

**STRENGTHENING THE INSTITUTIONAL FRAMEWORK
OF THE CONTEMPORARY ISLAMIC FINANCE:
COMPARATIVE ANALYSIS BETWEEN MALAYSIA,
SAUDI ARABIA, PAKISTAN AND SUDAN**

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1.0 ABSTRACT

This paper is drawn from an ongoing Ph.D dissertation which seeks to examine the roles of fatwa, Shariah resolutions, court judgment and governmental policies in the contemporary Islamic finance in Malaysia, with cross reference with the practices in Saudi Arabia, Pakistan and the Sudan. The research is currently at the reporting of the findings stage. The main objective of the paper is to review some of the existing literature quest for Institutional framework of contemporary Islamic finance is not properly located to build the argument for strengthening the Institutional framework and practice in contemporary Islamic finance with the view to minimize the Shariah and legal risks involved. The methodology employed for the research is library-based research on both primary and secondary sources of data, including text books, journal articles, online references, state guidelines, legislations and decided cases. Hopefully, the research could become a catalyst for future research on the governance of Islamic finance within the context of mixed jurisdictions of the contemporary practices both locally and internationally.

Keywords: Institutional framework, Shariah and legal risks, Contemporary Islamic Finance.

2.0 BACKGROUND

Fatwa issuing bodies, executive governmental functionaries and disputes settlement agencies play an important role in shaping the development of contemporary Islamic finance. Indeed, fatwa is the source engine for the development of Islamic finance. Fatwa is Shariah opinion issued by the Shariah scholars. The *muftī* deduces the *ḥukm* from *al-Qur'ān* and the *al-Sunnah*. The judge gives rulings after examining the question of the fact and seeks other scholar's opinion before issuing judgment. If the court can form its own opinion, then it is not necessary for the court to seek other scholar's opinion. Only and only after the court cannot form its own opinion only then it is

necessary for the court to seek the scholar's opinion. The court shall decide whether the litigant is liable or not and whether the contract is *.ṣaḥiḥ*, *bāṭil* or *faṣid*. It is up to the government whether to enforce the judgment or not.

3.0 PROBLEM STATEMENT

It seems that the current institutional framework of contemporary Islamic finance does not properly put in place a clear demarcation line between fatwa, court judgment and governmental policies. Within this context, there is a duty for the government as to ensure that the disputes settlement agencies are always independent. The government should exercise the *siyasaḥ syariyyah* (governmental oriented policy) as the way it should be. Indeed Islamic finance is not only about prohibition of *riba*, the avoidance of *gharar* and *maysir* but the most important things is that complete transfer of ownership rights and thereon property rights claim can be established and justice can be maintained if all the functionaries play their role as the way it should be under the normative theory of Islamic commercial law. Therefore, this paper examines the institutional framework and practices of the contemporary Islamic finance in Malaysia, Saudi Arabia, Pakistan and Sudan as comparative analysis as to enhance the institutional framework of fatwa issuing bodies, executive governmental functionaries and disputes settlement agencies in contemporary Islamic finance.

4.0 RESEARCH OBJECTIVES

The objectives of this research are two-fold, first is to review the existing literatures concerning the institutional structural framework of contemporary Islamic finance should be properly located to minimize Shariah and legal risks to build the argument for strengthening the institutional framework of contemporary Islamic finance. Another objective of the paper is to propose recommendations for the amendment of existing, or creation of new statutes or regulations for the proper governance of Islamic finance based on the findings of the research.

5.0 DESIGN /METHODOLOGY APPROACH

The methodology adopted in this research is library based involving both primary and secondary sources. In this regard, the research analyses written statutes and regulations passed by the respective jurisdictions, decided cases, online references, journal articles and relevant official government documents.

6.0 FINDINGS

After carrying out the research, it was found that the institutional structural framework of contemporary Islamic finance should be further strengthened with the view to minimize the related Shariah and legal risks. In addition, no single jurisdiction of contemporary Islamic finance operates under the “pure law” and legal system.

6.1 THE INSTITUTIONAL FRAMEWORKS

The Malaysian Federal Constitution was implemented on 31st of August 1957, the day Malaysia gained its independence from the British colonials. It is asserted that based on the particular historical record Islamic law or the Shariah is a law of the land. The Malacca Legal Digest, an important compilation regarding both equally civil and criminal laws and Maritime Laws of Malacca seems to have clear Islamic aspect inside them. Yet another apparent case in point seemed to be the particular acknowledgement of an Ottoman authority’s collection regarding Islamic civil law depending on the Hanafi School is obvious proof for the need to strengthen the concept of Islamic law. Malaysia is not any exclusion when conversing concerning the common advantage of the Majelle. Prof Ahmad Ibrahim verified in which the impact regarding poultry in addition to Egypt with respect regarding codification of Islamic laws by the transation of Majallah al-Ahkam al-Adliyyah in Johor. The fall of the Ottoman Empire in 1924 led to your Majelle becoming short-lived in addition to English Common Law started to be notable in Malaya.

Article 3(1) of the Constitution declares Islam as the official religion of the Federation and guarantees religious freedom. The Ninth Schedule outlines the legislative lists specifying the federal, state and common jurisdictional lists of both the federal and the state (Zainal Azam, 2007). Islamic finance fall under the federal jurisdiction and the Shariah court does not have power to hear Islamic finance disputes. The development of Islamic finance begins with the establishment of Pilgrims Management Fun Board in 1969. In 1983 Bank Islam Malaysia was established. In 1993, the Islamic windows concept was introduce where conventional banks can offer Islamic products within their conventional structure. The primary pieces of legislation relating to Islamic finance in Malaysia include the Central Bank Act 2009, the Islamic Bank Act 1983, the Takaful Act 1984, the Banking and Financial Institutions Act 1989, the Capital Markets and Services Act 2007, the Securities Industry (Central Depositories) Act 1991, the Securities Commission Act 1993, the Companies Act 1965, the Offshore Companies Act 1990, the Labuan Financial Services and Securities Act 2010 and also the Securities Commission Guidelines.

Meanwhile, the legal framework organizing the financial sector of Saudi Arabia could be classified as three, the first group of laws comprise of the legal fundamentals concerning the political, social and economic aspects of the nation, monetary policies, original laws of the Arab region, the money and currency control laws and various commercial laws (Nidal Rashid Sabri, 2009). It is notable that Saudi Arabia has no formal codified constitution. The governing law is the Basic Law which articulates the government's rights and responsibilities which was issued by King Fahdin March 1992. It includes provisions declaring Islam as the official state religion and the Quran and the Sunnah as the State constitution. It provides that the State protects the rights of the people in line with the Islamic Shariah, acknowledges the independence of the judiciary and that the administration of justice is based on the Shariah rules according to the teachings of the holy Quran, the sunnah and the regulations set by the Ruler, provided that they do not contradict the provisions of the Quran and the sunnah. On the same notion, Article 9 of the Basic Law states that "*the family is the kernel of the Saudi society, and its members shall be brought up on the basis o the Islamic faith*". Further, Article 26 provides that the state protects human rights "*in accordance with the Islamic Shariah*".

The second group of laws belongs to the organizing activities of financial institutions, including commercial, specialized and Islamic banks laws, central banks laws, insurance laws, insurance control laws, leasing financing laws, as well as the social securities agencies and public provident funds laws. Further, the third group of laws belongs to the organizing aspects of the financial markets including the corporate share laws, securities laws and trading regulations, government securities commission's laws, stock exchanges' laws and by-laws, disclosures and reporting requirements, brokers and membership requirements, insiders tradings laws and price limits regulation and margin regulations (Nidal Rashid Sabri, 2009).

Within the context of Islamic banking and finance specifically, the relevant law would be the Banking Control Law – Royal Decree No. M/5, 1996, Rules for Enforcing Provisions of the Banking Control Law – Ministerial Decision No. 3/2149, 1986, Cooperative Insurance Companies Control Law – Royal Decree No. M/3,2003. All the banking and financial activities in Saudi Arabia, including those by Islamic financial institutions, are regulated by Saudi Arabia Monetary Agency (SAMA) being the central bank and the regulators of the Islamic banking and insurance market.

On the other hand, the Pakistan Consitution was adopted on 10th April 1973, but was suspended in 1977 and reinstated in 1985. After a military take-over in 1999, the Constitution was again suspended until today. Islam plays a significant role in the Constitution, as Article 2 declares that Pakistan's official name shall be the Islamic Republic of Pakistan, and Article 2 declares Islam as the state religion. The objectives resolution of the preamble to the Constitution requires all laws to be brought in consonance with the Quran and the Sunnah. Part IX of the Constitution provides for the eventual Islamization of all existing laws, reaffirming that no laws "repugnant" to the injunctions of *Islām* are to be enacted.

The Islamic banking system is regulated by the State Bank of Pakistan (SBP), and within the purview of the State Bank of Pakistan Act 1956, the Policies for Promotion of Islamic Banking, the Detailed Criteria for Setting Up of Scheduled Islamic Commercial Bank based on Principles of Shariah in the Private Sector, the Detailed Criteria for Setting Up of Scheduled Islamic

Banking Subsidiaries by Existing Commercial Banks, the Guidelines for Opening of Stand Alone Branches for Islamic Banking by Existing Banks, as well as the Fit and Proper Criteria for Appointment of Shariah Advisors.

The Constitution of Sudan came into force on 1st of July, 1998. Article 1 provides that Islam is the religion of the majority of the population, but does not proclaim it to be the state religion. In this context, Article 65 identifies the sources of law is the Shariah, the consensus of the people, the constitution and custom. Due to continuous conflicts on the country, South Sudan seceded from Sudan following a self-determination referendum in January 2011, and its independence day in July 2011. For the purpose of this thesis, the discussion will only revolve around Sudan i.e. the northern part of Sudan to the exclusion of South Sudan due to the majority Muslim population in Sudan, whereas in South Sudan, the majority population is Christians.

Within the context of Islamic banking and capital market, the main regulator is the Central Bank of Sudan. The main pieces of legislation are the Law of the Regulation of Banking Activity 2003, the Companies Act 1925, the Khartoum Stock Exchange Act 1994, the Law on the Sale of Bank Collateral 1990, the Foreign Exchange Act 1998, the Encouragement of Investment Act 2003, the Foreign Exchange Act and the Bankruptcy Laws, the Anti Money Laundering & the Financing of Terrorism Act, the Property Mortgaged to Banks (Sale) Act, the Electronic Transactions Act, the Deposit Guarantee Fund Act and the Foreign Exchange Dealing Act.

6.2 RECOGNITION AND EFFECT OF FATWA

According to the Shariah, the recognition and effects of fatwa is not unanimously agreed by the Muslim companions. The majority of schools of thought hold that fatwa by the companions of the Prophet Muḥammad s.a.w. is binding and can be used as hujjah in legal arguments. On the other hand, jurists such as al-Amidi, al-Qarafi, madhhab al-Ashriyyah, Imam Malik and few others opined that *fatwā* cannot be used as hujjah, and on this basis, it is not binding.

In Malaysia, once a fatwa is gazetted it becomes binding upon the *Muslims* in the Federal Territories, Section 34(3) of the Administration of Islamic Law (Federal Territories) Act 1993 provides that:

Upon publication in the Gazette, a fatwa shall be binding on every Muslim resident in the Federal Territories as a dictate of his religion it shall be his religious duty to abide by and uphold the fatwa, unless he is permitted by Islamic Law to depart from the fatwa in matters of personal observance, belief, or opinion.

In addition, a fatwā is to be recognized by the courts as being authoritative, as provided in Section 34(3) of the Administration of Islamic Law (Federal Territories) Act 1993:

A fatwa shall be recognized by all Courts in the Federal Territories as authoritative of all matters laid down therein.

As for the resolutions by the Shariah Advisory Council of the Central Bank of Malaysia, such resolutions passed are binding upon the Islamic banks and financial institutions as well as the courts pursuant to Section 57 of the Central Bank Act 2009.

Meanwhile in Saudi Arabia, the fatwa issued by the General Presidency of Scholarly Research and Ifta' and the Council of Senior Scholars, although not expressly provided by any written laws, earn high credibility and recognition on part of the King, the State and the citizens (Abdullah F. Ansary, 2008).

On the other hand, according to Para A (ix) of the Instructions for *Shari'ah* Compliance in Islamic Banking Institutions, issued by the State Bank of Pakistan on 25 March 2008, the fatwa and rulings of the Shariah advisor in all financial matters shall be binding on the Islamic banks and financial institutions.

6.3 THE ROLE OF FATWA IS TO SUPPORT HUKUM

It is pertinent to note that according to the Shariah, the mufti makes clear the rulings of *Allah s.w.t.* and he is the inheritor of prophethood. Therefore, a mufti should uphold the teachings stated in the sources of Shariah, and ensure that the

fatwa is in line with the Shariah (Jackson, 1996). In this context, it is argued that a mufti is of higher status than a judge, as a judge adjudicates and obliges according to the dictates of the fatwa. Accordingly, if there is any conflict between the fatwa by the mufti and the rulings by the judge, it is only due to the difference of ijtiḥad applied to the various fatwa.

The position in Malaysia is that the national and the state mufti are to advise and issue rulings on Shariah matters pertaining to the sources of Shariah. Although it is not stated that the role of the fatwa is to support the Shariah, it goes without saying that such fatwa so passed would always be in line with the requirements of Shariah and therefore supports the Shariah. Meanwhile, it is provided that the National Shariah Advisory Council of the Central Bank has the main role to ascertain the Islamic law on any financial matter and issue a ruling upon reference made to it, and to advise the Bank on any Shariah matter relating to Islamic financial business, activities or transactions of the Bank pursuant to Section 52 of the Central Bank Act 2009. Accordingly, it also goes without saying that resolutions so passed by the Council must be in line with the Islamic law relating to any financial matter of issue, and therefore supports the Shariah.

Meanwhile in Saudi Arabia, the Islamic Shariah becomes the sacred prevailing law and the foundation of the legal system. Most of the judges and mufti resort to Hanbali Fiqh-books in deriving their decisions in the administration of justice. In this respect, the Quran and the sunnah are the main sources of law and relied upon by judges and mufti in rendering judgments and fatwa on the individual cases brought before them, as provided by Article 45 of the Basic Law of Government: *The source of the deliverance of fatwa in the Kingdom of Saudi Arabia are God's Book and the Sunnah of His Messenger.*

On the other hand, in Pakistan, it is provided by Para B(1) of the Instructions for Shari'ah Compliance in Islamic Banking Institutions issued by the State Bank of Pakistan on 25 March, 2008 that the Shariah advisor shall ensure that all products and services and related policies and agreements of the Islamic banks and financial institutions are in compliance with the Shariah rules and principles. Therefore, it could be seen that the role of fatwa in the case of Pakistan is to support the Shariah.

6.4 THE “RULE OF LAW” IN ISLAMIC FINANCE

It is pertinent to note that according to the Shariah, the rule of law is an important concept for the determination of any dispute before the judge. Within the context of Shariah, the rule of law is embodied in the source of Shariah itself. Therefore, the judge must base his decisions upon the rule of law, and not the rule of authorities. In other words, the judge must follow the guidance prescribed by the Shariah and must not deviate from it. Nevertheless, if the present dispute is not prescribed explicitly in the sources of Shariah, the judge must exercise his *ijtihad* to solve the dispute so long the judgment does not contradict the Shariah.

The position in Malaysia is that the Islamic law is applied only at the Shariah courts and this is expressly stated in the relevant State enactments. According to Section 2 of the Administration of Islamic Law (Federal Territories) Act 1993, “Islamic law” is defined as: Islamic law according to any recognized *madhab*. Nevertheless, because the judicial scope of authority of the Shariah courts is limited, and the powers of the courts are derived from the Federal Constitution and the written laws, the exercise of the implementation of Islamic law is somehow limited to what is prescribed in the written rules. For instance, the criminal jurisdiction of the courts pursuant to the Shariah Courts (Criminal Jurisdiction) 1965 provides that the courts shall have the powers to try offences for persons professing the religion of Islam, and that the punishment is limited to maximum imprisonment of 3 years, fine of RM5,000, strokes of 6 times or any combination thereof pursuant to Section 2 of the Act. Essentially, this results in the significantly limited application of the rule of law based on the Islamic law at the Shariah courts.

As for the civil courts, the judges are bound to uphold the Federal Constitution of Malaysia as the supreme law of the land, as expressly provided by Article 4 of the Constitution: “*This Constitution is the supreme law of the Federation...*”. This essentially means, the judges are under the obligation to uphold the rule of law, but the source of the law is the Federal Constitution and the written rules, as opposed to the Shariah itself.

Meanwhile in Saudi Arabia, Article 48 of the Basic Law of Government provides:

The courts will apply the rules of the Islamic Shariah in the cases that are brought before them, in accordance with what is indicated in the Book and the Sunnah, and statutes decreed by the Ruler which do not contradict the Book or the Sunnah.

On the other hand, in Pakistan, the judges uphold the rule of law and the main source of law is the injunctions of *Islām*, as laid down in the Holy Quran and the sunnah of the Holy Prophet. This is rightly so that Article 227(1) of the Constitution provides the source of Pakistani law relating to the Holy Quran and the sunnah:

All existing laws shall be brought in conformity with the injunctions of Islām as laid down in the Holy Quran and the sunnah, and no law shall be enacted which is repugnant to such injunctions.

In Sudan, the Sources of Judicial Decisions Act of 1983 provides that in respect of the disputes brought before the court shall be subject to the Shariah principles, custom, judicial precedents and principles of justice, provided that the particular matter is not governed by legal codifications. Similarly, Article 101(2) provides that:

A judge shall be guided by the principle of the supremacy of the Constitution and the law and he shall protect this principle, giving due regard to the establishment of justice in thoroughness and impartiality without fear or favour.

Based on the above, it could be concluded that the rule of law applicable in the Republic of Sudan is the supremacy of the Constitution and the law, instead of the Islamic sources of Shariah.

6.5 THE DISPUTE RESOLUTION MECHANISM FOR ISLAMIC FINANCE

The dispute resolution system in Malaysia is divided into two; one is the court litigation system, while the other is alternative processes. As for the court system, it is further divided into two, the Shariah and the civil judicial systems. With regards to the Shariah judicial system, even though Shariah law provides

regulations in all aspects, the Shariah law that is applicable in Malaysia is confined to only personal matters (Era Consumer, 2011). The Shariah Courts' jurisdiction only cover matters involving Muslims, and for specific personal civil matters for instance matrimonial, administration of Islamic law in the state, land, waqf, zakat, hibah and state holidays according to List II of the Ninth Schedule, Federal Constitution of Malaysia. In respect of criminal jurisdiction, the court can generally only pass sentences of not more than three years imprisonment, a fine of up to RM5,000, and/or up to six strokes of the cane as prescribed by the Shariah Criminal Procedure (Federal Territories) Act. Details of the subject matter can be found in the Federal Constitution, List II of the Ninth Schedule. The administration of the Shariah courts falls within the ambit of each State's jurisdiction. Hence there could be some differences in respect of the civil and criminal jurisdictions of the courts between one state to another. Primarily, the Shariah court is classified into three levels, namely the Shariah Subordinate Court being the court of first instance, followed by the Shariah High Court of a higher standing and the Shariah Appeal Court as the highest authority in the Shariah judicial system in Malaysia.

Meanwhile, the Malaysian civil courts consist of two levels; the first is the superior level, consisting of the Federal Court and the Special Court division, the Court of Appeal and two High Courts of co-ordinate jurisdiction, one each in Malaya and in Sabah and Sarawak. The second level is the subordinates' court, consisting of the Sessions Court, the Magistrates Court and the Court for Children. The civil courts structure is described in the following figure:-

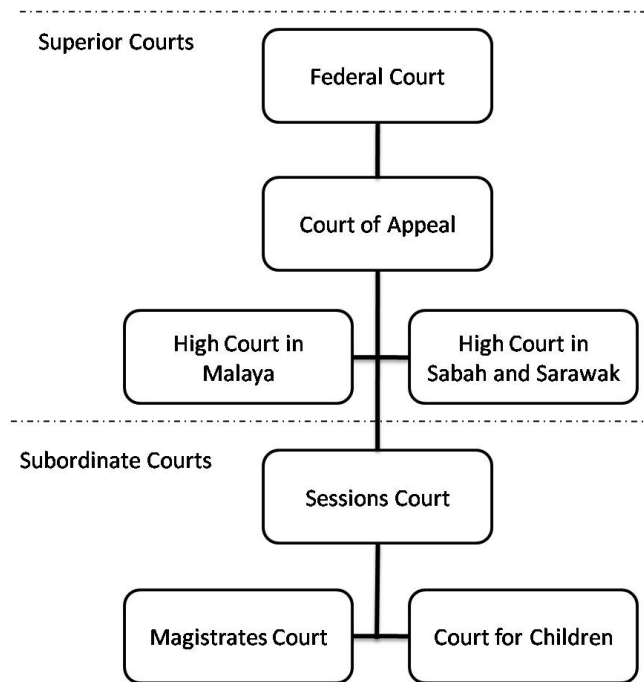


Figure 1 The civil courts structure of Malaysia

According to the Malaysian laws, the proper forum to hear and decide on banking and finance matters, both conventional and Islamic, is the civil courts as prescribed by List I of the Ninth Schedule of the Federal Constitution. Essentially, the court at first instance to hear such matters is the High Court. For the Islamic commercial division of the High Court of Kuala Lumpur in Jalan Duta alone, a figure exceeding 3500 of Islamic finance cases had been registered for determination by the court for the time period 1983 up to January 2010.

There are currently three judicial bodies in Saudi Arabia: (1) the judicial bodies under the Ministry of Justice, including the courts of first instance, courts of appeal and the high courts, (2) the independent judicial authorities called the Boards of Grievances (Diwan al-Mazalim), and (3) the semi-judicial committees that work under the supervision of the competent ministry, such as the Committee for the Settlement of Banking Disputes of SAMA, and the

Committee for the Settlement of Customs Disputes, which belong to the Ministry of Finance (Abdul Rahman, 2010).

The first judicial body which is the Shariah court system constitutes the basic judiciary of Saudi Arabia and its judges and lawyers form part of the ulama', the country's religious leadership. However, there are also extra- Shariah government tribunals which handle disputes relating to specific royal decrees (Esposito, 1998). The final appeal from both Shariah courts and government tribunals is to the King and all courts and tribunals follow the Shariah rules of evidence and procedure (Campbell, 2007). The Saudi system of justice has been criticized for being slow, arcane (Anonymous, 2009), lacking in some of the safeguards of justice and unable to deal with the modern world (Anonymous, 2007). The capabilities and reactionary nature of the judges have, in particular, been criticized (Anonymous, 2001) and, in 2009, the King made a number of significant changes to the judiciary's personnel at the most senior level by bringing in a younger generation.

The current Saudi court system comprises of a Supreme Judicial Council, Courts of Appeal and First-Instance Courts such as the General Courts and Summary Courts as provided by the 1975 Law of the Judiciary. The following figure shows the court structure of Saudi Arabia:

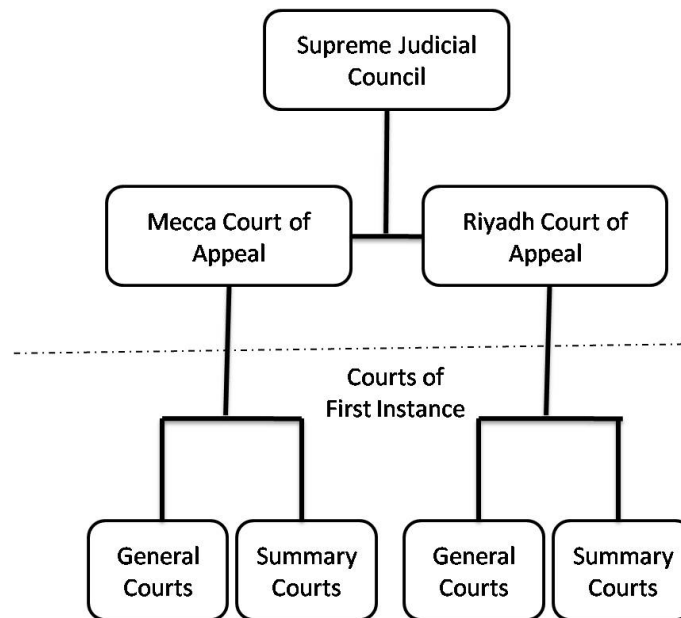


Figure 2 The Court structure of Saudi Arabia

The Supreme Judicial Council is the highest authority of the judicial system pursuant to Article 30 of the 1975 Law of the Judiciary. It carries out numerous administrative, legislative, consultative and judicial functions. It holds both civil and criminal jurisdictions, and primarily reviews judgments involving death sentence and certain major crimes, apart from establishing principles and judicial precedents that the lower courts are bound to follow. The second tier court is the Courts of Appeals, which mainly deal with criminal cases, cases of personal status and other cases which do not fall into the first two categories (Abdullah F. Ansary, 2011). It is an interesting point to note that the Court of Appeal does not reverse the decisions made by the lower courts. It merely either affirms and finalises the judgments or sends them back to the lower court trial judges for modification with whatever comments it may have. If the judges of the lower court maintain his/their opinion, the Court of Appeal may overrule the original decision and have another judge or panel of the lower court to review the case as provided by the Law of Procedure Before *Shari'ah* Courts, Royal Decree No. M/21, Articles 187-191.

Meanwhile, the First-Instance Courts consist of two courts, namely Summary Courts and General Courts. Summary Courts have jurisdiction over certain hudud cases, ta'zir cases (excluding those prescribed by a statutory law) and decisions concerning monetary damages or compensation for crimes that do not exceed one-third of the *dīyah* (blood money) which equals to approximately 20,000 Saudi Riyals or USD6,000) pursuant to Ordinance No. 2514 enacted by the Minister of Justice, dated 12 October 1996. They also have jurisdiction over civil claims for a sum less than 8,000 Saudi Riyals or USD2, 133) pursuant to Article 31 of the Law of procedure Before *Sharī'ah* Courts (2000). On the other hand, the General Courts have jurisdiction over cases wherein the sentence claimed is either death penalty, or *qisās* (retaliatory punishment) in cases other than death as provided by Article 129 of the Law of Criminal Procedure (2001). They also have jurisdiction over civil claims for sums totaling more than 20,000 Saudi Riyals or USD6,000.

Apart from that, Saudi Arabia also has an administrative judicial body known as the Board of Grievances under the prime minister department. These bodies play a role to address the complaint raised by the society with regard to the misconduct of the judges, malpractices of the executive functionaries and the issues raised on the contract with the foreign investors. It also caters the disputes pertaining to maritime and banking and finance.

The 1982 Law of the Board of Grievances and the 1989 Procedural Rules before the Board of Grievances identify three types of circuits within the Board of Grievances, being the Board of Appeal Circuits, the Scrutinising Appeal Circuits, and the First-Instance Circuits, as enshrined in Article 6 of the 1982 Law of the Board of Grievances, and Articles 18, 35 and 40 of the Procedural Rules Before the Board of Grievances, Council of ministers Resolution No. 19. The Board of Appeal Circuits, being the highest authority in the Board of Grievances circuits system, only decides on the abandonment of interpretations or principles. On the other hand, the Scrutinising Appeal Circuits function as appeal courts and have the final authority in grievances, thus functioning as administrative circuits. They decide on matters pertaining to administrative disputes, criminal offences, commercial cases and general matters. Meanwhile, at the bottom hierarchy of the Board of Grievances, the First-Instance Circuits deal with first instance disputes concerning administrative, criminal,

disciplinary, commercial and subsidiary matters. These circuits are reformed regularly, and currently one-third of the circuits are devoted to adjudicating commercial disputes and criminal cases. This is provided in Articles 14 and 39 of the Procedural Rules Before the Board of Grievances, Council of ministers Resolution No. 19.

The following figure shows the current structure of the Board of Grievances of Saudi Arabia:

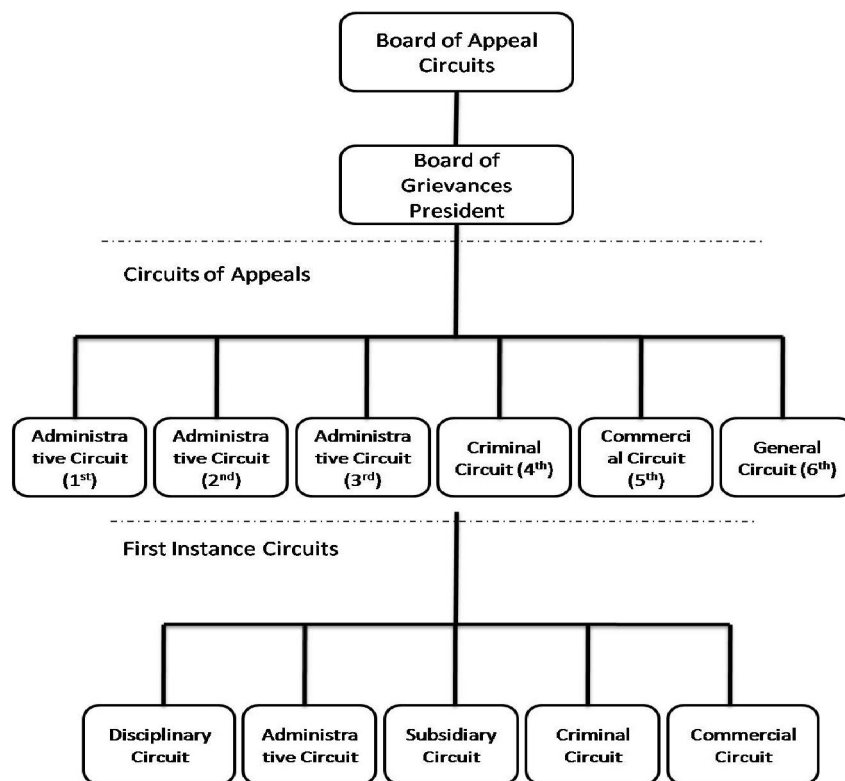


Figure 3 The structure of the Board of Grievances of Saudi Arabia

Like many other jurisdictions, the Islamic finance dispute resolution in Pakistan also consists of two options: the judicial system which involves litigation, and the alternative system which involves arbitration, mediation and conciliation. As for the judicial system, there is a Supreme Court for the whole of Pakistan,

and in each of the four provinces there is a High Court, and other courts exercising civil and criminal jurisdiction. The Supreme Court and the High Courts are formed under the Constitution and the other Courts are formed by or under the Acts of Parliament or Acts of Provincial Assemblies.

The Supreme Court is at the highest hierarchy of the judicial system of Pakistan. It is headed by the Chief Justice known as the Chief Justice of Pakistan and such number of other judges as may be determined by the Act of Parliament. It holds original, appellate and advisory jurisdiction. Meanwhile, a High Court consists of a Chief Judge and as many other judges as may be determined by law or as may be fixed by the President. It has original and appellate jurisdiction (Omar and Sahal, 2005).

On the other hand, the other courts would include the Shariah Court, the Civil Court, the Criminal Court, Special Courts and Tribunals, the Ombudsman and the Jirga. The Shariah Court comprises eight Muslim judges including the Chief Justice to be appointed by the President. It has original and appellate jurisdiction. In every district of province, there is a Court of District Judge which is the principal court of original jurisdiction in civil matters, as well as Courts of Civil Judges, which function under the supervision and control of the District Judges in all matters of civil nature. Apart from that, there is also the Court of Sessions Judge and Courts of Magistrates in every district to deal with criminal matters. Apart from that, Special Courts and Tribunals are constituted to deal with specific types of cases, for instance Special Courts for Trial of Offences in Banks, Special Courts for Recovery of Bank Loans, Special Courts under the Customs Act and others (Omar and Sahal, 2005).

Apart from that, alternative dispute resolutions mechanisms are also being practiced in the Pakistani legal system, with the aim to overcome backlogged courts, litigation-happy parties and risk-averse businesses (Finkel, 2011). Among the solutions include the Ombudsman (also known as Concept Mohtasib) and the Jirga. The Ombudsman is an ancient Islamic concept for the establishment of the office of Mohtasib to ensure that no wrong or injustice is done to the citizens. It aims to diagnose, investigate, redress and rectify any injustice done to a person through maladministration on the part of the Federal Agency or a Federal Government official. It generally aims to institutionalize a

system for reinforcing administrative accountability. On the other hand, tribes would have a recourse to the Jirga (which literally means gathering or consultation) to solve their multifarious problems and hence it is commonly known as the tribal justice system. Its powers cover a broad spectrum of subjects from an informal, community-based body that was meant to settle small claims (Finkel, 2011).

Within the context of Islamic finance, the SBP is set to promote alternative dispute resolution mechanisms for the banking sector through policy development to further promote the concept of banking mediation in Pakistan (Karachi Centre for Dispute Resolution, 2010). So far, there is one mediation centre in Pakistan by the name Karachi Centre for Dispute Resolution, which hears and assists for dispute resolution processes and techniques that fall outside the government judicial process, including negotiation, mediation, collaborative law and arbitration.

Prior to an Islamisation campaign in 1983, the court system in Sudan is divided into two divisions, the first is the civil division headed by the Chief Justice and the Shariah division headed by the Chief Qadi (Metz, 1991). In 1983, the central government unified the civil and the Shariah courts, indicating there is only once court system being adopted in Sudan. The courts applied the law as found in two main sources Quran and Hadith together with writings of eminent jurists. The law is not concerned only the administration of the justice between the citizens, but it is also with the application of the rule of law between the citizens and the state organs (Mohamed Mahmoud, 1996). The qadi has to use Shariah law in solving the disputes (Abdullahi, 2008). The courts are divided into civil and criminal courts, which are both divided into multi-level structure. The apex court is the Supreme Court which has a preliminary jurisdiction of a single judge to consider appeals against the administrative decision of the president of the republic of the governors and of the federal and state ministers. Appeals from the decision of this single judge's court are dealt with by panel of three Supreme Court judges.

The second tier court is the Court of Appeal, which deal with appeals against the preliminary and appellate decision of the public court, the preliminary judgments of the first grade judge's courts in civil, criminal and personal matter

cases. There are currently 130 appeal court judges who function through 28 appeal circuits each consisting of three judges presided over by the most senior thereof. The other courts include the Province Courts, which are located in the capital cities of various provinces, the district courts, and the town and rural courts which hear and decide cases within the locality of the respective district, and the town and rural areas (Fleur-Lobban, 2008). Apart from that, a Constitutional Court was established by the Constitutional Court Act 1998 comprising of four types of courts: regular courts which determine both civil and criminal matters, special mixed security courts, military courts and tribal courts (Sharanjeet, n.d.). The judge make judgment based on the hukm based on the book of fiqh and qaul al-mu'tamad according to madhab Hanafi (Riyal Ka'bah, 2010).

It is asserted that Sudan continuously revised the colonial laws in order to realized the implementation of Shariah law including Islamic banking and finance. Islamic finance disputes been heard at (al-mahkamah al-tijariyah). Other than that there are few institution been established based on the law that is hay' ah al-riqabah al-Shariah (Shariah Supervision Council) at the federal level and under the ministry of finance. In spite of supervising the Shariah, this body is fully responsible to examine the law and propose the law to be revised so that the law is in conformity with Shariah.

7.0 ORIGINALITY / CONTRIBUTION

The paper comprises derived research based on country analysis within the jurisdictional settings of Malaysia, Saudi Arabia, Pakistan and Sudan coupled with the researcher's practical experience being engaged in Shariah advisory and legal practices and activities. It is original in the sense that the researcher provides reasoned interpretation of the administration of contemporary Islamic finance and normative theory and the role that fatwa issuing bodies, executive governmental functionaries and disputes settlement agencies can play in order to achieve justice.

8.0 CONCLUSION AND SUGGESTIONS

The paper critically examined the structural institutional framework of contemporary Islamic finance in Malaysia, Saudi Arabia, Pakistan and Sudan using secondary data coupled with field experience of the researcher. In this regard, the research found certain loopholes in the governmental institutional frameworks of the respective jurisdictions which warrant improvements aiming to strengthen the operations and practices of the contemporary Islamic finance.

As for the limitations, the chosen methodology i.e. library based suffices to address the problem statement. Since this research does not employ any empirical analysis, the theoretical reporting of the findings could not describe the real world practices of the structural institutional frameworks. Therefore, future research is highly suggested to incorporate empirical methods in reporting the real world practices of the subject matter.

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