

"Challenges in Implementing Sharia Objectives in Banking Supervision"

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Abstract

We find ourselves facing a massive jurisprudential movement in providing Islamic solutions that meet people's needs in dealing with banks without falling into usury. Humanity today is more in need than ever of someone to guide its sailing ship through the tempting and tumultuous waves of banking transactions, until it reaches the safe shores of righteousness. This research addresses the topic of Challenges of Implementing Sharia Objectives in Banking Supervision, starting from a major problem: How can Sharia objectives be discerned through banking transaction supervision? What are the difficulties and challenges faced by this supervision? And what are the guidelines for this supervision in the balance of Sharia objectives? This research sought to achieve this by discussing a set of ideas that establish an independent and robust institutional framework for banking transaction supervision, through which Sharia objectives can be realized. Knowledge of Sharia objectives is one of the most important and fundamental sciences, and no jurist can build a ruling without it. Misunderstandings only occur due to ignorance of it or negligence in its application. Therefore, this research touches on reality and connects between scientific theory and practical application, which is lacking in banking transactions.

Keywords: *Sharia Objectives, Sharia Supervision, Supervision Challenges, Banking Supervision, Banking Transactions, Supply Transactions.*

Introduction

Praise be to Allah, the Watchful, the Reckoner, who says: Not a word does he utter but there is a watcher by him ready. (Quran, Surah Qaf, Verse 18). He takes account of every utterance and examines the secrets of hearts when they whisper. Nothing escapes His knowledge, not even the weight of an atom in the heavens and the earth, whether it moves or rests. He accounts for every deed, big or small, and holds them to account so that every soul may know what it has sent forth and what it has left behind. It comes to realize that were it not for the necessity of vigilance and accountability in this world, it would have suffered in the fields of the Hereafter. After striving, accountability, and vigilance, if it were not for His grace in accepting its mixed merchandise, it would have been disappointed and lost. I bear witness that our Master Muhammad is His servant and messenger, who said about excellence: To worship Allah as if you see Him, and if you do not see Him, know that He sees you. (Agreed upon). May Allah bestow His blessings upon him, his family, his companions, those who follow his footsteps, and those who await his Sunnah until the Day of Judgment.

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Significance of the Topic:

The world around us is witnessing a massive jurisprudential movement that offers solutions to meet people's needs in dealing with banks without engaging in usury. This has led to the establishment of renowned banks, specialized academic committees, international conferences and seminars, as well as the creation of academic departments. Countless theses, dissertations, research papers, and studies have been produced as a result. This has also sparked disagreements, the formation of schools of thought, and the emergence of different approaches, ranging from facilitative to restrictive, and from independent to imitative.

This research addresses the topic of Challenges of Implementing Sharia Objectives in Banking Supervision, discussing a range of ideas that lay the foundation for building an independent and robust institutional framework focused on achieving Sharia objectives in banking transaction oversight. Understanding the objectives of Sharia is one of the most crucial and fundamental sciences, and a jurist cannot build a ruling without it. Misunderstandings only occur due to ignorance of it or negligence in its application.

Al-Shatibi stated in his *Al-Muwafaqat* : The mistakes of a scholar are most often due to neglecting to consider the objectives of Sharia in the sense in which he exerted his efforts. (*Al-Muwafaqat*, Al-Shatibi, 4/170.)

Furthermore, it is believed that the objectives are the essence of actions, and the conditions of a diligent person are summarized in two things: First, knowing the objectives, and Second, correctly implementing and utilizing them in their respective contexts. The *Maqasid* criterion in Islamic Sharia constitutes a fundamental pathway in investing in the social value system, aiming to rescue humanity from ethical and material poverty, as well as moral and financial deficiency, which weigh heavily on humanity's shoulders. Sharia is not merely a collection of ethical and moral principles in financial transactions; rather, it introduces complementary objectives for the ethical aspect and consummating purposes for the value dimension in all transactions, including banking transactions. This is echoed in the comprehensive words of the Prophet Muhammad (peace be upon him), as he said, I was only sent to perfect noble character. (Reported by Ahmad in his *Musnad*, Hadith No. 8952, and its authenticity was confirmed by its narrators. Al-Albani also authenticated it in *As-Saheehah*, Hadith No. 45.) Today, humanity is more in need than ever before of those who can steer its ship amidst the waves of tempting and complex banking transactions. This is to ensure that it safely reaches the shore of secure prosperity and to extend a helping hand to those who may not know any path other than straying in their apportionment. This is vital to guarantee their continued existence on the ladder of justice, fairness, humility, and integrity.

This can only be achieved through a concerted effort utilizing all available means, with a vigilant oversight guided by Sharia objectives and directed towards commendable interests. It should be presented with the moderation of religion and the justice of Sharia, serving as a beacon for the upright figures of contemporary civilization and the noble-hearted individuals of diverse cultures who share common concerns and yearn for a world founded on the values of virtuous dealings.

In the analogy of the ship narrated by Al-Bukhari in his *Sahih*, the Prophet Muhammad (peace be upon him) said: The example of the person abiding by Allah's order and restrictions in comparison to those who violate them is like the example of those persons who drew lots for their seats in a boat. Some of them got seats in the upper part, and the others in the lower. When the latter needed water, they had to go up to bring water (and that troubled the others), so they said, 'Let us make a hole in our share of the ship (and get water) saving those who are above us from troubling them.' If the people in the upper part left the others do what they had suggested, all the people of the ship would be destroyed, but if they prevented them, both parties would be safe. (*Sahih Al-Bukhari*, Book of Partnership, Chapter: Is it allowed to divide and take the upper part.)

Significance of the Research:

1. This research is considered one of the most important studies addressing issues related to banking transactions within financial institutions. It serves as an academic resource for specialists and legal consultants in the banking sector.
2. Its engagement with reality and its connection between theoretical knowledge and practical application fill a gap in the understanding of banking transactions. It provides a valuable contribution in raising awareness to avoid convoluted methods of usurious supply transactions, which pose a threat to human societies. Additionally, it aids in alleviating the burdens on clients and ensures their financial needs are met through legitimate means.
3. By invoking Sharia objectives and considering them in the supervision of banking transactions, especially since there is still a need for further exploration and expansion in this area, both in terms of theoretical foundational studies and practical jurisprudential applications.

Problem Statement:

This research aims to uncover the Sharia objectives through the supervision of banking transactions and to identify and address a range of challenges that confront this oversight. It seeks to describe and unveil the reality, along with the inherent difficulties, challenges, obstacles, and issues that banking transaction supervision faces in order to achieve Sharia objectives.

The research addresses the following challenges:

1. How can Sharia objectives be discerned through the supervision of banking transactions?
2. What are the difficulties and challenges faced by this oversight?
3. What are the guidelines for this supervision in the balance of Sharia objectives?

Research Objectives:

1. To establish that the topic of Sharia supervision is an indispensable subject for finding the best ways to enhance banking transactions while ensuring they align with Sharia objectives.
2. To emphasize that the Islamic identity and character of a bank can only be realized by its distinctiveness from conventional interest-based banks.
3. To elucidate the challenges and negative phenomena facing the oversight of banking transactions, which hinder the achievement of Sharia objectives.

Research Methodology:

1. **Descriptive Inductive Method:**
 - This methodology involves examining and describing banking transactions to reach conclusions and make judgments about them. Through this method, the researcher aims to establish the jurisprudential foundations of Sharia supervision of banking transactions.
2. **Analytical-Critical Method for Addressing Challenges and Negatives:**
 - This approach involves analyzing and critically evaluating the obstacles that hinder the achievement of Sharia objectives in banking transactions, which we have referred to as challenges and negatives. This method aims to provide a comprehensive understanding of the issues at hand.

Research Plan:

The research is divided into an introduction and two main sections. Each section contains two topics and concludes with a conclusion that summarizes the main findings and recommendations. The structure is as follows:

Section One: Sharia Objectives and Banking Transaction Oversight: Concept and Definition

- Topic One: The Concept and Validity of Sharia Objectives
- Subtopic One: Defining Sharia Objectives and Their Validity
- Subtopic Two: Defining Banking Transaction Oversight and Its Terminology

Section Two: Challenges and Negatives Facing Sharia Oversight of Banks

- Topic Two: Challenges Facing Sharia Oversight of Banks
- Subtopic One: Challenges Confronting Sharia Oversight of Banks
- Subtopic Two: Negative Phenomena Hindering the Achievement of Sharia Objectives in Banking Oversight

Section One: Sharia Objectives and Banking Transaction Oversight: Concept and Definition

Topic One: The Concept and Validity of Sharia Objectives

Subtopic One: Defining Sharia Objectives and Their Validity.

First: The Concept of Sharia Objectives and Their Consistency

Definition of Objectives Linguistically:

When we refer to Arabic language dictionaries, we find that the original meaning of this term revolves around multiple meanings. Ibn Jinni mentioned that the root meaning implies intention, direction, avoidance, and movement towards something, whether it is done in moderation or with excess. This is the true essence of the term, even though in some contexts, it may specifically refer to the intention of uprightness rather than deviation. Do you not observe that sometimes you intend justice just as you intend injustice at other times? Therefore, intention and direction encompass all of them.

(Taj Al-Arus, by Al-Zabidi, 9/36.)

Definition of Objectives in Islamic Jurisprudence:

In Islamic jurisprudence and principles, when referring to objectives, it denotes the aims and purposes of Sharia. Despite the interest of early scholars in the objectives of Islamic law, and their use of this term in various discussions and foundational issues, they did not provide a specific definition for it. Their statements were mostly aimed at explaining these objectives and enumerating them without delving into the establishment of a comprehensive and restrictive definition. For example, Imam Al-Ghazali, may God have mercy on him, stated: But what we mean by 'interest' is the preservation of the legislator's intent, and the intent of the legislation for creation is fivefold: to preserve their religion, lives, intellects, progeny, and wealth. (Al-Mustasfa, by Al-Ghazali, 1/417)

Similarly, Imam Al-Amidi, may God have mercy on him, said: The purpose of legal rulings is either to bring about benefit, ward off harm, or a combination of both. (Al-Ihkam, by Al-Amidi, 3/271).

Imam Al-Shatibi, may God have mercy on him, also mentioned: The obligations of Islamic law are traced back to the preservation of its objectives in creation. These objectives are divided into three categories: necessity, need, and improvement. (Al-Muwafaqat, by Al-Shatibi, 2/8.)

Thus, objectives refer to the interests that Sharia aims to achieve in all its rulings and details.

Second, the Stability of Sharia Objectives:

Indeed, absolute stability is one of the characteristics and features of Sharia objectives, not of the legal rulings themselves. This is because objectives are comprehensive and it is not conceivable for the comprehensiveness to be variable. However, this does not at all imply that the features of objectives do not intersect with the features of Sharia. Sharia consists of legal rulings, while objectives represent the aims of these rulings. The extent to which these aims align with the means results in shared features. Some of these features, not an exhaustive list, include divinity, inclusiveness, perpetuity, impartiality, and the distinctiveness of objectives from the legal rulings with the characteristic of absolute stability. This has made objectives a criterion for understanding the texts of Sharia, as legal rulings are flexible unlike objectives, which are fixed.

Subtopic Two: Defining Banking Transaction Oversight and Its Terminology: First, the concept of control/supervision

In the Arabic language, the term *al-haqd* is used to indicate various meanings, and among the most prominent of these meanings are:

1. Waiting or anticipation :means waiting for it, and *al-haqd* means to wait for it .is the act of waiting, and it is also the act of looking out for and anticipating something.
2. Supervision and oversight :means one who supervises or oversees the place and elevates it .And *al-haqd* refer to the location that is supervised or overseen, and they are what rises or stands above the ground.

These various meanings of *al-haqd* highlight the diverse interpretations and usages of the term in the Arabic language. In the context of banking or financial transactions ,typically refers to oversight, control, or supervision of these transactions to ensure their proper and lawful execution.

-Preservation and Guarding: One who *al-haqd* oversees) something is the one who watches over it. The *al-haqd* is the guardian who does not leave anything unattended. *al-haqd* is the guard who supervises and protects their place of observation. Therefore, the *al-haqd* is the vigilant guardian.

(From Taj al-Aroos by Al-Zubaidi, Page 817.)

In terminology:

Control is defined by several definitions, including:

- It is a means by which one can ascertain the extent to which the goal is achieved efficiently and effectively within the specified time.
- Verifying the extent to which the activities of the Islamic financial institution, whether a company or a bank, comply with the provisions of Islamic Sharia, according to the issued fatwas and decisions approved by the fatwa authority (Role of Sharia Supervision, Zaheer, p. 102.)

From these definitions, we observe the following:

First, in the general concept, control is an organized and progressive process that begins with monitoring, tracking, and analysis, and ends with providing observations, suggestions, and solutions. It is a responsible task that entails many consequences.

Second, control acts as a safety valve as it regulates the operations of Islamic banks and demonstrates their compliance with Sharia provisions.

Second: Sharia Supervision Designations:

The designations of Sharia supervision vary from one bank to another, and this is due to the diversity of tasks within the Sharia supervisory board and its various functions. Since

the significance lies in the actual roles and meanings, rather than in the wording and titles, the inclusion of both Sharia regulatory and supervisory functions within the board has led many to prefer terms like Sharia Supervisory Board . Here, we provide a list of these designations as follows: Sharia Supervisory Board, Sharia Advisor, Sharia Supervisory Committee, Sharia Observer, Sharia Council, Religious Committee, Sharia Authority, Sharia Oversight Department, Fatwa and Sharia Supervision Authority, Fatwa and Research Management.

Topic Two: Challenges Facing Sharia Oversight of Banks

Subtopic One: Challenges Confronting Sharia Oversight of Banks

Challenges facing the Sharia Supervisory Board for banks in performing its functions are numerous, which we outline as follows:

1. Limited qualified individuals who possess expertise in both the Sharia and economic fields. Many scholars may have a Sharia foundation but lack a comprehensive understanding due to a weak conceptualization. As a result, decisions may be questionable, lacking strength and stability. This necessitates the establishment of specialized research and study centers, as well as the integration of Sharia and economic sciences.
2. Proliferation of contemporary banking issues: The banking and financial sector is observed to be the fastest-growing sector, with a proliferation of contemporary issues and emerging challenges. This requires a swift response and keeping pace with the scholars of Sharia. It calls for a complete understanding of the banking product industry and proximity to the financial market, which demands a dedicated and specialized team.
3. The influence of globalization and external capitalist challenges: Islamic banks cannot detach themselves from government central banks. There are laws and procedures that cannot be bypassed, such as tax laws and some aspects of interest in foreign transactions. These issues may complicate the role of Sharia scholars, as financial economics aligns with the capitalist system. The hope is for the Islamic world to strive towards having financial markets whose instruments comply with Sharia, in order to consolidate efforts and rise to the challenges of globalization and enter the world of the powerful.
4. Novelty of the experience for Islamic banks: The novelty of the experience, coupled with fierce competition from conventional banks and rival institutions, the absence of a conducive environment, constant interference, and the mobilization of systems and governments against them, along with the absence of a governing legal framework, especially in the Arab world, has made the experience seem like swimming against the current.
5. Absence of a legal framework and legislative frameworks for Islamic banks: As most laws and regulations have emerged within a traditional capitalist commercial environment, Islamic banks themselves will inevitably be isolated, not recognized by the central bank. This isolation applies not only to the establishment of Islamic banks but also to Sharia supervision. The presence of a legal foundation for the board's operations facilitates its work, as it ensures that no one can interfere with its authority. In some countries, the law mandates the establishment of a higher Sharia supervisory authority at the state or national level, as in Malaysia.

Subtopic Two: Negative Phenomena Hindering the Achievement of Sharia Objectives in Banking Oversight

There are numerous negative phenomena that hinder the achievement of Sharia objectives in banking supervision, which we outline as follows:

1. Categorization of scholars by banks into extremists and lenient: This situation leads many bank owners to seek a licensed fatwa, and doubt creeps into their hearts regarding preventive fatwas. This is detrimental and requires remediation through unifying fatwas and agreeing on established, sustainable, and regulated standards.
2. Banks' focus on lenient scholars according to categorization: Leniency and strictness in evaluating matters, and basing juristic rulings on non-Sharia principles, is not a recent phenomenon, but an ancient one in the history of Sharia. This is not limited to banks as arenas of finance and financial matters, but is a pervasive issue in various domains. In our time, it has become alarmingly widespread. This problem requires rectification by Sharia bodies.
3. Weak public trust in some scholars: Political and religious disputes have created a distorted reality, causing some Islamic finance specialists to be categorized based on political frameworks. This has created a gap between them and the public. Addressing this issue requires the reinforcement of awareness and thought, and the allocation of a specialized group to study and address pressing Sharia issues.
4. Commercial competition in products based on fatwas rather than quality: The attachment of Sharia bodies to banks, along with the weakness of some individuals, has led them to covet wealth and compete in issuing fatwas not based on Sharia requirements, but to please clients and expand into prohibited areas. This issue can be addressed through unifying fatwas and asserting control.
5. Interest groups in the appointment of Sharia bodies: While this matter is critical at all levels of life, it is even more perilous at the Sharia level. This necessitates a special competence, technical expertise, and qualitative skills.

Topic two: Maqasidic Jurisprudence and the Legislative Wisdom of Banking Transaction Supervision:

It is imperative to invoke the intended wisdom and consider the anticipated benefits behind stipulated rulings when conducting deduction and inference:

After understanding the intended ruling, it is incumbent to take into account the objectives and also consider the wisdom for which that ruling was established; namely, the benefit to be sought or the harm to be avoided. If we can ascertain and be assured of these, we can base the implementation of the ruling and determine its scope; i.e., what falls within it and what does not, what is forgivable within it and what is not, what is associated with it and what is not. This lies at the heart of considering the objectives. The foundation of rulings lies in rationality and justification, and this becomes more established and clear in transactional matters, especially in contemporary banking transactions.

In substantiating this, we can refer to a number of prophetic prohibitions in the realm of transactions, such as the prohibition of two sales in one transaction, the prohibition of selling what one does not possess, and the prohibition of selling on top of an existing sale. Determining the purpose behind each of these prohibitions, or collectively, is an integral part of understanding the meanings, rulings, and the structure built upon them. One who errs in understanding the wisdom has erred in deducing the ruling, in specifying its place, and in realizing its scope. They may have included something that is not part of it, or excluded something that is within it. Determining the harm intended by the prohibition, as well as specifying the benefit intended by the command, is a step no less significant or impactful than authenticating or weakening a narration. The correction and weakening of the narrative is one aspect, while the correction and weakening of knowledge is another. Just as the fatwas and jurisprudential inferences based on these narrations may differ due to discrepancies in their authentication and weakening, similarly, the differences in their wisdom and intended purpose are among the reasons for variation.

Conclusion

with the help of Allah, I have provided in this research an overview of the most significant challenges faced by Islamic banking supervisory bodies. By identifying and describing these challenges, banks can work towards overcoming them and minimizing their impact.

Results:

From a Sharia perspective, supervision entails monitoring, auditing, examining, and analyzing all activities and transactions conducted by the bank to ensure they align with the principles of Islamic law, in accordance with the fatwas and recommendations issued by the Sharia authority. This is achieved through the use of appropriate Sharia-compliant methods and means, highlighting any violations and errors for correction, and providing reports to the relevant authorities, including observations, guidance, and suggestions for improvement.

The necessity of utilizing Sharia standards issued by Islamic bodies in the development of supervision and auditing in banks.

Islamic law recognizes the freedom of banking transactions, considering it a sacred right with its sanctity and status. Every individual has the absolute right and complete freedom to finance and thereby earn through their legitimate efforts, lawful earnings that sustain their livelihood and preserve their dignity.

One of the objectives of Sharia in financial transactions in general is the circulation and trading of wealth among people. To achieve this objective, Sharia legislated various forms of banking transactions, some of which are contracts of exchange and others involve donations. These transactions are regulated by Sharia supervision to prevent people from following their desires, prohibiting usury, deceit, fraud, and various forms of exploitation, and to safeguard against harm, disputes, and conflicts.

The research highlights a number of challenges in achieving Sharia objectives in banking supervision, including the categorization of scholars by banks into strict and lenient categories, banks' emphasis on lenient scholars based on categorization, the diminished trust of the public in some scholars, competition in products based on religious verdicts rather than quality, and the presence of interest groups in the appointment of Sharia bodies.

The research emphasizes that considering the objectives of Sharia in the field of banking transactions is a fundamental aspect of scholarly exertion (ijtihad) and issuing legal opinions (ifta). It is a condition for their validity. Understanding and deducing the provisions of Sharia involves various elements, including wording and meaning, text and context, ruling and wisdom, worship and justification, circumstances and consequences, specifics and generalities, means and objectives. All of these elements converge and integrate with the invocation of Sharia objectives when issuing legal rulings by those endowed with Maqasidic jurisprudence.

Recommendations:

1. Establish high-quality academic departments and advanced scientific centers to mentor specialized intellectual elites in Sharia, finance, and economics, focusing on Islamic banking transactions.
3. Organize seminars and specialized conferences in the field of Sharia supervision, and disseminate the culture of supervision at the public level, in order to deepen understanding and define its outlines.
2. Form a committee of academics and specialists to formulate systems and regulations that serve as a guiding framework for Sharia supervision of banking transactions. These should be integrated into university curricula and academic courses.

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