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**للاقتصاد الإسلامي**  
جامعة الأزهر  
مجلة علمية دورية محكمة  
الجزء الثاني

السنة الثانية والعشرين - العدد الرابع والستون ١٤٣٩هـ - ٢٠١٨م

## **العدد الرابع والستون**

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مجلة  
مركز صالح كامل للاقتصاد الإسلامي

بجامعة الأزهر  
مجلة دورية علمية محكمة

يصدرها

مركز صالح كامل

للاقتصاد الإسلامي

**رئيس مجلس الإدارة**

فضيلة الأستاذ الدكتور/ محمد حسين المحرصاوي رئيس جامعة الأزهر

**رئيس التحرير**

الأستاذ الدكتور/ محمد السيد برس مدير المركز



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



أولاً

بحوث باللغة العربية





## قواعد النشر بالمجلة

- ١- أن يكون البحث مبتكرا يتسم بالجدة والأصالة.
- ٢- أن يكون البحث في مجال الفكر الاقتصادي الإسلامي وما يتصل به من المعارف والعلوم.
- ٣- أن لا يكون البحث مستلا من دراسة سابقة.
- ٤- أن لا يكون قد سبق نشره بصورة من الصور.
- ٥- أن يلتزم بالضوابط والأسس العلمية المتعارف عليها مع الاهتمام بعزو الآيات القرآنية الكريمة وتخريج الأحاديث النبوية الشريفة.
- ٦- أن لا يتجاوز البحث سبعين صفحة من القطع المتوسط.
- ٧- أن يقدم الباحث عدد ٢ نسخة ورقية من البحث مصحوبة بـ CD باسم السيد الأستاذ الدكتور / مدير مركز صالح كامل للاقتصاد الإسلامي بجامعة الأزهر - جمهورية مصر العربية - القاهرة - مدينة نصر - شارع المخيم الدائم. أو على البريد الإلكتروني للمركز: salehkamel@yahoo.com
- ٨- أن يجاز البحث من اثنين من المحكمين المتخصصين.
- ٩- الأبحاث المقدمة لا ترد سواء نشرت أم لم تنشر.
- ١٠- لإدارة المجلة الحق في إعادة نشر الأبحاث ورقيا أو إلكترونيا أو أي وسيلة نشر أخرى دون الرجوع للسادة الباحثين.
- ١١- لا يحق لأي جهة نشر أي بحث من بحوث المجلة إلكترونيا أو بأي وسيلة نشر أخرى إلا بعد الرجوع إلى إدارة المجلة.
- ١٢- الباحثون بالمركز الذين هم على رأس العمل معفون من تكاليف النشر في حدود ٣٠ صفحة وما زاد على ذلك يحاسب عليه طبقا لشروط المجلة بالإضافة إلى تكاليف التحكيم.
- ١٣- الآراء الواردة في البحث مسئولية الباحث.

## قائمة الحكمين

يقوم بتحكيم أبحاث المجلة نخبة من كبار الأساتذة في مختلف التخصصات، وهم الواردة أسماؤهم أدناه، وعند الضرورة يستعان بغيرهم ممن هم أدق تخصصاً.

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الباحث بالمركز  
عضوا

## تصدير

بقلم الأستاذ الدكتور محمد السيد برس

مدير المركز ورئيس التحرير

الحمد لله رب العالمين، والصلاة والسلام على أشرف المرسلين، سيدنا محمد النبي الأمين، وعلى آله وصحبه ومن تبعهم بإحسان إلى يوم الدين. وبعد.  
فيسعدنا أن نقدم إلى متابعي مجلة مركز صالح كامل للاقتصاد الإسلامي من الباحثين والقراء، العدد رقم (٦٤)، والذي تبدأ به المجلة عامها الثاني والعشرون من عمرها المديد منذ تاريخ إصدارها، وبه تتابع المجلة القيام برسالتها التي تحملتها، وتسعى إلى تحقيقها.

فمن الأبحاث التي يحملها هذا العدد بحث يدور حول: «المسئولية الاجتماعية لمهنة المحاسبة والمراجعة» وبحث ثان عن «مساهمة البنوك بالمملكة العربية السعودية في المسئولية الاجتماعية بين الواقع والمأمول.. دراسة تحليلية» والبحث الثالث يتحدث عن «إطار مقترح لدمج الاستدامة في الممارسات التجارية.. دراسة ميدانية على منظمات الأعمال السعودية» وجاء البحث الرابع حول «أثر الائتمان المصرفي في أداء بورصة الأوراق المالية السعودية» أما البحث الخامس فعن «محددات هجمات المضاربة في دول أوروبا الوسطى والشرقية باستخدام نموذج التحول لماركوف ونموذج شعاع الإنحدار الذاتي» والبحث السادس عن «العلاقة بين عجز الموازنة العامة وميزان المدفوعات.. دراسة حالة الجزائر» والبحث السابع حول: «تقنين الأحكام الشرعية» أما البحث الثامن فجاء عن «باب

الحجر من كتاب: تحفة النبيه في شرح التنبيه .. للإمام الزنكلوني - الشافعي .. دراسة وتحقيق» وجاء البحث التاسع حول «الكفاءة في النسب» والبحث العاشر عن «دور التدقيق الخارجي في تدعيم الممارسة الجيدة لحوكمة الشركات .. دراسة تطبيقية لبعض المؤسسات الاقتصادية العمومية» وجاء البحث الحادي عشر عن: «التطبيقات الرقابية للحوكمة في الشركات المساهمة في المملكة العربية السعودية»، وجاء البحث الثاني عشر حول: «التحول للمصرفية الإسلامية في إطار قوانين وبيئات مختلفة»، وجاء البحث الثالث عشر حول: «قياس أثر استخدام شبكات التواصل الاجتماعي في تعزيز مبدأ الوسطية - الاعتدال - ونبذ التطرف .. آراء عينة من طالبات جامعة الأميرة نورة بنت عبد الرحمن بالرياض». إلى آخر أبحاث المجلة.

ونأمل أن تسهم المجلة - بما تقدم من فكر، وفي نشر الفكر الاقتصادي الإسلامي، وبما تحمل من دعوة - في تحصين الأمة من الوقوع في شرك الهجمات الموجهة إليها، ونسأل الله تعالى أن يجزي المشاركين فيها خير الجزاء، وأن يجعل ما يقدمون في سجل حسناتهم، مع دعوتنا المتجددة لهم أن يستمروا في التفاعل مع مجلتهم وأن يمدوها بثمرات فكرهم، وثاقب نظراتهم.

والله الموفق والهادي إلى سواء السبيل

**مدير المركز رئيس التحرير**

**أ.د/ محمد السيد برس**

# Operational, Regulatory and Shari'ah Issues of Islamic Lending-Based Crowdfunding: Case Studies of Selected Platforms<sup>(\*)</sup>

MYSARA ABDELWAHAB MOHAMED

## Abstract

**Purpose** – The study aims to provide insight into some critical aspects that need to be evaluated for successful Islamic lending-based crowdfunding platforms. It also aims to provide a deep understanding of the use of Islamic financial transactions pertaining to Islamic lending-based crowdfunding.

**Methodology** – This paper uses a qualitative method which is more appropriate with the objective of the study as it does not require any statistical analyses. The paper is based on document analysis and a comparison approach between of two Islamic lending-based platforms "KapitalBoost in Singapore and Beehive in Dubai" from the Shari'ah perspective. These two are considered the most active platforms of Islamic lending-based model.

**Findings** – Basically there are three contractual relationships in the underlying contracts of Islamic lending-based platform "sale, *Tawarruq* and agency-based". Some Shari'ah issues rise: the relationship of the platform with the parties, responsibility of Shari'ah compliance during lending period and other Shari'ah issues related to the underlying contracts.

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**Originality/value** – The study highlights several issues in Islamic lending-based platforms in terms of operational, regulatory and Shari'ah issues. The paper also contributes significantly in providing the literatures of Islamic lending-based crowdfunding as an emerging issue from the social finance aspect.

**Keywords:** crowdfunding, lending-based, Islamic lending-based, contract, KapitalBoost, Beehive.

**Paper type:** research paper

## 1 Introduction

The excessive reliance on debt instruments in the conventional financial system, has caused emerging trends in the Islamic finance industry in its quest to compete with the conventional system. These trends involve tracking the path of the conventional system of debt culture which caused much similarity with the lending-based crowdfunding model. This model represents the most common type of the whole crowdfunding industry which amounted to USD25.1 Billion or 73% of the total estimated crowdfunding industry in 2015 (S. Wahjono, Marina, Widayat, & Nasir, 2017). More also, according to the Beehive Online Marketplace for Peer-to-Peer (P2P) financing in Dubai, global P2P lending has been forecasted to deliver \$300 billion by 2020 to the industry.

In Islamic lending-based crowdfunding, the platforms use some specific contracts compliant to the Shari'ah. These contracts include commodity *murabahah* based on *tawarruq*, *murabahah* to the purchase orderer and *wakalah bil ujah*. However, to meet the Shari'ah requirements for these contracts, there should be proper controls, particularly Shariah supervision and review. Some of the platforms do not have any Shariah committee even though they present themselves as Halal platforms, which may not be the case. In this regard, there is the need to investigate the applications of these contracts to ascertain

whether they fulfil the Islamic principles in debt transactions, such as avoidance of usury (*riba*), gambling (*maisir*), uncertainty (*gharar*) and products and services not acceptable in the Shariah.

Accordingly, this research paper will explore the application of underlying Shari'ah contracts in some selected Islamic lending-based crowdfunding platforms, namely Kapital Boost in Singapore and Beehive in Dubai.

## **2 Methodology**

This study uses a qualitative method which is more appropriate for this kind of research, where the absence of statistical data. The paper relies on the main instruments of the qualitative method which are document analysis and comparison between Kapital Boost in Singapore and Beehive in Dubai, in terms of Shari'ah compliant, in order to determine the level of adherence of the two cases with Islamic principles of lending-based. In this regard, this method aims to understand the two cases, in order to drive the accurate results pertaining to the real practice of the cases. Besides, the two selected cases have been chosen, because they are considered the most active Islamic lending-based crowdfunding in crowdfunding industry. Where their countries "Singapore and Dubai" issued regulations in respect to Islamic crowdfunding which led to progress these two platforms in Islamic crowdfunding industry.

## **3 Literature review**

### **3.1 Concept of crowdfunding**

Crowdfunding is essentially a new operating system with its own particularities as it represents the new interaction of social crowd economics landscape globally(Nur Aqidah Suhaili & Mohd Rizal Palil, 2016). Crowdfunding is defined as a collective effort by a large group of people on the network to pool their money together in order to invest in, whether for profitability or social responsibility purposes, and support ideas initiated by individuals, groups or organizations. In another words,



the main idea of crowdfunding is to raise money from large audiences rather than a few groups of investors, (Leite, 2012).

The use of crowd increases the customers' request of product newness as well as decrease costs, through sharing the design of product and development, the crowd can contribute to create a value for the business. Furthermore, crowdfunding activities, investors and the other parties enhance needed capital to the business to enhance its investment, for instance obtaining new assets and pay allowances (Schwienbacher & Larralde, 2010). Besides, crowds are more diverse than individuals or small groups, that means it is more efficient but the efficiency of crowds for mitigating problems of business pertains to its composition. However, another author said it is based on the own opinion of crowd members or may follow others' suggestion and reached them to the better solutions (Surowiecki, 2004).

All definitions care about the social responsibility and how it serves economic growth. Through providing a fund for small and microfinance players in the market in order to increase all progress factors that enhance economic growth such as, raise the percentage of employment up and reducing the poverty. As well as, how the investors and entrepreneurs meet easily via the internet.

### **3.2 Models of crowdfunding:**

According to the Word Bank (2013), there are five models of crowdfunding, which are: Donation-based, Reward-based, Equity-based, Lending-based /peer to peer (p2p) lending and Royalty-based. On the other hand, according to International Organization of Securities Commissions (IOSCO) 2014, there are only four models without a Royalty-based model, the first two models are under community category, while the last two models are under financial return or crowdfunding investment, that will be discussed below.

#### **a. Donation-based model**

Donation-based crowdfunding has an essential role to support charity enterprises that enhance social entrepreneurship. From an Islamic perspective it presents an optimal channel for spending Zakah and Sadaqah to be utilized efficiently for reducing unemployment and poverty alleviation. According to Massolution (2012), donation-based crowdfunding is considered the simplest model in crowdfunding, where funders just donate only for charity purposes without waiting for any expected returns. In other words, all funded projects through this model are non-profit projects. However, there are some physical gifts given to the donors to appreciate the value of their contribution (Leite, 2012).

The mechanism of the donation-based model begins with the project initiator preparing a short video presentation of the project plan with detailed explanations about the concept, goals and logistics such as, location, time and costs required/expected. In the second stage the project initiator chooses the relevant crowdfunding platform to launch the campaign. The campaign will be viewed on the platform, then after the potential investors get convinced of the campaign, the investor chooses a campaign and transfer the money to specific account by the platform. Once the target of the campaign is complete, then the platform will send terms, instructions and administrative fees to the project initiator. Signing the agreement and fundraising will be transferred to the entrepreneur to run the project (S. I. Wahjono & Marina, 2016).

#### **b. Reward-based**

Reward-based model also concentrates on charity projects like the Donation-based model. However, fund provider expects some kind of returns from the business, these rewards may be in the form of appreciated stuff such as, invitations for visiting concern, film, artist workshop or dinner. Furthermore, in other cases funders receive symbolic gifts such as, T-shirts advertising or any samples of the products which are included in the campaign (Abdullah, 2016). For

instance, Jamaican bobsleigh team financed their participation in the Olympic Winter Games in Sochi via crowdfunding, offering their sponsors a T-shirt in return (Dapp & Laskawi, 2014).

**c. Equity-based model**

In the Equity-based model funders are treated as equity-investors because of providing money to the capital seekers. Each capital provider has shares based on capital contribution (Andersson, Andersson, & Uusivuori, 2015). Massolution (2012) said that “funders receive compensation in the form of fundraiser’s equity-based or revenue or profit-share arrangements”. The funder might have the right to participate and vote on some decision. In terms of effective practice, equity-based recorded the most effective model especially for funding digital products such as, software, music and video. Furthermore, equity-based raises the largest amount of money per campaign compared to the other models. Moreover, most campaigns of equity model raised more than 25 thousand dollars, it is considered the fastest growing category (Leite, 2012). Therefore, funders in equity-based crowdfunding projects share in dividends and reserve the right to sell their shares (Joode, 2015).

**d. Lending-based model**

The lending-based model or peer to peer (p2p) crowdfunding is one of the investment crowdfunding models. It is like a loan where the lender provides a loan to the borrower who has to repay the principal loan plus interest over a period of time. In other words, the crowd grants loans to the entrepreneurs to run their project or finance new goods or services, and the crowd receives fixed periodic income (the original amount as well as the interest) without any considerations about what is the financial condition of the project. In 2015 this model became the most common model of crowdfunding (Wahjono, Sentot Imam, Anna Marina, Widayat, Nasir, 2017). The next section will discuss this model in depth, because it is the subject matter of this paper.

### 3.3 Types of contracts in Islamic lending-based crowdfunding

As mentioned above, the best way to avoid prohibited elements such as *riba*, *gharar*, gambling and *maysir*, etc, is to use Islamic Financial Transactions. This is important nowadays where there is a pervasive debt culture where anything is accepted regardless of its prohibited nature. The Shari'ah approved transactions which can be used in lending based transactions and crowdfunding (lending-based model) include Commodity Murabahah, Murabaha to purchase order, Wakalah and Qard Hasan. These are discussed in further details in the section below.

#### 3.3.1 Murabahah Contract

Murabahah contract is the most commonly used contract in Islamic financial transactions, it is categorized as a sale contract which is called "trust sale" because it is based on the honesty of the seller to determine the cost and profit of the commodity. The origins of the word Murabahah came from "Ribh" which means to gain something or further something. The simple/the original form of Murabahah contract is, when the seller introduces a commodity with disclosure about the cost in addition to profit. Murabahah is often used in deferred instalment payment basis. In banks, capital markets and the crowdfunding industry, there are some forms of using Murabahah contract that requires other components (Suzuki & Sohrab Uddin, 2016). This part is a discussion of these forms and components of Murabahah contract in modern use.

It is notable in Islamic lending crowdfunding platforms, they use Murabahah contract in two forms:

- a) Commodity Murabahah
- b) Murabaha to Purchase Order

#### a. Commodity Murabahah Financing (*Tawarruq*)

According to Samah (2016) the main objective of commodity Murabahah is getting cash. In the current use of Commodity Murabaha Financing there are four parties in the contract:

- 1- Fund seeker
- 2- Fund provider
- 3- Commodity Broker 1
- 4- Commodity Broker 2

A fund seeker approaches the platform for financing through the purchase of a commodity. The fund seeker could be people, organization or business. The fund provider will purchase a commodity on spot basis from Commodity Broker (1). The fund provider could be people, business or an organization. The fund provider will sell the commodity to the fund seeker on a deferred instalments payment basis (principal plus profit). The fund seeker, who is now owner of the commodity will appoint the fund provider as an agent to sell the commodity on spot price to Commodity Broker (2). The fund provider will pay the fund seeker in spot. Hence, the fund seeker will receive the cash which is the main objective of the contract.

#### **b. Murabaha to Purchase Order (MTPO)**

Most of the activities of Islamic banking sector rely on Murabaha to purchase order, even in the Islamic lending-based crowdfunding industry (Wulandari, Putri, Kassim, & Sulung, 2016). Where a customer/fund seeker approaches a platform for seeking assets, then undertake to purchase that assets in form of binding Wa'ad, then the platform contacts its investors which are registered on the platform and the potential investors in order to provide a fund for the fund seeker. The platform will purchase the assets from a supplier and deliver them to the fund seeker in spot and the fund seeker will pay the sale price in deferred.

One of the main documents that serves conducting Murabaha contract is Murabahah Master Agreement. It is a document of agreement between the parties of Murabahah contract, where the customer agrees to purchase commodities from the investor from time to time as per the terms and conditions of this agreement in order to facilitate the

agreement under which various Sub-Murabahah contracts may be conducted from time to time (Alfalah Limited, 2017).

### 3.3.2 Wakalah bil ujah

"Wakalah refers to a contract in which a party, as principal (muwakkil) authorizes another party as his agent (wakil) to perform a particular task in matters that may be delegated, with or without imposition of a fee". The basic of Wakalah is delegation or authorization of the agent "wakil" by the principal "muwakkil" resulting in the agent having fiduciary duties "amanah" towards the principal within what has been authorized to him (Bank Negara Malaysia, 2015).

### 3.3.3 Qard/loan contract

According to AAOIFI standards, Qard is a transfer of ownership in fungible wealth to a person on whom it is binding to return wealth similar to it. It is permissible to a lending institution to charge for services rendered in loans equivalent to the actual amount directly spent on such services. Qard contract is usually used in a non-profit institution, as well as utilized in modern form like Current Account.

As a result of that, all these contracts have been used in Islamic crowdfunding lending-based platforms, through above discussion the paper can match these contracts with the real practice in the industry as well as matching with Shari'ah Standards of AAOIFI, Shari'ah scholars' opinions and Fatwas.

## 4 Selected Case studies of Islamic lending-based crowdfunding

One of the main objectives of this paper is to analyse the current practice of Islamic lending-based crowdfunding industry, through exploring the application of lending based crowdfunding in Kapitalboost and Beehive crowdfunding platforms.

### 4.1 Case Study (1): Kapitalboost in Singapore

As mentioned above there are two types of financing which are conducting two different Shari'ah contracts which are: Murabaha for

assets purchase and Wakalah bil Ujah with Qard for Invoice Financing. The following illustration will explain the real practice of each contracts respectively:

**a. First contract: "Murabaha for assets purchase"**

Kapital Boost arranges a Murabaha contract for the purchase of assets. Under figure (1), investors agree to purchase assets which they will sell to the SME at a marked-up price in deferred instalments. The asset purchasing flow between Kapital Boost, the SME, and the seller/supplier are shown and explained below.

In figure (1) there are three parties KapitalBoost, SMEs and investors, after SMEs requesting financing from the platform and before buying assets, they conducted Murabaha Master Agreement among the three parties. Firstly, SMEs ask for finance to purchase the need assets, then after the investors get convinced about the SMEs campaign, the investors transfer the money to SMEs via KapitalBoost through using online payment gate, and SMEs will purchase the assets from the supplier by cash as agents on behalf of the investors. Therefore, the ownership of the assets will be in investors possession, at the same time the assets physically will be in the SMEs possession, then the SMEs will request to purchase the assets from the investors with the original price plus profit with payment of deferred basis. So, the ownership of the assets will be transferred to the SMEs, and the SMEs can sell their goods or services to their customers, and pay back the investors principal and profit.

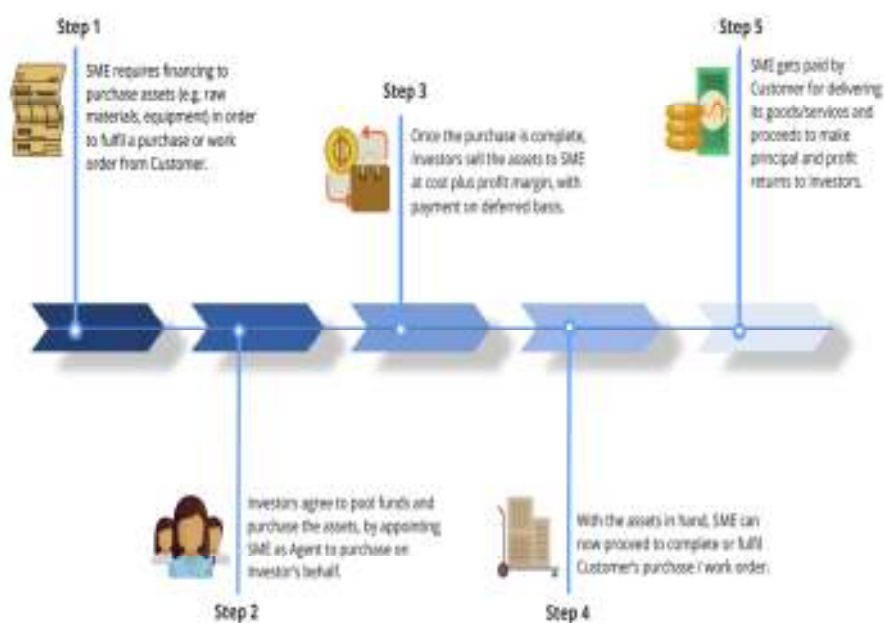


Figure 1: Asset Purchase financing (Murabaha) (Adopted from: [kapitalboost.com/](http://kapitalboost.com/))

**b. Second contract: (Wakalah bil Ujrah with Qard for Invoice Financing)**

It offers invoice financing for SMEs seeking to liquidate their receivables for getting cash. Invoice financing allows greater flexibility on the usage of funds beyond just asset purchases. In figure (2), SMEs can seek cash advance to meet their working capital needs and ensure smooth business operations.

In figure (2), firstly, the SMEs approach the platform to liquidate their receivables, then the funders/investors lend the SMEs loans without any interests<sup>1</sup>, and funders will be agents for collecting payments from customer/supplier for *Ujrah* "fees for agency", the amount of that Qard/lending should not be more than 85% of the receivables amount according to KapitalBoost conditions. Secondly, funders will approach



KapitalBoost as a sub-Agent to handle the receivables management services, at the maturity date of the receivables, the customers will pay the invoice amount, then SMEs will pay the principal of loan plus agency fees to the investors and KapitalBoost.

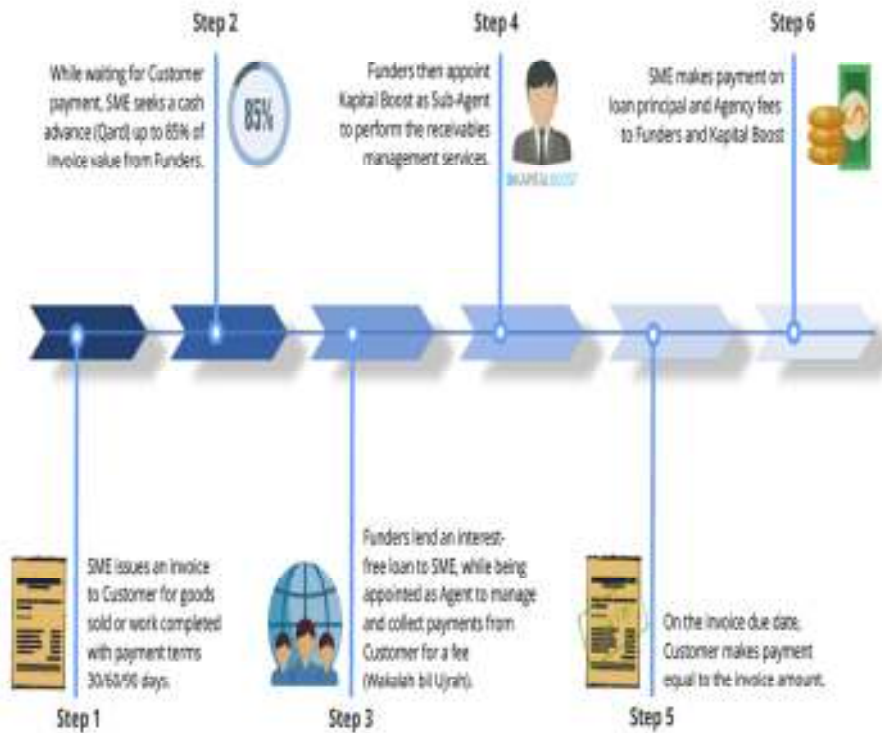


Figure 2: Invoice financing (Qard and Wakalah) (Adopted from: [kapitalboost.com](http://kapitalboost.com))

#### 4.2 Case Study (2): Beehive in Dubai

As mentioned above, beehive conducts a Commodity Murabaha contract through Dubai multi commodities centre "DMCC Tradeflow" online platform which is a dedicated flexible and customized online platform for registering possession and ownership of commodities stored

in UAE based storage facilities. It is a specialized, interactive ownership registry that brings together all stakeholders related to the trade and financing of physical commodities (DMCC, 2004). Figure (3) illustrates the procedures of conducting Commodity Murabaha on beehive Islamic p2p crowdfunding.

- 1- Business will undertake to Purchase the commodities, the Investors will offer to purchase the commodities,
- 2- Supplier will accept and the ownership of the commodities will be transferred
- 3- The Investors will issue a Murabaha contract, and the business will be accepted and ownership of the commodities will be transferred from the Investors to the Business, with the payment of cost price plus agreed profit which is deferred instalments.
- 4- Once the Business has obtained the underlying commodities, they can instantly monetize the value of the commodities through DMCC Tradeflow (beehive, 2017a).



Figure (3) Commodity Murabaha in beehive P2P crowdfunding  
(Adopted from: Beehive, 2017a)

## 5 Analysis and Findings

### 5.1 Table (1): Comparison of Kapitalboost and Beehive Lending-Based Crowdfunding

The comparison will highlight the most important points that help in clear assessment of the two cases. After this comparison the paper will discuss the main issues that drive the similarities and differences, as well as explore the challenges of each case in order to enhance the results of the paper.

	<b>KapitalBoost platform</b>	<b>Beehive platform</b>
<b>Platform Relationship</b>	Financial intermediary	Financial intermediary
<b>Charge business fee (service fee)</b>	5% of the total fund	2-4% based on the period
<b>Investment fee</b>	<b>No</b> investment fee	2% as repayment fee
<b>Profit rate (investors)</b>	Depend on the period of repayment and risk of business	6% -14% based on risk rate and period of repayment
<b>Guarantee</b>	personal guarantee for the total fund & joint bank account between SME & the platform & collateral with value 150% of fund amount ( <b>one of the options</b> )	Undated security cheque for the total fund & personal/corporate guarantee
<b>Risk</b>	borne by the investor	borne by the investor
<b>Past Period of business</b>	1 year	2 years

<b>Underlying products</b>	Asset Purchase Financing & Invoice Financing	Business Financing & Invoice Financing
<b>Underlying contracts</b>	Murabaha master agreement & Qard with Wakalah	Commodity Murabaha ( <i>Tawarruq</i> )
<b>Securities commission (SC)</b>	Available	available
<b>Geographic Scope of business place</b>	Singapore, Malaysia and Indonesia	UAE
<b>Late in paying</b>	Not mentioned	Profit continues to accrue at the agreed daily rate for any late payments (it may lead to interest)
<b>Default</b>	After 90 days, legal actions from the investors side	After 30 days as grace, legal actions from the platform, with investor's responsibility.
<b>Secondary market</b>	not available	Available (0.5% fee)

Table (1): Comparison between Kapitalboost and Beehive in Islamic Lending-Based Crowdfunding (Source: Authors' own)

According to the comparison in table 1 between the two cases, it is noted that the most important points to be highlighted are:

- a. **Secondary market:** in the case of when investors want to exit early from the platform, Beehive allows them to deal in the secondary market which allows investors the option to transfer their investment parts acquired on the platform to other investors on the same platform. Investments can only be transferred in the secondary market only in cases where the business has successfully made a repayment. There is no guarantee that a loan part put up for sale on the secondary market will be purchased, and investors will be

charged by 0.05 % in case of successful secondary market transaction (Beehive, 2017b).

- b. Past period of business:** the two platforms must have already launched the business before obtaining fund. For kapitalboost platform must be launched for 1 year before fundraising event, and for Beehive must be launched for 2 years before fundraising event, in order to make sure that the business has enough experience in the market, and then has higher potential of profitability.
- c. Charge business fee:** for kapitalboost platform, it imposes a charge fee of 5% of the amount of funds in case of successful fund. While beehive platform charges a fee based on payment period from 4-2% of the total amount of successful fund. This percentage is represented the profit of the platform.
- d. Geographic Scope of business place:** regarding to the place that the business based in, for KapitalBoost is wider than Beehive, where the former is eligible in three countries which are (Singapore, Malaysia and Indonesia). While the latter is eligible only in country for fundraising, which is Emiratis. Therefore, Kapitalboost may have more effective on the crowdfunding market.
- e. Underlying contracts:**

For kapitalboost platform, the underlying contracts are two kinds of products which are "Asset purchase financing" based on general Murabaha and "Invoice financing" based on Wakalah bil Ujrah with Qard. For general Murabaha contract, they have the same product in Islamic banking which is Murabaha to purchase order, but in different mechanism, which is based on Murabaha Master Agreement. There is a Shari'ah issue with the conducting of *wakalah bil Ujrah* which will be highlighted in the Shari'ah issues below.

For Beehive platform the underlying contract is Commodity Murabaha based on *Tawarruq*, which is a controversial issue among Shari'ah scholars because it involves basics of *bai' Al- 'inah* through *Al-Tawarruq Al-Monazam*, which is impermissible according the

most of scholars as well as International Islamic Fiqh Academy since 2009<sup>1</sup>. However, many esteemed Shari'ah Advisory Boards in different banks issued Fatwas with permissibility of this kind of *Tawarruq* due to the necessity of such kind of contracts for commercial and legal challenges. Therefore, the form of contract may lead to Shari'ah compliant, but according to the real practice, it is not achieving Shari'ah objectives.

- f. **Shari'ah committee (SC):** both of the two platforms have SC. It has the similar functions of SCs in the other Islamic financial institutions, such as responsibility and accountability for all Shari'ah decisions, opinions and views provided as well as ascertain of the Shari'ah compliance of all business campaigns and supervision of the whole contractual transactions between the parties in the platform (Hassan, 2016). The existence of SC in these platforms make them trustier in the Islamic crowdfunding industry.
- g. **Late in paying:** first of all, fund provider should give a grace period for the fund seeker because the fund seeker may be in difficulty, as it is mentioned in Quran. Allah says ( *وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ* ) (....البقرة آية ٢٨٠) that means " if the debtor is in straitened circumstances, then let there be postponement to the time of ease "verse 280 Surah Al-Baqarah". In the KapitalBoost case it is not mentioned any kind of charging fee, and this is Shari'ah compliant. For Beehive case, they mentioned "that profit continues to accrue at the agreed daily rate for any late payments" which may lead to interest, in such case, as long as the information is not clear enough, and the word "accrue" means according to longman dictionary "if money accrue or is accrued, it gradually increases over a period of time". Therefore, in such case it is considered as an interest.

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(1) <http://www.iifa-aifi.org/2302.html>

## 5.2 Operational Issues

### 5.2.1 Commodity Murabaha based on *Tawarruq* and nature of asset "Beehive"

As discussed earlier the steps of Commodity Murabaha transaction in details, where Beehive platform conducts this Commodity Murabaha transaction based on *Tawarruq* which needs some special requirements for conducting Commodity Murabaha transaction which are formed in three characteristics: (i) highly liquid commodities that can be easily bought and sold in similar qualities, (ii) in any desired quantity (iii) tradable on an electronic exchange with high profit (IFSB, 2017), such as *Bursa suq al-sila* in Malaysia, Bahrain and DMCC Tradeflow Commodity Murabahah platform in beehive Dubai, because after obtaining the commodity, it monetises through BMCC, which is the main objective of the contract. Therefore, the nature of the asset in Commodity Murabaha contract based on *Tawarruq* in Beehive platform should cover all these requirements to be valid with the contractual operation.

### 5.2.2 Murabaha based on sale contract and nature of asset "Kapitalboost"

As mentioned above the nature of assets in Commodity Murabaha differs from the nature of assets in general Murabaha based on sale contract, where the latter does not need to provide a commodity that can be highly liquid into cash, because the commodity in such case is needed for trading or producing activities for the fund seeker. To mitigate the risk, fund seeker should give a promise of purchasing the commodity before the fund provider possesses the commodity.

In case the cost of commodity/asset exceeds the amount of funds from each fund provider, and the asset is indivisible/not scalable. The platform should conduct Murabaha master agreement and determine in each stage of contract the rights and obligations of each single fund providers, where each fund provider does not know the potential

investor(IFSB, 2017). So, the platform should be very careful with establishing a pool of temporary joint owners in terms of transparency and roles of enhancing dispute settlement to avoid Shari'ah non-compliance. As a result of that, conducting Murabaha Master Agreement is a condition to implement the contractual operation properly.

### 5.2.3 Islamic platform functions

The main function of lending-based crowdfunding platforms is a financial intermediary. However, according to the last report of "ifsb" 2017 in terms of Islamic crowdfunding, the platform acts as a third-party facilitator which has three main functions (i) verify the enterprises from Shari'ah compliance perspective, (ii) sending the enterprise details to the Islamic investors. (iii) to meet the investors and supplier/commodity traders together, where each investor can purchase the required commodity for Murabaha contract. For the paper's opinion, there is no big different between the two platforms' functions, because at the end of the day there is no assigning contract between the platform and other party. Through these three functions we can try to make the relationship of the two parties stronger to avoid the Shari'ah issue of the explicit offer and acceptance between the investors and business, that will be elaborated it in the following Shari'ah issues.

## 5.3 Shari'ah Issues:

### 5.3.1 The underlying contract of invoice financing in KapitalBoost platform (Wakalaha bil Ujrah with Qard,)

For *Wakalaha bil Ujrah* with *Qard*, according to the provided explanation on their website which is not clear enough for building a comprehensive perception from Shari'ah compliance perspective. So, in this regard, the structure of *Qard* and *wakalah bil ujrah* are Shari'ah compliance separately. However, in such case when the two contracts are combined, there some Shari'ah issues should be highlighted. *Wakalah* contract depend on providing *Qard* to the business. As mentioned in their website, the business will appoint the investors as



agent in case the investors provide *Qard* to the business, and then *Wkalah* fee will be along with *Qard* which is considered *Bai' wa salaf* (بيع وسلف) which is impermissible as in Hadith.<sup>2</sup>

(ما روى عن النبي صلى الله عليه وسلم أنه نهى عن بيع وسلف) أخرجه أبو داود والترمذي وقال حديث حسن صحيح.

This Hadith means that prophet Mohamed (pbuh) said "sale and loan contracts at the same time is impermissible".

Therefore, *Qard* contract in such case will lead to Fiqhy ruling (كل قرض جر نفعاً فهو ربا) which means, any benefit generated from a loan is *riba*. In addition, according to AAOIFI Shari'ah Standards it is permissible to combine two contracts except if one of the contracts is condition to another, and in this case if the there is no *Wakalah* contract, *Qard* contract will not be conducted. Furthermore, another Fatwa about *Wakalah with Qard* " a customer approach a bank for *Qard Hasan*, and the bank accepts, with condition of using a part of its customer's bank account in Bursa as agent with fee "*ujrah*" and one of the outstanding scholars his name is Al Sheikh Abdalhai Yousf said this a *Hilah for Riba*<sup>3</sup>.

### 5.3.2 Relationship of platforms with the parties

There are two models of the relationship of operator platforms as an intermediary between the parties in the platform which are: the project selection model "the first generation" and the class or product selection model "the second generation". For the first generation the fund provider can choose the fund seeker based on previous relationship between them. For the second generation the platform will assess and class the fund seekers then fund provider can choose the relevant fund seeker without any previous relationship(IFSB, 2017). Hence, in the second case the fund provider will be doubtful that the fund seeker will

(2) "Al-Muta' "{657:2}; "Musnad Ahmad" {179/2}

(3) <https://ar.islamway.net/fatwa/37223/%D9%82%D8%B1%D8%B6-%D9%88%D9%83%D8%A7%D9%84%D8%A9>

conduct the business according to Shari'ah principles or not. As well as, the contracts should be an explicit offer and acceptance between parties, because in the practice fund provider puts condition to finance in any project at specified profit to be in a particular risk category. The offer in that way may lead to defective offer. At the same time, fund seeker often does not know the all fund providers who contributed to the transferred the fund to him through the platform. So, the fund seeker will not know how can respond the acceptance of that offer to the fund providers. This issue is raised because platforms do not mention the relationships between them and the parties. Therefore, Shari'ah committee in the platform must clarify that relationship. Besides, when fund providers send money to the platforms, the platforms allocate that fund to different fund seekers without detailed knowledge of the fund providers, and the fund providers receive periodic profit plus the principal amount which looks like Riba even if the fund seeker conduct the contract as Commodity Murabaha. As a result of that, the project selection model "the first generation" with a clearly identifiable Murābahah or Commodity Murābahah contract can avoid such problem.

### **5.3.3 Responsibility of Shari'ah Compliance During Lending Period**

The main issue of Islamic platform crowdfunding is the verification of fund seeking business to be fulfilled the Shari'ah requirements such as avoidance of involving impermissible items and interest-based transactions. In addition, Islamic investors' concern about Shari'ah compliance throughout the period of contract. This ambiguity led the paper to raise the issue of responsibility of Shari'ah compliance whether the platform or each investor is responsible for following up the Shari'ah compliance. In case of the responsibility of Shari'ah compliance is located in the investors side, that requires them to have enough experience to evaluate Shari'ah compliance. On the other hand, which is more practical, in case of the responsibility of Shari'ah supervision in the platform side that will lead to some questions which

are: How can a platform as being a start-up by itself confirm of the Shari'ah compliance of enterprise, which means the cost of Shari'ah board it will be very costly, and it will increase the burden of the platform. Top of that, in case of breaching Shari'ah compliance roles, Is there any dispute settlement technique? These problems would be solved easier in countries which have a Shari'ah governance than those who do not have. In other words, in case the platform became non-compliant the Islamic investors should claim against the platform, which make the platform expose to risk. In order to mitigate this risk the Islamic platforms require a capital buffer or insurance to cover such kind of risk and in this case the cost of Islamic platform will increase compared to the counterparty(IFSB, 2017). At the same time, the role of the Islamic platform will change from intermediary or matchmaker to a financial institution. As a result of that, Islamic platforms would transfer more responsibility to the investors, in order to keep the platform as facilitator or intermediary.

#### **5.4 Regulatory Issues (Role of Shari'ah Compliance)**

The main point of regulating Shari'ah compliance of Islamic lending-based crowdfunding is to make sure that the business will be Shari'ah compliant till the end of business. Because the business will begin in Shari'ah complaint for a period of time from the beginning, then over time some Shari'ah non-compliant items start to appear into the transactions of the platform or the quality of Shari'ah may retract. Except in case the platform itself reports its controversial issues(IFSB, 2017). As a result of that, there is a need to set regulations for the Shari'ah Advisory Board which are appropriated with the nature of Islamic lending-based crowdfunding to guarantee the activation of Shari'ah requirements for the whole period of the business. For instance, Malaysian regulation of Shari'ah compliance is very appropriate example for Islamization the lending-based crowdfunding which includes: (i) Providing Shari'ah knowledge and guidance for the whole issues, especially in structuring, documentation and investment instruments. (ii)

Applying intellectual reasoning "ijtihad" in case of absence of any ruling(Commission, 2016).

## **6 Conclusion**

The underlying contracts in Islamic lending-based crowdfunding are based on sale contract, Tawarruq and agency-based. The contractual relationship is only between the fund seeker and fund provider. Besides, the role of the platform is a mere financial intermediation is to assess the credit risk of fund seekers and assigns proprietary scores to them. In addition, the platforms minimize the investment risk through diversifying investment across several different campaigns on the website. However, investors have the full responsibility to decide on the investments that best suit their risk appetite.

According to available information in the selected internet platforms, the two platforms avoid involving prohibited commodities, which means all products and services of the campaigns are Halal, and they have Shari'ah Committees, which plays an essential role in filtering projects for Shari'ah compliance. Furthermore, the available documents in their websites are not enough for highlighting other critical issues, and in some cases, there is some ambiguity related to Shari'ah issues. It is required that such issues should be activated and monitored and observe their disclosure statements in generally and the Shari'ah requirements in particular.

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## محتويات الجزء الثاني

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