

SHARIAH COMMITTEE OF TAKAFUL OPERATORS IN MALAYSIA: INDEPENDENCE IN THE STATE OF MIND

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ABSTRACT

This paper aims to discover how the Shariah Committee members of takaful operators in Malaysia perceive their own independence from the board and management in carrying out their duties and obligations. This paper explored the concerned issues through personal interviews with six selected Shariah Committee members of takaful operators and one Shariah Advisory Council member of Bank Negara Malaysia. The findings suggested that there is no material pressure from the board of directors and the management on the Shariah Committee members when making decisions related to Shariah matters. In summary, the Shariah Committee is independent from the board and management in carrying out their duties and obligations. It is believed that the independence of the Shariah Committee plays a vital role in achieving an efficient Shariah governance structure. Ultimately, this paper is expected to enhance the stakeholders' trust and confidence in the credibility of the Islamic financial institutions, particularly with regards to the integrity of the takaful operators in upholding Shariah in their business.

Keywords: Shariah Committee, Shariah governance, independence, takaful.

INTRODUCTION

The Islamic finance industry has been growing tremendously for the past few decades, not only in the Muslim countries, but it has also charted its path on the global finance map. As with other corporations in other industries, the Islamic financial institutions (IFIs) are also bound by the corporate governance best practices. It is noteworthy that the most distinct characteristic of the IFIs as compared to their conventional counterparts is the element of Shariah compliance that is attached to every technical aspect of their transactions. This further reiterates the need for a specific governance framework to cater for the Shariah related matters in the IFIs.

In 2010, Bank Negara Malaysia (BNM) has issued the Shariah Governance Framework for Islamic Financial Institutions (SGF) which became effective on 1 January 2011. This framework has since become an integral part of the governing infrastructure of the IFIs alongside the incumbent corporate governance framework which had been in place. The objective is to set out the expectation of the BNM on the IFI's Shariah governance structures, processes and arrangements to ensure that all operations and activities are in accordance with Shariah (BNM, 2011). Among the importance of the SGF is to ensure Shariah compliance, to instill public confidence, as well as to promote financial stabilities of the IFIs. In one of its latest development, BNM also has issued a Strategy Paper on Value-based Intermediation (VBI) in March 2018 which aims to strengthen the roles and impact of Islamic finance towards a balanced social and commercial ecosystem that is also sustainable in the long-run. Given the market maturity and heightened business complexity in the operations of Islamic financial institutions, BNM has recently issued Shariah Governance Policy (SGP) on 20 September 2019, which supersedes the SGF. In line with the BNM's strengthened expectation for effective Shariah governance in IFIs, the new and revised version of SGP aims to enhance the oversight accountabilities of the board, Shariah committee, and senior management.

Among others, the rapid growth of Islamic finance has been characterized by the product innovations. To a certain extent, it is claimed that the Islamic financial institutions (IFIs) have been going in parallel with the conventional principles and instruments due to the pressure to achieve commercial objectives (Rosly, 2010). For instance, the use of conventional interest rates as the benchmark for profit rates, the legitimacy of contracts such as bay al-'inah and tawarruq munazzam in the Islamic finance products, etc. have raised questions over the credibility of the IFIs in upholding Shariah in its operations. Consequently, many labelled Islamic finance as a mere "form over substance". The negative perception is further exacerbated by the plausible conflict of interests faced by the Shariah scholars in passing relevant decisions due to their high-paying positions in the Shariah boards (Hegazy, 2005).

In view of the above context, it is therefore important to give attention to the aspect of Shariah Committee's independence in making sound decisions to ensure effective management of Shariah non-compliance risks. This paper focuses on this particular aspect in the Malaysian takaful industry. The choice of takaful industry is motivated by the fact that despite its steady growth, it has always been at the backseat to Islamic banking with regards to both of its development and market share. Therefore, this paper is expected to examine dimensions which could further push the takaful industry to be another face of Islamic finance alongside the Islamic banking industry. As highlighted by Masruki, Mohd Hanefah, and Dhar (2020), it is important to reflect on various Shariah governance mechanisms in order to gain the trust and confidence of the stakeholders. In turn, this will ultimately contribute to the overall stability in Islamic finance industry (Laldin & Furqani, 2018).

LITERATURE REVIEW

The SGP highlighted that the board of directors, the Shariah Committee, and the management are the key players responsible for the Shariah governance of the IFIs. Although the board is ultimately accountable and responsible for the overall Shariah governance framework and Shariah compliance of the IFIs, the Shariah Committee has to advise the board and provide all the input to IFIs regarding Shariah matters. In essence, it is the Shariah Committee that is accountable and responsible to the decisions and opinions of the Shariah related matters (Hussain, 2019). Shariah compliance is indeed an important factor in IFIs because it provides the legitimacy of the operations and practices (Saad & Abd Rahman, 2018). As an independent body that supervises the Shariah issues and compliance, Shariah Committee is seen as pivotal in ensuring the development and success of the respective institutions (Ghayad, 2008). In addition, Eldaia, Mohd Hanefah, Marzuki, and Shatnawi (2020) also indicates that Shariah Committee quality plays a significant role in moderating the relationship between the audit committee characteristics and the performance of the Malaysian takaful performance. This signifies the important role played by the Shariah Committee in the governance of IFIs. The requirement to establish the Shariah Committee is stipulated in the Islamic Financial Services Act 2013 (IFSA) as follows: 30. (1) *A licensed person shall establish a Shariah committee for purposes of advising the licensed person in ensuring its business, affairs and activities comply with Shariah.*

In addition to the legislative requirements, BNM further requires the Shariah Committee to be composed of at least five members, a majority of whom must be Shariah experts and backed by qualifications in finance and law. This is to ensure the ability of the Shariah Committee to rigorously deliberate on challenging upcoming Islamic finance issues, and to deliver sound Shariah decisions in due course. The Shariah Committee members shall be recommended by the nomination committee and be appointed by the board of directors.

Based on the SGF, it is observed that there is a dual governance structure in the IFIs, i.e., the board of directors and the Shariah Committee. Under the dual governance structure, there have been concerns on whether this particular structure would in any way affect the independence of Shariah Committee in making objective decisions and subsequently undermine the Shariah compliance of the IFIs and the achievement of Maqasid Shariah (Muhamad Sori et al., 2015). In the conventional corporate governance, there is a clear demarcation between the board of directors and the management. Akin to this issue, the governance of IFIs should also have a clear demarcation of responsibility and accountability between the board of directors, management and the Shariah Committee. Therefore, it is important to highlight a clear demarcation of responsibility and accountability between these key players.

On another note, Malik, Ullah, and Ullah (2020) underlined the diffusion of knowledge between the finance and shariah principles which supports the growth and development of IFIs. This is particularly applicable in the discussion of the interactions between the three key players namely, board of directors, management, and Shariah Committee. Conflicts may have arisen due to the different background and understanding. However, it is believed that gradually there is exposure to each other's knowledge and hence the diffusion of knowledge throughout the process of working together. This further enhances the understanding of both finance and shariah value propositions.

While various studies have reported tremendous growth of Islamic finance globally, Mansour and Bhatti (2018) highlighted that it did not go in parallel with its corresponding qualitative growth. One of the main contributing factors is poor development of Islamic financial products, whereby sheer recycled products mimicking the interest-based conventional products do not truly represent the spirit of Islamic finance (Alkholifey, 2017). Pursuant to this, Shariah Committee plays an important role to formulate a strategy leading to innovative products that accomplish excellent quality from all the economic, business, and shariah prism.

The importance of Shariah Committee independence has indeed been highlighted in the BNM Shariah Governance Policy. However, although the guidelines clearly require the Shariah Committee to be independent from the board and management in making its decisions, the independence issue is still up for discussion because it mainly deals with the nature of human being. For instance, Kader et al. (2014) highlighted the concern regarding the independence of Shariah board given the fact that they are appointed and remunerated by the managers of the takaful operators.

In the same vein, Muhamad Sori et al. (2015) highlighted the importance of both the independence in fact (i.e., state of the mind) and the independence in appearance (i.e., be seen as independent). The former deals more with the actual independence in practice. Meanwhile, the latter could be interpreted as merely box-ticking of the guidelines. In view of the foregoing, it is interesting to explore the question of whether or not Shariah Committee members are independent from the board and management in carrying out their duties and obligation.

RESEARCH METHODOLOGY

Personal interviews were conducted with the aim to find out how the Shariah Committee members perceive their own independence from the board and management in carrying out their duties. As highlighted by Mhd. Sarif and Ismail (2017), the use of personal interviews enriches the research by providing more meaningful findings despite its highly contextual nature. Furthermore, it suits the objective of this research which is to explore the self-perception of the Shariah Committee of the takaful operators on their independence in carrying out their duties and obligations. The interviews used a semi-structured set of questions as a guide. Each interview took approximately 30 minutes, and was recorded on audio tapes. Subsequently, interview notes were transcribed and analysed. The interviewees consist of six selected Shariah Committee members of takaful operators and one Shariah Advisory Council member of Bank Negara Malaysia, and they are coded as I1 – I7. The interview questions were developed following the issue of Shariah Committee independence which have been raised by Grais and Pellegrini (2006), Hamza (2013), Mohamad and

Muhamad Sori (2016), and Muhamad Sori et al. (2015), as well as with certain references to the BNM Shariah Governance Framework 2011.

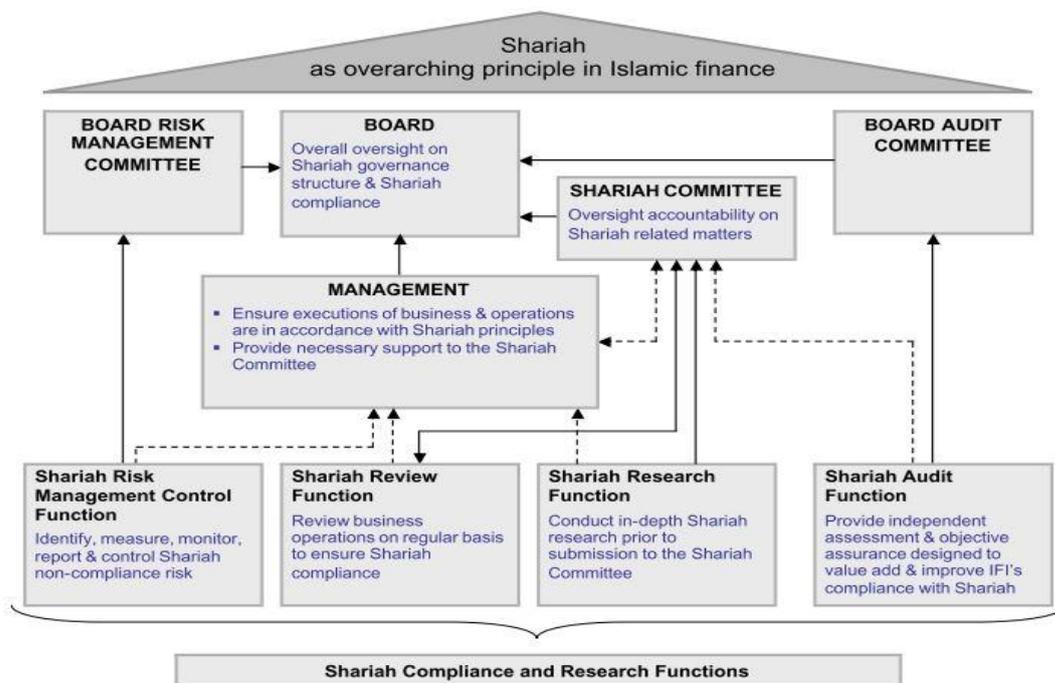
RESULTS AND DISCUSSION

Independence is an important dimension of the Shariah Committee attribute in running the IFIs. This particular trait, however, is difficult to be quantified. Unlike the board of directors, the Shariah Committee members are not categorised into independent and non-independent members because they all are expected to be independent. According to the BNM Shariah Governance Framework 2011, the Shariah Committee members have to be independent in carrying out their duties. Nevertheless, there are some previous literature which have raised some concerns regarding the independence of Shariah Committee members in carrying out their fiduciary duties (Graiss & Pellegrini, 2006; Hamza, 2013; Mohamad & Muhamad Sori, 2016; Muhamad Sori et al., 2015). The rest of this section details out some insights on this issue which have been sought from the interviews with six Shariah Committee members of takaful operators and one Shariah Advisory Council of the Bank Negara Malaysia.

Shariah Committee vis-à-vis BOD in the Shariah Governance Framework

In discussing the issue of independence of the Shariah Committee, the chain of command in IFIs should be looked at. The position of the Shariah Committee vis-à-vis the board of directors is illustrated in Figure 1.

Figure 1: Shariah Governance Framework Model for Islamic Financial Institutions (Source: Bank Negara Malaysia Shariah Governance Framework for Islamic Financial Institutions, 2011)



From the framework, it can be seen that the Shariah Committee is positioned lower than the board of directors. In addition, the arrow is also shown as going from the Shariah Committee to the board of directors, indicating the reporting hierarchy between the two. As a result, questions have been asked as to how independent the Shariah Committee members really are in the truest sense, when they are in actual fact reporting to the board of directors whose priorities are often quite distinct from that of the Shariah Committee. Would there be any influence or pressure from the board on the Shariah Committee when it comes to decision-making? Interesting feedback and explanations were given by the interviewees with regards to this issue. I7 pointed out that:

"If you notice, it is because the legal framework does not allow two bodies to have equal position. But with regards to Shariah matters, the board of directors are guided by the Shariah Committee."

According to company law applicable in Malaysia, the highest authority in a company would be the board of directors. The board, in turn, is allowed by virtue of law to appoint board committees, such as an investment committee, an audit committee, and others. As for the IFIs, the board can also appoint a special committee, namely the Shariah Committee, whose main function is the oversight of all Shariah-related matters. However, despite the fact that the Shariah Committee is appointed by the board, it does not mean that they cannot be independent from the board. It is important to understand that the Shariah Committee has the highest authority in the institution when it comes to Shariah-related matters. In this case, the board of directors must give due regard to any decision made by the Shariah Committee on any Shariah issue relating to the carrying on of the business, affairs, or activities of the institution.

All interviewees further reasoned that there is a very clear distribution of functions and authority between the board and the Shariah Committee. It is evident that Shariah-related issues fall under the jurisdiction of the Shariah Committee, and in this regard the board of directors has no right to overwrite the decisions of the Shariah Committee. Should there be dispute between the two bodies, the subject matter shall be forwarded to the Shariah Advisory Council (SAC) of Bank Negara Malaysia, who has the highest authority in Shariah-related matters governing the IFIs in Malaysia. The SAC will then examine the subject matter on a case-by-case basis. Any decision by the SAC will then be final and binding on that particular IFI.

When asked on whether the Shariah Committee members might feel obliged to go with any request from the board or management which may contradict with Shariah, I5 responded:

“... we cannot agree at the expense of Shariah, we cannot do that. We, the Shariah Committee, we have a strong committee, we are strong with our views...”

However, I5 added that if the board does not agree with certain issues highlighted by the Shariah Committee, further discussion may be conducted to find common ground of understanding. I5 said:

“... we go for some alternatives, but these alternatives are still made sure to be something which does not contradict to Shariah... Shariah Committee members have to be very wise in terms of making decision that is not only purely Shariah compliant, but at the same time, it is also aligned with the business decisions.”

As explained earlier, any decision notified by the Shariah Committee shall be given due regard by the board of directors. In support to the above argument, I3 added that it boils down to the respect accorded to the Shariah Committee by the board of directors. If due respect is given, then independence would not be an issue even if the Shariah Committee is positioned to be reporting to the BOD in the Shariah Governance structure. The findings here also resonate with the claim made by Mohamad (2019) who also added that this issue will be addressed because the Shariah Committee will be required to establish a certain policy in making its Shariah decisions.

The perception of Shariah Committee members of their own independence despite being nominated and remunerated by the board

In view of the foregoing discussion, the term ‘independence’ is discussed in the context of the ability of the Shariah Committee members to make decisions without being influenced by the board of directors and top management. Based on the feedback received from the interviews, all interviewees clearly stated that regardless of the fact that they are nominated and remunerated by the institution whose highest authority is the board of directors, their actions and decisions remain free from any pressure and influence from the board of directors. Repeatedly, they argued that although the board has the overall highest authority, any decision-making for Shariah-related matters is still clearly within the purview of the Shariah Committee.

I7 elaborated further on the issue of whether the independence of Shariah Committee is affected by the fact that they remunerated by the IFIs. In an example given, the independence of consultant and external auditors are not compromised just because they are being paid for their services. They also should not feel obliged to cater to the needs and wants of the board of directors at the expense of integrity. Similarly, the Shariah Committee is also bound by the same code of ethics and professionalism. In fact, the Shariah Committee should be seen as even more independent because they are explicitly held to be accountable to Allah in carrying out their duties.

In addition, I3 stated that the remuneration may only compensate for the effort and resources that they spend in carrying out their duties. The remuneration certainly does not match the weight of liability and responsibility that they have to undertake as the Shariah Committee members. As highlighted by I3:

“The remuneration is a small thing compared to the work, liabilities, and responsibilities. So, if people say we are not independent because of the remuneration that Shariah Committee members receive, I think that is not really accurate.”

As for the nomination issue, all interviewees are consistent in their opinions, whereby Shariah Committee should not be susceptible to the fear of being terminated by the board of directors. The Shariah Committee should not be intimidated by the board and the top management because their position is protected by Bank Negara Malaysia, in the sense that the IFIs cannot simply terminate any of the Shariah Committee members without giving any concrete reason. If the institution wants to terminate any of its Shariah Committee members, the board would have to formally submit the justifications for such an action to Bank Negara Malaysia. Acceptable reasons are normally related to non-performance, lack of contribution, poor attendance, et cetera. It is only upon thorough examination and approval by Bank Negara Malaysia that any termination could take effect. Therefore, the Shariah Committee members should always be firm in voicing out their opinions and concerns with regards to Shariah matters. In short, from a regulatory perspective, the Shariah Committee can be independent from the board and the top management in making its judgments and decisions.

There are also other reasons which have been highlighted by the interviewees to justify their independence despite the remuneration and nomination issue. First, theoretically, the Shariah Committee has a very high responsibility in upholding the Shariah principles for the benefit of ummah. Therefore, their conscience towards Allah S.W.T. would likely prevent them from making any decision that is against the Shariah. As highlighted by I3:

“... we are accountable to Allah SWT. We are liable to Allah SWT. So, if we decide or if we do something against Shariah because of certain interest or benefits, we are answerable to Allah SWT.”

Another significant feature of Shariah governance is the man-to-God accountability. Those who are involved in this process are not only answerable to the stakeholders of the company, but are ultimately accountable to Allah. With this additional aspect of accountability being explicitly spelled out as part of Shariah governance, it emanates a sense of trustworthiness and a sense of responsibility to search deeper, in order to give opinions without any oppression.

Second, the Shariah Committee normally consists of three to five members. Therefore, it is difficult for the board to influence the opinion of all members to be in favour of its requests. Ultimately, the final decision is still up to the majority of the Committee. I3 pointed out that:

“Maybe you can influence one of them, but not all... The decision is ruled by majority. Even if the Chairman said yes but if the rest said no, it still cannot influence any decision.”

Finally, independence is deemed to be not much of an issue for the Shariah Committee because they are not permanent and full-time employees of the IFIs. I3 highlighted this in his response:

“In other words, they have total independence in making any decision because they are not full-time staff, they are not liable to the management. Most of them have full time job as lecturer, researcher, in another institution. They are only part timers. So, it does not affect their independence.”

Therefore, they should not fear making decisions that are against the will of the board in order to uphold the Shariah principles. The conflict might be more likely to exist if they were full-time staff, although by principle, the priority should still be given to the Shariah.

Representative from the board or top management in the Shariah Committee meetings

Another concern arises when the Shariah Committee meetings are sometimes attended by representatives from the board or top management. It is known that the Shariah Committee and the board of directors may have different priorities. For the Shariah Committee, its priority should always be Shariah compliance, whilst for the latter the priority is normally the wealth of the shareholders. Given the concerns about authority as discussed above, it is argued that the presence of board members or top management in Shariah Committee meetings may affect the objectivity of the Shariah Committee members in their decision-making process. This concern was voiced out to the respondents and their opinions on this matter were sought.

This situation can be viewed from two perspectives. On the one hand, there is a possibility that the presence of the board member or management could influence the decisions to be in their favour. On the other hand, their presence is mainly intended to facilitate the exchange of knowledge and information. Between the two, the respondents were generally more inclined towards the second perspective. For I2, he is not wavered by whomever that sits in the Shariah Committee meeting, even if it is high positioned personnel. For him, the most important thing is the integrity of the decisions they make. I2 said:

“I do not know about the rest, but for me, although it was the Chairman who joined the meeting, it does not matter. What is important to me is the hukum”.

In addition to this, I5 opined that it is important for the CEO to attend the Shariah Committee meetings because the CEO would be the best person to bridge the gap between the Shariah Committee and the board of directors. Basically, all respondents unanimously agreed that the attendance of these representatives in the Shariah Committee meeting is to enable explanations to be given to the Shariah members, as well as to obtain explanations from the Shariah Committee with regards to Shariah-related decisions. It benefits both bodies of authority. The Shariah Committee can better understand the issue before making its decision, while the board or top management can better understand the rationale behind every decision of the Shariah Committee so that they can convey such information to their colleagues. I4 continued to relate this to his personal experience:

“Every month, it (Shariah Committee meeting) is very interesting. The directors will come and sit in, and they want to learn. Actually, they came to learn. And this doesn't happen to my other companies. The Japanese, you know, they take things really seriously. They even asked about the semi colon. You know, they are very thorough because they really want to make sure it works. So, I really respect them and they're prepared to go through the process... But I did indicate to the Shariah Secretariat. I said, can we have some sessions without the board? Especially when it deals with pure Shariah decisions.”

The above response suggested that some board members have demonstrated keen interest to learn and understand the Shariah issues at a deeper level. Interestingly, the interest is sometimes coming from the foreign non-Muslim directors. In line with Abd Hamid (2020) which states that there is always room for discussion between the board and the Shariah Committee, the interviewees in this study highlighted that the board has always given due regard to any decision made by the Shariah Committee. If the board requires further clarification, they will request for further discussion. Normally, in their subsequent discussion, the board will provide new information and new context which might previously be unknown to the Shariah Committee. Thereafter, the Shariah Committee will be allowed to further deliberate and decide again. This is because the Shariah Committee operates based on the information that is presented to it. The more information they obtain, the more robust would their opinion be. However, on hindsight, is it possible that any indirect influence is imposed when the board actually asks for further discussion? As far as the

respondents are concerned, they take the request in good faith, which is genuinely to cater to the issue at hand without compromising the Shariah principles.

Involvement of the Shariah Committee member in the product development process

Similarly, when discussing the situation where some of the Shariah Committee members are called to help the Shariah department to develop products, I7 explained that the primary objective for this practice is the knowledge sharing and knowledge transfer from the experts in the Shariah Committee to the staff in the Shariah department. I7 pointed out:

“The best is to include Shariah people as well, because the level of knowledge of the product people are still not as good as the Shariah Committee. They might have the knowledge, but probably a bit limited... So, by having them (Shariah Committee) deliberating in the group together, that could influence the product structure.”

The same sentiment was shared by I4 who mentioned:

“If you stop the Shariah Committee from being involved in the enhancement, a lot of projects will be stalled. It is the issue of knowledge transfer.”

On another note, I4 mentioned that although it seems like it does not sit well with the governance process for some of the Shariah Committee members to be involved in the product development process, audit will still be conducted in order to ensure that the products have gone through proper development stages before they are approved. Furthermore, the paperwork process may have to be repeatedly revised if there is no input from the ShC members, and this could waste a lot of time. Consequently, it will slow down the industry's growth and development. Other interviewees also agreed that the industry is currently still in the process of convergence between the Shariah and the operations. Therefore, with very few Shariah scholars in this industry, the knowledge transfer process is deemed to be crucial. Furthermore, the interviewees firmly believe in the integrity of the Shariah Committee in carrying out its duties.

In addition, it is also argued that not all Shariah Committee members are called upon to help with product development. Therefore, when the products are brought to the Shariah Committee for endorsement, the other Shariah Committee members who were not involved can provide the check and balance for the process. I3 asserted that:

“... if the product development team develops the product from the start until the end, and then only they go to Shariah Committee, the Shariah Committee may disapprove the product. Then, they have to do it again. So, the question of whether it will conflict the Shariah Committee member or not.. my view, it is not. Because usually they only invite one or two Shariah Committee members that are very resourceful and very knowledgeable to be involved, to get their feedback and opinion. When they table the product to Shariah Committee, the rest of the committee members need to give their decisions. Not only this one or two who were involved since the beginning. No. Everyone. They can say yes or no. So, I think, wallahua 'lam, I think there is no issue of independence.”

The fact that some of the Shariah Committee members are involved in the product development does not mean that the product would be automatically approved at the institution level. Furthermore, there is another level of approval which would be made at the BNM level by the SAC members. I3 added:

“Even though it complies with Shariah, sometimes this product is not approved by Bank Negara. So, they need to ensure, they need to seek the assistance and advice from the Shariah Committee on how to ensure that this product is not only Shariah compliant, but also will be approved by Bank Negara Malaysia. Especially for new products.”

In addition, this issue has also been addressed by BNM (2019) in its recent Shariah Governance Policy, i.e. 11.9 - In relation to paragraph 10.13, if a matter to be brought before the Shariah committee gives rise to a conflict of interest to any Shariah committee members, the Shariah committee must excuse himself from the discussion and abstain from voting on that particular matter.

Recommendation for a Shariah Committee member to be appointed as a board member

As stipulated under Section II: Oversight, Accountability & Responsibility of the BNM Shariah Governance Framework (SGF) 2011:

• Principle 2.4 – The board may consider appointing at least one member of the Shariah Committee as a member of the board that could serve as a ‘bridge’ between the board and the Shariah Committee. The presence of a director with sound Shariah knowledge would foster greater understanding and appreciation amongst the board members on the decisions made by the Shariah Committee.

This has also been iterated in the recent BNM Shariah Governance Policy (2019):

• 12.10 – The board is encouraged to appoint a Shariah committee member as a board member. The Shariah committee member appointed is expected to foster closer integration of Shariah governance consideration within the business and risk strategy of the IFI.

The principle accentuates a valid reason for the aforementioned recommendation. Again, the notion of knowledge sharing and knowledge transfer to bridge the gap between the BOD and ShC plays an important role. This is in line with the findings from Hussain, Hassan, and Azhar (2016), despite acknowledging the potential legal conflicts from the appointment. Further added by an interviewee:

“So, I think it’s a good opportunity to learn and to educate them. And also, we can do this by rotation... So, by doing it in rotations, it can avoid any conflict, and secondly it can also educate the Shariah Committee at the same time. So, they have the opportunity to look, to understand and to listen to the discussion.”

However, there is concern that the appointed Shariah Committee member cum board of director would tend to act more like a board director rather than giving priority to Shariah compliance. I4, who happened to be wearing both hats, stated that someone in such a position needs to be very clear of his or her dual roles. As a board member, one has the business call whose main concern is to consider the implications on the shareholders’ wealth. Meanwhile, a Shariah Committee member shall always put Shariah compliance as his top priority. One may ask, which aspect is more important? Clearly now, with heavy penalties under the IFSA 2013, all three parties (the board, top management and the Shariah Committee) are jointly liable for the upholding of the Shariah compliance. Therefore, in Islamic financial institutions like the takaful operators, it is evident that Shariah compliance shall not be compromised in favour of any other factors.

The bottom line is that one should always be aware of his priorities. As for the Shariah Committee member, at the instance of being appointed as a board member, the priority is still and should always be to uphold the Shariah principles. Everything else comes second.

CONCLUSION

The findings indicate that it is unanimously agreed by the respondents that there is no significant pressure, neither from the board of directors nor the top management, on the Shariah Committee members when making any decision related to Shariah matters. Although there has been some negative public perception about how the Shariah Committee has to abide by the needs of the board and the top management, the respondents insist that such is not true. In a very convincing and persuasive manner, they affirm their independence from the board of directors and top management when making any Shariah-related decision. It is true that in some cases, the board and management revert to the Shariah Committee with regards to certain decisions. However, the respondents stated that such practice is more for the purpose of getting clarification rather than to influence the Shariah Committee. This finding reflects the knowledge diffusion between these three key players, which is indeed positive for the industry development and better governance of the IFIs. Therefore, it can be concluded that the Shariah Committee has total freedom in expressing its opinion regarding any Shariah-related matters without being pressured or adversely influenced by the board and top management. This is not only because they indeed have the final say for the Shariah matters under the law, but it is also because for the Shariah Committee, their accountability to Allah supersedes their accountability to man. For the existing and potential customers who have doubts on the independence of the Shariah Committee, hopefully this study would be able to increase their confidence with regards to the integrity of these takaful operators in upholding Shariah in their business.

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