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EXPLORING THE BANKERS' PERSPECTIVES ON SHARIAH AND OPERATIONAL ISSUES OF RESTRUCTURING AND RESCHEDULING IN ISLAMIC FINANCING DURING COVID-19 PANDEMIC

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ABSTRACT

The Central Bank of Malaysia ordered all banks to give an automatic six months moratorium or loan or financing deferment starting April, 1 2020 to their customers during the Covid-19 pandemic since many customers had difficulties paying their monthly financing obligations to banks. Thus, the objective of this paper is to explore the bankers' perspectives on Shariah and operational issues arising in Islamic banks in implementing moratorium which involves restructuring and rescheduling financing facilities during Covid-19 pandemic. At the same time, the methods these bankers used to manage the issues are also highlighted in this paper. A qualitative analysis is applied in this paper where the researchers conducted interview sessions with the Head of Shariah Department from an Islamic banking window and another from the Development Financial Institution which offers Islamic banking products and services. This study's findings show that there are certain perspectives from bankers in dealing with Shariah issues regarding restructuring and rescheduling during moratorium such as the issue of *qalb al-dayn* (debt restructuring), capitalization of accrued profit in the financing facilities as well as the operational issues related to the system and people. It can be deduced then that all Islamic banks were doing extremely well in their steadfast endeavors towards offering remedies to the issues faced for the sake of the overall improvement of Islamic banks in the implementation of restructuring and rescheduling of financing facilities as outlined by guidelines or Resolutions issued by the Shariah Advisory Council of Bank Negara Malaysia.

Keywords: restructuring, rescheduling, Shariah issues, operational issues, Islamic banks.

INTRODUCTION

According to the World Health Organization (2020), humanity went through a devastating shock at the end of the year 2019 as the world became plagued with an outbreak that wholly affected its inhabitants known as the pandemic of the coronavirus disease 2019 (Covid-19). This Covid-19 had first been identified at the end of December 2019 with its first known case in Wuhan, China and later on, was declared as a pandemic by WHO in March 2020. This disease rapidly spread, leading to an ongoing pandemic worldwide, and Malaysia was no exception. The first case of Covid-19 in Malaysia was recorded to be on 25th January 2020, which was confirmed to have appeared among travelers from China in Johor via Singapore (Elengoe, 2020). The outbreak was limited to imported cases at first, but then in March 2020, several local clusters emerged from *Tabligh* Jamaah, a religious assembly in Sri Petaling, Kuala Lumpur which caused a massive spike in arising cases of Covid-19 in both local and import origins (Babulal & Othman, 2020). The total number of cases rose to 2,000 active cases across every state and federal territory in Malaysia by the end of March 2020 (Center for Strategic & International Studies, 2020).

In response to the daily rising number of cases, the government of Malaysia led by the then Prime Minister, Muhyiddin Yassin, imposed a nationwide lockdown known as Movement Control Order (MCO) under the Prevention and Control of Infectious Diseases Act 1988 and the Police Act 1967, which came into effect on 18th March 2020, intending to reduce the spread of Covid-19 through social distance (Tang, 2020). The implementation of this MCO had led to an economic knockout, resulting in negative effects on incomes, jobs, livelihoods, further exacerbation on inequality, poverty and hardship, disruption of supply chains and others. Due to travel restrictions stemming from MCO, not only was the travel and tourism sector affected, the manufacturing sector had also received a hard blow by the disruption of the global supply chain, putting pressure on production and trade activities. Additionally, most households were also greatly affected because of a decline in consumption and investment (Lim, 2020).

Meanwhile, one of the more unfortunate consequences of Covid-19 was the income losses suffered by business owners and large organizations, causing employers to restructure their businesses in order to reduce the operating costs of coping with the impact of the pandemic. This meant the retrenchment of employees that were surplus in the business organization. For example, AirAsia and its long-haul sister company AirAsia X Bhd (AAX) had retrenched 10% of their 24,000-strong workforce as Tan Sri Tony Fernandes, the Chief Executive Officer (CEO), had foreseen and recognized the incoming difficulties the aviation sector would face in recovering from Covid-19 pandemic (Bernama, 2020). This situation led to an increase in the unemployment rates in Malaysia. Consequently, this had negatively impacted the unemployed with financial burdens as they went by with their daily expenditures such as purchasing sustenance for their family, obligatory payments of debts (car and house), and others. As a result, many defaulted on loans and mortgages had risen (Lim, 2020).

In order to help individuals, SMEs, and corporations cope with the impact of the Covid-19 outbreak in Malaysia, the Central Bank of Malaysia with the help of the financial institutions had announced several regulatory and supervisory measures to ease the cash flow of customers and borrowers. These measures gave banks the flexibility to respond quickly to their customers' needs, allowing them to remain focused on supporting the economy during these unprecedented circumstances (Central Bank of Malaysia, 2020a). An extended period of MCO had resulted in people losing their jobs, and subsequently, being unable to pay off their debts. The Prime Minister of Malaysia, Tan Sri Muhyiddin Yassin announced that starting 1st April 2020 to 30 September 2020, there would be a six-month automatic moratorium or loan deferment on loan and financing repayments by restructuring or rescheduling in both conventional and Islamic financial institutions (Daim, 2020).

According to The Association of Banks in Malaysia (2021), a moratorium is known as a loan deferment, defined as a temporary postponement on suspension of loan or financing repayment commitment, including principal and interest or profit for a limited period of time. This automatic moratorium was granted to all loans or financing accepting credit cards, charge cards and corporate cards that are eligible for individuals and Small and Medium-sized Enterprises (SMEs) that meet the criteria. The eligible borrowers did not have to make any payments and no charges were imposed for late payments. In the future, the deferred payment of loan and financing repayment would be continued after the 6 months deferment period. The borrower who opted for the moratorium had to choose either from two options for repayment, whereby the first option was paying the deferred installments accumulated within those six months in October with no additional charges, whereas the second option was continuing the repayment of the installments with an extension of six months after the moratorium period ended. With this implementation, all licensed banks, financial institutions, licensed Islamic banks regulated under BNM could offer the moratorium (The Association of Banks in Malaysia, 2021).

Restructuring in the banking sector refers to the modification of principal terms and conditions on the loan and financing that may include a change in the structure or type of loan and financing or other significant changes applied to its terms by creating a new contract to the loan or financing agreement. By having restructuring, the borrowers can improve their cash flow and overcome their financial difficulties. On the other hand, rescheduling in banking institutions is referred to the modification of loan or financing repayment terms whereby there is no significant change to the conditions and principal terms in the loan or financing contract. Normally, rescheduling in a banking institution involves lengthening or extending the tenure and revision of payment instalments on the loan and financing from the borrower (Yahya et al., 2020).

Some issues arose in the changing of the existing contracts to other contracts or arrangements under the 6 months automatic moratorium where there is a possibility of rescheduling or restructuring of financing facilities for Islamic banks which operate based on Islamic contracts such as *murabahah* (mark-up profit) and *ijarah* (leasing). According to Muneem et al. (2020), a new contract must be offered when an Islamic financing facility is restructured in the case of restructuring of the facility. The selling price in the new facility may be higher than the original selling price to pay off the existing debt and make other payments like legal documents, and this will increase the amount of debt to the debtor. Thus, it can lead to an increment in the payment from the borrower, which is Shariah non-compliant. According to the majority of scholars, the restructuring of a financial facility is similar to *qalb al-dayn* (debt restructuring), which is not permitted under Shariah (Muneem et al, 2020). According to Hasan et al. (2018), *qalb al-dayn* and debt refinancing are comparable in the sense that both involve the cancellation of existing contracts and the signing of new ones with a new financing amount and a longer period.

Ghazali (2014) highlighted that in a restructuring of facility, the existing debt or facility is usually restructured into a new facility or new terms, with some additional non-actual costs considered into the new price to allow the bank to profit from the exercise. As a result, the risk of debt rollover is increased when this addition is charged to the debtor or customer at the new price. Mat Ali et al. (2021) mentioned that the implementation of the moratorium raised a question about the justification used by Islamic banks in imposing additional charges after the moratorium period has expired. Profit was said to take precedence over social responsibility in the Islamic Banks. Mutual consent between the contracting parties namely the bank and customer in the execution of a new *aqad* (contract) during the moratorium is required to ensure the contract is valid (Shariah Advisory Council of Bank Negara Malaysia, 2020). Shaharuddin (2020) mentioned that an issue came up in getting the customers' consents to take part in the restructuring and rescheduling under moratorium as it may include the involvement of installment changes after the deferment period ends. The issue of deemed consent may arise between Islamic banks and customers when they occasionally convert existing contracts to new ones without sufficient time to wait for the consumers' approval.

Consequently, the researchers aim to look into the perspectives held by bankers on the emerging Shariah and operational issues within Islamic banks in executing the restructuring and rescheduling of financing facilities during Covid-19. Nevertheless, it is imperative that the respected Shariah committee of these banks offering Islamic banking products and services to be counseled beforehand on these issues to ensure that their practices are Shariah-compliant (Muneem et al., 2020), as well as from the Shariah Advisory Council of Bank Negara Malaysia for guidance on the Resolutions issued by Bank Negara Malaysia. At the same time, the paper also intends to investigate the practices applied by bankers in managing the potential Shariah and operational issues arising from the restructuring and rescheduling of the financing facilities. The Islamic banking and finance industries are still going through the process of restructuring and rescheduling financing facilities, so even when the Covid-19 pandemic is over, the discussion about Shariah and operational issues will still be relevant. The findings of this study thus remain pertinent to the way the Islamic banking and finance industries operate.

METHODOLOGY

In achieving the objective of this study, a qualitative research design had proven to be the most well-suited method to decipher the multiple perspectives and insights gained from bankers on the Shariah and operational issues in carrying out moratorium in Islamic banks in the course of the Covid-19 wave, particularly on restructuring and rescheduling of financing facilities. Thus, a qualitative research methodology had been applied, including a literature review and qualitative thematic analysis based on the information collected from the interview sessions throughout the study. Interviews with informants from Islamic banks who were actively involved in the restructuring and rescheduling of financing facilities during the Covid 19 pandemic are used to gather information. A data analysis process will be carried out using the information gathered from the interviews. One way to analyze qualitative data is through thematic analysis. Usually, it is used concerning a collection of texts, such as transcripts or interviews. The researcher carefully examines the data to find recurring themes—topics, concepts, and patterns of meaning. The bankers' perspectives on Shariah issues revolve mostly around the issues of *qalb al-dayn* and capitalization of accrued profit in financing facilities, based on the researchers' thematic analysis derived from the interviews with the two informants.

The limitation of this study was primarily getting the bankers’ agreements to partake in this study and, since this field of research is considered new, published resources were scarce and difficult to acquire. The researchers have reached out to numerous Islamic banks to schedule interviews to get information regarding the issues on restructuring and rescheduling of financing facility during the COVID-19 pandemic. However, only two informants from two banks had consented to participate in face-to-face semi-structured interviews respectively while the other Islamic banks are reluctant to take part in this study. Even though only two informants were willing to provide information for this study, the researchers still made every effort to take advantage of the opportunity to obtain information from the bankers. One of the informants is the Head of Shariah Department of an Islamic banking window known as Bank 1, while the other is the Head of Development Financial Institution offering Islamic banking product and services known as Bank 2. However, as the two informants preferred to remain anonymous, they are referred to as R1 and R2 in this paper.

The researchers had chosen the two informants since they were the persons in charge of the Shariah contracts in all products and services offered in their banks. Moreover, the credit department of Islamic banks require the approval and consent from the Shariah Committees through the Head Shariah Department regarding the implementation of restructuring and rescheduling of financing facility in the respective banks. Furthermore, the two informants had broad and vast knowledge in Shariah allowing them to oversee matters related to Shariah in Islamic banking including the implementation of moratorium in Islamic banks.

RESULTS

There are two main issues correlating to Shariah and another two main issues from the operational aspect when financing facilities are restructured during moratorium in Covid-19 pandemic based on the interviews conducted with the two informants who are each the Heads of Shariah Department Bank 1 and Bank 2 respectively. The informant from Bank 1 will be known as R1 and the informant from Bank 2 will be known as R2. From the thematic analysis performed by the researchers, the bankers' perspectives on the issues are analyzed and discussed to achieve the research objectives of this paper. The analysis highlighted the bankers' perspectives on the two Shariah issues and the two operational issues which arose in the Islamic banking industry in the restructuring of financing facilities during the Covid-19 pandemic. At the same time, the discussion on the methods of managing the issues by the bankers will be addressed under each of the issues.

Shariah Issues on Restructuring of Financing Facilities from Bankers' Perspectives and How They Deal with them.

In restructuring Islamic financing facilities, there is a requirement for a new legal document in recording every term and condition since Islamic finance emphasizes on mutual agreement met by the contracting parties. In restructuring sale-based financing involving a sale agreement, the original sale must end *(fasakh)* before concluding the new agreement. In the restructuring of sale-based financing, the involved parties which are the bank and the borrower will present new contract (*aqad*) or agreement documents based on the applicable Shariah contract to remain Shariah-compliant and to facilitate the restructuring exercise (Yahya et al., 2020). In addition, in the 32nd meeting of Shariah Advisory Council (SAC) of Bank Negara Malaysia dated 27 February 2003; the SAC of Bank Negara Malaysia resolved on a mutual agreement that the financing will not be exceeded from the original despite the extension in the financing period (Ibrahim, 2021).

According to Central Bank of Malaysia (2020b), the SAC of Bank Negara Malaysia Ruling on Restructuring and Rescheduling of Islamic Financing Facility during Covid-19 Crisis in 30th SAC Special Meeting dated on 14 July 2020, which was then revised on 16 October 2020 required having a new agreement in restructuring if there are different Shariah contracts applied. For example, house financing contracts which originally apply *musharakah mutanaqisah* (diminishing partnership) which is diminishing partnership can be restructured to use *ijarah* contract or the borrower can ultimately apply a combination of multiple financing contracts into a new single contract. By having this SAC ruling, restructuring and rescheduling are more flexible and efficient in catering the various different needs and circumstances of vulnerable groups such as small businesses and individuals with low income.

From the thematic analysis based on the interviews conducted with the two informants, the researchers can classify the bankers' perspectives on the Shariah issues as revolving mainly on the issue of *qalb al-dayn* and capitalization of accrued profit in the financing facilities. Below are the perspectives of the bankers on the issue of *qalb al-dayn* and capitalization of the accrued profit and how they deal with them.

Qalb al-dayn

Qalb al-Dayn or known as debt restructuring is defined as banks imposing a new selling price and profit, as well as using a current asset for new the contracts (Muneem et al., 2020). Ḥammad (2011) defines *qalb al-dayn* as the creation of a new debt which is a deferred payment basis over an existing debt which is also on the liability of the debtor, after the debt is due. The new debt with an increment of quantity or quality can be of a different genre or the same. The Hanbali school, particularly Ibn Taymiyyah, addressed the rules and issues associated with *qalb al-dayn*. According to his study, when a debtor is unable to pay off their present debt, *qalb al-dayn* is going to impose a new debt on him. This can be done by entering into a new contract or by demanding more money from the debtor while allowing them more time to pay it off (Muneem et al., 2020).

The Head of Shariah Department from Bank 1, R1 commented below on the issues of *qalb al-dayn* in implementing moratorium during the Covid-19 pandemic by saying that it has Shariah issues on whether it can be practiced or not.

"From the Shariah perspectives there are issues about the practices of the qalb al-dayn whether it is permissible to create a new debt to pay off the old debts. Meaning to say if I give to Husna RM10,000 and then you could not pay me this RM10,000. So, can I give you another loan or another financing just to allow you to pay me the old debt. So, I created another debt or you create another debt just for the sake of paying the old debt. So, this what we called the issue of qalb al-dayn, means you just simply create a new debt to pay off the old debt. So, coming straightly from Shariah perspectives, scholars have issues with this practice of the qalb al-dayn."

R1 further compared the practice of *qalb al-dayn* to the conventional bank where it is a common practice while Islamic banks have to deal with it properly to avoid Shariah issues. R1 mentioned that there are different opinions among Muslim scholars regarding the application of *qalb al-dayn*. While the majority of scholars do not permit the use of *qalb al-dayn* at all, others only permit its use under restricted conditions for solvent (*musir*) debtors. The majority of scholars concur that an insolvent debtor (*mu'sir*) cannot be allowed under the application of *qalb al-dayn* at all.

Based on the interviews conducted with Bank 2, the Head of Shariah Department or R2 disagreed with the issues of *qalb al-dayn* in implementing moratorium during Covid-19 pandemic only even though he concurred to the Shariah issues of *qalb al-dayn* in restructuring of the financing facilities. *"For the qalb al-dayn, it is not specifically related to the Covid-19 only. It can happen anytime in the banking system."*

The researchers agreed with the statement given by R1 and R2 regarding the issues of *qalb al-dayn* during moratorium since majority of Muslim scholars concluded that imposing *qalb al-dayn* is not permissible on an insolvent debtor and is considered as *riba al-jahiliyyah* whereby Quranic verse states that;

> *"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."*
>
> (Surah al-Baqarah 2: 280)

The above Quranic verse suggests that the creditor should allow ample time for the debtor to repay his debt. The consensus of Muslim scholars proves that *qalb al-dayn* is prohibited to be applied to an insolvent debtor. However, both R1 and R2 concurred that Bank Negara Malaysia did not explicitly define solvent and insolvent debtors but instead left it up to Islamic banks to do so when determining which customers would be qualified for financial restructuring of the facility. R1 differentiated between insolvent and solvent customer.

"Solvent customer meaning this customer is facing temporary problems. Temporary problems meaning to say, maybe they have to close down their operation, they have liquidity issues. If the business can continue as usual, they surely can pay and commit their monthly commitment. Their business stopped suddenly then they could not pay their commitment. I mean this customer is basically solvent customer but just that they are facing temporary liquidity issues so bank will assist, if this type of customer is a wholesale customer. But if you are insolvent (mu'sir) and it is not because of the Covid-19 so we would not interfere. We would not, I mean the treatment will be different basically. Bank will monitor their performances. I mean you will know their business cycle, whether they are facing problems or not. So, bank will look at this customer and before the customer is hit by Covid-19"

To allow restructuring, based on the interview sessions with R1, one of the factors the bank will look at is whether the customer is a solvent customer or insolvent customer. Islamic banks constantly review customers' financial performances. Therefore, rather than waiting and anticipating the moment customers are unexpectedly hit with financial difficulties, the bank will intervene pre-ante or in advance in order to avoid customers from facing financial adversaries during Covid-19. Additionally, the bank also requires customers to present documentations such termination letters from companies or Employees Provident Fund statement to determine whether a customer is solvent or insolvent customers and as a way to verify that the customer is truly in dire need of financial assistance during the Covid-19 pandemic. The meaning of solvency as explained by R1 is that customers with financial problems will be classified as an insolvent customer whereas customers without any financial problems will be classified as the solvent customer.

Capitalization of Accrued Profits

According to Shariah Advisory Council of Bank Negara Malaysia (2021), Islamic Financial Institutions may not include and account for any accrued profit on original financing as the new principal amount for the restructured and rescheduled facility. This prohibition is applicable to restructuring and rescheduling financing with all customers (both solvent and insolvent). Such practice aims to avoid amplification of profit on debts or compounded profit that will worsen the financial position of customers who are already badly affected by the Covid-19 pandemic. Therefore, in implementing a restructuring and rescheduling, the new principal amount for the restructured and rescheduled facility shall be equivalent to the outstanding principal amount of the original facility.

Based on the interview session conducted, the researchers can summarize that all the informants have similar opinions regarding the issues of capitalization of accrued profits in implementing restructuring and rescheduling of financing facility during the Covid-19 pandemic where they are following the Resolution issued by the Shariah Advisory Council of Bank Negara Malaysia (Bank Negara Malaysia, 2021). R1 explained the situation where capitalization of accrued profit happened as below.

"The accrued profits would not be capitalized, would not be capitalized meaning to say, if the accrued profit is RM20,000, Islamic banks will put aside the RM20,000 where customer is required to pay off maybe lump sum, something like that but for the conventional banks, the accrued profits will be capitalized."

R2 also explained the situation where capitalization of accrued profit happened as below.

"Bank Negara come out with the resolution which prohibited the bank to capitalize, meaning to say, now, for restructuring purpose, whatever the existing principal outstanding in the earlier case RM140,000 so that amount will also give the principal for the new facility under the restructuring exercise. So, you are no longer allowed to capitalize or to compound RM140,000 plus the profit outstanding earlier. So, that is actually the difference. For now, because of the differences, what we call it, treatment or process, so this actually impacted the bank in terms of how we are going to do the restructuring when we do restructure."

The informants had touched on the capitalization of profits earned and it was aligned in accordance to the Ruling of the Shariah Advisory Council of Bank Negara Malaysia on Compounding Profit for Restructuring and Rescheduling (R&R) of Islamic Financing SAC 214th Meeting dated 30 June 2021, which forbids Islamic banks from including accrued profit from the original new principal amount of restructuring and rescheduling of financing facility. When restructuring and rescheduling a financing facility, Islamic banks must ensure that the new principal amount is equal to the outstanding principal amount of the original facility. If no additional financing is involved, the amount of accrued profit and late payment charges from the original financing can be added to the total new debt obligation, but this amount cannot be capitalized in the calculation. As such, Shariah Advisory Council of Bank Negara

Malaysia aims to prevent capitalization of gains that may exacerbate the financial situation of their customers. All in all, the researchers concurred with all the feedback from the informants.

Operational Issues

Currently, most of the operations in both Islamic and conventional banking institutions rely on technology and due to the worldwide integration and greater competition among the banking industries, they are more exposed to operational risks. Moreover, the Covid-19 pandemic that hit Malaysia at the end of December 2019 brought about tremendous impact on the operations in the banking industry. The operational risk is defined as the risk of loss resulting from incompetence or breakdown of both internal and external processes, as related to people and systems and failure of technology. Operational risks are likely to be a vital component in the operations of the Islamic banking system because of their specific contractual features and calculation of payment to avoid Shariah non-compliance issues from arising or the contract being void.

Based on the interview sessions with the informants R1 from Bank 1 and R2 from Bank 2, they agreed that the system and people are the two operational issues that arose during implementing the restructuring and rescheduling of financing facility during the Covid-19 pandemic.

System

Failure in the system is defined as the failure of the internal control systems to detect potential issues in the operational processes and difficulties in enforcing Islamic contracts in a broader legal environment. R2 justified that some Islamic banks system issues in implementing restructuring and rescheduling of financing facility during the Covid-19 pandemic. R2 emphasized that Islamic banks have to change the system of the calculation of payment during implementing restructuring and rescheduling of financing facility during the pandemic.

"Of course, a lot of things will be involved. Especially in terms of the system, maintenance, how we are going to amend the payment hierarchy to be made, whenever customer made the instalment. That kind of thing will involve a lot of operational issues in the bank and will give dominos effect. The system we have to change, the payment hierarchy we have to change, notice to the customer we have to amend for that time, the operational matter actually affects the bank existing processes."

R2 also shared his bank's experience with the existing system in dealing with moratorium implementation during Covid-19 pandemic where they were unprepared for it.

"We need to change in terms of our system and how it works previously so we need to change the system, the operation of the system on whatever that we need to enhance, whatever we need to modify the system, background of the system so that one, we have to involve a lot of money and also paper to amend that system basically. Secondly, in term of, again relate also with the system because this one we will involve testing because we know that Bank Negara prohibits the compounding elements right so after the system has been enhanced, we need to do the testing whether it complies with the requirement or with the scope that we wanted it to be and so the system testing."

On the contrary, R1 from Bank 1 emphasized that the existing system in his banks did not face any failure during the implementation of restructuring and rescheduling of financing facility when the pandemic hit Malaysia. R1 considered the bank fortunate because it could utilize the established and efficient conventional bank system since it is the Islamic banking window of the conventional bank.
"No. The current system has the capability to address the requirement."

The researchers can conclude from the explanation given by R2 that the system is one of the vital aspects to supervise because it can lead to non-Shariah compliance if the system cannot cope with any requirements issued by the regulators during the Covid-19 pandemic. Moreover, if industry players do not manage the operational issues, it will lead to Shariah issues in what is called a dominos effect where the failure in the system would then lead to Shariah issues if the system does not comply with the Shariah requirements and could ultimately bring forward legal issues as well if there is a dispute regarding the system handled by Islamic banks. The dominos effect refers to how one action can have a knock-on effect to related subjects (Pettinger, 2018). Conventional banks, in comparison, do not have the Shariah requirements in complying with the system, and the capitalization of profits is still calculated even during the pandemic. However, the researchers agreed with the statement by R2 that enhancing the system is costly to Islamic banks. In addition, R2 also emphasized on the importance of testing the system in the practices of restructuring and rescheduling to ensure the system is Shariah-compliant and complies with the practices at all times and circumstances.

People

In order to find out the efficiency and productivity of operational risk management, the employees and the staff management in Islamic banks must realize the potential issues and risks that may arise during implementing the restructuring and rescheduling of financing facility during Covid-19 pandemic. In a crisis, all the decisions and actions must be carried out wisely to avoid human or people's error in implementing restructuring and rescheduling of financing facility during the Covid-19 pandemic (Jonsson, 2014).

R1 commented on the issues to deal with people, as due to implementing the restructuring and rescheduling of financing facility during the Covid-19 pandemic, bankers find it difficult to have proper communication with the customers, especially in restructuring because they need to get the customer’s consent to execute the new contract or agreement.

“So, sometimes it is very hard, very challenging to get all those I would say proper communications and of course there are legal implications if this consent from customer is not proper.”

“Normally, restructuring involved execution of the akad or new document. So, when it is required for you to execute new akad or new document, this is where you need to get the acceptance from customer. You need to contact customer, you need to get agreement and consent from the customers but you could not get the consent from the customer. Meaning to say, you cannot reach the customer, try to contact customer but he did not pick up the call for example, maybe because they are working from home for instance. So, they could not get the sign off from the respective stakeholders. So, most banks they go to what they called as deemed consent.”

R1 explained the situation of deemed consent in the bank whereby the bank provides the facility to the customer and the bank needs to do or change something to their facility agreement with the consent of the customer. However, the customer cannot be contacted and the bank has to take fast action with regards to the contract. In this case, the bank may try to reach the customer but there is a time limit in waiting for the customer’s response within, for example, seven to ten days. If the customer fails to respond within that timeframe, the bank will consider the customer as agreeing to the changes of the terms and conditions.

R1 also stated that the implication of this deemed consent will lead to Shariah and legal risks or issues if the staff is not handling or communicating it correctly with the customers.

“So, what is the status of deemed consent? Is it legally valid from legal perspectives? Is it valid from Shariah perspectives? So, these question of deemed consent is yet to be tested. If someone bring it to the court, there is possibilities that the court will declare this deemed consent is invalid because according to the contract law, you have to have proper offer and acceptance from the customer, and again I mean

customer can argue from Shariah perspectives. They might say from Shariah there is no offer and acceptance, you should get my proper consent for example."

R2, on the other hand, said there is no issue with the people or management of an Islamic bank during implementing restructuring and rescheduling of financing facility during the crisis as long as all parties can communicate well with each other.

"Communication from the government, from the Bank Negara, from industry player, so, we have to have one common understanding how it should be communicated. We need to alert our branches on how they should communicate with the customer so what would be the common questions that the customer may ask, so how do they need to respond, what would be the answer for particular questions"

R2 also emphasized on the convenience of online communication between the bank and the customer which improves the process of the moratorium as the increased reliance on digital channels in recent decades, most communication and interaction between customers, corporate clients, and banks now occurs online. Additionally, to achieve a sustainable growing business model, commercial banks must adopt a mix of digital and human-enabled services to improve client experience and engagement (Law & Chung, 2020).

Based on the responses from all the informants, the researchers agreed with the statements given by all the informants regarding the importance of proper communication either via physical or online means among all the stakeholders including the staff and employees to avoid potential issues arising during implementing restructuring and rescheduling of financing facility during the Covid-19 pandemic. Moreover, to mitigate the result or effect of the crisis, positive communication and relationships such as strong connections, friendly engagements, and warm interactions are very vital (Lovell, Dolamore, & Collins, 2021).

Discussion of the Results

In summary, the information gathered from the interview sessions with the Head of Shariah Department in Bank 1 and Bank 2 of Islamic banks had elucidated that most of the emerging issues during the implementation of the moratorium during the Covid-19 crisis stem from the execution of restructuring process instead of rescheduling. Under the circumstance where Islamic banks provide a financing facility and a fixed rate is present, the maximum level of liability of the customer would be only up to the selling price. However, if customers prefer to do rescheduling instead, then the financing facility period will be extended. Islamic banks will first calculate the monthly basis amount required to be paid during the payment holidays until the extended tenure. If the customer pays a total amount of the remaining tenure in addition to the extended tenure and this amount exceeds the selling price, the bank will implement restructuring of the financing facility by forming a new contract or agreement instead of rescheduling. Meanwhile, in regard to the issues surrounding *qalb al-dayn*, it is crucial that bankers are careful in practising *qalb al-dayn* to their customers as most Muslim jurists do not permit it. Apart from that, to avoid riba and haram, bankers should clearly and carefully determine whether the customer is considered solvent or insolvent before allowing to practice *qalb al-dayn.* Thus, the Islamic banks need to have a proper policy to determine solven and insolvent status of their customers before the application of *qalb al-dayn* to avoid Shariah issue. On the other hand, The Shariah Advisory Council of Securities Commission Malaysia (2022) had resolved that *qalb al-dayn* in the restructuring of sukuk is permissible subject to three conditions such as there must be an execution of a new contract where it creates a new payment obligation and a revised payment period, the proceeds from the new contract may be used to pay the original outstanding debt which consequently results in the termination of the existing contract; and the debtor is categorised as *musir* (solvent) as determined by the sukuk trustee or the sukukholders.

Besides that, the researchers also discovered new issues arising within the already existing issues during the implementation of moratorium, which the informant refers to as the dominos effect. Therefore, one issue could consequently branch out to several other issues. For instances, in the restructuring process, a new contract or agreement is required to form the agreement whereby customer's consent is necessary to sign the agreement. However, due to the restrictions imposed by the government during MCO, this has become difficult to achieve as the public's movement became restricted and limited. This also caused a communication strain between the banks and their customers since most of the customers were working from home. If Islamic banks do not address this matter properly, it will lead to legal issues as well as Shariah non-compliance issues since the main element in the execution of *akad* is proper offer and acceptance *(ijab and qabul)*. Though Islamic banks may use the deemed consent approach as an alternative, they would still have to be careful in terms of how they perform it in order for it to be valid from the Shariah perspective.

The researchers discovered that the practices of Bank 1 and Bank 2 were aligned with the requirements set by the Shariah Advisory Council of Bank Negara Malaysia (2021) during this moratorium in which Islamic banks are not allowed to include the calculations of the accrued profits of an original financing as the new principal amount for the restructured facility. This is to avoid amplifying the profits charges on financing amounts. Hence, all Islamic banks need to comply to the Shariah principles as guided by Shariah Advisory Council of Bank Negara Malaysia's Resolution issued in 2021 in implementing a restructuring which promotes *Ihsan* (compassionate) while offering restructuring and rescheduling during moratorium in Covid-19 pandemic. In contrast, prior to Covid-19, if the customer defaulted in their financing, payment of the principal amount along with the profit to be paid will be capitalized as a new principal amount for the restructuring purpose. Although Islamic banks faced a number of Shariah and operational issues during the implementation of moratorium during Covid-19 outbreak, from the information gathered, it can be concluded that the two banks (Bank 1 and Bank 2) were doing well.

On the topic of operational issues related to the system and people, Bank 2 experienced problems in coping with the immediate changes of the operating system to do restructuring under moratorium. However, Bank 1 showed much success in managing the system issues. Though Bank 1 concurred with the challenges in dealing with their customers especially during MCO, Bank 1 did not face many problems with the system. Bank 2 also does not deny the difficulties when dealing people which represents their customers and stakeholders.

As for the second research objective, the researchers looked into the ways banks handle and overcome Shariah and operational issues during a time of crisis. It can be concluded that in implementing the restructuring and rescheduling of the financing facility during the pandemic, based on the interviews conducted with the two informants, the most crucial factor is teamwork and engagement from all stakeholders. Apart from that, communication via physical and online channels to further enhance common understanding between bankers and customers should be widely practiced in order to strengthen the process of restructuring and rescheduling. Communication can be the vital key to refine the moratorium process and with the increased norm of utilizing digital platforms over recent years, most communication and interaction between customers, corporate clients, and banks now occur online. Furthermore, in achieving a sustainable growing business model, commercial banks must combine digital and human-enabled services to provide better customer experience and engagement.

Lastly, in terms of customer eligibility for restructuring and rescheduling during the Covid-19 outbreak, it can be said that it is more lenient as compared to the practices before the Covid-19 pandemic. In dire times, Islamic banks understand the financial burdens weighing down on the customers and thus, emphasizes on the importance of drawing a distinctive line to differentiate solvent and insolvent customers to provide financial assistance. For this, customers would need to provide documentation showing or mentioning that they have been severely impacted by the pandemic, except for customers who are financially impacted not as a result of Covid-19 where in this case, the customer would not be eligible.

CONCLUSION

As a conclusion, this paper has discussed the bankers' perspective on the Shariah and operational issues of restructuring and rescheduling in Islamic banks during moratorium of Covid-19 pandemic. Two banks had agreed to participate and shared their views and practices on the two respective issues. From a Shariah standpoint, it was later discovered that there are two important issues such as *qalb al-dayn* and capitalization of accrued profits. While from the operational aspect, there are issues on system and people where the bankers will have to deal and execute the contract with. The bankers elaborated each of the issues and related them with the practices in their banks together with the way they handled the issues. This paper managed to highlight the perspectives and experience of the bankers in dealing with the Shariah and operational issues of restructuring and rescheduling in Islamic banks during moratorium of covid-19 pandemic with the guidance outlined by Shariah Advisory Council of Bank Negara Malaysia through their Resolutions as well as the support from the banks' stakeholders. As a recommendation to Bank Negara Malaysia as the regulator of Islamic banks, more time should be given to the banks to comply with all the resolutions by the Bank Negara Malaysia. On the other hand, the practitioners of Shariah functions, especially the Head of Shariah Department in all Islamic Financial Institution, should gather and have a brainstorming session with all their experts in the industry and Muslim scholars to discuss the best industrial practices in every aspect and solve any problems and issues that may arise due to restructuring of the financing facility.

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