

ADDRESSING LEGAL CHALLENGES IN INTEGRATING SHARIAH-COMPLIANT BANKING AND WAQF: A STUDY OF AIBIM'S INITIATIVES IN MALAYSIA

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Abstract

The integration of Shariah-compliant banking and waqf presents legal challenges that are crucial to address for effective implementation in Malaysia. This study focuses on initiatives by the Association of Islamic Banking Institutions Malaysia (AIBIM) aimed at overcoming these challenges. The objective of this study is to analyze AIBIM's initiatives in addressing legal challenges related to integrating Shariah-compliant banking and waqf in Malaysia. This study uses a qualitative approach, specifically a qualitative case study, to examine how Malaysian legislation defines key aspects, identifies legal challenges, and proposes enhancements within AIBIM and relevant legal experts. Data collected from these sources is analyzed to identify the strategies and legal frameworks utilized by AIBIM. As a result of these studies, it reveals that AIBIM has developed comprehensive frameworks and initiatives to navigate the legal complexities surrounding Shariah-compliant banking and waqf integration. These initiatives include legal advocacy, policy recommendations, and collaborative efforts with regulatory authorities. In conclusion, AIBIM's proactive approach to addressing legal challenges has significantly contributed to enhancing the legal environment for Shariah-compliant banking and waqf integration in Malaysia. However, ongoing collaboration and adjustments to regulatory frameworks are necessary to sustain and expand these initiatives effectively.

Keywords: Waqf, Shariah-Compliant, Legal, AIBIM, Malaysia.

INTRODUCTION

Once, land was important for waqf due to productivity, but now cash waqf is more important because it's more productive compared to land, as testified by the existing research studies and found profitable in the practices of the modern Islamic financial system. (Shahedur et al., 2012). Waqf is an Islamic concept of charitable endowment that can be used to provide financial assistance to the needy or to support social and economic development. There is hardly any business sector that is waqf-free, especially since the introduction of modern forms of waqf like cash waqf and sukuk waqf. Waqf is tied to the governmental system it falls under (management-wise) everywhere. The estimated economic value of Waqf varies from one country to another, but it still has enormous economic value (Tahir, 2015). In discussing the significance of waqf in the Islamic financial

landscape, according to Ustaz Don Daniyal Don Biyajid (2012), a renowned Islamic scholar, has emphasized the practice of endowment is very important among Muslims because there are many things that are limited due to financial factors. He added that, although different in terms of shariah, principles, and methods, the practice of waqf in Arab countries has proven that the practice plays an important role as a financial fund to move their education system. For example, the country of Egypt has succeeded in creating a world-famous waqf university, which is Al-Azhar University in Cairo, which was established through the waqf fund of the Islamic community (Zulkifli Mohamed, 2017).

The Syafi'i School defines waqf as someone who holds onto something that can be exploited by keeping it undamaged and losing possession of it, as well as using it for purposes that are allowed. Waqf, according to Hanafi School, is the act of doing something with an object that has permanent status as property by giving its benefits to other parties for their present and future well-being. The definition put out by the Hanafi school leads one to the conclusion that any property designated as waqf for charitable purposes is still owned by the waqf, which retains control over the waqf property (Ghani et al., 2018). The Maliki School holds that a person does not give up ownership of their property when they enter a waqf. Waqf, however, has the power to stop the wakif from doing anything that would allow someone else to claim ownership of the property. In addition, the waqf cannot withhold its waqf and is required to surrender its advantages. The Hanbali School of thought proposes a waqf that, while the property's benefit is goodness in drawing nearer to God, completely restricts the owner's freedom to carry out his useful property by leaving the property undisturbed and severing all rights of control over it. The Hanbali School and the Syafi'i School both define waqf property as not being sold, given as a gift, or bequeathed to anybody. In general, the opinions expressed by the Hanafi and Maliki schools of thought are comparable in that they both agree that the waqf period need not be perpetual, that it is permissible to impose conditions on the waqf property, and that the waqf may temporarily reclaim its ownership. Definite, but the waqf is not permitted to utilise the waqf-owned land (Ghani et al., 2018).

Nowadays, there is a rising market for shariah-compliant financing, which is being embraced by organisations and investors all over the world. This is brought on by a variety of elements, such as the rise in the number of Muslims, the growing interest in ethical investing, and the demand for alternative investment solutions. Shariah-compliant finance is a financial system that operates in accordance with the principles and guidelines of Islamic law (*Shariah*). It is based on the ethical principles of Islam, such as the prohibition of interest (*riba*), speculation (*gharar*), and uncertainty (*maysir*). Investors and companies can benefit from a variety of shariah-compliant financial services. It gives investors a way to invest their money in accordance with their religious convictions. It gives firms access to capital that is not offered by traditional banking institutions.

Through the Association of Islamic Banking and Financial Institutions Malaysia (AIBIM), Bank Negara Malaysia (BNM) has requested the involvement of Islamic banks in collaborating and establishing the Waqf Fund initiative action plan between Islamic banks and SIRC to maximize Waqf's potential and strengthen the ummah's economy in Malaysia. One of the initiatives from AIBIM is the myWakaf project, which is to promote and facilitate the development of waqf in Malaysia. They provide a platform for individuals and organizations to donate to waqf projects. The funds raised through myWakaf are then managed by AIBIM and distributed to eligible waqf projects. A more effective and fair financial system might be produced by combining waqf and banking that comply with Shariah. However, to make this integration a reality, several legal issues must be addressed.

The integration of Shariah-compliant banking and waqf has the potential to create a more efficient and equitable financial system. In Malaysia, the management of Islamic issues, including waqf management, is the responsibility of Majlis Agama Islam Negeri, or the State Islamic Religious Council (SIRC). According to all state enactments, SIRC serves as the only trustee for all waqf properties throughout the federation and each state of Malaysia. Waqf and Shariah-compliant banking working together could result in a more effective and

fair financial system. To make this integration a reality, however, there are a few legal issues that must be resolved. However, more must be done to address the legal issues that arise when combining banking and waqf that adhere to Shariah. To create a comprehensive legislative framework for waqf, the government, Islamic banks, financial organisations, waqf boards, and the community must collaborate. This research paper will offer a thorough analysis of the legal difficulties, the regulatory environment, and AIBIM's strategic interventions, ultimately advancing our knowledge of the complex interaction between Shariah-compliant banking and Waqf in Malaysia's burgeoning Islamic finance industry.

PROBLEM STATEMENT

The combination of Shariah-compliant banking and waqf as tools for social and economic development is becoming more and more popular, but there are considerable legal obstacles in Malaysia that need to be overcome. The purpose of this study is to explore the legal barriers that the Association of Islamic Banking Institutions Malaysia (AIBIM) has faced in its attempts to successfully combine banking and waqf that comply with Shariah and to suggest solutions for these issues. The focus of this problem statement is the legal obstacles that prevent Malaysia from integrating banking and waqf that comply with Shariah. The study's objectives are to examine the difficulties that AIBIM, a significant player in Islamic banking, has and to offer possible solutions or approaches to get above these barriers.

LITERATURE REVIEW

There are numerous publications that offer a thorough analysis of Malaysia's Waqf property administration and management from the perspective of Islamic law. Furthermore, it goes into the crucial function of waqf in the evolution of the Islamic financial system, specifically focusing on the Malaysian setting. Previous studies, such as those by Afendi and Aziz (2010), stated that the waqf donor has a wide jurisdiction to appoint anyone to administer and manage the waqf property. A waqf donor could appoint himself as trustee or hand over this trust to people who receive waqf or to someone else. If the waqf donor sets certain conditions for those appointed, the trustee should implement the conditions and observe all the decisions taken by the waqf donor. On the other hand, if the waqf donor does not specify any party to deal with the waqf property, the judge of the Syariah court (a Muslim court) will have to determine the said party, as mentioned in Maliki and Syafi'i sects' Islamic scholars' views. In a comparative study of waqf in Malaysia and Arab Saudi Arabia, Tahir (2015) also explains that Islamic waqf affairs in Malaysia are the responsibility of the Islamic Religious Council of each state, and courts recognise Shariah as the governing law of property for Muslims, including waqf. Section 25 of the Civil Law Act 1956 states that the administration of Muslims' property shall be in accordance with Islamic law.

Malaysian waqf law makes the SIRC's the 'sole trustees' of waqf property in the state, which is also resented by some quarters, including the beneficiaries (Syed & Kader, n.d.). This means that the SIRCs have the authority and responsibility to manage and administer these waqf properties. However, this provision has been met with resistance and resentment from certain parties, including the beneficiaries of the waqf properties. Omar et al. (2018) also stated that Majlis Agama Islam Negeri, or SIRC, is responsible for managing Islamic matters, including waqf management, in Malaysia. SIRC acts as the sole trustee for all waqf properties in every state and federation of Malaysia, as stated in all state enactments. Also, in the study *Waqf History and Legislation in Malaysia: A Contemporary Perspective* (Yaacob, 2013), in the case of waqf, the SIRC in each state is the sole trustee to manage all the waqf assets. However, under the law, the waqif or founder may specify in the foundation deed the beneficiaries, the purpose of use, or the purpose for which the waqf was created. The SIRC is given the authority and accountability to manage the waqf properties in the interest of waqif as specified in the foundation deed.

While the Ambrose et al. (2015) study also stated that in Malaysia, the founder of waqf can be either Muslim or non-Muslim. To restate, the religion of the founder is not regarded as one of the conditions for the validity of waqf. For instance, the SIRC of Negeri

Sembilan allows non-Muslims to contribute cash waqf, and the Selangor Waqf Enactment No. 7 of 1999, Part 2, allows non-Muslims to convert his or her assets into waqf within the Shariah framework. Omar et al. (2018) wrote that the Department of Waqf, Zakat, and Haj was introduced by the Federal Government to produce guidelines for managing waqf assets in Malaysia and create uniform waqf enactments and regulations in the federal state to be emulated by other states in Malaysia.

This literature review critically examines the legal framework for waqf in Malaysia, identifying several weaknesses such as fragmentation, outdatedness, and lack of clarity.

Additionally, it proposes a series of reforms to address these issues and enhance the legal framework. Furthermore, the study contributes significantly to the literature by highlighting valuable insights into the legal challenges involved in integrating Islamic banking and waqf in Malaysia. In the study *Waqf Management and Administration in Malaysia: Its Implementation from the Perspective of Islamic Law* (Afendi & Aziz, 2010), it was specified that most state enactments do not specifically allocate how to administer the waqf property. Usually, the power of officials that run the waqf property is limited because it is placed under Baitulmal. Omar et al. (2018), studies that specialised in *Current Issues in Corporate Waqf in Malaysia*, stated that for secondment cases within the SIRC organisation itself, without any immediate replacement of the position, it may greatly impact the waqf timeless, especially when the person being seconded holds an important role in the decision-making process, which is their lack of knowledge and management skills of waqf.

Although the waqf is under state jurisdiction, many of the waqf cases are in fact heard by the civil court and tried based on civil law (common law in the United Kingdom). The judicial structure in the Federal Constitution of Malaysia states that the civil court has higher authority than the shariah court. This creates many differences between Islamic matters that should only be dealt with by the shariah court, being brought to the civil court, and judges incompetence in Islamic shariah because they are trained in common law, as expressed by Yaacob (2013). To support this subject, Tahir (2015) also explained that in Malaysia, Waqf is still subject to the scrutiny and jurisdiction of the civil courts. The civil courts are usually presided over by judges who may not be conversant with Islamic law. Thus, they may tend to decide disputes on waqf and may make decisions that are contrary to the principles of Islamic law on waqf. There may be circumstances where Muslim scholars will be called to the court to guide the court with respect to Islamic law matters on waqf, for example, a mufti.

Also, in *Legal and Administrative Challenges in the Development of Waqf in Malaysia*, studies by Syed and Kader (n.d.) specialised in the issue of court jurisdiction, which is the Syariah Court, as jurisdiction over waqf lies within the jurisdiction of the Syariah Court. This is especially true considering Article 121(1A) of the Federal Constitution, which says that where the parties are Muslims and the disputed matters are within the jurisdiction of the Syariah Court, the civil courts shall have no jurisdiction. The reality, however, is that it is quite impossible to exercise the jurisdiction of the civil courts in waqf cases where the dispute pertains to waqf land due to several reasons. (Abdullah & Yaacob, 2012) stated in their studies that the application of cash Waqf is still unclear as to whether its application would infringe any provisions in the state's laws pertaining to Waqf or otherwise. It is clear from the states' provisions that the SIRC will be the sole trustee of Waqf. The issue is whether the Takaful operator could be a legitimate trustee according to the local laws. Sukmana (2020) also expresses that laws on waqf should be in line with the laws that are regulated by each country. Aspects of the laws of waqf should be improved and ensure harmony with other related laws to have a positive impact on society.

These articles collectively contribute to our understanding of the impact, challenges, and potential advancements of Shariah compliance in various financial aspects of businesses in Malaysia. They highlight the importance of adhering to Islamic principles in financial practices and governance, shedding light on the intricacies and potential avenues for innovation in this field. By exploring these articles, we gain insights into the significance of Shariah compliance in shaping the financial landscape of Malaysia and the potential

implications for businesses operating within this framework. In their studies, Shahzinda et al. (2015) explain that for a company to be listed as Shariah-compliant, it must follow all the criteria and benchmarks set by the Bank Negara Malaysia (BNM), Shariah Advisory Council (SAC), and Securities Commission Malaysia (SC). However, Shariah-compliant companies are deemed to comply with the Shariah values, rules, and restrictions in dealing with their financial sources and financing to boost their performance. In the context of Shariah principles, Shariah-compliant companies are not allowed to be involved in any prohibited element. The impact of firm leverage on the performance of Shariah- and non-Shariah-compliant companies in Malaysia was studied, and it was found that firm leverage has a negative and significant impact on the performance of both types of companies. This indicates that both Shariah-compliant and non-Shariah-compliant companies should exercise caution when utilising excessive debt, as it can result in a decline in performance. Nordin et al. (2018) also stated that Shariah compliance in finance means the practice of Islamic law in financial activities that removes three primary elements of principle: gambling, uncertainty, and interest.

Furthermore, Fatmawati et al. (2022) also reveal the presence of functions or organs within IFIs or IBs, which are responsible for ensuring all products and business activities within the organisation always conform to Shariah rules and levels. To discharge its responsibilities effectively, the SSB must coordinate and interact with other functions within the IB. For instance, during the product development process, the SSB may need to coordinate with the Shariah research department and compliance unit before issuing Shariah rulings. Todorof (2018) clarifies that a Shariah-compliant banker is more likely to allow the funding of a transaction that would potentially alleviate one's poverty (including by taking a charitable action) than to finance a transaction for the sake of one's getting richer. Moreover, the restriction imposed on Shariah-compliant firms is related to standard day-to-day business. Firms can trade only in products and services that are permissible (halal), and Shariah-compliant firms are those whose fundraising activities or financing should not involve the use of interest (riba), as clarified by Bugshan et al. (2021).

Numerous impactful suggestions and initiatives have been put forward to enhance waqf management and effectively address the challenges associated with it. Significant efforts have been undertaken to foster the integration of Shariah-compliant banking and waqf, as evidenced by the development of a diverse range of initiatives. In *Waqf Management and Administration in Malaysia: Its Implementation from the Perspective of Islamic Law*, Afendi and Aziz (2010) explain that MAIN can also be involved in developing any activity, whether undertaken by other bodies or people, or either under the management or half management or by a private organisation, by giving help to those spotted by MAIN eligible to carry out all the activities. To increase income, MAIN is entitled to carry out activities by collaborating with different bodies, whether from the government, corporation, or private sector. Also, Ari and Koc (2021) stated in their studies that the endowment organisation should avoid any attempts to paralyse its movement through outdated organisational and administrative frameworks and the adoption thereof without taking an orientation towards the necessities of development. Such development should be commensurate with contemporary life updates without compromising legitimate basics.

Additionally, with approval from the relevant Islamic religious council, an incorporated company, a registered society, or a registered trustee may also undertake Waqf. Hence, the Malaysian government took a good step, which is to provide the public sector as well as the private sector with more platforms to make better use of Waqf and various schemes, such as cash Waqf (Tahir, 2015). *Studies of Legal and Administrative Challenges in the Development of Waqf in Malaysia* by Syed & Kader (n.d.) have expressed a good lesson to learn from the successful strategy of MUIS in Singapore through the corporatization of its property development department into a 100% wholly owned subsidiary known as Warees Investment Pte Ltd. ('Warees'). Through the implementation of the concept of istibdal (assets migration), employing real estate investment initiatives, and innovative syariah-compliant financing modes, WAREES has been able to develop key

waqf properties in Singapore. Darus et al. (2017) stated that Malaysia needs to reform, not only in the fundamental aspect of educating society to understand waqf in a larger context but also in the legislative aspect related to law. Now, if we want to transform waqf into a larger scale by establishing waqf at a corporate level; but first we must change our mindset by assessing other waqf approaches instead of the traditional practice. We must create our own model for Waqf Corporation based on Shariah so that the purpose of implementing waqf in a corporation does not contravene Islam, and we should not simply adapt the conventional model for Waqf Corporation.

METHODOLOGY

For this research, a qualitative case study design will be used. The rationale for selecting AIBIM as the case study's subject is its significant contribution to the advancement of Waqf and Shariah-compliant banking in Malaysia. An in-depth examination of the legal issues and AIBIM's initiatives to overcome them is made possible by this study design. This research's main goal is to investigate the legal issues surrounding the combination of Waqf and Shariah-compliant banking. Furthermore, the study intends to investigate the actions taken by AIBIM to tackle these issues, thereby adding to our knowledge of how Islamic financial concepts are integrated in Malaysia. The organisation chosen as the case study is the Association of Islamic Banking Institutions Malaysia, or AIBIM. Based on AIBIM's well-known role in supporting Shariah-compliant banking and waqf in Malaysia, this choice was made. We can learn a great deal about the legal difficulties Islamic financial organisations confront and the methods they use to get over them by researching AIBIM. The study will make use of secondary data from published research and articles on AIBIM's initiatives as well as the legal difficulties in combining Waqf and Shariah-compliant banking. To find relevant sources, a thorough assessment of the literature will be done. To guarantee accuracy and legitimacy, data will be gathered from reliable sources such as reports, academic journals, and official publications. To find important themes and patterns in the data that has been gathered, thematic analysis will be used for data analysis. This methodology facilitates the recognition and elucidation of recurrent notions, theories, and viewpoints concerning the legal obstacles encountered by AIBIM and the measures that the organisation has implemented to tackle them. If available, software for qualitative data analysis will be used to effectively manage and organise the data.

The research process will be conducted in accordance with ethical standards. When using secondary data, proper reference and acknowledgment of sources shall be made sure of. By using anonymized data and preventing the disclosure of sensitive or personal information, data confidentiality and privacy will be preserved. A few limitations are acknowledged in the research. First off, the study's reliance on secondary data raises the possibility of biases or gaps in the literature. Second, the findings' applicability in different circumstances is constrained by the case study approach. Finally, the sample size will be restricted to the information found in the chosen sources. The results of this study will have a big impact on how Shariah-compliant banking and waqf are integrated in Malaysia. Through an analysis of AIBIM's initiatives, this study aims to enhance comprehension of the legal obstacles that Islamic financial institutions encounter and identify potential avenues for enhancement. The study will clarify the role AIBIM plays in resolving these issues and offer perceptions that can guide future approaches to the effective incorporation of Islamic financial concepts. Considering a concentration on AIBIM as the case organisation, this paper presents the research approach for examining the legal difficulties in combining Shariah-compliant banking and Waqf. Discussions were held regarding the design of the qualitative case study, thematic analysis, data collection from secondary sources, ethical considerations, and limits. The study's potential contributions to the field of Islamic finance in Malaysia were demonstrated by highlighting the significance and consequences of the findings.

FINDINGS AND DISCUSSION

In Malaysia, utilising the potential of waqf assets for economic growth has gained favour through waqf economic development. Shariah-compliant banking and Waqf, two essential elements of Islamic finance, have significantly shaped the socioeconomic environment of nations with most Muslims. These two aspects of Islamic finance have thrived in Malaysia, a country renowned for its strong Islamic financial environment, making a considerable contribution to the growth of the economy and the welfare of the populace. Waqf and Shariah-compliant banking together provide a dynamic link between philanthropy, economic growth, and Islamic financial principles. Although all fields have a strong Islamic foundation, they function in different legal systems and regulatory environments, which creates complex legal opportunities and challenges.

One of the key issues is the waqf's ambiguous legal framework. Malaysia's current waqf regulations are out-of-date and fall short of meeting the demands of the contemporary financial system. It may be challenging for Islamic banks and financial institutions to create waqf-based goods and services due to this ambiguity. The lack of cooperation among the various waqf stakeholders is another problem. This comprises the executive branch, Islamic financial institutions, waqf boards, and the general populace. The development and implementation of waqf-based programmes may be challenging due to a lack of cooperation.

The Malaysian Association of Islamic Banking and Financial Institutions (AIBIM) has promoted and implemented waqf-based programs. To address these issues, AIBIM has made some progress. For Islamic banks and other financial institutions, the association has created a variety of best practices and recommendations for waqf. Additionally, the AIBIM has collaborated with the government to strengthen the laws governing waqf.

The Legal Challenges Arising from the Integration of Shariah-Compliant Banking and Waqf in Malaysia

1. The Lack of a Clear Legal Framework for Waqf

In Malaysia, waqf is governed by a complicated and changing legal system. It is based on a combination of federal, state, and Islamic law, which is governed by a complex legal system that consists of several laws, rules, and requirements. In the case of Malaysia and Saudi Arabia, we observed two main difficulties and/or constraints that exist within both countries' legal frameworks, such as the long and relatively complicated procedures required for establishing an endowment and the hardships faced in searching for formal reports and data related to Waqf (Tahir, 2015). Islamic law prescribes that the property that is donated must be managed and administered by the appropriate parties responsible for supervising waqf property benefits so that the benefits can be channelled to parties that are the rightful recipients (Afendi & Aziz, 2010). As Islamic law matters are under the jurisdiction of the various states in Malaysia, the Waqf Enactment, also known as the Islamic Religious Administration Enactment, is the main piece of waqf-related legislation in that country. Majlis Agama Islam Negeri, or State Islamic Religious Council (SIRC), is responsible for managing Islamic matters, including waqf management, in Malaysia. SIRC acts as the sole trustee for all waqf properties in every state and federation of Malaysia, as stated in all state enactments (Omar et al., 2018). According to federal law, the Federal Constitution of Malaysia allows each state to make legislation concerning Islam. Waqf is affected by a few federal laws, notably the National Land Code of 1965 and the Administration of Islamic Law (Federal Territories) Act of 1993. While, regarding the state's legislation, Malaysian states each have their own unique waqf laws. The definition of waqf, the steps for establishing a waqf, and the duties of the waqf administrator are often outlined in these laws, which differ from state to state. And the primary source of law for waqf in Malaysia is Islamic law. However, there are situations when it is necessary to turn to federal and state regulations because the interpretation of Islamic law regarding waqf is not always obvious.

The Administration of Islamic Law (Federal Territories) Act of 1993 (Act 505) is the primary federal statute governing waqf. This Act outlines the creation and administration

of waqfs in the federal territories of Labuan, Putrajaya, and Kuala Lumpur. Waqf is governed by state regulations that differ from state to state. But most states have passed legislation like Act 505, known as waqf. These laws often include the following provisions which is the creation of waqfs by entities, whether individuals or groups, and the selection of trustees, or mutawallis, to oversee waqfs. Islamic law also plays a significant role in Malaysia's waqf governance, in addition to federal and state legislation. Islamic law establishes the fundamental rules governing waqf, such as the necessity of charitable use of waqf assets and their impossibility of sale or inheritance. The Syariah Court's jurisdiction over waqf lies within its jurisdiction. This is especially true considering Article 121(1A) of the Federal Constitution, which says that where the parties are Muslims and the disputed matters are within the jurisdiction of the Syariah Court, the civil courts shall have no jurisdiction (Syed & Kader, n.d.).

The establishment, administration, and use of waqf assets in Malaysia are governed by the laws, rules, and provisions listed below. The Federal Constitution of 1957 stipulates that the SIRC will be established in each state. The management of waqfs in each state is the responsibility of the SIRC. Next, waqf land may be registered under the National Land Code of 1965 (NLC). The National Land Code of 1965 (NLC) does not provide specific provisions pertaining to waqf lands, compared to special provisions in respect of trusts (Tahir, 2015). Waqf land cannot be bought, sold, financed, or mortgaged without the SIRC's consent. Additionally, the Trustee Act of 1949 (Act 208), which is the Trustee Act, outlines the duties and authority of trustees. Unless specifically stated otherwise by legislation, the SIRC serves as the trustee for all waqfs in the state. Then the waqf rights enforcement provisions of the Specific Relief Act 1950 (Act 137) are presented. Lastly, the Contracts Act 1950 (Act 136) is another law that governs the legality of waqf contracts.

Next, the lack of clarity surrounding the merger of banking and waqf that conforms to Shariah in Malaysia has important ramifications for several parties, including regulatory bodies, financial institutions, waqf institutions, legal professionals, and the public. In addition, to strengthen the shariah compliance element that makes globalisation trusted, the concepts of justice, moral obligation, accountability, and equality should be mainstreamed as part of the shariah element value (Nordin et al., 2018). The absence of specific norms and regulations addressing the integration of banking and waqf that comply with Shariah produces confusion for Islamic financial institutions, to name a few consequences of this lack of clarity. The expansion and development of Shariah-compliant banking may be hampered by this uncertainty. The growth of waqf assets and their productive use are hampered by the unclear integration of waqf and banking. This lessens the overall influence of waqf in society and restricts the ability of waqf organisations to make meaningful contributions to socioeconomic growth.

So, as already formed, there is no clear legal framework for waqf in Malaysia. Islamic endowments, known as waqf, are meant to serve the common welfare. Waqf operations in Malaysia, however, lack a clear legal framework, which might make it challenging to combine them with Shariah-compliant banking procedures. Additionally, many different consequences result from Malaysia's unclear integration of banking and waqf that abide by Shariah. Financial institutions are left in the dark, the waqf sector struggles to expand, cooperation and innovation are stifled, regulatory issues arise, and socioeconomic potential is lost as a result. But also in Malaysia, the waqf legal system is continuously developing. The government is currently working to create a federal waqf law that will be applicable to all states. This regulation is anticipated to offer a more thorough and consistent framework for the management of waqfs in Malaysia. To address these consequences, it is necessary to create precise legal frameworks and rules that make it easier for banking and waqf that comply with Shariah to integrate seamlessly, guaranteeing adherence to the law while fostering social and economic advancement.

2. The Need for Harmonization Between Shariah Law and Conventional Law in Waqf

Shariah law includes a variety of conditions for waqf, including that the property or assets be provided for a legal cause, that the donor does not receive any advantage from the waqf, and that the waqf be run openly and honestly. Conventional law also imposes several conditions on waqf, including the necessity for a precise and explicit legal document, the appointment of a trustee to oversee it, and registration with the appropriate authorities. Banking procedures that follow the principles of Shariah law are known as shariah-compliant. Thus, these practices must refrain from engaging in any actions that are regarded as *riba* (usury), *gharar* (uncertainty), or *maysir* (gambling). Therefore, there are many issues that arise in society, including whether Shariah-compliant companies' operations are similar to those of their conventional counterparts (Hunjra et al., 2022).

When waqf activities are combined with Shariah-compliant banking practices, there is a need for shariah law and common law to be harmonized. This is since the ownership, management, and use of property are governed by distinct laws and statutes under the two legal systems. Shariah-compliant firms, however, have other non-conventional sources of finance, including trade partnership-based contracts such as *musharakah* and *mudarabah* and debt-based contracts (cost-plus financing) such as *murabahah* and *tawarruq* (Bugshan et al., 2021). For instance, traditional banking practices are predicated on the concept of interest; however, Shariah law prohibits the charging of interest on loans. Therefore, there must be a way to reconcile these two opposing viewpoints to develop a waqf-based banking system that is both financially sound and Shariah-compliant.

The creation of a successful and sustainable waqf industry depends on the integration of Shariah law and customary law, which is a difficult and complex process. It is a procedure that calls for the support of Islamic academics, attorneys, bankers, and public servants. It can help to guarantee that waqfs are used for their intended objectives and that they are managed in an accessible and transparent manner, which is just one of the advantages of harmonising Shariah law and conventional law in waqf. But the appropriateness of the management systems of Waqf with its real Islamic standard was handicapped due to some historical reasons that are primarily attributed to the history of western colonialism in the Muslim world (Shahedur et al., 2012). Additionally, it may help waqf become more appealing as an investment choice and draw in additional donors. It can also support the creation of new waqf institutions that are both shariah-compliant and enforceable by law. Finally, it may contribute to the development of a more favourable climate for the waqf sector.

To create a successful and long-lasting Islamic financial industry, Shariah law and common law must be reconciled. Although difficult and complicated, this process is crucial for the development of Islamic finance. Despite these obstacles, there has been substantial advancement in recent years in the fusion of Shariah law and common law. The demand for Islamic financial goods and services is rising, and Islamic scholars, lawyers, and bankers are becoming more and more conscious of the value of cooperation.

3. Legal Complexities in Applying Shariah Principles to Waqf

Applying Shariah principles to the management and administration of waqf assets presents legal challenges for a few reasons. These complications may have an impact on how banking and waqf that abide by Shariah law are integrated. Due to differing legal viewpoints and schools of thought, there might be variations in the interpretation and application of Shariah principles in the management of waqf assets. This variety can include things like how money is distributed, how investments are made, and what waqf funds can and cannot be used for. As a result, it can be difficult to guarantee that all waqf institutions conform to Shariah principles consistently. The endowment organisation should avoid any attempts to paralyse its movement through outdated organisational and administrative frameworks and the adoption thereof without taking an orientation towards the necessities of development (Ari & Koc, 2021).

The management of waqf assets is guided by shariah principles, although there are differences in how these are interpreted and applied. There may be divergent views among legal experts and schools of thought on facets of waqf management, such as acceptable uses of waqf funds, income distribution, and investment strategies. It can be difficult to resolve these disagreements and guarantee that Shariah principles are followed consistently by all waqf entities. The corporate waqf model that was developed and implemented in WANCORP has gone through the practice of *Istibdal*, where the replacement of waqf assets with the principle of profit compensation has been implemented (Huda, n.d.), which is the function of WANCORP in administering and allocating waqf proceeds in accordance with the waqf deed.

To overcome these obstacles and make it easier for banks and waqfs that adhere to Shariah to integrate, efforts should be taken to provide precise legal rules that harmonise Shariah principles with the current legal system. To effectively address these issues and create comprehensive solutions that support the expansion and efficacy of Shariah-compliant banking and waqf integration in Malaysia, cooperation between waqf institutions, Shariah-compliant banks, legal professionals, and regulatory agencies is essential.

The Collaborative Strategies and Frameworks Have Been Established Among Waqf Institutions, Shariah-Compliant Banks, Legal Experts, And Regulatory Authorities

Banking that complies with Shariah and waqf interacts in a variety of ways. Islamic law forbids the charging or paying of interest, and both waqf and Islamic banking are based on these principles. Waqf is a type of charity endowment in which resources are given for general welfare. On the other side, Islamic banking is a form of financial intermediation that follows Islamic law.

1. Collaborative Initiatives Between Waqf Institutions and Shariah-Compliant Banks

The utilisation of waqf assets to finance Islamic banking operations is one potential area of cooperation between waqf and Islamic banking. A waqf could be utilised, for instance, to fund an Islamic bank or to guarantee the loans the bank makes. As a result, Islamic banks would be able to increase their lending activities and offer the community more financial services. The use of waqf assets to produce income for charity purposes is another area where partnership may be possible. A waqf's assets, for instance, may be managed by an Islamic bank, which would then utilise the income to pay for social welfare initiatives. Waqfs would be better able to accomplish their charitable goals as a result.

In recent years, strategic partnerships between waqf authorities and corporate bodies and figures have been executed to develop waqf properties. For example, Tabung Haji (TH) and Majlis Agama Islam Wilayah Persekutuan agreed to collaborate in developing and managing Menara Bank Islam (Omar et al., 2018). As per the deal, TH covered the cost of construction, and its subsidiary TH Properties took over the asset management after it was finished. The building is leased to Bank Islam and has been known as Menara Bank Islam since it was completed. Setee Aishah is a waqf land parcel that Uda Holdings and Majlis Agama Islam Pulau Pinang (MAINPP) have joined forces to build. This configuration helps with the asset's development, and the several retail lots given to Majlis provide a fresh source of waqf funding.

There are several cooperative techniques and frameworks that have been developed among waqf organisations to overcome the legal challenges of integrating waqf with Shariah-compliant banking, Shariah-compliant banks, legal professionals, and regulatory agencies. For the first time, waqf assets in the form of shares of the company were issued and managed by a corporate body (Omar et al., 2018). First, the establishment of waqf banks. Waqf banks are companies that specialise in managing and investing waqf funds in a way that complies with Shariah. These banks can offer waqf institutions a range of services, including financing, investment guidance, and asset management. Next is the

creation of financial services and products based on waqf. Waqf funds, waqf sukuk, and waqf takaful are only a few of the latest financial services and products based on waqf. These goods and services may contribute to the waqf institutions increased financial stability and donor accessibility. But the application of cash Waqf is still unclear as to whether its application would infringe any provisions in the state's laws pertaining to Waqf or otherwise (Abdullah & Yaacob, 2012).

2. The Creation of Waqf Databases

Moreover, there is also the creation of waqf databases. Databases called waqf registries include data about waqfs, including the waqf's beneficiaries, assets, and financial records. These registers can aid in ensuring that waqfs are managed openly and responsibly. A comprehensive documentation of waqf-related data enables stakeholders to keep a closer eye on how well waqf assets are being used and performing. Waqf databases can also make it easier to spot possible areas for development, such as underutilised resources or chances to maximise waqf resources. Another issue is waqf reporting, such as the absence of the necessary standard of reporting, which leads to no uniformity in recording as well as a lack of transparency (Mahat et al., 2015).

3. Collaborative Strategies Legal Experts and Regulatory Authorities

Additionally, the evolution of fatwas, or Islamic legal rulings. Fatwas are Islamic legal pronouncements that offer advice on how to uphold Shariah law in particular circumstances. Waqf and Shariah-compliant banking have been the subject of several fatwas, which may help to explain the complicated legal issues involved. Next, the establishment of corporate waqf in 2006 by Johor Corporation (JCorp) has transformed waqf practice in Malaysia. For the first time, waqf assets in the form of shares of the company were issued and managed by a corporate body (Omar et al., 2018). Experts and professionals from various fields come together on these collaborative platforms to share experiences, exchange knowledge, and work together to address the legal, operational, and regulatory issues of integration.

To gather information, evaluate case studies, pinpoint best practices, and create suggestions for legislators, regulators, and other stakeholders participating in the integration process, committees and working groups are essential. These committees' and working groups' thoughts and products aid in the creation of frameworks, policies, and strategies that support the effective fusion of waqf and Shariah-compliant banking. Lastly, there is the formation of committees and working groups. Several organisations have formed working groups and committees to examine the feasibility of combining banking that complies with Shariah with waqf. These organisations can assist in identifying the potential and difficulties in this field and formulating suggestions for how to deal with them.

In Malaysia, regulatory bodies like the Securities Commission Malaysia and the Central Bank of Malaysia (Bank Negara Malaysia) are essential in promoting cooperation and guaranteeing compliance with legal frameworks in the waqf industry. The regulatory organisation in charge of policing and overseeing Malaysia's capital market is the Securities Commission Malaysia (SC). The Securities Commission Malaysia (SC) has taken on a few initiatives to explore effective ways to revive the role of waqf in economic and social development through the Islamic capital market (Securities Commission Malaysia, 2015). In the context of waqf, the SC is responsible for making sure that investment operations related to waqf comply with securities laws and regulations. They set up policies and procedures to control how waqf institutions operate, such as rules for investments, transparency obligations, and fundraising.

The Central Bank of Malaysia, also known as Bank Negara Malaysia (BNM), is the country's central bank responsible for monetary stability and financial supervision. It oversees financial matters and maintains monetary stability. BNM is essential to the supervision of banking and financial operations that adhere to Shariah, including waqf. Shariah-compliant banks operating in Malaysia set rules and procedures to guarantee

adherence to financial standards and Shariah principles. Bank Negara Malaysia (BNM), through the Association of Islamic Banking and Financial Institutions Malaysia (AIBIM), has called for Islamic banks' participation in collaborating and standardising the Waqf Fund initiative action plan between Islamic banks and SIRC in developing the potential of Waqf and empowering the economy of ummah in Malaysia (myWakaf, 2021). AIBIM produces a waqf house financing product, and all AIBIM members will utilise the newly developed waqf home financing product (MA Yusof, 2023).

These are only a few of the cooperative frameworks and techniques that have been developed to deal with the complicated legal issues of the combination of banking that complies with Shariah and waqf. The continual effort put into creating these frameworks and policies is crucial for the waqf sector's future. The need for more clarity on the definition of profit in waqf is one of the issues that must be resolved to further integrate waqf and Shariah-compliant banking. The demand for more financial services and products with a waqf foundation and the requirement for waqf registries to be more functional and efficient. Next is the demand for more fatwas about banking that comply with Islamic law and waqf. Waqf institutions, Shariah-compliant banks, legal professionals, and regulatory bodies must work together more. We can make waqf a more viable and long-lasting financial tool that can be used to assist society by solving these issues.

The Initiatives and Interventions of AIBIM Addressed the Legal Challenges Encountered During the Integration of Shariah-Compliant Banking and Waqf

The Association of Islamic Banking and Financial Institutions Malaysia (AIBIM) is known as the national trade organisation for Malaysia's Islamic banking and finance sector. AIBIM is a dynamic, visible, responsive, and effective organisation representing the Islamic finance industry (Rozani et al., 2021). AIBIM is also known as an association that represents Islamic banking in Malaysia. AIBIM promotes a sound Islamic banking system and practice, both locally and internationally (MA Yusof, 2023). Islamic banking follows Shariah law and focuses on ethical and socially responsible financial practices. Over 100 institutions, including commercial banks, Islamic banks, investment banks, takaful operators, and other financial institutions, are members of the organisation, which was founded in 1997. The Islamic Financial Services Board (IFSB), a global organisation that establishes guidelines for Islamic financial institutions, also counts AIBIM as one of its members. In Malaysia, the Islamic banking and financial sector is effectively represented by AIBIM. It is dedicated to fostering the industry's expansion and development and making sure that it satisfies the needs of the Malaysian populace. The initiatives and interventions AIBIM made to address the legal issues that arose with the integration of Shariah-compliant banking and waqf are only a few instances. The participating Islamic Banks (IBs) shall collaborate with each other as well as with the participating SIRCs in managing the waqf fund project, which will be identified by the Joint Management Committee (JMC), a committee to be established by the respective SIRCs and the appointed IBs thereto (Code-of-Governance-and-Transparency-for-Waqf-Fund (1), n.d.). The activity of AIBIM contributes to the development of the waqf industry in Malaysia and makes waqf a more appealing and approachable alternative for people and enterprises.

In 2017, AIBIM launched the myWakaf initiative, which is an economic instrument based on philanthropic values aimed at achieving its objective of providing the best service to every layer of society, especially the less able, to enable them to receive quality services and assistance in meeting their needs for mutual prosperity. AIBIM represents members' interests and provides guidance and assistance regarding Islamic banking and finance's local, regional, and worldwide growth (MA Yusof, 2023). Several Islamic banks (IBs) have reached a consensus to facilitate the growth of social finance instruments by maximising the value of waqf and providing channels to collect and manage the waqf fund efficiently (Code-of-Governance-and-Transparency-for-Waqf-Fund (1), n.d.). This initiative, known as "myWakaf," allows six (6) Islamic banking institutions that are members of AIBIM, which are Affin Islamic Bank Berhad, Bank Islam Malaysia Berhad, Bank Muamalat Malaysia

Berhad, Bank Rakyat, Maybank Islamic Berhad, and RHB Islamic Malaysia Berhad, to work together in providing banking service channels to make it easier for donors to perform waqf worship for the development of waqf projects in Malaysia. MyWakaf is an innovation in waqf collection where the SIRC can explore a wider space with potential contributors such as corporations and companies. With the close cooperation between MAIN and Islamic banks, myWakaf believes that it will make a strong contribution to increasing the efficiency and effectiveness of waqf projects. To facilitate the orderly development and operationalization of waqf funds that are consistent with Shariah requirements (MyWakaf Performance Report Card 2020, n.d.).

In 2020, "Guidelines on Waqf Management for Islamic Banks" were released by AIBIM. This manual gives Islamic banks details on the statutory, administrative, and practical facets of waqf management. The lack of clear and thorough laws and rules governing waqf in Malaysia is one of the problems. Because of the resulting ambiguity and uncertainty, it has been challenging for Islamic banks to create and provide waqf-based goods and services. The Malaysian government and AIBIM have been collaborating to create a new waqf law to solve this issue. To have a dynamic and synergistic relationship between SIRC and Islamic banks to spearhead innovative waqf-related development (MyWakaf Performance Report Card 2020, n.d.) A clear and comprehensive legal framework for waqf would be provided by the proposed law, which would aid in encouraging the growth of waqf-based goods and services in Malaysia.

Additionally, AIBIM has collaborated with SIRC to advance the creation of a national waqf registry. The national waqf registry will contribute to increased accountability and transparency in waqf management in Malaysia. In Malaysia, the administration of waqf is handled by SIRC. To encourage SIRC to create waqf-based projects and to increase public awareness of the advantages of waqf, AIBIM has been collaborating with SIRC. There is no doubt that these STRs and the overall cooperation of banks with the relevant authorities have been useful in supporting enforcement activities by law enforcement agencies (MyWakaf Performance Report Card 2020, n.d.).

The activities and interventions of AIBIM have assisted in addressing the legal issues that have arisen with the integration of waqf and banking that adheres to Shariah. In rendering these financial supports and assistance, the Islamic banking industry is supported by the rulings of the Shariah Advisory Council (SAC) of BNM (Rozani et al., 2021). Because of this, Islamic banks can now create and provide a greater range of waqf-based goods and services, which aids in encouraging the expansion of the waqf industry in Malaysia. AIBIM has been working on the new waqf law as well as advising and assisting Islamic banks with waqf-related issues. For instance, AIBIM has written a manual on waqf management specifically for Islamic banks. This manual offers Islamic banks details on the statutory, administrative, and practical facets of waqf management. AIBIM should regulate the Waqf Banking Products Development Process (WBPs), as each product must be approved by the Fatwa of the SIRC. Thus, the SIRC has already contributed to the development of WBPs by providing guidelines to AIBIM (MA Yusof, 2023).

CONCLUSION

The study's conclusions show that Malaysia's waqf legal system has many weaknesses, including fragmentation, outdatedness, and confusion. These flaws make it more difficult to manage and administer waqf properties effectively and in compliance with Islamic law. The report also highlights the need for reforms by identifying a few legislative obstacles preventing the smooth integration of Islamic banking and waqf. There have been several suggestions and attempts put forth to address these issues. These recommendations seek to improve the legal foundation for waqf in Malaysia, encourage efficient waqf property management, and facilitate the integration of banking that complies with Shariah with waqf. These changes would strengthen the role of waqf in promoting socioeconomic development and advance Malaysia's Islamic financial system. All things considered, this research adds significantly to the amount of knowledge already available on the topic by shedding light on

the legal difficulties associated with combining banking and waqf that comply with Shariah. The actions taken by AIBIM provide a positive direction and emphasise how crucial it is to resolve legal issues to guarantee the smooth integration of these two crucial elements of Malaysia's Islamic banking system.

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