

SHARIAH GOVERNANCE PRACTICES OF ISLAMIC CREDIT
CO-OPERATIVES IN MALAYSIA

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March 2017

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I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged

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ABSTRAK

Sistem tadbir urus Syariah adalah merupakan sebuah mekanisma pengawasan yang penting bagi memastikan semua aktiviti, operasi dan perniagaan institusi kewangan Islam patuh dan selari dengan ajaran dan kehendak Syariah. Konsep rangka kerja tadbir urus Syariah dibincangkan secara meluas di dalam bidang perbankan Islam. Walau bagaimanapun, konsep ini kurang mendapat perhatian untuk dibincangkan dalam kerangka Koperasi Kredit berlandaskan Syariah. Oleh itu, tujuan kajian ini adalah untuk meninjau amalan semasa tadbir urus Syariah dalam Koperasi Kredit berlandaskan Syariah terutamanya daripada 4 bidang utama, iaitu, susunan dalaman bagi mewujudkan fungsi Jawatankuasa Syariah; peranan dan tanggungjawab Lembaga Koperasi, Jawatankuasa Syariah, Pengurusan dan Jawatankuasa Audit Dalaman; sifat-sifat Jawatankuasa Syariah berkaitan kebebasan, kerahsiaan, kecekapan, konsisten dan ketelusan; dan juga susunan luaran berkaitan tadbir urus Syariah dalam sektor ini. Kajian ini dijalankan dengan mengendalikan sesi temu bual secara mendalam dengan mengemukakan soalan semi-struktur dengan pemberi maklumat utama iaitu Pihak engurusan, Jawatankuasa Syariah, Unit Syariah ANGKASA dan juga dengan pengawal selia dalam sektor ini. Soalan-soalan temu bual telah dihasilkan, berstruktur dan disusun dengan kaedah tematik supaya semu daata boleh dianalisa dengan mudah. Kajian ini mendapati terdapat jurang yang serius dalam sistem tadbir urus Syariah yang diamalkan oleh Koperasi Kredit berlandaskan Syariah. Ini adalah disebabkan oleh ketiadaan sistem kawalan Shariah dalaman yang sewajarnya untuk menyokong sistem pengawasan ini. Kajian ini juga mendapati bahawa koperasi masih pasif dan di tahap minima bagi melaksanakan tadbir urus Syariah yang baik walaupun selepas penguatkuasaan GP28 iaitu Garis Panduan Tadbir Urus Syariah bagi Koperasi. Di samping itu, ketika melihat sifat-sifat Jawatankuasa Syariah dalam sektor ini, kajian ini menunjukkan bahawa Jawatankuasa Syariah masih dalam keadaan konflik menguruskan lima isu utama yang terdiri daripada kebebasan, kerahsiaan, kecekapan, konsisten dan ketelusan. Perlu diberi perhatian, kajian itu juga mendapati pendekatan yang nominal oleh pengawal selia dilihat sebagai punca utama menyumbang kepada tahap amalan semasa tadbir urus Syariah dalam sektor ini. Keadaan ini menunjukkan sememangnya terdapat beberapa kekurangan dan kelemahan berkaitan rangka kerja tadbir urus Syariah yang sedia ada. Oleh itu, beberapa ianya memerlukan penambahbaikan selanjutnya dan peningkatan di peringkat koperasi dan juga peringkat pengawal selia. Kajian ini menawarkan sumber maklumat yang berguna dalam bentuk memberikan beberapa cadangan yang berkaitan kepada pengawal selia, koperasi dan penyelidik untuk pembangunan masa depan berkaitan amalan tadbir urus Syariah dalam Koperasi Kredit berlandaskan Syariah. Kajian ini juga cuba menyediakan data baharu dan maklumat penting berkaitan keadaan semasa tadbir urus Syariah dalam Koperasi Kredit berlandaskan Syariah. Perbincangan mengenai kajian ini juga boleh berfungsi untuk menambah literatur mengenai topik ini.

ABSTRACT

The Shariah governance system is an important mechanism to ensure that all the activities, operations and businesses of Islamic financial institutions adhere to the Shariah precepts and requirements. Although the Shariah governance framework concept is widely discussed in Islamic banking, in the case of Islamic Credit Co-operatives, this concept has received little attention from researchers. Hence, the purpose of this study is to explore the current practices of Shariah governance in Islamic Credit Co-operatives, particularly in its four main areas – the internal arrangement in establishing the Shariah Committee function; the roles and responsibilities of the Board of the Co-operatives, Shariah Committee, Management and Internal Audit Committee; the attributes of the Shariah Committee in terms of independence, confidentiality, competency, and consistency of judgement; and also the external arrangement pertaining to Shariah governance in this sector. In-depth interviews using semi-structured questions were conducted with key informants, namely, the Management, Shariah Committee, ANGKASA's Shariah Unit and with the regulator. All the interview questions were generated, structured and arranged in a way that all the data could be analysed easily using the thematic analysis approach. This study identified a serious gap in the Shariah governance system practiced by Islamic Credit Co-operatives, due to the perfunctory attitude of the co-operatives for an internal Shariah control system to support the governing system. This study also found that the co-operatives are passive and still at the basic stage of implementing good Shariah governance even after the issuance of GP28: The Guidelines of Shariah Governance for Co-operatives. In addition, while exploring the attributes of the Shariah Committee in this sector, this study demonstrates that the Shariah Committee is still in conflict when dealing with the five main issues – independence, confidentiality, competency, consistency, and transparency. Moreover, this study concluded that the nominal approach by the regulator is the root cause of the current state of Shariah governance in this sector. This position acknowledges that there are shortcomings and weaknesses to the existing Shariah governance framework that need further enhancement and improvement at the co-operative and regulatory level. Thus, this study offers useful information resources that provide some relevant recommendations to the policymakers, co-operatives, and researchers for future development of Shariah governance practices in Islamic Credit Co-operatives. Furthermore, this study attempts to provide fresh data and significant information pertaining to the current state of Shariah governance in Islamic Credit Co-operatives. The discussion in this study can also serve to enhance the literature on the topic.

ملخص البحث

نظام الحكم الشريعة هو آلية هامة لضمان التزام جميع الأنشطة والعمليات والأعمال التجارية للمؤسسات المالية الإسلامية بمبادئ ومتطلبات الشريعة الإسلامية. ويناقش على نطاق واسع مفهوم نظام أحكام الشريعة الإسلامية في مجال العمل المصرفي الإسلامي. ومع ذلك، في حالة تعاونيات الإقراض الإسلامي، لقي هذا المفهوم أقل اهتمام من الباحثين في حقل الاقتصاد الإسلامي ومن ثم، فإن الغرض من هذه الدراسة هو استكشاف الممارسات الأحكام الشريعة في تعاونيات الإقراض الإسلامي الحالية، وخاصة من أربع نواح رئيسية، وهي: الترتيب الداخلي في تأسيس وظيفة الهيئة الشرعية، بالإضافة إلى أدوار ومسؤوليات مجلس التعاونيات، ولجنة الشريعة، الإدارة ولجنة المراجعة الداخلية. مواصفات لسمات الهيئة الشرعية من حيث الاستقلال والسرية والكفاءة والانساق والشفافية؛ وأيضاً الترتيب الخارجي المتعلق بالحكم الشرعي في هذا القطاع. وقد أجريت مقابلة مطولة بأسئلة شبه منظمة مع المخبرين الرئيسيين، وهم الإدارة، والهيئة الشرعية، ووحدة ANGKASA الشرعية، وأيضاً مع المنظم. وصممت الأسئلة ورتبت بطريقة يمكن من وصممت الأسئلة ورتبت بطريقة يمكن من المنهج الموضوعي. تكتشف الدراسة فجوة خطيرة في النظام الشرعي الحاكم لممارسات تعاونيات الإقراض الإسلامية. هذا ويرجع ذلك إلى عدم وجود نظام تحكم شرعي داخلي سليم لدعم النظام الحاكم. ووجدت الدراسة أيضاً أن التعاونيات لا تزال سلبية وفي مستوى متدن في تنفيذ الحكم الشرعي المناسب حتى بعد صدور GP28: المبادئ التوجيهية للحكم الشرعي في التعاونيات. وبالإضافة إلى ذلك، في حين استكشفت الدراسة سمات الهيئة الشرعية في هذا القطاع، فإنها توضح كذلك أن الهيئة الشرعية لا تزال في صراع التعامل مع القضايا الرئيسية الخمسة التي تتكون من الاستقلال والسرية والكفاءة والانساق والشفافية. الجدير بالذكر أن الدراسة وجدت أن النهج الرمزي من قبل المنظم هو السبب الرئيسي للوضع الحالي للحكم الشرعي في هذا القطاع. ويقر هذا الموقف أن هناك أوجه القصور والضعف في إطار الحكم الشرعي الإسلامي الحالي والذي يحتاج إلى مزيد من التعزيز والتحسين على كل من المستوى التعاوني والتنظيمي. وتقدم الدراسة مصادر معلوماتية مفيدة يمكنها أن توفر بعض التوصيات ذات الصلة إلى صناع القرار، والجمعيات التعاونية والباحثين بغرض التنمية المستقبلية لممارسات أحكام الشريعة في تعاونيات الإقراض الإسلامي تحاول الدراسة كذلك أن توفر بيانات ومعلومات جديدة هامة تتعلق بتطبيق الأحكام الشرعية في تعاونيات الإقراض الإسلامي. ويخدم طرح هذه الدراسة إثراء الحصيلة العلمية في هذا الموضوع.

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GLOSSARY

<i>'Adalah</i>	Justice
<i>Ar-Rahn</i>	A contract between a pledgor (<i>rahin</i>) and a pledgee (<i>murtahin</i>) whereby an asset is pledged as collateral (<i>marhun</i>) to the pledgee to provide assurance that the liability or obligation against the pledgee will be fulfilled.
<i>Bay' Al-Inah</i>	An arrangement that involves sale of an asset to the purchaser on a deferred basis and subsequent purchase of the asset at a cash price lower than the deferred sale price or vice versa, and which complies with the specific requirements of <i>bai' inah</i> .
<i>Bay' Bithamin Ajil</i>	A sale contract in which the payment of the price is deferred and payable at a certain particular time in the future.
<i>Gharar</i>	Uncertainty or hazard caused by lack of clarity regarding the subject matter or the price in a contract of exchange.
<i>Hadith</i>	The sayings of the Prophet Muhammad (Peace be upon him)
<i>Ijarah</i>	A lease contract that transfers the ownership of a usufruct of an asset to another person for a specified period in exchange for a specified consideration
<i>Ikhlas</i>	Sincerity
<i>Khalifah</i>	Vicegerent
<i>Maisir/Qimar</i>	Games of Chance
<i>Mujadahah</i>	Determination
<i>Murabahah</i>	A sale and purchase of an asset where the acquisition cost and the mark-up are disclosed to the purchaser
<i>Musyarakah</i>	A partnership between two or more parties, whereby all parties will share the profit and bear the loss from the partnership.
<i>Qard</i>	A contract of lending money by a lender to a borrower where the latter is bound to repay an equivalent replacement amount to the lender
<i>Quran</i>	Islamic holy book
<i>Riba'</i>	Interest or usury
<i>Shariah</i>	Islamic law and principles
<i>Siddiq</i>	Truthfulness
<i>Takaful</i>	Islamic Insurance
<i>Tawarruq</i>	Consists of two sale and purchase contracts. The first involves the sale of an asset by a seller to a purchaser on a deferred basis. Subsequently, the purchaser of the first sale will sell the same asset to a third party on a cash and spot basis.
<i>Ukhuwah</i>	Brotherhood

GLOSSARY

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<i>Ukhuwah</i>	Brotherhood

ABBREVIATION

1K1K	1 Community 1 Co-Operative
AAOIFI	Accounting and Auditing Organizations of Islamic Financial Institutions
ANGKASA	Malaysian National Co-operative Movement
BNM	Bank Negara Malaysia
BOC	Board of Co-operative
Co-op	Co-operative
GCC	Gulf Cooperation Council
GP27	Guideline of Corporate Governance for Co-operative
GP28	Guideline of Shariah Governance for Co-operative
IAC	Internal Shariah Committee
IAH	Investment Account Holders
IBFIM	Islamic Banking and Finance Institute of Malaysia
ICC	Islamic Credit Co-operative
IFI	Islamic Financial Institution
IFSB	Islamic Financial Services Board
ISRA	International Shariah Research Academy for Islamic Finance
Mg	Management
MKM	Co-operative College of Malaysia
OECD	Organization for Economic Cooperation and Development
SAC BNM	Shariah Advisory Council Bank Negara Malaysia
SB	Shariah Boards
SC	Shariah Committee
SGF	Shariah Governance Framework
SKM	Malaysia Co-operative Societies Commission
UK	United Kingdom