Cost Benefit Analysis: Transforming Malaysian Prison Department Towards Income Generating Through Islamic Finance Products

Hakimah Yaacob

“It makes no sense to put people in prison and not train them to do something constructive." “We must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short term benefits — winning the battles while losing the war. It is wrong. It is expensive. It is stupid.”

(Chief Justice Warren E. Burger 1907 – 1995)

ABSTRACT

Prison Department is an avenue where most of the human capital available. The pressing issue is without the transformation, the prison department left as giant dummy without profiting the country and cost millions to the tax payers annually. An attempt is made to dwell on the subject with an aim to clarify the rationale of having a transformation within the Prison Department leveraging on various products and alternatives under Islamic Finance. The objective of the paper is to address the significant impact behind the idea of having the transformation. The positive impacts cover the inmates, victims of crime, government and the society at large. It is timely to transform the prison system since it involves tripartite relationship under the criminal justice system that needs special attention to be redressed and addressed. Cost benefit Analysis shown that the transformation benefits the country as well as the nation. The humanity approaches, rights of crime victim, governments cost saved and society’s pledged secured are incorporated into this paper. The paper claims that in ever increasing global market and interest in Islamic finance from all over the globe, the prison department should grab the chance of being part of it. Transformation is a must for a better world.

Keywords : Prison Department, Human Capital, Cost Benefit, Transformation, Islamic Finance, Products, Sukuk, Waqf, equity financing, istisna’.

INTRODUCTION

Crime causes huge negative impact to the economy. The Government would have to bear the cost of incarcerating the prisoners and the victims and the society have to suffer the costs associated with being a crime victim. The costs suffered by the victims and the government are the costs associated with victimization itself and legal hassle that has to be borne by both parties. One of the two key aims of the criminal justice systems is “to reduce crime and the fear of crime and their social and economic loss”. The economic, social or cost of crime is essentially a measure of the impact of crime on society. It gives us a way of measuring the impact of policies aimed at reducing crime and its consequences. A high level of understanding on the main impact of crime and the relative seriousness of the different types of crime is vital in highlighting areas where the related criminal policy needs to be enhanced. The cost-benefit analysis of alternative measures can help to inform the criminal justice system and other agencies about the most effective mix of policies that would be able to bring down the cost of crime. The main objective of the paper is to address the significant impact behind the idea of having the transformation. The positive impacts cover the inmates, victims of crime, government and the society at large. It is timely to transform the prison system since it involves tripartite relationship under the criminal justice system that needs special attention to be redressed. The methodology employs in this paper are based on the information gathered from the Prison Department and library study. This paper is divided into few discussions. The first part highlights the rationale behind the transformation

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RATIONALE OF THE TRANSFORMATION

Impacts On The Government Cost

1. Daily prisoner-related expenses is RM35\(^2\) per prisoner

The yearly prisoner-related expenses is RM12,775. With 40,000 prisoners, this means that the yearly cost of incarcerating these inmates is RM511 million, thus diverting an average of RM42.9 million per month from the national economy. The government must begin to think in terms of the cost-benefit of incarcerating these prisoners, with the view of generating returns from it. The prisoners are of course not regarded as commodities, but with so much spent on them, a strategy that reforms their behavior and at the same time, contributes to the national economy would be a very much welcomed strategy indeed. As citizen myself, I am also concerned about the social responsibility of prisoners towards the victims. By paying the money to the government, it will only cause them to mitigate punishment, or what we call as-sulta\(^3\).

TABLE 1: The estimated costs for a prisoner expenses in a day (year 2011)

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food/drinks (price of raw foods, groceries, preparation, and kitchen safety control)</td>
<td>RM7.98</td>
</tr>
<tr>
<td>Service costs (envelopes/stamps/electricity/water/sports/reading materials and medical costs)</td>
<td>RM1.07</td>
</tr>
<tr>
<td>Clothes (pants/shirts/towel/etc)</td>
<td>RM1.27</td>
</tr>
<tr>
<td>Daily expenses (toothpaste/toothbrush/soap)</td>
<td>RM0.24</td>
</tr>
<tr>
<td>Hygiene</td>
<td>RM4.43</td>
</tr>
<tr>
<td>Meeting supervision and safety control</td>
<td>RM0.69</td>
</tr>
<tr>
<td>Record and Registration Office management</td>
<td>RM2.48</td>
</tr>
<tr>
<td>Safety management and control</td>
<td>RM13.75</td>
</tr>
<tr>
<td>Rehabilitation programme</td>
<td>RM3.09</td>
</tr>
<tr>
<td><strong>TOTAL COSTS</strong></td>
<td><strong>RM35.00</strong></td>
</tr>
</tbody>
</table>

2. Safe prison management and better prison discipline through the reduction of idleness

Idleness in prison is dangerous. It can give rise to boredom and frustrations that can explode in disputes among inmates and in attacks by inmates upon prison staff. Prison industrial activity is, first and foremost, a management tool. It enhances discipline within prison by keeping inmates occupied and by raising their morale. During the 20th century, the periods of greatest unrest in prisons throughout the United States coincided with periods of depression in the prison.

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\(^2\) Interview with Tn Haji Supri, Prison Deputy Manager, Kajang Prison, Dec 2010.
\(^3\) Payment made to the government to mitigate punishment of the criminal and as a matter of fact the money paid or fine paid should go to the victims of crime. The practice among the Jews and was eliminated by the prophet.
\(^4\) Refer to fn 10.
\(^5\) Source from Malaysian Prison Department, Kajang.
3. Cost efficiency

It is more expensive to operate a prison where the inmates are idle, tense, and disruptive than it is to operate a prison where the inmates are busy and well disciplined. Investments in prison industries can lower expenditures on day-to-day prison operations and decrease the likelihood of having to expend resources to quell disturbances. Moreover, prison industrial programmes enable inmates to produce items of value for the Government, such as furniture, electronics, signs, military gear, and so forth. Sale of these products, in turn, generates revenue that can be used to offset expenses that would otherwise have to be met through appropriated funds. FPI staff salaries are funded out of such earnings, and, for many years, FPI revenues were also used to subsidize educational and other programmes for inmates.

4. Inmate job training and rehabilitation

The primary task of a prison is to confine offenders, but the secondary task is to provide inmates with ways to improve themselves during the confinement period. Prisons cannot magically rehabilitate offenders, but they can provide opportunities for inmates to reform their behavior and rehabilitate themselves. As former Federal Bureau of Prisons Director J. Michael Quinlan wrote, "We can't 'cure' criminal behavior, but we know that some programs work for some inmates some of the time.” Prison work programmes are among those that can help. The work experience and vocational training they provide can increase ex-offenders' prospects for employment and reduce the likelihood of recidivism.

5. Inmate financial responsibility

Inmates have families to help support, court-imposed fines to pay, and victims to recompense. The wages that they earn through employment in prison labor programmes, however meager, can help them meet those obligations. Under the Bureau's Inmate Financial Responsibility Program (IFRP), all inmates who have court recognized financial obligations must use at least 50 percent of their FPI earnings to pay their debts. Since the programmes began in 1987, more than $80 million has been collected. For example, in its 60 years incorporation, Federal Prison Industries, Incorporation, has provided meaningful employment for inmates, developed sound educational and vocational training programs for inmates, and helped minimize the economic impact of prison labor on the private sector. As a component of the Federal Bureau of Prisons, its operations are limited to the correctional institutions of the Federal Government. But it has played a strong leadership role throughout the field of corrections and has served as an example to the prison systems of the various States.

In June 23, 1934, President Franklin D. Roosevelt signed into law the establishment of Federal Prison Industries, Incorporated (later on will be referred to as FPI). Subsequently, on December 11, 1934, his Executive Order 6917 formally created FPI as a wholly owned corporation of the United States. The history of FPI is a critical chapter in the history of corrections in general, and of prison work programs in particular. Retrieved from www.pia.gov

Central Office, Mid-Atlantic Region (MXR) North Central Region (NCR) Northeast Region (NER) South Central Region (SCR) Southeast Region (SER) Western Region (WXR) Source: retrieved from http://www.bop.gov/ on 27th Feb 2012.

Government, to operate factories and employ inmates in America’s federal prisons. The organization continues to educate Federal Government agencies, customers, and the private sector, and other constituents about the incredible investment known as UNICOR\textsuperscript{9}. Since 1934, UNICOR is one government program that has continued to work in every sense of the word, leading to residual, lasting benefits of a reduction in government spending; positive impact upon the U.S. economy; the viability and health of our communities; the safety and security of our Nation’s corrections facilities; and a fresh start for a brighter future.

**IMPACTS ON THE VICTIMS THAT BEING HARMED UNDER THE CURRENT SYSTEM**

The law as it stands today is still retributive and rehabilitative in nature.\textsuperscript{10} It is based on a theory of justice that considers punishment of the perpetrator as the only acceptable response to crime. Most legal systems of today apply the same theory of retribution in their legal documentation. The traditional concept of justice imbued in most legal systems and inherently believed by legislators as well as the public goes back to the ancient mosaic principle of “an eye for an eye”. Punishment is expected to befit the committed crime. In reality, the harsh biblical law of retribution is of course no longer applied in its most austere form. According to modern secular penal law, no murderer is put to death and forced to suffer the same pain he or she had inflicted upon the victim. Most crimes are punished with imprisonment, not with physical injury. Critics of modern legislation argue that the role of a criminal justice process should reflect both the crime (in the person of the perpetrator) and its victims equally. However, the present systems fail to acknowledge that crime victims are continuously sidelined and their interests not being taken into sufficient consideration. The current criminal justice system does not interact with the victim, as illustrated in Table 2 below.

<table>
<thead>
<tr>
<th>The current criminal justice system</th>
<th>The missing link of interaction</th>
<th>The CJ responds only to the criminal and not to the victim</th>
</tr>
</thead>
<tbody>
<tr>
<td>The criminal justice</td>
<td>The victim</td>
<td>Injury caused to the victim</td>
</tr>
<tr>
<td>The victim</td>
<td>The criminal</td>
<td></td>
</tr>
</tbody>
</table>

**TABLE 1: The current criminal justice system.**

The current Malaysian justice system causes the government to spend much more financial resources on the convicted criminals rather than the victims. It is estimated that the government spends an average of RM 35 per day for the upkeep of each prisoner during his or her period of conviction.\textsuperscript{11} The question is if the government also spends a similar amount in rendering aid to the victims of the crimes. The victim’s participation in the administration of justice, that is when the victim decides to bring the perpetrator to court, results in the victim incurring numerous financial expenses and added inconveniences which are in many cases not only born by the victims themselves but by their families. Thus, the victims who have already undergone serious physical, mental and emotional trauma, are further burdened with the financial consequences of the crime from which the perpetrator – even if convicted – is exempted. The victims have to face time-related, financial, and personal problems long after the crime has been committed and the perpetrator identified.

\textsuperscript{9} “UNICOR” is simply the trade name for Federal Prison Industries, Inc. http://www.unicor.gov/about/faqs/faqsgeneral.cfm

\textsuperscript{10} A new step taken by the Malaysian government in 2004 by introducing section 293(1)(e) in the Criminal Procedure Code when it introduced community service to be conducted by the juvenile which is under the monitoring of the Ministry of Welfare, Women and Children.

\textsuperscript{11} As of 23\textsuperscript{rd} February 2010, the prisoners in Malaysia were calculated at 44,000. (Interview with Tuan Nasir bin Ali Din, prison attendant at Kajang Integrity School, Kajang Prison, Jln Jelok, Kajang, Selangor. The same interview was conducted with Tn Supri Hashim, the Prison Attendant of Kajang Prison, at Kajang Prison general office, 2pm–4pm, 18 July 2008).
In terms of the amount of time victims need to invest in order to have justice served, they need to travel frequently to attend court hearings before and during the actual trial period, wait for the next hearing which may be postponed several times for various reasons, and take time off from work or their studies for each hearing or appointment with their legal representative.

In terms of the financial burden the victims have to bear to have justice served, they need to bear their own travel and transportation expenses, the cost of hiring lawyers to represent their case at court and initiate proceedings, and pay the numerous visits and phone calls they have to make in order to prepare for the trial. All these expenses are added to the already existing medical bills incurred in the treatment of emotional trauma, physical injury, etc. The current system’s channel of communication is criminal-centric and it serves solely as the medium to punish and rehabilitate the criminal. At the same time, the system ignores its role in asking the convicted perpetrator to take responsibility for his actions and assume accountability towards the damage he has caused. The economic and social expenditures caused by crime are essentially a measure of the impact of crime on society. It allows for a way of measuring the impact of policies aimed at reducing crime and its consequences.

PRODUCTS AND AVENUES FROM ISLAMIC FINANCE

4.1 TAKAFUL

Takaful can be provided as a basis for protection. As takaful emerged from the kafalah which means protection. Takaful is the Shari’a-compliant alternative to conventional insurance. It is defined as a scheme based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of needs, whereby the participants mutually agree to contribute for the purpose.  

Participants donate their Contributions to the Participants’ Takaful Fund, which is used to pay for any loss or damage that any of the Participants may suffer from. This means that the Participants share the risks. There are basically two different types of Takaful models for the management and investment of funds by a Takaful operator, namely, the Mudarabah model and the Wakalah model. Other business models such as Waqf model, Tabarru’ model and combination of models are also adopted by some Takaful operators on a slighter extent.

By the principle of Mudarabah, the Takaful operator accepts payment of the contributions from participants on the basis of equity partnership that is a risk-sharing mechanism where the profit is shared between the Takaful operator and the participants in a predetermined manner. The contract specifies how the surplus from the operations of Takaful is to be shared, in accordance with the principle of Mudarabah, between the participants as the providers of capital and the Takaful operator as the entrepreneur. The sharing of such profit is approved by the Shari’ah Supervisory Board for each year; it may be in a ratio 50/50, 60/40, 70/30, etc. as mutually agreed in advance between the contracting parties and depending on the developmental stage of the company. The sharing of surplus that may emerge from the operations of Takaful is made only after the obligation of assisting the fellow participants has been fulfilled. Shareholders of the Takaful Operator as Mudarib bear expenses for the investment activities and the participants as Rab-al-maal bear the expenses for the underwriting operations. Financial losses are required to be covered only by the participants, such as in form of a reduction in of their capital or by paying higher contributions; while the Takaful Operator may only lose its time and effort of labour spent in managing the underwriting operations.

According to the Wakalah model, the group of participants can delegate their rights or business to the Takaful operator (Wakeel), who then acts as their agent and representative. Shareholders of the Takaful Operator provide the capital to establish the Wakalah Takaful as a donation and do not receive any share of the income generated from investing the Participants Takaful Fund. The Takaful operator assumes the business risk in developing and operating Takaful business on behalf of the participants but never participates in the mutual underwriting losses. It generates its income by charging a Wakalah fee for managing the underwriting operations and investing activities, based on the level of contribution, investment returns and generated surplus. This fee rate is fixed annually in advance and should be approved by the Shari’ah Supervisory Board of the Takaful Operator. All operating expenses are charged to the Participant Takaful Fund, while expenses for the investment activities are charged to the Takaful Shareholders Fund.

\[12 \text{ Sec 2, TAakaful Act 1984.}\]
4.1.1 Funeral

Payment will be made to the eligible next-of-kin. The payment can be taken from the prison industry. The inmates will be more self responsible for the demeanour and damages caused to the victims. The payment they gained from the work at prison industry can be channelled to the victims.

4.1.2 Medical bills

The same applies to the medical bills that caused huge economic impact on the victims. As a result of crime the victims may suffer losses in terms of physical, emotional, psychological and economic. These impacts of crime may cause huge losses to the victims. The government nearly spent millions for medical bills as result of free treatment at government hospitals given to the victims as a result of crime\textsuperscript{13}.

In addition to the above, there are several ways in which the prison Department can benefit from becoming involved in Islamic Finance sector, some of which are explained below:

4.2 Equity financing: Using contracts such as musharakah and mudharabah, Islamic financial institutions can finance the operations of this sector and subsequently, share the profits generated thereafter. However, this is with the assumption that the Islamic financial institutions are not involved in the overall scheme that includes the element of cash \textit{waqf}, which requires the preservation of the corpus, except if the Islamic financial institutions agree that a certain percentage of the profit obtained would channelled to the \textit{waqf} fund;

4.3 \textit{Istisna'}-based financial products: By leveraging on the management system of the prison authorities and the readily available labour in the form of inmates, the Islamic financial institutions can play a role in generating results in the real economy;

4.4 Cash \textit{waqf}: Islamic financial institutions can exercise their social responsibility by contributing directly to the \textit{waqf} fund, as stated above. Historically, it is very difficult to trace the practice of cash \textit{waqf} in Arab countries, as the local Muslim jurists argued that the investment of cash \textit{waqf} is subjected to riba. However, the situation changed during the Ottoman rule when the Ottoman courts approved cash \textit{waqf} as early as the beginning of the 15\textsuperscript{th} century. By the end of the 16\textsuperscript{th} century, the use of cash \textit{waqf} had become extremely popular all over Anatolia and the European provinces of the empire, which controlled much of Southeastern Europe, the Middle East and North Africa. By minimizing the problems of red tape and bureaucracy, schools, libraries, water conduits, bridges, roads, ports, lighthouses and pavements were built. The health sector was also not excluded from reaping the benefits of cash \textit{waqf}.

In this modern era, the prison system is one area where Islamic financial institutions can contribute, in the spirit of fulfilling the corporate social responsibility (CSR). As mentioned earlier, the capital in the cash \textit{waqf} fund would be invested in low-risk investment avenues and subsequently, the profit generated would be used for a variety of purposes, including financing the operations of the prison industry. Basically, there will be two sources of capital injection, i.e. from the fines paid by the criminals and the revenue generated by the prison industry. These two sources of capital will be channeled into a fund (Victim’s Fund) with two specific functions. The capital channelled into the fund will be utilized in two ways, i.e. to finance the payment to be made to the victims and to be invested. Furthermore, the payment to be made to the victims is divided into two, namely pecuniary loss (medical costs, funeral and burial costs, loss of income and monetary losses) and discretionary compensation, which is based on the \textit{al-irs} (ال서비스). Within the context of the modern criminal justice system, the principle of \textit{al-irs} can be implemented through a structured and standard scheme; a scheme provided by the Government. The management of the funds can be established by the government through one of their GLCs (Government Linked Companies) or a company with a \textit{nadzir} as the trustee to manage the property.Inmates would be paid for their labor out of the Corporation's revenues; the inmates could use their stipends to purchase goods from the institution commissary, i.e. to support their families, or to pay fines or restitution..The profits from investment would go into the fund that would finance all industrial operations (including capital improvements) and also help subsidize programmes for inmates. Thus, the financial basis for the system has the advantage of requiring no additional burdens on taxpayers. A unique, intra-governmental multiplier effect came into play. Government

\textsuperscript{13} Based on interview with Dr Faizal Salik, Head of OSCC, One Stop Crisis Centre(OSCC), Kuala Lumpur Hospital on Oct 23 2010.
money spent by an agency on prison industry-made furniture, for instance, also offset prison expenses. The Government, in other words, gets more value for its money; of course, that same money is eventually injected back into the national economy, in the form of staff salaries, inmate wages, and payments to private sector vendors.

4.5 Prison Industry Based-Innovative Prison Sukuk

CALPIA (California Prison Industry Association)\textsuperscript{14}, was set up as part of the American prison industry\textsuperscript{15}, that provides work assignments to approximately 5,900 inmates in 22 prisons. It operates more than 60 types of subsectors, which covers the services, manufacturing and agricultural industries. These industries produce a variety of goods and services, including flags, coffee, shoes, signs, binders, eye wear, gloves, office furniture, license plates, clothing, cell equipment and many more. The products and services of CALPIA are available to Government entities, including the federal, state and local governmental agencies, as well the public at large. This is what we call ‘prison industry’. The government may introduce the same system that can generate income out of the operation. The expenditure suffered by the government as shown in Table 1 can be redressed. The current practice of prison having an art among the prisoners is out of level of expectation. It did not even reach to the level of Small Medium Enterprise. It is submitted that since the prison Department is a huge institution, hence it should be enlarged into at least to a Medium size Industry.

CONCLUSION

In conclusion, transforming the Prison Department is essential. It is able to safe prison management and better prison discipline through the reduction of idleness. As stated earlier the idleness in prison is dangerous. It can give rise to boredom and frustrations that can explode in disputes among inmates and in attacks by inmates upon prison staff. By having at least something to do it enhances discipline within prison by keeping inmates occupied and by raising their morale. Apart from that, it creates efficient expenses in cost. Indeed it is able to cover expenses of all the prison staffs. Moreover, prison industrial programmes enable inmates to produce items of value for the Government, such as furniture, electronics, signs, military gear, and so forth. Sale of these products, in turn, generates revenue that can be used to offset expenses that would otherwise have to be met through appropriated funds. FPI staff salaries are funded out of such earnings, and, for many years, FPI revenues were also used to subsidize educational and other programmes for inmates. Besides, inmates are getting well trained and rehabbed. The work experience and vocational training they provide can increase ex-offenders’ prospects for employment and reduce the likelihood of recidivism. In addition, inmates are more financially responsible towards harm that they have caused. There are many avenues in Islamic finance for example that can be adopted as a start.

REFERENCES


\textsuperscript{14} Refer to http://www.pia.ca.gov. Court-ordered restitution/fines are deducted from the wages earned by CALPIA inmates and are transferred to the Crime Victims’ Restitution Fund. CALPIA inmates receive wages between $.30 to $.95 per hour, before deductions.

\textsuperscript{15} Since 1934, Federal Prison Industries, Incorporated-a wholly-owned corporation of the United States Government-has operated factories and employed inmates in America’s Federal prisons. Also known as FPI or UNICOR, Federal Prison Industries, Inc., has made an incalculable contribution to law enforcement by contributing to the safety and security of Federal correctional institutions. At the same time, it has produced a wide array of products for use by the U.S. Government and provided tens of thousands of inmates with the vocational training and work experience they needed to become gainfully-employed, law-abiding citizens after release. FPI serves many constituencies-the public, prison staff, other Federal agencies, and even the inmates themselves. It is one of the most successful and cost-effective enterprises of the Federal Government.


Denise White (2002), Great Tradition of Ethics, 10th Edition, United Kingdom


Enough is Enough at http://www.enoughisenough.org.au/victims/


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