



A STUDY ON THE LEGAL ASPECTS OF  
THE *SHARĪcAH* ADVISORY BOARDS IN  
MALAYSIAN FINANCIAL INSTITUTIONS

BY

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## ABSTRACT

The existence of the *Sharī'ah* advisory board in an Islamic financial institution is significant in ensuring that the institution complies with the *Sharī'ah* principles in carrying out its Islamic financial business and activities. Due to the vital role in ensuring *Sharī'ah* compliance of the Islamic financial institution, the *Sharī'ah* advisory board should be equipped with a comprehensive legal sanction to govern its affairs and those of its members. This study examines the legal aspects of the *Sharī'ah* advisory board in Malaysian Islamic financial institutions. This study seeks to answer whether the existing legislations are sufficient to govern the legal aspects of the *Sharī'ah* advisory board in Malaysia which consists of the *Sharī'ah* Advisory Council established by Bank Negara Malaysia and the *Sharī'ah* advisory boards established by the respective Islamic financial institutions. This study adopts the legal research method where the data used were largely library-based (documentary). Statutory provisions passed by the Parliament of Malaysia, Guidelines issued by Bank Negara Malaysia and other legal instruments were explored and analysed to understand the legal aspects of the *Sharī'ah* advisory board in Malaysia. This study found that the *Sharī'ah* advisory board is regulated by several statutes and guidelines governing Islamic financial business in this country of which several legal aspects of the *Sharī'ah* advisory board are provided in the statutes and guidelines. Based on the analysis conducted on the relevant provisions of such legislations, this study reveals that the existing legislations have covered the essential legal elements of *Sharī'ah* advisory board. However, several provisions of such existing legislations seem to be unclear and thus require proper explanations. In addition, the existing legislations fail to prescribe several significant elements dealing with the *Sharī'ah* advisory board such as the the position of the *Sharī'ah* Advisory Council in the organizational structure of Bank Negara Malaysia, the religion of the members of the *Sharī'ah* Advisory Council, the termination procedures of the member(s) of the *Sharī'ah* advisory board of the Islamic financial institutions and the assessment methods to measure the competency of the board members. This study concludes that the existing legislations are insufficient to regulate the legal aspects of the *Sharī'ah* advisory board in Malaysia. Insight drawn from this study suggest the need to enhance the existing legislations and strengthen the regulatory framework of the *Sharī'ah* advisory board in Malaysia. The relevant authority should take immediate approach to improve the deficiencies of the legislations in order to avoid any possible legal conflict in the future.

## ملخص البحث

إن لوجود الهيئة الإستشارية الشرعية في المؤسسة المالية الإسلامية أهمية ملحة لضمان إلتزام المؤسسة مع مبادئ الشريعة الإسلامية في تنفيذ أعمالها المالية وأنشطتها. نظرا لدورها الحيوي لضمان الإلتزام بمبادئ الشريعة في هذه المؤسسة المالية، ينبغي علينا وضع القوانين الإدارية الشاملة للهيئة الإستشارية الشرعية لتنظيم هذه الهيئة وأعضائها. يسعى هذا البحث للإجابة على السؤال: هل التشريعات الموجودة كافية لتنظيم النواحي القانونية للهيئة الإستشارية الشرعية في ماليزيا، والتي تتكون من الهيئة الإستشارية العليا الذي أنشأها البنك المركزي الماليزي والهيئات الإستشارية الشرعية التي أنشأتها المؤسسات المالية الإسلامية؟ يعتمد هذا البحث طريقة البحث القانوني حيث كانت البيانات المستخدمة تستند إلى أسلوب البحث المكتبي. ويبحث البحث في الأحكام القانونية التي يقرها البرلمان الماليزي، والضوابط التوجيهية الصادرة عن البنك المركزي الماليزي وغيرها من الآليات القانونية ويتم تحليلها لفهم النواحي القانونية للهيئة الإستشارية الشرعية في ماليزيا. وقد توصل الباحث إلى أن للهيئة الإستشارية الشرعية تنظيمات من قبل القوانين الإدارية والضوابط التوجيهية التي تنظم الأعمال المالية الإسلامية في ماليزيا - وتوصل البحث بأن القوانين الإدارية والضوابط التوجيهية توفر العديد من النواحي القانونية للهيئة الإستشارية الشرعية. ومع ذلك، يبدو أن بعض القوانين في هذه التشريعات غير واضحة، وتحتاج إلى توضيحات. وبالإضافة إلى ذلك، فقد فشلت التشريعات القائمة لوصف العديد من العناصر الهامة في التعامل مع الهيئة الإستشارية الشرعية. ومثال ذلك، تعيين مكانة الهيئة الإستشارية العليا في الهيكل التنظيمي للبنك المركزي الماليزي، وتعريف دين أعضائها، وإجراءات إنمائية أعضاء الهيئة الإستشارية الشرعية للمؤسسات المالية الإسلامية وأساليب التقييم لقياس كفاءة أعضاء الهيئة الإستشارية الشرعية. ويخلص البحث بأن القوانين الموجودة غير كافية لتنظيم النواحي القانونية للهيئة الإستشارية الشرعية. واقترح البحث تعزيز التشريعات القائمة وتعزيز الإطار التنظيمي للهيئة الإستشارية الشرعية في ماليزيا. ينبغي للسلطة المعنية أن تتخذ مبادرة فورية لأجل تحسين القوانين الإدارية والضوابط التوجيهية من أجل تجنب أي إحتكاك مع الإطار القانونية الممكنة في المستقبل.

## **APPROVAL PAGE**

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## DECLARATION

I hereby declare that this thesis 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.

Mohammad Azam Hussain

Signature .....

Date .....

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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*To my parents*

*AYAHANDA HUSSAIN HANAFIAH  
BONDA RAMLAH YAACOB*

*My wife*

*IDAYU MOHD DAHLAN*

*My children*

*MUHAMMAD NAUFAL AL-ZIKRY  
NUR 'AISYAH HANNAN  
MUHAMMAD NAQIB AL-ZIKRY  
NUR 'AISYAH SOFIYYA*

*I dedicate this work*

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Capital Framework for Development Financial Institutions (BNM/RH/GL 005-7)

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## LIST OF ABBREVIATIONS

AoA	Article of Association
BAFIA	Banking and Financial Institutions Act
BIMB	Bank Islam Malaysia Berhad
BNM	Bank Negara Malaysia
BNM/GPS 1	Guidelines on the Governance of <i>Shari'ah</i> Committee for the Islamic Financial Institutions (BNM/RH/GL/012-1)
BoD	Board of Directors
CBMA	Central Bank of Malaysia Act 2009 (Act 701)
CJA	Courts of Judicature Act
CLA	Civil Law Act 1956 (Revised 1972) (Act 67)
CLJ	Current Law Journal
CMSA	Capital Markets and Services Act 2007 (Act 671)
DFI	Development Financial Institution
DFIA	Development Financial Institution Act
et al	( <i>et alia</i> ): and others
etc	and so forth
FSA	Financial Services Act 2013 (Act 758)
GFA	Government Funding Act 1983 (Act 275)
GP1-i	Guidelines on Corporate Governance for Licensed Islamic Banks
IBA	Islamic Banking Act 1983 (Act 276)
Ibid.	( <i>ibidem</i> ) in the same place
IBS	Islamic Banking Scheme
ICM	Islamic Capital Market
IFI(s)	Islamic Financial Institution(s)
IFSA	Islamic Financial Services Act 2013 (Act 759)

IFSB	Islamic Financial Services Board
J	Judge
JC	Judicial Commissioner
KLRC	Kuala Lumpur Regional Centre for Arbitration
LFSA	Labuan Financial Services Authority
MLJ	Malayan Law Journal
NC	Nomination Committee
No.	Number
SAC	<i>Sharī'ah</i> Advisory Council
SC	Securities Commission
SCA	Securities Commission Act 1993 (Act 498)
SGF	<i>Sharī'ah</i> Governance Framework for Islamic Financial Institutions (BNM/RH/GL_012_3)
TA	Takaful Act 1984 (Act 312)
Vol.	Volume
YA	Yang Arif
YAA	Yang Amat Arif
YDPA	Yang di-Pertuan Agung

## TRANSLITERATIONS

ء	'	خ	kh	ش	Sh	غ	Gh	ن	N
ب	B	د	D	ص	ṣ	ف	F	ه	H
ت	T	ذ	dh	ض	ḍ	ق	Q	و	W
ث	Th	ر	r	ط	ṭ	ك	K	ي	Y
ج	J	ز	z	ظ	ẓ	ل	L		
ح	ḥ	س	s	ع	ʿ	م	M		

Short Vowels	
َ	a
ِ	i
ُ	u

Long Vowels	
أ + َ	ā
ي + ِ	ī
و + ُ	ū