

THE OBJECTIVE OF SHARIAH GOVERNANCE: A MAQASID PERSPECTIVE

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Abstract	<p><i>Shariah governance refers to a set of institutional and organizational arrangements through which Islamic financial institutions ensure that there is effective independent oversight of Shariah compliance. Regarding this, in most cases, Shariah governance emphasises the issues related to Shariah matters namely on their permissibility. Less attention has been given to the question of whether it has to do with the objective of the firm as mostly discussed by conventional corporate governance corpus. This is perceivable by looking at rule-based standards and frameworks published by several Shariah standard-setters such as the IFSB and the AAOIFI. It is for this reason, this paper will explore Shariah perspective on the issue of the objective of the firm, especially the Islamic financial institutions as one of the means used by Muslims to generate wealth in our modern day. Using qualitative research, data was collected from Islamic literature relating to the issue, and was analysed thematically. By applying maqasid Shariah, this paper will reveal that ensuring firm sustainability is a consequential factor to be highlighted in Shariah governance system. In other words, Shariah governance is not merely about product permissibility under Shariah tenets, but also keen on the objective of the existence of the institutions itself. This is believed could give the answer for the Islamic financial institutions to the question of whether their purpose is to generate and increase the value of the wealth merely for the best sake of the shareholders or to give the generated wealth back to Muslims as the stakeholders in charitable ways of delivery system.</i></p> <p>Keywords: <i>Shariah, Governance, Corporate, Firm, Sustainability.</i></p>
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INTRODUCTION

Shariah governance is the specialty of Islamic financial institutions (IFI). The development of this corpus has been indebted to the IFIs as they are the pioneers of proper *Shariah* compliance process in our modern economy. Under corporate governance purview, the most peculiar features of *Shariah* governance is the existence of *Shariah* committee, membered by a group of experts in Islamic finance. The presence of this additional organisational arrangement has propelled many corporate governance engineering in order to accommodate the specific needs of the IFIs, under the same governance umbrella as perceived by the regulatory regime under jurisdiction.

Several standard-setters such as the IFSB and the AAOIFI have issued their frameworks to ensure such a system is going to operate in the best manner possible to achieve its objectives. However, in most cases, the frameworks have only highlighted the organisational and operational aspects, where less attention has been given to the

fundamental spectrum of the system itself. As a result, *Shariah* governance to some extent is merely about product permissibility and the process to ensure its organisational requirements are in place.

As seen in conventional corporate governance system, it is not a mere organisational feature, but rather a structural arrangement to achieve the reason why it is there. If we go through the debates regarding corporate governance, we could see how question who matters most, between the shareholders and the stakeholders for instance, gives significant impact to how a corporation is structured and directed by its governance constituents. Thus far, this question is not an issue under *Shariah* governance purview despite its consequential impact to the IFIs operations. It is for this reason, the IFIs are perceived as money generators that operate in compliance with *Shariah* tenets. It also has put the IFIs under question when it comes to how those who are operating with *Shariah* compliance flagship to assist the stakeholders or the *ummah* in general due to the fact that wealth generation is almost always the central issue.

Therefore, this paper will present an examination on the objectives of *Shariah* governance. By emphasising on achieving the function of the IFIs to ensure sustainability for the best sake of the stakeholders, it will excavate the basic features of *Shariah* governance in order to exhibit the fact that the seeked answers are already there, yet not being highlighted in a way it is suppose to be. To do so, Maqasid *Shariah* will be applied implicitly and explicitly. To encapsulate those discussion, this paper will be divided into four main sections. The first section is the introduction, which is the present section. It then will be followed by the definition of *Shariah* governance in section two. Section three will excavate the discussion on the maqasid *Shariah* which then leads to the discouse of the objective of *Shariah* governance. Last but not least, section four will provide the conclusion of the paper, to wrap up the primary points this paper has to offer.

DEFINITION OF SHARIAH GOVERNANCE

Shariah governance is a new terminology used by the researchers to signal on a governance system of Islamic financial institutions or Islamic corporations. It is also known as Islamic corporate governance, but the preferred terminology for this research henceforth is the *Shariah* governance. Similar to corporate governance narrative, the concern of *Shariah* governance as far as this research is concerned lies on the objective of corporation and its constituents (Lewis 2005).

Furthermore, *Shariah* governance extends the discussion on how the governance system should be conducted, in order to ensure *Shariah* compliance within the corporation, trying to fill the gaps left in corporate governance related to the corporations offering the Islamic products and services. Therefore, in order to understand the discussion that will be addressed by this particular research, a clear overview on the subject of *Shariah* and corporate governance are rather vital.

Meaning Of Shariah

The word *Shariah* originates from Arabic language. The Quran, as the source of the *Shariah* law, has mentioned the word *Shariah* in many occasions such as '*Shir'atan*' - شِرْعَةً - and '*Shari'ah*' - شَرِيْعَةً. *Shariah* means 'begin' as mentioned by Ibn Kathir. For example, *shara'a fulan al-kitabah* - شَرَعَ فُلَانٌ فِي الْكِتَابَةِ - meaning 'a person begins the writing'.

Shariah also means the clear path. In a practical context, *Shariah* has been defined as the pathway for the water, the path to the watering-place, the clear path to be followed and the path which the believers have to tread in order to obtain guidance in this world and deliverance in the next. In original usage, *Shariah* has been defined as the road to the watering place or a path leading to the water, such as the way to the source of life. In its common usage, *Shariah* refers to commands, prohibitions, guidance and principles that

God has addressed to mankind pertaining to their conduct in this world and salvation in the next (Kamali 2008).

Terminologically, *Shariah* means the commandments from Allah to the mankind, which revealed to the Prophet Muhammad PBUH (Peace and Blessing be upon Him), that guide the faith of human towards Him as their Creator and the relationship of Muslims with their Muslim brothers as well as to the humanity and the nature (Shaltut 2001). In this regard, many scholars have interpreted *Shariah* as the way of life as discussed by Ramadan (1999). Al-Jurjani (2004) defined *Shariah* as the way of the religion.

In Islamic tradition of knowledge, Ibn Taimiah (2004) defined *Shariah* as everything that commanded by Allah either it is in faith or in physical actions. *Shariah* is also known as a law that was revealed in the Quran, or through the teaching of the Hadith (traditions of the Messenger), in the context of inner faith, practical actions and good ethics.

Corporate Governance

As far as this research is concerned, the word 'governance' in *Shariah* governance terminology refers to the conventional definition of corporate governance. Literally, the term governance derives from the Latin word *Gubernare*, meaning to steer, usually applied to the steering of a ship, which implies that corporate governance involves the function of direction rather than control (Solomon 2010). In this matter, the Oxford English Dictionary provides a wider meaning of governance as to include any 'act or manner of governing'. Minhas (2012) mentioned that governance is a method which an organization adopts to ensure that components of the organization follow the set rule, regulation, policies and processes.

Sir Adrian Cadbury (1992), as the Chairman of Cadbury Committee, defined corporate governance as a system by which companies are directed and controlled. Pertaining this, corporate governance could be characterized as a system where shareholders ought to have control, managers have a fiduciary duty to serve shareholder interests alone, and the objective of the firm ought to be the maximization of the shareholders' wealth (Iqbal and Mirakhor 2004).

In a similar notion, the Organisation for Economic Co-operation and Development (OECD) stated that corporate governance is a set of relationships between a company's management, its board, its shareholders and other stakeholders which provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. This definition has put its concern in the wider stakeholders rather than only focusing on the shareholders (Keay, 2020).

Explaining corporate governance in the context of the financial services sector, Arun and Turner (2004) have mentioned the importance of ensuring capital and investment returns and protecting depositors as well as shareholders. In a broader manner, corporate governance in financial institutions to some extent is different to that of other types of business organisation, as it involves with a larger group of stakeholders. With this position, Hassan (2011) asserted that financial institutions are much more regulated as compared to other commercial entities.

Nevertheless, despite the diversity of the definitions of various bodies, the key role of corporate governance is still at a similar notion which is derived from the underlying principle of assuring the economic well-being of the whole community on the basis of universal brother-hood, justice, mutual accountability, truthfulness and transparency, protection of minorities, adequate disclosure and equitable distribution of wealth (Malekian and Daryaei 2010). Hence, it can be concluded here that corporate governance is a set of mechanisms that help in confirming, with fair and just dealing with all the stakeholders and to strengthening transparency and accountability (Tapanjeh 2009).

Shariah Governance

In terms of Shariah governance, the emergence of this corpus is rather in its infancy and there is no consensus definition to interpret the whole concept of *Shariah* governance as to the conventional counterpart (Faizol & Yusof, 2020). According to the IFSB (2009), *Shariah* governance system refers to the set of institutional and organisational arrangements through which IFIs ensures that there is effective independent oversight of *Shariah* compliance.

In this regards, IFSB's has asserted that the distinguished feature of *Shariah* governance that is it should have more emphasis on how to verify the Islamic business entity activities run with the adherence of *Shariah* law. Asserting this, Ahmed (2011) described *Shariah* governance as the structures and processes in place to ensure that principles and requirements of Islamic law are fulfilled in all contractual and operational aspects of the IFIs from the perspectives of different stakeholders.

MAQASID SHARIAH

The *Maqasid Shariah* or the objectives of *Shariah* refer to the overall goals and meanings to be achieved by *Shariah* law under the principles of realisation of benefit and prevention of harm. To achieve the objective of the *Shariah* law, it is through a thorough comprehension on the alluded meaning depicted by the texts of the Islamic sources and the objective of each single law deduced from the respective sources. Since *Shariah* law comes with reasons and explanations, these intertwined concept are well embedded into every single derived law. In terms of the impacts to humans life, the objectives of *Shariah* are categorized into three broad categories, the *daruriyyat* (necessities), the *hajiyyat* (needs), and the *tahsiniiyyat* (luxuries) as firstly mentioned by al-Ghazali (Raysuni, 2009).

On this vein, al-Fasi (1993) defined *Maqasid Shariah* as the end sought behind the enactment of each of the *Shariah* law. His definition covers the general objectives (*amm*) and the specific objectives (*khass*). As said by scholars such as al-Ghazali and al-Shatibi, there are five general objectives of *Shariah* which are the preservation of faith, life, posterity, wealth and intellect.

These objectives are regarded as the macro objectives that cover the whole system of humans life. Under each general objectives, there are many other specific objectives, function as the supportive objectives to secure every elements of the general objectives achievable at micro level and could cover the smallest part and parcel of entire humans life. In other words, specific objectives are meant to assist the scholars to look into specific provisions for specific cases in order to come up with the resolutions that could uphold general objectives. This means, every topic in *Shariah* will have its own objectives at the lowest level (*juz'i*) as point of reference that does not contradict with the general approaches of the *Shariah* as a whole system (Raysuni, 2009).

The implementation of *maqasid Shariah* comes in a various approach, from one area to another. *Shariah* governance corpus is not excluded from such a discourse. This will be explicated by the next discussion which stands as the backbone of our argument in this discourse.

OBJECTIVES OF SHARIAH GOVERNANCE

As seen in the abovementioned discussion, *Shariah* governance is more likely as an additional feature of the conventional corporate governance. In this regards, the injection of *Shariah* compliance notion has required the institutions to abandon non-compliant aspects of their products and services by adopting supportive mechanisms to acquire that. This however does not mean that the IFIs corporate governance system is to be totally different as compared to the conventional counterpart.

For the matter of fact, the question of concerned is still the same. What is the objective of the corporate governance installed within the IFI governance system? As an answer to this, in a broader manner, the objectives of *Shariah* governance are not in a full contradiction with conventional corporate governance as practised by various

corporations. This is in part because *Shariah* governance system plays the role to enhance stakeholders' confidence by promoting transparency and accountability in governing the corporations as frequently seen in conventional corporate governance. It is also in fact promoting independence and competency. To some degree, the IFIs governance system is still about value maximisation.

Due to that, the IFIs are perceived as wealth generators for the shareholders. The only characteristic that differs in both systems is that *Shariah* governance is a system that upholds the Islamic values of doing business while conventional system has nothing of concern on *Shariah* purview. To understand this, there are three main objectives of *Shariah* governance to be addressed: to ensure *Shariah* compliance, to optimise corporation value within Islamic perspective and to ascertain corporate sustainability.

To Ensure Shariah Compliance

Shariah governance is a safeguarding system to ensure that the IFIs will always comply with the *Shariah* requirements in all parts of its operations, as per se, compliance with the *Shariah* requirements is what differentiates IFIs from its conventional counterparts (Kunhibava 2012). The mission of the highest regard of the IFIs is to meet stakeholders' desire in conducting their business so it would be done in accordance with *Shariah* principles. Without a clear objective that appreciate the value of the teaching of Islam, the tenets of Islam would only be put as one of the business strategies, and may not be considered as a fundamental guidance to steer the direction of the IFIs.

Technically, *Shariah* governance addresses the governance structure of the IFIs, and its functionality in the way to ensure *Shariah* compliance. To execute the said duty, a *Shariah* committee is set up to oversee the IFIs and certify the transactions. On top of that, *Shariah* committee is also advising the board of directors in *Shariah* matters, endorsing and validating relevant documentations in regard to products and services as well as internal policies and manuals and marketing advertisements (Alnasser 2012).

Other than focussing on the permissibility of the contracts, the *Shariah* committee should also put their attention and effort on preserving the validity of the contracts. This means that any contract, especially those which are fabricated based on the general provisions and do not possess any contravention with specific provision from the Islamic sources, brought upon the committee is to be presumed as permissible and valid respectively.

This notion has a crucial part in dealing with financial institutions since a non-compliant contract could compromise and nullify the agreed deals. The impact of non-compliance not only possibly could affect the IFIs internally, but also could diminish customer's confidence to the IFIs adversely. This is moulded based on the presumption of continuity. Under this, each closed deal should be presumed in continuation of both the positive and the negative until the contrary is established by evidences (Kamali 2003).

To Optimise IFIs' Corporate Value Islamically

Economically, the IFIs are money generating bodies, similar to its conventional counterpart, but run based on the Islamic teachings. That is what gives them a unique interpretation on how a business entity should be governed. Other than that, the IFIs are mainly fashioned along as to those of conventional financial institutions in many ways (Graiss and Pellegrini 2006).

Most importantly, the economic propeller of the IFIs is generated from an Islamic worldview. Under this worldview, the IFIs see the wealth as a trust handed over by God to humans to manage on His behalf. Hence, it should be acquired, managed and transacted in adherence with the law of the Owner. Additionally, Islam sees the economic activities as instruments to serves the needs of the society.

This, to some extent is seemed to be contradicted with capitalism that puts the focus on wealth maximisation. On achieving their covenant feature, the IFIs requires a better preference on *Shariah* governance as the economic justice promulgate by Islam is

also urging a fair distribution and prescribing a certain level ethical codes. The final objective of those is to provide equal treatment for the deficit and surplus units of the economy. In fact, it is the duty of each *Shariah* governance organs to search for this economic equilibrium, so it could gain the sought-after stakeholders' confidence.

Value optimisation under *Shariah* perspective is not only about the increase in terms of numbers but also how the generated wealth is managed for the better good of humans. This is due to the fact that wealth is an instrument, not a goal as far as *Shariah* may concerned. In this sense, Muslims believe that human is the stewardship of God to manage the wealth on the earth under His will.

The absolute owner of the wealth in this case is only the God Himself and human as His vicegerent possessed the right to earn the wealth through permissible manners. In this relation, humans ought to use the wealth to fulfil their necessities and needs as an instrument to obtain other general objectives of *Shariah*. Such a worldview also distinguishes *Shariah* governance point of reference from its conventional counterpart, where wealth maximisation is considered as the main goal especially for the advocates of the shareholder theory (Keay 2008).

To this end, it is imperative for the *Shariah* committee to ensure that any strategic approach taken by the management of the IFI for the sake of the institution, does not only consider profit generation as well as its adherence to *Shariah* law. They should encourage the management to look beyond such horizon, namely on the sustainability and capability of the institutions to serve the *ummah* for a longer period of time and a wider group of stakeholders. Only by that, the wealth generated by the IFIs will serve its purpose as the instrument for the prosperity of the stakeholders as well as to optimise its corporate value.

To Ascertain Corporate Sustainability

Be noted that it is a crucial responsibility for the directors to ascertain that the IFIs could sustain in the longest run possible. In the light of the *Maqasid Shariah*, the IFIs ought to preserve the generated wealth and prevent it from any harm, so it could serve the *ummah* as the stakeholders.

In this regard, Minhas (2012) suggested that the provision of adequate resources, system procedures, infrastructure and code of ethics for acceptance of business and its legitimacy according to *Shariah* governance entirely depends on the management. In terms of other *Shariah* governance organs such as *Shariah* committee, they are in need of having a sound and prudent standard operating system to tackle multiple events that could jeopardise the IFIs' corporate sustainability. Effective management responsibilities in providing adequate resources and capable manpower support to the function involved in the implementation of *Shariah* governance (BNM 2010).

However, providing proper policies and systems will be inadequate if they are not implemented and supervised positively (Minhas 2012). The failure in governing this aspect could be disastrous to the IFIs as they would suffer the risks more than their counterparts would, the *Shariah* risk. Furthermore, this aspect of *Shariah* governance might well be the catalyst required by the IFIs to promote transparency and avoid mismanagement, especially on *Shariah* matters.

To ascertain sustainability, every constituents of *Shariah* governance ought to put their attention on wealth creation, distribution and consumption process so that it is not to be circulated only among the rich in the society (Chapra 1985). As to this, it is worth mentioning that financial activities in Islam is not about wealth concentration, but rather concern with how to create and circulate the wealth in the best distribution manner as promulgated by *Shariah*.

Income created from the economic activities should be distributed in a just and fair approach regardless of the economic status of the recipients. That is why making the highest number of revenue and the longest run of profitability are rather downturning the greater role of the IFIs. What matters most is institutional sustainability so it could bring

prosperity to the *ummah* in the longest run possible, not merely to satisfy short-term privilege as may be demanded by certain business parties.

CONCLUSION

As a conclusion, the objective of the *Shariah* governance is to optimise the value and to ascertain the sustainability of the IFIs in a way that is in compliance with *Shariah* law. Looking at this, it is conceivable that *Shariah* is not prohibiting value optimisation. The concern is only on the way of generating the value where it must follow the teaching of Islam.

It may have a certain border to comply, but this is also telling us that *Shariah* governance corpus is rather not a complete stranger to the existing corporate governance body of knowledge. On top of that, this discussion also for the matter of fact is standing on the ground where the discourse of *Maqasid Shariah* lies. The prominent aspect of *Maqasid Shariah* is the employment of the notion where every business entity must be built embedded with the ambition to sustain or to last in order to serve.

The element of sustainability is the fundamental of *Maqasid Shariah* itself which is to preserve good and to prevent harm. In this regard, *Shariah* governance serves as one of the modern mechanisms to implement the philosophical discourse of Islamic teaching into real world application.

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