76. **Hibah in Wadi`ah Contract**

One of the methods in accepting deposits by Islamic financial institutions in Malaysia is based on the concept of *wadi`ah yad dhamanah*. Some of the Islamic banking institutions give *hibah* to *wadi`ah* depositors as token of appreciation for the depositors’ confidence in the institutions. However, one of the concerns is that the practice of giving *hibah* to *wadi`ah* depositors will become an `urf or norm forbidden by Shariah.

In this regard, the SAC was referred to on the issue as to whether the practice of giving *hibah* by the Islamic banking institution to *wadi`ah* depositors is permissible.

### Resolution

The SAC, in its 35th meeting dated 22 May 2003, has resolved that the practice of giving *hibah* by Islamic banking institutions to *wadi`ah* depositors is permissible. Nevertheless, such practice shall not become a norm in order to avoid this practice from becoming an `urf that resembles a condition in a deposit contract based on *wadi`ah*.

### Basis of the Ruling

In the current banking practices, deposited monies by the customers will be used by the bank for certain purposes such as financing and investment. From the Shariah perspective, monies deposited into a deposit account based on *wadi`ah yad dhamanah* is equivalent to a loan based on *qard* in which the bank must refund the deposit to the customer upon request according to the agreed terms and conditions. Thus, the requirements of *qard* and its effects are also applicable in deposit account products based on the concept of *wadi`ah yad dhamanah*. 
A *hadith* of Rasulullah SAW provides:

> "Rasulullah SAW said: The best person among you is the one who does his best in debt settlement."

In a *qard* contract, a condition that gives benefits to the lender is not allowed. For instance, a condition requiring the borrower to give a free accommodation or at a cheap price to the lender, and giving a reward or gift in return for the lender’s kindness.

The practice of giving *hibah* by a borrower to a lender is recommended in Islam. However, it must not be conditional in the contract so as to avoid the element of *riba* as stated in the following *hadith*:

> "From Ali r.a. who said, that Rasulullah SAW had said: Every loan that gives benefit (to the lender) is a riba."

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