

**PERPUSTAKAAN
KOLEJ UNIVERSITI INSANIAH**

THE DETERMINANTS OF SHARI'AH PRACTITIONERS'

**PREFERENCE TO ADOPT MUAMALAT CASES IN SHARI'AH
COURTS: A STUDY OF NORTHERN STATES OF
PENINSULAR MALAYSIA.**

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ABSTRACT

The main objective of the study was to identify the factors or determinants that influenced the intention of *Shari'ah* practitioners comprising *Shari'ah* officer and *Syarie* lawyers in the northern states of Peninsular Malaysia i.e Perlis, Kedah, Penang and Perak in adopting *Muamalat* cases in *Shari'ah* courts. The study adopted the theory of planned behavior (TPB) which was an extension of the theory of reasoned action (TRA) and further the study adopted two operational components of attitudes i.e relative advantage and compatibility which were taken from decomposed theory of planned behavior (DTPB). The study was prompted by controversial decisions made by civil courts judges in deciding *Muamalat* cases of which disregarded the Islamic principles in construing Islamic banking instruments. This study attempted to provide a solution as regard to which court should be the competent court in deciding disputes arising from Islamic banking and finance transaction. This study found that compatibility, subjective norms and religiosity are positively and significantly influencing the *Shari'ah* practitioners' intention in northern states of Peninsular Malaysia to adopt *Muamalat* cases in *Shari'ah* courts. In the same time, the study also found that relative advantage and Perceived Behavioral Control were both to be insignificant predictors. It was suggested that efforts must be enforced to ensure the sustainability of the Islamic finance industry by incorporating *Shari'ah* courts into the country legal system framework. This suggestion was mainly due to finding of this study which showed that compatibility was the highest indicator in determining the intention of *Shari'ah* practitioners in adopting *Muamalat* cases in *Shari'ah* courts in Malaysia.

ABSTRAK

Tujuan utama kajian ini dijalankan ialah untuk menentukan faktor-faktor yang mempengaruhi pengamal undang-undang *Shari'ah* yang terdiri daripada Pegawai *Shari'ah* dan Peguam Syarie di negeri-negeri utara Semenanjung Malaysia iaitu Perlis, Kedah, Pulau Pinang dan Perak di dalam mengadaptasikan kes-kes Muamalat di Mahkamah *Shari'ah*. Kajian ini menggunakan “*Theory of Planned Behavior (TPB)*” yang merupakan lanjutan daripada “*Theory of Reasoned Action*” dan pada masa yang sama, kajian ini turut menggunakan dua komponen operasi Sikap iaitu *Compatibility* (Kesesuaian) dan *Relative Advantage* (Kelebihan relatif). Kajian ini dilakukan bertitik-tolak daripada keputusan kontroversi hakim Mahkamah sivil di dalam mengadili kes-kes berkaitan dengan perbankan Islam di mana hakim-hakim gagal untuk mengambil kira prinsip kewangan Islam di dalam menafsirkan instrumen-instrumen perbankan Islam. Kajian ini juga mencari satu penyelesaian kepada persoalan mahkamah manakah yang sepatutnya bagi menyelesaikan sebarang pertikaian yang timbul daripada transaksi kewangan dan perbankan Islam. Dapatan kajian ini menemui bahawa *Compatibility* (kesesuaian), *Subjective Norms* (norma-norma subjektif) dan *Religiosity* (keagamaan) adalah faktor yang signifikan yang mempengaruhi pengamal undang-undang *Shari'ah* di negeri-negeri utara Semenanjung Malaysia di dalam mengadaptasi kes-kes Muamalat di Mahkamah *Shari'ah*. Pada masa yang sama, kajian mendapati bahawa *Perceived Behavioral Control (PBC)* dan *Relative Advantage* (Kelebihan relatif) bukan merupakan pengukur yang signifikan. Kajian ini mencadangkan supaya usaha-usaha harus digiatkan bagi memastikan kelastrian industri Kewangan Islam di Malaysia dengan memasukkan Mahkamah *Shari'ah* di dalam kerangka utama sistem perundangan negara. Cadangan ini adalah berpunca daripada dapatan kajian ini yang mendapati bahawa *Compatibility* (kesesuaian) merupakan pengukur utama yang menentukan niat pengamal undang-undang *Shari'ah* di dalam mengadaptasikan kes-kes *Muamalat* di Mahkamah *Shari'ah* di Malaysia.

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