

Shariah Minds in Islamic Finance

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Shariah Minds in Islamic Finance, written by Datuk Dr Mohd Daud Bakar, a global practising Islamic scholar, won the Islamic Finance Book of the Year 2016 awarded by Global Islamic Finance Award (GIFA) in 2016. It is the first ever book which provides a rare inside look and accounts of the many facets of the career of a Shariah advisor. The writer is a very influential and experienced person who has very deep knowledge in the field of Shariah. He is also an authoritative figure as a Shariah scholar in Islamic finance. He has been devoted to shaping the world of Islamic finance and has been actively involved in various basic works over the past two decades. From his writing in this book, I am confident that the author is very keen to convey and share the knowledge and experience he has for the benefit of others in order to further develop the

Islamic finance industry and meet the established Shariah requirements.

The book contains 13 chapters. The first four chapters focus on the definition, roles, expectations and significance of Shariah scholars in Islamic finance. Chapters 5 and 6 discuss the methodology embraced by Shariah scholars as well as the thinking process from the occurrence of a problem to the issuance of *fatwā* or ruling. Chapter 7 discusses the streamlining of the reasoning leading to differences in *fatwā*. These three chapters are the main part of the book as they explain the process of Shariah minds. The following chapters namely, 8, 9 and 10, are devoted to resolving several issues and the negative thoughts of the public towards the performance and contributions of Shariah scholars. The remaining three chapters are the

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personal views and experiences of the author with regard to the author's wish list, career path and the daily routine of Shariah scholars.

The book also articulates the real-life stories experienced by the author himself, encompassing the way of the thinking of Shariah scholars and organizing their thinking in dealing with the Islamic finance industry. It revolves around product, support, audit, compliance, oversight, just to name a few. Readers are able to experience a remarkable enlightenment from this book as it explores the issues and conflicts that occur among Shariah scholars. In addition, the book also deliberates on the importance arising from some Shariah board representation by a number of scholars, the role and behaviour of *fatwā*, the future development of scholars, Shariah professional profit schemes and many more perceptions of Shariah scholars.

The earlier parts of the book focus on the definition of Shariah scholars, roles, requirements and qualifications to become a Shariah scholar. In addition, they also provide information on the characters of Shariah scholars and the challenges with regard to being an effective Shariah advisor in the financial sector. There are so many calls to produce more Shariah scholars for the industry. Therefore, extensive reading of all the *fatwā* and resolutions issued by many Shariah boards around the world will help Shariah scholars to

enter the world of Shariah advisory. As time progresses, a Shariah advisor needs to elevate their knowledge on Islamic Finance to the level needed to enter the Shariah advisory world. According to the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the Shariah board is entrusted with the duty of directing, reviewing and supervising the activities of Islamic financial institutions.

Indeterminately, the main function of Shariah scholars is to provide assurance on Shariah compliance. Shariah scholars also have to engage with other scholars to instil the culture of Internal Shariah Compliance. This is because Shariah advisors have to provide Shariah endorsement when products or services are launched and to manage and develop their Islamic Finance businesses. As Muslim economists, they need to contribute more by combining economics and Shariah as well as corporate finance. Muslim economists must not only think of Shariah compliance of the contracts, but must also be able to comprehend the data and make inferential conclusions on that particular data. The book also offers constructive assessments and insights of a Shariah advisor for the improvement of Shariah advisory services and the industry as a whole.

Next, the need is for Shariah boards to share their expertise, knowledge, intellectual capabilities as well as to provide a third-party

assurance that Shariah compliance is not being compromised. This is because of the necessity to adhere to the principle of transparency, integrity, and good governance that must be implemented at all levels. Additionally, Shariah scholars must be well trained and equipped professionally with a sound foundation of the proliferation of knowledge in Islamic finance. Moreover, they have to acquire all the necessary skills, both hard and soft, in order to navigate the expectations of the industry. At the same time, the book communicates the need for greater standards of governance. It emphasizes the duties and responsibilities of care as well as the diligence and skills that Shariah scholars must possess.

In the book, the author specifies that the objectives of Shariah scholars are to look at the *Maqā'id al-Sharī'ah* and to determine the legality of specific financial contracts. However, some Shariah scholars seem to overstate the technical aspects of financial contracts. Due to this, they seem to regulate the overall impact of such contracts upon the realization of Shariah objectives in the long run, as part and parcel of the general equilibrium of the economy. At the same time, the author tends to limit the scope of the discussions on *Maqā'id al-Sharī'ah* with regard to poverty eradication and equitable distribution as addressed by Muslim economists, hence, disregarding many other

economic goals in harmony with *Maqā'id al-Sharī'ah*. The author also emphasises that wealth creation is more fundamental to distributive goals emphasized by Muslim economists. Nonetheless, he may have overlooked that Muslim economists view that wealth should be created from real activities as finance only plays a supportive role.

Shariah scholars are constantly under pressure as they are being called by the Shariah boards, to issue *fatwā* and Shariah resolutions to avoid any conflicts that could accommodate the many imperfect environments in the financial sector. Among the conflicts that have occurred are the *fatwā* dispute between scholars based in Malaysia and scholars based in the Gulf Cooperation Council (GCC) countries as well as the monopoly of some leading Shariah scholars. As rules have been postulated, Shariah scholars will have a common understanding that they will make decision based on two primary sources of Islam namely, *Al-Quran* and *As-Sunnah* or Traditions of Prophet Muhammad (PBUH). Additionally, they should also be aware of the four different schools of law in the Sunni world. For example, the general Shariah principle in financial dealings, among others are prohibitions of *riba*, *maisir* and *gharar*. Hence, these divine prohibitions are also attributable to other practices such as gambling, and bribery as well as criminology such as theft and armed robbery.



Sustainably, apart from developing young and new scholars, senior Shariah scholars must also be able to see the potential of engaging with these young and dynamic scholars and grooming them for the betterment of the industry. The reason why senior Shariah scholars have to contribute to this active, purposeful and impactful coaching or engagement is to transform these new scholars as the most qualified Shariah scholars to the next level.

Furthermore, readers are able to enjoy the information and inspiration provided by the book, particularly for the new generation who wish to become Shariah scholars. Among them are invaluable trade tips and secrets from the author's own industry experience that has spanned more than twenty years.

With the contributions provided by Shariah scholars, the public is very confident that Shariah filtering and Shariah due diligence have been well performed by a group of Shariah experts. It will also increase public confidence in the process of ensuring Shariah compliance and maintaining compliance all the way. Hence, the presence of Shariah scholars in the

industry helps to shape a kind of Islamic finance image and branding in the minds of the audience. It has also put Islamic finance on the stage.

To conclude, the Shariah mind works mostly by following a legal algorithm shaped by various maxims in performing analogical analysis between new financial products and the classical *fiqh* rulings, while the aggregate socio-economic impact is simply ignored. This description fits Shariah advisory board members, but not necessarily Shariah scholars who should be at the forefront of finding solutions and suggesting improvements. Therefore, it is unsurprising that the roles of Shariah scholars in Islamic finance are limited to reactionary behaviour towards industry demands instead of a progressive attitude towards promoting the objectives of Shariah in the market. Shariah scholars are in serious need of a wake-up call from the industry to move on, and this suggests that they lack creativity to initiate the efforts to look for solutions inherent in revelation. Nevertheless, the author suggests that Shariah scholars should be actively involved with the task of instilling the culture of internal Shariah compliance in financial institutions ■