

THE INDEPENDENCE OF THE INTERNAL SHARIA AUDIT IN ISLAMIC BANKS

Emad Ali Meeloud Abdullah ⁱ, Shahir Akram Hassan ⁱⁱ & Zakaria Bahari ⁱⁱⁱ

ⁱ (*Corresponding author*). PhD Student, Centre For Islamic Development Management Studies, Universiti Sains Malaysia. (USM). Emadalimeelod.8282@gmail.com

ⁱⁱ Associate Professor, Centre For Islamic Development Management Studies, Universiti Sains Malaysia (USM). shahirakram@usm.my

ⁱⁱⁱ Associate Professor, Centre For Islamic Development Management Studies, Universiti Sains Malaysia (USM). bzak@usm.my

Abstract	<p><i>Islamic banks have become urgent for every Islamic society that rejects dealing with usury and desires to apply Islamic law to the products they provide. There is no doubt that Islamic banks, with this distinctive characteristic that distinguishes them from other traditional banks, are exposed to a set of challenges facing the conduct of their method of operation, and the most prominent of these challenges is the independence of auditors. Therefore, this study aims to highlight the extent of the independence of Sharia auditing in promoting Islamic banking by defining the relationship between Sharia auditors and the management of Islamic banks, the effects, such as the method of employment and wage determination, and the impact that relationship reflects on some aspects of Islamic banking work. This study comes within the framework of interest in Sharia auditing because of its importance to the application of Islamic Sharia. To ensure this, the auditors' work must be characterised by complete independence and therefore will depend on the qualitative study and review of previous studies to achieve the objectives of the study. The study concluded that the complete Sharia audit process cannot be achieved if the Sharia auditors are not completely and truly independent. This reflects that the Sharia audit profession is still unregulated and is affected by senior management and the entities that appoint and employ them. To ensure the procedures of the Sharia audit process and the implementation of the provisions of Islamic Sharia, it is necessary to enhance the independence of Sharia auditors by appointing and dismissing them by the state, Sharia Supervision, or Dar Al-Fatwa, and adopting Sharia standards issued by the Accounting and Auditing Organisation for Islamic Financial Institutions in the Sharia investigation process to enhance the independence of Sharia auditors.</i></p> <p><i>Keywords: Independence, Sharia, Internal, Audits, Islamic Banks.</i></p>
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INTRODUCTION

Islamic banks were established in response to the desires and aspirations of Muslims to conduct business in accordance with Islamic law. The need for legal audits to win clients has increased due to the massive expansion witnessed by the Islamic financial sector, the growth of Islamic banking operations, and the spread of these institutions. The need for care increased with the expansion and growth of Islamic banks' operations. Independent Sharia auditors must be appointed if banks want to gain the trust of their customers, operate in accordance with Islamic Sharia, as well as provide services that are consistent with the principles of Islamic Sharia (Abdullah & Hassan, 2022), and ensure the provision of services that are consistent with the principles of Islamic Sharia. Since it is compatible

with the objectives of Islamic Sharia, independent Sharia auditors must be appointed, because Sharia auditing is of great importance in Islamic banks, as awareness is increasing in institutions. Islamic finance requires that these institutions and banks contribute to preventing dealing with usury (interest) and achieving the goals and objectives of Islamic Sharia. This requires that the Sharia audit process be independent and regular in Islamic institutions and banks, and there is also a need to develop a useful framework for Sharia audit to ensure the effectiveness of Sharia compliance goals in financial institutions. And international banking services, which in turn can contribute positively to adherence to the objectives of Islamic Sharia in society. Their opinion regarding the soundness of Islamic banking products is a legitimate opinion, and therefore independence standards should be applied as accurately as possible. Therefore, this study aims to highlight the extent of the independence of Sharia audit in enhancing Islamic banking by identifying the relationship between Sharia auditors and the management of Islamic banks and influences such as the method of recruitment and wage determination, and the impact that results from that. The following is a presentation of the literature review of the study.

ISLAMIC BANKS

The beginnings of Islamic banking, in its broad sense, go back to the early days of the establishment of the Islamic state. The contemplator of Islamic history finds in its applications some concepts of Islamic banking operations (Mustafa, 2012).

This is to keep away from usury and suspicious transactions, according to the Almighty's saying: ﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ ﴾. (al-Baqarah: 278). This means, that Allah Almighty commands His believing servants to fear Him, forbidding them that which brings them closer to His wrath and distances them from His pleasure. He said: ﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ ﴾ which means, fear Him and watch what you do ﴿ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا ﴾ which means: leave what you owe people of excess on capital, after this warning ﴿ إِن كُنْتُمْ مُؤْمِنِينَ ﴾ which means: with what God has legislated for you in terms of permitting selling, prohibiting usury, and so on (Ibn Kathir, 2000).

The last quarter of the twentieth century witnessed the birth of Islamic banks, which appeared to be a practical reality in response to the desire of a wide segment of Muslims who concealed their extreme embarrassment in dealing with traditional banks (Mustafa, 2012), as the first beginnings of the experience of Islamic banking were in 1963, with the experience of the Hajj Fund in Malaysia and savings banks in Egypt.

It launched in Malaysia what is known as savings funds without usurious interest to help Muslims perform the Hajj, followed by serious attempts with organized organizations and systematic thinking to develop financing formulas and methods that adhere to the provisions of Islamic Sharia in Egypt, Pakistan, and the Emirates, while 1963 AD established savings banks that provide banking business and services under the supervision of Dr. Ahmed Al-Najjar (Alshaebi, 2021). It can be said that the first integrated Islamic bank in terms of banking business with a commercial field based on Islamic law is the Dubai Islamic Bank, which was established in 1975, and was considered a quantum leap in the field of Islamic banking and the basic building block that banks followed successively in pushing towards the establishment of such banks. It was surprising that some Western banks followed by establishing a special department for Islamic transactions, especially some banks in Britain, and then other Western banks such as the British Bank and HSBC joined them (Khan et al, 2016).

It was defined (Al-Mousawi & Jawad, 2009) as a monetary institution that works to attract monetary resources from members of society and employ them effectively to ensure their glorification and growth within the framework of the agreed rules and provisions of Islamic law and in a way that serves the people of the nation and works to develop its economy.

To ensure the work of Islamic banks for the purposes of Islamic law and to provide products that are compatible with the provisions of Islamic law, there must be an independent legal audit that works with complete independence and objectivity in those

banks. Islamic banking must avoid financial instruments which contain the *riba* (interest), *gharar* (uncertainty), and *maysir* (gambling). Alternatively, various contracts are provided by fiqh muamalat, such as *bay'* (sale), *ijarah* (lease), and *kafalah* (guarantee), which can be adopted as modern financial instruments (Ishak & Asni, 2020).

SHARIA AUDIT IN ISLAMIC BANKS

Sharia audits gain the attention of Islamic banks, which are fully aware of their contribution to achieving the objectives of Islamic Sharia. The Sharia audit aims to ensure that the activities of Islamic banks are in line with the purposes of Islamic Sharia and that their operations do not contradict the rules and principles of Islamic Sharia. This requires that Sharia auditors be independent. Completely from management, to ensure that they express their opinion on Islamic products with full transparency, objectivity, and integrity of financial reports and irregularities that violate Islamic law. Muhammad (2007) defines Sharia audit as a systematic process of obtaining sufficient and relevant evidence to form an opinion on whether the subject matter, i.e., employees, processes, and financial as well as non-financial performance, is compatible with the rules of Islamic Sharia and principles widely accepted by the Islamic community and to submit reports from Stakeholders. Shariah auditing can be defined as the process of financial institutions that follow Islamic Shariah to the extent of their compliance with all activities, including contracts, risks, and financial statement operations. It consists of the persistence of financial institutions following Islamic Shariah's principles, policies, instructions, and provisions when carrying out activities (Khatib et al., 2022)

Kasim et al., (2009) said that the role of Sharia auditing in financial and banking institutions differs and is broader than its role in traditional organizations. This is because it has been extended to include compliance with Islamic Sharia; moreover, auditing in Islam is derived from the basic values of Islamic society and the traditional concept of meeting the purposes of Islamic law.

SHARIA AUDIT RESPONSIBILITIES

The Auditing Standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions state that to test compliance with the rules and principles of Islamic Sharia, the auditors must obtain sufficient and appropriate evidence that provides the auditor with reasonable assurance that the international financial institutions comply with the rules of Islamic Sharia and the principles, fatwas, rulings, and directives issued by the supervisory body Finance, and an auditor responsible for expressing his opinion on the financial statements of international financial institutions as described in the governance standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions (Yacoub, 2012).

The International Financial Standards Board (2006) stated in its statement on Sharia auditing that the audit committee of financial institutions that provide Islamic financial services should make every effort to ensure that auditors can understand compliance with the purposes of Islamic Sharia, depending where appropriate on the work done by internal auditors or auditors. The internal auditor and the internal auditor, or Sharia auditor, must work closely with the internal auditor to enhance the capabilities of the external auditors to conduct Sharia compliance reviews as part of their auditing processes, and most institutions that provide Islamic financial services have internal auditors or a legal reviewer of their own who do this review (Yaacob & Donglah, 2012).

To ensure the integrity and transparency of Sharia auditors in Islamic banks and to express their opinions impartially, they must be independent and provide products that are compatible with Islamic Sharia.

SHARIA AUDIT INDEPENDENCE

The forensic auditor must be impartial and independent because he weighs only the truth without weighing the rights of any of the parties that have a relationship with the account

he supervises. The Balance *وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ * أَلَّا تَطْغَوْا فِي الْمِيزَانِ * وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ* (al-Rahman: 8-9). *وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ* Meaning: justice *وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ* *وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ* means do not underestimate the weight, but rather fornicate with justice and fairness *وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ* that is, He created the heavens and the earth with truth and justice, so that all things are with truth and justice (Ibn Kathir, 2000).

The guardian must secure protection for him so that he can practice impartiality and independence. Allah Almighty said *وَلَا يَضَارَّ كَاتِبٌ وَلَا شَهِيدٌ* (al-Baqarah: 282). It means that he forbade the witness and the clerk to harm the rightful owner by refusing or asking for hard wages, and so on (al-Sa'di, 1988) protection takes the form of appointment and dismissal (Qantujji, 2015). Independence is when a neutral technical opinion begins with the fairness of the financial statements and the extent to which banks adhere to the provisions of Islamic Sharia.

Undoubtedly, the appointment and dismissal of the Sharia auditor and the determination of fees directly affect his independence and the performance of his work in the Sharia audit process in Islamic banks and institutions. The Sharia auditor is independent when he is not a shareholder in the bank, one of the members of the Board of Directors of the bank, or one of the employees in the subsidiaries of the bank during the past two years from the date of appointment, and he must not have a relationship up to the second degree with the senior executives and members of the board of directors of the bank.

The issue of adherence to professional ethics depends on the principle of religious law. Responsibility towards Allah must be the priority in consideration, followed by responsibility towards society, the profession, and superiors. Focusing on adherence to Sharia law provides good scrutiny through sincerity during the performance of professional duties and the pursuit of the satisfaction of Allah Almighty for good performance.

Through awareness of accountability before God and the Day of Resurrection, for example, a good Sharia auditor will refrain from committing any corruption or being convicted of any fraudulent activities, such as accepting a gift or service that would affect the independence of the Sharia auditor. A neutral technical opinion without this opinion being affected by any other external influences in addition, the auditor must adhere to the accounting and auditing standards issued by the Accounting and Auditing Organisation for Islamic Financial Institutions during the audit process (Yousef Basodan et al., 2016).

The Sharia auditor needs to enjoy intellectual independence and investigate fairness and objectivity in his work towards the parties benefiting from his mission by expressing a neutral opinion and not submitting to the influence of a party or doing work that contradicts objectivity and integrity. Considering that, the auditor is required to issue a report based on clear professional foundations and standards. In detail, matters that could affect the independence of the Sharia auditor, such as appointment, fees, dismissal, and family relations (Jasser, 2013).

Control Standard No. 1: Appointment, composition, and report of the Sharia Supervisory Board, paragraphs 3-8, mentioned that the Sharia auditor (the Sharia Supervisory Board of the institution) is appointed and dismissed by the shareholders in the General Assembly based on a recommendation from the Board of Directors of the institution, as stated in Standard No. 1: Paragraph 7, that the Shari'ah Supervisory Board should not include in its membership managers from the institution and should not include shareholders with an effective influence. This idea was confirmed by Standard No. (5) Paragraph (5, 97), where it was mentions that members of the Shari'ah Supervisory Board should not be In connection in any capacity with administrative decisions and management responsibilities in the institution, and when a member of the Sharia Supervisory Board is in the period of his assignment or the period preceding or directly preceding his assignment an employee of a client, partner, or worker with an Islamic financial institution, the period before judgments his assignment should not be less than Three years, and perhaps the most important paragraph is what Standard No. (5)

mentioned, paragraph (6), that the Sharia Supervisory Board should avoid possible and actual situations that prevent its ability to issue objective precomputable with Islamic Sharia's purpose judgments (Meshaal, 2015).

The independence of the internal Shariah auditor serves as a key attribute in the effective discharge of his duties in professional practice. The internal Shariah auditor effectuates a delicate balance since, while appointed by the management, the internal Shariah auditor is charged with reviewing the conduct of the same management. Potential conflicts of interest, to which the internal Shariah auditor may be subject, serve to erode his independence.

While conducting his work, such tensions risk undermining internal Shariah audit effectiveness as the undue influence exerted on him by management undermines the objectivity of auditing results (Khalid & Sarea, 2021). To ensure the achievement of organization objectives in Islamic Financial Institution (IFI), effective internal Shariah auditing necessitates investment by IFIs in internal auditing resources and enhancement by IFI of the independence of internal Shariah auditors. The Shariah audit function became mandatory for all IFIs in some countries. However, there are still gaps between the actual and desired Shariah audit practices (Noor Aimi et al., 2020).

Therefore, to maintain the independence of the auditing profession, the auditor must be constantly aware of his duties and responsibility towards Allah, society, and the client, submit reports expressing a neutral technical opinion, and contribute to providing products that are compatible with the provisions of Islamic Sharia. Researchers believe that the independence of Sharia auditors in Islamic banks is considered one of the most important factors that guarantee the safety and legitimacy of banking operations in these banks. The Sharia auditor is a person qualified by an accredited Sharia body, and his mission is to review the activities of Islamic banks to ensure their compliance with Islamic Sharia.

Several factors affect the independence of Sharia auditors, including:

- **Organizational independence:** The Sharia auditor must be independent of the Islamic banks he audits. This means that the Sharia auditor must not be an employee of the Islamic bank and must have full access to all records and documents related to banking operations.
- **Financial independence:** The Sharia auditor must be financially independent from the Islamic banks he audits. This means that the Sharia auditor may not receive any remuneration or financial benefits from Islamic banks in exchange for his work.
- **Professional independence:** The Sharia auditor must be professionally independent from the Islamic banks he audits. This means that the Sharia auditor must be able to perform his work fairly and objectively without being exposed to any pressure or influence from the Islamic bank.
- **Several measures can independently and objectively be taken to enhance the independence of Sharia auditors in Islamic banks, including:** Issuing laws and regulations that regulate the work of Sharia auditors: Governments must issue laws and regulations that regulate the work of Sharia auditors and clarify their rights and duties.
- **Establishing an independent body to accredit Sharia auditors:** An independent body must be established to accredit Sharia auditors, and specific standards for accreditation must be established.
- **Providing adequate funding for Sharia auditors:** Adequate funding must be provided for Sharia auditors so that they can perform their work independently. The independence of Sharia auditors plays an important role in enhancing confidence in Islamic banks. The Sharia auditor is considered the main guarantor of the safety and legitimacy of banking operations in these banks.

The independence of Sharia audits is considered a basic principle in the field of Sharia, or Islamic financial auditing. This principle aims to ensure that the audit process is carried out independently and objectively, without interference or inappropriate influence from other parties. Achieving the independence of the Sharia audit requires attention to several aspects, including:

- Auditor independence: The auditor must be independent and not affiliated with or influenced by the entity whose accounts are being audited. This is ensured by appointing independent external auditors from the auditing entity.
- Independence of the process: The audit process must be conducted independently and objectively, without influence from other parties. This includes clearly defining the scope of the audit and providing auditors with the necessary resources to carry out their work accurately and fairly.
- Independence of standards and directives: The standards and directives followed in Sharia auditing must be independent and not influenced by external interests or pressures. These standards and guidelines have been developed by independent and authoritative bodies in the field of Sharia auditing.

The independence of Sharia audits is essential to ensuring integrity and objectivity in auditing processes and to enhancing confidence in Islamic financial institutions. Maintaining the independence of the audit requires providing an appropriate environment and strong organizational procedures to prevent any interference or inappropriate influence that hinders the audit process (Al-Hammad et al., 2023).

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The independence of Sharia audits is essential to ensuring integrity and objectivity in auditing processes and to enhancing confidence in Islamic financial institutions. Maintaining the independence of the audit requires providing an appropriate environment and strong organizational procedures to prevent any interference or inappropriate influence that hinders the audit process.

CONCLUSION

Sharia auditing is an important profession in Islamic banks because it is a tool for monitoring compliance and ensuring the provision of products that are compatible with the objectives of Islamic Sharia. Many problems have not been solved, and the most important of these problems is the problem of the independence of Sharia auditors when performing their duties in Islamic banks. This gives an incorrect picture of the credibility of Islamic banks. The absence of recognized, unstructured guidelines and Sharia audit standards is a major problem facing the current Sharia audit framework.

Therefore, the study concluded that the complete Sharia audit process cannot be achieved if Sharia auditors are not completely and truly independent, and this reflects that the Sharia audit profession is still unorganized and influenced by senior management and the entities that appoint and employ them. The Accounting and Auditing Organisation for Islamic Financial Institutions and the Islamic Financial Services Board are involved in addressing the independence of Sharia audits in Islamic banks and thus producing independent and qualified Sharia auditors.

The study recommends that forensic auditors should understand the standards used in forensic audits and be competent in distinguishing the types and quantities of evidence that should be collected before completing the audit. The forensic auditor must have an independent mind. Therefore, Sharia auditors must strive for a high level of independence and ensure the procedures of the Sharia audit process and the implementation of the provisions of Islamic Sharia. The study also recommended that the independence of Sharia auditors be strengthened through their appointment and dismissal by the Authority. The state, the Sharia, or the Fatwa House, adopts the Sharia standards issued by the Accounting and Auditing Organisation for Islamic Financial Institutions.

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