



**LEGAL FRAMEWORK OF ISLAMIC BANKING IN THE
KURDISTAN REGION: A COMPARATIVE ANALYSIS
WITH MALAYSIA**

BY

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ABSTRACT

The operation of Islamic banking business in the Kurdistan Region has been growing steeply owing to the rapid growth of investment and the stability of economic and political conditions. Nevertheless, this sector still inflicts serious legal issues with regard to the governing of the Islamic financial institutions and *Shary'h* governance. Therefore, this research examines the current legal framework of Islamic banking in the Kurdistan Region by comparing it with Malaysia with the view of answering all questions on the various statutes that govern the Islamic banking activities and their role in the implementation of *Shary'h* compliance with the purpose of providing appropriate recommendations in the light of the Malaysian experience. In the present thesis, an analysis and descriptive method were adopted in combination with a comparative approach. In line with this, library resources such as books, thesis, articles, papers and journals were utilized. Furthermore, the relevant statutory provisions and guidelines were also analyzed and explored to comprehend whether the existing regulatory system is sufficient to facilitate the smooth running of the Islamic banking business. The research maintained that although the governments in Malaysia and the Kurdistan Region have taken several attempts in the form of amendments, reviews and introduction of acts, the legal issues, particularly in Kurdistan, are still arising. It has been also established that the *Shary'h* board under the existing regulatory system is not supported sufficiently in the Kurdistan Region, especially in respect of its authority, responsibilities and membership, and hence seems to be inefficient in implementing *Shary'h* compliance. Therefore, it is recommended for the Kurdistan Region to introduce a specific and comprehensive act in relation to governing the Islamic banking industry. The relevant laws also need to be amended and revised urgently to facilitate the enhancement of the operations of the Islamic banking business. The research also suggests that the *Shary'h* board should be assigned the highest authority and enables its decisions to be binding not only within the IFI but also over court proceedings. Furthermore, it is also recommended that the national level of the *Shary'h* board needs to be recognized by the legal framework in the Kurdistan Region to preclude the proliferation of different *Shary'h* views which might cast doubt on the legitimacy of the Islamic banking products and services. Finally, it is contemplated that if all recommendations propounded by the research are appropriately regarded for and incorporated into the current legislation, the legal obstacles could be diminished and the Islamic banking industry may progress and develop hastily in the Kurdistan Region.

ملخص البحث

تزايدت الأعمال المصرفية الإسلامية في إقليم كردستان بشكل كبير نظراً للنمو السريع للاستثمار واستقرار الأوضاع الاقتصادية والسياسية، ومع ذلك فإن هذا القطاع لا يزال يفرز قضايا قانونية خطيرة فيما يتعلق بتسيير المؤسسات المالية الإسلامية والحوكمة الشرعية، ولذلك فإن هذا البحث يدرس الإطار القانوني الحالي للعمل المصرفي الإسلامي في إقليم كردستان عن طريق مقارنته بماليزيا، بهدف الإجابة عن جملة أسئلة متعلقة بمختلف الأنظمة الأساسية التي تحكم الأنشطة المصرفية الإسلامية، ودورها في تحقيق الامتثال للشرعية، بغرض تقديم التوصيات المناسبة في ضوء التجربة الماليزية في المسائل المطروحة الحالية، واعتمد الباحث على المنهج الوصفي والتحليلي والمقارن، واستخدمت المصادر المكتبية مثل الكتب والبحوث والمقالات والأوراق والمجلات، كما تم تحليل الأحكام والتوصيات القانونية ذات الصلة واستكشافها لفهم ما إذا كان النظام التنظيمي القائم كاف لتسهيل سير العمل المصرفي الإسلامي، وعلى الرغم من أن الحكومة في ماليزيا و إقليم كردستان قامت بعدة محاولات في شكل تعديلات وتشريع قوانين وتعديلاتها، وخاصة في كردستان إلا أنه لا تزال هناك اشكالات تشريعية كثيرة. ثبت أيضا أن الهيئة الشرعية في ظل النظام القائم لا يتم دعمها بكفاية في إقليم كردستان، وخاصة فيما يتعلق بسلطتها ومسؤولياتها وعضويتها، وبالتالي يبدو أن الامتثال للشرعية لم يلتزم به بشكل جيد، لذا تبرز الحاجة إلى تقديم قانون محدد وشامل فيما يتعلق بتنظيم العمل المصرفي الإسلامي، كما أن القوانين ذات الصلة تحتاج إلى تعديل وتنقيح بصورة عاجلة لتسهيل وتعزيز فعاليات العمل المصرفي الإسلامي، ويوصي البحث أيضا إلى أن الهيئة الشرعية يجب تمكينها من أعلى سلطة، وتمكين قراراتها بحيث تكون ملزمة ليس داخل المؤسسات المالية الدولية وحسب، ولكن أيضا ضمن إجراءات المحاكم، وأن يتم الاعتراف بالهيئة الشرعية على المستوى الوطني ضمن الهيكل القانوني في إقليم كردستان، لتفادي تعدد واختلاف الفتاوى الشرعية، والتي من شأنها التشكيك في شرعية المنتجات والخدمات المصرفية الإسلامية، وأخيرا يلاحظ أنه إذا أخذت جميع التوصيات التي طرحتها الدراسة بشكل مناسب وأدرجت في التشريعات الحالية يمكن أن تساهم في تقليص العقبات القانونية، وتطور العمل المصرفي الإسلامي تطويراً عاجلاً في إقليم كردستان.

APPROVAL PAGE

I certify that I have supervised and read this study and in my opinion, it confirms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Alan Ibrahim Mohammed

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Date

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**LEGAL FRAMEWORK OF ISLAMIC BANKING IN KURDISTAN
REGION: COMPARATIVE ANALYSIS WITH MALAYSIA**

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CHAPTER ONE

INTRODUCTION

1.1. BACKGROUND OF STUDY

Islamic banking is a system of financial intermediation that is compatible with *Shary'h* principles which emphasize ethical values in all their dealings and this aspect is the key distinction from its conventional counterpart. This sector has now a widely used term, which has originated in recent decades and grown dramatically, and is not isolated only in Muslim countries, but has transcended to reach a number of non-Muslim countries. Furthermore, Islamic banking has created and diversified many new products and services, which is another essential feature of Islamic banking. In this regard, the conventional bank is no any longer the only participant in the market, as Islamic banking has also joined in the market as an important rival. As a consequence of this development, Islamic banking has attracted many writers' attention and numerous researches have been oriented around this area. However, only little research has been concentrated on the legal aspect of Islamic banking. In this regard, it should be noted that the existence of a robust and comprehensive legal framework is essential for enhanced and successful operations of Islamic financial activities. Thus, a flawed and non-exhaustive legal framework could undermine the trust and confidence of the public and slow down the development of the Islamic banking system. Therefore, the legal aspect of Islamic banking is the main focus of this study.

Needless to say, Malaysia is at the forefront of conducting Islamic banking businesses and has an advanced position in this field. Therefore, comprehending and

discussing the legal aspects of Islamic banking cannot be accomplished without considering the legal framework of Islamic banking in Malaysia by virtue of its profound experience: the commencement of the first genuine practice in this area which traces back to 1963. Malaysia has a broad experience in dealing with various legal issues and obstacles in providing feasible solutions in this regard. On the other hand, the Islamic banking operations in the Kurdistan Region¹ is a new experience; the history of the first Islamic bank commenced with the operation of the Kurdistan International Bank (KIB) in mid-2000, and was initiated without the availability of any specific legislation until 2011 when Regulation No. 6 was introduced by the Iraqi parliament.

Consequently, the aim of the present study is not intended to be a comparison between Malaysia and the Kurdistan Region to discover which one of them is more developed or transacts better, because the answer is quite conspicuous and clear. Therefore, the primary objective of this study is to discuss the legal and regulatory aspects as well as the *Shary'h* governance of Islamic banking in light of the Malaysian experience to see how it has progressed and succeeded in dealing with this sector and contributed in appropriating solutions to addressing and surmounting the impediments and hindrances that the Islamic banking has encountered in this country, particularly with regard to the legal framework of Islamic banking, for the purpose of propounding an influential guidance to the legal aspect and *Shary'h* governance of Islamic banking in the Kurdistan Region.

¹ The Kurdistan Region is an autonomous region located in the north of Iraq and bordered by each of Iran, Turkey and Syria. Kurdistan got its freedom from Saddam Hussein's regime after an uprising against him in 1991, and established its government after the first election in 1992. Kurdistan is a Parliamentary democracy system and has its own president and primary minister, and even the region has independent foreign relations without referring to the Iraqi government. With regard to the economic aspect which relies on the oil industry, agriculture and tourism, Kurdistan enjoyed a thriving economic status by virtue of the stable political and security situation. "Iraqi Kurdistan Profile-Overview," BBC News, <<http://www.bbc.com/news/world-middle-east-28147263>> (accessed 3 February, 2015)

1.2. OBJECTIVES OF THE STUDY

A robust and sound legal framework plays an indispensable role in the progress of any financial institution. Therefore, it is imperative to enact and modify the existing laws permanently in response to the economic and financial system development. The regulatory framework of Islamic banking is different from other financial institutions due to its regulatory formation which is governed by both *Shary'h* and state laws of the respective countries in which banks transact; in turn, Islamic banks are mostly facing conflict matters in relation to the legal aspect. Hence, this study attempts to fulfill the following objectives:

- I. To study the differences and similarities between Islamic banking in Malaysia and the Kurdistan Region with regard to the legal framework
- II. To identify the legal deficiencies and flaws encountered by Islamic banking in Malaysia and the Kurdistan Region
- III. To examine *Shary'h* governance in light of the Malaysian laws and the applicable laws in the Kurdistan Region

It should be noted that the Kurdistan Region is the most stable² area in Iraq with a robust economy dominated by the oil industry. It is set to achieve a higher level of development than other places in Iraq. Besides that, Kurdistan is a predominantly Muslim region and a vast proportion of its population does not deal with the conventional bank services owing to its inconsistency with *Shary'h* principles. Hence, there is an urgent need to strengthen the legal framework and *Shary'h* governance of

² The Kurdistan Region is the safest area in Iraq and has enjoyed a stable security situation. In this regard, it is totally different from the rest of Iraq which generated a flourishing investment and booming economy. Alan Attoof, "Pointing to Stability, Kurds in Iraq Lure Investors," *The New York Times*, 27 June, 2007 <http://www.nytimes.com/2007/06/27/world/middleeast/27_kurds.html?pagewanted=all> (accessed 12 April, 2013).

Islamic banking for the purpose of enhancing banking activities and increasing public confidence.

In view of this, the present study examines the legal framework and *Shary'h* governance of Islamic banks in Malaysia and the Kurdistan Region by demonstrating the differences and similarities in these aspects as well as identifying and highlighting the legal obstacles and hindrances that precluded the development of the Islamic banking in the Kurdistan Region.

1.3. STATEMENT OF PROBLEM

In light of the above discussion, it is clear that a sound and robust legal framework of Islamic banking plays a substantial role in boosting public confidence and hastening market growth. The experience of Islamic banking in Malaysia has dramatically developed in comparison to other countries which implement the Islamic banking system, particularly after the first and actual effort in 1983.

Irrespective of the remarkable growth that has occurred in all dimensions of Islamic banking in Malaysia, some questions with regard to the legal framework and *Shary'h* governance are arising. Thus, it is essential to identify the issues of the legal framework as well as *Shary'h* governance and compare them with the same aspects of Islamic banking in the Kurdistan Region. Hence, the differences are crucial and meaningful to identify the issues and obstacles encountered by Islamic banking in the Kurdistan Region and provide a sound solution for the purpose of the enhancement of this sector in the Kurdistan Region.

1.4. LITERATURE REVIEW

Numerous resources regarding Islamic banking has been written, particularly regarding the Malaysian experience in this field, but many of their discussions either concern only Islamic banking from a *Shary'h* perspective or economic aspect. Only a few references analyze the legal aspect which is the main focus of the present study.

In contrast, literature on Islamic banking in the Kurdistan Region is not available and, moreover, references on Islamic banking in Iraq are also scarce and infrequent. However, a little literature can be found and such discussions are also brief and non-comprehensive, yet still useful so long as the same Iraqi Acts in relation to banking are applicable in the Kurdistan Region.

Some of the indispensable and available literature on the subject is described as follows:

In respect of the Islamic banking development, Ibrahim Mahdi Arif Al Barzinjy, in his significant work “Al Masarif Al Islamiah fi Eqlim Kurdistan-Iraq: Al Nashah-Al Tahadiat-Al Afaq”, comprehensively discussed the historical background of establishing banks in Iraq as well as the origin and growth of Islamic banking in Iraq and the Kurdistan Region.

The researcher, in his Master’s thesis, attempted to get involved in both a theoretical and empirical study and, hence, he highlighted the growth of Islamic banking in the Kurdistan Region as well as the concept of Islamic banking in relation to its principles, definition and objectives. Significantly, the research is thoroughly concerned with the emergence of Islamic banking in Iraq and its effect on rising and

developing Islamic banks in the Kurdistan Region. Thus, Al Barzinjy's will be a useful reference to be discussed in the present study.³

Another reference regarding the development of Islamic banking is "The Development of Islamic Banking in Malaysia" by Islam Ekrem Hasani, who elaborated on the historical background of Islamic banking in Malaysia, its evolution as well as a summary of its legal aspect. The researcher thoroughly discussed the developmental process of the Islamic banking system in Malaysia and divided this process into two periods. He indicated that the first period began from 1991 to 1996, and the second period has been launched since 1997. Hasani asserted that the first period was an important stage in the evolution of Islamic banking by reason of creating a comprehensive Islamic financial system which operated in competition with conventional systems. Nonetheless, the researcher presented a descriptive summary on the IBA1983 as a legal aspect of Islamic banking in Malaysia which only discussed the establishment of the Act without addressing the details of the act in regulating the banking business, which is the primary emphasis of the present study. However, this study will highly benefit from the historical background and evolutionary process of Islamic banking in Malaysia discussed in the research.⁴

In another literature with regard to the development of Islamic banking, Dr. Nadwa Abdul-Majed Abdul-Azez discussed the practical aspect and emergence of Islamic banking in general with a brief indication to the development of Islamic banking in the Kurdistan Region. The reference included both a theoretical and an empirical study on the general concept of Islamic banking as well as the growth and current practice of Islamic banking in the Kurdistan Region. Abdul-Azez showed that

³ Ibrahim Mahdi Arif Al Barzinjy, "Al Maşarif Al Islāmiah fi Iqlim Kurdistan-Iraq: Al Nashah-Al Taḥadiāt-Al Āfāq," (Master dissertation, University of Jinan, Lebanon, 2012)

⁴ Islam Ekrem Hasani, "The Development of Islamic Banking in Malaysia," (Master thesis, IIUM, 2004).

besides the urgent demand by the people of the Kurdistan Region in dealing with the banking operations pursuant to *Shary'h* principles, the economic and financial growth, as a result of political stability, had also spurred further development of Islamic banking in the Kurdistan Region. Additionally, several Islamic banks and other Islamic financial institutions were also established in the last few years. All this discussion is designed to be examined in the present study.⁵

Moreover, Wan Marhaini Wan Ahmad, in the chapter “Islamic Banking in Malaysia Prior to 2005” in his book entitled “The Malaysian Financial System An Overview”, briefly examined the history and development of Islamic banking in Malaysia in which he hinted to all the main steps that were taken to establish an Islamic bank in Malaysia. The writer asserted that the success of the foundation of the Islamic banks in Malaysia went back to the first attempt by interest-free institutions that commenced their operations in the early 1960s and other underlying activities such as the National Steering Committee, whose purpose of studying the possibility of introducing Islamic banking in Malaysia from both religious and legislative aspects was a result of the Muslims’ demand to deal with interest-free transactions in their financial activities. Even though the discussion needed further elucidation, this is still a helpful reference of the present study.⁶

With regard to the legal framework of Islamic banking in Malaysia, Iftikhar Ahmad, in his thesis entitled “Islamic Banking-A Comparative Approach a Case Study of Iran, Malaysia, Pakistan and Sudan with special reference to *Mushāraka* and *Muḍāraba* Financing”, provides a comparative study on Islamic banking in Malaysia

⁵ Nadwa Abdul-Majed Abdul-Azez, *Al Masārif Al Islāmīyah: Nashatuha, Taṭawwruaha ma'h baḥth maydane Ilmaṣarfa'l-Islāmīyah al-‘amelah fi Kurdistan-Iraq*, (Kurdistan Region, Erbil: Minarah, 2012).

⁶ Wan Marhaini Wan Ahmad, “Islamic Banking in Malaysia Prior to 2005” in *The Malaysian Financial System An Overview*, edited by M. Fazilah Abdul Samad (Kuala Lumpur: University of Malaya Press, 2006).

and the selected countries. Ahmad, in one chapter, described the legal framework and origin of Islamic banking in Malaysia, but his description was too brief and non-exhaustive. He did not state the role of the IBA in the regulation of Islamic banking, its deficiency as well as the conflict with the other acts. Regarding the origin of Islamic banking in Malaysia, he did not describe all the efforts that were made to establish Islamic banking and so on. All these issues will be examined in the present study.⁷

In addition, Mohamed Ismail Shariff, in his paper “The Development of Islamic Banking in Malaysia”, concentrated mainly upon the legal obstacles that were confronted by Islamic banking in Malaysia. He discussed the impact of IBA1983 on Islamic banking as a general and brief act, as well as the application of Islamic law within common law which caused a conflict between Islamic law and all other laws in Malaysia. Therefore, Shariff propounded several solutions with the purpose of developing and applying Islamic law within the system of civil courts. For instance, he suggested that: Judges who apply Islamic law must be Muslims with adequate knowledge regarding Islamic law; the establishment of the Islamic Law Bench or Division, the enactment of a law to offer precedence of the Islamic law over civil law in Islamic transaction cases; and the incorporation of the *Shary’h* Supervisory Council that was founded under both the IBA1983 and the Bank and Financial Institutions Act (BAFIA) 1989. This is essential and helpful to the present study in view of identifying the same problems and contributing with convenient solutions in the event of those that are faced by Islamic banking in the Kurdistan Region.⁸

⁷ Iftikhar Ahmad, “Islamic Banking a Comparative Approach a Case Study of Iran, Malaysia, Pakistan and Sudan With Special Reference to “Musharaka” and “Mudaraba” Financing,” (Master thesis, IIUM, 1994).

⁸ Mohamed Ismail Shariff, “The Development of Islamic Banking in Malaysia”, *Malaysian Student Law Journal*, vol. 3, issue1 (April 1997).

Problems and shortcomings in the legal framework is an apparent matter of Islamic banking in Malaysia. Norhashimah Mohd. Yasin, in one of her foremost articles entitled “Islamic Banking in Malaysia: Legal Hiccups and Suggested Remedies”, made an important discussion and proposed significant suggestions in the form of remedy.

Yasin, in her article, emphasized that the weakness of the Islamic law’s position in Malaysia was the primary reason behind many problems, particularly in relation to financial law. Among those problems which the Islamic banks in Malaysia had faced was the conflict of the IBA1983 as the main Islamic law with civil law owing to the non-exhaustiveness and ambiguity of the IBA. Consequently, she suggested that the civil court should take necessary steps to make a modification, especially regarding the statuses that were enacted before the existence of IBA1983 so as to be flexible in dealing with Islamic banking. Her research included vital information in relation to numerous legal problems which had not been addressed so far. Hence it will be useful information, designed to be examined and compared with the same aspects in the Kurdistan Region in the present study.⁹

Furthermore, Dr. Nik Norzrul Thani, in chapter seven of his book entitled “Legal Aspects of The Malaysian Financial System”, analyzed the legal framework of Islamic banking in light of the Malaysian relevant acts and in relation to the licensing of Islamic banking and the regulations of Islamic banking business. Thani, in his book, attempted to respond to the vital questions in respect of supervising Islamic banking, the role and function of the *Shary’h* Supervisory Council and the effectiveness of its decision. Furthermore, he briefly explained the operations and financing projects of Islamic banking. Generally, his discussion was limited and brief.

⁹ Norhashimah Mohd. Yasin, “Islamic Banking in Malaysia: Legal Hiccups and Suggested Remedies”, *IUM Law Journal*, vol. 9 (2001).

Therefore, there is a need for further elucidation regarding the legal framework of Islamic banking which the present study intends to cover for the purpose of making comparisons with the Kurdistan Region.¹⁰

“Islamic Banking: How Developed it is in Malaysia Today? Is the Law Equipped for the Development of Islamic Banking? Juridical and Practical Issues” by Mohamed Ismail Mohamed Sharif is another reference which concerns obstacles that have been encountered by the legal framework of Islamic banking in Malaysia. He clearly demonstrated the main issues relating to the legal aspect of Islamic banking in Malaysia. Sharif, in his discussion, highlighted some problems in IBA1983, BAFIA1989, civil law and other relevant laws related to the definition of Islamic banking business, licensing of Islamic banks, the establishment of the *Shary’h* Advisory Council (SAC) and effectiveness of its decision and the scope of application of the civil law and other laws to the Islamic banking transactions. Although the discussion is not comprehensive, which is the main focus of the presented study, it is a substantial guidance and useful source for highlighting the main problems regarding the legal framework of Islamic banking in Malaysia.¹¹

Zulkifli Hasan, in his paper entitled “The Effectiveness of the Legal Framework of the Islamic Banking System in Malaysia”, briefly discussed the role and effectiveness of the legal framework of Islamic banking in Malaysia. He sees that the legal framework has a pivotal role in the enhancement of Islamic banking activities and generally believes that the legal framework of Islamic banking in Malaysia is effective in view of its concern to the regulatory and *Shary’h* aspects. His

¹⁰ Nik Norzrul Thani, *Legal Aspect of the Malaysian Financial System*, (Petaling Jaya, Selangor: Sweet & Maxwell Asia, 2001).

¹¹ Mohamed Ismail Shariff, “Islamic Banking: How Developed it is in Malaysia Today? Is the Law Equipped for the Development of Islamic Banking? Juridical and Practical Issues,” <<http://mauntech.utimonline.net/articles/islamicbanking.htm>> (accessed 28 March, 2008).

discussion is limited to an exposition and he did not discuss some issues related to the shortcomings in the legal aspect. Therefore, there is a need for further discussion and clarification in this aspect that is the primary emphasis in the presented study.¹²

Zulkifli Hasan, in another article entitled “*Sharia* Governance in Islamic Financial Institutions and the Effect of the Central Bank of Malaysia Act 2009”, attempted to discuss the framework of the SAC in light of CBA2009. The author sees that enhancing and improving a *Shary’h* governance framework is an essential objective of passing the CBA2009 by the Malaysian government. The main concentration in the article was only on the impact of CBA2009 on *Shary’h* governance in the Islamic financial institutions, yet the explanation was brief as it only covered Sections 51-58 of Pt VII of the CBA. Furthermore, he did not explain the role and functions of *Shary’h* governance, the effectiveness of its decision as well as the obstacles that *Shary’h* governance might encounter, particularly in the event of conflict; all these will be broadly clarified in the present study.¹³

Another absorbing analysis reference of the legal framework of Islamic banking in terms of Malaysian acts is “Law and Practice of Islamic Banking and Finance” by Nik Norzrul, Mohamed Ridza Abdullah and Megat Hizaini Hassan. They elaborated on the legal framework of Islamic banking in Malaysia as well as the role and function of the SAC. Initially, they described several issues in light of the Malaysian acts that regulate Islamic banking such as IBA 1983, the Central Bank of Malaysia Act (CBMA) 2009 and other relevant acts. To illustrate, the authors explained the licensing of Islamic banks in Malaysia as well as the regulatory aspects

¹² Zulkifli Hasan, “The Effectiveness of Legal Framework of the Islamic Banking System in Malaysia”, (National Seminar in Islamic Banking and Finance, Islamic Science University of Malaysia, 29-30th August 2006).

¹³ Zulkifli Hasan, “*Sharia* Governance in Islamic Financial Institutions and the Effect of the Central Bank of Malaysia Act 2009”, *Journal of International Banking Law and Regulation*, issue 3, (2010).

of the Islamic banking business. In addition to that, they concentrated upon the indispensable role of the Central Bank of Malaysia in continuing to improve the capability of *Shary'h* and the legal framework of Islamic banking.

Furthermore, they discussed the *Shary'h* governance of Islamic banking in terms of Malaysian laws, particularly on the importance of unity and harmony of scholars' views to preclude public confusion regarding the Islamic banking business which have tremendous impact on promoting and fostering shareholders' confidence and gives rise to the maintenance of financial stability. Therefore, this work is one of the main references for the present study.¹⁴

Another literature that concerns the legal framework pursuant to the Malaysian laws is that of Mohammad Khairi, Razli Ramli and Haryani Aminuddin in their book "Islamic Banking Practices from the Practitioner's Perspective". In the chapter on the legal framework, they briefly illustrated the legal framework according to the pertinent acts which regulate Islamic banking in Malaysia with the exhibition of prominent articles of civil law in the legal proceeding process in parallel with other relevant acts. They also explained several approaches of claim in the legal proceedings, as well as cited few civil court cases. The information that was given by the authors regarding the legal framework was inadequate as they did not cover the primary points in relation to the licensing of Islamic banks, regulating of Islamic banking business by the relevant acts such as the IBA 1983 and the BAFIA 1989 and the role and functions of the *Shary'h* Supervisory Council in supervising Islamic banking. That is what the present study designs to contribute in and make a comparison with the acts that regulate Islamic banking in the Kurdistan Region.

¹⁴ Nik Norzrul Thani, Mohamed Ridza Abdullah & Megat Hizaini Hassan, *Law and Practice of Islamic Banking and Finance*, (Petaling Jaya, Selangor, Malaysia: SWEET & MAXWELL ASIA, 2nd edn, 2010).

However, this book still serves as a crucial source since it was published by Islamic Banking Malaysia Berhad as one of the leading banks in Malaysia.¹⁵

Abdul Karim Aidohni, in his book entitled “The Legal Aspects of Islamic Banking A comparative look at the United Kingdom and Malaysia”, spelt out the Islamic banking under the UK legal system and made a comparison with the legal framework of the Islamic banking in Malaysia. Aidohni presented a comprehensive analysis of the English legal system and Islamic banking in light of this system, the regulatory aspect of banking in the United Kingdom and the implementation of Islamic banking under the conventional banking regulations of the United Kingdom. On Islamic banking in Malaysia, only in one chapter, he briefly examined the Malaysian legal system and exhibited potential differences in Islamic banking between Malaysia and the United Kingdom. More fundamentally, he exposed some of the legal issues in the Malaysian legal system in relation to Islamic banking as well as the effective solutions used by the Malaysian financial authorities. The elucidation of the legal aspect of Islamic banking in Malaysia limited and needed further elaboration. However, this is still a useful literature for the present study due to its concern about the legal framework of Islamic banking in Malaysia which is the main focus of this study.¹⁶

Another significant reference on this subject is “Islamic Banking and Takaful” by Rusni Hassan. The book concerns all fields in Islamic banking such as: the historical development of Islamic banking and finance, the *Shary’h* framework, the Islamic financial contracts, the legal framework of Islamic banking, the role of the *Shary’h* advisors, the Islamic banking products and the citation of several cases.

¹⁵ Mohammad Khairi Saat, Razli Ramli & Haryani Aminuddin, *Islamic Banking Practice from the Practitioner’s Perspective*, (Kuala Lumpur: IBFIM, 2011).

¹⁶ Abdul Karim Aidohni, *The Legal and Regulatory Aspects of Islamic Banking a Comparative Look at the United Kingdom and Malaysia*, (London: Rutledge, 1st publish, 2011).