

**ACCOUNTABILITY AND RESPONSIBILITY OF SHARIAH
SUPERVISORY BOARDS IN ISLAMIC FINANCIAL
INSTITUTIONS**

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BRUNEI DARUSSALAM**

1437H / 2016M

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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HAJI MOHAMAD AIDIL YUSRIE BIN HAJI SHARI

11P0005

A thesis submitted in fulfillment of the requirement for the degree of
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**Faculty of Shariah and Law
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Brunei Darussalam**

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SUPERVISION

ACCOUNTABILITY AND RESPONSIBILITY OF SHARIAH SUPERVISORY BOARDS IN ISLAMIC FINANCIAL INSTITUTIONS

**HAJI MOHAMAD AIDIL YUSRIE BIN HAJI SHARI
11P0005**

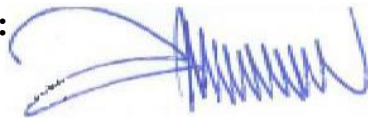
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DECLARATION

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ABSTRACT

ACCOUNTABILITY AND RESPONSIBILITY OF SHARIAH SUPERVISORY BOARDS IN ISLAMIC FINANCIAL INSTITUTIONS

This research aims to identify the accountability and responsibility of Shariah Supervisory Boards in Islamic Financial Institutions. The researcher follows the inductive and comparative approach to reach the objective of this research through the inductive approach, the researcher will be able to evaluate the efficiency of the accountability and responsibility of Shariah Supervisory Boards in overseeing that Shariah governance is practiced in-line with international standards. The comparative approach compares Shariah Supervisory Boards' models from different jurisdictions. The finding of this study shows that the implementation of the Shariah Supervisory Board in terms of the Islamic jurisprudential theory is achievable in-line with international standards. However, the actual practice of the Shariah Supervisory Board in Brunei Darussalam is still very limited and requires further development in the improvement of the Shariah Supervisory Board. Therefore, this research presents effective solutions to handle the current challenges in the implementation of the Shariah Supervisory Board, so that the Shariah Supervisory Board would bring effective financial development in Brunei Darussalam, particularly in the Islamic financial services.

ABSTRAK

AKAUNTABILITI DAN TANGGUNGJAWAB LEMBAGA PENASIHAT SHARIAH DALAM INSTITUSI KEWANGAN ISLAM

Kajian ini bertujuan untuk mengenal pasti akauntabiliti dan tanggungjawab Lembaga Penasihat Syariah dalam Institusi Kewangan Islam. Penyelidik telah menggunakan pendekatan induktif dan perbandingan untuk mencapai objektif kajian ini. Dengan pendekatan induktif penyelidik akan dapat menilai keberkesanan akauntabiliti dan tanggungjawab Lembaga Penasihat Syariah dalam mencapai tadbir urus Syariah yang selaras dengan piawaian antarabangsa. Manakala, pendekatan perbandingan pula membandingkan model Lembaga Penasihat Syariah dari bidang kuasa yang berbeza. Dapatan kajian ini menunjukkan bahawa pelaksanaan Lembaga Penasihat Syariah dari segi teori perundangan Islam adalah selaras dengan piawaian antarabangsa. Walaubagaimanapun amalan Lembaga Penasihat Syariah di Brunei Darussalam masih sangat terhad dan memerlukan inovatif bagi meningkatkan tadbir urus Syariah. Oleh itu, kajian ini memberikan beberapa penyelesaian yang berkesan untuk menangani cabaran semasa pelaksanaan Lembaga Penasihat Syariah, agar Lembaga Penasihat Syariah itu berkesan dan akan mencapai pembangunan kewangan di Negara Brunei Darussalam, khususnya dalam perkhidmatan kewangan Islam.

ملخص البحث

مسئولية المجالس الشرعية في المؤسسات المالية الإسلامية

يهدف هذا البحث إلى تحديد مسؤولية المجالس الشرعية في المؤسسات المالية الإسلامية. يتبع الباحث المنهج الاستقرائي وأسلوب المقارنة للوصول الى الهدف المنشود من البحث؛ ومن خلال المنهج الاستقرائي سوف يكون الباحث قادرا على تقييم كفاءة المجالس الشرعية فيما يتعلق بمسئوليتهم بشأن تحقيق الحوكمة الشرعية بما يتماشى مع المعايير الدولية. أما أن المنهج المقارن فإنه يقارن بين نماذج المجالس الشرعية في عدد من الدول. إن نتيجة هذه الدراسة تبين أن الرقابة الشرعية من حيث النظرية الفقهية الإسلامية قادرة على أن تتماشى مع المعايير الدولية في هذا المجال. ومن الملاحظ أنه انطلاقا من الواقع والممارسة الفعلية فإن الرقابة الشرعية في بروناي دار السلام ما تزال محدودة وتحتاج إلى تحسين من خلال تطوير عمل المجالس الشرعية. لذلك، يقدم هذا البحث بعض الحلول الفعالة للتعامل مع التحديات الراهنة التي تواجه الرقابة الشرعية بطريقة تمكّي المجالس الشرعية من الاسهام في تعزيز التنمية في بروناي دار السلام، وخاصة في مجال الخدمات المالية الإسلامية.

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TRANSLITERATION

Arabic Word Transliteration System

Transliteration Table

Arabic	Roman	Example	Transliteration
ء	ʾ	فقهاء	fuqahʾ
ب	B	البخاري	al-Bukhār
ت	T	الترمذي	al-Tirmidh
ث	Th	الحارث	al-Tharīth
ج	J	الجرجاني	al-Jurjān
ح	ḥ	حيّان	ḥibbān
خ	Kh	خلدون	Khaldān
د	D	الدارقطني	al-Darūqūḥ
ذ	Dh	الذهبي	al-Dhab
ر	R	الرافعي	al-Rāfi
ز	Z	الزبير	al-Zubayr
س	S	السرخسي	al-Sarakhs
ش	Sh	الشافعي	al-Shāfi
ص	Ṣ	الصابوني	al-Ṣabbān
ض	Ḍ	ضابط	Ḍabī
ط	Ṭ	الطبري	al-Ṭabar
ظ	Ẓ	ظاهر	Ẓāhir
ع	ʿ	العبيّادي	al-ʿAbbād
غ	Gh	الغزالي	al-Ghazāl
ف	F	الفارسي	al-Fāris
ق	Q	القاسم	al-Qāsim
ك	K	الكرخي	al-Karkh
ل	L	لقمان	Luqmān

م	M	مالك	Mālik
ن	N	ناصر	Nāṣir
هـ / ه	H	هارون / أسامة	Ḥarūn / Usāmah
و	W	الوليد	al-Walīd
ي	Y	يحيى	Yaḥyā

Short Vowel

Arabic	Roman	Example	Transliteration
ـِ	A	كتب	Kutiba
ـِ	I	علم	ʿalima
ـُ	U	غلب	Ghuliba

Long Vowel

Arabic	Roman	Example	Transliteration
ـِ / ـِ	ā	كبرى / باب	baḥb / kubrā
ـِ	ā	وكيل	waklā
ـُ	ū	علوم	ʿulūm

Diphthong

Arabic	Roman	Example	Transliteration
ـُ	Aw	قَوْل	Qawl
ـِ	Ay	لَيْل	Layl
ـِ	Iyy	شَافِعِيَّة	Shāfiʿiyyah
ـُ	uww	قُوَّة	quwwah

Exemptions:

- a. The Arabic letter (ء) found at the beginning of a word is transliterated to the letter (a) and not to (ā). Example: أكبر transliterated to: akbar (not ākbar).
- b. The Arabic letter (ة) found in a word without (ال) which is coupled with another word that contains (ال) at the beginning of it is transliterated to the letter (t) and not (h). Example: مكتبة الإمام transliterated to: Maktabat al-Imām not (Maktabah al-Imām).
- c. If the Arabic letter (ة) found in a word with (ال) in a single word or in the last word in sentences, it is transliterated to the letter (h) and not (t). Example:

-	المكتبة الأهلية	transliterated to: al-Maktabah al-Ahliyyah (not al-Maktabat al-Ahliyyah)
-	قلعة	transliterated to: qalāh (not qalāt)
-	دار وهبة	transliterated to: Dār Wahbah (not Dār Wahbat)

- d. The Arabic word which refers to a country or a place is exempted from transliteration. Example: (بروناي) transliterated to Brunei (not Barānay).

ABBREVIATIONS

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institutions
AMBD	Autoriti Monetari Brunei Darussalam
BIBD	Bank Islam Brunei Darussalam
BNM	Bank Negara Malaysia
Cap.	Chapter
CIBAFI	General Council for Islamic Banks and Financial Institutions
CIBFM	Centre for Islamic Banking, Finance and Management
CIFP	Chartered Islamic Finance Professional
Ed.	Editor
ed.	Edition
GSIFI	Governance Standard for Islamic financial institution
Ibid	ion beam induced deposition
IFSB	Islamic Financial Services Board
IIFM	International Islamic Financial Market
INCEIF	International Centre for Education in Islamic Finance
IILM	International Islamic Liquidity Management Corporation
IIRA	Islamic International Rating Agency
ISRA	International Shariah Research Academy for Islamic Finance
ISCU	Internal Shariah Compliance Unit
ISRU	Internal Shariah Review Unit
KDYMM	Kebawah Duli Yang Maha Mulia
MIF	Masters in Islamic Finance
n.d.	no date / no year
No.	Number
n.pl.	no publisher
Op. cit.	Opus citatum est
p.	Page
pp.	Pages
SAB	Shariah Advisory Body
SC	Securities Commission Malaysia
SFSB	Shariah Financial Supervisory Board
...etc.	et cetera
TAIB	Tabung Amanah Islam Brunei
Vol.	Volume

CHAPTER ONE

INTRODUCTION

1.1. BACKGROUND

The Shariah Supervisory Board has taken its form in response to the need to address Shariah¹ issues and matters at institutional and national levels. The importance of Shariah, as a source of guiding principles and rules of proper conduct, will be explained throughout this research. It is important to note that the application of Shariah principles and rules is directed at the activities, transactions, products, funds and organisations, as well as the financial system as a whole. The Shariah Supervisory Board is meant to provide assurance that the institution, its activities, products and services, transactions, as well as the rights and obligations of the contracting parties, conform to Shariah principles and rules and are directed towards accomplishing the goals of Shariah.

Compliance with Shariah principles and rules implies providing investors, shareholders and stockholders with confidence that the financial products, financial activities, financial systems and financial institutions are “Shariah compliant”. Any indication or sign of non-compliance suggests a breach of religious as well as fiduciary duty that can lead to both operational and reputational risks. This can cause panic and trigger a confidence crisis in the financial system. With increasing investment and financing activities operating within the Islamic Financial System, it is pertinent to ensure that the Shariah Supervisory Board is established and efficiently implemented.

This research discusses the merits of centralized versus decentralized Shariah Supervisory Boards and considers what responsibility the Shariah Supervisory Board members should have. The IFSB has recently [2010] issued guidelines on Shariah governance. These guidelines, including the conditions for the appointment of Shariah Supervisory Board members, their mandate, procedures for the conduct of meetings, and lines of accountability and reporting, are evaluated within the rulings of the Shariah Supervisory Board of the AAOIFI and the International Fiqh Academy in Jeddah, Saudi Arabia.

¹ Islamic law based on Qur'an and Sunnah as belief for Muslim.

1.2. STATEMENT OF THE PROBLEM

Islamic Financial Institutions have taken the form of commercial banks, investment banks, investment and finance companies, asset management companies and financial services companies. There are diverse Islamic banking models practiced in different jurisdictions, namely dual banking models, fully-fledged Islamic institutions, Islamic subsidiaries of conventional banks and Islamic windows. Basically, the implementation of Islamic finance, and the way it is nurtured, greatly depends on the local legal environment and market factors.

In Brunei Darussalam, the establishment of a Shariah Supervisory Board is a statutory requirement for all financial institutions offering Islamic products pursuant to Section 14(1) of the Perbadanan Tabung Amanah Islam Brunei Act Cap 163, Section 3(3) of the Islamic Bank Act Cap 168, Section 62(g) of the Finance Companies Act (Amendment) Order 2006, Section 3 of the Syariah Financial Supervisory Board Order 2006, Section 8(2) of the Islamic Banking Order 2008, Section 10(1)(e) of the Takaful Order 2008 and Section 23(2) of the Securities Market Order 2013. The main objective of the establishment of the Shariah Supervisory Board is to advise Islamic Financial Institutions on Shariah matters and to ensure compliance with the Shariah tenets and requirements in their operations. Even though these legislations provide regulatory frameworks for the establishment of the Shariah Supervisory Board, their legal ambit is unclear. The main issue this research will explore is the way the existing legislations address the accountability and responsibility of the Shariah Supervisory Board and offer possible suggestions for improvement.

1.3. RESEARCH AIM AND OBJECTIVES

The aim of this research is to analyse the extent of the Shariah Supervisory Board practices in Islamic Financial Institutions by analysing the accountability and responsibility of the Shariah Supervisory Board in Brunei Darussalam and some selected countries.

There are a number of objectives through which the aim of this study will be achieved, which are as follows:

- i] To investigate the concept of Shariah governance]**
- ii] To explore the current practices of accountability and responsibility of Shariah Supervisory Boards]**
- iii] To analyse Shariah Supervisory Boards in Brunei Darussalam, and provide a guide for them.**

1.4. RESEARCH QUESTIONS

The study aims to respond to and answer the following formulated research questions:

- i] What is the Shariah governance system]**
- ii] What are the current practices of accountability and responsibility of Shariah Supervisory Boards]**
- iii] How are the Shariah Supervisory Boards in Brunei Darussalam]**

1.5. SIGNIFICANCE OF THE RESEARCH

In view of the lack of intensive and in-depth research in the area of Shariah Supervisory Boards, the researcher conducted a comprehensive study on the extent of the Shariah Supervisory Boards' practices, in the hope that the findings may provide certain guiding principles and best practices for Shariah Supervisory Boards of Islamic financial institutions. The findings of this study will provide useful information for the framework and practices of Shariah Supervisory Boards of Islamic financial institutions in Brunei Darussalam.

1.6. THE SCOPE OF THE RESEARCH

The scope of this study is limited to Shariah Supervisory Boards of Islamic financial institutions or institutions offering Islamic financial products and services in Bahrain, Brunei Darussalam, Indonesia, Kuwait, Malaysia, Pakistan, Singapore, United Arab Emirates and the United Kingdom. The research focuses on the accountability and responsibility of Shariah Supervisory Boards.

1.7. LITERATURE REVIEW

Although the first attempt to develop Islamic finance was introduced about four decades ago, Islamic finance is still in its developing stage in comparison to conventional banking.² Therefore, the evolutionary process to develop theoretical and practical aspects of Islamic finance must be carried out continuously. Researches and discussions for the purpose of developing concepts and theories, learning from the experiences of the existing financial system, and generating innovation for creating new breakthrough in products and services, are very important.

As a relatively new financial system, Islamic finance is an interesting subject of many studies. Studies toward this industry have used various approaches. The study to develop the conceptual and theoretical framework of Islamic banks was initiated by Muslim experts in economics such as M.A. Mann³ in his book titled *Islamic Economics, Theory and Practice*.³ In his monumental work, Mann³ describes many aspects of Islamic economics in general, Islamic finance in particular. As an example of pioneering work in the area, the book mostly discusses theoretical aspects, rather than practical experiences. On the other hand, Ne⁴atullah Siddiqi developed an academic and practical approach to Islamic economics. His early endeavours in this area were marked by his books, *Moslem Economic Thinking and Issues in Islamic Banking*.⁴ In these works, both Siddiqi and Mann³ dealt with the issues of eliminating an interest-based economic system. Again, apparent from these works is the study of the rationale for establishing Islamic finance, which has been given sufficient attention.

These early studies were mostly initiated by Muslim economics scholars, and accordingly, studies on Islamic finance are mostly from the economic point of view. This is a fair consequence of the diligence in introducing Islamic finance, which, in the initial stages, was pioneered by Muslim scholars in economics. During this period, Shariah and legal perspectives of Islamic finance studies were conducted by those who were Islamic law experts as well as lawyers.

² Rodney Wilson. (1995). "Islamic Banking and Its Impact on the International Financial Scene". *The Institute of Islamic Banking and Insurance*. <http://beta.islamic-banking.com/lectures/lectureslist.php>

³ M.A Mannan. [1980] *Islamic Economics, Theory and Practice*. Delhi: Idarah-I Adabiyat-I.

⁴ Ne⁴atullah Siddiqi. [1982] *Moslem Economic Thinking*. London: Islamic Foundation [1983] *Issues in Islamic Banking*. London: Islamic Foundation.

The significance of the study of economics from the Shariah approach found its impetus when the issue of Shariah compliance started to arise. In the process of the development of Islamic banking, several problems and issues were encountered. One of the significant issues pertains to Shariah compliance.

As a continuation of the development of theoretical frameworks, the analysis on Islamic law relating to the practical aspects, which specifically addresses some problems that have arisen, are clearly analysed by S.H. Ahmad in his book, *The Adaption of Islamic Banking Practice to Conform to Islamic Law*.⁵ Here, the author discusses Islamic banking and compares it to conventional banking. He also pays sufficient attention to the operational structure of the banking business that conforms to Shariah principles. After extensively analysing the concept of usury and comparing it with the idea of wages and profit, he discusses different products and services which Islamic banks may offer. The book contributes to the implementation of the Shariah principles in Islamic banking products. Not all of the products of conventional banking are parallel with Islamic law, the selection and adaption of the existing products of the conventional banks into banks that conduct Islamic banking business is compulsory. It was observed however, that the book left out the issue of Shariah compliance, as during that period [1970-1980], this problem was not of high significance.

From the fiqh perspective, Jihād ‘Abd Allah Abu ‘Uwaymer,⁶ in the year 1986 in his book titled *Al-Tarshīh al-Shar‘ī li al-Bunūk al-Qā’imah*, presents discussions on the reasons, from the Shariah viewpoint, for the importance of mu‘āmalat, particularly in Islamic finance dealings. He concluded that the establishment of Islamic banks is an indispensable need from the Shariah perspective [ar-rat shar‘īyah]. After philosophically describing the importance of the establishment of the Islamic bank from a religious perspective [dīniyyah] and an economic perspective [iqtīdiyyah], he then analyses the existing conventional banking system from the Shariah point of view. It can be understood that some of the products offered by conventional banks are based on ribā and others are based on services given by the bank instead of being

⁵ S.H. Ahmad. [1985] *The Adaption of Islamic Banking Practice to Conform with Islamic Law*. London: Arabian Information.

⁶ Jihād ‘Abd Allah Abu ‘Uwaymar. (1986). *Al-Tarshīh al-Shar‘ī li al-Bunūk al-Qā’imah*. N.pl: n.pb.

purely based on interest. In addition, he also discusses the implementation of Islamic law in the banking system. Although he touches on the practicality of some Islamic financial industries, especially in the Middle East, he still did not address the Shariah compliance of the Islamic banking business.

In contemporary years, particularly in the late 1990s, the later works on this topic address some evaluative approaches towards the issue of compliance with Shariah principles. The most interesting among them is the study conducted by Muhammad Taqi Usmani on the Islamic legal aspect of Islamic banking business. Muhammad Taqi Usmani,⁷ in his famous *Judgement on ribā*, generally describes various destructive effects of ribā on society and therefore suggests that it must be prohibited. The broad analysis towards ribā from the Islamic law point of view is also presented. His conclusion provided a strong answer for identifying interest in the various banking practices. Khurshid Ahmad⁸ generally discusses the concept and problem of eliminating ribā. After reviewing the controversies on the Federal Shariah Court Judgment in Pakistan on ribā, he tried to connect the problem to the international economic and political situation. The method of dealing with foreign debt, which has been established by the government in the country, is one issue he tried to address.

Nabil Salah's work in 1992 attempts to formulate in detail, the avoidance of ribā in Islamic contracts and transactions. Since the basic principles of Islamic banking are to avoid ribā, gharar and maysir, the exclusion of these elements from all financial transactions is essential. Nabil Salah⁹ describes these three concepts and correlates them to the actual context of the existing legal system, especially those in the Middle Eastern countries. Thus, the way terms are laid in the context of the legal framework, is obvious.

Wahbah al-Udayli, in his celebrated work, *Financial Transaction in Islamic Jurisprudence*, lays down the substantial understanding on several contracts that are

⁷ Muhammad Taqi Usmani. [1999] *The Text of Historic Judgment on Ribā: The Supreme Court of Pakistan*. Malaysia: The Other Press.

⁸ Khursyid Ahmad. [Eds.] [1994] *Elimination of Ribā from Economy*. Islamabad: Institute of Policy Studies.

⁹ Nabil A. Salah. [1992] *Unlawful Gain and legitimate Profit in Islamic Law*. London: Graham & Trotman.

relevant in Islamic financial businesses. Although there are a number of fiqh works discussing Islamic commercial contracts, the work of Wahbah al-Ujayli are set out on a contemporary approach, which takes the contemporary practical aspects of financial transactions into account.¹⁰ His work has prominent sources and foundation in the analysis of Islamic contracts.¹¹ In addition to this work, the work of Talal De Lorenzo¹² is also worth noting due to its in-depth analysis on some contracts applicable to Islamic banking business today.

Apart from the verdict issued by the Pakistani Court, which addresses the hidden ribā in the so-called Islamic banking products, the practice of sales, which seem to be close to ribā, have been seriously addressed by some experts. Abdullah Sa'eed evaluates this method in his book titled *Islamic Banking and Interest, A Study of the Prohibition of Ribā and its Contemporary Interpretation*. The practice of Islamic banks, in his opinion, reveals that they have been unable to eradicate interest from their transactions, which is observed under different names. He suggests that it is not enough to have the label "Islamic" to be an Islamic bank, as the banks need to be more humane: enabling people to have access to funds at a proper cost and fulfilling requirements of justice and fairness.¹³

Muhammad Anwar, in his work *Islamicity of Islamic Banking Practices*, in the monograph titled *Islamic Banking, How far we have gone* mentions that many of the financing modes operated by the banks are akin to the practice of ribā. The Islamic banks are treating the selling price as credit loan. The difference between the sale price and purchase price is the time value of money, which is equivalent to interest. This is the essence of all financing transactions based on trading models including *murabahah*, *bay' bi thaman 'ajil*, *ijarah* and *bay' al-'inah* as practiced by the banks. Therefore, he concludes that some measures should be taken to avoid such

¹⁰ Wahbah al-Ujayli [2003] *Financial Transaction in Islamic Jurisprudence*. Trans. Mahmoud A. El-Gamal. Beirut: Dar al-Fikr.

¹¹ Trans. C. R. Tyser, B. A. L. et al. *The Malle*. [2007] Kuala Lumpur: The Other Press.

¹² Yusuf Talal De Lorenzo. 1997. *A Compendium of Legal Opinions on the Operation of Islamic Banks*. London: Institute of Islamic Banking and Insurance.

¹³ Abdullah Sa'eed. (1996). *Islamic Banking and interest, A study of the Prohibition of Ribā and its Contemporary Interpretation*. Leiden: E.J. Brill.

transactions, such as changing the institutional body of Islamic banking to enable them to optimise muqārabah and mushārakah properly.¹⁴

Furthermore, one of the pioneers of Islamic banking, Nejatullah Siddiqi, has called for better Shariah Supervisory Board roles in order to achieve better Shariah compliance in Islamic banking. He criticises the “malpractice in Shariah advisement” in Islamic banking today. His conclusion is based on the practice of bay‘ al-‘inah and bay‘ al-tawaruq, which has been approved by the Shariah Supervisory Boards in some Islamic banks.¹⁵

With particular reference to the implementation of Shariah compliance, the analysis in this study shall take the rights, duties and responsibilities of Shariah Supervisory Boards in Islamic banks and conventional banks conducting Islamic banking business, into account. The reason is that this is the only body that is assigned the highest responsibility to control and maintain the operation of Islamic banks in order for them to function in line with Islamic principles. As enunciated by ‘Abd al-‘Amid Ma‘mūd al-Ba‘li¹⁶ in *Al-Madkhal li Fiqh al-Bunuk al-Islamiyyah*, the importance of the inception of the Shariah Supervisory Boards is to maintain Shariah compliance, and, therefore, their main responsibility is not merely to supervise, but rather to deliver fatwā relevant to the operation of Islamic banking. For this reason, the requirement for the members of this Board is primarily that they should have expertise in exercising ijtihād.

The mode of the Shariah Supervisory Board also occupies a central place in the discussions relevant to Shariah compliance. In formulating the mode of the Shariah Supervisory Board that is most suitable for Islamic banks, ‘Assan Yusuf Daud¹⁷ in *Al-Raqbah al-Shariyyah fi al-Ma‘rif al-Islamiyyah* presents several alternatives together with the advantages and disadvantages of those modes, such as those Shariah

¹⁴ Muhammad Anwar. “Islamicity of Islamic Banking Practices”. *Islamic Banking, How Far have We Gone?* Kuala Lumpur: IIUM Press. 2009.

¹⁵ Mohammad Nejatullah Siddiqi. 21 April 2006. “Shariah , Economic and the Progress of Islamic Finance: The Role of Shariah Experts”. Dr. Mohammad Nejatullah Siddiqi. <http://www.siddiqi.com/mns/RoleofShariahExperts.htm>

¹⁶ ‘Abd al-‘Amid Ma‘mūd al-Ba‘li. (1983). *al-Madkhal fi Fiqh al-Bunuk al-Islamiyyah*. N.p.l: al-Ma‘had al-Dauli lil-Bunuk wa al-Iqtid al-Islami

¹⁷ ‘Assan Yusuf Daud. 1996. *al-Riqbah al-Shariyyah fi al-Ma‘rif al-Islamiyyah*. Al-Qahirah: al-Ma‘had al-‘Alī al-Fikr al-Islami.

Supervisory Boards which emphasize advisory and those which emphasize supervisory responsibilities. ‘Abd Sattār Abū Ghuddah¹⁸ in *Hai’at al-Riqābah al-Shar‘iyyah wa Daur al-Fatwā fi Dhabt al-Athar al-Kulliyah* specifically identifies the weakness of the Board when its members have to exercise ijtihād as the main method to issue fatwā and decisions. Here, the author demonstrates relatively clear solutions for such problems.

In addition, al-Ba‘lī¹⁹ in *Taqnīn A‘māl al-Hai’ah al-Shar‘iyyah: Mu‘āmalah wa Āliyatuh*, provides justifications for the need to establish the Shariah Supervisory Board from the fiqh perspective. The author specifically explains how regulations related to the Shariah Supervisory Board should be formulated. Mohammad Amīn ‘Alī Qaṭṭān²⁰ in *al-Riqābah al-Shar‘iyyah fi Muassasāt Šinā‘a al-Khadamāt al-Mulliyah al-Islāmiyyah* discusses the relation between the Shariah Supervisory Board and the Board of Directors in Islamic banks. Here the author also describes the problems faced by the Shariah Supervisory Board.

The research conducted by Shameela Chinoy²¹ notes that the main responsibility of the Shariah Supervisory Board members is to audit and approve Islamic financial transactions. She states that if a transaction, as structured, contradicts the Shariah principles, it would not be approved and would have to be revised. Therefore, her opinion is that it is necessary for the the Shariah Supervisory Board to participate in the drafting and finalisation of contracts in collaboration with the legal advisers of the bank.

In terms of the efforts required to improve the role of the Shariah Supervisory Board, Abdullah M. Norman²² suggests that the Islamic law should not be seen as an obstacle to product innovation, although sometimes, it seems to be a constraint

¹⁸ ‘Abd Sattār Abū Ghuddah. “Hai’at Riqābah al-Sharī‘ah wa Daur al-Fatwā fi Dhabt al-Āthar al-Kulliyah”. **Āliyah al-Barakah**. 2004.

¹⁹ Al-Ba‘lī, “Taqnīn A‘māl al-Hai’ah al-Shar‘iyyah: Mu‘āmalah wa Āliyatuh”. **al-Mu‘tamar al-Thalith li al-Hai’at al-Sharī‘iyya li al-Mu‘assasāt al-Mulliyah al-Islāmiyyah**. October 2003.

²⁰ Mohammad Amīn ‘Alī Qaṭṭān. (2004). **al-Riqābah al-Shar‘iyyah fi Muassasāt Šinā‘a al-Khadamāt al-Mulliyah al-Islāmiyyah, Dirāsah Shar‘iyyah Taḥqīqiyya**. Al-Qāhirah: Dār al-Nahḍah al-‘Arabiyya.

²¹ Shameela Chinoy. 1995. “Interest-Free Banking: The Legal Aspects of Islamic Financial Transactions”. World Banking Abstract Online. <http://www.wbaonline.co.uk/abstract.asp?id=8009>

²² Abdullah M. Norman. 2003. “Imperative of Financial Innovation for Islamic Bank”. **International Journal of Islamic Financial Services**. <http://www.iiibf.org/ġumals/ġumal15/vol4no3art1.pdf>

towards it. This means members of the Shariah Supervisory Board have to be innovative in employing *iftih*, especially in the area of financial contracts. Similarly, Engku Rabiah Adawiah²³ in *Development of Islamic Banking in Malaysia: Constraints and Opportunities from the Jurisprudential Perspective*, suggests that *iftih* should be optimally utilized to innovate and develop new products in Islamic banking businesses. Accordingly, the responsibility of the Shariah Supervisory Board entails building harmony between the creativity of *iftih* and product innovation in Islamic banks.

Thus, the role of the Shariah Supervisory Board is even more complicated in countries adopting the dual banking system. Sudin Haron²⁴ demonstrates the importance of regulating the Shariah Supervisory Boards in such a way that enables them to function optimally in various countries. Pertinent to this, the independence of the Shariah Supervisory Board, the rights of the Shariah Supervisory Board members, and whether *fatwā* can be challenged in court or not, are of vital importance. Barbara L. Seniaswski accurately addresses these questions.²⁵ These issues are obviously crucial, partly because of what happened in the Egyptian Supreme Constitutional Court, Pakistani Federal Shariah Court and the relevant Sudanese court, where interested parties challenged the *fatwā* through the courts.

Concerning these issues, few international bodies serving Islamic financial institutions have made the crucial contribution of issuing some guidelines that are to be adopted by Islamic financial institutions for achieving higher Shariah compliance. To date, the AAOIFI²⁶ has issued six Governance Standards for Islamic Financial Institutions [GSIFI] covering: the appointment and composition of SSBs [GSIFI 1, 1997] the checks and balances brought about through external Shariah reviews [GSIFI 2, 1998] functions of internal Shariah reviews [GSIFI 3, 1999] the objective monitoring of Shariah-compliance by audit and governance committees [GSIFI 4,

²³ Engku Rabiah Adawiah. "Development of Islamic Banking in Malaysia: Constraints and Opportunities from the Jurisprudential Perspective". *IIUM Law Journal*. [2] 2003.

²⁴ Sudin Haron. [1997] *Islamic Banking: Rules and Regulations*. Selangor: Pelanduk Publications.

²⁵ Barbara L. Seniaswski. 2001. "Ribā Today: Social Equity, The Economy, and Doing Business Under Islamic Law". Heinonline.

<http://heinonline.org/HOL/LandingPage?handle=hein.bournals/c1139&div=5&id=&page>.

²⁶ Accounting, Auditing and Governance Standards for Islamic Institutions. "Governance". Bahrain: Accounting and Auditing Organisation for Islamic Financial Institution. 2010.

2001 the independence of SSBs [GSIFI 5, 2005] and a general statement on governance principles for IFIs [GSIFI 6, 2005]. As a result, some regulatory authorities are beginning to rely on the AAOIFIs' Standards for specific regulation of Islamic Financial Institutions.

In 2002, Habib Ahmed and Mohammad Umer Chapra explored Corporate Governance in Islamic Financial Institutions²⁷ in light of a sample survey of Islamic financial institutions, discussing the measures that need to be taken to improve the overall corporate governance in these institutions. The paper then addresses some of the standard tools that are available for making the Board of Directors and the Management more effective and responsible. These include proper internal controls, risk management, transparency, loan accounting and disclosure, Shariah clearance and audit, external audit, and regulation and supervision.

Afar Iqbal and Mervyn K. Lewis, in *An Islamic Perspective on Governance* [2009]²⁸ undertook innovative research to examine the Islamic and contemporary western concepts, institutions, processes and traditions regarding governance: public, corporate, financial and fiscal. This study breathes fresh air into the debate of some of the critical issues of positive economics by exploring new linkages of governance with normative goals, ethical frameworks and egalitarian policy initiatives. The book has made extremely significant contributions to governance under an Islamic System, thoroughly researched, very clearly written and organized, particularly in the context of the current turmoil in financial markets and the possible means of assisting financial and economic stabilisation from an Islamic perspective.

The IFSB issued guidelines on Guiding Principles on Shariah Governance System for Institutions Offering Islamic Financial Services, in 2009.²⁹ The IFSB was designed to provide the framework for the roles and functions of Shariah Supervisory Boards themselves, none of which were addressed in previous publications. This standard

²⁷ M. Umer Chapra, Habib Ahmed. 2002. "Corporate Governance in Islamic Financial Institutions". Islamic Research and Training Institute. <http://www.irtipms.org/pubtext/93.pdf>

²⁸ Afar Iqbal, Mervyn K. Lewis. [2009] *An Islamic Perspective on Governance*. UK: Edward Elgar Publishing Limited.

²⁹ Islamic Financial Services Board. 2010. "Guiding Principles on Shariah Governance System for Institutions Offering Islamic Financial Services". Islamic Financial Services Board. <http://www.ifsb.org/standard/IFSB-10%20Shariah%20Governance.pdf>

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