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**| RESEARCH ARTICLE**

# Legal Policy and the Exemplary Growth of Islamic Banking Business: The Case of Malaysia

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**| ABSTRACT**
As a new economic entity, the Islamic banking business is an interesting object, not solely for economic and legal discourses, but again for the economic and financial anchor that may elevate the profit for the existing financial and economic industries, and thus also for a country. It is generally agreed, therefore, that the growth and development of this new industry in particular counties are due to concerted efforts politically, legally, economically, socially, and other relevant causes. Malaysia is an interesting case to consider since the growth of the Islamic banking business here is proven to be the best compared to the other countries within the region. This article seeks to explore how the Islamic banking business has developed across the decades and how legal policy has spearheaded the growth of the Islamic banking business in Malaysia. The discussion will cover government policies, facilitative legal frameworks, and the simple *fatwa* issuer body. The adopted legal policy has been proven to be a significant factor that led to the growth of the Islamic banking industry.

**| KEYWORDS**

Islamic banking, Legal policy, Growth, Malaysia

**| ARTICLE INFORMATION**

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## 1. Introduction

Within the region of Southeast Asia, actually, Malaysia is not a single player in Islamic banking in its initial stage. The Philippines initiated the experiment to tap into the Islamic banking business with the establishment of Al-Amanah Islamic Investment Bank in 1974. It is sadly said, however, the popularity of this Philippines based Islamic bank is much lower compared to Islamic banks in some neighbouring countries.[1] The most interesting case, therefore, is Malaysia's Islamic banking business, which started in 1983; it is now becoming a very dominant player in this business, not only regionally but also internationally. Though historically, interest (*riba*) free investment has been given attention by Malaysian Muslims far before the independence of Malaysia, the factual practice of Islamic banking just began in the 80s. The experiment for *riba* free economic undertaking was made in the 1940s by the trial to invest *hajj* pilgrim fund in Malaysia into certain investment projects which were parallel with Islamic principles, and unfortunately, this experiment was unsuccessful. Then it was just in 1983, Malaysia introduced the practice of Islamic banking business through the establishment of Bank Islam Malaysia Berhad.[2]

This establishment has been a milestone that becomes the beginning of a long and successful journey of Islamic banking business, not merely in Malaysia but rather in the region of Southeast Asia. If today, Islamic finance in Southeast Asia is recognized globally,

[1] Reuters.com (2022)
[2] Haron (1997), p. 15.

this is mostly because of Malaysia, which started the business very well prepared. What Malaysia started thirty-nine (39) years ago In the area of Islamic finance, Malaysia is ranked first (number one) in the Top IFDI Countries and Global Average IFDI Scores for 2022.[3] It means Malaysia has retained its highest place in the whole ranking of the global Islamic Finance Development Indicator (IFDI) for the tenth consecutive year.[4] Therefore, this paper aims to analyze the causes behind the success of Malaysia in developing Islamic finance, including Islamic banking. It is hardly believed that such a high reputation is achieved without many key determinant factors.

## 2. Methodology

This study employed doctrinal legal research that mainly focused on the literature review and statatue approach concerning the Islamic banking industry in Malaysia. This region was chosen as the research location considering that the country has been leading the growth of Islamic banking compared to other Southeast Asian Countries. The data was then analyzed qualitatively through data reduction, analysis and drawing the conclusion.

## 3. Growth of the Islamic Banking Industry in Malaysia

According to the Islamic Financial Stability Report 2022, Islamic banking remains by far the largest sector of the global Islamic financial services industry. Fifteen of the 36 tracked jurisdictions experienced a systematically significant increase in the Islamic banking industry, specifically and in Islamic finance generally. The global Islamic financial industry has grown to register overall total assets of US$ 3.06 trillion end of the year 2021.[5] It is also reported that Shariah-compliant financial products and services are now offered in more than 80 Muslim and non-Muslim jurisdictions worldwide.[6] It is worth noting that, in 2011, Malaysia exceeded Iran in the Islamic Finance Country Index (IFCI) for the first time since the inception of IFCI due to the government's initiative to use Islamic banking and Islamic finance as a policy instrument and vital part of the economic plan.[7]

There were only two full-fledged Islamic banks before 2002 in Malaysia, i.e. Bank Islam Malaysia Berhad (BIMB) and Bank Muamalat Malaysia Berhad (BMMB), established in 1983 and 1999, respectively. At present, there are 17 fully-fledged licensed Islamic financial institutions in Malaysia with 11 local-licensed banks and 6 foreign-licensed banks, namely;[8] (1) Affin Islamic Bank Berhad; (2) Al Rajhi Banking & Investment Corporation (Malaysia) Berhad; (3) Alliance Islamic Bank Berhad; (4)AmIslamic Bank Berhad; (5) Asian Finance Bank Berhad; (6) Bank Islam Malaysia Berhad ; (7) Bank Muamalat Malaysia Berhad; (8) CIMB Islamic Bank Berhad; (9) Hong Leong Islamic Bank Berhad;(10) HSBC Amanah Malaysia Berhad; (11) Kuwait Finance House (Malaysia) Berhad; (12) Maybank Islamic Berhad; (13) RHB Islamic Bank Berhad; (14) Standard Chartered Saadiq Berhad; (15) Public Islamic Bank Berhad; (16) OCBC Al-Amin Bank Berhad; and (17) Bank Muamalat Indonesia. These full-fledged Islamic banks offer a wide-ranging of Islamic banking and financial products, both retail and commercial, based on Shariah contract concepts, for instance, *mudarabah*, *musharakah*, *bai' bithaman ajil*, *istisna'* and *tawarruq*. These products, which also include deposit and financing, have attracted customers regardless of their locality, race, religion, skin color, political mindset or gender.[9]

Positive growth of the Islamic banking industry in Malaysia is recorded, and this can be seen through Malaysia's Islamic banking assets, reaching RM653,315 billion as of December 2017, as compared to RM267,631 billion in December 2010. Therefore, it is fair to say that there is a noteworthy increase in total Islamic banking assets right from the end of December 2006 up to the end of December 2017. [10] By 2021, Malaysia's Islamic banking share in total banking assets is ranked number six; together with Brunei, they were the biggest across jurisdictions globally after gulf countries.[11] To discover the causes for the impressive growth and development of Islamic financial assets, or specifically Islamic banking asset in Malaysia, is not an easy endeavour. The tremendous achievements of the Islamic banking industry in Malaysia are surely rooted in various factors and efforts. Hence, it is important to discuss the determinant factors involved in such significant development. The discussion will mostly address the legal policy adopted by the government. Since the area of legal policy is a wide range of aspects, this will then be divided into two main aspects, which are the government initiatives and facilitative legal framework for the whole Islamic banking industry.

[3] Icd-ps.org (2022), p.
[4] Mida.gov.my (2022), p.12
[5] Ifsb.org (2022), p. 12 & 16
[6] gfmag.com. (2022).
[7] Irti.org. (2022), p.41-47
[8] Bnm.gov.my (2022a)
[9] Nor (2016), p. 601-603
[10] Bnm.gov.my (2022b)
[11] Ifsb.org (2022) p. 16

## 4. Determinant Factors of Islamic Banking Growth in Malaysia

### *4.1. Government Initiatives*

In the history of Islamic banking in Malaysia, the Government of Malaysia has always performed a vital role. It is clear that the initiative taken by the Government to establish the very first *Lembaga Tabung Haji* has become a major historic move which encourages more incredible growth of the industry itself. To ensure that the country is always on the right track keeping the stability of its economic and financial position, the Government has come out with *Rancangan Malaysia* or Malaysia Plan, which contains a five-years of the economic development plan. The very first Malaysia Plan was introduced for the year 1966 to 1970. The main objective of the plan is to encourage the welfare of all citizens and improve the living environments in rural zones, particularly among low-income groups. For the purpose of this article, it is important to see the recommendations made by the Government related to the development of the Islamic banking industry in Malaysia from the Seventh Malaysia Plan to the Tenth Malaysia Plan.

It is worth noting that, other than plans and strategies, Malaysia Plan also consist of a number of the country's policies in order to achieve its thrusts and objectives. For instance, the Malaysia Plan Sixth (RM6) is a five-year economic plan for the period of 1991 to 1995. RM6 also contains strategies, programs and related projects to achieve the objectives of the National Development Policy (DPN) as well as the New Economy Policy (DEB) during that period. In RM6, the Government made more recommendations on the conventional banking industry, especially on the loans, capital market, insurance and etc., as Islamic banking was still in its introductory stage. Among the recommendations is for the Government to elevate their efforts in ensuring efficient, discipline and professionalism within the finance, banking and insurance industry itself.[12] Meanwhile, improvements and recommendations on the Islamic banking industry shall be seen in the next Malaysia Plan, i.e. Seventh Malaysia Plan (RMT).

Moving on to the RMT, which was created for the period of 1996 to 2000, it is mentioned that Malaysia has accomplished remarkable economic growth whereby the country's Gross Domestics Product (GDP) has increased significantly within the period of RM6. This situation shows that the country possesses an established foundation to achieve the main objective of the National Development Policy (NCP), which is to create fair and united Malaysians. Regarding the Islamic banking industry, RMT reported that to complete the conventional banking system, the Interest-Free Banking Scheme (SPTF) was introduced in 1993 to authorize financial institutions and merchant banks in Malaysia to operate Islamic banking services as windows. Throughout the years, there were 23 commercial banks, 18 financial companies and 3 merchant banks offering the SPTF services. With the increase in the number of financial institutions' numbers, the Islamic banking industry has grown rapidly. Total assets were also expanded by 245.8 per cent from RM2.4 billion in the year 1993 to RM8.3 billion in 1995. It is also understood that the total number of financing offered by the Islamic banking system significantly increased from RM1.1 billion in 1993 to RM3.5 billion in 1995. [13]

For the period of 1996 to 2000, the private investment is aimed to be RM385 billion compared to RM 207 billion in RME. Therefore in order to achieve this target, the financial system shall be strengthened to offer new financing instruments as well as to encourage savings. One of the main strategies is to facilitate the Islamic banking system as one of the effective fund distribution channels for infrastructure projects. In other words, the role of the Islamic banking system is enhanced to be more important to the economic development of the country.[14] In Eighth Malaysia Plan(RMK-8), which covers the period from 2001 until 2005, consists of strategies, aspirations and projects to fulfil the objectives of the National Vision Policy (DWN).[15] Among the objectives of the National Vision Policy (DWN) are to reinforce economic sustainability and resilience as well as create integration among Malaysians. RMK-8 also revealed a swift advancement in the Islamic banking industry whereby the total assets of 51.7 per cent a year from RM6.2 billion recorded in 1995 increased to RM47.1 billion at the end of 2000. This amount represents 6.9 per cent of the total assets of both conventional and Islamic banking industries, which is an excellent performance of the Islamic banking industry itself.[16]

Another important achievement of the Islamic banking industry is the establishment of the second Islamic bank, i.e. Bank Muamalat Malaysia Berhad, in October 1999.[17] This establishment is a result of mergers between Bank Bumiputra Malaysia Berhad and Bank of Commerce (M) Berhad, which plays a part in increasing access to the Islamic banking system in Malaysia. Realizing that the role of the Islamic banking industry has become more important, the Central Bank of Malaysia has enacted a Ten-year Master Plan exclusively for the betterment of the industry. The Central Bank also has set up an Islamic banking and Takaful Department to control and supervise recommendations contained in the Ten-year Master Plan. The Central Bank also has made it compulsory for the banks involved in the Islamic Banking Scheme (SPI) to disclose their financial report. Besides, National Shariah Advisory Council

[12] Pmo.gov.my (2022a)
[13] Pmo.gov.my (2022b)
[14] *Ibid*
[15] Pmo.gov.my (2022c)
[16] *Ibid*
[17] Thani (2003), p.17

(MPS) was also initiated in October 1997 to administer and give advice to the Central Bank as well as the banks on any Shariah issues regarding Islamic banking. To support the well-being of Islamic banking operations, each bank involved with the SPI shall upgrade its Islamic Banking Unit. Further, Islamic banking funds are also added from RM1 million to RM20 million for commercial banks, RM10 million for financial companies and RM6 million for merchant banks. [18] Through RMK-8, the Government has intended to develop Islamic financing as an effective channel for funds distributions. The Government also came out with a comprehensive plan for the Islamic banking industry in the Financial Sector Master Plan, including training and new guidelines related to the Islamic banking business.

Initiatives of the Government to strengthen the Islamic banking industry can further be seen in the Ninth Malaysia Plan for the period 2006 until 2009. It is reported in the Plan that the Government has expected the financial services sector to continue playing an important role in driving the growth of the economy.[19] In achieving this, efforts are taken by the Government to equip human resources with the required skills and expertise and promote a culture of continuous learning. The Government is also keen to introduce clear policy guidelines and practices as regard talent management in producing professional and well-trained employees. Besides, International Centre for Education in Islamic Finance (INCEIF) was established as a professional certification body and a training institute for post-graduates in order to meet the increased demand for expertise in Islamic finance globally.[20] The Government is also working on developing the country into a Global Islamic Financial hub with the formation of centers of excellence for education, training, consultancy and research in Islamic banking and finance. The Government has also given proper attention to empowering consumers. This is done through the more intensive provisions of appropriate information so that the consumers are fully aware of their responsibility, especially in making financial decisions. Meanwhile, the Tenth Malaysia Plan implemented for the period of 2011 until 2015 witnessed the Government giving concentration on ten National Key Economic Areas (NKEAs), which are; and gas; palm oil and related products; financial services; wholesale and retail; tourism; information and communications technology; education; electrical and electronics; business services; private healthcare; agriculture; and greater Kuala Lumpur. [21]

NKEA is defined as a driver of economic activity that possesses the prospective to directly and materially contribute a quantifiable amount of economic growth to the Malaysian economy.[22] Among the initiatives taken by the Government to ensure that the financial sectors remain resilient and diversified and continue to contribute to economic growth is by formulating a new financial sector blueprint which expresses the strategies involved to further evolve the Malaysian financial sector to support and drive the next phase of Malaysia's economic expansion as well as enhancing Malaysia's position in Islamic finance worldwide by strengthening the Malaysia International Islamic Financial Centre (MIFC) capabilities, nurturing greater associations and collaboration with international standard setting bodies and other jurisdictions, and streamlining research and development. This is important to improve Malaysia's attractiveness as a preferred centre for Islamic finance education, research, training and product innovation. Emphasis is also given to ensuring the dynamism and robustness of the established financial infrastructure, comprising the regulatory, legal and Shariah framework, research and training institutions.[23]

With the theme of "anchoring growth on people," the Eleventh Malaysia Plan is introduced for the period of 2016 to 2020. Under the focus area of enhancing *Bumiputera* Economic Community (BEC) opportunities, Islamic banking plays a vital role in creating more *Bumiputera* entrepreneurs in strategic subsectors, particularly in the halal industry.[24] It is also interesting to note that Islamic banking is also given an emphasis through the Budget 2019 tabled in November 2018, whereby the Government will set up a Special Committee on Islamic finance led by the Ministry of Finance with members from the Central Bank of Malaysia as well as Securities Commission in order to promote Malaysia as an international leader of the bond and sukuk market.[25] This has shown that the Islamic banking and finance industry owns an important part of economic growth and expansion.

To uphold the position of the Finance and banking sector in Malaysia, the Government and the Central bank have come out with Financial Sector Masterplan (FSMP) for the year 2001 to 2010 and a Financial Sector Blueprint (FSBP) for the year 2011 to 2020 which have placed the banking sector on a stronger foundation to support the needs of the economy.[26] The FSMP introduced eleven recommendations, with three areas being the main focus of the Plan which are an institutional capacity enhancement,

[18] Bnm.gov.my (2022c)
[19] Pmo.gov.my (2022d)
[20] Inceif.org (2022)
[21] Pmo.gov.my (2022e)
[22] Pmo.gov.my (2022c)
[23] *Ibid*
[24] Pmo.gov.my (2022d)
[25] Treasury.gov.my (2022)
[26] Bnm.gov.my (2022c)

financial infrastructure development and regulatory framework development. The recommendations under the institutional capacity enhancement involve measures to ensure that the shortage of skilled manpower in Islamic banking and takaful is adequately addressed. In addition, specific means are taken to promote a healthy competitive culture among the Islamic banking and takaful players in the financial infrastructure development area. It is also further mentioned in the FSMP that the legal, regulatory and Shariah framework of Islamic banking and takaful is strengthened further through the review of the existing laws and guidelines governing the industry. A code of ethics is also given the emphasis on disciplining the industry with less intervention from the Central Bank.[27]

The Blueprint also notes that the Malaysian financial sector has transformed due to the implementation of the FSMP introduced in 2001. It is also reported in the Blueprint that since 2001, the financial sector has expanded at an average annual rate of 7.3 per cent to account for 11.7 per cent of real GDP in 2010. The Blueprint emphasis will progressively be positioned on enhancing the resilience of Islamic finance, including in liquidity and crisis management, as the country is facing a more challenging international environment. As far as Islamic banking is concerned, the Blueprint comes out with recommendations, among others are; [28]

1. Issuing new Islamic banking licenses to institutions with particular expertise and expanding the business scope of qualified International Islamic Banks in order to boost the diversity of players in the domestic Islamic finance industry;
2. Enlarge market competency by assisting the use of standard documents and agreements among financial market players;
3. Reinforce the framework for the effective and competent flow of cross-border Islamic financial activities in view of increased cooperation and coordination towards achieving greater market connectivity in Islamic finance worldwide; and
4. Develop Malaysia as a reference center for Islamic financial transactions by building the development of human capital in Islamic finance as well as establishing Shariah, legal, regulatory and supervisory frameworks.

It is clear from the above-mentioned policies that the Malaysian government has undertaken necessary actions to enable the Islamic banking business to grow significantly in the country. It is also an indicator that apparently leveraged public confidence in the industry in the eye of investors and customers as well, be it nationally, regionally or even globally.

### *4.2. Facilitative Legal Framework*

Apart from the policies we read through the previous section of this article, the area receiving attention and focus in strengthening the Islamic banking industry is the legal and regulatory framework. A facilitative legal framework will definitely assist in promoting a competitive financial environment and ensure Shariah compliance. A good and facilitative legal framework also will help the Islamic banking industry to operate effectively, with adequate legal recognition, support, and protection. It was a fortune that the beginning of the involvement of Malaysia in the Islamic banking industry was marked by a very good legal atmosphere. When the government firmed the plan to introduce Islamic banking business in the country, a certain committee was appointed by the government with two (2) important tasks; preparing the legal basis for the establishment of a new Islamic bank and preparing the establishment of an Islamic bank company. Within two years, these preparations were finally completed, and therefore, before the bank was established, the legal basis, namely the Islamic Bank Act of 1983 (IBA 1983), was issued.[29]

This made the newly established bank very strong in terms of its legal basis, which is, of course governing many things related to an Islamic bank. Historical records also reveal that during its early years, the government put a clear policy that BIMB was the first bank and, at the same time, also a new experiment, and no other Islamic bank could be established until this first experiment had proven to be successful. It is clear that the particularities of Islamic banks, which in many features are different from their conventional counterpart, have been accommodated by this act. In sum, the emergence of Islamic banking in Malaysia was responded to by setting up a very clear anticipation, with a good plan by the government. It is just an example of how legal incentive has been provided since the very initial stage of the emergence of the Islamic banking business in the country. Further legal incentives will be clearly explored in the following passages. For the purpose of this analysis, legal policies for taxation and the *fatwa* issuer body in the matter of Islamic banking business will be presented in the following passages.

### *4.3. Double Tax Abolition*

In the area of business and investment, among key factors for the creation of a conducive atmosphere are good and quick responses from the relevant authorities towards any barriers. Pertinent to the Islamic banking business, the existing tax regulatory frameworks, not only in Malaysia but rather in almost all countries in which Islamic banks are operating, caused a problematic situation. In property acquisition-based products in Islamic banks, a double tax has been applied; it was the value-added tax by the bank and the customer. In the *Murabaha* scheme, for instance, a bank must pay tax when it purchases a property from the

[27] Bank Negara Malaysia (2001)
[28] Bnm.gov.my. *Supra*, not 20
[29] Thani et.al. (2003), p.6-17.

vendors, and again, when the bank sells the property to the customers, the customer must pay a similar tax. Thus, a double tax is applied here. This situation was not only complicated but also unfair if it is viewed from the fact that conventional banks are not exposed to double taxes. The issue of double burdens or double taxes then became a serious impediment for Islamic banks across the globe since the nature of taxation law is almost similar everywhere. The issue shall be settled by equalizing the nature of tax in Islamic banks with the same thing in conventional banks. Malaysia then settled the issue by eliminating the double taxes in 1989.[30] The point in this matter is that Malaysian has been in consistent treatment towards Islamic banks and Islamic banking businesses; it clearly shows a good and quick legal response.

As regards the tax imposition system on the Islamic banking system in Malaysia, generally, there is no specific tax legislation which governs Islamic financial instruments.[31] However, there are certain provisions on Islamic transactions identified in the Income Tax Act 1967 (the Act). For instance, Section 2(7) laid down that profits coming from the Shariah transactions shall be treated equally as in conventional financing arrangements. Section 2(8), on the other hand, allowed Islamic financing to continue without any tax issue relating to asset transfer or lease. Meanwhile, Section 6A(3) states that a rebate shall be granted for the year of assessment for any *zakah*, *fitrah* or any other Islamic religious dues payment paid in the same year, which is obligatory.

Apart from the Income Tax Act, Islamic financing transactions are also benefited from various stamp duty exemptions so that the transactions are not adversely taxed as compared to conventional financial transactions. The identified stamp duty exemptions are all instruments of the *al-Ijarah* Head Lease Agreement of immovable property executed between a customer and a financier,[32] all instruments of the Asset Sale Agreement or the Asset Purchase Agreement executed between a customer and a bank for the purpose of renewing any Islamic overdraft financing facility,[33] all instruments of the *Bai' al-Inah* Sale Agreement or the *Bai al-'Inah* Purchase Agreement for the purpose of the issuance of credit cards,[34] all instrument of Asset Sale Agreement or an Asset Lease Agreement for the purpose of renewing any Islamic revolving financing facility[35] and all instruments made by any financier which relate to purchase of property for the purpose of lease back[36].

Due to the underlying asset within each Islamic financial transaction, tax neutrality, as well as the tax treatment of profits, needs to be resolved as tax issues tend to be debated in most countries. Tax neutrality can be interpreted as a form of tax incentive whereby relief is given to the tax charges that were supposed to be imposed on Islamic financial transactions. As regards to this issue, Malaysia was among the first country to apply tax neutrality to Islamic finance instruments and to reduce the cost of transferring assets in Islamic finance.[37] This measure has promoted an equal position between conventional and Islamic financial products. The Government also has granted several tax incentives in order to assist the wellbeing of the Islamic finance industry in Malaysia.

There are three broad categories of tax incentives for Islamic finance, which are tax incentives to diversified players such as Banking, *Takaful,* and Fund Management, tax incentives to facilitate Islamic finance transactions in Malaysia, and tax incentives on expertise. Examples of tax incentives granted by the Government to Islamic finance transactions are 100 percent tax exemption Year of Assessment (YA) 2007 to YA 2016 for Islamic banks and Islamic banking units licensed under the Islamic Banking Act 1983 on income resulting from Islamic banking business conducted in international currencies, including transactions with Malaysian resident and interest income received by non-residents from financial institutions established under the Islamic Banking Act 1983, or any other financial institutions approved by the Minister of Finance. Therefore, the Islamic banking industry is more welcoming to foreign investors, which indirectly benefits the industry itself.

### *4.4. Simple Legal Procedure and Structure of Fatwa Body*

Philosophically, an Islamic bank is called Islamic because the bank is derived from Islamic teachings or Islamic law, or Islamic principles. The further question is which principles, among various interpretations and opinions, paths, and schools shall be referred to. It is a matter of fact that the differences in places where Muslims live are tantamount to the differences in *madzhab* (schools), and therefore hardly to find a single adhered opinion relating to Islamic principles. In Malaysia, Islamic principles that must be followed are the resolutions from *Shariah* Advisory Council (SAC). Interestingly, this council is designated to be structurally under

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[30] Triyanta (2008)
[31] Malaysian Institute of Accountants (2012). p12.
[32] Stamp Duty (Exemption) (No. 8) Order 2000
[33] Stamp Duty (Exemption) (No. 9) Order 2000
[34] Stamp Duty (Exemption) (No. 38) Order 2002
[35] Stamp Duty (Exemption) (No. 2) Order 2004
[36] Stamp Duty (Exemption) (No. 3) Order 2004
[37] Malaysian, *supra* 28, p.14.

and within the Central Bank of Malaysia (Bank Negara Malaysia).[38] This organizational design is strategic in the sense that all the decisions or resolutions rendered by this council are tantamount to decisions of the government since the Central Bank of Malaysia is a governmental body. As decisions of the governmental agency, the binding power of the decision is not an issue anymore. Differently, in some other countries, the *sharia* body designated to issue the decisions or *fatwa*s very often are not governmental in nature. In a situation like this, the binding power of *fatwa*s or decisions is questioned, as the nature of *fatwa* doesn't carry binding power.

Other interesting points of SAC, which is part of the Central Bank of Malaysia, are the requirements for the appointed persons and independency in terms of remuneration paid. The requirements and selection criteria for anyone appointed to this council can be clearly examined. In addition to this, in terms of remuneration given to the members of SAC is, of course, tackled by the government.[39] When the council is independently established by the public, Muslim scholars, or even the association of bankers, it will be non-governmental in nature, and it suffers lacking binding power and lacking financial adequacy in funding the process of *fatwa* issuance and in offering remuneration for the SAC members. Thus it is certain that in Malaysia, the procedure and institutional structure related *fatwa*s in the banking business are made in simple ways, and this, in turn, will give high flexibility to the legal framework in dealing with Islamic banks.

## 5. Conclusion

It is argued that behind the exemplary growth of Islamic banking in Malaysia, there are some determining factors. One of the most important of such factors, as has been clearly presented above, is legal policy. The relevant authority within the Malaysian government has proven to be undertaking necessary actions to enable the Islamic banking industry, among the wide range of Islamic finance, to grow smoothly. Included in the said policy is a facilitative legal instrument in which some relevant regulations were initiated properly and timely. Incentive in taxation was also well initiated to treat equally between conventional and Islamic banking industry. The last *fatwas* issuer body is also designated in such simply to ease any issues resolved without any complications that may inhibit the growth of the Islamic banking industry. This study is limited to the region of Malaysia as the location of research. Therefore, it is strongly recommended to study the growth of Islamic Banking in other Southeast Asian Countries.

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[38] Central Bank Act (CBA) 1958, section 16B (1). Here is stated: "The Bank may establish a *Shariah* Advisory Council, which shall be the authority for ascertainment of Islamic law for the purposes of Islamic banking business, *takaful* business, Islamic financial business, Islamic development financial business, or any other business which is based on *shariah* principles and is supervised and regulated by the Bank."
[39] This is a legal consequence of the provision in Central Bank Act (CBA) 1958, section 16B (1). Can be construed that as the authority to establish SAC is the Central Bank, all recruitment procedures are also under its authority.

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