

**JUSTIFICATIONS OF FATWA OF THE SHARIAH ADVISORY
COUNCIL ON ISLAMIC BANKING PRODUCTS: A CRITICAL REVIEW
OF SHARIAH SCHOLARS' OPINIONS**

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ABSTRACT

This study examined the criticisms of the controversial Islamic banking products and the fatawa issued by the Shariah Advisory Council (SAC) of Bank Negara Malaysia supported and approved these controversial banking products ('Inah contract, Tawarruq and Bay' al-Dain) and reviewed both academicians and practitioners of the industry as well as Shariah scholars' views on the matter, and all of them put forward in the light of the Shariah. The study presented the discussions about Islamic controversial banking products and their fatwa justifications as provided by the SAC. The research covered some key related concepts on the topic in the literature review. The research proposed new methodology for the product development in the Islamic financial institutions in order to authenticate and strengthen the Shariah principles and requirements as well as to realize the very basic objectives of Islamic economics that is to maximize the welfare of the Ummah and to alleviate the poverty as the research found that, the failure of the controversial banking products to do so. This research found that the controversial Islamic Banking products are not in line with Shariah objectives as currently practised in Malaysian Islamic Financial Institutions (IFIs). The proposed methodology will consider strongly three matters, namely: form of the contract, the substance of the contract and finally the usage and implementation of the contract. Based on this, the research recommends that the scholars of the SAC should come up with clear measures that can determine the existence or the absence of these justifications that lead to them the permissibility of the controversial banking products, with the consideration of the conditions and parameters set down by the scholars of jurisprudence. The decision makers of Malaysian IFIs should give the final decision to those scholars among the Shariah Boards with regard to products and services offered by the industry. However, conducting vote is not really translating the views of these Shariah scholars particularly when they disagreed for such products or services.

ABSTRAK

Kajian ini meneliti kritikan pada kontroversi yang terdapat pada produk perbankan Islam dan fatwa yang dikeluarkan oleh SAC, Bank Negara Malaysia menyokong dan meluluskan produk-produk perbankan yang mempunyai kontroversi ('kontrak Inah, Tawarruq dan Bay' al-Dain) dan dikaji semula oleh pakar akademik dan pengamal industri serta pandangan cendekiawan Shariah mengenai perkara tersebut, yang mereka usulkan dalam panduan Shariah. Kajian ini membentangkan perbincangan tentang produk perbankan Islam yang mempunyai kontroversi dan justifikasi fatwa seperti yang disediakan oleh SAC. Penyelidikan ini meliputi beberapa konsep yang berkaitan dengan topik utama dalam kajian literatur. Penyelidikan ini mencadangkan kaedah baru bagi pembangunan produk di institusi kewangan Islam untuk mengesahkan kekuatan prinsip dan kehendak Shariah serta bagi merealisasikan objektif asas Ekonomi Islam iaitu untuk memaksimumkan kebajikan ummah dan untuk mengurangkan kemiskinan. Kajian mendapati bahawa produk perbankan yang mempunyai kontroversi telah gagal untuk berbuat demikian. Kajian ini mendapati bahawa produk Perbankan Islam yang mempunyai kontroversi tidak selaras dengan objektif Shariah seperti yang dilakukan institusi-institusi kewangan Islam di Malaysia. Penyelidik mencadangkan kaedah yang akan mempertimbangkan tiga perkara penting iaitu bentuk kontrak, isi kontrak dan akhirnya penggunaan dan pelaksanaan kontrak. Dengan demikian, kajian ini mengesyorkan ulama' SAC perlu memikirkan langkah-langkah jelas yang boleh menentukan kewujudan atau ketiadaan justifikasi yang membawa kepada keharusan produk perbankan yang mempunyai kontroversi, dengan pertimbangan keadaan dan parameter yang ditetapkan oleh ulama fiqh. Para pembuat keputusan institusi-institusi kewangan Islam di Malaysia harus memberi keputusan muktamad dalam mana-mana produk dan perkhidmatan yang ditawarkan oleh industri dan hanya dari kalangan cendekiawan Shariah di lembaga Shariah (SAC) supaya mereka perlu membuat keputusan muktamad, kerana menjalankan undian tidak menterjemahkan pandangan ulama Shariah yang sebenarnya, terutamanya apabila mereka tidak bersetuju keatas produk atau perkhidmatan tersebut.

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