

SHARI'A GUIDELINES FOR ISLAMIC FINANCIAL ENGINEERING –ECONOMIC -JURISPRUDENCE STUDY

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Research Summary

Financial engineering is one of the vital subjects nowadays, it has been transferred into the Islamic financial market and introduced in Islamic banks it complies with Islamic principles and conventions in terms of investment mechanisms, sponsorship of its products and ethics, Hence, the disclosure of these principles and conventions from the Quran and Sunnah and its implementation on the contemporary financial products, has become a legitimate necessity to achieve because religious scholars have made a great deal effort through ages to find solutions for new occurrences Muslims face.

This research comes as a reaction to repeated calls by many experts and scholars in Islamic financial industry to revise the status of Islamic financial products and to lay down rules that can live up with the principles of Shari'a for the service and welfare of Muslim societies and for contributing into the development of the world, which Muslim are by de jure commanded to achieve.

Islamic financial engineering is one of the contemporary issues that necessitate a deliberate study based on shari'a and ethical codes. Therefore, it is an investigation that tries to explore the aforementioned principles.

Financial institutions and Islamic banks are facing great challenges. To overcome such challenges, there should be a tremendous effort based on deliberate study able to find alternative and developed financial mechanisms, so as to keep pace with the requirements of the contemporary financial markets. In addition, there should be a thorough study as to develop overarching rules and principles which will serve and pave the way to innovation and creativity in designing financial products and services by taking into account the principles and objectives of Shari'a and the protection involved against infringements that may cause risk to Islamic banking system and therefore its failure.

As a result, this foundational study has been set to help reduce potential risks and fill the gaps. In addition, the researcher has made an attempt to relate the objectives and universal rules of shari'a with contemporary financial transactions based on practical analysis of samples that have been innovated in financial transactions founded on Islamic jurisprudential social and moral perspectives in order to set forth rules and principles, particular as well as

universal, that can guide recurring transaction operations in Islamic financial engineering so as to improve and keep this field in compliance with Shari'a, and management techniques after making some corrections.

The research proposal aims at establishing three points:

- To explain and set foundation appertains to the significance of the principles of Shari'a in regulating the financial transactions and products
- To study principles of the contemporary financial products
- To set up particular principles able to create service and Islamic financial products.

The research composes of an introduction, four chapters and a conclusion that includes findings, recommendations and table of contents. The first chapter comes after an introduction, in which the researcher explains, in detail, the research proposal which contains the following: problem statement, hypothesis, scope of the study, literature review, methodology and other steps.

The researcher in the first chapter studies Islamic legal regulations, concepts and terminologies related to it. Besides, he explains the fundamental differences between those concepts and the given terminologies. Furthermore, he does not only shed light on types of Islamic legal regulations: the particular one and the universal one but he also elucidates the concept of objectives of shari'a and its relationship with Islamic finance.

In the second chapter, the researcher highlights the concept of financial engineering, its definition and its scope. In the third chapter, however, he explains the rules of innovation for Islamic financial products. He also mentions some suggested rules for regulating innovation in accordance with Islamic principles and objectives.

In the final chapter, the researcher mentioned scholarly sources and social responsibility for innovating Islamic financial products, including the basic regulating criterion, the concept of social responsibility, and the role of Islamic

financial institutions to consider social affairs and public welfare.

In the conclusion, the researcher stated the following results

- Islamic principles are the limits and criteria that are used to measure all necessary provisions, to determine the quality of a transaction and its rulings in terms of lawfulness and unlawfulness, furthermore. They also determine the necessary procedures in conducting any transaction or process— whether this is banking, financial, or devotional action.
- The Maqasid are principles that are inherent in all religions. Therefore, every religious ordinance has a rationale behind it—whether the given objective is to occur now or in the future for the well-being of mankind and for keeping evil, whatsoever, away from them. This is the objective that has been set forth in financial transactions. As for the devotional actions, the objective of a given ordinance may be well-known and conceivable to some people and indiscernible to others; all depends on the intellectual level of each individual to discern and understand. The objective of some prescriptions, however, many unknown and indiscernible; therefore, there is no any harm not knowing it, because, unlike business transactions, knowing objectives behind devotional actions is not necessary.
- Creation of a financial mechanism that can solve an existing or potential problem and that can combine between legitimate credibility and economic efficiency in order to respond to the demands of the market and society. It is an attempt to find legitimate exits so as to put an end to the obstacles facing financial transactions, taking into account the shari'a rulings and making sure its fundamental principles are not evaded within a frame of Islam principles and regulations and within a frame of its objectives—universal as well as particular. This is to preserve and maintain necessities and meet the demands of individuals with a consideration of economic efficiency and social values.
- The financial innovation is a contemporary terminology which, in short, means: “the creation of something new or restoration and renovation of something old that would appear in a new outlook. This is what is meant by Islamic financial engineering. In fact, it is a type of religious revivalism, particularly on business and financial transactions.
- Innovation regulations are considered as religious, judicial or moral criteria and standards in all cases, in order to serve shari'a objectives and universal rules that guide them. That is to say, no infringement of these rules is allowed, whatsoever.
- The fundamental rules of shari'a are against any actions of dodge on Islamic rulings and the Islamic financial engineering, mainly because such behavior is an attempt to cover conventional products, in the name of Islamic financial engineering, with a cover that appears in the surface to be Islamic but which appear fake after a close examination.
- Engineering innovation is important in Islamic finance because it help get rid of usurious financial transactions in the world, by replacing it with another that is compatible with Islamic law t in terms of origin, continuity and end.
- When dealing with any financial transaction one must take into account the value-added aspect of that transaction irrespective of whether this addition is partial as in the case of institution or universal as in the case of economic dimension of the state. There also should be social responsibility that is set by Islamic Financial institution.
- The Takaful insurance and Bay Murabah lil amr bishira (cost plus profit sale for purchaser) are innovative forms in Islamic financial transactions, that have met the public interests with economic efficiency and legitimate credibility, acceptable to some extent
- The rule that reads “damage and benefit go together” is a key rule founded on the principle of relating the merit of profit with the endurance of risks. This is what radically distinguishes the conventional bank system based on guaranteed profit by securing the capital from the Islamic bank system based on shared profit and loss. Moreover, it is a link between the two letters: “R&R” –the first “R” is represents the English word ‘risk’, whereas the second “R” represents ‘revenue’ which is profit in Arabic; because the halal profit is what has been generated from business which the bank should accountable for the risks. This does not mean that risking is desirable by itself; rather a matter of either achieving success in business or being a liability.
- To create any new financial transaction, one should bear in mind the ensuing policies:
- There should be valid reasons for financial innovation.
- The financial innovation should be based on scopes that allow Ijtihad such as in matters related to business—not religious and ritual matters.
- To combine between the legitimacy of purpose and that of means.
- To combine between the objectives of shari'a and the interest of the man concerned.
- It should achieve a valid interest that complies with the shari'a principles: whether this interest is public or private.
- It should not be a means to something that is forbidden by the shari'a

- It should not contain any forbidden financial trick that leads to making something that is halal (allowed) haram (prohibited).
- It should not be something that purely harmful or whose harm is greater than the expected good.
- The criteria set by the Islamic law to study the financial engineering are principles and rules that one should abide by if he/she aims to develop a sample in Islamic finance. This requires adequate knowledge in both Shari'a and finance; because scholars have stated that issuing a legal regulation for a given case necessitates a discernment of that case.
- One of the most key prerequisites for those willing to lay the foundation of or introduce engineering samples for current financial transactions is to be well-informed in the principles of shari'a, particularly Islamic jurisprudence and its foundations in order to discern the rules of argumentation, methodologies of verdict extraction, regulations of how ordinance is made, and rules of the use of analogy to draw out particular verdicts, based on occurrences and facts, from universal rules. In addition, they must know Arabic as it is a key for discerning Islamic law. In fact, it serves as a referee in case of controversy and contention. Hence, a researcher should have adequate knowledge about the meanings of the words and textual expressions of a given inquiry by denotation or implication. He also must be well-acquainted with current financial sciences and how its implications in Islamic financial institutions. In fact, he must know the conventions and laws of stock markets.
- The concept of social duty in Islamic banks is devotional and moral. Therefore, the chief executive officers of Islamic banks contribute to the formation, improvement, protection of the community as a whole. They also take part in serving the social welfare and goals for individuals via formulation of procedures and activation of methods and techniques to achieve these goals. They contribute in creating solidarity, cooperation, development, social awareness and overarching growth. All this for the sake of seeking the satisfaction of Allah, the Almighty.
- Social duty is vital in the activities set by Islamic banking. This comprises moral and legal duty. Hence, the social duty of the institution may be to generate material profit for the society, through activities set by the Islamic financial institutions; activities such as the institution's participation in charitable or non-profitable developmental projects. The activities may take place in a way people can benefit from, such as creating job opportunities for the jobless, and establishing investment projects for the low-income earners, and the like. It is also worthy of note that Islamic Banks must not exercise activities that will cause harm to the given society.
- Among the duties that Islamic financial banks as well as institutions hold is to set out social priorities in investment, finance, social welfare. They also have to focus on value-added elements they can contribute into the universal economic growth. Furthermore, they should make sure the needs of the people are fulfilled. All this should be carried out within a frame of steady-scheme based on prioritization. However, the reality on the ground shows the opposite of what Islamic banks should maintain as prioritization. That is to say that all what Islamic banks present as finance terms is Murabaha (cost plus sale); though, Murabaha is construed as the least used methods in structuring a universal economic system, let alone its failure to fulfill the requirements of social duty. This, consequently, has raised many questions about how the contract of Murabaha is formulated and questioned regarding its economic as well as social credibility.