

GOVERNANCE OF FATWA RESOLUTIONS ON ISLAMIC BANKING PRODUCTS IN MALAYSIA

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Abstract: *The governance of fatwa resolutions constitutes a core element in ensuring Shariah compliance, operational stability, and the credibility of the Islamic banking system in Malaysia. Fatwa resolutions are not merely legal rulings but function as regulatory instruments that bind Islamic banking institutions in terms of product development, contract implementation, and operational practices. This study aims to analyze the governance of fatwa resolutions concerning Islamic banking products in Malaysia, focusing on the role of authoritative institutions, mechanisms of ijtiḥad, and implementation challenges within the contemporary financial context. A qualitative approach was adopted through document analysis and library research on Shariah resolutions and relevant academic literature. The findings indicate that the fatwa governance system led by the Shariah Advisory Council of Bank Negara Malaysia has successfully established uniformity and legal certainty within the Islamic banking industry. However, continuous improvement in the transparency of ijtiḥad methodology and the application of the maqasid al-shariah approach is required to ensure that fatwa resolutions remain relevant and authoritative.*

Keywords: *Fatwa Governance, Shariah Resolution, Islamic Banking, Collective Ijtiḥad, Maqasid Al-Shariah.*

Introduction

The governance of fatwa resolutions in Islamic banking in Malaysia is a fundamental component in ensuring Shariah compliance, operational stability, and the overall credibility of the national Islamic financial system. Within the Shariah governance framework, fatwa resolutions are not merely normative legal decisions but serve as binding regulatory instruments that govern product structures, contract execution, and operational practices. The role of a central authority such as the Shariah Advisory Council of Bank Negara Malaysia is highly significant in standardizing Shariah decisions, preventing conflicting fatwas, and ensuring legal certainty in the Islamic banking industry.

Literature Review

Fatwa instruments represent one of the most crucial components in Islamic banking governance in Malaysia, regulating Shariah compliance of products, operations, and financial practices. The effectiveness of fatwas depends on the implementation of systematic, authoritative, and institutionalized ijtiḥad mechanisms through collective ijtiḥad that integrates textual Shariah sources, the discipline of Usul al-Fiqh, and interpretations of contemporary financial realities.

The Shariah Advisory Council of Bank Negara Malaysia (SAC BNM), as the Shariah authority, has strengthened uniformity and legal certainty. However, it faces challenges related to transparency in istinbat methodology, tendencies toward taqlid, and the formalistic use of classical contracts that may undermine substantive Shariah compliance. Shariah advisory

institutions at the banking, capital market, and international levels complement the governance ecosystem, although challenges remain in professionalism and multidisciplinary expertise when addressing complex financial instruments.

Strengthening the fatwa framework requires standardization of *ijtihad* methodology, empowerment of Shariah advisory institutions, and regulatory harmonization to ensure that Islamic banking fatwas remain authoritative, responsive, and credible in modern finance. Fatwa approaches tend to be pragmatic and responsive to contemporary needs, particularly through the permissibility of contracts such as *bai' al-tawarruq* and *bai' al-'inah* as risk management instruments.

Research Methodology

This study applies a qualitative approach through library research, examining primary and secondary sources including compilations of rulings issued by authoritative institutions such as the Shariah Advisory Council of Bank Negara Malaysia, academic writings, scholarly books, journals, and conference proceedings related to core Islamic banking products. The analysis was conducted descriptively and analytically to evaluate the governance of fatwas concerning Islamic banking products in Malaysia.

Findings

Operational Framework of Fatwa Issuance in Islamic Banking

Ijtihad refers to a systematic and authoritative scholarly effort to determine the will of Allah SWT regarding legal issues lacking explicit textual evidence, based on guided reasoning and the discipline of *usul al-fiqh*, typically conducted within institutional fatwa frameworks by qualified authorities. Contemporary issues such as Islamic banking require solutions grounded in textual sources (*fiqh al-nusus*) and contextual financial realities (*fiqh al-waqi'*), supported by expertise across Shariah disciplines.

Rapid financial industry development, product innovation, and complex banking structures necessitate functional *ijtihad* mechanisms to ensure rulings remain aligned with Shariah principles and relevant to current practices. Institutionalized and authoritative *ijtihad* ensures consistent compliance, reduces interpretative conflicts, and strengthens credibility of Islamic financial institutions as legitimate and ethical systems.

Effective *ijtihad* addresses hybrid product development, risk management, new investment instruments, and digital financial technologies. Islamic banking products must be free from *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling). Multidisciplinary collaboration among experts in *fiqh*, finance, law, accounting, and risk management produces practical and realistic *ijtihad* aligned with industry needs.

Shariah Advisory Institutions in Malaysia

Shariah advisory institutions form a core component in implementing the Islamic banking fatwa framework in Malaysia. Each Islamic financial institution is required to establish a Shariah Committee to assess, monitor, and ensure compliance in all products and activities. Shariah decisions serve as the basis of operational legitimacy and internal control against non-compliance risks.

At the national level, the SAC of Bank Negara Malaysia acts as the highest Shariah authority coordinating and standardizing decisions while reducing conflicts. However, challenges arise when SAC decisions are interpreted or contested within civil legal contexts without adequate *fiqh* understanding, potentially affecting legal certainty and governance stability.

The Shariah Advisory Council of the Securities Commission Malaysia plays an important role in the Islamic capital market, particularly in sukuk, Islamic funds, and Shariah-compliant investment instruments. Coordination between SAC BNM and SAC SC ensures consistency across the financial system.

Islamic banking in Malaysia is also influenced by State Mufti Departments, international fiqh institutions, and standard-setting bodies such as AAOIFI and IFSB. Although their resolutions are not legally binding, they function as persuasive authorities enriching Shariah governance.

4.3 Implementation of Fatwas on Islamic Banking Products

The fatwa framework determines Shariah validity by ensuring alignment between contract structure, implementation reality, and legal implications. SAC BNM decisions are binding on Islamic financial institutions and the judiciary. Methodologies applied include:

- a) Gradual and systematic collective ijthihad involving Shariah, finance, banking, and legal experts through structured processes including issue submission, proposal preparation, secretariat review, and deliberation until consensus or majority decision.
- b) Integrated implementation of Shariah sources including the Quran, Sunnah, classical juristic opinions, usul principles, and fiqh al-waqi'. Where no specific text exists, either selective ijthihad (ijthihad intiqai') or constructive ijthihad (ijthihad insya'i) is applied. Consideration of maslahah and maqasid al-shariah ensures holistic evaluation beyond technical contract validity.

Compilation of Selected SAC BNM Fatwa Resolutions

The Shariah Advisory Council of Bank Negara Malaysia has reached several decisions through a series of meetings concerning a number of Islamic banking products:

- a) Al-Tawarruq is permissible in deposit and financial products (51st meeting, 28 July 2005).
- b) Al-'Inah is permissible in interbank Islamic money market transactions if compliant with Shafi'i principles and involving non-ribawi commodities (8th meeting, 12 December 1998)
- c) Al-Istisna' is permissible in project financing and business premises refurbishment; conventional bonds may be accepted as security (Special meeting, 13 April 2007),
- d) Al-Mudarabah transactions that involving third-party guarantees are permissible (90th meeting, 15 August 2009).
- e) Musharakah Mutanaqisah by combining Musharakah and Ijarah contracts is permissible if executed separately; collateral may be imposed based on beneficial ownership recognition (56th meeting, 6 February 2006).

Conclusion

Overall, the governance of fatwa resolutions plays a vital role in ensuring alignment between Shariah principles, operational needs of Islamic banking, and contemporary financial realities in Malaysia. Its effectiveness depends on the authority of institutions such as the SAC BNM in standardizing decisions, strengthening legal certainty, and preserving industry integrity. Challenges such as formalistic tendencies, commercial pressures, and product innovation complexity require continuous improvement of the governance framework. Strengthening transparent ijthihad methodologies, applying maqasid al-shariah approaches, and enhancing professionalism within Shariah advisory institutions are essential to ensure that fatwa resolutions remain relevant, authoritative, and capable of sustaining Islamic banking in Malaysia.

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