

The Principles of Shariah Governance in Statutory Duties of Shariah Advisory Council in Malaysian Islamic Banking System: A Way Forward

Mohd Izzat Amsyar Mohd Arif
The National University of Malaysia, Bangi

Ruzian Markom
The National University of Malaysia, Bangi

Hisham Hanapi
Tunku Abdul Rahman University College

Abstract: *Al Quran and al Sunnah are the primary sources in the Islamic law (known as al Shariah). Generally, both comprise principles as well as regulations which regulate the way of life for all mankind. In Islamic banking practice, the Shariah law has delineated basic muamalat principles. It is acting as an operation guideline for the Islamic banking industry. The concept and principles of moderation are fundamental in Islamic banking practice so that, all kind of extreme characteristics may be prevented. The principles of moderation prohibit any element which overlooks the permitted limit namely gambling, uncertainty (gharar), usury, fraud and so on. The Islamic banking system upholds the the principles of fairness, trust, transparency and accountability which are instilled through the Shariah governance system. Its function is to ensure that the operation and activities of the banks are Shariah compliant. The Shariah governance framework for Islamic banking in Malaysia resulted from the enactment of Central Bank Act 2009 and Islamic Financial Services Act 2013. It is an important mechanism for ensuring compliance with the Shariah requirements in the operations of Islamic banking. In addition, it seeks to ensure the stability of the Islamic banking industry in Malaysia as well as increase the confidence of stakeholders. Shariah Advisory Council was established as the sole authoritative body in decisions making relating to Shariah issues in Islamic banking operation and facilities.*

Keyword: *good corporate governance principles; Shariah governance; Islamic banking system; Shariah Advisory Council*

I. INTRODUCTION

Islamic banking is a part of the Islamic financial system. It was developed to provide an alternative banking services to fulfill the needs and the interests of the people especially the Muslims. The Islamic banking facilities are operated based on the Shariah governance system in order to ensure all its activities are Shariah compliant. The structure of Shariah governance takes different forms in different countries due to the different legal system been applied as the backbones in governing the Islamic banking system. (Rusni Hassan 2013)

Islam emphasized the concept of moderation through the al Quran an al Sunnah. In fact, the first constitution in the world, was drafted by the Prophet SAW is a reflection of the concept of moderation (known as wassatiyyah)(Azyati Azhani 2013). There are lot of Quranic provisions touching this concept, highlighting that this religion prohibits all extreme elements in the social life including oppression, tyranny and fraud. Extremism shall be eliminated so that the concept of wasatiyyah be applied in all aspect of life including politic, education and economy (Abdullah Md Zin 2014).

This article discusses about the existence of the concept of moderation in the Islamic banking system. Bank Negara Malaysia has outlined four important principles for a good governance i.e. fairness, trust, accountability and transparency. This value of moderation that emphasizes moderation value and rejects extremism has distinguished the Islamic banking system from the conventional system. Hence, this concept is giving additional value to the Islamic banking system because it may increase the confident level to people especially the Muslims.

II. RESEARCH METHODOLOGY

This article is based on the descriptive and comparative analysis research which involves library-based method. The method chosen is one of the well-known approaches to get the literature material such as books, articles and journals including the Acts of Parliament and any other legal materials. These texts are scrutinized to develop the concept and scope of analysis. Reference is also made by referring the website of Bank Negara Malaysia, Bank Indonesia and few other websites.

III. MODERATION EPISTEMOLOGY: DEFINITION AND BASIC CONCEPT

In this research paper, the principles of good corporate governance practice are referred to the values of moderation or *wasatiyyah* which has been inscribed in the Islamic teachings. These values are universal and important to be applied into the Shariah governance system of the Islamic banking industry.

The term moderation is similar to the word *wasatiyyah* in Arabic (Maan Z Madina 1973). Dewan Bahasa dan Pustaka explains this term as in the middle, equality or equivalent (Kamus Dewan 2005). The word moderation which has been widely used is also similar with the word *iktidal*, *tasamuh*, *mutawassit* and *tawaazun* (Abdul Rauf 2005). From the conceptual definition, *wasatiyyah* means ‘the best choice’ (al Salabi 2005) and not extreme or extravagant (Omar Hashem t.th) It includes the avoidance of any extreme behaviour and tend to the middle choices after the consideration of all the available views (Muslim Ibrahim 2011). Qurasih Shibab express the term of *wasatiyyah* means something with noble, good and just value (Quraish Shihab 1996). It is located in the middle of two types of extreme attitudes; *ghuluw* and *tatarruf* (Kamal Mujani 2015). It refers to the attitude, principles or views that are too hard (*ifrat*) or to loose (*tafrit*) (Muhammad Haniff Hassan 2003).

In addition, Tafsir al Manar includes the aspect of excellence in the definition of *wasatiyyah*. Mahmud Syaltut supports this definition by providing (Abdullah Basmeih 2001):

“Islam is the straight road. Its law; the Shariah is lasting forever and suitable (to be applied) for all situations and times. The people before Islam can be categorized into two. The first group is rigid and extreme and the second is negligent and too loose. After the arrival of Islam, a moderate manhaj; wasatiyyah been outlined and implemented into all matters of human daily life”.

In verse 143, Surah al Baqarah, Allah SWT has used the word *wasata*:

“We have made you a moderate Ummah (nation) so that you may testify against mankind and that your own Rasool may testify against you”.

Imam Al Razi had interpreted the word moderate - ‘*wasata*’ in this Quranic provision as justice; balance and equal in all affairs (Al Razi 1935). Later, Al Qaradawi particularized the interpretation by adding that the parameter of the moderation is measured by the compliance towards the sources of Islamic law; al Quran and al Sunnah (Al Qaradawi 1997). Due to this, it is proposed that the operational definition to the concept of *wasatiyyah* in this article refers to a principle of moderation and balanced which rejects any form of extremism measured through the application of the principles underlined by the Shariah. Among the principles found through the assessment towards the concept and definition of *wasatiyyah* are of fairness, trust, transparency and accountability (Abdullah Md Zin 2014).

APPLICATION AND APPRECIATION OF ISLAMIC MODERATION PRINCIPLES IN THE SHARIAH GOVERNANCE OF ISLAMIC BANKING SYSTEM

The principles of moderation in the perspective of Islamic Banking System is by putting the basis to the al Quran and al Sunnah; complying all the muamalat principles, not exceed the limitation delineated such as violating what been prohibited. In verse 29, Surah al Nisa':

"O believers! Do not consume one another's wealth through unlawful means; instead, do business with mutual consent; do not kill yourselves by adopting unlawful means. Indeed Allah is Merciful to you".

The Islamic finance principles emphasizes corporate governance, structural strength, transparency of the information disclosure and strict compliance with the Islamic law rules (Bank Negara Malaysia 2012). The foundation of Islamic banking system is based on the Islamic faith and must stay within the limits of the Shariah in all of its operations and activities. Amongst the governing principles of the system are, the avoidance of interest-based (*riba*) transactions, economic activities involving oppression (*zulm*), uncertainty (*gharar*), fraud and so on. On the other hand, conventional banking is essentially based on the debtor-creditor relationship between the depositors and the bank on one hand, and between the borrowers and the bank on the other. Interests are considered to be the price of credit, reflecting the opportunity cost of money. Islamic law considers a loan to be given or taken, free of charge, to meet any contingency. Thus, in Islamic banking, the creditor should not take advantage of the borrower. When money is lent out on the basis of interest, more often that it leads to some kind of injustice. The first Islamic principle underlying for such kind of transactions is "*deal not unjustly, and ye shall not be dealt with unjustly*" [2:279]. From this basis, the products and facilities of Islamic banking were produced such as *Wadiah Yad al Dhamanah, Mudharabah, Musyarakah, Bai' Bithaman Ajil, Ijarah, Murabahah, Al Qardhu Hasan, Al Kafalah* and *Hiwalah*.

To ensure the effectiveness of supervision in providing the atmosphere that always complies with the Shariah, the framework of the Shariah governance was established (Bank Negara 2005). It is an organizational arrangement for the operation of all Islamic banking institutions. In tandem with market developments, the Malaysian regulatory authorities have been at the forefront in supporting the industry's growth with robust regulatory frameworks, legislations and Shariah guidelines in order to preserve the sanctity of the Shariah-compliant transactions and boost the public's confidence in the sector (Munawar Iqbal 2002)

Apart from that, in Malaysia, section 30(1) of the Islamic Financial Services Act 2013 has compelled any banking Institutions that provide the Islamic banking facilities to establish a Shariah committee for purposes of advising the institution in ensuring its business, affairs and activities comply with Shariah (Chapra 2002). Meanwhile in Indonesia, the obligation to establish Dewan Pengawasan Shariah with the same function as Shariah Committee is provided by virtue of Undang-Undang No 21 Year 1998 about banking and section 34 of PBI No. 11/3/PBI/2009. As a result from this, in both countries, Bank Negara Malaysia and Bank Indonesia have established a two-tiered Shariah governance structure, comprising an apex Shariah advisory body at the federal level and a supervisory Shariah committee formed at the respective Islamic financial institutions (Bank Negara 2002). It is a necessary mechanism for the Islamic banking system to operate in a manner consistent with muamalah principles, with a clearly defined institutional arrangement within Islamic banking institutions regulated by the Bank.

The term Shariah governance is a modern term which cannot be found in any classical *fiqh* texts. Accounting and Auditing Organization for Islamic Financial Institutions (herein after been refer as AAIOFI)¹ does not come up with the particular definition for this term in the publication of *Governance Standard No 1-5 (AAIOFI 2005)*. Meanwhile, via *Guiding Principles on Shariah Governance System in Institutions Offering Islamic Financial*

¹ Accounting and Auditing Organization for Islamic Financial Institutions (AAIOFI) was established in 1991 and based in Bahrain, is the leading international not-for-profit organization primarily responsible for development and issuance of standards for the global Islamic finance industry. Amongst its most remarkable achievements is the issuance of 94 standards, so far, in the areas of Shari'ah, accounting, auditing, ethics and governance. Its standards are adopted by central banks and regulatory authorities in a number of countries, either on a mandatory basis or as basis of guidelines.

Services (IFSB 2010), Islamic Financial Services Board (herein after been refer as IFSB)² has provides an exclusive definition for Shariah governance;

“The set of institutional and organisational arrangements through which an Islamic Banking Institutions ensure that there is effective independent oversight of Shariah compliance over each of the internal structures and processes”

In Malaysia, the Malaysian Central Bank Act 2009 (herein after been referred as CBMA 2009) and Islamic Financial Services Act 2013 (herein after been referred as IFSA 2013), and the Law of Republic of Indonesia No. 21 Year 2008 relating to Islamic banking are the regulatory acts which govern the operation of Islamic banking industry. All the given written laws as aforementioned do not explain regarding the definition of Shariah governance. However, under the provisions of IFSA 2013 and the Regulation of Bank Indonesia No.8/4/PBI/2006 show a clear relationship between the aspect of Shariah governance with the aspect of Shariah compliance.

Section 28(2) of IFSA 2013 states that a compliance with any ruling of the Shariah Advisory Council in respect of any particular aim and operation, business, affair or activity shall be deemed to be a compliance with Shariah in respect of that aims and operations, business, affair or activity. Other than that, section 30-36 of the act provides the procedures in order to achieve Shariah compliance in the Islamic banking operations; it is mandatory to establish an internal Shariah committee in each of the Islamic banking institutions. The establishment of Shariah committee also is mandatory in accordance with the Regulation of Bank Indonesia No.8/4/PBI/2006.

By referring to the provisions of the regulatory laws in Malaysia and Indonesia, it is clearly understood that the system of Shariah governance is an important mechanism to ensure that that principles of muamalat been inscribed into the implementation of Shariah banking activities. This system emphasizes the principles of wasatiyyah such as fairness, trust, transparency and accountability (Bank Negara Malaysia 2016). Bank Indonesia also has included the aforesaid principles into the Guidelines of Good Governance in section 1(6) of the regulation of the Central Bank of Indonesia. These principles are stressed by the previous Governor of the Central Bank of Malaysia, Tan Sri Zeti Akhtar Aziz as they are capable to strengthen the confident levels of the consumers (Sekreter 2013).

Based on the above discussion, the fundamental distinction between Islamic banking and conventional finance is in the former's adherence to principles of Shariah through the principles of wasatiyyah that advocates a close link between financial transactions and the real economy.

Fairness

Fairness is a universal value. The word 'fairness' in Malay is 'adil' which is derived from Arabic. According to Kamus Dewan, in its 4th Edition, 'adil' means 'belongs to the right side or holding on to the truths' (Dewan Bahasa dan Pustaka 2005). In Arabic, the word 'adil' is called *al-'adl*. *Al-'adl* is defined as 'the thing in between, it is not biased or does not take sides' (al Munawwir 1997). According to Ahmad Azhar Basyir, fairness is 'putting something where it belongs or to its rightful place' or 'giving someone what he rightfully gets' (Basyir, 2000). Hailani Muji Tahir on the other hand, explained that fairness is one of the wasatiyyah principles because it is described as accuracy in making considerations and be against injustice (Tahir, 1974). In the Quran, the word *al-qist* also denotes the same meaning as *al-'adl*. It is pertinent to note that *al-'adl* has been mentioned in the Quran 35 times whereas the word *al-qist* is 24 times (Al-Baqiy, 1981). In Surah An-Nisa', verse 135, Allah commands;

² Islamic Financial Services Board (IFSB) is based in Kuala Lumpur, was officially inaugurated on 3rd November 2002 and started operations on 10th March 2003. It serves as an international standard-setting body of regulatory and supervisory agencies that have vested interest in ensuring the soundness and stability of the Islamic financial services industry, which is defined broadly to include banking, capital market and insurance. In advancing this mission, the IFSB promotes the development of a prudent and transparent Islamic financial services industry through introducing new, or adapting existing international standards consistent with *Shari'ah* principles, and recommend them for adoption.

“O you who believe! Be maintainers of justice (fairness), bearers of witness of Allah’s sake, though it may be against your own selves or (your) parents or near relatives”

Fairness is the main value since the opposite of this value is the attribute that goes beyond moral boundaries i.e. atrocity, tyranny and oppression. Islam always upholds social fairness which bring fairness in our action and equality regardless of social ranking, gender, race and religion (Juhaya, 1995). One of the biggest contributions of Islam towards humankind is the principle of social fairness and its application in every aspect of human life. Islam provides a discipline that can be applied by all mankind and every member of the society is recommended to improve their material life in the social system with fairness. In the perspective of *fiqh*, fairness refers to equity, balance, and putting something where it belongs (Daud, 1991). Social fairness and economy in property utilization and division is applied in Islamic banking system (Engku, 2013). It is also a fundamental characteristic that distinguishes Islamic and conventional banking system.

Conventional banking system is a system based on money lending service facility offered to the customers (Amsyar, 2013). The bank gains profits by imposing interest over the loan obtained. However, transactions which are based on interest or elements of *riba* is prohibited and declared *haram* in Islam since these elements are oppressive and atrocious to the customers. Surah Al-Baqarah verses 278-279 state;

“O you who believe! Be careful of (your duty to) Allah and relinquish what remains (due) from usury, if you are believers. But if you do (it) not, then be apprised of war from Allah and His Apostle; and if you repent, then you shall have your capital; neither shall you make (the debtor) suffer loss, nor shall you be made to suffer loss.”

The practice of *riba* in the conventional banking system has made it difficult for moderation value to be upheld. This practice is considered as oppressive, capitalistic and in disregard of the less fortunate group of people. Apart from that, the interest rate offered by conventional banks is based on Base Lending Rate (BLR) that may vary depending on the economic situation of the country and global economic climate. For example, during the economic crisis which hit Malaysia in 1997, BLR percentage ratio had skyrocketed and this had caused all conventional bank customers to endure with the payment of loan facility at an extremely high interest rate. Therefore, banking system that practices usury or interest has exploited our economic system that eventually results in the imbalance of resources and wealth distribution.

Every Muslim is under obligation to practice Islamic teachings in all aspects of life. The Islamic principles of Shariah can be applied across all fields including political, social as well as economic. Thus, Islamic banking system has been introduced in Malaysian banking and finance system and began its implementation in 1983 when Bank Islam Malaysia Berhad was established under the Islamic Banking Act 1983. This effort was initiated in response to the demands of the Muslim society especially in this country who desperately needs a Muslim-friendly property financing facility such as vehicles and houses which is Shariah-compliant and free from any element of usury. Shariah governance framework in Islamic banking system in Malaysia has taken into account various roles played by Islamic banking institutions in providing a fair service to all stakeholders, including minority shareholders and investment account holders (Zeti Akhtar, 2005). In light of the principle of fairness, every entity responsible to uphold the application of Shariah in Islamic banking system in Malaysia which includes Shariah Committee in banks or Shariah Advisory Council in Bank Negara shall be entitled to be ‘put in their rightful position’ to optimize their roles. Failure to maintain fairness in the execution of their duties will cause an adverse effect to the performance of our banking institutions.

Trust

The word ‘trust’ brings the meaning of ‘believable’ and ‘honest’ (Kamus Dewan, 2005). Prophet Muhammad SAW decreed;

“One’s faith is imperfect if he is dishonest” (Narrated by Ahmad)

Trust is one of the utmost wasatiyyah principles that is very admirable and highly commendable. In fact, it should be habitually practiced in our daily life and day-to-day dealings with others. The opposite meaning of trust is treachery or corruption. In Shariah governance aspect, trust shall be one of the noble principles applicable in the Islamic banking system and its application is evident from the independence of the supervisory instrument in its operation in Islamic banking institutions. Lack of independence would create difficulties and

encumbrances on the part of the supervising party to instill trust value in its decision-making process because the decision or action taken may have been unduly influenced by any interested parties.

According to the aforementioned definition of Shariah governance, the Islamic Financial Service Board (IFSB) emphasizes on the importance of the element of independence in the supervisory instrument. An effective supervisory system refers to a process in the organization and institution that guarantees the monitoring or supervisory instrument is independent and free from any undue influence in ensuring Shariah compliance in the Islamic banking system.

When exercising its respective duties, every member of Shariah board, be it Shariah Committee or Shariah Advisory Council, shall always maintain high morality and intellect and most importantly, professional independence. The principle of independence shall be applied in all circumstances to avoid domination or manipulation of other parties. The term 'professional independence' that we suggest here means 'the ability to exercise sound judgment after fair consideration of all relevant information and views without undue influence from management or inappropriate outside interests' (Islamic Financial Services Board 2009).

Accountability

Accountability is a sense of responsibility towards an action or decision issued as well as readiness to provide explanation and justification for it (Malay Literature Reference Centre 2008). Shariah governance framework shall specify the functions of the components and structures to ensure accountability of each authority by separating the appropriate powers to prevent conflict of interest.

Accountability is closely related to integrity (Kamus Dewan, 2005). Integrity and honesty are the main essence of the Shariah governance in Islamic financial transactions which are dependent on mutual trust between parties. The importance of accountability and integrity is clearly stated in the Quran and Sunnah. In Surah Al-Anfal verse 27;

"O you who believe! Be not unfaithful to Allah and the Apostle, nor be unfaithful to your trusts while you know."

Besides, as Prophet Muhammad decreed which means,

"There are four habits, in whosoever they are found, he will be a complete hypocrite. If any one of these habits is found in a man, he will have one of the hypocrite attributes, till he gives it up, when something is given to him in trust he commits dishonesty, when he talks he tells lies, when he makes a promise he deceives, and when he quarrels he dismisses the truths". (Al-Bukhari)

As a public fund consumer, a banking institution shall act honestly and be accountable for the benefit of the stakeholders. The application of the principle of accountability in the present Islamic banking is evidently seen through Shariah Advisory Council, not only when issuing resolutions for certain Shariah-related issues that have been brought before it, but it extends to the aspects of contentions and arguments in its submissions, referencing to Islamic sources, and methodology as well. Every Shariah resolution issued by the Shariah Advisory Council contains decision and fundamental considerations such as acceptable Islamic sources which substantiate the decision issued (Shariah Resolution in Islamic Finance 2nd Edition, 2010). For instance, Shariah Advisory Council in the first meeting dated on 8 July 1997 has decided that banking facility based on *bai' al-'inah* transaction is permitted. With the decision, the sources which have been referred to form the decision and *hukum* was attached. The resolution quoted verse 275 of the Surah al-Baqarah and the views of Islamic *fiqh* scholars from Syafie and Hanafi Schools. In addition, Shariah Advisory Council also applied the principle of accountability by issuing guidelines for the implementation of *bai' al-'inah* that requires the procedures to comply the requirements of *syarak*. Such requirements were outlined in the reports made at the 16th meeting of Shariah Advisory Council on 11 November 2000 in order to determine the parameters of a legal implementation of *bai' al-'inah* transactions in accordance with Shariah principles.

Transparency

Transparency is defined as a state of frankness and no undisclosed or suspicious matter (Malay Literature Reference Centre 2008) and its opposite word is 'concealment' (*al-kitman*). This type of moderation value is

crucial to be applied in the operations and activities of Islamic banking especially the disclosure of information in the reports of such activities such as financial performance report (Sekreter, 2013). Other examples like comprehensive details of status of contracts in banking products shall be mentioned clearly in the report. In fact, any irregularities and issues raised in any Islamic banking products and transactions shall not be concealed.

The importance of transparency in banking operations is to ensure that Islamic banking customers are able to obtain true and precise information relating to the products offered to them so that they are able to make an informed decision. Moreover, transparency will also be able to smoothen the banking operation and thus, safeguarding the interest of the parties involved including the shareholders and customers (Zeti Akhtar Aziz, 2005). For example, the investment account holders will find it really helpful if they can have access to these relevant information such as the strategies of investment, the income of the investment and the rate of returns etc. so that they are able to form an investment decision. Lack of transparency can cause a negligent misrepresentation of relevant information about certain Islamic banking products that eventually will prejudice the interest of the stakeholders. For example, when dealing with prospective customers, if the marketing executive fails to provide all relevant and material facts about the products of Islamic banking, the transactions and how it is to be executed, or sometimes the bank fails to educate customers on the issue of Islamic banking products which are allegedly more expensive due to its fixed returns compared to conventional banking products which are more flexible based on the fluctuation of market scenario, it could cause severe losses to the customers if they rely on these very limited information.

The application of transparency also can be seen clearly in the issuance of Shariah Advisory Council's resolutions. The resolutions are directly accessible via Bank Negara website. A proposal to issue Sijil Hutang Boleh Niaga (SHBN) based on *bai' al'-inah* was brought before Shariah Advisory Council. Under this facility, the Islamic banking institution will sell its assets to the customers in cash and it will re-purchase such assets from the customers in credit at a higher purchase price. The difference of the selling and purchase prices will be the 'profit' obtained by the customers. However, the application of *bai' al'-inah* as one of the Islamic banking facilities has triggered hot debates on the issue of the transaction in *hukum syarak* to the extent that the Islamic banking institutions in Malaysia have been criticized as prioritizing to solely gain profits rather than complying *syarak* (Rizal, 2009).

As we discussed before, Shariah Advisory Council has allowed *bai' al'-inah* transaction in its first meeting on 8 July 1997. Shariah Advisory Council, as aforesaid, has also provided trail of Islamic sources referred by it to ascertain *hukum* and the legality of the transaction in the resolution such as verses from the Quran and the scholarly views from prominent Mazhabs (Bank Negara Malaysia, 2010). By virtue of this decision, not only the *bai' al'-inah* transaction is acknowledged as legal and valid to be applied in any Islamic banking product, but it also installs confidence to the society about its legal status in Shariah and use the products worry-free. Therefore, as we can conclude that, Shariah Advisory Council has applied the principle of transparency in its resolutions by disclosing all material information for the Muslim society to refer to especially the methods of ascertainment of *hukum* in its decision-making process to remove the elements of doubt and uncertainty in the transactions in Islamic banking system. Moreover, Finance products under the concept of *bai' al'-inah* has been well-celebrated and accepted by the customers than the other concepts such as *bai' bithaman ajil*, *al-rahnu*, etc (Bank Rakyat, 2002).

IV. CONCLUSION AND RECOMMENDATION

The value of moderation focuses on maintaining the parameters specified by the Quran and the Sunnah in various aspects of human life, be it social, political and economic. The concept of moderation as been underlined by the Islamic law through its primary sources is one of the valuable attributes that has been emphasized frequently in Islam. In Islamic banking system, to ensure that the products of Islamic banking continue to comply with Shariah, the Islamic banking institutions must also ensure the best practice of effective Shariah governance and in so doing, they must apply the principle of wasatiyyah or moderation.

Bank Negara Malaysia has outlined four important principles as the underlying principles for a good governance i.e. fairness, trust, accountability and transparency through the "Guidelines on Corporate Governance for Licensed Islamic Bank". The Guidelines is to promote the adoption of effective and high standards of corporate governance practices by Islamic bank and Islamic bank holding companies.

The discussion on the concept of moderation and its principles is vital especially in the context of Shariah governance in Islamic banking system towards the development of Islamic banking industry to be viable and

competitive as well as in parallel with the principles and principles as required by *syarak*. Therefore, the application of these good principles enumerated by the concept of moderation will ensure the operation of Islamic banking fulfills the requirements of *syarak*, act as a guiding mechanism to enable the ultimate objective of good Shariah governance in Islamic banking system in Malaysia can be achieved i.e. to ensure comprehensive Shariah compliance.

Nevertheless, to increase its competitive level and to be able to satisfy the banking needs of the consumer especially, to Muslims, Islamic banking industry in Malaysia requires some improvement. One of the aspect of improvement that may be proposed is the incorporation of *wasatiyyah* values enshrined in Islam into the system of Shariah governance to ensure that the Islamic banking system is always parallel with the requirements of hukum *syarak* especially in its operations.

Provisions in the Central Bank of Malaysia Act 2009 that limit the rights of the parties concerned to make reference to Shariah Advisory Council shall be amended. The parties which include the Central Bank, banking institutions, the courts and the arbitrators, shall have the right to make inquiries, references and seek advices which concern with the issue of Shariah and hukum *syarak*, since Shariah Advisory Council is the main advisory and authoritative body for Islamic banking system. Therefore, Shariah Advisory Council shall be accountable for these parties as they are its major stakeholders and shall it provide any report or advice sought by them, the Shariah Advisory Council shall be answerable to them to maintain fairness between the parties and also to provide certainty with regards to the issue of Shariah in Islamic banking system. With this respect, the provisions in the Central Bank of Malaysia Act 2009 shall be amended accordingly to provide more accessible platform for the parties to connect with Shariah Advisory Council.

On the other hand, the internal procedure employed by the Shariah Advisory Council in issuing any Shariah resolution shall be clearly formulated. The Shariah Advisory Council is not only required to create a comprehensive mechanisms on how the resolutions are to be issued, but it also has to make sure such mechanisms are disclosed to the members of the public. The main purpose of the disclosure is to show that the Shariah Advisory council is transparent and honest to the public, particularly to the stakeholders on how the process is carried out in the Shariah Advisory Council and eventually it will instill confidence and build trust among customers towards the credibility of the Shariah Advisory Council. It is proposed that, clear guidelines shall also be drafted with the internal procedure which contain method of *istinbat* applied in issuing the resolution, the sources of Islamic law referred i.e. verses of Al-Quran and As-Sunnah etc., opinions of relevant Islamic jurists and also methods from *al-qawaid al-fiqhiyyah* shall be laid out in the mechanisms. For this purpose, Pedoman Penetapan Fatwa Majelis Ulama Indonesia No. U-596/MUI/X/1997 may be used as reference.

REFERENCES

- [1.] Abdullah Basmeih. (2001). *Tafsir Pimpinan Ar-Rahman*. Kuala Terengganu: Percetakan Yayasan Islam Terengganu Sdn. Bhd.
- [2.] Abdullah Ishak. (1995). *Pendidikan Islam dan Pengaruhnya di Malaysia*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- [3.] Abdul Halim Abdul Hamid. (2001). *Study on Islamic Banking Education and Strategy for the New Millennium - Malaysian Experience*. International Journal of Islamic Financial Services Vol. 2 No.4
- [4.] Abdul Rachman Assegaf. (2007). *Pendidikan Islam di Indonesia*. Jakarta: Suka Press.
- [5.] Ahmad Azhar Basyir. (2000). *Negara dan Pemerintahan dalam Islam*. Jogjakarta: Penerbit UII.
- [6.] Ahmad Warson Al-Munawwir. (1997). *Kamus Al-Munawwir Arab-Indonesia Terlengkap*. Jogjakarta: Pustaka Progressif.
- [7.] Bank Negara Malaysia. (2010). *Resolusi Shariah Dalam Kewangan Islam Edisi Kedua*. http://www.bnm.gov.my/files/press_release/2010/shariah_resolutions_2nd_edition.pdf [8 Mac 2016]
- [8.] Bank Negara Malaysia. (2012). *Shariah Advisory Council of the Bank*. <http://www.bnm.gov.my/index.php?ch=7&pg=715&ac=802> [24 April 2012]
- [9.] Bank Negara Malaysia. (2016). *Concept Paper – Corporate Governance*. http://www.bnm.gov.my/guidelines/01_banking/04_prudential_stds/Concept%20Paper_CorporateGovernance.pdf [8 September 2016]
- [10.] Bank Negara Malaysia. Laporan Kestabilan Kewangan dan Sistem Pembayaran 2009.

- [11.] Bank Rakyat. (2002). Laporan Tahunan.
- [12.] Chapra, Ahmed Habib. (2002). *Corporate Governance in Islamic Financial Institutions. Occasional Paper No. 6*. Jeddah: Islamic Research and Training Institute/Islamic Development Bank.
- [13.] Central Bank of Malaysia Act 2009.
- [14.] Dewan Bahasa dan Pustaka. (2005). Kamus Dewan Edisi Keempat. Kuala Lumpur: Penerbit DBP.
- [15.] Dewan Bahasa dan Pustaka. (1997). *Kamus Dewan Edisi Ketiga*. Kuala Lumpur: Penerbit DBP.
- [16.] Engku R. Adawiyah. (2013). *Maqasid Shariah dan Produk Kewangan Patuh Shariah Dalam Sektor Pengurusan Dana Islam*.
http://irep.iium.edu.my/35511/1/produk_patuh_Shariah_dalam_sektor_pengurusan_dana_islam_%26_maqasid_Shariah.pdf [15 Disember 2016]
- [17.] Hailani Muji Tahir. (1974). *Konsep Bank Islam: Perbandingan dan Pelaksanaan*. Bangi: Jabatan Shariah UKM.
- [18.] Hassan, M. Haniff. (2003). *Muslim Moderat Warga Singapura (Moderate Muslim of Singapore)*. Singapura: Perdaus dan Lembaga Pentadbir Masjid al-Khair.
- [19.] Idris Zakaria. (2013). *Titik Temu antara Falsafah dan Kehidupan Praktis*. International Journal of Islamic Thought Vol. 3 Jun 2013.
- [20.] Islamic Financial Services Act 2013.
- [21.] Islamic Financial Services Board. (2009). *Guiding Principles on Shariah Governance Systems for Institutions Offering Islamic Financial Services*. <http://www.ifsb.org/standard/IFSB-10%20Shariah%20Governance.pdf> [27 Mei 2014]
- [22.] Juhaya S.Praja. (1995). *Filsafat Hukum Islam*. Bandung: Pusat Penerbitan Universitas LPPM UNISBA.
- [23.] Law of Republic of Indonesia No. 21 Year 2008 relating to Islamic banking
- [24.] Maan Z. Madina. (1973). *Arabic English Dictionary*. Asean Educational Service.
- [25.] Mahmood Abdel Ghany Mahmoud Ashour. (2013). *Ummatan Wasata*. Putrajaya: Institut Wasatiyyah Malaysia.
- [26.] Mohammad Asas. (1997). *Malik Al Quran Translation*. Texas: The Institute of Islamic Knowledge.
- [27.] Mohamad Rizal Md Nor. (2009). *Bay' al-'inah: Hukum dan Pelaksanaannya dalam Perbankan Islam di Malaysia*. Kuala Lumpur: Universiti Malaya.
- [28.] Muhammad Fu'ad Abd al Baqiy. (1981). *Al-Mu'jam al Mufahras li Alfaz Al Qur'an al Karim*. Beirut: Dar al-Fikr, Beirut.
- [29.] Muhammad Syafie Antonio. (1999). *Bank Shariah Bagi Banker dan Praktisi Keuangan*. Jakarta: Tazkia Institute.
- [30.] Munawar Iqbal. (2002). *Islamic Banking and Finance: New Perspectives on Profit-Sharing and Risk*. Edward Elgar Publishing limited:Cheltenham.
- [31.] Muslim, Nazri, and Ahmad Hidayat Buang. (2012). "Islam dalam perlembagaan persekutuan dari perspektif hubungan etnik di Malaysia." *Jurnal Kemanusiaan* 20
- [32.] Mustafa Daud. (1991). *Tamadun Islam*. Kuala Lumpur: Utusan Publications & Distributions Sdn Bhd.
- [33.] Nik Mustapha. (1994). *Falsafah Pengurusan dalam Islam*.
http://www.repo.uum.edu.my/2222/1/Nik_Mustapha_Hj._Nik_Hassan_1.pdf [12 Februari 2017]
- [34.] Nurfarahin Mohd Nasir. (2011). *Isu-Isu Falsafah Barat Menurut Islam*. Kuching: Penerbit UNIMAS.
- [35.] Pusat Rujukan Persuratan Melayu. (2008). *Kamus Dewan Keempat*.
<http://prpm.dbp.gov.my/Search.aspx?k=perihal.&d=10> [17 Januari 2017]
- [36.] Regulation of Bank Indonesia No.8/4/PBI/2006
- [37.] Sekreter.(2013). *Importance of Transparency in Islamic Finance*.<https://journal.ibsu.edu.ge/index.php/jbm/article/download/511/445> [13 Februari 2017]
- [38.] Shihab, M.Quraish. (1996). *Wawasan al-Quran Tafsir Maudhu'i atas pelbagai persoalan umat*. Bandung, Indonesia: Penerbit Mizan.
- [39.] Titus, H. H. 1959. *Living Issues In Philosophy: Introductory Text Book*. New York: New York Pub.
- [40.] Zeti Akhtar Aziz. (2005). *Peningkatan dan Keberkesanan Tadbir Urus Korporat dalam Industri Perkhidmatan Kewangan Islam. Persidangan Lembaga Perkhidmatan Kewangan Islam Yang Kedua*. Kuala Lumpur: Bank Negara Malaysia.