

**ISLAMIC BANKING RECOVERY OF DEBT IN
MALAYSIA: A LEGAL AND REGULATORY
FRAMEWORK**

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Abstract

In Malaysia, no separate courts and regulatory laws have yet been set to govern the operations of Islamic banks in recovery of debt except in civil courts. Since 1983 with the introduction of Islamic Banking Act (IBA 1983) and the latest Islamic Financial Services Act (IFSA) of 2013, the operations of Islamic banks in debt recovery have been applying the conventional legal framework and under the provision of commercial bank and civil law, which in many instances do not support specific or tailored issues of Islamic banking. This research is designed to study the legal issues related to recovery of debt by reviewing the concept of legal and regulatory framework in Islamic banking. Hence, qualitatively it can be tested that there might be a possible legal issues and disputes in Shariah rulings and civil court cases in this research and therefore it is imperative to test this hypothesis to solve the problems by analysing legal doctrine, rule, principle or concept in order to see whether it matches with the judicial statement which had thitherto existed, and to suggest new set of legal and regulatory framework on Islamic banking recovery of debt in Malaysia. This research is very important in contributing and enhancing the knowledge in the field of Islamic banking recovery of debt. This research has successfully presented a possible impact of legal and regulatory framework on Islamic banking recovery of debt that has to be resolved and also to have proper Shariah perspectives on Islamic debt recovery from Malaysian civil court point of view. Therefore, a comprehensive legal and regulatory framework in recovery of debt is extremely needed in Islamic banking industry in Malaysia.

Keywords: recovery of debt, legal, civil court, regulatory, framework, Islamic banking, legal issues and disputes, Shariah, Malaysia.

Abstrak

Di Malaysia, tiada mahkamah dan undang-undang pengawalseliaan yang berasingan telah ditetapkan untuk mentadbir operasi perbankan Islam dan pemulihan hutang kecuali di mahkamah sivil. Sejak tahun 1983 dengan pengenalan Akta Perbankan Islam (IBA 1983) dan Akta Perkhidmatan Kewangan Islam terkini (IFSA) tahun 2013, operasi perbankan Islam dalam pemulihan hutang telah menggunakan kerangka undang-undang konvensional dan di bawah penyediaan bank perdagangan dan undang-undang sivil, yang dalam banyak keadaan tidak menyokong isu perbankan yang khusus. Kajian ini direka untuk mengkaji isu-isu undang-undang yang berkaitan dengan pemulihan hutang dengan mengkaji semula konsep rangka kerja undang-undang dan pengawalseliaan dalam perbankan Islam. Oleh itu, secara kualitatif, ia boleh diuji bahawa terdapat kemungkinan masalah dan pertikaian undang-undang dalam keputusan penghakiman Syariah dan kes-kes mahkamah sivil dalam penyelidikan ini dan oleh itu adalah penting untuk menguji hipotesis ini untuk menyelesaikan masalah dengan menganalisis doktrin, peraturan, prinsip dan konsep undang-undang untuk melihat sama ada ia sepadan dengan kenyataan kehakiman sehingga sekarang ini dan mencadangkan rangka kerja perundangan dan pengawalseliaan baru mengenai pemulihan hutang perbankan Islam di Malaysia. Penyelidikan ini sangat penting dalam menyumbang dan meningkatkan pengetahuan dalam bidang pemulihan hutang perbankan Islam. Penyelidikan ini telah berjaya membentangkan kesan kemungkinan kerangka undang-undang dan pengawalseliaan terhadap pemulihan hutang perbankan Islam yang perlu diselesaikan dan juga mempunyai perspektif Syariah yang betul mengenai pemulihan hutang Islam dari sudut pandangan mahkamah sivil Malaysia. Oleh itu, rangka kerja undang-undang dan pengawalseliaan menyeluruh dalam pemulihan hutang amat diperlukan dalam industri perbankan Islam di Malaysia.

Kata kunci: pemulihan hutang, undang-undang, mahkamah sivil, kawal selia, rangka kerja, perbankan Islam, isu perundangan dan pertikaian, Syariah, Malaysia

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