '*aqidah* perspective, a Muslim should believe in the existence and oneness of Allah, believe in each and every elements in Rukn al-Islam, believe and obey the orders and prohibitions, believe in the messages delivered by the Prophet p.b.u.h , believe in the punishment in the Hereafter and believe in the assigned destiny (*qadha*' and *qadar*). All these believe contribute as a bar to the directors from committing the crimes of bribery and breach of trust.

ii. '*Ibadah* and '*Akhlak*

From '*ibadah* perspective, the practice of prayer is able to prohibit a Muslim from the commission of sinful acts, the act of fasting is able to increase one's devotion to Allah while the act of paying zakat is able to clean oneself from sinful acts and increase his livelihood. Therefore, if the '*ibadah* of a director is excellent, then the acts of bribery and breach of trust will be projected as wrongful acts and sins whereby the director will try to avoid them. Those who possess good moral and ethics will not eventually involve in anything done by those who possess bad moral and ethics.

Based on the above discussion, no doubt that the solution is to trace the actual causes of the crimes. The 3 main basis of Islam has to be strenghten so that all the philosophy, concept and business ethics may be easily understood and practised by an individual.

A director has to believe in the existence and authority of Allah. In the context of business or work, a company director has to instill the belief that Allah is the livelihood provider. The effect of the belief (tauhid) in the director's self enable to give him a clear mission in each and every work done. It is also able to develop a balanced attitude/behavior between spiritual and physical, mental and desire, in

this word and Hereafter. Apart from that, it may act as the source of calmness of mind and happiness of life. A director is not afraid of the loss or decrease of livelihood because he believes that livelihood comes from Allah. Alleviation (keredhaan) from Allah in receiving livelihood is more important than the value or amount of the livelihood itself. The belief itself will produce an individual with respectable attitude who will stay away from committing acts prohibited by Allah.

The Philosophy Of Business/Work

Apart from the strong believe to Allah (*tauhid*) as discussed above, a director also needs to instill in himself the philosophy of business and work. Among the philosophies is that property is a tool not a motive where it is seek for the sole purpose of adherence and getting close to Allah. Each and every work done (including office held and duty) is a trust, thus it has to be performed correctly and in the best way. Besides that, a work done is also considered as a devotion to Allah (*'ibadah*), thus its performance according to the teachings of Islam will produce reward from Allah. A director should not be greedy but instead be thankful with the livelihood that he has. With the instillation of the above philosophy, with Allah's will, a Muslim company director is able to avoid himself from getting involve in the crimes of bribery and breach of trust which is frequently committed by the directors lately.

Conclusion

It is now evident that bribery and breach of trust are regarded as crimes both in the eyes of syariah and civil law. It is not exaggerate to say that this disease is now beginning to creep in the society and is not limited to the company directors only. The return to the teachings of Islam is identified as the best way to barricade the crimes from keep on spreading. To all company directors especially the future directors out there, let us ensconce the belief and practices based on Islamic teachings because only Islam can solve the problem.

References

- 'Abdul Rahman I. Doi (1995). *Undang-Undang Syariah*. Terj. Rohani Abdul Rahim. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Abu Bakar bin Yong. (2007). Rasuah: Terhakisnya nilai amanah Islam. http://www.ikm.gov.my/v5/index.php?lg=1&opt=com_article&gr...
- Al-Imam Zainuddin Ahmad, *Summarized Sahih Al-Bukhari Arabic-English*, Terj. Dr. Muhammad Muhsin Khan, Riyadh:Maktaba Dar-us-Salam.
- AL-AHKAM online. Rasuah, hadiah dan sedekah (bah.1). http://members.tripod.com/ahkam_2/soaljawab/soaljawab166.htm
- Anti Corruption Resource Center. Islamic approaches to corruption.
- Berita Perak. Etika dan usahawan – 'Sikap tamak selalu rugi'. <http://berita.perak.gov.my/sekilaspandang/jan05.htm>
- Bribery. <http://www.answers.com/topic/bribery>

- Chai Yong Seng. (1994). Criminal breach of trust. 2 *MLJ* xcvi; [1994] 2 *MLJA* 97.
- Companies Act 1965. Kuala Lumpur: International Law Book Services
- Dato' Dr. Syed Othman Alhabshee. (1996). Definition of bribery according to Islam. *New Straits Times*. 2 November 1996.
- Datuk Dr. Syed Othman Alhabshee. Etika perniagaan.
<http://www.vlib.unitarkljl.edu.my/staff-publication/datuk/CEMERLANG.pdf>
- Director's duties. http://www.skyanderson.com/articles/directors_duties.asp
- Dr. Md Ishak Ismail, Nur Fa'izah bt Abu Bakar. Tadbir urus korporat – Peranan dan kepentingan terhadap sektor korporat.
http://www.micg.net/research/TADBIR%20URUS%20KORPORAT%20ANETIKA%20PERNIAGAAN_2.pdf
- Frent Fisse. (1992). Fraud and the liability of company directors – Directors' liability for fraud: A changing Scene. *Australian Institute of Criminology. AIC Conference Proceedings No 10*.
- Ghafani Awang. (2008). The Islam Forbids Bribery Since It Initiates Cruelty. 29 Mei 2008. <http://www.islam.gov.my/portal/lihat.php?jakim=3239>
- Hillary Sale. (2006). Federal fiduciary duties for directors. *Law and economic workshop*. http://repositories.cdlib.org/berkeley_law_econ/spring2006/7
- Jagir Singh. (1994). *Law of Bribery and Corruption in Malaysia with commentaries*. Kuala Lumpur: International Law Book Services.
- K.Madhavan. Investigation of cases relating to criminal misappropriation and criminal breach of trust.
- Kilpatrick Stocktone LLP. (2003). Director fiduciary duties after Sarbanes-Oxley. Georgia.
- Malaysian Anti-Corruption Commission Act 2009. Kuala Lumpur: International Law Book Services
- Malaysian Penal Code
- Mehmet Ali Gurol. *A sine qua non* of the business world today: Corporate economic crime. *Proceedings 8th Annual Hawaii International Conference on Business*. 22-25 Mei 2008.
- Membangun usahawan cemerlang
<http://www.geocities.com/warisanbumi2/Hemat/bangun.htm?2008200818>
- Mencegah rasuah melalui kaedah pendidikan. *Harian Online*. (1998).
<http://161.139.39.251/akhbar/Corrup.practice/1998/bh98217.htm>
- Mervyn K. Lewis. (2006). Accountability and Islam. *Proceedings Fourth International Conference on Accounting and Finance in Transition*. Adelaide. 10-12 April 2006. 1-16
- Mohd Noor Omar. Perspektif Ikim: Laksana mandat ikut hak, kepentingan – Mengutamakan keuntungan peribadi punca penyelewangan dalam syarikat, agensi. <http://mois.gov.my/document/perspektif.ikim.pdf>
- Mohd. Azam Hamzah dan Md. Akhir Haji Yaacob (1986). *Falsafah dan Prinsip Perundangan Islam*, Bangi: Penerbit Universiti Kebangsaan Malaysia.
- Muhammed Embeay. Fight against corruption, Islamic perspective.
http://www.guardiannewsngr.com/friday_worship/article01/100306
- Munir Quddus, Henri Bailey and Larry White (2005). Business Ethics – Perspectives from Judaism, Christianity and Islam. *2005 Proceedings of the Midwest Economic Association*. 152-162

- Prof Bernad S. Black. (2001). The principal fiduciary duties of boards of directors. *Presentation at Third Asian Roundtable on Corporate Governance*. Singapore. 4 April 2001.
- Prof. Madya Syed Omar bin Syed Agil. Garis panduan tingkah laku etika Islam dalam perniagaan. <http://permai1.tripod.com/etika.html>
- Salleh Buang. (1997). *Dimensi Baharu Masyarakat Malaysia: Makalah Undang-undang*, Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Samsar Kamar Latif. (2000). *Company Law of Malaysia*.
- Samsar Kamar bin Ab Latif. (2007). The new statutory duties and liabilities of directors under the recent Companies (Amendment) Act 2007. 5 *MLJ* cccxviii; [2007] 5 *MLJA* 318
- SC: Pengarah, CEO yang melanggar undang-undang boleh dilucut kelayakan dan disingkir.
http://www.sc.com.my/eng/html/resources/press/pr_20040205bm.html.
- Star Online 19 Jun 2008. "Pengarah dituduh dengan pecah amanah melibatkan RM16 million"
- State Mufti's office Brunei Darussalam. Rasuah: Gejala masyarakat yang perlu dibanteras.
http://www.brunet.bn.gov.mufti/irsyad/pelita/2004/ic37_2004.htm
- Statistik Jenayah Komersial. <http://www.rp.gov.rmp03/statindeks2006.htm>
- Suruhanjaya Pencegahan Rasuah Malaysia. Kesalahan rasuah.
<http://www.sprm.gov.my>
- Suruhanjaya Syarikat Malaysia. Kod etika pengarah syarikat.
http://www.ssm.com.my/perkhidmatan_kod.php
- The Free Dictionary. <http://legal-dictionary.thefreedictionary.com/bribery>
- Utusan Online, 12 Jun 2008. "Pengarah wanita didakwa pecah amanah"
- Utusan Online 21 Julai 2008. "Pengarah syarikat lanskap didakwa atas 6 tuduhan rasuah"
- Walter CM Woon. (1988). *Company law*. Singapore: Longman Singapore Publishers Pte Ltd.