

**FACTORS OF DIVERGENCE OF *SHARI'AH* SUPERVISORY OPINIONS AND
ITS EFFECTS ON THE HARMONIZATION OF ISLAMIC BANKING
PRODUCTS AND SERVICES**

By



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ABSTRACT

Overall, the aims of this study are to examine the factors that create differences of opinions among *Shari'ah* supervisory bodies and the effects of their opinions on standardization and internationalization of Islamic banking products and services. The study used semi-structured in-depth interview where five respondents from the Middle East and Malaysia *Shari'ah* advisors participated in the interview sessions. The data were analyzed using manual techniques. The findings reveal that indeed, differences in educational background, various schools of thoughts, environment and culture in which *shariah* advisors operate, industrial will and legal requirements in different jurisdictions significantly create differences of opinions among *shariah* advisors on Islamic banking products and services. In addition, the findings also reveal that these differences in opinions among *Shari'ah* advisory bodies create confusions among public and bankers, and negatively affect standardization of Islamic banking products and cross-regions Islamic banking transactions and investment. Moreover, the findings also show that it is difficult for the industry to have Islamic-based products due to high competition from conventional counterpart, poor technology, legal constraints and lack of political will, globalization nature of banking transaction, low level of global awareness on Islamic banking products and issue of moral hazard. Finally yet importantly, the study found that there are possibility for convergence of opinions, standardization of Islamic banking products and services if Islamic countries establish a unified global international *Shari'ah* advisory council, set international basic requirements for Islamic *Shari'ah* advisors, established international Islamic banks research and development centre and increase training and educations of Islamic bankers. Therefore, this study has several implications to the bankers, policymakers and researchers. The policymakers should be able to resolve their political differences and set up unified international advisory council and international research and development center. The bankers should increase training and educations of the workforce as well improving their banking infrastructure to facilitate cross-border transactions.

Keywords: *Shari'ah* views, Islamic banking, products & services, standardization.

ABSTRAK

Secara keseluruhannya, matlamat kajian ini adalah untuk mengkaji faktor-faktor yang mewujudkan perbezaan pendapat antara Shari'ah badan penyeliaan dan kesan pandangan atas piawaian dan antarabangsa bagi produk dan perkhidmatan perbankan Islam. Kajian yang menggunakan temubual mendalam separa berstruktur di mana lima responden dari Timur Tengah dan penasihat Syariah Malaysia telah mengambil bahagian dalam sesi temuduga ini. Data dianalisis menggunakan teknik-teknik manual. Hasil kajian menunjukkan bahawa sesungguhnya perbezaan latar belakang pendidikan, pelbagai aliran pemikiran, budaya dan suasana di mana penasihat syariah beroperasi, kehendak industri dan keperluan undang-undang dalam bidang kuasa yang berbeza dengan ketara membawa kepada perbezaan pendapat di kalangan penasihat syariah ke atas produk dan perkhidmatan perbankan Islam. Di samping itu, dapatan kajian juga menunjukkan bahawa perbezaan pendapat antara Badan Penasihat Syariah tersebut mewujudkan kekeliruan antara orang ramai dan bank-bank, dan memberikan kesan negatif terhadap penyeragaman produk perbankan Islam dan merentas rantau transaksi perbankan Islam dan pelaburan. Selain itu, dapatan kajian juga menunjukkan bahawa ia adalah sukar untuk industri yang mempunyai produk berasaskan Islam disebabkan oleh persaingan yang tinggi daripada konvensional, teknologi yang lemah, kekangan undang-undang dan kekurangan kesungguhan politik, sifat globalisasi transaksi perbankan, rendah tahap kesedaran global pada produk perbankan Islam dan isu bahaya moral. Akhirnya lagi penting, kajian mendapati bahawa terdapat kemungkinan pertembungan pendapat, piawaian bagi produk dan perkhidmatan jika negara-negara Islam menubuhkan kesatuan global Antarabangsa Majlis Penasihat Syariah, menetapkan keperluan asas antarabangsa bagi penasihat Syariah Islam, ditubuhkan penyelidikan antarabangsa bank Islam dan pusat pembangunan dan peningkatan latihan dan pendidikan daripada bank-bank Islam. Oleh itu, kajian ini mempunyai beberapa implikasi kepada bank-bank, penggubal dasar dan penyelidik. Pembuat dasar harus dapat menyelesaikan perbezaan politik mereka dan menubuhkan majlis penasihat bersatu antarabangsa dan pusat penyelidikan dan pembangunan antarabangsa. Pihak Bank perlu meningkatkan latihan dan pendidikan tenaga kerja serta meningkatkan infrastruktur perbankan mereka untuk memudahkan urusan niaga merentas sempadan.

Kata kunci: Pandangan Syariah, perbankan Islam, produk dan perkhidmatan, piawaian.

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TABLE OF CONTENTS

| | |
|---|------------|
| PERMISSION TO USE..... | <u>ii</u> |
| ABSTRACT..... | <u>iii</u> |
| ABSTRAK..... | <u>iv</u> |
| ACKNOWLEDGMENT..... | <u>v</u> |
| TABLE OF CONTENTS..... | <u>vi</u> |
| LIST OF TABLES..... | <u>x</u> |
| LIST OF FIGURES..... | <u>xi</u> |
| LIST OF ABBREVIATIONS..... | <u>xii</u> |
| TRANSLITERATION TABLE..... | <u>xiv</u> |
| | |
| CHAPTER ONE: INTRODUCTION..... | <u>1</u> |
| 1.0 Background of the study..... | <u>1</u> |
| 1.1 Problem statement..... | <u>5</u> |
| 1.2 Research questions..... | <u>9</u> |
| 1.3 Research objectives..... | <u>9</u> |
| 1.4 Significance of the study..... | <u>10</u> |
| 1.5 Scope of the study..... | <u>10</u> |
| 1.6 Organization of the study..... | <u>11</u> |
| | |
| CHAPTER TWO: LITRATURE REVIEW..... | <u>12</u> |
| 2.0 Introduction..... | <u>12</u> |
| 2.1 Development of Islamic banking products and services:..... | <u>12</u> |
| 2.2 Factors of divergence among <i>Shari'ah</i> opinions towards Islamic banking products and services..... | <u>19</u> |
| 2.3 <i>Shari'ah</i> Governance models..... | <u>24</u> |
| 2.3.1 Malaysia <i>Shari'ah</i> supervisory model..... | <u>28</u> |
| 2.3.2 Saudi Arabia <i>Shari'ah</i> supervisory model..... | <u>30</u> |
| 2.3.3 United Arabic Emirates (UAE) <i>Shari'ah</i> supervisory model..... | <u>32</u> |
| 2.3.4 Kuwait <i>Shari'ah</i> supervisory model..... | <u>33</u> |
| 2.4 Standardization of Islamic financial products and services..... | <u>34</u> |

| | |
|---|----|
| 2.4.1 The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) | 34 |
| 2.4.2 Islamic Financial Services Board (IFSB) | 35 |
| 2.5 Divergence on <i>Shari'ah</i> views between Malaysian and Middle Eastern countries about some selected Islamic banking products | 36 |
| 2.6 Effects of divergence among <i>Shari'ah</i> opinions towards Islamic banking products and services | 42 |
| 2.7 Remedies for divergence among <i>Shari'ah</i> opinions towards Islamic banking products and services | 43 |
| 2.8 Conceptual framework | 46 |
| 2.9 Conclusion..... | 47 |
| | |
| CHAPTER THREE: RESEARCH METHODOLOGY | 48 |
| 3.0 Introduction | 48 |
| 3.1 Qualitative research methods | 48 |
| 3.2 Research design..... | 50 |
| 3.3 Population, sampling and sample size..... | 51 |
| 3.4 Research instrument | 53 |
| 3.5 Data collection technique | 54 |
| 3.6 Data analysis | 55 |
| 3.6.1 Analyzing data manually | 56 |
| 3.6.2 Computer-assisted data analysis..... | 58 |
| 3.7 Conclusion..... | 59 |
| | |
| CHAPTER FOUR: FINDING AND ANALYSIS..... | 60 |
| 4.0 Introduction | 60 |
| 4.1 Background of the interview participants | 60 |
| 4.2 Findings and analysis | 62 |
| 4.2.1 Divergence of opinions among <i>Shari'ah</i> scholars and its effects on Islamic banking products and services..... | 63 |
| 4.2.2 Barriers to develop and standardize pure Islamic-based banking products and services | 70 |
| 4.2.3 Remedies to standardized Islamic banking products and services to facilitate global Islamic banking transactions and investment | 75 |

| | |
|---|------------|
| 4.3 Discussion findings in relation to the literature | <u>77</u> |
| 4.4 Conclusion..... | <u>81</u> |
| | |
| CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS | <u>83</u> |
| 5.0 Conclusion and discussion | <u>83</u> |
| 5.1 Contribution to knowledge..... | <u>87</u> |
| 5.1.1 Contribution to the body of literature | <u>88</u> |
| 5.1.2 Contribution to research methodology | <u>88</u> |
| 5.2 Implications and recommendations..... | <u>89</u> |
| 5.2.1 Implications and recommendations for Islamic <i>Shari'ah</i> h supervisory bodies | <u>89</u> |
| 5.2.2 Implications and recommendations for policy makers..... | <u>91</u> |
| 5.2.3 Implications and recommendations for Islamic banks | <u>91</u> |
| 5.3 Limitation of the study | <u>92</u> |
| 5.4 Suggestions for future research..... | <u>93</u> |
| | |
| REFERENCES | <u>94</u> |
| APPENDICES | <u>112</u> |
| APPENDIX A (Interview questions- English) | <u>115</u> |
| APPENDIX B (Interview questions- Arabic)..... | <u>121</u> |
| APPENDIX C (Informed consent form)..... | <u>126</u> |
| APPENDIX D (Data collection support letter)..... | <u>129</u> |
| APPENDIX E (Interview transcript 1) | <u>131</u> |
| APPENDIX F (Interview transcript 2) | <u>148</u> |
| APPENDIX G (Interview transcript 3)..... | <u>158</u> |
| APPENDIX H (Interview transcript 4)..... | <u>170</u> |
| APPENDIX I (Interview transcript 5) | <u>182</u> |
| APPENDIX J (Factors of divergence of opinion among Shari'ah scholars on Islamic banking products and services)..... | <u>190</u> |
| APPENDIX K (Effects of divergence of opinion among Shari'ah scholars on Islamic banking products and services)..... | <u>192</u> |
| APPENDIX L (Barriers to develop pure Islamic-based products and services) | <u>194</u> |
| APPENDIX M (Barriers to standardize Islamic banking products and services) | <u>196</u> |

APPENDIX N (Remedies for development and standardization of Islamic banking products and services)..... 198
APPENDIX O (Glossary)..... 200



LIST OF TABLES

| | |
|---|----|
| Table 2.1: Conventional banks versus Islamic banks | 18 |
| Table 2.2 Islamic major school of thoughts and their sources of <i>Shari'ah</i> | 21 |
| Table 2.3 <i>Shari'ah</i> governance regulation in the GCC..... | 26 |
| Table 2.4 <i>Shari'ah</i> governance regulation in the Malaysia, Pakistan and Sudan | 27 |
| Table 2.5: Classical <i>tawarruq</i> versus organized <i>tawarruq</i> | 40 |
| Table 2.6: Conceptual framework | 46 |
| Table 4.1: Demographic characteristic of the participants | 61 |
| Table 4.2: Divergence of opinion among <i>Shari'ah</i> scholars & Effects on Islamic banking products and services..... | 63 |
| Table 4.3: Barriers to develop and standardize pure Islamic-based banking products and services..... | 70 |
| Table 4.4: Remedies to standardized Islamic banking products and services..... | 75 |
| Table 4.5: Relationship between literature and findings | 78 |

LIST OF FIGURES

| | |
|--|----|
| Figure 2.1: <i>Shari'ah</i> h contracts | 17 |
| Figure 2.2 <i>Shari'ah</i> governance in Malaysia..... | 30 |
| Figure 2.3 <i>Shari'ah</i> governance in Saudi Arabia..... | 31 |
| Figure 2.4 <i>Shari'ah</i> governance in UAE..... | 32 |
| Figure 2.5 <i>Shari'ah</i> governance in Kuwait..... | 33 |



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LIST OF ABBREVIATIONS

| | |
|--------|---|
| AAOIFI | Accounting and Auditing Organization for Islamic Financial Institutions |
| ARCF | Arbitration and Reconciliation Centre for Islamic Finance |
| BBA | <i>Bai Bithamin Ajil</i> |
| BCL | Banking Control Law |
| BIMB | Bank Islam Malaysia <i>Berhad</i> |
| BNM | Bank Negara Malaysia |
| BSN | Bank <i>Simpanan Nasional</i> |
| CIBAFI | General Council for Islamic Banks and Financial Institutions |
| CMA | Capital Market Authority |
| DIB | Dubai Islamic Bank |
| GCC | Gulf Cooperation Countries |
| IDB | Islamic Development Bank |
| IFIs | Islamic Financial Institutions |
| IFSA | Islamic Financial Services Act |
| IFSB | Islamic Financial Services Board |
| IIFA | International Islamic <i>Fiqh</i> Academy |
| IIFM | International Islamic Financial Market |

| | |
|--------|--|
| IILMC | International Islamic Liquidity Management Corporation |
| IIRA | International Islamic Ratings Agency |
| IIUM | International Islamic University Malaysia |
| INCEIF | International Centre for Education in Islamic Finance |
| IRTI | Islamic Research & Training Institute |
| ISRA | International <i>Shari'ah</i> Research Academy for Islamic Finance |
| KFH | Kuwait Finance House |
| LMC | Liquidity Management Centre |
| OIC | Organization of Islamic Cooperation |
| P | Page number |
| Pr | Probe |
| Q | Question |
| SAC | <i>Shari'ah</i> Advisory Council |
| SAMA | Saudi Arabian Monetary Agency |
| SSB | <i>Shari'ah</i> h supervisory board |
| UAE | United Arab Emirates |
| BLR | Base Lending Rate |



Transliteration table

| Transliteration | Arabic letter |
|-----------------|---------------|
| 'a, 'i, 'u | أ, إ, ؤ |
| b | ب |
| t | ت, ث |
| th | ث |
| j | ج |
| h | ح |
| kh | خ |
| d | د |
| z | ذ |
| r | ر |
| z | ز |
| s | س |
| sh | ش |
| s | ص |
| d | ض |
| t | ط |
| z | ظ |
| e | ع |
| gh | غ |
| f | ف |
| q | ق |
| k | ك |
| l | ل |
| m | م |
| n | ن |
| h | ه |
| w | و |
| y | ي |

CHAPTER ONE

INTRODUCTION

1.0 Background of the study

The Islamic laws (*Shariah*) are comprehensive and covered all aspects life including economic and financial activities. *Shari'ah* guides Muslims behavior and actions (Abdul Aris et al, 2013). However, the absence of Islamic banking led Muslim customers to involve in conventional financial practices for centuries. This is due to the practical initiative of conventional banking before the establishment of Islamic Banking. While conventional banking products and services mostly focuses on interest, which is totally forbidden in Islam, Islamic banking is interest free. Therefore, Muslim countries attempted to develop their own Islamic financial system according to Islamic principles, or at least to create alternative financial system to avoid conventional practices, which ended with establishment of Islamic financial institutions especially Islamic banking (Malik, Malik, & Mustafa, 2011).

The first Islamic bank founded was Mit Ghamr bank, which was established in Egypt in 1963. The bank had adopted the concept of profit and loss sharing in performing its intermediary task of transmitting fund from surplus units to deficit units (Walker & Childs, 2015).

From 1970s and above, many Islamic financial institutions were established (Vayanos, et al. 2008). For instance, Dubai Islamic Bank (DIB) was formed in 1975 with new investment techniques, strategies and product development (Ahmad, 2008). Later on in 1980s Islamic banking reached South East Asian region when Bank Islam Malaysia Berhad in 1983 was established as a Malaysian's first national Islamic bank (Bimb, 2010). Then

Citibank in Bahrain started to provide Islamic banking products and services through the Islamic section in 1996 named Citi Islamic Investment (Citi Islamic Investment Bank, 2013). Less than a decade later, the first Islamic commercial bank was established in a country dominated by Non-Muslim in 2004 which was Islamic Bank of Britain (Cameron, 2013).

Islamic banking has spread vastly over the years across the globe. Those regions that are experiencing significant growth are Middle East, South East Asia and North Africa. One of the main reason is perhaps, the existence of the larger number of Muslims in these regions. However, to bind these regions together on the basis of same religion would be an oversimplification. Even within these regions, significant variations exist between the products and processes of Islamic Banking.

Currently, more than 600 Islamic financial institutions across the globe offering financial products and services –including banking products and services- in accordance to *Shari'ah* principles exist (Nelson, 2014). These Islamic financial institutions spread over 75 countries. Nevertheless they are mostly located in Southeast Asia and Middle East (Shaharuddin et al., 2012). For that reason, their assets is expanding due to such increase around the world. For example, the total value of assets own by Islamic finance globally, is estimated to be around \$2 trillion (Walker & Childs, 2015), This include the value of global Islamic banking assets, reached an estimated value of \$1.53 trillion (Ahmed, 2015). This consist of 80% Islamic banks, as well as Islamic windows which operate by conventional banks, 15% is *sukuk* (Islamic bonds), 4% is Islamic mutual funds and only 1% *Takaful* (Islamic insurance) (Mcaughtry, 2015).

Islamic banking is growing gradually among the said number of conventional banking. It is expanding not only among the nations with majority of Muslim population but also among the nations where Muslims are minorities, for example, United Kingdom, Japan, and India (Sol, 2007).

The secret behind this remarkable spread is that, Islamic finance is more balanced and stable than conventional, simply because: (i) prohibition of speculation in Islamic financial system (ii) financing in Islamic financial system must be asset based, which means it is fully collateralized; and (iii) it is established on moral statues (Kammer, Norat, Piñón, Prasad, & Towe, 2015).

Although Islamic banks perform similar functions as their conventional counterparts such as accepting deposits and provides financing to the deficit units, but the Islamic principles such as prohibition of *riba*' (usury), *maisir* (gambling), *gharar* (uncertainty), etc. embedded in these products and services. For instance; Islamic bank accepts deposits in saving and investment accounts using Islamic based contracts, such as *wadia'h* and *mudarabah* (profit sharing) rather than interest (Abdul Aris et al., 2013).

For the diversity of Islamic financial products, Islamic financial institutions offered a wide range of products. Which include deposit, savings and investment deposits products and extending to financing products and services, such as property financing, hire purchase, project financing, education financing, working capital financing and other financing products (KFH, 2013).

On the aspect of product, Islamic financial products and services are innovated or adjusted to comply with the *Shari'ah* framework (Ismail, 2011). This translate to an increase in the number of Islamic banking products and services to be more than 50 Islamic

products and services currently offered by the Islamic banks. These products relied on differences on *Shari'ah* concepts, like; *musharakah*, *murabahah*, *mudarabah*, *bai' bitthaman ajil*, *ijarah*, *istisna'*, *qard hasan*, etc. (Bahari, 2009).

The basic tenets of Islamic banking are structured upon the avoidance of *riba* (interest), *gharar* (uncertainty), *maisir* (gambling), and *haram* (prohibited) industries, which include those products which are related to pork, alcoholic beverages, and pornography (Sol, 2007). In addition, Oracle (2012), stressed that Islamic banking models are built upon the foundation of compliance with *Shari'ah* .

From this regard, there is *Shari'ah* advisory board which performs a significant role in terms of development of Islamic banking products and services. However, what is considered as a weakness in Islamic banking facilities is lack of standardization of system to manage or supervise Islamic banks by *Shari'ah* advisory committees for assessing Islamic banking products and services (Alaro, 2009). There are difference of opinions among *Shari'ah* advisors with respect to Islamic banking products and services, which makes the operation and understanding the process more complicated (Farhan, Wajid, & Rizwan, 2012). For instance, in the Middle East Islamic banks employed their *Shari'ah* advisors, who will advices them on issues that are related to products development. However, what seems to be a missing there is no unified high authority of *Shari'ah* advisory council at the Central Bank. Which could lead to standardization of Islamic banking products and services in that particular country. This creates problem to Islamic banks within the same country as different Islamic banks offer different products and services. On the other hand, South East Asian countries such as Malaysia has a unified

Shari'ah advisory council at the central bank, to ensure standardization of all products and services in the country (Wilson, 2009).

In addition, there is lack of standardization of Islamic banks products and services at the international level across different jurisdictions, this is because of differences on opinions among scholars across different regions (NawalKasim, NuHtay, & Salman, 2013).

1.1 Problem statement

Shari'ah governing bodies have played significant roles in the development of Islamic banking and finance. The bodies review and evaluate the concept and structure of Islamic banking products and services. Others functions of the bodies are monitoring the banks operations, offering of advice to all related parties and provision of *Shariah* guideline in other to ensure that Islamic banks are *Shariah* compliant in all aspects.

Despite the importance of *Shariah* governing bodies to Islamic institutions, the bodies and their *Shariah* advisors across different jurisdictions create enormous challenges to Islamic banking industry. There are shortages of qualified *shariah* advisors. These *Shariah* advisors have different educational background and *Shariah* governing bodies follow different schools of thoughts. These factors led to ineffective *Shariah* governance of Islamic banks, different interpretations of sources of *Shariah* and different *fatwa* on Islamic banking products and services. Thus, their differences of opinions and *fatwa* on Islamic banking products and services confuse bankers, customers and investors. Moreover, it makes cross-border transaction and investment difficult.

According to Kammer et al. (2015) *Shari'ah* advisors are scarcely spread across numerous financial institutions and this led to ineffective *shariah* governance of Islamic banks. Moreover, since *shariah* governing bodies follow different schools of thoughts they often adopt different methodology in understanding sources of *shariah*, in deriving *shariah* rules and *fatwa* on Islamic banking products and services. For instance, *shariah* governing councils in Southeast countries such as Malaysia allow *bay al-dayn* (debt trading) but Middle Eastern scholars disapproved the contract. This becomes a major obstacle for Middle Eastern investors not to invest in Malaysian capital markets. In addition, in Malaysia jurisdiction, Islamic funds cannot be leaked into conventional securities and that is clearly stated in Bank Negara Malaysia *Shari'ah* Advisory Council (henceforth called SAC) resolution. The SAC, in its 58th meeting dated on 27 April, 2006, barred Islamic financial institutions from granting financing to companies or individuals whose activities clearly involve non-*Shari'ah*-compliance elements or activities. Meanwhile in Gulf Cooperation Countries (GCC), Islamic banks can boost funds to recapitalize *riba*-based institutions or utilize the funds for activities which might not comply with *Shari'ah* investment criteria (Shaharuddin et al., 2012). Another interesting area to note is that that SAC of Bank Negara Malaysia allows stipulation of *ibra'* in the contract, while some *Fatwa*-issuing bodies in Middle East do not allow it, because it resembles *riba al-jahiliyyah*, which is strictly prohibited by the Qur'an (Laldin et al., 2012).

In addition, *Shari'ah* governing bodies have different rulings in the term of conditions for Islamic banking product such as; *murabahah/ tawarruq*, accepted bills/ bills of exchange, *ijarah muntahyah bittamleek*, and *bai' addayn*. Furthermore, there are different opinions towards two transactions in one contract, like; *ijarah* and *tamleek*, *murabahah*

and *wakalah*, etc. these differences of opinions among *Shari'ah* governing bodies in different jurisdictions affect cross-border financial harmonization (Kammer et al., 2015).

Tajudin (2010) concludes that disputes on *Fatwas* and *shariah* rulings are visible when certain contracts is accepted in a particular jurisdiction but not accepted in other jurisdictions. This affect standardization of Islamic banking products and services, practices and system across different countries. Moreover, it is not surprising that differences in *Shari'ah* interpretations of Islamic sources arises from adopting different Islamic school of thoughts. Yet, there is limited studies that examine the effective of these differences of opinions and *fatwa* on the standardization and internationalization of Islamic banking products and services.

Another issue is that this study attempts to investigate the effect of regulatory framework governing Islamic banks in different jurisdictions. Currently, there are a number of regulatory frameworks governing Islamic financial institutions across different jurisdictions. These frameworks and rules can often be contradictory and lead to differences in the application of Islamic banking products and services (Oracle co., 2012).

For example, Malaysia adopted dual banking system (Abdul Aris et al., 2013), where Islamic banks have to comply with both the Islamic law and the conventional banking laws. While in some other Muslim countries such as Sudan Islamic banks adopt only single regulatory framework, which is the only system in the country (Kammer et al., 2015). Moreover, in secularized countries such as United Kingdom, Islamic banks operate under purely conventional banking laws. These differences in regulatory framework significantly affect standardization of Islamic banking products and services, yet there is hardly enough studies that examines their effects. El-gamal (2007) argued that it is the time to review

some of the regulatory and legal frameworks, because of the advancement in technology, which could affect the financial system and practices. It is known fact that even in Islamic jurisprudence that Imam *Shafi'e* developed one set of jurisprudence resolutions in Iraq, but he changed that system when he traveled to Egypt regarding the differences in time, place and culture.

Finally, more importantly, despite efforts by many international Islamic financial organizations such as Islamic Financial Services Board (IFSB), Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), International Islamic Financial Market (IIFM), etc. to set international standard rules and regulations to facilitate international Islamic banking transactions, still their standards are not adopted across all the jurisdictions (Tajudin, 2010). For example, AAOIFI *Shari'ah* standards are part of binding regulatory requirement in some jurisdictions such as Bahrain, Sudan, Pakistan, and Syria. Islamic Development Bank Group and various financial institutions also adopt them. In addition, AAOIFI *Shari'ah* standards have also been used as basis of national *Shari'ah* guidelines in countries such as Indonesia and Malaysia (Nizam & Khairul, 2012). Nevertheless, AAOIFI *Shari'ah* standards are not recognized or enforce in other jurisdictions such as Iran. Thus, cross-border international transactions are difficult for Islamic financial institutions, as there are lack of internationally recognized *Shari'ah* standards for Islamic banking transactions (Kammer et al., 2015). Therefore, this study attempts to fill in the research gap by examining the factors that create differences of opinions among *shariah* advisors and the effects of these differences of opinions on standardization of Islamic banking products and services via cross-border Islamic banking transactions.

1.2 Research Questions

On the basis of above research problem, this study attempts to provide answers to the following research questions:

- a) What are the main factors that create differences of opinions among *Shari'ah* advisors and how do their differences in opinions affect standardization of Islamic banking products and services?
- b) Is it visible to create pure Islamic-based banking products instead of Islamisation of conventional banking products and services?
- c) How Islamic banking products and services can be standardize to facilitate global Islamic banking products and investment.

1.3 Research Objectives

To answer the research questions, this study attempts to achieve the following research objectives:

- a) To examine the factors that influence differences of opinions among *Shari'ah* advisors and effects of their opinions on Islamic banking products and services.
- b) To identify the barriers on the development and the standardization of pure Islamic-based banking products and services.
- c) To examine how Islamic banking products and services can be standardized to facilitate global Islamic banking transactions and investment.

1.4 Significance of the Study

This study is significant to the advancement of knowledge, policy makers, Islamic financial institutions and researchers. The study will improve the store of knowledge in the field of Islamic finance.

The development and standardization of Islamic banking products and services are crucial for globalization of Islamic finance. Therefore, this study examines way to standardize Islamic banking products and services. This study also helps to contribute to research methodology as it employed qualitative research method to identify root causes of differences on products offer by Islamic banks and remedies for these problems.

Furthermore, the analysis and findings will provide way forward to policy makers, mainly central banks across different jurisdictions to find common ground to standardize Islamic banking products and services.

Finally, having *Shari'ah* standard views for Islamic banking products and services all over the globe is a good opportunity to gain the public trust, and they will efficiently practice investment activities with Islamic banks. This will increase cross-border or regional investment.

1.5 Scope of the Study

This research focuses on two main aspects of Islamic banking; which are Islamic banking products and services and *Shari'ah* advisors views towards those products and services. It discusses why Islamic banks in Muslim countries offer same products and services but using different *Shari'ah* based contracts which could create confusion among customers.

GCC countries and Southeast Asian countries have been selected, because most of Islamic banks are located in these two regions (Matoussi & Grassa, 2012; Khan & Bhatti, 2008).

Secondly, the divergence of opinions on *Shari'ah* rulings has significant effects on these two regions. In addition, the researcher have selected some Islamic banking products that are controversial between these two regions. They include: *murabahah*/ organized *tawarruq*, *hibah on tawarruq*, *ijarah muntahiah bittamleek*, *bai' al-dayn* / Accepted Bills-I / Bills of exchange purchase-I, *kafalah bil-ajr*, *ibra'*, *gharamah* on debt, and Products that contain two transactions in one contract.

1.6 Organization of the Study

The study is organized in five chapters as follows. Introduction as Chapter one. Chapter two literature on differences between *Shari'ah* scholar's views on Islamic banking products and services. Next, Chapter three focused on the research methodology that has been used. Chapter four provides the results and findings of the study. Finally, conclusion and recommendations are provided in Chapter five.

CHAPTER TWO

LITRATURE REVIEW

2.0 Introduction

This chapter reviewed some literature in respect of some selected Islamic banking products and services combined with *Shari'ah* views on these products and services. The chapter is divided into nine sections; section one examines the development of Islamic banking products and services. Section two reviews some factors that led to different *Shari'ah* views. Section three discusses *Shari'ah* governance, roles and models. Section four reviews attempt by International Islamic organizations to standardize Islamic financial products and services. Section five discusses some effects of divergence among *Shari'ah* advisory bodies on Islamic banking products and services. Section six examines divergence on *Shari'ah* views between Malaysia and Middle Eastern countries on some selected Islamic banking products. Section seven provides remedies for these differences. Section eight displays the conceptual framework, and finally section nine presents summary and conclusions.

2.1 Development of Islamic banking products and services

The purpose of Islamic financial practitioners is not just to replicate the conventional financial products and services in an Islamic way, but to create new original financial products and services which appeal to both of Islamic banks and investors, even if this leads to slower growth (Goud, 2009).

The absence of product development and innovation model that conceptualized the originality and uniqueness of *Shari'ah* complaint Islamic financial products and services

led to re-structuring of conventional financial products and services, which were adjusted to comply with *Shari'ah* rules and to avoid its prohibitions. In that respect the *Shari'ah* compliance financial products and services are nothing rather than “mimic” or “replicate” of its conventional counterparts if not guided by *Shariah* properly (Tajudin, 2010).

Farhan et al., (2012) stated that Islamic scholars should not spend their precious time to transform conventional products and services into Islamic. They have to develop their own products and services, which are originated from Islamic rules and regulation. According to Zulkhibri and Majid (2012), generally, there are four major methods which have been adopted by Islamic financial institutions in the development of Islamic banking products and services in most of the countries to ensure the compliance by Islamic financial institutions: i) standardized products defined by the government agencies, such as Bank Negara Malaysia (BNM) but endorsed by *Shari'ah* Advisory Council (SAC) which is centralized *Shari'ah* body to whole Islamic banks and *Takaful* companies in Malaysia; ii) products developed by Islamic financial institutions but approved by *Shari'ah* Board of regulatory authorities; iii) products developed by international Islamic organizations and adopted by regulatory authorities, which are binding for some member countries, such as; the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), International *Shari'ah* Research Academy for Islamic Finance (ISRA), and International Islamic *Fiqh* Academy (IIFA); and. iv) products approved individually by *Shari'ah* committees of respective Islamic financial institutions, which are binding for that particular bank exclusively, but are used as a guidance for other Islamic financial institutions.

In general Islamic banking products and services are developed based on Islamic contracts (Hussin, 2010). These Islamic contracts are categorized as exchanged-based contracts, partnership-based contracts, security-based, and charitable-based contracts.

Partnership based contracts include *mudarabah* and *musharakah*. In *mudarabah* whereby the agent (bank) gives capital and the recipient uses skill and aptitudes benefits are shared, but losses would be carried out by the capital provider who does not have the privilege to meddle in the administration of the business operation, unless carelessness, abuse, or rupture of agreement which ought to be demonstrated (Kammer et al., 2015). Islamic banks uses this contract to accept deposit in investment accounts and providing financing, such as project financing. In general investment accounts depositors become capital providers, and bank the fund manager, this to enable the Bank to carry out business enterprise within the *Shari'ah* principles whereby both parties should agree to share the profits from investment according to a stated mutually agreed ratio (Arshad & Ismail, 2011).

However, *musharakah* means profit and loss sharing where two parties financed a certain venture and would share profits and losses arise from such business. One popular kind of *musharakah* is diminishing partnership (*musharakah mutanaqisah*) (Abu, 2013), which is a joint partnership contract between the financial institution and its client. The client starts to purchase the share of the financial institution until he is going to own the whole property. In addition, the financial institution leases its share to the client at the same time. Furthermore, the customer needs to guarantee that he will purchase that share from the bank, hence this contract consists a combination of partnership of a business, buying and selling the share of the property and leasing (Meera & Razak, 2009).

For example, when a client attempts to buy a house, he has to proceed to the bank and fill up the application form. If this application is accepted by the bank then the bank and the customer are going to purchase the house where the bank come up with 90 percent of the total price while the customer pays only 10 percent. Based on this, the bank has ownership of 90 percent of the property and the customer owns only 10 percent of the house. After the purchase, the bank leases its portion to the customer. Then the client moves into the house and pays the rent of the house monthly and he progressively buys the share of the bank. So, every month the client pays the house rent plus a certain fixed amount to buy the bank's shares. Eventually, the client buys the entire shares of the bank and the bank is going to transfer the ownership to the client. (Osmani & Abdullah, 2010).

While some contracts are trade based contracts, like; sales with mark up and deferred payments (*murabahah*), which is one of the well-known method in distributing fund in Islamic bank through the funding product of *murabahah*, which implies a trading with cost plus the profit contracted. The characteristics of *murabahah* are that the seller has to inform the buyer about the price of product that purchased and charged fixed amount of profit on the cost (Prabowo, 2009). *Murabahah* is one of the products of Islamic banking which attracted many people, because of this contract becomes easy and precise alternative for a variety of financing or loans in the conventional banking which is certainly loaded with *riba* (Shofawati, 2014). According to Cole and Soufani (2013) *murabahah* is similar to a cost-plus contract where the profit margin is added to the cost that was endured by the seller. The cost and profit margin is expected to be stated clearly in the contract. This kind of contract could help individuals who do not have enough capital. Both the financier and the buyer of the commodity, product, or raw material, real estate, fix the mark-up profit

margin. The time value of money is taking a portion of the profit margin. In this case, the bank cannot charge any penalty or interest on late payment, and not allowed to any reparation outside the financial contract, or any purchases with deferred delivery of the products, such as *Salam* for basic products and *istisna'* for manufactured products, and *ijarah* (lease) with different options to buy.

In addition, some of contracts are supporting or security based contracts (Hussin, 2010), such as *wadi'ah* (safe-keeping contracts) which is defined as empowerment to someone for keeping the owner's property explicitly and implicitly. It also can be divided further into two types namely *wadia'h yad amanah* and *wadia'h yad damanah*. *Wadia'h yad amanah* is trust contract where the trustee will be entitled to keep the funds of the depositors in his or her safe safekeeping by explicit or implicit terms. However, there is pattern shift from a trust contract to a guaranteed *wadia'ah* contract. The modification of the *wadia'h yad amanah* contract is made by connecting the contract *wadi'ah* with a guaranteed element. Those guaranteed elements converts the original concept of *wadi'ah*, which is based on trust, "to guaranteed to custody", also known as *wadia'h yad damanah* (Ibrahim & Noor, 2011). The element of guarantee is deemed necessary since the bank is allowed to utilize the funds at its own risk. However, some of the depositors decide to withdraw their money at the end; the bank needs to reassure that the money is made obtainable upon demand. The profit gained from utilization of the deposit funds belongs to exclusively to the bank, and the bank may voluntarily choose the share the profits obtained with depositors as a form of discretionary *hibah*, in some cases structured based on the commodity *murabahah*, *wakalah* unrestricted investment and *mudarabah* general investment (Qaed & Qaed, 2014).

This is in addition to *wakalah* (the agency contracts), which are mostly use in money market transactions.

Finally, other contracts are charitable contract based, for example; *hibah* (gift contract) which is defined as a form of a grant either in *a'ain* (its physical form) or otherwise. It covers gifts and alms. All three terms have similar meanings. The only difference is in the purpose of the gift. Alms are grants aimed for reward in the hereafter, and generally given by the rich to the poor people. A gift is an offer to honor someone and is usually related to certain matters (Muda, 2008). In addition, it is *tabarru'* (volunteer contracts) as general contract could be described as proffering someone's possession to another -either in the physical form or its benefits- without consideration, mostly as an act of generosity or courtesy, either with an immediate effect or taking place in the future (Noordin, 2014). *Tabarru'* contract is used in *takaful* operation (Rahman & Mohamad, 2010).

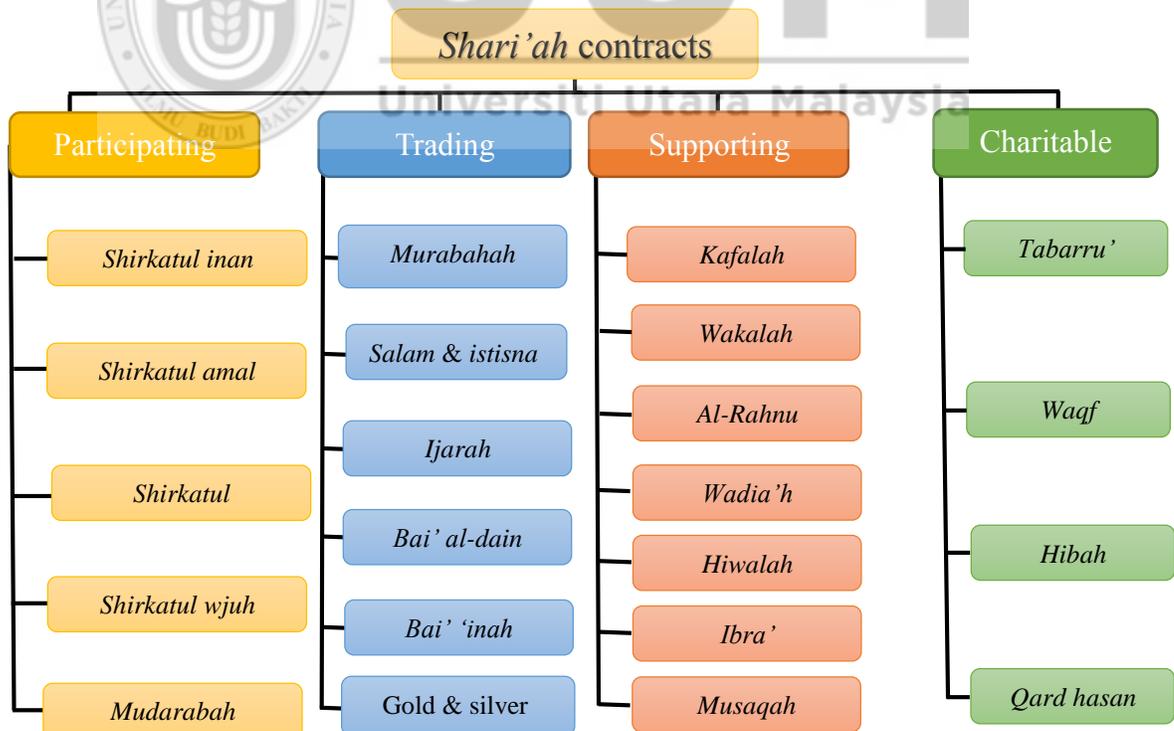


Figure 2.1
Shari'ah contracts
 Source: modified Omar (2010) and Hussin (2010)

In practice, the differences between Islamic banks and conventional banks are relatively small. Reasons include: i) many conventional banking products and services can be re-engineered as *Shari'ah*-compliant products; and ii) Islamic banks differ in the level of risk sharing (Mejía, Aljabrin, Awad, Norat, & Song, 2014). From the Islamic banking system with conventional structure some very initial differences come to existence, which can be summarized as follows:

Table 2.1

Conventional banks versus Islamic banks

| | CONVENTIONAL BANKS | ISLAMIC BANKS |
|--------------------------------------|---|--|
| Functions and operating modes | Fully based on man-made principles. | Must be based on <i>Shari'ah</i> principles. |
| Investor assurance | Predetermined rate of interest. | Investor as capital provider and management as entrepreneur share the risk, hence profit rates are only indicators. |
| Aims | Maximizing profit without any restrictions. | Maximizing profit subject to <i>Shari'ah</i> restrictions. |
| Rules of accounts | Governed by product terms and conditions. | Governed by undertaking contracts, determining the terms and conditions. |
| Fundamental function | Lending and borrowing with compounding interest. | Participation in partnership business. Important to understand the customers' business. |
| Relationship | Creditors and debtors. | Could be Partners, Investors and traders, Buyers and sellers. |
| Deposits rate and guarantee | Fixed interest rates and deposits are fully guaranteed. | Non-guaranteed return may be given as <i>hibah</i> (gift) and rate of return must be indicative rate. Only <i>wadia'h</i> deposit accounts are guaranteed. |
| Loan / financing rate | Usually based on floating rates, BLR +/- rates. | Fixed profit mark-up (<i>bai bithamin ajil, murabahah</i>) Floating profit rates (<i>musharakah, ijarah</i>) |

Source: (Abdul Aris et al., 2013).

2.2 Factors of divergence among *Shariah* opinions towards Islamic banking products and services

The divergences among the *Shariah* scholars have become a major challenge in implementing and developing Islamic products and services (Hamza, 2012). There are several factors contributed to a divergence of juridical opinions within the community of companions and, eventually, the formation of the first categorisation of schools of law based on their methodology of juridical reasoning (*ijtihad*). The schools, or rather ‘tendencies,’ were the ‘supporters of opinion’ (*ahl al-ra’Ī*) and the ‘supporters of narration’ (*ahl al-athar*), and they are briefly discussed in various contemporary accounts of the ‘evolution of *fiqh*.’ The factors that led to the formation of these two ‘tendencies’ could be summarised in three factors, namely, political/sectarian conflicts, migration of the companions, and personalities of the imams of the time (Auda, 2007).

There are four main schools of thoughts in Islam, which are the most well-known among Muslims. Which are; 1) *Hanafi* school, which is the oldest one. It derives its name from *Abu Hanifa*, died in 767. 2) *Maliki* school, which was founded by *Malik ibn Anas*, who died in 795 in Medina. 3) *Shafi’e* school. Its founder was *Muhammad ibn Idris al-Shafi’e*, an Arab who died in 819 or 820 in Egypt, and 4) *Hanbali* school, founded by disciples of *Ahmad Hanbal*, who died in 855 in Baghdad. Each of these schools of thoughts adopted different preference according to the secondary sources to drive *Shari’ah* rules, and the school itself is adopted by different jurisdictions (Visser, 2009).

Scholars of jurisprudence (*Juris consults*) divide the sources of the *Shari’ah* into main or primary sources, and secondary sources. The primary sources are 1. *Al-Quran* 2. *Al-Sunnah* 3. *Qiyas* (analogical deductions), and 4. *Ijma’* (consensus). The secondary sources

are: 1. Revealed laws preceding the *Shari'ah* of Prophet (peace be upon him) 2. The fatwa of Companions 3. *Istihsan* (equity in Islamic Law) 4. *Maslahah mursalah* (consideration of public interest) 5. *Urf* (custom) 6. *Istishab* (presumption of continuity), and 7. *Sadd al-zara'ii* (blocking of means) (Hussin, 2010). For instance, Visser (2009) cited that the *Hnafi* School is the most flexible of the four schools, emphasizing private interpretation, *ra'i*, juristic interpretation, *istihsan*, and reasoning by analogy, *qiyas*. *Ijma'*, consensus. Hanafi furthermore grant a much larger place to custom, *urf*, than the other schools. Aida (2009) stresses that Malikies prefer Madinah traditions. In addition, it seems to have given priority to *qiyas* over *ahadith* with a weak chain of transmitters. While Shafii'es emphasizes the common opinions of qualified Islamic jurists in each era and fully accepted consensus (*ijma*), but rejected the personal view of scholars (*ijtihad* in the form of *ray*), juristic interpretation (*istihsan*) (Visser, 2009). Although they have some differences in secondary sources regarding detail small matters but there are no differences in principles and faith fundamentals. However, according to Bahari (2009) some GCC scholars are in favored to practice comparative study method of *Fiqh* in order to identify the valid principle or nearest valid principle of *Shari'ah* for Islamic finance regardless of which *Mazhab* they belong.

These different schools differ in their opinions in many specific rulings although they agree on most important *Shari'ah* issues. To standardize *Shari'ah* rulings the precedence of one school of thought over the other, which cannot be universally acceptable (Zaidi, 2012).

Table 2.2

Islamic major school of thoughts and their sources of Shari'ah

| Hanafi | Maliki |
|--|--|
| <p>If narration is 'ahad</p> <ol style="list-style-type: none"> 1. Qur'an 2. Sunnah 3. Companions opinions 4. Analogy 5. Preference 6. Consensus 7. Custom 8. Presumption of continuity <p>If analogy is 'inappropriate'</p> | <p>If narration is 'ahad</p> <ol style="list-style-type: none"> 1. Qur'an 2. Sunnah 3. Companions opinions 4. Madinah's tradition 5. Analogy 6. Interest 7. Blocking the means 8. Custom 9. Presumption of continuity <p>Via preference, if applies</p> |
| Shafi'e | Hanbali |
| <p>If narration is 'ahad</p> <ol style="list-style-type: none"> 1. Qur'an 1. Sunnah 2. Consensus (of companions) 3. Companions opinions 4. Analogy 5. Presumption of continuity <p>At one level</p> | <ol style="list-style-type: none"> 1. Qur'an 2. Sunnah 3. Companions opinions 4. Consensus 5. Analogy 6. Interest 7. Preference 8. Blocking the means 9. Presumption of continuity |

Source: (Auda, 2007)

Besides the four great law schools there have been others. A very strict one was the Zahiri school, whose founder Abu Sulayman Daud al-Zahiri died in 884. Laws should according to the Zahiri school be exclusively based on the literal meaning, *zahir*, of the *Quran* and the *Sunna*, excluding *qiyas*, *ray* and *istihsan*. The only *ijma* that is legally valid is the consensus of the Companions (Visser, 2009).

There some other factors that lead to differences of views would be more prevalent due to the diversity in the background, culture, and society that will inevitably result in various interpretations on a particular issue (Ibrahim, 2015). In addition, the competition and globalization of conventional banking system, as well as people's attitude (Hussin, 2010). Hamza (2012), stressed that the fact that each bank has its own *Shari'ah* board amplifies the lack of consistency despite the fact that often the same *Shari'ah* board members sit in several Islamic bank. Such situation creates a lack of efficiency and coherence throughout the Islamic financial industry. The environmental factors increase the disparities between the *Shari'ah* boards like the strong competitive environment in which Islamic bank tend to have monopolistic behavior. Then the circles of intellectuals and religious organizations have a significant influence on the *Shari'ah* board. There is also the degree of practice and religious education of the population which appears to be another influencing factor. It seems that more a community is educated religiously; it is more demanding about the product compliance to the *Shari'ah*.

Internationally, there are continuous arguments among *Shari'ah* scholars opinions on the compliance to the *Shari'ah* principles. Sol (2007) stated that some *Shari'ah* scholars have concerned about the permissibility of establishing Islamic windows or Islamic subsidiaries, while those conventional banks with Islamic windows might use capital from conventional banks, this means there is no guaranty that the provided funds for these Islamic windows are generated from Islamic or *Shari'ah* compliance sources.

According to Zulkhibri and Majid (2012) there is need from micro level perspective, to have one agreed view among *Shari'ah* views regarding some Islamic financial activities whether compliance to the *Shari'ah* principles or not. In the past both practitioners and

customers were facing difficulties, which led to restriction of Islamic finance and banking practices in many jurisdictions. Therefore, creating a consensus among *Shari'ah* views on Islamic finance is necessary. At a macro level, the industry has access to only a handful of acknowledged and accredited scholars who have the necessary combination of understanding of *Shari'ah* and knowledge of banking operations and products. This limited availability can restrict product innovation, this despite of globalization has a great impact on its spread while International banks treat Islamic financial products from a purely marketing perspective, (Al-Salem, 2009).

The main problem stated by Farhan et al. (2012) is that there is a lack of harmonization among the *Shari'ah* scholars who are in charge to issue resolutions or Fatwa about Islamic financial products and services, one of the obstacles that hindering the way of Islamic bank is the divergence among the *Shari'ah* scholars, this creating cloudy environment for both of consumers and investors whether certain products and services are compliance to the *Shari'ah* principles. Even common Muslims are less aware about the diversity products offered by Islamic banking, (Zulhibri & Majid, 2012). Actually *Shari'ah* supervisory institutions in different jurisdiction try to rely on their *Shari'ah* scholars which may lead to the contradiction in views on financial products and services. Thus, financial products and services that are permissible in some nations might considered as no *Shari'ah* compliance in others. The existed lack of uniformity in standard *Shari'ah* governance application is broadly reflects divergence in *Shari'ah* methods across various regions. This is because of the limitation of qualified scholars at the country level, and the rapid development of the Islamic banks.

According to Kammer et al. (2015) in some cases regulators do not always have the capability (or willingness) to ensure that banks have in place a sound framework for *Shari'ah* compliance—nor do they take responsibility for assessing whether *Shari'ah* advisors are fit and proper. Furthermore, different interpretation among *Shari'ah* views may lead to a lack of harmonization both within and across borders. Large differences in practice across countries and limited standardization create additional uncertainty for Islamic finance customers. Scarcity of *Shari'ah* scholars with financial sector expertise, and a slow pace of innovation are also weighing on the industry. Matoussi and Grassa (2012) conducted a study on 90 largest Islamic banks in South East Asia and GCC countries. Their finding reveal that *Shari'ah* advisors with accounting or finance knowledge positively influence Islamic banks performance. Thus, the competence of the *Shari'ah* Supervisory Board helps the management of Islamic banks to improve their products and services and therefore enhance the financial performance of the bank.

In contrast, there are some situations whereby financial institutions seeking for a *Fatwa* regarding a certain financial product contacts the *Shari'ah* advisor whom they assume will consider such a product as *Shari'ah* compliant and eventually issue that *Fatwa* for them, which described as “*Fatwa* shopping”. This negatively affects perception of Islamic banks and thus their performance (Goud, 2009).

2.3 *Shari'ah* Governance framework models

Since Islamic banking is similar to the conventional banking in many ways, as stated by Mejía et al. (2014) and the only way to be different from conventional is that Islamic financial institutions have to make sure all of its products and services are complaint to

Shari'ah rules and regulations, these include; services, instruments, practices, management, operations etc. The *Shari'ah* law has an important role, not only in ruling financial transactions and operations, also in monitoring and supervising all the practitioners and every activity in the financial system. Because the backbone of Islamic finance and banking is *Shari'ah* compliance, it makes sure all the practices of Islamic finance and banking are in line with the Islamic principles and guidelines. Another important role is trust and confidence of the public, especially the shareholders. Which can be increased by showing them real *Shari'ah* compliance applications. It also increases the confidence of the practitioners, customers and the public that the activities and practices are always in compliance to *Shari'ah* rules and regulations (Hasan, 2007). Hence, the compliance with the *Shari'ah* rules principles will be achieved through having a powerful *Shari'ah* governance framework.

In most *Shari'ah* incorporated jurisdictions, Islamic banks are required to have a *Shari'ah*-Board and, in some cases, its work has been complemented by the establishment of a centralized *Shari'ah* supervisory board. In some jurisdictions (e.g., Sudan, Turkey, the United Arab Emirates, Qatar) the centralized *Shari'ah* supervisory boards have been set up as an independent public institution. For instance, what is practicing Qatar is self-regulation for Islamic financial institutions, which means there is no centralized *Shari'ah* Advisory council at Central Bank of Qatar, but there is “Supreme *Shari'ah* Council” which belongs to Ministry of *Awqaf* and any matter can be transferred to the Council for resolution. However, Central Bank of Qatar appoint *Shari'ah* advisors for Islamic banks to give the resolution of any issue problem came across one by one (Hasan, 2007). While in other

countries such as Afghanistan, Bahrain, Malaysia, Pakistan, and Palestine, the *Shari'ah* supervisory board has been set up at the central bank (Mejía et al., 2014).

Table 2.3

Shari'ah governance regulation in the GCC

| | Bahrain | Kuwait | UAE | Qatar | Saudi Arabia |
|--|---------------------------------|---------------------------------------|----------------------------------|-------------------|----------------------|
| Fatwa issued by Islamic banks | ✓ | ✓ | ✓ | ✓ | ✓ |
| Existence of review committee | ✓ | ✓ | ✓ | ✓ | ✓ |
| Presence of scholars in other Islamic banks | ✓ | ✓ | ✓ | ✓ | ✓ |
| Nomination of <i>Shari'ah</i> scholars by Islamic banks | ✓ | ✓ | ✓ | ✓ | ✓ |
| Authority of <i>Shari'ah</i> conflict | The national SB in Central Bank | Ministry of Awqaf and Islamic Affairs | Higher <i>Shari'ah</i> Authority | Ministry of Awqaf | Islamic Fiqh Academy |

Source: (Hamza, 2012)

In some jurisdictions, the central bank has a *Shari'ah* board (e.g., Afghanistan, Malaysia, Pakistan, Palestine, Sudan, and Syria). However, *Shari'ah* boards of central banks differ in their mandate, scope, governance, and accountability. This means *Shari'ah* board of directors are responsible as a final reference for *Shari'ah* compliance of central bank, which typically delegates the responsibility for day-to-day *Shari'ah* compliance to its senior management. Senior management, in turn, is required to ensure *Shari'ah* compliance in line with the guidance of the *Shari'ah* board. This implies that the relationship of the central bank's *Shari'ah* board face to face the central bank is advisory. There are different models on the role of a central bank's *Shari'ah* board. In some cases (e.g., Malaysia, and Sudan), the central bank's *Shari'ah* board has overall authority over

Shari'ah issues that relate to banking and finance, and it is the final arbiter in disputes on such issues (thus, this central bank's *Shari'ah* board has legislative and adjudicative powers). In other jurisdictions (e.g., Afghanistan, Pakistan, and Syria), the central bank's *Shari'ah* board does not have legislative authority or adjudicative power in relation to the *Shari'ah* rules and regulations, though it is required to be consulted on proposed amendments to the legal and regulatory framework which could have *Shari'ah* law implications (Song & Oosthuizen, 2014).

Table 2.4

Shari'ah governance regulation in the Malaysia, Pakistan and Sudan

| | Malaysia | Pakistan | Sudan |
|---|--------------|--------------|--------------|
| Fatwa issue done by Central Bank | ✓ | ✓ | ✓ |
| Review committee | ✓ | ✓ | ✓ |
| Presence of scholars in other Islamic banks | No | ✓ | ✓ |
| Appointment of <i>Shari'ah</i> scholars by Islamic banks | ✓ | ✓ | ✓ |
| Authority of <i>Shari'ah</i> conflict | Central Bank | Central Bank | Central Bank |
| Note: after approval of Central Bank | | | |

Source: (Hamza, 2012)

According to Mejía et al. (2014) there are two existence approaches of supervision of Islamic financial institutions, especially for Islamic banks in different regions that contain both of Islamic and conventional banks. In the first model, both of Islamic and conventional banks are undergo to the supervision of a single supervisory council, such as Saudi Arabia, Kenya, Ethiopia, Kazakhstan, Qatar, Kuwait, Tunisia, the United Arab Emirates, Turkey, and the United Kingdom. In the second model, the supervision subjects with separate supervisory units within only one supervisory council. These countries include Bahrain,

Jordan, Indonesia, Pakistan, Lebanon, and Syria. According to the first model a single supervisory applies to all banks (Islamic banks and conventional banks), while in the second model, separate supervisory frameworks may be applied to Islamic banks by the separate supervisory units. In practice, there is typically substantial correspondence between the different supervisory frameworks.

Nevertheless, there is paradigm shift, as there are some of the selected jurisdictions that have exerted significant efforts to set separate regulation for Islamic banks which is different from conventional banks like; Malaysia, Sudan, Indonesia and Pakistan. Pakistan and Sudan even Sudan has tried to upgrade entire banking system to Islamic banking system, but have backed off and practiced dual systems that regulate Islamic and conventional banking system. Bahrain, Saudi Arabia, U.A.E, Kuwait, Turkey, and Jordan operate Islamic banking alongside conventional banking (Zulkhibri & Majid, 2012). Hence, some country's models should be discussed as follows:

2.3.1 Malaysia *Shari'ah* supervisory model

Malaysia is considered advanced in terms of *Shari'ah* governance for Islamic financial institutions. According to the Central Bank of Malaysia Act 701, 2009 Bank Negara Malaysia is responsible to set up a *Shari'ah* Advisory council as the ultimate reference for all Islamic financial institutions (Government of Malaysia, 2009). As well as the Islamic Banking Act 1983 and *Takaful* Act 1984 present the fundamental basic rules for the *Shari'ah* supervisory committee at both Islamic banks and Takaful companies. The *Shari'ah* committee has to refer to *Shari'ah* Advisory Council for the resolutions on *Shari'ah* issues (Zulkhibri & Majid, 2012). In order to ensure full *Shari'ah* compliance of

financial products, Bank Negara Malaysia (BNM) also has strengthened the regulatory and supervisory framework of Islamic Banks with the enactment of the Islamic Financial Services Act (IFSA) 2013 (BIMB, 2014). It provides a comprehensive legal framework that is in full compliance with *Shari'ah* in all aspects of regulation and supervision of the Islamic financial institutions in Malaysia, from licensing to the winding up of the Islamic financial institutions (Miskam, 2013).

The virtue of Act 701, 2009 has founded Malaysian *Shari'ah* Advisory Council (SAC) at Bank Negara Malaysia (BNM). Therefore, in the term of any issue or disputing regarding Islamic banking and Takaful, the court will refer to the *Shari'ah* Advisory Council at Bank Negara Malaysia. Which made the *Shari'ah* Advisory Council's resolutions binding for them (Hasan, 2007).

In addition, in the term of qualification in both Bank Negara Malaysia and bank level *Shari'ah* committee scholars have to comply with some requirements, as follows: (1) a member shall be a Muslim individual; (2) members shall at least be a degree holder in *Shari'ah*, which includes *Fiqh Muamalat* or *Usul Fiqh*; (3) should be able to demonstrate strong proficiency in Arabic language both written and verbal skills, and have good understanding in *Bahasa Malayu* (Malaysian language) and the English language (Wardhany & Arshad, 2012). All appointment including reappointment, resignation and removal of the *Shari'ah* Committee members shall be made by the board, subject to the approval by the Bank and the SAC (BNM, 2010).

The *Shari'ah* standards followed are those of the SAC of Bank Negara Malaysia and of the Securities Commission. However, there are also some standards influenced externally such as the *Shari'ah* standards of the AAOIFI, the Islamic *Fiqh* Academy of the OIC in

Jeddah, as well as the IFSB standards internally influenced the opinions of Malaysian *Shari'ah* members (Hamza, 2012). In addition, IFSA advances the development of a robust end-to-end *Shari'ah*-compliant regulatory framework that will serve as a model for other countries (BIMB, 2014).

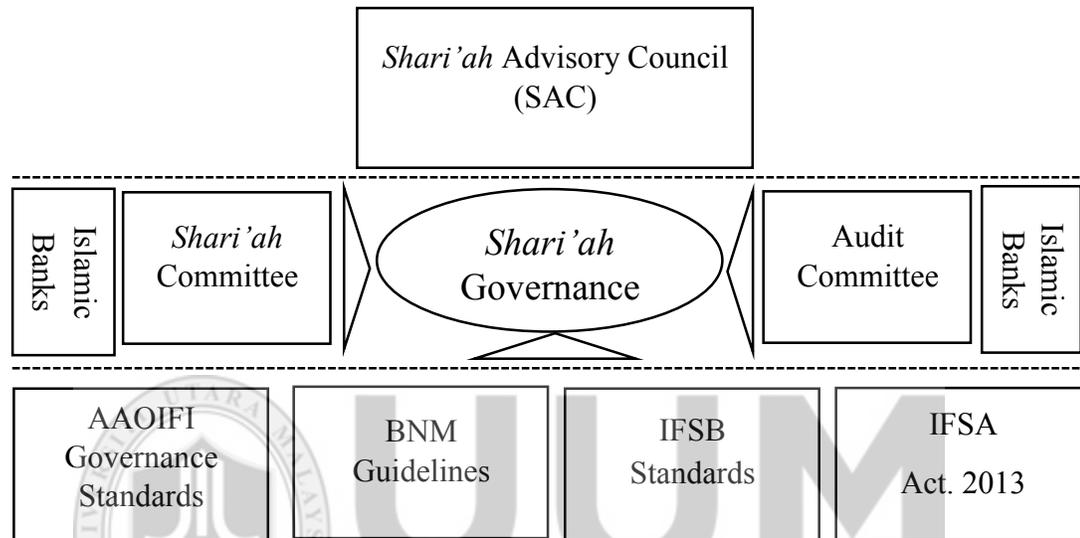


Figure 2.2

Shari'ah governance in Malaysia

Source: modified (Hamza, 2012)

2.3.2 Saudi Arabia *Shari'ah* supervisory model

Majority of Saudi Arabia are offering Islamic banking products and services, whether from Islamic or subsidiaries. Islamic banking is developing and spreading rapidly, according to its highly-profitable products and services. As well as the separation between Islamic banks and conventional banks is reducing as many banks have a large part of their deposits as non-interest bearing which positively influenced its spreads (Global Investment House, 2006).

However, contrary to Malaysia, Saudi Arabia has no centralized *Shari'ah* advisory council at central bank to issue rules and regulations as a standard for all Islamic financial institutions in the country or to supervise them. Hence, there is no specific law for Islamic banking and *Takaful* company's activities. Instead of that the Saudi Arabian Monetary Agency (SAMA), and the Capital Market Authority (CMA) are responsible as a higher authority to issue resolutions and supervise both of Islamic and conventional financial institutions.

The Banking Control Law (BCL), which issued under Royal Decree No. M/5, dated on 11 June 1966, is a main law that supervises all financial activities in Saudi Arabia. On the other hand, the Royal Order No: B/13876 dated 12 August 2010 to limit and control *Shari'ah Fatawa* for the *Shari'ah* scholar's commission in Saudi Arabia, which also known as the Senior Council of *Ulama'a*, this means the only Fatwa that should take to consideration is which issued by the senior council Scholars. (Al-Shamrani, 2014).

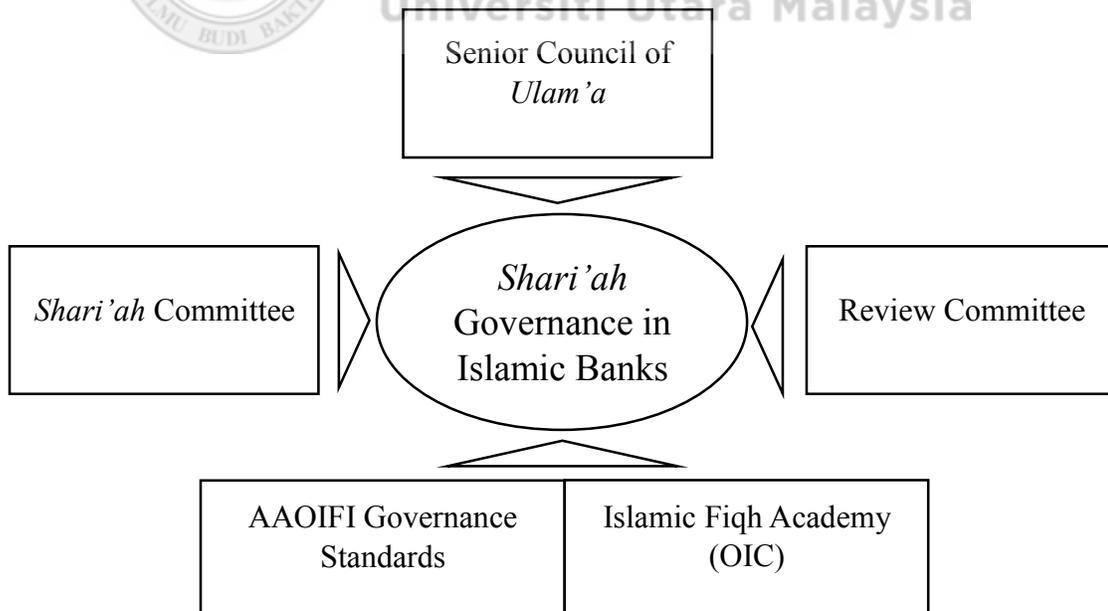


Figure 2.3

Shari'ah governance in Saudi Arabia

Source: modified (Hamza, 2012)

2.3.3 United Arab Emirates (UAE) *Shari'ah* supervisory model

Central Bank was established to control and supervise banking sector in the U.A.E. to maximize the control for both of local and foreign banks in the country, as well as supervising and regulating a variety of financial institutions. The Article 5, from Federal Law No. 6 of 1985 is the major section that supervises Islamic financial activities in UAE (Al-Nahyan, 2002). The higher *Shari'ah* authority has established according to this law. Which considered as final reference regarding *Shari'ah* matters that related to Islamic finance and banking. However, regarding the establishment of *Shari'ah* advisory committee at the banking or financial institution level Article 6 of the same law is responsible for that (Hasan, 2007).

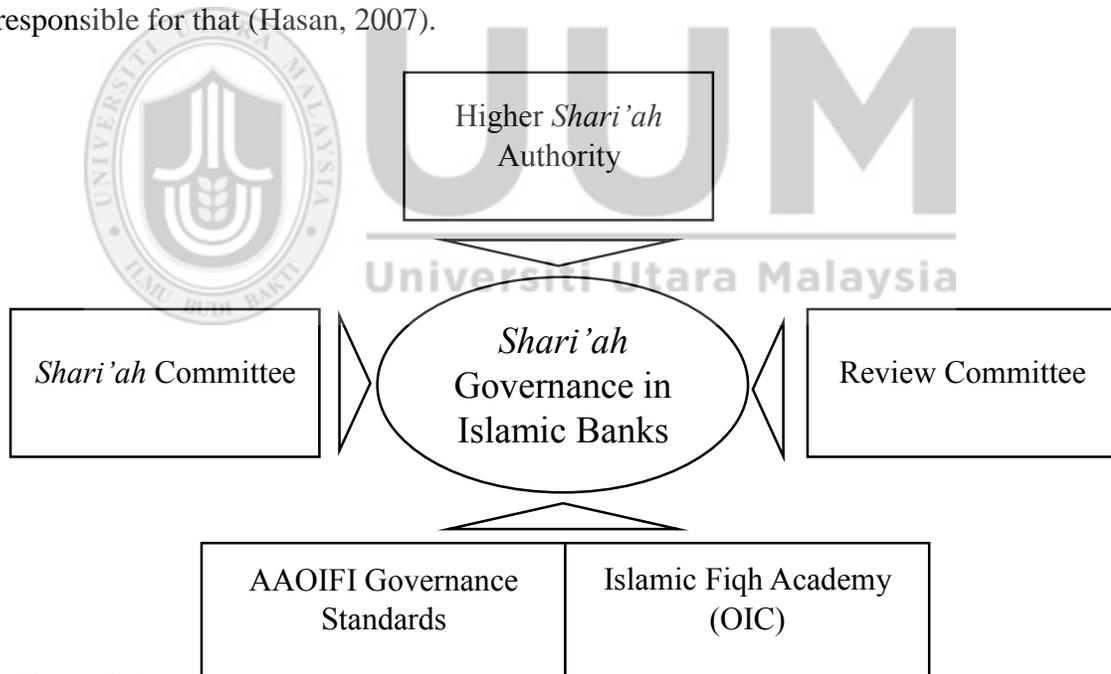


Figure 2.4

Shari'ah governance in UAE

Source: modified (Hamza, 2012)

2.3.4 Kuwait *Shari'ah* supervisory model

Kuwait has no *Shari'ah* advisory council which undergo the central bank, which means is more self regulation practice for Islamic financial institutions. The regarded law is stated in Section 10, Chapter 3, Central Bank of Kuwait Law 32/1968. The law rules that there should be a *Shari'ah* advisory committee for every Islamic banks and other financial institutions. In the case of any issue regarding *Shari'ah* ruling about Islamic finance and disputing of opinions among *Shari'ah* scholar who are member of *Shari'ah* supervisory committees the board of directors are responsible to transfer the issue to the “*Fatwa* Board” which attached Awqaf Ministry and Islamic Affairs. However, it is not compulsory and binding. But the final authority should be *Fatwa* Board in the Awqaf. Another keypoint should be noted is that this *Fatwa* Board is as an external body to the Central Bank of Kuwait (Hasan, 2007).

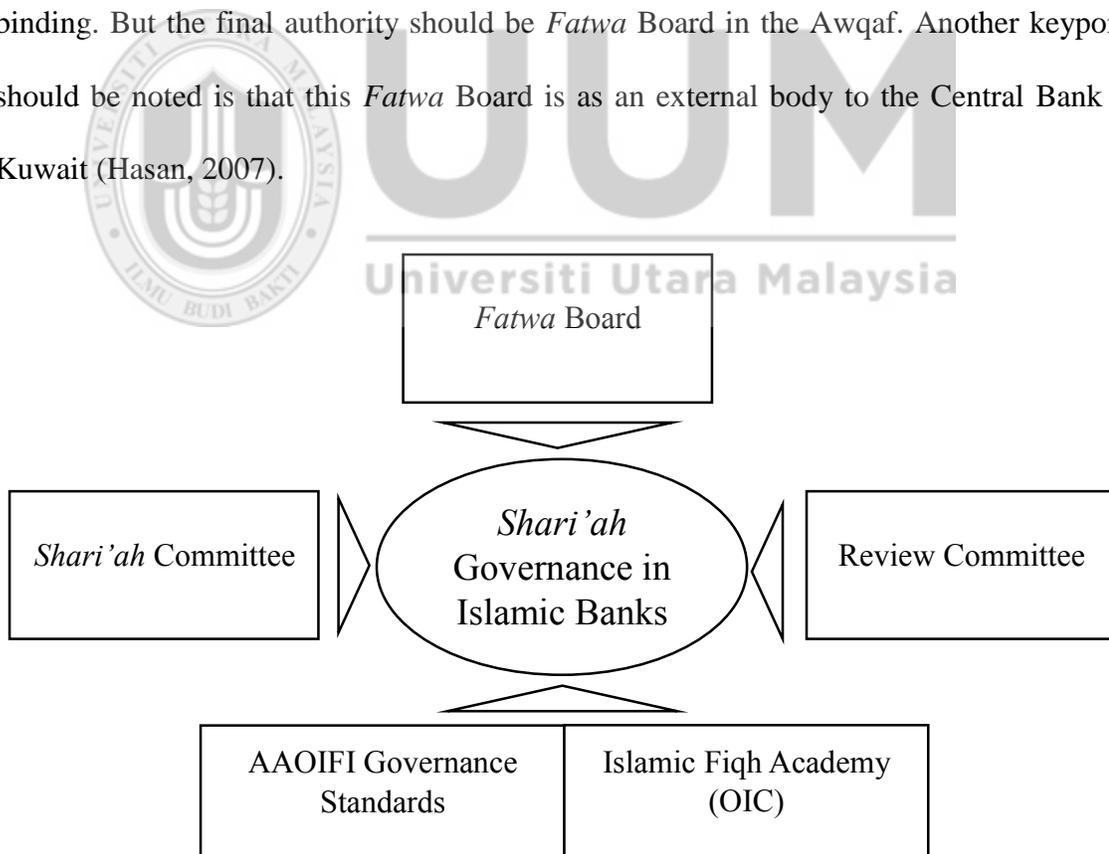


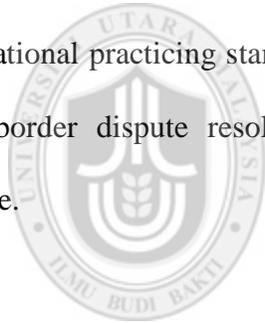
Figure 2.5

Shari'ah governance in Kuwait

Source: modified (Hamza, 2012)

2.4 Standardization of Islamic financial products and services

According to Tajudin (2010) several attempts have been done in some Muslim countries to standardize Islamic financial products and services, by setting up various internationally recognized Islamic financial organizations. There are mainly two key standard setters: the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), established in 1990, for Shari'ah accounting and auditing standards, and the IFSB, set up in 2002, for regulatory and supervisory standards. These institutions have developed a wide range of technical standards and guidance notes, working closely with the Basel Committee and similar conventional standard-setting bodies to ensure coherence and consistency with their standards (Kammer et al., 2015). The purpose of these organizations are to develop international practicing standards, standardize Islamic financial products and service and cross-border dispute resolution mechanism. Thus, increase globalization of Islamic finance.



2.4.1 The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)

AAOIFI is an international organization responsible for developing and issuing standards for international Islamic finance industry. Its headquarter is located in Bahrain, and it offers standards and other supervisions to more than 200 institutional members from over 40 countries. Its members include central banks, regulatory authorities, financial institutions, accounting and auditing firms, legal firms, etc. its *Shari'ah* resolution standards is considered as binding for some countries such as Bahrain, Pakistan, Pakistan,

Syria and Sudan, as well as these standards are used as *Shari'ah* guidelines for some other countries like; Indonesia and Malaysia.(Nizam & Khairul, 2012).

AAOIFI Governance Standard for Islamic Financial Institutions states that "every Islamic financial institution shall have a *Shari'ah* Supervisory Board (SSB) to be appointed by the shareholders in their annual general meeting upon the recommendation of the board of directors, taking into consideration of the local legislation and regulations" (Al-baluchi, 2006).

The qualifications requirements, *Shari'ah* supervisory board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) include that based members should be those who are expertize in *Fiqh al mua'amalat* (Islamic commercial jurisprudence) as well as expertise in Islamic finance knowledge. However, the *Shari'ah* supervisory board might include members rather than those specialized in *Fiqh mua'malat*, however, those certain members should be qualified in other area of knowledge Islamic financial institutions (IFIs) but they should also know about *Fiqh mua'malat*." (Nawal Kasim et al., 2013).

2.4.2 Islamic Financial Services Board (IFSB)

The Islamic Financial Services Board (IFSB) was established in 2003 its headquarter in Kuala Lumpur – Malaysia. It plays a remarkable role in the development and promotion of Islamic standards (Haron, 2012). IFSB is an international organization which in charge for setting standards, as well as boost the strength and stability of the Islamic financial institutions through issuance of international resolution standards and advice guidance for Islamic banks and other financial industries, such as capital markets and Takaful and

insurance institutions. IFSB prepared its standards based on long processes and procedures, which involves in the issuance of exposure drafts, holding workshops and public hearings. In addition, they conducts research on the certain industries regarding the current issues, as well as conferences and seminars are being organized for both of standard setting bodies and financial institutions stakeholders. Overall, the IFSB build a relationship with every related organizations from national, regional, and international level. Also works to the relevant research institutions and market players (IFSB, 2006). In April 2013, IFSB consisted of more 187 members, including; 57 regulatory and supervisory authorities, and 122 market players, professional firms eight international inter-governmental organizations, and industry associations operating in 43 regions (Haron, 2012).

2.5 Divergence of *Shari'ah* views between Malaysia and Middle Eastern countries on some selected Islamic banking products

Laldin et al. (2012) have found that there are remarkable differences in *Fatwas* towards Islamic banking products in GCC countries and Malaysia as follows; There is 100% difference in *Fatwa* resolved by the respected *Fatwa*-issuing bodies in the Middle East and Malaysia in relation to three *Shari'ah* principles, namely: *'inah*, *kafalah bi al-ajr*, and stipulation of *ibra'* in the contract. Also there is 20% difference regarding the *tawarruq* contract. Likewise, the 20% difference in the case of *tawarruq* signifies that only one *Fatwa*-issuing body in the Middle East has a different opinion from that of Malaysia.

According to Laldin, Khir, & Parid (2012) all Islamic financial arrangements in Malaysia must be *Shari'ah*-compliant in their entirety, while in GCC countries,

conventional banks can raise funds to recapitalize *riba*-based institutions or utilize the funds for activities which may not necessarily comply with *Shari'ah* investment criteria.

In the term of diversity in product offering, Malaysian Islamic banks are offering more products. In this case Malaysia Islamic banks are more progressive to conventional bankers and more efficient but still too liberal to GCC scholars. For instance, the Accepted Bills-Islamic (“AB-i”) which was known as Islamic Accepted Bills (IAB) previously, it was launched in 1991. The AB-i is formed according to the *Shari'ah* concepts of *murabahah* or (cost-plus) and *bai' dayn* (debt trading) (Islamic Banking and *Takaful* Department, 2007).

In Malaysia *bai' dayn* is permitted this is based on some scholars of the Islamic *Shari'ah* scholars or jurists who allow to practice this kind of transactions if some certain conditions are carefully examined (Hussin, 2010). For example if the instrument has purchased to the issuer, but not with the discount to the first party (Bahari, 2009). However, Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has not yet provided any standard resolution regarding these two types of contracts (Hussin, 2010).

Although, the quality of the products are higher in Middle Eastern countries regarding to the *Shari'ah* compliance rules and regulations, it is clear that the products offered in that jurisdiction is less comparing to Malaysia.

Syed Farhan et al. (2012) stressed that in Jordan a famous Muslim scholar criticized *gharamah* (penalty) imposed by the Islamic banks in case of client default in *murabahah* and declares that it is *riba*. However, (Bank Negara Malaysia, 2009) mentioned that the Islamic financial institutions may include a clause in the *murabahah* contract, stipulating a “compensation for late payment” as determined by the authorities in charge which is

claimable by the Islamic Financial Institution from the client as an income. While *gharamah* refers to the penalty imposed as a deterrent measure for the delay in payment by the debtor. In this context, the difference between late payment charged (*gharamah*) is *ta'wid* which - in general- means giving compensation on losses incurred resulting from harmful incidences. That if the *ta'wid* is less than the late payment charge. Late payment charged is determined by rules of law, and late payment charge on judgment debt shall not be compounded. Alternatively, the Islamic Financial Institution may include a clause stipulating late payment penalty, which must be channeled to charity (Mohamad, 2012).

Later on, in its 101st meeting on 20 May 2010, the *Shariah* Supervisory Council of Bank Negara Malaysia has ruled that both the concept of *ta'wid* and *gharamah* permissible condition subject to the following: a. *Ta'wid* can only be imposed for late payment are of financial obligations arising from exchange contracts (such as buying, selling and leasing) and *qard*. b. *Ta'wid* can only be imposed after the end of the repayment period agreed by both contracting parties elapsed. c. Islamic banking institutions may recognize *ta'wid* as income on the basis that it is imposed as compensation for actual loss suffered by the Islamic banking institutions d. *Gharamah* cannot be taken into account as income, but must be channeled to certain charities (Yaakub et al., 2013). The scholars who allowed penalty of late payment mostly considered this charge as a (*ta'wid*), and their justification in permissibility of *ta'wid* is based on a maxim in Islamic jurisprudence, that is: Meaning: "Whatever loss should be removed" (Al-Zuhaili, 1994).

In summary there are three different opinions about penalty on late payment (Yaakub et al., 2013): a) first penalty is allowed but it should be in the form of money, this *fatwa* is issued by Sheikh Mustafa Zarqa', Sheikh Muhammad Sadiq al-Dharir, *Shari'ah* Advisory

Council of Islamic Bank Jordan and most of *Shari'ah* Committee of Islamic banks in Malaysia believed that penalty is permitted and it could be used as an income for the bank. As mentioned by BNM (2013) the sale contract in the *bai' inah* arrangement involves payment of the deferred price in instalment, the seller may provide periodic rebate (*ibra'*) based on certain benchmark agreed by the contracting parties. The contracting parties may agree to include a clause in the sale contract on late payment charges as determined by the relevant authorities, that *gharamah* (penalty) shall not be recognized as income. Instead, it shall be channeled to charitable bodies (BNM, 2013). This is based on *masalih mursalah* (public interest) which is closing the doors of taking advantage by delaying payments b) there should be a penalty in the form of money. However, it could not be an income for the bank but should be cleansed by channeling to charity. This view is provided by some scholars, include Dr Abd Sattar Abu Ghuddah and *Shari'ah* Council of AAOFI agreed that penalty is permitted for delay payment if a part of the penalty is channeled to charity. This is based on *iltizam al-tabarru'* in *Mazhab Maliki*. Which implies that, clients should agree to *sadaqah* (donate) and appoint the Islamic bank to distribute the donation to charity if he/she fails in the payment in the specific time. c) There should be no penalty at all. The scholars who are supporting this view are Dr Nazih Hammad, Member of the Islamic *Fiqh*1 Academy, Jeddah, Saudi Arabia and Dr Md Ali El-Gari and *Shari'ah* Board Member of the Islamic Bank of Asia because they believe that penalty is similar to *riba* according to the maxim that says any debt brings advantage is *riba*.

Tawarruq consists of two sale and purchase contracts where the first involves the sale of an asset to a buyer on a deferred payment and the next sale involves sale of the asset to a third party on a cash basis (BNM, 2015). Sol (2007) discussed that the practice of

tawarruq in some of Gulf Cooperation Countries is partially supported by the *Malikie* and *Hanbalie* Islamic schools of jurisprudence, has been criticized by the Islamic *Fiqh* Academy and by the AAOIFI in the term of organized *tawarruq*.

Tawarruq consists two well-known types; classical and organized *tawarruq*, which are differed in some aspects as follows:

Table 2.5

Classical twarruq versus organized tawarruq

| Classical <i>tawarruq</i> | Organized <i>tawarruq</i> |
|---|---|
| <i>Muwarriq</i> (seller of the commodity) plays no role in the resale of the commodity. | For the resale of the commodity, the <i>muwarriq</i> (seller/creditor) acts as an agent on behalf of <i>mutawarriq</i> (seeker of liquidity) to resell the commodity. |
| <i>Mutawarriq</i> receives cash directly from the end buyer. | <i>Mutawarriq</i> receives cash from the original seller (<i>muwarriq</i>), to whom he/she is indebted to on deferred payment. |
| There should be no pre-arrangement made between the original seller of the commodity (<i>muwarriq</i>) and the end buyer. | There is a possibility that the original seller of the commodity and the end buyer have a pre-arrangement made between them. |

Source: (ISRA, 2013)

Although the OIC *Fiqh* Academy in its 2009 resolution deemed organized *tawarruq* as impermissible, contemporary banks still persist in the usage of this structure for deposit and personal financing, in its 17th session, held in December 2003, the Academy announces its stand on *tawarruq* by differentiate between *tawarruq haqiqi* (real *Tawarruq*) and *tawarruq masrafi* or *tawarruq munazzam* (organized *tawarruq*). While the real

tawarruq is permitted, but for organized *tawarruq*, although Islamic banks widely practice it but it seems to be similar to *bai' inah*. Therefore, it is prohibited (Dusuki, 2007). This might also be seen on the basis that AAOIFI in its *Shari'ah* Standard 30 (2010) permits *tawarruq* provided that it's according to the guidelines and parameters; however as showed above, the current application of *tawarruq* in Islamic financial institutions do not comply with all these parameters. It is not permissible to both *tawarruq* (organized and reversed) because transactions happening at the same time between the financier and the *mustawriq*. This is considered a cheating or trick in order to get additional cash from the contract. Therefore, it is considered as consisting the element of *riba* (ISRA, 2013).

Another issue of regarding the divergence of *Shari'ah* opinions is permissibility of *sukuk*, while the differentiate is clearly appeared between Middle East and Malaysia starting from the definition of *sukuk* as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines investment *sukuk* as “certificates of equal value representing undivided shares in ownership of tangible assets, usufructs and services, assets of particular projects or special investment activity.” The definition of Securities Commission (SC) of Malaysia, however, is broader referring to *sukuk* as “certificates of equal value which evidence undivided ownership or investment in the assets using *Shari'ah* principles and concepts”. After a remarkable increase of *sukuk musharakah* 2004-2008 until negative criticisms were raised against equity-based *sukuk* by AAOIFI's annual event in Bahrain in November 2007, Sheikh Taqi Usmani, Chairman of the *Shari'ah* Board of AAOIFI raised three main criticisms against *sukuk* relating to the following issues: (i) *sukuk* holders not having real ownership interest in the underlying assets; (ii) the regular distributions to *sukuk* holders not being based on actual performance of the underlying

assets; and (iii) guarantee of the return on capital via the use of purchase undertakings (ISRA, 2013).

2.6 Effects of divergence among *Shari'ah* opinions towards Islamic banking products and services

From the above divergence examples among *Shari'ah* opinions towards certain Islamic banking products and services with some negative affects cause on both of Islamic banks and public bank risks, while some of these products are permissible in some jurisdictions and prohibited in another which means *Shariah* non-compliance risk. This can have effect on the asset values of the Islamic financial institutions with possible loss of investment or reinvestment income with may result in fund withdrawals and cancellation of investment contracts thus causing a decline in profits and performance of the Islamic financial institution which will further affect public confidence in Islamic financial system (Miskam, 2013). For example, Sheikh Taqi Usmani raised doubts about the transfer of ownership to *sukuk* in his famous paper “*Sukuk* and their contemporary application” which was circulated towards the end of 2007 caused quite a stir and led to turmoil in the *sukuk* market during the global financial crisis (Sacarcelik, 2004). Product innovation is another challenge, as they are limited Islamic instruments, affects cross-border liquidation of assets (IADI, 2010). Since not all religious scholars follow the same Islamic school of thought, varying allegiances directly affect *fatwa* issuances and ultimately Islamic financial products structures (Baeshen, 2009).

In the context of *mu'amalat*, differences of views could be deemed positive as it broadens the scope for *Shari'ah* scholars to make references and to understand the reasons

and objectives of *Shari'ah* law. On the other hand, in the context of *mu'amalat*, it may lead to difficulties in managing transactions given that different interpretations may hamper parties to contract seamlessly (Ibrahim, 2015).

Zulhibri and Majid (2012) argued that another challenge that effects compliance in Islamic financial institutions is adopting different *Shari'ah* governance models in different jurisdictions. Therefore, *Shari'ah* compliance is difficult regarding these differences. Which increases the operational risk for Islamic financial institutions. Also at the bank level this diversity of opinion among the *Shari'ah* scholars that compose of the religious councils could be one of the greatest challenges to be raised by Islamic finance. The lack of centralization and religious supervision can lead to a lack of standardization of *Shari'ah* ruling and uniformity in Islamic financial and banking products within the same jurisdictions and among various regions. The aim of centralized regulation is to ensure the harmonization of *Shari'ah* ruling and to reinforce the credibility of *Shari'ah* board (Hamza, 2012).

2.7 Remedies for divergence among *Shariah* opinions towards Islamic banking products and services

To bridge those gaps Tajudin (2010) suggested some solutions, which include; the necessity to establish an international authority for *Shari'ah* regulations and setting resolutions for Islamic finance or at least to have one global *Shari'ah* framework which accepted by all regions. In addition, there is need to implement some mechanisms that could ensure wider acceptance of Islamic financial products and services across the globe. Wider cross-border representation on the *Shari'ah* committees or *Shari'ah* supervisory

boards (SSBs) of Islamic financial institutions for instance, the presence of more *Shari'ah* scholars from the Middle East in the SSB of Malaysian financial institutions and vice versa. Further financial sector flexible measures that allow more Islamic financial institutions from other regions. For example, opening of the Malaysian financial sector that allows entry of more Islamic banks from the Middle East. Ibrahim (2015) also stated that it would be desirable if countries in the different region can develop equivalent standards that could eventually be consolidated as *Shariah* standards that are applicable to the whole region and to even serve as benchmarks to other Muslim countries. According to (NawalKasim et al., 2013) all the guidelines are not comprehensive enough, for instance, while IFSB defines the *Shari'ah* governance, AAOIFI and BNM did not. Thus, there should have one standardized and comprehensive guideline or framework so that it will be the easy reference for the industrial players, regulators, *Shari'ah* advisors and investors.

Given the specialist nature of Islamic finance, the Islamic financial institutions require well-trained and high workforce with major skills sets to cater the specific nature of Islamic finance. The global Islamic finance and service institutions suffers some set back which include lack of Islamic finance skills at almost all stages and those higher levels especially the middle and senior management. The Islamic finance and service institutions in particular Islamic financial institutions face the difficulty of building a talent pool with the right mix of expertise in *Shari'ah* knowledge and modern finance while addressing the issue of “poaching” by competitors within the country and other aspiring Islamic financial hubs given their lucrative remuneration packages. The Islamic finance and service institutions needs to find the most effective ways of how to attract, retain and develop Islamic finance experts. Enough of *Shari'ah* scholars with adequate financial acumen or

expertise is required to apply *Shari'ah* law to financial products & services, and more of financial experts with adequate *Shari'ah* knowledge to accelerate product innovation (Tajudin, 2010).

Upton and Mackintosh (2015) disclosed that we cannot judge the diversity in practice. Instead, we are concerned that Islamic financial institutions might incur significant costs to analyze the possible application of the standard and that those costs might be avoided by timely communication to the marketplace.



2.8 Conceptual framework

Table 2.6

Conceptual framework

| Concepts | Authors |
|---|---|
| Factors of divergence among <i>Shari'ah</i> scholars | 1. Background (Ibrahim, 2015) 2. Methodology(Goud, 2009) 3. School of thoughts(Zaidi, 2012),(Auda, 2007) 4. Understanding(Kammer et al., 2015) 5. Qualification(Nawal Kasim et al., 2013),(Wardhany & Arshad, 2012) 6. Legal framework(Song & Oosthuizen, 2014),(Mejía et al., 2014), (Hasan, 2007) 7. Secondary sources(Aida, 2009), (Bahari, 2009) 8. Industrial will(Hamza, 2012), (Goud, 2009) 9. Political affiliation(Auda, 2007) |
| Effects of divergence among <i>Shari'ah</i> scholars | 1. Confusion(Syed Farhan et al., 2012) 2. Trade relationship(Kammer et al., 2015),(IADI, 2010) 3. Standardization(Hamza, 2012) 4. Implication(Hamza, 2012) |
| Barriers for developing and standardizing Islamic banking products | 1. Globalization(Hussin, 2010), (Al-Salem, 2009) 2. Lack of unity(Syed Farhan et al., 2012) 3. Awareness(Zulkhibri & Majid, 2012) 4. Legal (Zulkhibri & Majid, 2012) 5. Luxury/ loyalty(Goud, 2009) 6. Banker's background ..(Zulkhibri & Majid, 2012) |
| Remedies for these barriers | 1. International Shariah advisory council ..(Tajudin, 2010), (NawalKasim et al., 2013) 2. Global umbrella institution(Tajudin, 2010) 3. Harmonization & combining views(Zulkhibri & Majid, 2012) |

2.9 Conclusion

The primary aim of this chapter is to review the literature relating to factors that affect the development of Islamic banking products and services, with difference opinions among scholars towards those products, showing influences of the divergence among *Shari'ah* views, *Shari'ah* supervisory bodies, and their models in different countries. However, to the best of the researchers knowledge, little or no comprehensive study have found to cover the issue of selecting the divergence factors, with finding proper ways to develop original Islamic banking products and services, and setting a standard rules among all Islamic financial institutions. Hence, the research try to find some concepts and collect the information from experts to build some proper theories, which help the respective institutions to fill the gap of standardization.



CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

The preceding chapter has discussed literature on Islamic banking products and the roles of *Shari'ah* advisory bodies on the development of standardized Islamic banking products and services. This chapter examines research methodology that are used for data collection and data analysis so as to achieve the objectives of this study, Therefore, this chapter is broadly divided into seven sections. Section one discusses about the research method used. Section two examines the research design. Section three discusses about population, sampling and sample size. Section four examines the instrument used in this study. Section five discusses data collection. Section six examines data analysis techniques and the last section provides conclusion.

3.1 Qualitative Research Methods

This study has used a qualitative research methodology, which is mainly exploring a problem and developing a detailed understanding of a central phenomenon, while the literature might yield little information about the phenomenon of study, and the researcher needs to learn more from participants through exploration (Creswell, 2012). Hence, every real-world happening can become the subject of a qualitative study (Yin, 2011). There are various forms of qualitative data when they are placed into the different categories, which are observations, interviews and questionnaires, documents, and audiovisual materials (Creswell, 2012). According to Oun and Bach (2014) an interview is used to understand people's belief system, perspectives, and experiences. In-depth interview is a qualitative

research technique which involves in both face to face and technological communication between interviewer and interviewees to explore their perspectives on a particular idea, program, or situation (Boyce & Palena, 2006). In addition to personal histories, and experiences, especially when sensitive topics are being explored (Mack, Woodsong, McQueen, Guest, & Namey, 2005). It can be formed with structured questions or informal and unstructured (Turner, 2010). Data can be generate in the form of field notes, audio - and sometimes video- recordings, and transcripts(Mack et al., 2005). Then those records should be transcribed for analysis (Stewart, Treasure, Chadwick, and Gill, 2008).

The study has used face to face semi-structured in-depth interviews to collect qualitative data. The researcher prepared a semi structured open –ended questions, arranged in a reasonable logical order, and covering the all the research objectives. Semi-structured interview consist of open ended questions, topics and discussion (Walliman, 2011). It also involve introducing a topic, then probes for further information or provide examples with directly asking for information and interpreting respondents' replies (Cohen, Manion, & Morrison, 2007). Sometimes in depth interview is described as a form of conversation with a purpose, while it is a combination of structure and flexibility (Legard, Keegan, & Ward, 2003). The researcher asked the same questions to all participants, but may not necessarily in the same order, supplementing the main questions with some planned or unplanned probes. In addition to primary data, secondary data can be generate from textbooks, articles, journals, official letters, handbooks, as well as documents from websites and other library based information (Kothari, 2004).

Considering Informed consent, which is a mechanism to ensure that people understand what it means to participate in a particular research study so they can decide in a conscious,

deliberate way whether they want to participate or not? Informed consent is one of the most important tools to ensure respect for persons during research (Mack et al., 2005).

3.2 Research Design

Research design is a comprehensive plan for data collection in an empirical research project (Bhattacharjee, 2012). Research design can be exploratory, descriptive and explanatory (Saunders, Lewis, & Thornhill, 2009).

This study has used the exploratory research design, which means the research in question is intended to explore, rather than simply to describe, the phenomena studied (Given, 2008). Since the researcher has little understanding of many issues regarding *Shari'ah* opinions towards Islamic banking products and services. Hence, exploratory research design is suitable for this study. Exploratory research is a type of research design that is conducted because a problem in the research has not clearly been defined. It is also a valuable means of finding out 'what is happening; to seek new insights; to ask questions and to assess phenomena in a new light' (Saunders et al., 2009).

Exploratory research today is the best known of the inductive types of discovery (Given, 2008). Hence, this study had used face-to-face semi-structured in-depth interview to collect the data from the target participants. According to Bricki and Green (2000) this type of interview is used to explore in detail the respondent's own perceptions and accounts. This method also used on topics for which little is known and where it is important to gain an in-depth understanding.

One of a great advantages of exploratory research is that it is flexible and adaptable to change. If researcher are conducting exploratory research he must be willing to change

your direction as a result of new data that appear and new insights that occur to you (Saunders et al., 2009).

3.3 Population, Sampling and Sample Size

With respect to the interview, the targeted populations were the Bank Negara Malaysia *Shari'ah* Advisory Council (SAC), Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), and International Islamic *Fiqh* Academy (IIFA), etc. in addition some *Shari'ah* committees at the bank level were also targeted, which include Bank Simpanan Nasional (BSN), Al-Rajhy Bank, and Dubai Islamic Bank, etc.

In all research the issue of sampling is a crucial point (Adams & Cox, 2008). Even though qualitative investigations typically involve the use of small samples, choice of sample size still is an important consideration (Onwuegbuzie & Leech, 2007). There is a wide variety of sampling methods used in qualitative research. The most suitable and accurate sampling of this research is Purposive Sampling “which involves choosing individuals from a population based on certain characteristics”, this means the sample is derived purposefully rather than randomly (Tuckett, 2004). It is best suited to subjective-qualitative measurement (interviews) according to preselected criteria relevant to a particular research question. Sample sizes may or may not be fixed prior to data collection to focus on the high level experts, who know about the topic (Mack et al., 2005).

Small sample size studies generally involved more contact time with each interviewee, or longer interviews (B. Marshall, Cardon, Poddar, & Fontenot, 2013). The most important issue in deciding how many qualitative interviews are enough depend on the purpose of the research, the type of research question to be addressed and the methodology it is

proposed to adopt. Because there is no formula for defining the desired number of instances for each broader or narrower unit of data collection in a qualitative study. At the broader level, most studies have only a single data collection unit (Yin, 2011). Even the most expert researchers cannot answer the sample size question without involvement in the project (Richards & Morse, 2006). According to Moriarty (2011) a well-conducted study drawing on a small number of in-depth interviews offer more valuable information than one based on a larger numbers of participants but producing very sketchy information. If a decision is made to focus on one case, it may be that this is sufficient as the case is unique and it is not comparable with other cases. A complex case may indeed take all the resources available (Baker & Edwards, 2012). However, a more advanced research process is to select individuals or schools who are representative of the entire group of individuals of the population (Creswell, 2012). Sample sizes may or may not be fixed prior to data collection (Mack et al., 2005).

The selection of the participants in this research was based on purposive sampling. The participants in this study are treated as experts and assumed to have an accurate and unique perspective on the subject matter. Each organizations were contacted through email or personal contact explaining to them the purpose of the interview with the UUM data collection support letter (refer to appendix D). Therefore, the sample size consists five participants, who accepted the interview, and it is assumed to be sufficient for this study to achieve its objectives.

3.4 Research Instrument

The research instrument is list of semi-structured questions or themes must be related precisely to the aims and objectives of the focus assessment study and carefully constructed in order to collect the data necessary to achieve those aims (Jane, 2004). In this situation the researcher seeks to establish the meaning of a phenomenon from the views of participants (Creswell, 2003).

The study used a format of interview Protocol, which provides a general plan for the interview including time, date, and place as well as the general questions and reminders on how to begin and end the interview and information on possible follow-up contact (Chism, Douglas, & Hilson, 2008). In addition, the purpose of the interview should be explained, and why the participant has been chosen, and the expected duration of the interview (Boyce & Palena, 2006). Moreover, it is necessary to obtain details of information on the background of the respondents, experience positions (Adams & Cox, 2008). The questions should include probes such as; would you give me an example? Can you elaborate on that idea? Would you explain that further? I am not sure I understand what you are saying. Is there anything else? (Boyce & Palena, 2006).

Since the interview is semi - structured, a set of interview question is prepared as an interview guide to seek opinions of the respondents. The interview questionnaire consisted of mainly open-ended questions. It is considered appropriate as it gives more freedom to the respondents to express their thoughts and views freely. The interviewer assured the respondents that their information will be confidential (Jane, 2004). An interview guide for semi-structured interviews is basically different from a questionnaire. It is not a list of questions, but a guide to a dynamic conversation (De Clerk, Willems, Timmerman, &

Carling, 2011). Thus, the interview guide consists of five parts covering all the research objectives. (See the appendix A and B for interview guide).

3.5 Data Collection Technique

Data come in two main forms, depending on its closeness to the event recorded. Data that has been observed, experienced or recorded close to the event are the nearest one can get to the truth, and are called primary data. Written sources that interpret or record primary data are called secondary sources, which tend to be less reliable (Walliman, 2011).

The most well-known sources of data collection in qualitative research methods are interviews, observation, text, and talk, (Redlich-amirav & Higginbottom, 2014). In this study two types of data are used, primary data and secondary data.

The primary data were collected through semi-structured face-to-face interview. An interview guide is used so that information about the same questions can be obtained from all the respondents but the extent of probing and exploration depends on the interviewer. Each of the selected interviewee was contacted via telephone and e-mail to arrange the time and place for the interview. After an agreement was reached about the time and place for the interview, the interviewee was called again to confirm the appointment. The interview was in-depth interview that lasted between 40 minutes to one hour on average. All data collected were coded by participant number rather than their names, in order to maintain the confidentiality of the participants. The interviews were tape-recorded, in addition to notes taking. The types of data in the interview method generate are field notes, audio (and sometimes video) recordings, and transcripts (Mack et al., 2005).

The researcher used a non-directive style of interviewing using open-ended questions allowing the participants the freedom to control pacing and subject matter of the interview. Additionally, a more directive style of questioning is used as needed when the researcher requires more clarification of information that the participants will be providing. Besides to record interviews or to take notes, after those records should be transcribed for analysis (Stewart, Treasure, Chadwick, and Gill, 2008).

For the ethical considerations the researcher must anticipate any ethical issues that may arise during the qualitative research process. Research involves collecting data from people, about people. Researchers need to protect their research participants by developing trust with them, promoting the integrity of the research, guarding against misconduct and any impropriety that might reflect on their organizations or institutions, and cope with new challenging problems (Cohen et al., 2007). First and foremost, the researcher has an obligation to respect the rights, needs, values, and desires of the participants. All participants signed a consent form stating that they were willing to participate in the interview while also ensuring them confidentiality and anonymity throughout the process (see appendix C). Furthermore, the reputation and position of the participants are protected, especially since the findings of the study could be shared with other people and organizations.

3.6 Data Analysis

Once data from the interview have been collected, through tape-recording, qualitative data were thematically analyzed in order to code the common concepts that represented participant's point of views until the collected data is gradually transformed into findings

(Watt, 2007). Usually, there are two main approaches to analyze qualitative data, which are manually and software based program. The researcher has combined both methods, but mostly focused on manually to analyze the data. The software has been used only to manage the data and code the ideas.

3.6.1 Analyzing data manually

There is no one systematic way to analyze qualitative data, it depends on the researcher's way to present, because there are multiple interpretations –which would be a glory and headache (Cohen et al., 2007). However, qualitative researchers usually go through six steps to analyze data (Braun & Clarke, 2006) manually. Firstly: transcribing the data; that is, they type the text into word processing documents (Johnson & Christensen, 2008). It is this transcriptions that are later analyzed (Stewart, et al, 2008). After completing all the full transcripts, the interviewer read the data to start data reduction, which is the process of selecting, focusing, simplifying, abstracting, and transforming the 'raw' data that appear in written-up field notes.

Data reduction occurs continuously throughout the life of any qualitatively oriented project. Through organizing the data by going back to interview guide, and identify and differentiate between the questions/topics to answer, and those that were simply included in the interview guide as important are highlighted in the form of key words (Schutt & Chambliss, 2013). To accomplish this task, the researcher has read and re-read interview transcripts while searching for similarities and differences to code. Secondly: initial codes were selected to represent any interesting features that occurred throughout the entire data set (Cohen et al., 2007). Codes are labels or tags used to allocate units of meaning to the

data, going beyond the simple physical facts (Walliman, 2011), as the translation of question responses and respondent information to specific categories for the purpose of analysis (Cohen et al., 2007).

During the coding, researcher must keep a master list (i.e., a list of all the codes that are developed and used in the research study). Thirdly, the interviewer collated the codes, which are reapplied to new segments of data each time, and an appropriate segment, which is identifying words/phrases used frequently, as well as ideas coming from, how the interviewee has expressed him/herself and from the stories that he/she has told. These ideas are organized into codes or categories which is considered as a process of finding and organizing ideas and concepts (O'Connor & Gibson, 2003) into potential themes (Johnson & Christensen, 2008).

Fourthly, themes were reviewed to check that they were in conjunction with their coded extracts and with the entire data set. While, each of the response categories has one or more associated themes that gives a deeper meaning to the data. Different categories can be collapsed under one main overall theme(O'Connor & Gibson, 2003). Then an ongoing analysis of the specifics of each theme are done, the fifth step was to define, name and display each theme, because the major flow of analysis activity is data display (Maxwell, 2009), Hence 'display' is an organized assembly of information that permits conclusion drawing and action taking. The most frequent form of display for qualitative data has been narrative text (Bricki & Green, 2000), drawing, or outline to show how something works or clarify the relationship between the parts of a whole, the use of diagrams are especially helpful for visually oriented learners (Johnson & Christensen, 2008). The sixth and final step was to write out a description of each theme to draw the conclusion and verification.

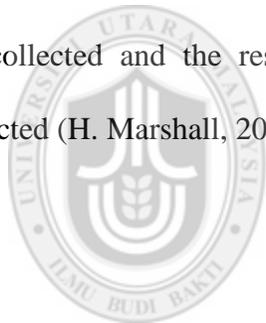
It calls for drawing the conclusions from your entire study (Yin, 2011). However, final conclusions may not appear until data collection is over. Because conclusion drawing is only half of the procedure (Miles & Huberman, 1984). The meanings emerging from the data have to be tested for their plausibility, their sturdiness, and their validity (Schutt & Chambliss, 2013), otherwise, we are left with interesting stories of unknown truth and utility.

3.6.2 Computer-assisted Data Analysis

The analysis process can be enhanced in various ways by using a computer. Programs designed for qualitative data can speed up the analysis process, make it easier for researchers to experiment with different codes (Hesse-Biber, 2010), test different hypotheses about relationships, and facilitate diagrams of emerging theories and preparation of research reports (Schutt & Chambliss, 2013).

There are some software used to analyze data in qualitative research method, which NVIVO is the most popular program among them, and a remarkable number of researchers wrote articles using this software (Ozkan, 2004). This program is designed for qualitative data and it can speed up the analysis process, make it easier for researchers to experiment with different codes, also to analyze through creating, applying, and refining categories; tracing linkages between concepts; and making comparisons between cases and events. It is a comprehensive qualitative data analysis software package. The software can be used to organize and analyze interviews, field notes, textual sources, and other types of qualitative data including image, audio and video files (Watling, James, & Briggs, 2012).

There are five important tasks in which NVIVO ease the analysis of qualitative data, first: Manage data; by organizing a number of muddled data documents. That includes interview transcripts, surveys, notes of observations and published documents (Bazeley & Jackson, 2013). Second: Manage ideas; in order to understand the conceptual and theoretical issues generated in the course of the study (Bazeley & Jackson, 2013). Third: Query data; by posing several questions of the data and utilizing the software in answering these queries, results of queries are saved to allow further interrogation and so querying or searching becomes part of an ongoing inquiry process (Flinders University, 2014). Fourth: Modeling visually; by creating graphs to demonstrate the relationships between the concepts and theoretical data (Watling et al., 2012). Fifth: Reporting; by utilizing the data collected and the result found to formulate transcript reports about the study conducted (H. Marshall, 2007).



3.7 Conclusion

This chapter has discussed the methodological approach undertaken in this research. It has outlined the methodology and sample selection process. It has examined data gathering process, as, the method employed for data collection, the sampling methods and how the data were analyzed along with ethical considerations.

CHAPTER FOUR

FINDING AND ANALYSIS

4.0 Introduction

This chapter presents findings and analysis of this study. The findings are based on the interpretation and analysis of data obtained from the semi-structured interviews of five participants. This chapter is divided into four sections. Section one presents the background of the interview participants. Section two focuses on the findings and analysis of the qualitative data. Section three, discusses about relationship between literature and the findings. While section four provides the summary and the conclusion.

4.1 Background of the interview participants

The researcher conducted face-to-face interviews with five participants from different institutions, holding different positions. The general background of the interview participants are presented in table 4.1. The table provides information about the participants' gender, marital status and current positions. The five participants are named after alphabet letters to protect their identity. The titles given to the participants are "A", "B", "C", "D" and "E".

Table 4.1

Demographic characteristic of the participants

| Name | Gender | Marital status | Position | Interview Venue |
|------|--------|----------------|---|----------------------------|
| “A” | Male | Married | Assoc. Prof. & a member of <i>Shari’ah</i> Advisory Council (SAC), (BNM) | (UUM) |
| “B” | Male | Married | A senior lecturer of <i>Shari’ah</i> (<i>muamalat</i> contract & Islamic capital market) at (UUM) | (UUM) |
| “C” | Female | Married | <i>Shari’ah</i> advisory committee member Bank Simpanan Nasional (BSN) | (UUM) |
| “D” | Male | Married | A member of Islamic <i>Fiqh</i> academy, and <i>Shari’ah</i> committee member of Dubai Islamic Bank | Westin hotel, Kuala Lumpur |
| “E” | Male | Married | <i>Shari’ah</i> committee member of Al-Rajhi Bank Malaysia | (IUM) |

Participant “A” is middle- aged- married male. He is an Associate Professor and a Dean at University Utara Malaysia (UUM), College of Business (COB). He has more than 20 years of experience in Islamic banking and finance as a lecturer and *Shari’ah* advisor. Currently, he is a member of Bank Negara Malaysia (BNM) and Securities Commission of Malaysia *Shari’ah* Advisory Council. Participant “B” is a young married male. He is currently a senior lecturer at University Utara Malaysia (UUM). He has more than 12 years of experience in teaching *Shari’ah* related Islamic banking courses such as *muamalat* contract and Islamic capital market.

Participant “C” is middle - aged married female. She is a senior lecturer at School of law, College of Law Government and International Studies, University Utara Malaysia (UUM). She has wide range of experience in Islamic banking and finance as a lecturer and *shariah* advisor. Currently, she is *Shari’ah* advisor of Islamic bank in Malaysia. Participant “D” is a matured married male. He is a Professor of Islamic financial contracts and head of the department of Islamic Jurisprudence in the College of *Shari’ah* and Islamic Studies at the University of Qatar. He has more than 40 years of teaching experience in Islamic finance. He is also the Secretary-General of the International Union for Muslim Scholars and a member of Islamic *Fiqh* Academy. He is a member of *Shari’ah* Supervisory Committees of various Islamic banks in Gulf countries such as Emirates Islamic Bank, UAE; Dubai Islamic Bank, UAE; Investment House, Bahrain; Investors Bank, Bahrain and First Investment, Kuwait. Finally, Participant “E” is a middle-aged married male. He is head of Department of *Fiqh* and *Usul al-Fiqh*, *Kulliyah* of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia. He has more than 10 years of experience as a lecturer. He is currently a deputy chairperson of Al-Rajhi Bank Malaysia Board, Chairman of *Shari’ah* Committee of AM Family *Takaful*.

4.2 Findings and analysis

After thematically analyzed transcripts, the interviewer identified five major unique themes, which are factors of divergence among *Shari’ah* views, effects of divergence *Shari’ah* views, barriers to develop original Islamic banking products and ways to standardize global Islamic banking products and services. Each theme is presented in separate section and the results are shown in figures.

4.2.1 Divergence of opinions among *Shari'ah* scholars and its effects on Islamic banking products and services.

Rights from the inception of Islamic financial institutions, *Shariah* scholars differ on the concept and structures of Islamic banking products and Islamic banks operation. This section examines the factors that led to divergence of opinions among *Shari'ah* advisors and the effects of their differences of opinions on Islamic banking products and services. Questions were posed to the participants asking them on the factors that created differences of opinions among *Shariah* advisory bodies and how their differences of opinions affect standardization and international Islamic banking transactions and investment. The findings are presented in Table 4.2.

Table 4.2

Divergence of opinion among Shari'ah scholars & Effects on Islamic banking products and services

| Themes | Responses |
|-----------------------------------|---|
| Factors of divergence of opinions | <ul style="list-style-type: none"> • Differences of educational background • Differences of schools of thoughts • Differences in legal requirements • Industrial will • Operational environment and culture. |
| Effects of divergence of opinions | <ul style="list-style-type: none"> • Confusion of public & bankers • Lack of standardization of Islamic banking products & services. • Hindrance in cross-regions banking transaction & investment |

4.2.1.1 Divergence of opinion among *Shari'ah* scholars

The participants were asked on why *Shari'ah* advisors differed on their opinions regarding Islamic banking products and services. The participants cited several reasons which include, differences in educational background of *Shari'ah* advisors, *Shari'ah* advisory bodies following different schools of thoughts, lack of industrial will, differences in legal requirements forced *Shari'ah* advisors to fit their opinions based on government guidelines and differences in environment and culture in which the *Shari'ah* advisors operates.

Almost all the participants (n=5) agreed that *Shari'ah* advisors came from diverse background of *Shari'ah* studies. Some are expert in Islamic jurisprudence without finance background, others specialized on *Shari'ah* laws or expert in conventional economics and finance. Thus, this diversity make *shari'ah* advisors to give opinions based on their specialization without either practical knowledge of banking or finance or *Shari'ah* knowledge. To substantiate the argument, the participant “D” asserts that:

“Some Shari'ah advisors have high level of knowledge and expertise in Usul Al-Fiqh sciences, so they can be able to make ijihad, and also concern about Maqasid al-Shari'ah. While other scholars are not expert in Usull al-fiqh. These differences of their background definitely have effect on Islamic banking products”. (Q1, P172)

Nevertheless, participant “E” had different perspective and argued blame should not be on *Shari'ah* advisors for their differences of opinions, as the role of *Shari'ah* advisor is new Islamic finance. So some of them definitely are not exposed, but we cannot blame them because different people should have different expertise. The *Shari'ah* scholar knows *Shari'ah* very well, finance people know finance very well, accountant knows accounting

very well, and the lawyers know the legal part very well. Therefore, combining the scholars from different background is expected to lead to sound decisions.

The second most affective factor is the methodology that they adopt in issuing *Fatwa*. Because most of participants (n=4) have discussed about methodology, which is mainly divided into three categories; leniency, moderation and restricted. In addition, some scholars are playing safe by following the majority of views. To demonstrate this factor, participant “A” classified them to several methods thus:

“Actually issuing Fatwa so fast, without doing proper due diligence... people will say very liberal, and there are also scholars who are, we can consider as they want to understand the matter properly, and after that they will decide what actually his or her view, however, there are scholars who are play safe and just following the majority, if majority agree, yes I agree, if majority don't agree, I don't agree” (Q8, P140-141)

Majority of participants (n=3) confirmed that another factor of differences is upholding some scholars to certain school of thoughts as participant “B” cited:

“Some of them uphold with Mazhab Al-Shafi'ee, even their opinion is weak ... For example, bai'innah before was practiced in Malaysia, why? Because bai'innah is permitted by Shafi'ee Mazhab. However, Mazhab Al-Hanafi and Al-Maliki didn't permit bai'innah. Because of that we see the differences in practices between Malaysia and Middle Eastern countries” (Q1&2, P149)

Lack of comprehensive understanding of Islamic banking products and services is considered as a factor also that could lead to different views because it is a very long process starting from development, launching to the market until the final stage which is usage of the fund. Therefore, it needs a quite understanding of the whole process to have proper view about legitimizing or rejecting the product. This issue revealed by majority of participants (n=3). Participant “E” discussed that in this way:

“Because of the understanding of the slim features of the products, some of the scholars don’t have a clear picture of products, and how it works. Not only the concepts but also the implications” (Q1, P183-184)

Majority of participants (n=3) agree that the differences in qualification requirements from one scholar to another, from one *Shari’ah* supervisory council to another, and from one country’s scholars to another will lead them to have different views in their *Fatwa* towards Islamic banking products and services. Regarding this issue participant “D” see the qualification as a reversal formula:

“The scholar must be highly qualified... it will reduce the differences, but when the qualification is lower than a wanted level, it will lead to a greater differences than we see today” (Q5, P173)

Every country has different legal system, which may have some contradictions with other countries. Hence, in some countries *Shari’ah* scholars fit the *Shari’ah* compliance of the products into an existing legal framework. While in some other countries *Shari’ah* scholars want the legal aspect of the products to fit into *Shari’ah* requirements. This is according to view of two participants as participant “E” explains the issue with a practical experience:

“Because of the regulatory requirements, some Shari’ah scholars have some tolerance and also compromise, in other word something which is not permissible but because of the legal requirement, for example because there is no other choice, then they tolerate, Shari’ah part which can be tolerated” (Q1, P183)

Preference of using secondary sources of *Shari’ah* is not fixed among all Islamic school of thoughts as some prefer certain sources on others and vice versa. Hence, contemporary Islamic scholars were affected by same factor in their *Fatwa* towards Islamic banking products and services. Two participants illustrated that with some examples, participant “A” said:

“There are preference among scholars whether to accept qaulu ssahaby or not? Whether to accept amal ahlul Madeenah or not? This preference scholars may follow Shafīee school of thought where they prefer qiyas, instead of qaulu ssahabi, however, for other mazhab they may prefer qpaulu ssahabi when there is conflict between qaulu ssahabi and qyas, may be they prefer qaulu ssahabi. Other scholars me also prefer qyas compare to the qaulu ssahabi” (Q1, P133)

Two participants uncovered another factor that lead to differences of views among *Shari’ah* scholars about some products and services, which is the industrial will. The industry likes to approve a product even by using the weak views of scholars, or school of thoughts. Because they try to launch the wider range of products to improve on their competitive edge. Participant “E” clearly stressed that:

“We cannot have a pure ijarah, because it is too risky, and the bank doesn’t want to own the asset when the bank just want to have money, they have this but they don’t want to follow they go to hire purchase, which is problematic from Shari’ah perspective but they want to use that, because they can forfeit the car, if customer defaults” (Q11, P186)

Another key point that discussed by participants (n=2) is the environment or culture that surrounded the *Shari’ah* scholars. This might comprise their view of Islamic banking products and services. As participant “D” explained:

“The environment that the scholars are living in, if the environment is surrounded by qualified scholars, then that scholar cannot have an irregular view, however, if the environment has few qualified scholars, it will affect the view of the scholar, which is one factor that affects them to have different views” (Q1, P172)

Sometimes certain *Shari’ah* scholars or *Shari’ah* supervisory council facing obstacles situations while some of them see the only way to pass that difficulties is just permitting that particular product at the moment until they find the way out of that obstacle. The only participant who was talking about this issue is participant “A” when he said:

“When we are facing difficulties, scholars may give an opinion that the product is permissible, why? Because that is only the solution for the market at the moment” (Q1, P132-133)

Few of the participants have revealed that some other factors of divergence such as preference on different secondary sources of *Shari’ah*, difficult situations and political affiliation can affect Islamic products and services. For more detail refer to appendix J.

4.2.1.2 Effects of divergence of opinions among *Shari’ah* scholar’s on Islamic banking products and services

Participants were asked on the effects of divergence of opinions among *Shari’ah* scholars on Islamic banking products and services. The interviewees have identified several factors, which include confusion, hindering of international trade relationships, effect of standardization of Islamic banking products and services and national differences on Islamic banking products and services. These factors are shown in table 4.2.

Almost all participants (n=5) agreed divergences of opinions among *Shari’ah* scholars create confusion among the public as well as the practitioners. That is why Malaysia set *Shari’ah* committee at the bank level and set the final reference at the central bank level. This is to overcome some confusion. Participant “B” classified its impact in two ways as both negatively affect public and practitioners:

“It has two kind of impact, first view; some people think that Islamic financial system is similar or same with conventional system, both of them have gharar (uncertainty) and cloudy, and unknown things. Second view; they prohibit even Islamic banking system” (Q8, P151)

On the contrary, participant “E” objected this idea and see it as a two side of the coin, which may be confusing some people, but for the others could be counted as a flexibility of *Shari’ah* or *rahmah* (mercy).

Regarding to the international trade relationship, two participants agreed that the divergence of *Shari'ah* views will be an obstacle when certain product is allowed in some countries and rejected in another, as participant “C” cited some examples of the impact with some reasons why it is difficult to follow international standards:

“In Malaysia we have bai’'inah, and is opposed by the most of Muslim jurists in the Middle East, because the transaction is very simple, it looks like a loan but it just legalized by the aqad (contract) I sell and buy, but the subject matter is not in existence at all, but we know the concept of heelah (trick) which is unknown to the public. For those who learn Usul al-Fiqh fine, you know why Shafi’ee allow bai’'inah. Now banks changed to tawarruq transaction or murabahah commodity. So people say now it is getting better, but people are not aware that when bank applying tawarruq the liability of the bank now become light, because they are just selling and they are just the agent, they are not buying anymore. So the different applications Middle East rejected bai’'inah, Malaysia have been applying since Islamic bank has been established” (Q7, P162)

However, participant “A” stressed that they are dealing with different *Shari'ah* views without harming the relationships, because of the flexibility of transactions. He argued his view in this way:

“we are not facing any challenge, because in one transaction there is many concept or many tranches, for example for the mudarabah side one investor from Middle East may want to take part on the mudarabah side, so, for first tranche is mudarabah sukuk, second tranche is maybe sell base, they may don't want to enter into sell base why? Because they don't want to enter the issue of bai' ddain (debt trading) for example. So, in one transaction normally consist of many tranches and normally investors they enter into the investment according to their preference what actually they want to enter. In many cases actually when issuing some Islamic financial products they agree to disagree” (Pr8, P138)

Two of participants believe that the divergence of *Shari'ah* view affects the standardization of Islamic products and services. According to participant “C” differences of opinion negatively affect standardization and Participant “D” added his argument and explained it this way:

“Definitely, it will affect standardization Islamic banking products and services, the impact may be negative, especially if the differences being in the fundamental things. We have two types of differences; differences in fundamentals, principles, and basics which affect the results also this one is very dangerous for the legal side, social side, educational side, and affect the product negatively. But if the differences in some small changeable parts it will be ok as long as it is for the development” (Q8, P174)

4.2.2 Barriers to develop and standardize pure Islamic-based banking products and services.

Islamic banks products and services are mostly been taken from conventional one with some modifications to comply with *Shari’ah* principles. Hence, participants were asked whether there is need to develop pure Islamic products and services rather than the Islamization of conventional products and services. They were also asked about the challenges when Islamic financial institutions try to develop their own product. All the participants agreed that it is better to have pure Islamic based products and services. However, they discussed some barriers that facing Islamic financial institutions when they try to develop or standardize Islamic banking products and services, such as globalization of conventional system, legal framework, political will, lack of unity and banker’s background. The findings are shown in table 4.3.

Table 4.3

Barriers to develop and standardize pure Islamic-based banking products and services

| Themes | Responses |
|---|--|
| Barriers to develop pure Islamic-based banking products and services. | <ul style="list-style-type: none"> • Legal barriers • Generous remuneration packages for <i>Shari’ah</i> scholars • Islamic baker’s background |
| Barriers to standardize Islamic banking products and services. | <ul style="list-style-type: none"> • Political will of Muslim countries • Globalization of conventional system • Lack of unity among <i>Shari’ah</i> scholars • Lack of effort |

All of participants (n=5) agreed that it is better to develop original Islamic banking products and services. However, four of them agreed that it must be developed and it is time for Islamic banks to grow and pass the current stage as participant “D” supported the idea in this way:

“At the beginning of establishing Islamic banks before 40 years, we were looking for some alternatives for the conventional interest... But now it is not allowed for the Islamic banks to remain in the alternative circle... look at the western countries now they are the fourth generation, they are presenting the best scenario in business, industry, and technologies. So nowadays simple things are gone, previously how NOKIA mobile phones were famous, but after SAMSUNG and IPHONE appeared Nokia era is gone” (Q12, P176)

On the other hand, participant “C” objected the idea and she provides some evidences to prove her view, while she did not deny the need for that, she explained her objection in this way:

“It is better to create but why do you want to waste your time to create something new when it is already in existence and it did not contradict the principle of Shari’ah?... It is same as urf (costume, or culture), during the prophet period (peas be upon him), he accepted whatever which in line with Shari’ah, such as Salam, and he rejected which is contrary with Shari’ah, such as ghrar (uncertainty)” (Q10&11, P164)

4.2.2.1 Barriers to develop pure Islamic-based banking products and services.

Majority of the participants (n=4) agreed that the existing legal system is the main obstacles for Islamic banking to develop their products and services, while in some countries same low is supervising both Islamic and conventional banks at the same time. Regarding this issue participant “E” expressed his view in this way:

“There some situations legal framework is also the challenge or the barrier, like for example before banks wouldn’t allow to take ownership, to own assets, we do not deny that, but it has been improved from time to time” (Q11, P186)

Some Islamic banks generous remuneration package for *Shari’ah* advisors so that they can approve their products without rigorous. According to the majority of participants (n=4) it is mostly a subjective matter and depends on the faith level of scholars. Because some Islamic financial institutions seeking for lenient *Fatwa* and sometimes provide gifts for *Shari’ah* advisors. Regarding this issue participant “B” stressed:

“Passion for money, high life, and luxury places have an impact which we cannot deny. If someone lives a luxury and comfortable life, it will influence his decisions, his thoughts, and everything. Despite of that we don’t say that every Shari’ah supervisor doesn’t have ikhlas (loyalty), they have ikhlas, and they have big efforts to Islamize the financial system” (Q12, P153)

The majority of participants (n=3) believe that one of the biggest barrier is from bankers. This is because, most of them are from conventional background as participant “A” mentioned:

“The problem is normally the bankers, they came from conventional, and they are familiar with the conventional system, they want to practice conventional practices, but in understood of Islamic environment. By using Islamic principles, but we hope to see new generations of bankers graduated from the Islamic banking program, and they can differ from previous practice” (Q10, P142)

There are some other barriers that discussed by the minority of participants such as competition from conventional banks which affects the development of every industry. Islamic banks have to compete with both conventional and other Islamic banks in developing their products and services. Despite the lack of ethics among the people today. Therefore, we cannot easily have pure classical Islamic banking products and services. Regarding these barriers, refer to appendix K.

4.2.2.2 Barriers to standardize Islamic banking products and services.

Despite of the divergence among *Shari'ah* scholar's views there are some other barriers facing Islamic financial institutions when they try to develop pure Islamic banking products and services.

The majority of participants (n=3) agreed that political will is a factor of failure for Islamic financial institutions to have standardization of Islamic banking products and services. Because every decision will remain on a paper until there will be a political will to apply it. Participant "D" addressed this issue and said:

"Political will has a very big role for Islamic finance to success or fail, Islamic banking is growing automatically (self-growing) self-power, while if the country adopt it will be done... Most of Islamic countries did not adopt Islamic banking system though they have some Islamic banks excluding Malaysia and some other countries. If those countries really adopt Islamic banking, now supposed to have rules and systems for it, and set some boards of Shari'ah scholars, bankers, and lawyers, to develop these products to introduce new products" (Q13&19, P177,178,179)

The second most effective reason is globalization of conventional system. Which affects to the Islamic financial system, because it is considered new comparing to conventional financial system. Which is more structured through about four centuries with bigger revenue and global rules. Majority of participants (n=3) agreed with this reason as participant "B" asserted that:

"There is international standard which hinders the Islamic banking developments a lot. For example in Geneva they issued resolutions for every banks to implement those resolutions... Globalization gives a bigger chance to the conventional bank, and they have huge revenues ... So, this is one of the biggest challenges" (Q11&15, P152&154)

However, participant "E" objected the effects of global conventional system to Islamic financial system to build their standard structure. He expressed his objection in this form:

“the conventional is there, I don’t agree they can be a barrier, but definitely in the process of growing Islamic finance, we do not deny that we should integrate with other standards as long as we can maintain the Shari’ah requirements” (Q15, P187)

The majority of participants (n=3) agreed that lack of unity among *Shari’ah* scholars at the international level may affect the standardization. Participant “B” thinks there is no official relationship among countries:

“I think the relationship between Middle East and Malaysia is just between scholars, which means there is not countries relationships but science relationship, or relationship among individuals, so we need the relationship between countries, official relationship” (Q17, P154)

However, participant “A” believe that *Shari’ah* scholars are very united at the international level as he stressed his objection and said:

“Shari’ah scholars in Islamic finance now are very unite, that is why they involve in conferences organize by various countries, they attend it, for example once a year at Darul Barakah, scholars from all over the world came to Darul Barakah seminars in order actually to discuss certain Shari’ah issues in Islamic finance” (Q20, P145-146)

Another barrier that was revealed by majority of participants (n=3) is lack of action from those international Islamic organizations who are always calling countries for standardization while they are not setting it at their top agenda as Participant “A” commented:

“The failure of the international bodies is that; they talk much, we want to standardize, we want to do these and to do these and that, however, they are not doing much researches on how to do that?” (Q15, P144)

The minority of participants have revealed some other barriers such as conflict of interest from one country to another, low level of awareness among Muslim people, lack of experience, low technology, low mechanism and inefficient training. For more detail refer to appendix L.

4.2.3 Remedies to standardized Islamic banking products and services to facilitate global Islamic banking transactions and investment.

After recognition of some factors that create barriers for Islamic financial institutions to develop their own products and services, there is need to at least to have standard products and services based on *Shari'ah* principles with one advisory and supervisory body around the world. Participant were asked about some proper solution to have harmonization and standardization for all Islamic financial institutions. Therefore, they cited some remedies such as establishing one international *Shari'ah* advisory council, standardizing of basic qualification and requirements, establishing international union research and development and establishing global umbrella body. These solutions are presented in table 4.4.

Table 4.4

Remedies to standardized Islamic banking products and services

| Theme | Responses |
|--|---|
| Remedies to standardized Islamic banking products and services | <ul style="list-style-type: none"> • Establishing one international <i>Shari'ah</i> advisory council • Standardizing basic qualification requirements • Establishing international union research and development • Establishing global umbrella body |

Almost all of participants (n=5) agreed with establishing one international *Shari'ah* advisory council to issue standard resolutions for all Islamic financial is one of the best solution. However only two of participants believe that it is better to have it with binding resolutions, as participant “D” supported that in this way:

“This is not just should but we are waiting for it... What we are hoping now to have even binding harmony among them on Shari’ah fundamentals for products... I am personally when the western countries advisors of prime ministers asking me for advice after financial crisis, the first question they asked us was if we adopt Islamic banking we have to follow whom from the Shari’ah supervisory bodies, while this says halal and the other says haram? I replied; no, those Shari’ah supervisors are responsible to organize and work on the issues. But for the implementations you have the methods which are the Shari’ah standards. So, after that they started to translate those standards to French and English languages. This may reduce some of those dangerous differences” (Q9&24, P175&180)

However, the other three participants did not agree with binding resolutions, and they think it is better to be as a reference as participant “A” thinks it will limit the flexibility of *Shari’ah* regarding the differences of time and place –environment/ culture- from country to another. He asserted that:

“For me, different countries have different problems, for you to say one standard, we are limiting the flexibility of Shari’ah, accordance to the time and place, one practice may suite the practice from Malaysia but may not suit practice of Arabs, and may not suit practice of the Europeans” (Q14, P144)

Majority of participants (n=4) agree with standardizing basic qualification requirements to reduce differences among *Shari’ah* views as participant “D” stated his view thus:

“Muslim countries should adopt at least basic qualification requirements for those scholars ... countries can set a standard for these qualifications to choose the member for Shari’ah supervisory committee and councils” (Q23, P179)

On the other hand, participant “A” believe that we must evaluate *Shari’ah* scholars through their capability, not their qualification:

“From my opinion we must have those who are capable to be Shari’ah scholars, not necessarily they have to have Shari’ah degree... So, what we try to do in Malaysia? The gap between those who in bank and Shari’ah scholars... We try to have scholars who can understand the finance at the same time, and also we want to make our practitioner, understand Shari’ah” (Q3&16, P136&145)

Majority of the participants (n=4) agreed with the importance of establishing international research and development for all Islamic financial institutions. Regarding this solution participant “D” added a proper suggestion:

“From long time ago I was asking Islamic banks to extract a portion from their annual profit for the research and development centers, because the only way for big institutions to succeed is to have research and development centers” (Q15, P177)

Majority of participants (n=3) agree with establishing a global institution to supervise all *Shari’ah* supervisory committees. Participant “C” supported this solution and said:

“I agree, only one institution is given the power and let it spread. I prefer to have this type of administration; all the Shari’ah advisory committees put under one umbrella” (Pr12, P166)

There are some other solutions that suggested by minority of participants such as creating a harmonization committee for them to get their views closer until they find one agreed view. Centralization of salaries and funds through government so that *Shari’ah* advisory members will be free from the financial influences from Islamic banks. In addition proper training for *Shari’ah* committees can help to get their views closer. More details are presented in appendix M.

4.3 Discussion findings in relation to the literature

The findings are compiled from the participants views on the substantial previous literature, which are similarly discussed by some authors as presented in table 4.5. In this section, the researcher attempt to explain some of these revelations in relation to literature reviewed.

Table 4.5

Relationship between literature and findings

| Mutual agreed concepts | Authors | Participants |
|--|---|-------------------------------|
| Factors of divergence among <i>Shari'ah</i> views | | |
| Background | (Ibrahim, 2015) | "A" "B" "C" "D" "- E" |
| Qualification | (Nawal Kasim et al., 2013), (Wardhany & Arshad, 2012) | "B" "D" "E" |
| Legal framework | (Song & Oosthuizen, 2014),(Mejía et al., 2014), (Hasan, 2007) | "A" "E" |
| Secondary sources | (Aida, 2009), (Bahari, 2009) | "A" "D" "- E" |
| Industrial will | (Hamza, 2012), (Goud, 2009) | "A" "E" |
| Political affiliation | (Auda, 2007) | "- A" "- B" "- C" "- D" "- E" |
| School of thoughts | (Tajudin, 2010),(Zaidi, 2012),(Auda, 2007) | "A" "B" "C" "D" |
| Understanding | (Shaharuddin et al., 2012), (Kammer et al., 2015) | "A" "D" "E" |
| Methodology | (Goud, 2009) | "A" "C" "D" "E" |
| Industrial will | (Goud, 2009) | "A" "E" |
| Effects of divergence among <i>Shari'ah</i> views | | |
| Confusion | (Farhan et al., 2012) | "A" "B" "C" "D" |
| Lack of standardization | (NawalKasim et al., 2013), (Hamza, 2012) | "C" "D" |
| Trade relationship | (Kammer et al., 2015),(IADI, 2010) | "- A" "B" "C" |
| Implication | (Hamza, 2012) | "C" |
| Need to develop Islamic financial products | | |
| Need | (Farhan et al., 2012) | "A" "B" "D" "E" |
| Barriers for developing and standardizing pure Islamic financial products | | |
| Lack of unity & harmonization | (Zulkhibri & Majid, 2012) (Farhan et al., 2012) | "B" "D" "E" |
| Gap between scholars and bankers background | (Zulkhibri & Majid, 2012) | "A" "D" "E" |
| Globalization's impacts | (Al-Salem, 2009) | "B" "C" "D" |
| Awareness | (Zulkhibri & Majid, 2012) | "E" |
| Legal | (Zulkhibri & Majid, 2012) | "A" "B" "D" "E" |
| Luxury/ loyalty | (Goud, 2009) | "A" "B" "C" "E" |
| Remedies for Islamic banking products and services to be standardized | | |
| Global authority umbrella | (Tajudin, 2010) | "B" "C" "D" "E" |
| Bridge the gap between scholars and bankers background | (Tajudin, 2010) | "A" "B" "C" "D" "E" |
| Harmonization & combining views | (Zulkhibri & Majid, 2012) | "B" "D" |
| International Shariah advisory council | (Tajudin, 2010),(NawalKasim et al., 2013) | "- A" "B" "C" "D" "E" |

As regard to different background of the *Shari'ah* scholars identified by Ibrahim (2015) as a factor of creating different opinions among them, four participants “A” “B” “C” “D” and “E”, confirmed this factor. In addition, the adopting of different *Mazhabs* and different interpretation or understanding of *Shari'ah* sources stated by Tajudin (2010) as a factors of divergence among *Shari'ah* views, were also revealed by each of participants “A” “B” “D” and “E” while all of them agreed with this factor revealed from the said literature. Furthermore, a comprehensive understanding to the whole process is stated by Shaharuddin et al. (2012) who emphasized that in Malaysia, Islamic funds are not legalized to leak out to the conventional financial market. While, in GCC countries, Islamic banks can boost funds to recapitalize *Riba*-based institutions. This statement similarly stated by participant “A” also:

“In Malaysia... the leakage of fund put to the non Shari'ah complaint, I can say minimum occurred, however, in middle east there are, if we do a research there maybe leakage of fund from Islamic fund been used for the conventional” (Pr5, P135)

Furthermore, (Goud, 2009) discussed some other factors of divergence, such as; methodology that is adopted by scholars, whereby some scholars are lenient to issues Fatwa. These groups of scholars are cherished by the industry, as they are lenient in their operation. These factors also confirmed by almost all participants as participant “E” clearly cited this issue:

“We cannot have a pure ijarah, because it is too risky, and the bank doesn't want to own the asset when the bank just want to have money” (Q11, P186)

In addition, participant “C” said:

“Some banks give; Ipad, very expensive lap top, etc. to their Shari'ah committee... I believe that some people made decision based on these gifts. There must be...” (Q13&Pr10, P165-166)

However, Auda (2007) stated that another factor is political affiliations, while it rejected by all participants “- A” “- B” “- C” “- D” and “- E”.

According to Farhan et al. (2012) there are some divergences among *Shari’ah* views on Islamic banking products and services, which makes things more complicated. In the same manner, the majority of participants agreed with these differences of *Shari’ah* view create a confusion as participant “C” cited:

“For example, lawyers when they want to conclude a contract, sometimes they are confuse what they should do first? The signing of the agreement? Or the sale agreement? Can we have two agreement in one document? Such as hire and purchase for car financing” (Pr7, P163)

NawalKasim et al. (2013) stated that the differences of opinions among scholars in different regions lead to the lack of standardization of Islamic banks products and services. Similarly, this argument supported by participant “D”:

“Definitely, it will affects standardization of Islamic banking products and services” (Q8, P174)

Farhan et al. (2012) stated that Islamic scholars should not Islamize conventional products. They need to develop their own *Shari’ah* compliance products. This view is supported by almost all participants, as participant “A” said:

“I support that, if we can be different from the conventional” (Q10, P142)

Regarding some barriers of standardization Zulkhibri and Majid (2012), Syed Farhan et al. (2012) and Al-Salem (2009) identified these factors, which are; lack of unity, *Shari’ah* scholar’s lack knowledge about financial system, bankers conventional background, and the globalization of conventional system on Islamic finance. Similarly, the majority of participants confirmed that these factors negatively affects the standardization of Islamic banking products and services. For instance, participant “B” stressed that:

“Some of scholars said they heard from the employees, it means they didn’t understand very well how the system is working” (Q4, P150)

In addition, he stated about globalization impact:

“Globalization gives a bigger chance to the conventional bank, and they have huge revenues ... So, this is one of the biggest challenges” (Q15, P154)

Finally, some solutions were suggested by Tajudin (2010) and NawalKasim et al., (2013) such as establishment of global authority regarding *Shari’ah* matters, with its framework and implementations be accepted universally. In addition, they suggested that the need to establish a combination of knowledge in both *Shari’ah* rules and modern financial system. These solutions also suggested and supported by almost all of participants. For example, participant “B” asserted:

“This is what we wish to have... If we unite we become stronger, and we take more binding and more serious resolutions” (Q21&Pr2, P155)

In addition participant “A” stressed about need to have combination of *Shari’ah* and finance knowledge:

“The gap is between those who in bank and Shari’ah scholars... We try to have scholars who can understand the finance at the same time, and also we want to make our practitioner, understand Shari’ah” (Q3, P136)

4.4 Conclusion

This chapter discussed the interpretations of the findings revealed from the research questions in order to achieve the research objectives. The chapter disclosed some of the factors that create differences of opinions among *Shari’ah* advisors on Islamic banking products and services. These include, different background of the scholars, methodology of issuing *Fatwa*, adopting different Islamic school of thoughts, different level of understanding of Islamic finance process etc. These could have significant effects on the standardization and internationalization of Islamic banking products and services. In

addition, the divergences of opinions also create confusion among public and practitioners on Islamic finance practice. Furthermore, it affects international trade relationships across the globe. On the other hand, this chapter examined the importance of development of Islamic banking products and services to have a standardization. This is in addition to some challenges that are facing the *Shari'ah* scholars and the industry when they try to develop and standardize Islamic banking products and services. Which include; lack of political will, legal barriers, globalization of conventional system, lack of unity among *Shari'ah* scholars and Muslim countries. These are some of the critical obstacles on the standardization of Islamic products and services. Finally this chapter has explored some important remedies to resolve these issues, which are; establishing high *Shari'ah* authority at the international level to supervise all Islamic banks and *Shari'ah* committees. It also explore the need to develop and improve international research and development for Islamic finance coupled with providing proper technology, training and strong system for Islamic finance. It is hoped that, the limitations of the researcher biasness was kept to its minimum in terms of its effect on respondents answers.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion and discussion

This qualitative research design has attempted to gain a holistic and integrated understanding of the effects of *Shari'ah* supervisory opinions on the development and standardization and internationalization of Islamic banking products and services from theoretical perspectives. It also develops and explores the proper suggestion related to issue of divergence of opinions, standardization and internationalization of Islamic banking products and services. The main purposes of Islamic banking are to develop products and services that can assist in transferring funds from surplus units to deficit units based on *Shari'ah* principles. This is to allow Muslim communities to deposit and invest their money in permissible investment. The products and services offered by Islamic banks are structured upon the avoidance of *riba*, *gharar* (uncertainty), *maisir* (gambling), *haram* (prohibited) industries, which include those products which are related to pork, alcoholic beverages, and pornography.

However, we have noticed that to play with market rules and create their competitive edge, Islamic banks are Islamizing conventional banking products and services rather than developing Islamic-based products. These create problems of standardization and internationalization of Islamic banking products and services as *Shari'ah* advisory councils differed in their opinions on these products and services. Thus, making cross-border international Islamic banking transactions difficult as products that are approved in one jurisdiction are disapproved in other jurisdiction.

In addition, despite efforts by some Islamic international organizations such as AAOIFI, IFSB, etc., to standardize Islamic banking transactions, but differences in opinions among *Shari'ah* advisory councils in different jurisdictions and lack of political will from Muslim countries made their efforts fruitless. Nevertheless, some countries started to adopt AAOIFI standards and this could lead to right directions.

Therefore, we have so far achieved all of the three objectives of this study. As previously identified in chapter one, the main objectives of this study are three: (a) to examine the factors that influence differences of opinions among *Shari'ah* advisors and effects of their opinions on Islamic banking products and services. (b) To identify the barriers on the development and standardization of pure Islamic-based banking products and services. (c) To examine how Islamic banking products and services can be standardized to facilitate global Islamic banking transactions and investment.

Based on this chapter, the first objective is achieved by examining the factors that led to differences of opinions among *Shari'ah* scholars. The findings reveals that differences on educational background among *Shari'ah* advisory scholars, differences in methodologies they used to derived rulings, the differences on various scholars based on their Islamic schools of thoughts, lack of comprehensive understanding of Islamic banking products and services, legal framework, etc. are among the factors that led to the differences in opinions among *Shari'ah* advisory councils of Islamic banks. Furthermore, for investigating the effects of differences on opinions among *Shari'ah* scholars on standardization of Islamic banking products, the finding reveal these differences of opinions led to confusion among public and practitioners, restriction on international trade

relationship and effect of standardization of Islamic banking products across different jurisdiction.

For the second objective, which is the need to develop original Islamic banking products and services, the barriers that is hindering the way and some suggested solutions were addressed. Which is the essential need for Islamic financial institutions to create their own Islamic products and services rather than replicating conventional products and services, this is in addition to some barriers identified that is facing *Shari'ah* scholars and the industry to develop their original Islamic banking products and services rather than the Islamization of conventional one. These barriers are; legal barriers from one country to another. Providing generous remuneration packages for the scholars by the industry which may affect their decisions for whom have low level of loyalty or faith. Also most of Islamic bankers are coming from conventional education and practice. Competition from conventional banks. And moral hazard by customers, which prevent Islamic banks to enter in direct business, just to provide fund.

Furthermore, the study investigated the reasons for failure of international organizations to standardize Islamic banking products and services. The main factors include; lack of political will among Muslim countries to set rules and standards. The power globalization of conventional system restricts the growth of Islamic banking and influences its system. This is in addition to lack of unity and harmonization among those organizations in formal relationship. Furthermore, lack of effort and action by those organizations to put it as top agenda. Moreover, there are also some other realized factors such as; lack of mechanism, technology, and low level of awareness among Muslim people.

The final objective included the role of convergence among *Shari'ah* views to develop standard Islamic banking products and services. Some solutions were suggested by the participants to achieve the final objective. Which is; the need to establish one international *Shari'ah* advisory council for all Islamic banks around the world, the standardize qualification requirements, in addition to the establishment of international research and development as well as setting one international institution as an umbrella body to supervise all *Shari'ah* committees around the world. Furthermore, building harmonization among different views of *Shari'ah* scholars. This combined with proper training for both *Shari'ah* scholars and bankers to fill the existed gap between them. And finally centralize salaries and funds for *Shari'ah* scholars to avoid the influences from the banks.

Although these findings are important, however, it is equally important to compare those factors of differences, challenges, and failures to understand the role of *Shari'ah* views to develop and standardize Islamic banking products and services. There are some obstacles related to divergence of *Shari'ah* views going through all stages from development and standardization, such as background, adopting Islamic school of thoughts and understanding of scholars on the product process. These can be solved through some of suggested solutions, such as; standardizing of qualification requirements.

Furthermore, there are other factors that affects standardization which include lack of unity among *Shari'ah* scholars and lack of effort, which can be solved through harmonization among views and establishment of international research and development. Moreover, centralize funds and salaries can also solve the problem of bankers who are providing generous remuneration packages for scholars who have low level of loyalty to issue lenient *Fatwa*.

Finally, the most significant solution is to establish one international *Shari'ah* advisory body with global umbrella institutions to set standard resolutions and governance for all Islamic banks. This remedy is going to solve the issue of having different *Shari'ah* law at the central bank level between different countries. It could also help to reduce obstacles in international trade relation. Also it minimizes the existed confusion among both public and practitioners. Likewise, it will empower *Shari'ah* standard resolutions to be implemented in all Islamic banks, with the reduction of some unwanted industrial will. Overall, it could be concluded that the entire objective of this study was achieved from the overall results and it is hope that this study would be beneficial to all relevant parties including the Islamic finance and banking.

5.1 Contribution to knowledge

The research filled both the literature gaps in the field of Islamic finance by examining five aspects related to Islamic banking products and services. It examines the reasons for differences in opinions among *Shari'ah* scholars, the effects of their differences of opinions on the development and standardization of Islamic banking products. It also investigates barriers faced by the industry in standardization of Islamic banking products. Finally it provides some remedies on the issues related to standardization and internationalization of Islamic banking transactions. Therefore, in more specific, the study contributes both to the body of knowledge and on the research methodology.

5.1.1 Contribution to the Body of Literature

Firstly, the primary contribution of this study to knowledge is that, it has explored the obstacles that prevent *Shari'ah* supervisory bodies across different jurisdictions to have unified opinions view on Islamic banking products and services. These factors have been discovered in a thematic analysis of interview transcripts. The reasons of their divergence vary from personal background, education, environment to industrial will and legal system. Secondly, the consequences of that divergence of opinions of *Shari'ah* advisory bodies have been identified. This is to resolve the issue of confusion among public and bankers so that it can facilitate cross-border transactions. Thirdly, the study has explored the possibility to develop Islamic-based products rather than Islamisation of conventional banking products. It has also identified several obstacles that can hinder the development of Islamic-based products. Fourthly, the study also highlighted the efforts of international Islamic organizations to standardize Islamic banking products and services and the challenges they faced. Finally, after identifying main factors the study also provide some remedies that can assist in reducing the challenges and obstacle in standardization and internationalization of Islamic banking transaction. Overall, this study has significantly contributed to knowledge as it has developed five theoretical frameworks that need to be empirically tested.

5.1.2 Contribution to Research Methodology

This study has developed research instrument that specifically looked into issues of development, standardization and internationalization of Islamic banking products and services. The study conducted in depth-semi structured interview to prove the research.

This contributes to the field of research methodology, as it is among the pioneering work on Islamic banking products and services. The development of the proposed theoretical framework in this study will help the future researchers to empirically study the relationships between these identified variables. The findings also reveal that, most significant factors that affect the standardization of Islamic banking products and services are related to the divergence of opinions among *Shari'ah*, and this will help future researchers to develop more questionnaires about these factors.

5.2 Implications and Recommendations

The study has investigated the reasons for differences of opinions among *Shari'ah* advisory bodies, the effects of these differences of opinions on the development of Islamic banking products and services as well as cross-border transactions. The study also suggests remedies for standardization and internationalization of Islamic banking products and services. This section reviews some of these implications and provides some recommendations:

5.2.1 Implications and Recommendations for Islamic *Shari'ah* supervisory bodies

The findings have several implications to the *Shari'ah* supervisory councils, committees, boards, and individuals to understand the impact of differences of *Shari'ah* scholars' opinions on standardization and internationalization of Islamic banking products and services. *Shari'ah* advisory bodies should try to reduce their differences so that Islamic banks can have standardized products and services. This will improve international

banking transactions across the globe. In addition, convergence of opinions can reduce confusion and increase awareness on Islamic banking products and services. Today, bankers and customers are confused as some Islamic banks in same countries offer same products but using different Islamic contracts. Some jurisdictions disapproved products in other regions as non-*Shari'ah* compliance. This creates confusions and limit cross-regions investment.

According to the findings *Shari'ah* scholar's different educational background, adopting different methodology from leniency on restriction, sticking to one Islamic school of thought, without caring about other views, and their different level qualifications significantly affects the divergence and prevent them to have harmonization on one standard products and services. Therefore, it is important for *Shari'ah* institutions to extremely work hard and build an international *Shari'ah* institution for training all *Shari'ah* scholars to have similar educational background which leads to closer views among them.

Furthermore, *Shari'ah* institutions should train and educate Islamic bankers through establishing institutions that contain both Islamic sciences and banking system, this is in addition to have more training on the technological instruments. This will help to upgrade a new generation who are expert in both fields together. Hence, the existed gap between bankers who have lack of Islamic science and *Shari'ah* scholars who have shortage of knowledge in banking system will be automatically covered.

Finally, it is better for international *Shari'ah* organizations to establish one global *Shari'ah* advisory council which supported by international research and development institutions. This will help them to overcome different *Shari'ah* resolutions for Islamic financial institutions. This could be a combination of members from every country.

5.2.2 Implications and Recommendations for Policy Makers

This study will help governments of both Islamic and non-Islamic countries to overcome the conflict of laws, which sometimes could be called an injustice laws. Because in most countries, they do not have any specific law for Islamic banking system. Hence the problem will appear when they are dealing with Islamic banking activities according to the conventional laws.

Majority of the respondents agreed with that political will as one of the factor that negatively affects standardization of Islamic banking products and services. Therefore, governments from every country, especially the Muslim majority countries, must develop a separate law for Islamic banks. It could also help international *Shari'ah* institutions to set their regulations at the central bank level and supervise all Islamic banks with that law. This will empower the relationship among countries in term of international trade, which will have a positive impact to the economy.

5.2.3 Implications and Recommendations for Islamic banks

According to the findings, Islamic banks do not like to participate in transparent direct business which is fully *Shari'ah* compliant, this create a confusion among both of public and practitioners thus, affecting public trust negatively and that should be reversed in order to gain public trust through increasing their trustworthiness, accountability and transparency. This can be resolved through the implementation of good practices of corporate *Shari'ah* governance such as appointing independent of *Shari'ah* committee. In addition, they must fund the *Shari'ah* institutions to develop international research and

development through a small portion of their annual dividends as suggested by one of the participants. Islamic banks should try to employ bankers who has knowledge in both of Islamic sciences and banking practices. Finally the top management officials of these institutions should be well knowledgeable, qualified, competent and honest, with high level of integrity, and above all have *Taqwa* to protect their faith and gain the trust of public and the benefit for hereafter also.

5.3 Limitation of the study

Although the findings of this study is important yet, there are a number of limitations that need to be taken into consideration. Firstly, limitation of the literature related to development of Islamic banking products and services and standardization of these products across different regions. There are very few studies conducted in this area. Secondly, time constraints; therefore, there is need for additional time to conduct a thorough investigation on that matter. For example, the participants of this study are from South East Asia and Middle Eastern countries. This made it difficult for researcher to access them, as it took long time for them to respond whether they can participate in this study or not. Moreover, some of the interviews were conducted in Arabic, thus the researcher have to translate it and transcript the interviews in English, which was time consuming. Thirdly, most of the participants hold high positions in *Shari'ah* advisory bodies and it was very difficult for researcher to have access to them as they have tight schedules. Lastly, there was problem of financial constraint as researcher had to pay for all the expenses related to data collection out of his pocket and this limits the ability of the researchers to increase the sample size. Therefore, there is need for increase on sample.

5.4 Suggestions for future research

Based on the major findings, the researcher has made some suggestions for future research in this area. The study has developed five theoretical frameworks and therefore, there is need for empirically tests to confirm if there is significant and positive relationships between differences of opinions among *Shari'ah* advisory bodies; and if the differences of opinions among *Shari'ah* advisory bodies significantly affect standardizations' of Islamic banking products and services. The future research should also examine if there are significant relationship between convergence factors and standardization of Islamic banking products and services across different jurisdictions.



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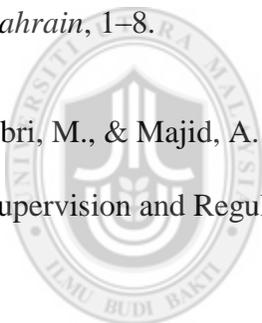
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