

The Role of Shariah Authority in Enhancing the Islamic Financial System in Malaysia and Indonesia

Peranan Majlis Penasihat Shariah dalam Memartabatkan Sistem Kewangan Islam di Malaysia dan Indonesia

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ABSTRACT

The Shariah Authority plays an essential role in confirming that the products and services of Islamic finance companies comply with Shariah principles. The Shariah Advisory Board and the National Shariah Council are the highest authorities for determining Islamic law for Islamic financial transactions in Malaysia and Indonesia, respectively -the Shariah Advisory Board of Malaysia reports to the Central Bank of Malaysia. At the same time, the National Shariah Council of Indonesia was part of the Indonesian Ulema Council, a non-governmental organisation. The latter is thus part of the regulatory framework and complements the financial system. As the two councils are different in nature, the rulings have different implications for the community. This article aims to analyse the status of the Shariah Authority in terms of the establishment and procedures for deriving the rulings. The research is qualitative and uses content analysis by looking at the legislation that governs these institutions. The research findings show that the Shariah authority in both countries has the same function in the industry but differs in terms of the creation of the rulings, the procedures and the attachment to the Islamic financial institutions, courts and arbitrators. In conclusion, the article proposes several improvements by the relevant agencies to strengthen the framework of the Shariah authority in Malaysia and Indonesia, leading to accountable administration to the industry, the community and the state.

Keywords: Shariah authority; Islamic Finance; Shariah Advisory Council; National Shariah Council; Shariah rulings

ABSTRAK

Majlis Penasihat Shariah memainkan peranan penting dalam memastikan produk dan perkhidmatan perniagaan kewangan Islam mematuhi prinsip Shariah. Majlis Penasihat Shariah dan Dewan Syariah Indonesia adalah pihak berkuasa tertinggi untuk menentukan undang-undang Islam bagi transaksi kewangan Islam di Malaysia dan Indonesia, masing-masing—Majlis Penasihat Shariah Malaysia berada di bawah Bank Negara Malaysia. Pada masa yang sama, Dewan Syariah Nasional Indonesia adalah sebahagian daripada Majlis Ulama Indonesia, sebuah pertubuhan bukan kerajaan. Oleh itu, yang terakhir adalah sebahagian daripada rangka kerja kawal selia dan tambahan kepada sistem kewangan. Memandangkan kedua-dua Majlis mempunyai sifat yang berbeza, kesan keputusan terhadap masyarakat berbeza. Artikel ini bertujuan untuk menganalisis status Majlis Penasihat Shariah berkenaan penubuhan dan prosedur yang mengeluarkan keputusan tersebut. Penyelidikan adalah kualitatif, menggunakan analisis kandungan dengan meneliti perundangan yang mengawal institusi ini. Penemuan penyelidikan menunjukkan bahawa Majlis Penasihat Shariah di kedua-dua negara berkongsi fungsi yang sama dalam industri tetapi berbeza mengenai penubuhan, prosedur, dan mengikat Institusi Kewangan Islam, mahkamah dan penimbang tara. Akhir sekali, artikel ini mencadangkan beberapa penambahbaikan oleh pihak berkuasa masing-masing untuk mengukuhkan rangka kerja pihak berkuasa Shariah di Malaysia dan Indonesia, menghasilkan tadbir urus yang bertanggungjawab kepada industri, masyarakat dan negara.

Kata kunci: Badan berotoriti Shariah; Majlis Penasihat Shariah; Dewan Syariah Nasional, Kewangan Islam; ketetapan Shariah

INTRODUCTION

Islamic financial institutions (IFISs) should always ensure compliance with Shariah principles when conducting Islamic financial transactions. They should also adhere to certain Islamic business ethics and norms, such as the principle of justice and fair dealing, fulfilment of agreements and settlement of liabilities, cooperation, and elimination of hardships, free marketing, reasonable pricing, and freedom from *darar* (disadvantage) (Ayub, M. 2007; Hassan, R. 2011). Prohibition of *riba* (usury), *gharar* (risk and uncertainty), and *maisir* (gambling) are the basic Shariah principles that must always be observed by Islamic financial institutions. Shariah supervision is critical for Islamic financial institutions to ensure that their operations and Islamic financial transactions always comply with Shariah principles. Shariah supervision is a set of rules or controls based on Shariah' principles. Its implementation ensures that activities do not violate Shariah principles. Shariah supervision is also a mechanism to correct errors resulting from Islamic financial transactions that are contrary to Shariah principles and to ensure sustainability in the implementation of Shariah rules. (Ab Rahman, S., Md Khalid, R., Abd Razak, A. & Jaafar, A.B. .2018; Abdul Aziz R, Abd Rahman, A. & Markom, R. 2019). Since Shariah compliance is the essence and the very foundation of Islamic finance, it is a constant obligation for Islamic financial institutions (Bakar 2002; Engku Ali, ER & Odierno, H. 2008; Abd Rahman, R., Lyndon, N.A., Ahmad, K.A., Zaini, A.R. & Mohd Danuri, M.S.N. 2021). Adequate attention should be given to a sound Shariah advisory framework. The Shariah advisory body is the crucial body that plays a vital role in the advisory framework.

The article aims to analyse the status of the Shariah authority in terms of the establishment and procedures for deriving the Shariah ruling and their impact on the community.

THE ESTABLISHMENT OF THE SHARIAH ADVISORY COUNCIL (SAC) IN MALAYSIA

The SAC established at the national level in Malaysia is legally referred to as the "Shariah Advisory Council" by the Central Bank of Malaysia Act 2009 (Act 701). In addition, Act 701 also provides an interpretation of this council by

referring to "the Shariah Islamic Finance Advisory Council established under section 51" (Act 701, section 2). This council is the ultimate mandate and authoritative source for determining Islamic law concerning Islamic financial transactions (Hassan, R., Triyanta, A. & Yusoff, A. 2011).

THE ESTABLISHMENT OF THE NATIONAL SHARIAH COUNCIL IN INDONESIA

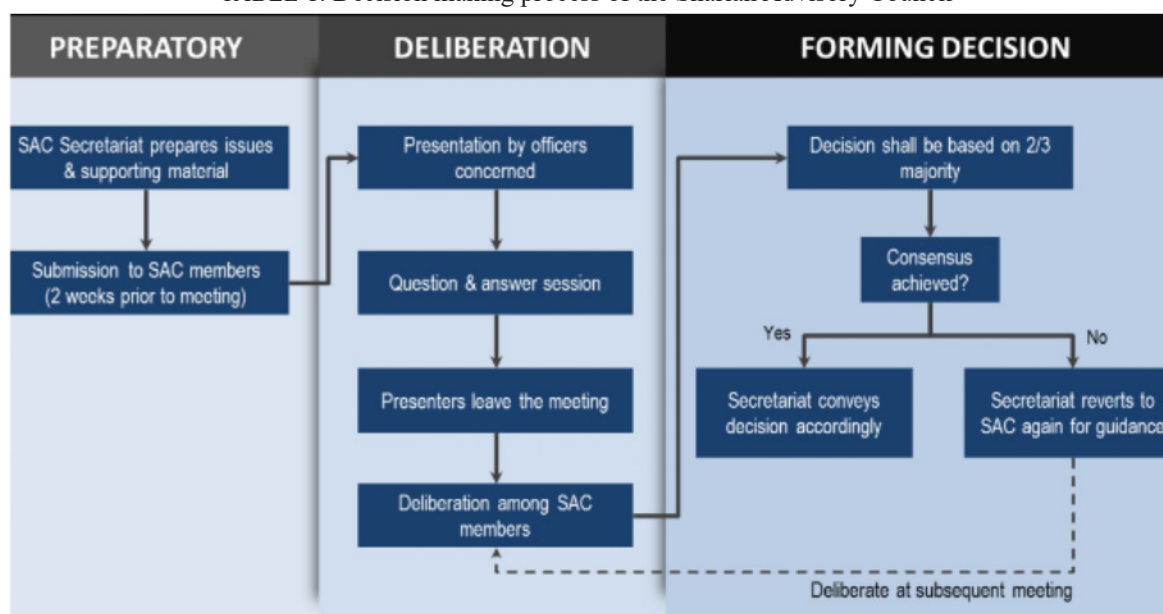
On 14 October 1997, the establishment of the National Shariah Council was initiated following pressure and insistence from the Indonesian Ulema Council. (Setyowati, R., & Heradhyaksa, B. 2019). In 1999, the National Shariah Council was officially established by the authority of the Indonesian Ulema Council No. Decision 754 / MUI / 11/99 on the Establishment of the National Shariah Council.

THE SHARIAH ADVISORY COUNCIL'S PROCEDURES FOR DERIVING SHARIAH RULINGS

In Malaysia, the law provides that the Shariah Advisory Council may determine its own procedures (Act 701, section 51(2)). The procedures meant in this section refer to the procedures that the Council will follow to discharge its statutory functions (Act 701, Section 52(1)). (Yaakub, N.I. & Markom, R. 2015) In this regard, the Council can determine its working procedures. Therefore, it has the benefit and agility to choose appropriate and best methods for the performance of its duties.

Undoubtedly, the Shariah Advisory Council is likely to have its own procedures to decide on any Shariah issue brought before it. In *Mohd Alias Ibrahim v RHB Bank Bhd & Anor* [2011] 4 CLJ 654, the court held that where a question relates to a Shariah matter, the civil court is required to consider any published decisions of the SAC or refer such questions to the SAC for decision and that any such decision is binding on the court. Section 51 of Law 701 refers to the function of SAC, to determine and not to determine Islamic law in relation to Islamic financial transactions. The question of whether or not the institution is Shariah compliant must be decided by the court. The rulings of SAC represent a form of expert opinion in Islamic finance. (Mohd Arif, M.I.A. & Markom, R. 2018).

TABLE 1. Decision making process of the Shariah Advisory Council



Source: Website of Central Bank of Malaysia at http://www.sacbnm.org/?page_id=3314

Apart from the above, the SAC working procedures are the Shariah guidance's methodology. The methods provide the primary technique for deriving Shariah ruling from distinguished foundations of Islamic law. The working method justified the sources of the *Madhhab* (Sect) in deciding Shariah issues (Hussain, M.A. 2016).

The Shariah decisions of the Shariah Advisory Council show that the Council does not arbitrarily take a decision on the issue brought before it. Its decision recognises the sources of Shariah, in particular the Qur'anic verses, the hadiths (prophetic traditions) of Prophet Muhammad (PBUH) and the relevant views of Muslim jurists. Indirectly, it represents the methodology used by the Council in providing Shariah guidance. (Hussain, M.A., Hassan, R.& Hasan, A. 2013)

The SAC in making decisions, referred to Shariah's primary and supplementary, including Al Quran, Hadith, Qiyas (Analogical Reasoning) and Ijma' (Consensus). Implicitly, it signifies the approach the Council chose in providing Shariah guidance. (Hussain, M.A., Hassan, R.& Hasan, A 2013)

In this context, the Shariah Advisory Council, at its 29th meeting on 25 September 2002, decided that an *Ijarah* (hire /lease) contract can be terminated if the leased property does not function and loses its usufruct, the parties to the contract do not fulfil the terms of the contract, or both parties to the contract terminate the contract by mutual consent.

The Shariah Advisory Council justified the decision below:

1. The object of an *Ijarah* contract is the usufruct of the leased asset, and if the asset loses its usufruct, the *Ijarah* contract ends.
2. Both parties can enter and mutually agree with the terms and conditions. They have the choice to terminate one of the contracting parties who defaulted.
3. The contract bound both parties.

The SAC in making a decision, is not bound to follow any particular *Madhhab*. They can select the most suitable *Madhhab* for a particular issue. Like in the case of *Ijarah*, they have faith in the Maliki, Hanbali and hadith.

However, several resolutions of SAC are supported by a standard theory. Such as whether the transfer of charges, as provided for in the Hire Purchase Act 1967, applies to automobile financing for the contract of *Al- Ijarah Thumma Al Bai'* (AITAB). In its seventh meeting held on 29 October 1998, the SAC decided that the transfer of charges in the Hire Purchase Act 1967 applies to AITAB automobile financing because it is not contrary to Shariah. In the case of AITAB automobile financing, when a lessee terminates the lease, another party may continue the lease and, in due course, purchase the asset from the Islamic financial institution. Islam acknowledges the transfer of claims and charges a joint arrangement between the parties.

According to List II, Schedule Nine of the Federal Constitution, Islamic law is the law for the person professing the religion of Islam. Shariah matters is part of Islamic law and have to be approved by the Fatwa Committee of the State. For example, Section 39 of the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) states that the Mufti will usually follow *qaul muktamad* (the accepted views) of the *Madhhab Syafie*, unless this leads to a situation contrary to the public interest. Mufti may resolve the issue of judgement and by the *qaul muktamad* of any of the four *Madhhab* for the *maslahah* (benefit of the community).

The above discussion showed that the decision-making process of the Fatwa Committee of the State was applied with some modifications to the SAC when issuing Shariah rulings. The SAC was the final body in deliberating Shariah issues in Islamic finance utilising the *qaul muktamad* of the four *Madhhabs* and reputable scholarly views for the *maslahah* (benefit of the community). The SAC has published the above decision in the SAC Resolution 2010-2012. The Secretariat of SAC will publish online the latest decision of SAC Resolution in Bank Negara Malaysia website for awareness to society.

PROCEDURE OF FATWA RULING IN ISLAMIC BANKING BY THE NATIONAL SHARIAH COUNCIL IN INDONESIA

The existence of the National Shariah Council within the Indonesian Ulema Council is an advantage. (Heradhyaksa, B. & Markom, R. 2018 ; Triasari, D. & De Zwart, F. 2021). The Indonesian Ulema Council has extensive experience, expertise, feasibility, and complete legal regulation and procedure for issuing a fatwa. The determination of fatwa in Indonesia is clear and regular, as the procedure for determining it was detailed in the Regulation of the Leadership Council of the Indonesian Ulema Council on the Guidelines for Determining Fatwa of the Indonesian Ulema Council No. Therefore, this regulation is also the reference principle for the National Sharia Board. U-596 / MUI / X / 1997 on 2 October 1997 in Jakarta.

Procedure of fatwa ruling in Islamic banking by the National Sharia Council in Indonesia. Firstly, issues requiring legal resolution are referred to the National Shariah Council. Then, brought to the attention of the members of the Fatwa Office of the National Sharia Council. The member of the Fatwa Office of the National Sharia Council shall review the matter in detail within seven days prior to the meeting

and review any discussion in a comprehensive and full argument. Finally, the Fatwa Bureau of the National Shariah Council establishes a fatwa decree by the signature of the highest leadership expert of the Indonesian Ulema Council.

According to Article 2 of the Guidelines for Determining Fatwa of the Indonesian Ulema Council, any issue (including issues on Islamic banking) discussed collectively by the Fatwa Commission should be consistent with the Qur'an, Sunnah, Ijma', Qiyas and other legal arguments. Based on the provision of Article 1(6) of the Guidelines for the Determination of Fatwa of the Indonesian Ulema Council No. U-596 / MUI / X / 1997, this discussion was held in the Office of Religion by all the experts of the National Shariah Council, representatives of Bank Indonesia, financial institutions and the financial industry such as banks, insurance companies, capital markets and others who have links with the Islamic economy and *Muamalat* (Mohd Asri, MN. et al. 2020)

The Governing Council consists of the Fatwa Commission of the Indonesian Ulema Council and the Regional Ulema Council, namely the General Chairman and the Secretary General and Chairman of the Fatwa Commission of the two assemblies based on Article 1(3), (4) and (5) of the Guidelines for Determining the Fatwa of the Indonesian Ulema Council no. Before the fatwa is determined, a comprehensive study is conducted in advance by the expert of the Secretariat appointed by the Governing Council in order to get a clear *tasawwur al mas'alah* (picture of the objective of the problem), the formulation of the problem. This socio-religious impression arises from various legal aspects related to the problem. U-596 / MUI / X / 1997 (Setyowati, R., Heradhyaksa, B., & Rosyid, M. 2021). This comprehensive study involves the study of the views of previous mujtahids, the opinions of the school of law, scholars and fiqh experts on the problem in question. The members of the Secretariat are mandated to prepare and disseminate working papers based on the findings of the comprehensive study. They refer to Article 4(1) of the Guidelines for Determining the Fatwa of the Indonesian Ulema Council. U-596 / MUI / X / 1997 Before deciding on a fatwa, the opinions of the school of law should first be carefully examined, especially by evaluating their arguments. If the problem relates to differing opinions between the schools, the fatwa must be decided on the basis of equality between the schools by making compromises and adjustments, or, if the above method does not provide a solution, the option of a more decisive view between the schools of law.

TABLE 3. The Basic Elements of Fatwa Determination of the National Sharia Council.

Sharia Source	Bil Category	Category	Other considerations
Primer	1.	Al Quran	Community benefit and societal impact
	2.	Al Sunnah	
	3.	<i>Ijma'</i>	
	4.	<i>Qiyas</i>	
Secondary	1.	Istihsan	
	2.	Masalih mursalah	
	3.	Sadd al dzara'ie	
	4.	Expert Opinions	

Sources: updated from Majelis Ulama Indonesia (1997).

When the members of the National Fatwa Council, in determining the law, discuss matters of law on which no agreement has been reached, the determination of the fatwa is transmitted, stating the disagreement together with their respective explanations. In this case, it is good to be *ihtiyathi* (cautious) and it is possible to *al-khuruj min al-khilaf* (come out of the disagreement). Finally, they will establish fatwa rulings. Then the chairman and the secretary of the Fatwa Committee of the National Sharia Council sign the fatwa decision. According to Article 8 of the Guidelines, each fatwa decision must be ratified in advance by the governing body as a fatwa determination decree.

THE STATUS OF SAC RULING IN MALAYSIA

One of the functions of SAC is to render a ruling in determining Islamic law in relation to Islamic financial transactions. The word "ruling" refers to any decision made by the SAC of the BNM. The Shariah decision of SAC is commonly known as the Shariah Resolution. In the case of Mohd Alias Ibrahim v. RHB Bank Berhad & Anor [2011] 4 CLJ 654, the court held that the decision issued by the SAC was a form of expert opinion in matters of Islamic finance and collective *ijtihad* (legal conclusion). The rulings issued by the SAC are not fatwa in the administration of Islamic laws in Malaysia. Such rulings are not to be considered fatwa of the issuing body, but merely for the purpose of ascertaining Islamic law and deriving the jurisprudence of the weight of evidence in court.

The Act 701 clarifies that Shariah decisions made by the SAC have a binding effect on IFIs, the court and the arbitrator, in accordance with a referral under sections 55 and 56. Non-compliance constitutes an offence and is punishable on conviction

by imprisonment for a term not exceeding eight years or a fine not exceeding twenty-five-million-ringgit Malaysia or both. In the event of conflicting decisions between SAC and the IFIs Shariah Committee, the decision of SAC shall prevail.

THE ANALYSIS OF THE STATUS OF SHARIAH AUTHORITY' IN MALAYSIA AND INDONESIA

SIMILARITIES BETWEEN THE SHARIAH AUTHORITY IN MALAYSIA AND INDONESIA

The information obtained through research on the infrastructure of Islamic banking in Malaysia and Indonesia shows that both countries have enacted strict laws to enable the operation of Islamic banking. Both Malaysia and Indonesia practise a two-tier system of Shariah authority. The Shariah committees, within the boundaries of their respective Islamic banking institutions, advise the IFIs and ensure that all banking operations comply with the prescribed Shariah standards. These organisations play a role in regulating aspects of Shariah compliance and harmonising Islamic law in line with the countries overall Islamic banking system.

DIFFERENCES BETWEEN THE SHARIA AUTHORITY IN MALAYSIA AND INDONESIA

The independence of the National Sharia Council is due to the fact that this institution is not subordinate to Bank Indonesia. Section 26 of Law No. 21 of 2008 on Shariah Banking states that despite the National Sharia Council in Indonesia being the sole Shariah authority of the Islamic banking system, the organisational structure, the Indonesian Council of Muslim Scholars of Decree Number 754 / MUI / 11/99 has proven that the institution

is part of the Indonesian Ulema Council, a non-governmental organisation. Basically, Section 51 (1) of the Central Bank of Malaysia Act shows that the Shariah Advisory Board was established at the initiative of Bank Negara Malaysia. Therefore, the legal status of the Shariah Advisory Board in this system of Shariah governance is under Bank Negara Malaysia when it performs its statutory function.

DIFFERENCES IN SHARIAH RULINGS IN MALAYSIA AND INDONESIA

In analysing the difference between the Shariah resolutions of the Shariah Advisory Council and the fatwa of the National Shariah Council, the approach of these two institutions to the issue of Shariah in relation to *Musyarakah* (partnership) contracts is examined. The Shariah Resolution on *Musyarakah* Contracts in Islamic Finance Bank Negara Malaysia's Shariah Advisory Council (2010-2012) on 5 November 2011 deliberated the Shariah principles on whether the holder of an investment account based on a *Musyarakah* contract must also bear the settlement costs of an Islamic banking institution, the Shariah Advisory Council has ruled that the settlement costs can be borne jointly by the bank and the customer. The decision does not refer to the Shariah provisions and the opinions of Islamic scholars, which form the basis for enacting the law on this issue. This situation leads to misunderstandings about the decision and context of the SAC decisions. (Mohamad S. & Tuan Abdullah A.A 2007). The enactment of the Islamic Financial Services Act 2013 (IFSA) has helped minimise confusion and strengthen the implementation of Shariah requirements in the operations of IFIs in Malaysia. Section 28 of the IFSA requires IFIs to ensure that their business operations comply with Shariah requirements. In addition, Section 29 has mandated Bank Negara Malaysia to publish guidelines on Shariah matters, such as the *Musyarakah* Policy Document and the Shariah Governance Policy.

The National Shariah Council of Indonesia issued a fatwa on *Musyarakah* funding in Decree No. 08 / DSN-MUI / IV / 2000. The fatwa's decision included the assertion of the provisions of the Qur'anic verses and the Sunnah, as well as the *ijma'* (scholars' agreement) on *musyarakah* contracts - the fiqh method of decision making. Even though the National Shariah Councils fatwa is not binding in Indonesia, the court incorporated the fatwa's decision into a court judgement to support and

understand the relevant Bank Indonesia regulations. In *Irma Ambasari v Bank Syariah Mandiri* (No. 1226K / PDT / 2012), the court cited Fatwa Dewan Syariah Nasional No. 04 / DSN / -MUI / IV / 2000 and Bank Indonesia Regulation No. 7 / 46 / P.B.I. / 2005 on the Murabahah contract. The Fatwa of the National Shariah Council and the Regulation of Bank Indonesia complement each other, as the rationale of the proposal and the fiqh method used to decide a law are clearly stated in the Fatwa of the National Shariah Council, while the Regulation of Bank Indonesia serves to translate the Shariah rules into the laws of the country.

In Malaysia, the constitutionality of the decisions and institutions of SAC was questioned. (Markom, R. & Yaakub, N.I. 2015; Hasshan, H., Markom, R. & Ab. Halim, A.H. 2021). The non-binding effect of the rulings of SAC led to the High Court refusing to follow the rulings given and thus departing from the decision of SAC. The case of *Tan Sri Khalid bin Ibrahim v Bank Islam Malaysia Bhd and Another* [2009] 6 MLJ 416, as explained by the judge, is a clear example of how judges can effectively use the principles of *Maslahah* and *Maqasid Al Shariah* (Objectives of *Shariah*) in Islamic finance cases. In this case, the judge appropriately construed the definition of Islamic banking according to the legal maxim "what is not prohibited is permitted", provided the banking transactions do not contravene Shariah.

The High Court judgement in *Arab Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd & 2 Ors* [2009] 1 CLJ 419 has attracted the attention of local Islamic finance players in Malaysia. In his judgement, the judge examined the validity and enforceability of the Bai Bithaman Ajil (BBA) contract on two grounds. First, he found that the BBA contract was far more onerous than a conventional loan with *riba* (usury), forbidden and condemned in Islam. Secondly, the BBA contract practised in this country contravenes the four *Madhhab*. The appeal was allowed, and the High Court judgement was set aside as reported in *Bank Islam Malaysia Bhd v Lim Kok Hoe & Other Appeals* [2009] 6 C.L.J. 22, where the judges strongly recommended in their judgments that it is crucial to refer questions on Islamic finance to the proper and competent persons such as the SAC. The decision was confirmed in *J.R.I. Resources Sdn Bhd v Kuwait Finance House (M) Bhd* (President of Association of Islamic Banking Institutions Malaysia & Anor, interveners) [2019] 3 MLJ 561, which the Federal Court held that only

the decisions of SAC Bank Negara Malaysia are constitutional and binding on civil courts, IFIs and the arbitrators.

In 2014 Bank Negara Malaysia has launched the Manual for Courts and Arbitrators to SAC under Section 51 and Section 56 of the Bank Negara Malaysia Act 2009 to reduce the complexities of deliberating Shariah issues. The manual was divided into four parts. Part A initiate the procedure for referring Shariah issues on Islamic finance by courts and arbitrators to SAC Bank Negara Malaysia. This manual describes the procedures and methods for referring Shariah issues arising in court or arbitration proceedings to the SAC for advice. Part B explains the scope of questions on Shariah law for matters relating to Islamic finance transactions that have or have not been decided by the SAC. The questions cover, but are not limited to, aspects of Islamic finance business such as business structure, products or services, implementation or operation, terms and conditions or documentation. The Manual provides illustration on issues unrelated to Shariah in which one court case raised the question of the licensing status of an Islamic banking institution in Malaysia. This question has nothing to do with Shariah. Then followed by the example of Shariah issues - SAC has ruled that *Tawarruq* contracts can be used to structure financing facilities. Then, a customer challenged the Shariah compliance of a *Tawarruq*-based financing product offered by an Islamic banking institution because it used silver metal as the underlying asset for *Tawarruq* transactions in the financing. In this context, the court may refer to SAC for clarification on whether the use of silver metal as an underlying asset for *tawarruq* transactions as in financing is permissible from a *Shariah* perspective.

Part C explained the procedure for receiving referrals from courts and arbitrators by completing the Court/Arbitrator Referral Form at SAC BNM. Finally, Part D supplemented Part C on the conduct and procedures of the SAC meetings. The Secretariat shall, within seven days of receipt of a reference from the court or arbitrator, inform the members of the SAC in writing of the meeting scheduled to discuss a reference from the court or arbitrator relating to Shariah matters. Such proceedings enhance the integrity of SAC as the ultimate mandate in establishing Islamic law on Islamic financial transactions in Malaysia.

CONCLUSION

Islamic banking services and operations of IFIs in Malaysia and Indonesia must comply with Shariah principles. There are substantial differences in terms of establishment, procedures for deriving judgments and the bindingness of the ruling /judgment of both institutions to the industries, arbitrator and the court. The implementation of Islamic banking in Indonesia is based on economic democracy and cultural groups. (Hagi Hutomo 2020). The regulatory regulation that governs Islamic banking in Indonesia is Law No. 21 of 2008 on Islamic Banking. This law separates Islamic banking and conventional banking through two different legal regulations. Based on Section 2 of Law No. 7 of 1989 and Section 39 of Law No. 3 of 2006, the Shariah Court is a judicial institution responsible for hearing and adjudicating Islamic banking cases in Indonesia. For Shariah governance at the national level, the National Shariah Council is responsible under Decree No. 754 / MUI / 11/99 of the Majelis Ulama Indonesia under the Council of the Ulama Majelis Indonesia. The National Shariah Council is tasked with dealing with issues and problems related to Muamalat and the Shariah economy, including Islamic banking. According to clause 1 (9) of Bank Indonesia Regulation No. 6/24 / P.B.I. / 2004, the National Shariah Council is a body established by the Indonesian Ulama Council with the power and authority to ensure compliance with Shariah-compliant banking products, services and activities. The process of issuing a fatwa in Indonesia is clear and orderly, as the procedure of this fatwa has been detailed in the Decree of the Council of Leaders of the Indonesian Ulama Council on the Guidelines for the Establishment of the Fatwa Council of the Indonesian Ulama Council No. U-596 / MUI / X / 1997. In enforcing the fatwa, Bank Indonesia must comply with Bank Indonesia Regulation No. 10/32 / P.B.I. / 2008 on the establishment of the Islamic Banking Committee. The Islamic Banking Committee will assist Bank Indonesia in interpreting the Fatwa of the National Shariah Council in relation to Islamic banking, thereby transforming the Fatwa of the National Shariah Council into a regulation of Bank Indonesia so that the content of the Fatwa of the National Shariah Council can be substantially enforced.

By comparing the Shariah governance model for the Islamic banking system in Malaysia and Indonesia, focusing on the legal status and statutory role of the Shariah Advisory Council and the National Shariah Council as a single Shariah authority, it is found that both countries have enacted strict laws to enable the operation of the Islamic banking system. As one of the most important legal institutions in Islamic religious administration in Malaysia and Indonesia, the Shariah Advisory Council and the National Shariah Council are authoritative institutions to provide opinions on Islamic law in relation to Islamic banking. Both Malaysia and Indonesia practise the two-tier Shariah system of administration. The Shariah Advisory Council of Malaysia is under the Central Bank of Malaysia, while the National Shariah Council of Indonesia is part of the Indonesian Ulema Council, a non-governmental organisation. Therefore, the decision of the Shariah Advisory Board is binding on the IFIs, the courts and the arbitrators. In contrast, the National Shariah Councils fatwa must be converted into a Bank Indonesia regulation in order to bind the parties involved in Islamic banking. The above discussion has shown that the Shariah authorities of Islamic finance are essential for the improvement and accountability of IFIs to the community. It is recommended that these authorities complement the governance and regulatory framework of the countries. In addition, the Council should adopt standard written procedures as a standard guideline for the Council to identify Islamic law in relation to Shariah matters in Islamic finance transactions brought before it. This will serve as a guideline for the new members appointed to the Council and prevent misconceptions from arising in the public mind about the procedures, they follow in determining Islamic law in relation to Islamic financial transactions.

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