

REALIZING MAQASID AL-SHARI'AH IN SHARI'AH GOVERNANCE: A CASE STUDY OF ISLAMIC BANKING INSTITUTIONS MALAYSIA

Azmir Azri Ahmad
Faculty of Business and Management
Universiti Sultan Zainal Abidin
Kampus Gong Badak, 21300, Kuala Nerus, Terengganu
azmir.azri@yahoo.com

Muhammad Shahrul Ifwat Ishak
Faculty of Business and Management
Universiti Sultan Zainal Abidin
Kampus Gong Badak, 21300, Kuala Nerus, Terengganu
shahrulifwat@unisza.edu.my

ABSTRACT

This study explores how far the element of *maqasid al-Shari'ah* is realized through the practice of *Shari'ah* governance in Malaysia. Among the main bodies in Islamic banking institutions, *Shari'ah* governance plays a vital role in ensuring that all financial activities comply with *Shari'ah* rulings and its objective. Based on library research, this study analyzes secondary sources including books, articles and related documents to obtain a clear picture of the element of *maqasid al-shari'ah* in *Shari'ah* governance. The findings reveal that two special *maqasid* have been realized through the practice of *Shari'ah* governance in Malaysia: ensuring the viability of Islamic banking institutions and promoting transparency. While this study is limited due to the lack of empirical analysis, it could be considered as being among the preliminary studies on the topic of *maqasid al-Shari'ah* in *Shari'ah* governance.

Keywords: Islamic finance, Shari'ah governance framework, *Maqasid al-Shari'ah*,

INTRODUCTION

It should be understood that even though Islamic financial institutions play in the same field as their conventional counterpart, the former needs to ensure that all of its activities are in line with *Shari'ah* principles. This includes all developed products and financial practices according to *fiqh Mua'amalat* (Islamic commercial jurisprudence). In this regard, a special governance run by a group of *Shari'ah* experts is needed by Islamic institutions to ensure their activities can be closely monitored.

In fact, utilizing the name of Islam must be done carefully by Islamic financial institutions as any wrongdoing may affect public confidence, and later their business as well. The case where the sales of *sukuk* dropped 50% and prices fell at an average of 1.51% in 2008 is an example to illustrate this point. Even though many factors contribute to this problem, it was argued in the statement by Muhammad Taqi Usmani, one of the prominent scholars in Islamic finance, that 85% of *sukuk* in the Gulf are non-*Shari'ah* compliant, which has significantly affected public confidence. This could lead to legal risk in some countries, as

Islamic products may be declared void by a court if they fail to fulfill Islamic requirements like the case of *Bay' Bithaman ajil* in Malaysia.

In this regard, *Shari'ah* governance is given special attention as a vital organ in the Islamic finance industry. In fact, this position is only qualified for those who have a strong background in *Shari'ah* and a deep understand of the current practice of finance. This is due to Shariah governance's responsibility in terms of *Shari'ah* matters such as structuring, reviewing, approving, auditing, and issuing an annual certification of *Shari'ah* compliance.

Realizing its significant role, *Shari'ah* governance needs to strengthen its fundamentals from the *Shari'ah* aspect rather than mirror corporate governance. For this purpose, *maqasid al-Shari'ah* seems to be ideal to be embedded with the concept of *Shari'ah* governance. While many studies pertaining to *maqasid al-Shari'ah* in banking, finance and economics have been carried out, it is found that the topic of *maqasid al-Shari'ah* in *Shari'ah* governance is still lacking. As a response, this study aims to explore the elements of *maqasid al-Shari'ah* that can be embedded within *Shari'ah* governance. The reformation of the Islamic finance industry should include promoting *maqasid* through product development or regulations; instead, the most practical solution is to strengthen its internal organ with fundamental *maqasid al-Shari'ah*. This study is divided into several sections.

The concept of Shari'ah Governance in Islamic Finance

To begin with, it is learned that a *Shari'ah* Governance Framework is crucial for Islamic Finance. IFIs need a unique governance framework to ensure their activities fully comply with *Shari'ah* rulings and principles. Furthermore, *Shari'ah* governance reflects a few elements such as integrity, transparency, accountability and responsibility that also exist in Islamic principles with the purpose to preserve *maslahah* to all stakeholders.

Over the years, the term “*Shari'ah* governance” has been clarified by many parties. Sastra (2018), for example, explains the main difference between *Shari'ah* governance and conventional corporate governance, whereby the former aims to ensure all activities, transactions, practices in IFIs must be in accordance to the *Shari'ah* principles. Furthermore, Noreen et al., (2016) states that the underlying concept behind the *Shari'ah* Governance Framework is deeply rooted in the Qur'an and the Hadith, thus its function is significantly deferent than the concept of the corporate governance model in conventional finance. In fact, *Shari'ah* requirements in IFIs are not limited in terms of prohibiting *riba*, *gharar*, and gambling. Rather, their highest fundamental principles are derived from the concept of *tauhid* (Noradibah et al., 2018). This can be understood from the Qur'an when Allah SWT says:

*“And I created not the Jinn and mankind except that they
should worship Me” (Adh-Dhariyat: 56)*

According to the *tafsir* (commentary) by Ibn Kathir, the meaning of this verse is, “I, Allah, only created them so that I order them to worship Me, not that I need them” (Muhamad Saed, 2012). In this regard, based on this verse, all mankind is accountable to Allah in this world and the hereafter. The concept of *tauhid* is embedded in the *Shari'ah* governance as it guides mankind to perform their duty and their responsibility because their actions are accountable to Allah (ISRA, 2011).

According to the *Shari'ah* governance framework, it is understood that the *Shari'ah* Committee (SC) represents its main components. The ultimate responsibility of SC is to provide clear advices for IFIs to ensure their activities are *Shari'ah* compliant (BNM, 2019).

In this regard, the concept of *shura* is applied in the *Shari'ah* governance framework, where IFIs must consult with the group of *Shari'ah* experts so that their activities are according to *Shari'ah* rulings and principles (Zain et al., 2015).

It is argued that the most crucial elements of *Shari'ah* governance are disclosure and transparency (ISRA, 2011). For example, the guideline issued by BNM has outlined the principle of transparency in which IFIs must disclose all information related to *Shari'ah* in their annual report (BNM, 2019). Despite the fact that this term has been widely discussed in corporate governance, the concept of transparency is not alien in Islam. In fact, it is very much similar to the Islamic principle of *amanah*. The concept of *amanah* represents the element of trust and honesty. Shuhari et al., (2019) concluded that the concept of *amanah* refers to the person who is entrusted with something to be performed, and he holds responsibility for any wrongdoing or deceit.

In the Qur'an Allah S.W.T says:

“And if one of you deposits a thing on trust with another let the trustee (faithfully) discharge his trust and let him fear his Lord. Conceal not evidence, for whoever conceals it – his heart is tainted with sin. And God know all that ye do” (Al-Baqarah 283).

The above-mentioned verse implicitly indicates that in any business dealing, there must be an element of transparency and disclosure. Nevertheless, despite the fact that the concept of *amanah* is an essential element in *Shari'ah* governance. Noordin et al., (2015) argued that the current disclosure of *Shari'ah* reported in IFIs is not adequate and needs to be improved.

With regards to *Shari'ah* governance, its framework consists two important terms: *Shari'ah* and governance. The word *Shari'ah* can be defined as “Path of religion and the various aspects of laws (*al-ahkam*) which Allah provides for his servants (humankind) through divine law revealed to Prophet Muhammad S.A.W (al-Qur'an) or through sunnah” (Abdul Karim Zaidan, 2006). As for governance, Hassan (2011) defines it is a system of guiding, monitoring and controlling institutions and organizations. In general, both words carry the same meaning: the institution is guided or controlled towards one goal to achieve success. Nevertheless, *Shari'ah* governance is guided by the divine law of God. This is because the primary sources of reference for *Shari'ah* governance are extracted from the Qur'an and the Sunnah. Also, its main elements are embedded with *Shari'ah* principles.

Shari'ah governance has attracted a number of literatures, yet Hassan (2011) argues that no previous study has provided a clear definition on this term, except the definition by IFSB (2009). This body defines *Shari'ah* governance as a set of institutional and organizational arrangements through which IFIs ensure that there is effective independent oversight of *Shari'ah* compliance over the issuance of relevant *Shari'ah* pronouncements, dissemination of information, and an internal Shariah compliance review.

This definition emphasizes three essential elements; firstly, IFIs should be institutionally arranged by an SC along with all internal *Shari'ah* functions namely *Shari'ah* Risk, *Shari'ah* Review and *Shari'ah* Audit. Secondly, the board and management of IFIs must ensure that the SC and relevant parties such as *Shari'ah* Review and Audit can exercise their duties independently and their decisions must be free from any undue influences. Thirdly, the definition denotes the internal arrangement process that covers the pre-transaction review and post-transaction review in ensuring the *Shari'ah* compliance framework (ISRA, 2011).

Meanwhile, the Central Bank of Kuwait issued *Shari'ah* Supervisory Governance for Kuwaiti Islamic Banks and defines it as a system whereby an IFI attempts to comply with *Shari'ah* and its objective (*Maqasid al-Shari'ah*) through independent and professional supervision (Central Bank of Kuwait, 2016). This definition has incorporated the element of *maqasid al-Shariah*.

In more detail, all bodies including the SC, internal Shari'ah Review and Shari'ah Audit should ensure all transactions are in accordance to *Shari'ah* and its *maqasid al-Shariah*. Contrary to other definitions where it is emphasized only to the organizational arrangement, the Central Bank of Kuwait attempted to further strengthen their Islamic finance by complying with *maqasid al-Shari'ah*. It is also assumed that *maqasid al-Shariah* is supposed to guide the implementation of the *Shari'ah* governance framework in Islamic finance.

MAQASID AL-SHARI'AH IN ISLAMIC FINANCE

Technically, the term *maqasid al-Shari'ah* can be understood as the wisdom that is emphasized by God in his rulings (Al-Yübī, 1998). Based on this concept, *Shari'ah* rulings are revealed for special purposes (Adis, 2014). *Maqasid al-Shari'ah* is interrelated with another term of *maslahah* (public interest) which reflects its core spectrum. In this regard, Al-Shātībī (2004) views *maslahah* as representing essential elements of human life: the exercise of one's livelihood, and the development of the emotional and intellectual qualities needed to live an effective life. In exploring the Qur'an and the Hadith, *maslahah* is the main objective of *Shari'ah* rulings, mainly to bring mercy (Qur'an: 21:107) and avoid difficulties (Qur'an: 6:5). At the same time, some *Shari'ah* rulings represent specific *maslahah*, such as protecting life through the rule of *qisos* (law of equality) (Qur'an: 179:2) and distributing the wealth through the rule of *fai'* (spoil of war) (Qur'an: 59:7).

Maslahah can also be learned from the Prophetic practices such as the case when the Prophet refused to take any action towards the *munafiqin* (a hypocrite group) due to the negative image towards Islam (Muslim, 2000). This approach has been followed by the rightly guided caliphs through their policies and decisions. For example, compiling the Qur'an as a single book, banning interfaith marriage, declaring divorce three times at once to count as three times, selling any lost camel, and imposing a fine on craftsmen for loss or damage to customers' property (Al-Khādāmī, 2010).

The theory of *maqasid al-Shari'ah* has been systematically developed by Muslim scholars between the 15th and 18th C.E. (Auda, 2007). Among the earliest were Al-Juwayni, al-Ghazali and Izz 'Abd al-Salam who introduced the idea of *maslahah* as well as five *dharuriyyat* (essentials) including protecting *din* (religion), *nafs* (soul), *aql* (intellect), *nasb* (progeny) and *mal* (property) (Al-Yübī, 1998). This was followed by ibn Taimiyyah, ibn Qayyim, and al-Qarafi, who have expanded the issues of *maslahah*, particularly in dealing with a possible clash between *maslahah* and the banning or tolerating of an action in the name of *maslahah*. Also, the issue of *hiyal* (trick) has attracted scholars to discuss how this element was utilized to legalize prohibited actions (Al-Raisūnī, 1995). On top of that, the topic of *maqasid al-Shari'ah* has become a comprehensive discussion with a unique approach introduced by al-Shatibi (Hamīdān, 2004). Known as the father of *maqasid*, al-Shatibi has reformed the fundamentals of *maqasid al-Shari'ah* with practical principles that can be applied in Islamic jurisprudence (Al-'Abaidī 1992).

In modern times, *maqasid al-Shari'ah* has gained more attention by many scholars as it has become an independent subject today. *Maqasid* is well-known as a concept that reflects the holistic meaning of Islam. Instead being jurisprudence-oriented, many scholars have attempted to deduce other values from Islamic sources to be recognized as *maqasid al-Shari'ah*, along with five well-known *dharuriyyat*. These include equality, freedom, reform, justice, human dignity and developing civilization (Adis Duderija, 2014; Bin al-'Ashūr, 2001). Meanwhile, Attia (2003) has proposed the scope of *maqasid al-Shari'ah* as re-manifested into individual, family, ummah, and all humanity. To ensure the practicality of *maqasid al-Shari'ah*, Al-Qarḍāwī (2006) believes that several concepts like *fiqh al-Maqasid*

(understanding the objectives of Islamic law), *fiqh al-Muwazanat* (understanding equilibrium), *fiqh al-Awlawiyat* (understanding priority) and *fiqh al-Ikhtilaf* (understanding disagreement), should be considered in practice.

In terms of its roles, it can be understood that *maqasid al-Shari'ah* promotes the total well-being of humankind and ensures the environment is according to the dictates of *Shari'ah* (Shinkafi & Ali, 2017). In this regard, it is essential to protect *Shari'ah* rulings from being altered in the name of the human well-being and avoid applying these rulings on a literal textual approach (Al-Qardāwī, 2006). While *maqasid al-Shari'ah* promotes achieving *maslahah* through Islamic rulings, rather than over-emphasizing their technical or legal aspects, it also plays a role in harmonizing between revelation and reality. *Maqasid al-Shari'ah* provides a special guideline for scholars to engage with the change of circumstances, people's needs and customs, and consider the social, cultural, political and economic background, before applying any rule (Zahraa, 2003).

Over the period, many studies regarding Islamic finance and *maqasid al-Shari'ah* have been carried out to improve the current practice of this industry. Dusuki and Abdullah (2007) hold the view that *maqasid al-Shari'ah* should provide an ethical guidance to ensure Islamic financial institutions promote social welfare and fulfill society's needs, rather being solely profit-oriented. Meanwhile, Laldin and Furqani (2013) proposed a special framework for applying *maqasid al-Shari'ah* in Islamic finance. The framework emphasizes wealth circulation, fair and transparent financial practices, and justice at both micro and macro levels. This is in line with concept of special *maqasid al-Shari'ah* introduced by Ibn Al-Ashūr (2001) whereby financial practices fulfil objectives of wealth in terms of being *wuḍūh* (transparency) and *thabāt* (stability). In terms of products, Ahmed (2011) came up with an idea of the *maqasid* assessment where Islamic financial products must fulfil Islamic principles in terms of form and substance, along with society's needs including poor people and small/micro entrepreneurs. Through *maqasid al-Shari'ah*, it is required that Islamic finance should not emphasize on legal aspects only but also to fulfil the spirit of *Shari'ah* in its operations. In this regard, Hasan (2016) has proposed the value-oriented reform to promote equity-based financing and customer protection. To realize this idea, he believes that the *Shari'ah* governance system can play a significant role. Meanwhile, Shaharuddin (2010) has stressed the need for a well-defined *maslahah* guideline in dealing with Islamic finance issues. This is vital since scholars can either be too rigid by over-focusing on technical aspects, or too liberal by arguing with unregulated *maslahah* principles. To practically apply the element of *maslahah* in real practice, Zakariyah (2015) views that the element of morality in Islamic finance should be promoted through education and awareness for all parties in this industry. Meanwhile, Soualhi and Bouheraoua (2019) emphasized the element of macro *maqasid* in Islamic finance, including consideration of the explicit ruling of the Islamic legal text, consideration of a contract's own objective and implications and consideration of justice and fairness in a contractual relationship. These *maqasid* should be realized at the level of regulators first before the level of Islamic financial institutions. At the same time, macro *maqasid* also needs to be considered as the benchmark to measure compliance of the Islamic finance regulations with the objectives of *Shari'ah*,

SPECIAL MAQASID AL-SHARI'AH RELATED TO SHARIAH GOVERNANCE

In general, *maqasid al-Shari'ah* can be categorized into two: general and specific. General *maqasid* refers to *maṣlaḥah* that covers all or the majority part of *Shari'ah* (Bin al-'Ashūr, 2001). General *maṣlaḥah* is established through the deducted process from all or the majority of areas of Islamic jurisprudence (Al-Khādimī, 2010). Among them are five fundamentals of *ḍaruriyyat*, *iṣlah* (reform), protecting the system, and avoiding difficulties. In fact, general

maṣlahah has strong fundamentals from Islamic sources, thus, it represents the whole meaning of *Shari'ah*. As a result, it can be applied widely in different fields and is considered the main priority under this classification. As for special *maqasid*, it reflects *maṣlahah* on specific areas of *Shari'ah* (Bin al-‘Ashūr, 2001). For example, *maqasid* in *ibadat*, family law, criminal law, and politics.

With regards to *Shari'ah* governance, special *maqasid* can be identified as follows:

1. To support Viability of Islamic Financial Institutions.

Even though Islamic financial institutions have emerged since a half-century ago, they are still considered as new players in the financial industry compared to their conventional counterparts, which have already been well-established for almost four centuries (Ishak, 2018). In fact, Islamic finance is facing many challenges to adapt its system to the modern financial environment. Furthermore, Islamic financial institutions, particularly Islamic banks, need to mitigate two types of risks in their operations: the risk as a financial intermediary and the risk of utilizing Islam's name in their services. The first risk includes credit risk, market risk of the absence of a developed secondary market for *sukuk*, mark-up risk using specific benchmark rates for their instruments, asset price risk, liquidity risk, and legal risk (Ahmed & Khan, 2007). As for the second risk, since Islamic products have unique features, their practices must be compliant with *Shari'ah* as some countries have established specific laws for Islamic banking practices.

While the number of Islamic banks has expanded dramatically around the world, it is reported that few of them have shut down their operations. For example, the Ihlas Finance House, an Islamic financial institution in Turkey, was closed in 2001 due to liquidity problems and financial distress (Syed Ali, 2007). Meanwhile, Faisal Islamic Bank closed its operations in the UK for regulatory reasons. At the same time, the Dubai Islamic Bank and Bank Islam Malaysia Berhad faced corporate difficulties and had borne significant losses, as the former experienced a USD 501 million fraud case while the latter declared RM 457 million losses as their BODs were not competent in respect to the banking industry (ISRA, 2011).

Thus, it can be concluded that Islamic financial institutions are still struggling to establish its identity and to adapt its system to the modern financial industry, which seems to be inconducive to its progress. In this regard, the viability of Islamic financial institutions should be considered as an important *maqasid al-Shari'ah* in Islamic finance.

2. To promote transparency.

The second identified *maqasid al-Shari'ah* related to *Shari'ah* governance is to promote transparency. In general, promoting transparency in all financial activities is part of special *maqasid al-Shari'ah* in finance (Al-Ashūr, 2001). Through this concept, all deals and transactions must be conducted in a transparent manner and all contracting parties must be clear about them. This includes the important facts of a transaction, particularly the items that have the potential for disputes. Then, they must mutually agree on it before the transaction can be executed. In this regard, Allah orders Muslims to write an agreement in matters relating to debt: “O you who have believed, when you contract a debt for a specified term, write it down” (al-Baqarah: 282). This verse becomes a guideline for Muslims when they are about to be involved in a long-term financial commitment to write the agreement, save all the details, and ensure that there are vital witnesses (Ibn Kathīr, 2008).

To support the *maqasid* of transparency in Islamic finance, *Shari'ah* governance should also be transparent. This governance plays vital roles in developing, reviewing, approving, auditing and issuing a certification of *Shari'ah* compliance for any product (ISRA, 2011). Also,

since Islamic financial institutions rely on public confidence, particularly regarding *Shari'ah* matters, *Shari'ah* governance needs to enhance its transparency in conducting its roles.

A CASE STUDY OF SHARIAH GOVERNANCE FRAMEWORK IN MALAYSIA

This section will explore how *maqasid al-Shariah* concepts are implemented in the *Shari'ah* governance framework. In examining the extent to which the *maqasid al-Shariah* is embedded in *Shari'ah* governance, it is imperative to discuss an overview of *Shari'ah* governance practice in IFI. As mentioned earlier *Shari'ah* governance as defined by IFSB (2009) is a set of institutional and organizational arrangements through which IFIs ensure that there is effective independent oversight of *Shari'ah* compliance. Additionally, the institutional arrangement means the *Shari'ah* board and all related *Shari'ah* control functions ensure the *Shari'ah* compliance of IFI (ISRA, 2011).

Viability of Islamic Finance Through Shariah Governance Framework in Malaysia

There are many factors that contribute to the global financial crisis, which, among others, are excessive and irresponsible lending by conventional banks. Moreover, as highlighted by Kayed and Hassan, (2011), the regulatory failure such as lack of effective regulation introduced by the regulator and lack of adequacy of governance established by the bank has led into a global financial crisis. Hence, for Islamic finance, it is imperative to establish effective governance in avoiding such failures in the future.

The development of Islamic banking and its regulation in Malaysia involve several phases where Phase 1 began in 1983 until 1993, and Phase 2 began in 1994. In the early phase of Islamic banking, several dedicated legislations were published and officially passed in the parliament to facilitate the first Islamic banking operations, Takaful and others related to Islamic financial institutions (Munirah & Zakiri, 2016). Consequently, Islamic banks must appoint an SC to obtain the Islamic bank license from BNM. A year later, the Takaful Act 1984 was introduced, followed by the Banking and Financial Institutions Act 1989 (BAFIA), The Central Bank of Malaysia Act 2009, and the Securities Commission Act 1993 (Zulkifli Hassan, 2010). As mentioned by Haji Besar et al. (2009), the Islamic Banking Act 1983 was the first regulatory that had stated the provision for the establishment of the SC as a requirement in granting the Islamic banking license.

The effort to develop a comprehensive *Shari'ah* governance framework was undertaken by BNM (Laldin & Furqani, 2018). BNM issued the first systematic guideline related to *Shari'ah* governance in 2005, titled the 'Guidelines on the Governance of *Shari'ah* Committee for the Islamic Financial Institutions' or known as GPS 1. Five years later, BNM issued more comprehensive *Shari'ah* Governance, which came into effect in 2011. The most significant changes in SGF 2010 compared to GPS 1, was that BNM has further elaborate the roles and responsibilities of the SC and has included the board's role and senior management in ensuring *Shari'ah* compliance. In general, the *Shari'ah* governance framework 2010, Islamic banking and Takaful are expected to establish four dedicated *Shari'ah* functions namely *Shari'ah* Review, *Shari'ah* Audit, *Shari'ah* Risk and *Shari'ah* Research. The figure below illustrates a model structure of the roles, functions, and reporting relationships of key organs in the IFI's *Shari'ah* governance framework:

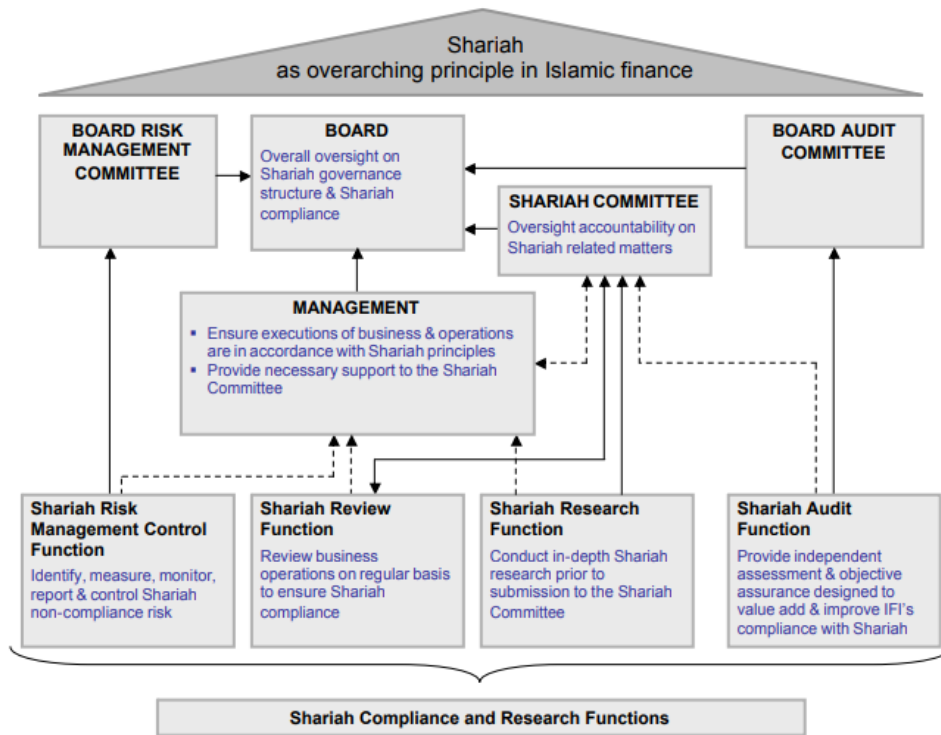


Figure 1: Shari'ah Governance Framework BNM 2010
 Source: (SGF BNM, 2010)

Given the rapid development of IFI business complexity and market maturity, the new *Shari'ah* governance issued by BNM in 2019, known as Shari'ah Governance Policy Document (SGPD 2019), superseded the earlier *Shari'ah* governance 2010. The revised *Shari'ah* Governance Policy 2019 emphasized *Shari'ah* non-compliance risk's effective management by strengthening the *Shari'ah* control function (Kamaruddin et al., 2020).

The highest level of institutional arrangement is known as the *Shari'ah* committee (SC) which is the body accountable for *Shari'ah* related matters by the respective IFI. Each jurisdiction adopts different practices and models of *Shari'ah* governance (Alam et al., 2019). For example, a centralized *Shari'ah* governance model has been adopted in Malaysia, comprising a two-tier model. The highest authority, namely the Shari'ah Advisory Council sits at the national level, whereby the SC works at the institutional level. The Shari'ah Advisory Council's ultimate objective is to reduce opinion differences, ensure harmonization of *Shari'ah* ruling, and promote good governance within IFI (Grassa, 2015).

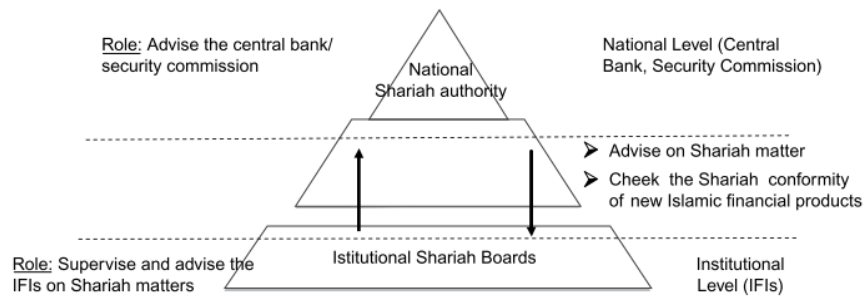


Figure 2: Two Tier Model
 Source: (Grassa, 2013)

The SC also undertakes the role in supervising, monitoring, auditing, and issuing *fatwa* to the IFI (IFSB, 2009). This includes ensuring zakat payment, providing guidance on the disposal of non-*Shari'ah* compliant funds, and its broader social role. Moreover, Akram Laldin (2020) posited that *Shari'ah* committee members must also assess the Islamic banking product and its implication to the economics of the *ummah*, which requires the *maqasid* approach to their ruling. It is also proven that the presence of *Shari'ah* committee in the IFIs gives comfort and confidence among the public towards Islamic banks (Marwan et al., 2016). This is because their function is not merely in ensuring *Shari'ah* compliance, but also to improve the quality of financial statements, improve bank performance, contribute to a moral and ethical system, and so forth (Mukhibad, 2019).

In view of the above, the *Shari'ah* committee's roles are not only to serve the Islamic bank, but also extend to the customers and overall public and society. Serving the public interest to maximize benefits and reduce losses for society is the main principle of the *maqasid al-Syariah*.

Apart from that, a sound and robust *Shari'ah* governance normally comprises two main pillars: internal and external organizational arrangement. As discussed earlier, the external arrangement is handled by the SC and is assisted by other *Shari'ah* control functions, usually referred to as *Shari'ah* Review, *Shari'ah* Audit, and *Shari'ah* Risk, which are expected to provide a system of checks and balances within the organization (Laldin & Furqani, 2018). As highlighted by Karim Ginea and Azhar Hamid, (2015), the internal *Shari'ah* control system of an Islamic bank is a critical system that operates at all times and in all levels within the bank to promote prudent *Shari'ah*-compliant operations in accordance with laws, regulations, policies, guidelines, and best practices. In the SGPD 2019, BNM has taken out the roles of *Shari'ah* research function and maintained only three functions as follows:

- i. *Shari'ah* Risk Management: *Shari'ah* risk management refers to a function that systematically identifies, measures, monitors, and reports *Shari'ah* non-compliance risks in the operations and business.
- ii. *Shari'ah* Review: *Shari'ah* review refers to a function that conducts regular assessment on the compliance of the operations, business, affairs, and activities of the IFI with *Shari'ah* requirements.
- iii. *Shari'ah* Audit: *Shari'ah* audit refers to a function that provides an independent assessment on the quality and effectiveness of the IFI's internal control, risk management systems, governance processes, as well as the overall compliance of the IFI's operations, business, affairs and activities with *Shari'ah*.

As compared to the conventional financial institutions, IFIs have been exposed to additional type of risk, namely '*Shariah* non-compliance risk'. Hence, it is necessary IFIs to have an adequate management risk system that can avoid the mentioned inherent risks. In SGPD 2019, it is required that the Board, *Shari'ah* Committee, and Senior Management to establish an effective internal organizational arrangement in supporting *Shari'ah* compliance risk culture in the IFIs. Besides, *Shari'ah* risk management function also must identify *Shari'ah* non-compliance risk exposure, assess the risk, and measure its potential impact to the IFIs. In ensuring the effective control in place, *Shari'ah* risk management must thoroughly monitor the *Shari'ah* non-compliance risk embedded in the business and operation of IFIs. As for reporting, the *Shariah* risk management function must escalate a full report regarding the *Shariah* non-compliance risk exposure and its potential to the board, senior management, and *Shariah* committee.

Hence, it can be concluded that ensuring *Shari'ah* compliance activities of IFIs are the collective responsibilities of all the stakeholders, including the SC, *Shari'ah* control functions, and not to mention the Board, Senior Management, and others.

Transparency and Disclosure in Shariah Governance

One of the essential elements in Islamic banking is transparency and disclosure. Similar to the concept of accountability in Islam, the IFIs are expected to fully disclose their activities, financial performance, and status of *Shari'ah* compliance activities, including numbers of *Shari'ah* non-compliance events that occur in the financial year report to the public. Nevertheless, Sekreter (2013) argued that most Islamic banks are lacking in terms of transparency and disclosure to their stakeholders.

Due to the public's demand for transparency and disclosure towards Islamic banks, the proper implementation of *Shari'ah* governance is imperative since it assists in ensuring that all the activities and operations comply with the *Shari'ah*. This is in consistent with the concept of *maqasid al-Shariah* in Islam, which is to protect and preserve public interest, including the needs of IFIs' stakeholders.

With general scrutiny for transparency and disclosures, the previous SGF 2010 only provides the example of the minimum annual disclosure in the appendix. As a result, all the Islamic banks (as per the table) have provided disclosure, namely the Shari'ah Committee Report, in their respective annual reports (SGF BNM, 2010).

Table 1: *Shari'ah* Committee Report of Islamic Banks in Malaysia

No.	Islamic Bank in Malaysia	Shariah Committee Report	Shariah Non-compliance Event Report
1.	Affin Islamic Bank Berhad	√	√
2.	Al Rajhi Banking	√	√
3.	Alliance Islamic Bank Berhad	√	√
4.	AmBank Islamic Berhad	√	√
5.	Bank Islam Malaysia Berhad	√	√
6.	Bank Muamalat Malaysia Berhad	√	√
7.	CIMB Islamic Bank Berhad	√	√
8.	HSBC Amanah Malaysia Berhad	√	√
9.	Hong Leong Islamic Bank Berhad	√	√
10.	Kuwait Finance House (Malaysia) Berhad	√	√
11.	MBSB Bank Berhad	√	√
12.	Maybank Islamic Berhad	√	√
13.	OCBC Al-Amin Bank Berhad	√	√
14.	Public Islamic Bank Berhad	√	√
15.	RHB Islamic Bank Berhad	√	√
16.	Standard Chartered Saadiq Berhad	√	√

Source: Researcher Compilation

Nevertheless, SGPD 2019 includes a more extensive discussion, mainly on the report of *Shari'ah* governance practices in the IFI annual report. It is required that the board discloses its oversight accountability for *Shari'ah* governance implementation and disclosure by the SC

regarding its responsibility and their opinion towards the compliance of IFIs with *Shari'ah* principles. Apart from that, the board and SC must ensure that all the information from the financial report is accurate and does not contain any misleading information and, ultimately, the *Shari'ah* committee report must be signed by the members of the SC.

Regarding the *Shari'ah* committee report, SGPD 2019 requires that the SC provides evidence that the respective IFIs comply with *Shari'ah*, and to disclose further if a *Shari'ah* non-compliance event has occurred during the financial year report, whether 'non-material' or 'material'. The material or non-material *Shari'ah* non-compliance disclosure is needed because *Shari'ah* non-compliance events involving financial loss such as breach of tenets or *aqad* requires purification of income, or non-financial implications, or may give reputational damage to the IFIs. Moreover, such a report must also include the nature, status and measures undertaken to address the *Shari'ah* non-compliance events, either material or non-material.

CONCLUSION

The *Shari'ah* Governance Framework is a backbone of Islamic finance where Islamic financial institutions must monitor, control, and conduct their activities according to the *Shari'ah* principles. Despite numerous studies on *Shari'ah* governance practice, there are still limited studies on the applicability of *maqasid* towards *Shari'ah* governance practice. Therefore, this study explores the realization of *maqasid al-Shari'ah* in the *Shari'ah* governance practice in Malaysia.

The findings reveal that two special *maqasid* have been realized through the practice of *Shari'ah* governance in Malaysia: ensuring the viability of Islamic banking institutions and promoting transparency by virtue of the efforts taken by BNM together with support by Malaysia's government, such as the issuance of legislation, act, standard, and governance with the ultimate objective to promote the Islamic financial system's resilience. The latest *Shari'ah* governance 2019 also emphasized on transparency and disclosure in IFIs. Hence, combining both ingredients, namely effective *Shari'ah* governance, and transparency, can further increase the stakeholder's confidence in Islamic finance.

While this study is limited due to the lack of empirical analysis, it could be considered among the preliminary studies on *maqasid al-Shari'ah* in *Shari'ah* governance. Therefore, for further studies, it is recommended to carry out empirical studies regarding the post-implementation of *Shari'ah* Governance Policy Document 2019 and a case study on the *Shari'ah* Committee Report of Islamic financial institutions in Malaysia.

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