

CURRENT ISSUES IN ISLAMIC BANKING AND FINANCE A WAY FORWARD

Yusuff Jelili Amuda

Faculty of Law and International Relations

Sultan Zainal Abidin University, Terengganu, Malaysia

yusuffyja@unisza.edu.my; akorede4@yahoo.com

Abstract

Islamic banking and finance requires a global critical discussion on current issues and practices. Islam encourages Muslims to engage in any lawful and profitable business and transaction in order to enhance and enrich their daily income. However, Islam prohibits all elements of interest (riba) in transaction and business. The prime difference between Islamic banking/finance and conventional banking is the prohibition of interest. The research discusses current issues in Islamic banking and finance such as home/vehicle financing, loans, and other related contract with reference to the opinions of classical jurists. The question is whether Islamic banking and finance is engaging in usury or interest (riba) or not. The study adopts qualitative and quantitative methods in analysis. The key findings is that Islamic banking and finance system is not fully implementing Shariah compliance in loan, home and vehicle financing which are contrary to Islamic principles. Islamic banking and finance needs to be improved in line with Shariah. It is recommended in these findings that Islamic banking and finance should strictly implement Shariah compliance in order to uphold Islamic sanctity. Granting loan should not attract any interest and must be free interest loan because an interest charge is totally prohibited in Islam. Nevertheless, professional or processing charges should be equally charged regardless of the amount of loan. It is better for the bank to engage in transaction in a way of transfer of ownership rather than giving home or vehicle financing with interest. Finally, useful suggestions were suggested on current issues in Islamic banking and finance in order to protect the sanctity of Islamic values.

Keywords: Current Issues, Islamic Banking, Islamic Finance, Shariah, Riba and Conventional

INTRODUCTION

Islam is a complete religion and comprehensive way of life whereby Muslim conduct and character is controlled and guided by Islamic principles. Islam encourages Muslims to acquire property in a lawful manner with the divine right to enjoy the acquired property in the best way. Islamic banking and finance is categorized under contracts (*Mu'amalat*) where financial activities generate income and change of ownership (Aznan, 2011). Islamic banking and finance is widespread globally and requires critical discussion on current issues and practices in the industry. Islam encourages Muslims to engage in any lawful and profitable business and transaction in order to enhance and enrich their daily income. However, Islam prohibits all elements of interest (*riba*) in transactions and business. The prime difference between Islamic banking/finance and the conventional banking system is the prohibition of interest. The prime objective of Islamic banking and finance is saving the deposited capital by the customer and other related purposes. Islamic banking and finance should adhere to the code of conduct of Islamic banking and financial system as stated in the sources of Islamic law. To this end, this paper examines related issues through a mixed methods approach.

METHODOLOGICAL APPROACH

The study applied a qualitative and quantitative method throughout the discussion and analysis on current issues in Islamic banking and finance in Muslim countries and beyond. Eighty questionnaires were distributed to a purposively targeted sample from Asia, Middle East, Africa, and others between 1st -30th of September, 2014 and 72 copies were collected from the respondents. Five purposively selected experts were interviewed for their perceptions on the current issues in Islamic banking and finance in order to improve the system and remove all elements of interest from the Islamic banking and finance operations in Muslim countries. The experts were drawn from practitioners and academicians based on their knowledge and fieldwork experience in Shariah and Islamic banking and finance. All the experts have vast knowledge of Islamic banking and finance especially Shariah issues. The survey consists of open-ended questions. The respondents were contacted physically and through e-mail and subjected to in-depth unstructured interviews. The essence of this method is to ascertain the respondents' perceptions on the current. The collected data were then subjected to critical analysis.

Conceptualisation of Islamic Contracts

The concept of Islamic contracts can be defined as the way or means of exchange of an owned item, property or commodity with another for the exchange of ownership of both contracting

parties. Muslims are permitted to engage in any lucrative contract. There are evidences from Quran in Q2:275, Q2:282, Q2: 198 and Q4:29 in support of Muslim involvement and in contract. Similarly, the Prophet Mohammad (PBUH) was asked about the best form of sale and he replied that devoid of cheating or treason. He further said that the truthful and honest trader is among the Prophets, the righteous and martyrs in the Last Day. This means that traders or contracting parties should base their contracts on mutual consent and there should not be any form of cheating and exploitation in banking and finance activities. Both contracting parties should uphold the ethical values of the contract such as the avoidance of excessive profit/gain, truthful and complete disclosure of information, ease of conduct, avoidance of swearing even if it is truthful, frequent paying of charity and documentation and witness of all debts. Similarly, the cornerstones of contract in any financial activity must be upheld and maintained in the interest of contracting parties. Rationally, no human being can singlehandedly depend on himself. Contracts are a means to exchange or transfer ownership to another in mutual consent between the two parties.

Prohibition of Interest (Riba) in Islamic Contracts

Under Islamic law, *riba al-fadl*, *riba al-nasiah*, *riba al-buyu* (sales) and *riba al-yad* are strictly prohibited based on Quranic and Sunnanic evidences. Any increase or interest on lent capital is prohibited in Islam.

Quranic evidence states to the effect that:

Those who eat *riba* (*usury*) will not stand (on the Day of Resurrection) except like the standing of a person beaten by *Shaitan* (Satan) leading to insanity. That is because they say: "Trading is only like *riba*," whereas Allah has permitted trading and forbidden *riba*. So whosoever receives an admonition from his Lord and stops eating *riba* shall not be punished for the past; his case is for Allah (to judge); but whoever returns [to *riba* (*usury*)], such are the dwellers of the Fire they will abide therein (Q2:275).

Allah will destroy *riba* and will give increase for *Sadaqat* (deeds of charity, alms, etc). And Allah likes not the disbelievers, sinners (Q2:276).

Truly those who believe and do deeds of righteousness, and perform as-Salat (*Iqamat-as-Salat*), and give Zakat, they will have their reward with their Lord. On them shall be no fear, nor shall they grieve (Q2:277).

O you who believe! Be afraid of Allah and give up what remains (due to you) from *Riba* (*usury*) (from now onward), if you are (really) believers (Q2: 278).

And if you do not do it, then take notice of war from Allah and His Messenger but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums) (Q2: 279).

And if the debtor is in a hard time (has no money), then grant him time till it is easy for him to repay, but if you remit it by way of charity, that is better for you if you did but know (Q2:280).

And be afraid of the Day when you shall be brought back to Allah. Then every person shall be paid what he earned, and they shall not be dealt with unjustly (Q2:281).

Hadith

On the authority of Abu Said al-Khudriy “Do not trade gold for gold except in equal amounts, with no increase of one over the other, and do not trade silver for silver except in equal amounts with no increase of one over other”.

Hadith narrated by Al-Bukhari and Muslim “Gold for gold is riba unless it is hand to hand”. On the authority of Abu Hurayrah that the Prophet Muhammad (PBUH) said: Avoid the seven grave sins”. He said: They are associating others with Allah, engaging in magic, killing a forbidden human soul without legal right, devouring riba, devouring the wealth of an orphan, escaping on a day of religious battle and defamation of unsuspecting believing married women. On the authority of Jabir that “Messenger of Allah cursed equally the one who devours riba, the one who witnesses it, and the one who documents it.”

In view of the above verses from Quran and Hadith, it can be inferred and interpreted that any channel, transaction, business, investment, or Islamic banking and finance activities that will attract usury or interest is prohibited. It is unlawful to take advantage or exploit a customer or client’s wealth illegally. Islamic banking and finance should abide and implement a traditional Islamic banking and financial system without mixing the conventional system with the Islamic system. It is the duty of the Shariah advisory committee to stand firmly in giving correct fatwa (ruling) on contemporary issues in Islamic banking. They should not politicise and play with Islamic law. Even if it is difficult to correctly implement an Islamic banking and financial system globally, Muslim scholars should not play with Islamic law. The principles and rulings must organically be derived from Islamic sources. The qualified and competent person should manage and run the Islamic banking and financial system.

Current Issues in Islamic Banking and Finance with reference to Classical Opinions

Islamic banking is defined as a system of banking which is in line with Islamic principles. The Islamic principles encourage moral and ethical values in dealing with contacting parties while prohibiting all sorts of interest. Any trade, contract, loan, and business activities that attract

interest is prohibited (Abdul Qadir. I.A, 2012, Onafowokan, 2003, Abdul Gafoor, 2003, Iqbal and Mirakhor, 1987). It can be deduced from the above definition that Islamic banking and finance practices and operations must be free from any sort of interest and there is no legal or rational reason for Islamic bank operators to permit, justify or legalise interest in the industry. All practices must be in line with Islamic law otherwise, it will be similar with the conventional banking system. There is no justification for legalising interest in Islamic banking and finance. All financial activities must be Islamic and strictly follow Islamic law. Alternatively, Islam permits and encourages Muslims to engage in any lucrative business and transaction. There is no legal limit for acquiring profit from business in so long as the profit is reasonable morally and ethically.

The opinions of classical Islamic jurists on usury/interest (riba) can be summarised and simplified in that both Imam Hanafi and Imam Hanbali considered measurability such as volume and weight as criteria for eligibility of usury/interest in contracts. Imam Malik argued that edibility and storability are criteria for the prohibition of usury in any financial activities while the Zahiri school of thought and Abu Bakar Ibn At-Tayyib restricted the eligibility of usury into the six (6) foodstuffs stated in only Quran. The Zahiri school of thought is against any additional foodstuff or items into the eligibility of usury/interest because they did not consider analogy as a source of Islamic law (Al-Zuhayli, 2003). It can be concluded that all classical schools of thought including the Zahiri school prohibit usury or interest. The researcher strongly agrees with all the above views as measurability, edibility and storability should be considered as criteria for prohibition of usury/interest in Islamic banking and financial activities. Islamic banks should refrain from usury in terms of increment or reduction due to deferred payment or pre-payment.

Issues on Home/Vehicle Financing and Loan

Islamic banking home and vehicle financing is a way of averting and reducing home or vehicle problems due to customer financial constraints to purchase the property by himself. In the process all sorts or elements of usury must be eliminated from home and vehicle financing. To illustrate the financing process, Mr. "Y" is in need of a house and he approached a developer. The house price is 4000 dinar. The bank will pay the cost plus mark up or profit based on the period of instalment payment. The margin will be based on the fixed interest. The argument here is that the entire process is similar to interest in a loan. This study submits that Islamic banks can re-structure home and vehicle financing according to Islamic law in a way that all elements of usury would be removed in the interest of both parties involved. Islamic banks can finance home/vehicle or any property in a legal way by applying the *Murabaha* model (cost plus mark up/margin) where the bank purchases the property from the seller and resells it based on an agreed price and period of payment.

On that note, it is the duty of the Islamic bank to evaluate and access the value of the property and later resell it to the buyer. Islamic banks are responsible for the any defect or damage that occurs in the house. The buyer will later approach the bank directly to repair the damage. The contract will be based on a *Murabaha* model with deferred payment after all logistic documentation has completed. The problem is that the bank does not want to engage in business due to self-imposed regulations and rules that are contrary to Islamic principles. The illustration is applicable to all current property financing by Islamic banks.

Elements of Usury in *Bay 'Ina*

It has been said in previous lines that usury is prohibited and Muslims are seriously warned not to acquire their wealth or property through unlawful means. The acquired property would be accounted for in the Last Day. Contracts or transactions are day to day activities that cannot be avoided. There should be no elements of usury or exploitation of others' wealth. Islam urges contracting parties to uphold the moral and ethical aspect of the contract. In the case of bay 'Ina, there is an element of usury and exploitation. In Islam, every act is considered devotional and each person or Muslim must be conscious of their voluntary acts\.. To illustrate the argument, if Mr. A seeks financial aid or loan from B (bank), Mr. A is in need of 100,000 dinars and the bank agreed to sell an asset or property to the customer equivalent to 150,000 dinar on instalment payment and with the agreement to resell the asset to the bank at the rate 100,000 dinars which will pave the way for the customer to have access to the needed cash. If the contract is concluded on that platform, the contract is invalid on the argument that there is an element of usury or indirect loan with interest. The view of Islamic jurists on bay 'Ina, is that the majority of classical scholars such as Imam Malik, Hanafi and Hanbali considered bay 'Ina invalid and unlawful due to the element of usury and bad motive or intention of contracting parties because they do not have sincere and good intention to transact together. The contract is valid under Imam Shafi'i. The authenticity of Imam Shafi'i's opinion on the subject matter had been questioned and critically examined by cotemporary scholars. This study supports the prohibition of bay 'Ina since it contains an element of usury (Mahmood .M.S, 2012).

Commercial Banking vs *Riba*

Islamic banking and finance's commercial activities must desist from any modern usury or method of devouring customer or client wealth in an unlawful manner. Islamic banks should be conscious and avoid any sort of interest on loan, home/vehicle financing and any other property financing in order to protect the sanctity of Islamic values. This study submits that Islamic banking and finance should not engage in any usury activities. Islamic banking and finance

should stand and fully implement Islamic rulings rather than regulations from the central bank that may be contrary to Islamic principles. Islamic banks should not make the haram halal by legalizing unlawful commercial activities. In addition, Islamic banking and finance must depart from all types of predetermined interest, or fixed charges in any contract. Islamic legal principles must be protected in the bank's relationship with customers such as trustee/beneficiary, depositor/custodian, investor/entrepreneur, vendor/purchaser, lessor/lessee, transferor/transferee, lender/borrower (Abdul Qadir. I.A, 2012, Asyraf .W.D. 2008). This study is strongly against any form of commercial banking activities that attract devouring customer and client wealth illegally.

ANALYSIS & FINDINGS

Analysis of Interview and questionnaire on current issues on Islamic Banking and Finance

Tale 1: Current issues on Islamic Banking and Finance

No	Item	Strongly Agreed	Agreed	Disagreed	None
1	I understand concept of Islamic Banking and Finance	18.1%	55.6%	1.4%	25%
2	Islamic Banking and Finance must be in line with Islamic principles	76.4%	23.6%	0%	0%
3	Islamic Banking and Finance practices in the Muslim world needs to be improved	83.3%	13.9%	0%	2.8%
4	Islamic Banking and Finance must not engage in any unlawful practices	72.2%	16.7%	5.6%	5.5%
5	Present Islamic Banking and Finance practice is still similar with conventional banking system	13.9%	33.3%	16.7%	36.1%
6	Islamic Bank and finance is still engage in interest charges	6.9%	37.5%	25%	30.6%
7	Islamic Banks profit rate is higher than conventional bank's interest rate	8.4%	20.8%	18.1%	52.8%
8	I prefer to get a loan from conventional bank than Islamic Bank due to mark-up	30.3%	15.5%	36.1%	18.1%
9	Islamic Banking and finance loan must not attract any interest	48.6%	30.6%	11.1%	9.7%
10	Islamic bank and finance practices must be completely Shariah-complaint	75%	18%	2.8%	4.2%
11	Current Islamic finance products are being applied according to the true spirit of Shariah	12.5%	38.9%	13.9%	34.7%
12	Islamic finance transactions being practiced today completely eliminate riba in all respects	5.6%	19.4%	36.1%	38.9%

13	Trade-based Islamic financial instruments are implemented by Islamic financial institutions in strict accordance with the requisite Shariah guidelines, such that they no longer involve any money –to-money transactions with an increase in amount	5.6%	29.2%	13.9%	51.4%
14	The ownership issues related to trade-based Islamic financial instruments have been effectively resolved and fully comply with the Shariah	5.6%	33.3%	9.7%	51.4%
15	The existing Shariah governance frameworks and the regulatory environment is sufficient in ensuring that Islamic banking products are practiced according to the letter and the spirit of the Shariah	5.6%	27.8%	27.8%	38.9%
16	The Islamic home financing products being practiced today, involve attributes of interest (riba)	7.1%	31.5%	30%	31.4%
17	Islamic vehicle financing product is similar in practice to a loan with interest	11.3	38%	23.9%	26.8%
18	Islamic banks should apply a non-interest model	38.9%	38.9%	2.8%	19.4%
19	Islamic Bank should give non- interest loans to the less privileged Muslim	41.7%	34.7%	9.7%	13.9%
20	Bay al-'Inah should be totally prohibited	19.4%	27.8%	11.1%	41.7%
21	Islamic banks can venture on profitable contracts with their customers rather than contracts that resemble loans with interest	27.8%	43.1%	6.9%	22.2%
22	Islamic Bank should apply Musharakah Mutanaqisa model in property financing rather than the current financing models	25.4%	43.7%	2.8%	28.2%
23	Islamic Bank should be a panacea to less privileged customer's burden	26.8%	47.9%	1.4%	23.9%
24	Mudharabah/ Equity models are a more Islamic way of generating income rather than loan with interest	34.3%	45.7%	1.4%	18.6%
25	Shariah Advisory committee should be given free hands to regulate Islamic Bank activities	26.8%	47.9%	4.2%	21.1%
26	There are aspects of current Islamic Banking and finance practices that are not Shariah compliant	18.4%	56.3%	4.2%	21.1%
27	Islamic Bank and finance should strictly implement Shariah compliance in order to uphold Islamic sanctity	54.9%	25.4%	2.8%	16.9%

28	Any condition or requirement that will impede proper operation Islamic Banking and Finance according to the Shariah principles should be removed.	34.3%	32.9%	7.1%	25.7%
29	Islamic Banking and Finance should oblige with central bank regulations, even if they impede Shariah-compliant practices.	8.6%	28.6%	34.2%	28.6%
30	Islamic Banking and Finance should be constitutionally permitted to operate in full Shariah-compliance.	55.7%	31.5%	1.4%	11.4%

The data from the above table reveals that an overwhelming 55.6% (n= 40) of respondents strongly agreed on their understanding about Islamic banking and finance and 18.1% (n=13) agreed. The 1.4% of (n=1) disagreed with their knowledge about Islamic banking and finance while 25% (n=18) answered none to the question. The majority of the respondents understood the concept and practice of Islamic banking and finance. The majority of 76.4% of (n=55) participants strongly agreed that the Islamic banking and finance system must be in line with Islamic principles and 23.6% of (n=17) agreed with the question. However, 83.3% (n=60) strongly agreed that Islamic banking and finance needs to be improved while 13.9% (n=10) also agreed with majority and 2.8% (n=2) marked none as their answer to the question and no participants disagreed with the improvement of Islamic banking practices across the world due to some un-Islamic practices. Concerning the similarity between Islamic banking and finance and conventional system, 13.9% of (n=10) strongly agreed the present and current practice in Islamic banking and finance system is similar with the conventional and 33.3% (n=24) agreed, 16.7% (n=12) disagreed and 36.1% (n=26) ticked none to the similarity between the two systems. Regarding interest charges, 6.9% of (n=5) and 37.5% (n=27) strongly agreed and agreed that Islamic banking and finance is still engaged in interest charges compared to 25% of respondents (n=18) disagreed with the majority while 30.6% (n=22) preferred none as their answer. Similarly, 48.6% of (n=35) strongly agreed that Islamic banking and finance loan system must not attract interest while 30.6% (n=22) agreed. The total of 11.1% of (n=8) respondents disagreed with the question and 9.7% of (n=7) chose none respectfully. In addition, 75% of (n=54) and 18% (n=13) of respondents strongly agreed and agreed that Islamic banking and finance be completely Shariah complaint while 2.8% (n=2) disagreed and 4.2% (n=3) answered none to the question.

On the issue of Islamic home financing, 7.1% (n=5) strongly agreed that the system involves attributes of interest (riba) and 31.5% (n=22) agreed, 30% (n=21) of respondents disagreed and 31.4% (n=22) answered none on the issue of interest. Similarly, 11.3 (n=8)

strongly agreed that Islamic vehicle financing is similar with loan with interest and 38% (n=27) agreed to the question. Contrarily, 23.9% (n=17) of respondents disagreed with the view that Islamic vehicle financing is similar with loans with interest and 26.8% (n=19) selected none as their response to the question. The present study submits that both home/vehicle financing must not attract any attributes of usury and industry must avoid any element of interest in the home/vehicle financing activities. The majority of 38.9% (n=28) and 38.9% (n=28) of respondents strongly agreed and agreed that Islamic banks should apply a non-interest model in their system, 2.8% of (n=2) disagreed and 19.4% of total respondents (n=14) said none as their answer.

Concerning Islamic banking and finance non-interest loan to the less privilege Muslim, 41.7% (n=30) strongly agreed that Islamic bank should non-interest loan to less privileged customer, 34.7% of total respondents (n=25) agreed. The total of 9.7% of (n=7) disagreed while 13.9% (n=10) selected none as their respectful answer to the question. The researcher agreed with the majority that Islamic banks should give non-interest to the customer. Loaning the customer with interest is contrary to Islamic law and similar to conventional banking. Islamic banks can venture on profitable contract using Islamic models rather than engaging in loans with interest. The total participants 27.8% of (n=20) strongly agreed that Islamic bank should venture on profitable contract and the majority of 43.7% of (n=31) agreed, 6.9% of (n=5) disagreed while 22.2% (n=16) of total respondents responded none. In this study, Islamic bank and finance should venture in profitable and lucrative business, transaction and investment by using Islamic models. The business will also create job opportunities for the unemployed and provide financial support to skilful businessmen who lack capital to run his or her business.

The table also indicates that 26.8% (n=19) strongly agreed that the Shariah advisory committee should be given free hands to regulate Islamic banks activities without any impediments and the majority 47.9% (n=34) of respondents agreed to the question. However, 4.2% (n=3) disagreed and 21.1% (n=15) answered none to the question. The majority 18.4% (n=18) and 56.3% (n=40) of respondents strongly agreed and agreed that some aspects of Islamic banking and finance are not Shariah complaint, 4.2% (n=3) disagreed and 21.1% (n=15) said none.

On the implementation of Shariah compliance in the Islamic banking and finance industry, the majority of 54.9% (n=39) and 25.4% (n=18) agreed that Islamic banks should strictly implement Shariah compliance in order to uphold the sanctity of Islam, 2.8% (n=2) disagreed and 16.9% (n=12) ticked none respectfully. In addition, 55.7% (n=39) strongly agreed that banks should be constitutionally required to be fully Shariah compliant and 31.5% (n=22) agreed, 1.4% (n=1) disagreed and 11.4% (n=8) of respondents said none to their answer.

Finally, the researcher strongly supports the view of the majority that the Islamic banking and finance system should be constitutionally obliged to be fully Shariah compliant and any obstacle to this should be removed. This will empower the Islamic banks to operate Islamically. Otherwise, the system will be controlled by the Central Bank Act which is not absolutely in line with Islamic principles.

Summary of the conducted interview on current issues on Islamic banking and finance

Based on the expert interviews with academicians and practitioners of Islamic banking, several key issues and challenges were identified. Regarding the current practices of Islamic banking and finance in the Muslim world, all interviewees agreed that the current practice needs improvement. The main reasons given were that further efforts are required to completely eliminate *riba* from the banking and financial system, and to ensure there is comprehensive conformity with Shariah principles. Interviewees also noted that even though Islamic banking and finance products fulfil Shariah requirements, the products sometimes do not really serve to help the *Ummah*. The key reasons identified for this problem were the high cost of financing of Islamic products and their similarity with debt instruments. In addition to the need for gradual improvements in the Islamic financial system, interviewees also addressed the challenges faced because Islamic finance has to operate under financial infrastructure which is different from its norms and values. For this reason, much more effort will be required to fix or improve the operation of Islamic finance within this dual system and to ensure Shariah compliance.

The expert opinions were divided regarding the argument that the present Islamic banking and finance practices are very similar to the conventional banking system. Interviewees that disagreed with this statement argued that Islamic finance is different from conventional system both in form and substance, pointing out that this perception of similarity is often based on economic reasoning and not on the Shariah view. On the other hand, interviewees who agreed with the statement opined that Islamic Banks just use Arabic names for similar *riba*-based products. Experts whose views were in the middle of the spectrum on this issue reasoned that both banking systems have different approaches in terms of contract use since conventional banks use debt contracts whilst Islamic banks use *Muamalat* contracts without interest, but that there are still similarities between the two in terms of calculation of financing because both use the method of compounding.

Interviewees also differed on the question of whether Islamic banking and finance still engage in interest charges. The majority of interviewees stated that there are no interest charges in Islamic finance, while a few stated that there is still some aspect of interest charges

involved in Islamic banking and finance. Those who asserted that Islamic banks do not charge or give interest in any form, reasoned that Islamic banks only give hibah or profit from investment, or engage in sale transactions to make profit, and further argued that the scholars with conventional economic background wrongfully understand it as interest. It was also stated that the component in finance that reflects rate charge is commonly misinterpreted by the public as interest.

In regards to the customer complaints regarding the higher profit rate of Islamic banks compared to conventional interest rates, the major reason highlighted was the element of risk. Interviewee's observed that although the complaint seems valid on comparison of the rates alone, Islamic banks bear higher risk and the customers enter into a transaction being aware of this higher risk. On the other hand, clients may not consider this element of risk and the amount they need to pay in the case of default payment. However, it requires finance knowledge to understand how banks calculate their rate of return or interest and other hidden costs, and hence banks may need to provide further clarification to customers on how the rate charges are computed to avoid this misperception. In addition, interviewee's also highlighted the challenge faced by Islamic finance in that, it operates under a system designed for conventional finance system which increases the cost for the industry, and this increased cost is reflected in the rate of financing.

There is a divergence in opinions on whether Islamic finance has succeeded incompletely eliminating riba in all respects. Interviewee's agreed that it has been eliminated to an extent. However, it was also observed that riba can sometimes occur in the case of default payment, although it is usually distributed back to charity. In other cases, riba may occur when certain financing instruments are not applied properly, leading to money-with-money transactions.

There was also consensus on the view that *Musharakah Mutanaqisa/ Mudharabah/* Equity models are a more Islamic way of generating income rather than loan with interest. However, it was also argued that it would create additional risk compared to a loan with interest which is fixed. This additional risk is also the main reason for the lower adoption rate of equity models by banks compared to trade-based/debt-based models.

All interviewee's stated that the existing *Shariah* governance frameworks and the regulatory environment is insufficient in ensuring that Islamic banking products are practiced according to the letter and the spirit of the *Shariah*. The key issue highlighted on this subject was that *Shariah* governance frameworks in most jurisdictions are regulated by the conventional banking laws, and hence the need for dualization initiative to create separate platform for both banking systems. It was also noted that the *Shariah* governance framework is sufficient if

applied correctly. The regulatory environment still needs to be improved gradually and cannot be done at once. Another issue that might create this problem in ensuring sufficient Shariah compliance is that in some countries, the regulatory framework is not yet in place to accommodate Islamic finance.

There is agreement among the interviewed experts that Shariah Advisory committee should be given free hand to regulate Islamic Bank activities. However, it was underlined that this should only be to the extent of Shariah matter's only. Interviewee's also stated that Islamic finance should follow the rule of Shariah and abide by the regulation of Central Bank in implementing and practising the Shariah instruments applicable to Islamic financial products. Therefore, it is important to have Shariah board/council at the regulatory level that is tasked with the duty of providing Shariah pronouncement to be incorporated from time to time into the Regulation. It was also noted that previous issues arising on Shariah compliance could be due to lack of understanding by Shariah scholars on how the instrument/product works. Therefore, it underscores a need for the committee members to understand finance, as they can give advice not only on the contract underlying the instrument but also the implication of the financing techniques used in that instrument from a Shariah perspective.

SUGGESTIONS

It can be suggested that Islamic banking and finance should adhere to Islamic law without any restriction.

Appointment of banker who are operating the Islamic banking and finance must be based on merit and competency. In case of deficiency and inefficiency, the authorities must find solutions in order to uphold the sanctity of the Islamic banking and financial system.

There should be training, seminars, and workshops for the bankers in order to upgrade their knowledge and understanding about Shariah and finance for the smooth running of the industry. Islamic banks should be firm and optimistic about the implementation of the real Islamic banking and finance without mix-up or colouring conventional banks as Islamic banks globally.

The Shariah advisory committee should not be based on political appointment but based on quality, competency, and merit. Otherwise, the wrong person would be in charge leading to mismanagement and inefficiencies.

Muslim scholars should have a unanimous design of an Islamic banking and finance system under the auspicious of Islamic Development Banks without interference from conventional banks.

There is a need for introducing the Baitul Mal across Muslim countries where the money should be saved and kept. The World Baitul Mal should be placed in any Muslim country rather than non-Muslim countries.

CONCLUSION

Based on the findings and analysis, it can be concluded that the Islamic banking and finance system does not operate fully in line with Islamic principles. Therefore, there is a need to adjust and remove any un-Islamic practices from contemporary Islamic banking and financial activities. Methods of home, vehicle, and loan financing should be completely Islamic and there should be no elements of usury. Islamic banking and finance should operate and display to the whole world the real meaning of Islamic banking and finance rather than painting conventional banking and finance as Islamic banking and finance. Islam has its own way of doing things and there is a culture and custom of doing thing in Islam which is different from others. Islamic banking should not be subjected to the dictates of conventional banks. Islamic banking and finance should be strictly against interest but venture to profit in legal way.

LIMITATIONS OF STUDY

The research limited its discussion on current issues in Islamic banking and finance such as home, vehicle financing, loans, and other related contract with reference to the opinions of classical jurists. It is also analysed elements of usury in *Bay 'Ina*, commercial banking vs *riba* and conceptualisation of Islamic Contracts. Islamic banking and finance requires a global critical discussion on current issues and practices in Muslim society. Islam encourages Muslims to engage in any lawful and profitable business and transaction in order to enhance and enrich their daily income. Sources of prohibition of interest (*riba*) in transaction and business were critically discussed. The study only examined the issues in Islamic banking and finance only.

REFERENCES

- Abdul Qadir. I.A. Islamic Banking as non-Interest Banking: Facts or Action. Shariah Law Reports, 2012, 3: i-xix.
- Ala'eddin Kharofa (2002), The Loan contract in Islamic Shari'ah and Man-Made-Law (Roman-French-Egyptian) A Comparative Study. (Kuala Lumpur, Malaysia: Leeds Publication),91-108.
- Asyraf .W.D. (2008). Commodity Murabahah Program (CMP): An Innovative Approach to liquidity Management', in Mohammed Daud Bakar and Engku Rabiah AEA(eds), Essential Readings in Islamic Finance. Kuala Lumpur, Malaysia: CERT Publication, pp.173.
- Aznar Hasan (2011) Fundamentals of Shari'ah in Islamic Finance (Kuala Lumpur: IBFIM), 192-195.
- Dandago, K.I, Muhammad, A.D, Oseni, U.A (2013) Essentials of Islamic Banking and Finance in Nigeria. (Nigeria: Benchmark Publishers Limited),

Iqba, M. and Mirakhor, A. "Islamic Banking" *The Islamic and Comparative Law Quarterly*, 1987, 4 (3):3

Mahmood .M.S. (2012) *Islamic Banking and Finance Shari'ah & Legal: Issues and Challenges* (Selangor, Malaysia: ASLITA),53-65.

Muhammad S.T. (1997). *Mu'amalat al-Bank wa Ahkamuha al-Shar'iyyah* (Cairo, Egypt: Nahdat Misr). 143-149.

Nuarrual, H.M.D and Sharifah Zubaidah S.A.K.A (2010) "Shariah and Legal issues in the Bay' Bithaman Al-Ajil (BBA): A Viewpoint", *Shariah Law Reports* 3:93-102.

Ruzian Markom and Sharina Ali Pitchay (2010), "Enforcement of Islamic Banking and finance laws in the civil courts of Malaysia", *Shariah Law Reports* 3:62-64.

Wahbah Al-Zuhayli (2003), *Financial Transactions in Islamic Jurisprudence*. (Damascus, Syria: Dr al-Fikr)

Yusuf Al-Qardawi, (1986) *The lawful and the Prohibited in Islam* (Beirut: Dar al-Qutan al-Karim), 266.