

Guest Editors

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Islamic finance is an unavoidable phenomenon in the world financial system. Not only does it offer a new group of potential investors looking to diversify away from traditional investments but its responsive adaptation to economic and financial expectations are among the factors pushing its growth. The world's financial markets are picking up on its potential and benefits. Countries are adopting Islamic finance into their jurisdictions by adding it into their legal and regulatory frameworks.

With the continued expansion of Islamic finance, the vital role of a strong legal and Shariah framework in the sustainable development of Islamic finance has been extensively discussed. The rapid transformation of the functioning of the Islamic financial system must be accompanied by guarantees that the regulatory and legal framework is aligned with these developments. This is indeed an important subject, particularly in the present era; the Fourth Industrial Revolution (4IR). Islamic financial institutions have to move fast to reap the benefits of the 4IR and to maintain their relevance.

The theme of this special issue is the legal and Shariah issues in Islamic finance in facing the challenges of 4IR. The contributions are mainly from the IIUM Institute of Islamic Banking and Finance (IiBF) of the International Islamic University Malaysia which is a centre of excellence for education and research in Islamic banking and finance. As the preeminent IBF (Islamic Banking and Finance) research centre, IiBF has produced numerous research and publications on related disciplines in Islamic banking and finance.

This special issue of IJMAR focuses on the legal and Shariah aspects of Islamic banking and finance, including: legal framework, Shariah governance, treatment of Shariah non-compliance by Islamic banks as well as financial consumer protection. The discussions cover different countries and jurisdictions such as Singapore, Bangladesh, Sri Lanka and Malaysia.

The paper entitled *Legal and Regulatory Issues of Islamic Banking and Finance in Singapore* discusses the legal framework of Islamic Finance in Singapore which is a niche market for Islamic banking and finance. Being a secular country, Singapore's legal and regulatory systems have been criticized for being unsupportive of Islamic banking and finance. This paper scrutinises the laws applicable to financial operations in the country and examines the suitability of those laws for Islamic banking and finance.

Another important topic that attracts discussion from authors is the Shariah governance practices of Islamic banks and Islamic financial institutions. Two papers are included on this topic discussing Shariah governance practices in Islamic financial institutions in Bangladesh and Sri Lanka respectively. Whilst the paper on the *Practice of Shariah Governance in Islamic Banking and Finance: A Critical Study from Bangladesh* examines the Shariah governance structure in Bangladesh which is based on a laissez-faire model,

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another paper entitled *Shariah Governance Structure of Islamic Financial Institutions in Sri Lanka* is more focused on a critical review of the process adopted in Shariah governance by Islamic banks in Sri Lanka. Both papers found that there are unique issues and challenges faced by the Islamic financial institutions in these countries and thus put forward relevant recommendations to enhance the Shariah governance practices in each country.

Shariah compliance is one of the main duties of Islamic financial institutions. It is the duty of Islamic financial institutions to ensure that Shariah compliance and control process adopted in their operations are rigorous and effective in ensuring that there are no Shariah non-compliance events. In Malaysia, Islamic financial institutions are subject to legal consequences in the event of Shariah non-compliance. These aspects are deliberated in the paper entitled *Shariah Non-Compliance Treatment in Malaysian Islamic Banks*.

It is also interesting to observe that the legal framework of Islamic banking and finance not only covers the legal requirement for Shariah principles but also other aspects such as financial consumer protection. The paper entitled *Financial Consumer Protection in Islamic Banks in the Context of IFSA 2013 and Relevant Guidelines by Bank Negara Malaysia* examines aspects of consumer protection for customers of Islamic banks in Malaysia. The paper highlights the importance of the Islamic financial service provider ensuring fair, responsible and professional conduct in the treatment of their financial customers who are one of the direct stakeholders of the industry.

Looking at the Shariah aspects of Islamic banking and finance, the papers in this special issue cover three main types of contract that are used in Islamic banking and finance products and instruments; forward lease (*ijarah*), manufacturing contracts (*istisna*) and the sale of non-existent matter (*bay' salam*). Forward lease is a contract that is widely used by Islamic banks and Islamic financial institutions for asset financing; however, there are some concerns about Shariah compliance that have been highlighted by scholars, as illustrated by the authors of the paper entitled *Contract Review: The Applicability of Ijarah al-Mawsufah Fi Zimmah (Forward Lease) in Malaysia*.

The viability of Shariah contracts such as *istisna* and *bay salam* are explored in two papers entitled *Examining the Viability of Istisna' for Project Financing: An Economic Perspective* and *Proposed Secured Bay Salam Model for Financing Agriculture by Islamic Banks* respectively. It is exciting to note that the authors approach the discussion on *istisna* for project financing from the economic perspective, highlighting the economic benefits and advantages that *istisna* can offer for Islamic financial institutions and their customers. Similarly, the great potential of *bay salam* as an Islamic financial instrument for agricultural related products is positively deliberated in the second paper. The authors of the respective papers highlight the significant features of both Shariah contracts and expertly discuss the potential that these contracts have to offer.

Islamic capital market is another important sector available under the Islamic finance industry globally. With its rapid growth, it is hard to ignore relevant issues relating to legal landscape and Shariah. In relation to innovations, it is interesting to observe that Islamic finance instruments are opening a unique perspective in theoretical and practical aspects of modern banking and capital market investment. Such observation can be seen from a research titled *Innovations in Sukuk in the Global Finance Market: Reviewing Key Considerations*. The researchers explored the innovations of Sukuk in the global banking

market and found out that social and economic factors influenced such existence of innovations. Regardless of the changes in the legal landscape of the countries, the notion of Shariah-compliance is still consistently been followed by the regulators in making such innovations happened to Sukuk. The best practise as derived from the Securities Commission of Malaysia was taken as an example by the researchers in applying the innovations of Sukuk, while attracting the investors. In another research titled “*Selected Shariah Issues in Sukuk Structures: A Comparative Approach*”, the researchers looked closely to Sukuk structures that are used for investments. They suggested an index based on Maqasid (Objectives of Shariah) in evaluating Sukuk structures to ensure that that investments made through Sukuk are impactful and meaningful. This is necessary to ensure that investments done through Sukuk aims not only for profit making but also reach the objectives of Shariah that is protecting and preserving religion, life, lineage, intellect, and wealth. The researchers found (among others factors) that all structures of Sukuk allow for a greater investment opportunity.

In evaluating the performance of Islamic banking and finance, it is also necessary to look at the existence of theories and their application. The researchers in the study titled *Debt Theories in Islamic Commercial Transactions and Their implications for the Islamic Capital Market* appraised the application of debt theories. The discussion is presented from a Shariah viewpoint where there are two contrasting opinions in regards to the dependency on debts. While one group of scholars considers that debts should be avoided, another group accepts debts as a necessity. According to the researchers, such differences should be taken as a positive outcome where debts should be avoided when they are not needed. It also can be used when its necessity emerged.

Depending on the examination of Islamic finance contracts, the researchers made their important findings in research titled *Examining Contracts used in Islamic Trade Financing: Issues in Bai Al-Dayn and Murabahah and Islamic Contracts for Home Financing: A Comparative Analysis*. In applying Islamic finance trade instruments, it is important to avoid the element of interest or riba since it is prohibited under Shariah. The researchers found that such avoidance of riba can be done without violating the rules as provided under the International Chamber of Commerce. Islamic finance contracts also open a unique nature of legal practice in relation to home financing facilities. The features of Islamic home financing facilities may be different from one another. The researchers found that such different features actually assist the banks in providing a better service by offering suitable products that meet their customers’ preferences and situation.

With an objective to investigate performance of Islamic and conventional banks in Malaysia, the researchers established a dissimilar finding compared to the earlier research. In *Financial Performance of Islamic and Conventional Banks in Malaysia: A Comparative Analysis*, the researchers selected eight different banks in Malaysia with four banks used to represent each of Islamic and conventional banks. Contrary to earlier research, they found out that the profitability of those conventional banks is higher than Islamic banks. They believe such situation happened due to the progressive adaptability of the conventional banks in utilising financial technology in comparison to Islamic banks. This research opens a door for future research relating to the performance of banks.

Guided by comparative methodology, a study titled *The Litigation Process in Handling Murabahah Cases: A Comparative Study between Malaysia and Indonesia* appreciates the different nature between common law and civil jurisdictions in dealing with legal cases

that emerged from Murabahah contracts. They found that even though there are differences in courts' structures of Malaysia and Indonesia, when dealing with Islamic finance contracts, the emphasis is on procedural requirements according to their respective legal systems. In another research titled *Hybrid Dispute Resolution in Islamic Capital Market: A Malaysian Perspective*, the researchers found out that it is important to utilise hybrid form of dispute resolution in relation to Islamic capital market in Malaysia. Instead of being too dependent on the court process, the utilisation of hybrid form of dispute resolution may speed up the process of justice and resolving disputes. This is essential in dealing with investments and capital market.

With the rapid momentum in the development of Islamic banking and finance, considerations should also be given to other financing products that meet the demand from customers. In *Impacts of the Islamic Financial Services Act 2013 on Investment Account Products Offered by Islamic Banks in Malaysia*, the researchers noted that the introduction of a new regulation may become an influential factor facilitating changes of legal landscape in the implementation of related banking products. In relation to investment account that is offered by the Islamic banks in Malaysia, the Islamic Financial Services Act 2013 provides a better security for customers that enjoy investing by using investment accounts. Islamic microfinance products are also essential to be considered. Based on a research titled *The Role of Islamic Microfinance for Poverty Alleviation in Mogadishu, Somalia: An Exploratory Study*, it is found that the Islamic microfinance is serving the needs of the poor in the society of Mogadishu. However, in order to make such Islamic microfinance to be more effective, a consideration should be given on its inclusivity among the society's members and reducing the complexity in obtaining the Islamic microfinance.

Islamic unit trust is another Islamic investment vehicle that allows an investment to be made through a fund manager. The discussion related to possibility of Islamic unit trust is presented in *Towards Developing a Conceptual Framework for Islamic Unit Trust Funds*. By referring to Malaysian regulatory scenario, the researchers provided an analysis leading to the conceptual framework for establishing an Islamic trust fund. They found out that as long as the requirements of Shariah are fulfilled, this type of Islamic investment vehicle can be applied without any inconsistency with the existing laws.

With such an extensive collection of new research directions, this special edition contributes to the extant literature on Islamic banking and finance and other sectors relevant to it. In facing the challenges associated with the Era of Fourth Industrial Revolution, the emergence of innovations in Islamic banking and finance are treated as a positive influence, while the stakeholders are also consistently following Shariah-compliance requirements and the existing modern legal framework. Such phenomenon can only signal towards one positive conclusion that the continuous development of Islamic banking and finance globally is the established reality in this millennium.