

ULASAN ARTIKEL / ARTICLE REVIEW

Possible Ways to Achieve Uniformity in Fatwas on Finance in the Practice of Shari'ah Supervisory Boards By Muhammad Sa'id Ramadan al-Buti. The Seventh Conference of the Shari'ah Boards of Islamic Financial Institution, 27-28 May 2008

(Beberapa cara untuk mencapai keseragaman dalam Fatwa berkaitan Kewangan oleh Majlis Penasihat Syariah oleh Muhammaad Sa'id Ramadan al-Buti. Persidangan Ketujuh Majlis Penasihat Syariah Institusi Kewangan Islam, 27-28 Mei 2008)

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Shari'ah Supervisory Board (the board) is an element of the structure established in financial institutions to ensure the running of the operation of banking and financial activities. The role of the board is to ensure that all products and services offered by that institution are fully compliant with Islamic law. The board also may issue rulings upon reference made to it.

This article was written and presented in the view that the writer wanted to highlight problems that cause non-uniformity of *fatwas* on finance among the *Shari'ah* Supervisory Boards. To achieve the uniformity, the writer proposed the formation of a single coherent structure i.e. the *fatwas* issued should be harmonious and consistent. The writer has identified four reasons in giving *fatwas* by the *Shari'ah* supervisory boards fail to achieve uniformity i.e. 1) lack of maturity in *fiqh*; 2) not referring to or seeking guidance from the *fatwas*

of the Islamic Academy i.e. the Organization of Islamic Conference in Jeddah and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI); 3) no methodology to clarify and make binding the best way to research Islamic issues; and 4) lack of association to organize regular meeting of all boards' members. The writer also has discussed on six recommended outlines for the third problem. The outlines were laid in the opinion of the writer in order to make clear and informative methodology in transmission process in making reference to jurists' opinions which are follows; 1) the word of *mufti* is referring to the word *mujtahid*, if one cannot complete the requirement of being *mujtahid*, he only can be considered as a transmitter of opinions; 2) thus the writer made it refers to the members of the board cannot be referred as a *mufti* as they are the transmitter of the Shari'ah ruling; 3) a jurists who has opportunity to transmit the opinions of the *mazhabs* in a given issue, must be in one of two categories, either he is committed to following particular *mazhabs* or he has more extensive knowledge; 4) the members of the board should aware of the opinions of the jurists from all the recorded *mazhabs* on the issue they were made reference to; 5) they must be consistent in transmitting the *Shari'ah* ruling for any issue from its sources; and 6) then, there is no harm if they differ in giving preference to the particular opinion they consider to be supported by the strongest evidence or that best achieves public interest.

This can be seen that the rise of the problems as to the non-uniformity of rulings or *fatwas* made by the board is mainly due to the existence of various opinions or *mazhabs* in Islamic law. The writer did acknowledge the variety of thoughts among the jurists, however, the inconsistency of the *Shari'ah* boards in issuing *fatwas* to their financial institutions and finally to have made known to the public has led to an unsettled state amongst these institutions which also has confused to the public. This writer's main concern for the board is to gain a complete and integrated mastery of the issues related to financial transactions in Islamic law. The main reference has to be made to the well-established source that can dispel the misconceptions on certain issues. However, form the outlines laid by the writer show that problems of the non-uniformity among the boards stem from the absence of standard guidelines in the transmission process of making reference to the jurists' opinions. Thus, there is need to certain guidelines that must be followed by the boards in all financial institutions, so that, there can be harmonization of *Shari'ah* laws pertaining to financial matters.

Even though the writer has recommended for the board to state all the dissenting opinions of jurists from all *mazhabs* because of the current practice of the board that fail to mention the difference of opinions among the jurists from other *mazhabs* and support with strong evidences in presenting the legal ruling on certain issue. However, the article can also substantively discuss on the standard guidelines for the boards to follow as their responsibility to ensure

the rulings issued are consistent with *Shari'ah*. By having standard guidelines, it may help the board when it making reference to the opinions of the jurists in order to make a decision for any cases referred to it. This is because there can be misconceptions among the *Shari'ah* boards of the financial institution as they might already have certain procedures laid by their institutions. Besides, the rulings issued by the board need to be circulated to all financial institutions as reference in making judgment for the cases referred to them. The lack of cooperation among the boards from all financial institution has led to non-uniformity in their rulings or *fatwas*.

This article seems does not practically relevant to Malaysia since in Malaysia have *Shari'ah* Advisory Board (SAC) established by Bank Negara. Whenever ruling given by the *Shari'ah* committee from any financial institutions is different from ruling given by the SAC, the ruling of the SAC shall prevail. Besides, Malaysia does not ratify AAOIFI as a main source to comply the guidelines laid by the said institution and Malaysia through Bank Negara does not bound to it. The Islamic financial institutions also may refer for ruling or seek the advice of the SAC. The Central Bank of Malaysia Act 1958 has now been re-enacted as the Central Bank of Malaysia Act 2009 (Act 701). Provisions therein relating to the establishment and functions of the SAC are relevant to be considered here. Section 56, reference to *Shari'ah* Advisory Council for ruling from court or arbitrator: (1) where in any proceedings relating to Islamic financial business before any court or arbitrator any question arises concerning a *Shari'ah* matter, the court or the arbitrator, as the case may be, shall- (a) take into consideration any published rulings of the SAC; or (b) refer such question to the SAC for its ruling.

However, there is also absence of mechanism in ascertaining the consistencies of *Shari'ah* law in Islamic banking and finance system in Malaysia with other countries. This can be seen that in Malaysia, the concept of *Bay al-Inah* is permissible as agreed by the SAC compared to other Middle East countries. Thus, this article may also discuss on the role of the *Shari'ah* Board in ensuring the application of *Shari'ah* law in finance system globally consistent and well-accepted by majority of the countries. Even though the disparities might derive from different *mazhabs* in Sunni beliefs, yet this can be the standardized through the general principle of *Shari'ah* by which referring to the Qur'an and *Hadith* of the Prophet Muhammad pbuh. Thus, the harmonization in *fatwas* concerning on finance can be uphold.

In today's world, the Islamic finance issue is now becoming a hot topic of discussion among economists, bankers and financial experts from countries all over the world. Therefore, the uniformity and harmonization of *Shari'ah* rulings and *fatwas* need to be taken into consideration seriously by the *Shari'ah* Supervisory Boards in order to eliminate of three main elements of *riba'* (interest/usury), *gharar* (uncertainty) and *maisir* (gambling) that have

been well-adopted in the world banking and finance system. Hence, this paper shows the concern of the writer on this matter that need to be taken seriously in order to avoid any misconceptions and doubts relating to Islamic law.