

Islamic Banking and The Standardization Dilemma: Comparative Legal Perspectives

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Abstract

The growth of Islamic banking across multiple jurisdictions has brought into sharp focus the ongoing challenge of legal and regulatory standardization. This article explores the implications of divergent interpretations of Shariah principles and varying national legal systems on the consistency and credibility of Islamic financial practices. Through comparative case studies of Malaysia, the Gulf Cooperation Council (GCC) countries, and Mauritius, the paper analyzes how different jurisdictions have approached the formulation and implementation of Islamic banking laws. The study highlights key legal structures, Shariah governance models, and regulatory oversight mechanisms, revealing how legal fragmentation contributes to operational inefficiencies, investor uncertainty, and obstacles to cross-border integration. The paper also examines the role of international standard-setting bodies such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB), assessing their effectiveness in promoting harmonization. These include strengthening transnational regulatory cooperation, encouraging mutual recognition agreements, and developing hybrid legal models that integrate Shariah principles within robust national financial frameworks. Ultimately, the article argues for a pragmatic path toward standardization, one that balances doctrinal authenticity with legal interoperability to support the sustainable growth of Islamic finance.

Keywords: Muslims Islamic Banking, Legal Standardization, Shariah Governance, Comparative Law, Regulatory Frameworks

Abstrak

Pertumbuhan perbankan Islam di berbagai yurisdiksi telah menyoroti tantangan berkelanjutan dalam standardisasi hukum dan regulasi. Artikel ini mengeksplorasi implikasi perbedaan interpretasi prinsip Syariah dan sistem hukum nasional yang beragam terhadap konsistensi dan kredibilitas praktik keuangan Islam. Melalui studi kasus komparatif Malaysia, negara-negara Dewan Kerjasama Teluk (GCC), dan Mauritius, makalah ini menganalisis bagaimana berbagai yurisdiksi mendekati perumusan dan pelaksanaan undang-undang perbankan Islam. Studi ini menyoroti struktur hukum utama, model tata kelola Syariah, dan mekanisme pengawasan regulasi, mengungkap bagaimana fragmentasi hukum berkontribusi pada ketidakefisienan operasional, ketidakpastian investor, dan hambatan integrasi lintas batas. Makalah ini juga menelaah peran badan penetapan standar internasional seperti Organisasi Akuntansi dan Audit untuk Lembaga Keuangan Islam (AAOIFI) dan Dewan Layanan Keuangan Islam (IFSB), menilai efektivitasnya dalam mendorong harmonisasi. Ini termasuk memperkuat kerja sama regulasi transnasional, mendorong perjanjian pengakuan timbal balik, dan mengembangkan model hukum hibrida yang

mengintegrasikan prinsip Syariah dalam kerangka keuangan nasional yang kuat. Pada akhirnya, artikel ini mengusulkan jalur pragmatis menuju standarisasi, yang menyeimbangkan keaslian doktrinal dengan interoperabilitas hukum untuk mendukung pertumbuhan berkelanjutan keuangan Islam.

Kata Kunci: *Islamic Banking, Legal Standardization, Shariah Governance, Comparative Law, Regulatory Frameworks*

Introduction

In this modern era, Islamic banking remains one of the alternatives to conventional banks and many people keep using it due to many reasons. Islamic banking has established itself as a vital component of the global financial system, providing ethical, Sharia-compliant alternatives to conventional banking. Islamic banking guided by principles such as prohibition of interest, risk-sharing and engaging with halal products (Bastian & Fitri, 2025). Islamic banking are based on Islamic Financial System (IFS) and it is a set of financial policies, instruments, and services, to employ Islamic assets and trade them under Sharia values, controls, and standards, to achieve full employment of economic resources and achieve social welfare. The objective is to operate and develop funds through legitimate means and it also to achieve financial and monetary stability, economic balance and social well-being.

Unlike conventional banking, Islamic banking depends on distinct Shariah standards issued by various organisations, such as the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) in Bahrain, the Islamic Financial Services Board (IFSB) in Malaysia, or national Shariah councils in each country, in contrast to conventional banking, which complies with generally recognized international frameworks (Kettell, 2011). A financial product that is accepted as Shariah compliant in one nation may be disapproved of in another due to the potential for these bodies to render varying decisions.

Despite significant progress, several critical challenges persist that require continued scientific attention. Islamic banking is constantly associated with lack of standardization and regulations. The dual nature of Islamic banking where financial transactions must comply with both civil law and Islamic Sharia will create a complex environment for conflict resolution (Moustafa Aldabousi et al., 2025). Traditional judicial systems often lack the specialized knowledge required to assess the validity of Islamic banking contracts and transactions, leading to extended litigation periods and outcomes that may not align with Sharia principles (Faizi & Shuib, 2024).

This research is important because the expansion of Islamic banking across different jurisdictions has created inconsistencies in Shariah interpretation and regulatory frameworks, leading to legal uncertainty and challenges in cross-border financial transactions. Understanding how different legal systems approach Islamic banking standardization is essential for strengthening regulatory consistency while preserving Shariah principles.

Previous studies have mainly focused on individual jurisdictions or specific aspects of Shariah governance, such as Malaysia's regulatory framework or the implementation of AAOIFI standards. This study contributes to the literature by providing a comparative legal analysis of Malaysia, GCC countries, and Mauritius, highlighting common challenges and proposing a balanced approach that combines international standardization with local legal adaptation.

Literature Review

The expansion of Islamic banking across various legal systems has led to a significant discussions about the importance of Shariah standardization. One of the most referenced efforts in this part is Malaysia's Shariah Governance Framework (SGF) which are introduced by Bank Negara (BNM) in 2010 but has been revised in 2017 and 2019. Observed findings from a study on Shariah Governance Framework SGF-2010 shows that the framework has significantly improved Shariah governance in Islamic banks, especially in improving the roles and accountability of the Shariah Committee. However, despite its success there are limitations that persist especially in transparency, Shariah Committee independence and also the integration of Shariah governance into risk strategies (Naysary et al., 2020). These findings show how hard it is to stay true to Islamic principles while also trying to make the system clear and efficient.

The Gulf Cooperation Council (GCC) region presents a different kind of legal and regulatory system. A recent study examined how global economic policy uncertainty affects monetary stability in GCC countries that indirectly reflects how sensitive it is Islamic finance operations are to external policy fluctuations (Elmonshid, 2026). The results shows different effects to different countries which means using the same Shariah or legal system everywhere might not work well. This is due to the diverse fiscal and legal autonomy of GCC nations where the political and monetary decisions differ significantly. These variations show the difficulty of applying the same legal or Shariah rules, especially in countries where fiscal and monetary autonomy is tightly linked to political and economic agendas (Elroukh, 2024).

The case of Mauritius which is a Muslim-minority country adds a unique part to the standardization dilemma. Despite the law allows Islamic banking, it is still hard for a full Islamic retail bank to grow. The challenges like lack of awareness, insufficient legal infrastructure to enforce Islamic contracts, and a shortage of a qualified Shariah scholars and also liquidity instruments (Warsame, 2017). These conditions not only just limit the operational capacity of Islamic banks but also reflect how regulatory harmonization is more complicated in non-Muslim majority country (Rassool, 2018).

At the international level, organizations like the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) have been strong supporters for standardized practices. A case of study of AAOIFI's standards implementation in Malaysia highlights both progress

and resistance. While some banks follow these rules to be more Shariah compliant, but others hold back because of problems like lack of skills, high costs and different view of national Shariah authorities (Shaikh, 2023). The study points out that even though AAOIFI's rules are well-made but they only matter if each country's regulator accepts them, thereby limiting their global impact (Rahayu et al., 2024).

Method

This study employs a qualitative comparative legal research design to examine the challenges of standardization in Islamic banking across different jurisdictions. The research adopts a doctrinal legal approach, which involves the systematic examination and critical analysis of legal principles, statutory provisions, regulatory frameworks, policy documents, and scholarly literature relating to Islamic banking and Shariah governance. According to Hutchinson and Duncan (2012), doctrinal legal research focuses on identifying, interpreting, and synthesizing legal rules and principles derived from authoritative legal sources. Accordingly, this study analyses primary legal materials, including Bank Negara Malaysia's *Shariah Governance Policy Document*, relevant regulatory frameworks governing Islamic banking in selected Gulf Cooperation Council (GCC) countries, and the legal framework applicable to Islamic banking in Mauritius. In addition, international standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) are reviewed to evaluate their role in promoting regulatory harmonization. These primary sources are complemented by secondary materials, including peer-reviewed journal articles, books, policy reports, and conference proceedings, to provide a comprehensive understanding of the legal and institutional issues surrounding Shariah standardization.

The collected materials are analysed using comparative legal analysis and thematic content analysis. Comparative legal analysis enables a systematic comparison of legal systems, governance structures, and regulatory approaches across jurisdictions to identify similarities, differences, and best practices in Islamic banking regulation (Zweigert & Kötz, 1998). The comparison focuses on key aspects, including Shariah governance arrangements, regulatory oversight, implementation of Shariah standards, and legal mechanisms supporting cross-border Islamic finance. Subsequently, thematic content analysis is employed to identify recurring themes and patterns emerging from the reviewed legal and academic sources. Following the approach proposed by Braun and Clarke (2006), the analysis involves coding the data, categorising recurring concepts, and interpreting themes related to legal harmonization, governance effectiveness, institutional diversity, and regulatory challenges. The integration of these analytical methods provides a rigorous framework for assessing how different legal environments influence the standardization of Islamic banking while offering practical insights into achieving greater harmonization without compromising jurisdictional autonomy or Shariah principles.

Result and Discussion

The comparative analysis of Malaysia, GCC countries, Mauritius and international standard-setting bodies illustrates the complexity of the standardization dilemma in Islamic banking. This suggest that while global Shariah harmonization promises benefits in operational efficiency, legal certainty, and investor confidence, its application is hindered by jurisdictional differences in governance structure, regulatory priorities and socioeconomic contexts.

Malaysia's Shariah Governance (SGF) operates under a centralized structure which the Shariah matters and its rulings and binding on all Islamic financial institutions (Kunhibava, 2015; Robbi & Azman, 2025). This has notably improved accountability and reduced uncertainty in product approvals. Challenges such as ensuring the independence of Shariah Committees, enhancing transparency and integrating Shariah risk into overall risk management remain, highlighting that even well established frameworks must adapt for greater operational flexibility (Boulanouar et al., 2026; Sulub & Haron, 2023).

In contrast, GCC countries operate under decentralized governance, each maintains its own regulatory and Shariah oversight structures. This approach aids legal adaptability but also introduces inconsistencies. For instance, a study analyzing Shariah supervision and corporate governance in GCC countries found significant disparities in how institutions implement these mechanisms which in turn impacts the performance of Islamic banks across the region (Virk et al., 2022). Without a centralized regional Shariah authority, a product compliant in one jurisdiction may face rejection in another, leading to inefficiencies in cross border Islamic finance

Mauritius provides a strong illustration of the challenges Islamic banking faces in Muslim minority jurisdictions. Aldohni (2015) highlights that regulatory difficulties such as how to incorporate Islamic banking within traditional legal structures and whether to establish separate or integrated regulatory frameworks. It can significantly restrict the expansion of Islamic commercial banking in non-Muslim countries. While restrictions on product types and uncertainties about consumer protection mechanisms already cause significant obstacles, the conventional legal framework may not accommodate the unique features of Islamic finance without deliberate adaptation (Amuda & Al-Nasser, 2026). This suggest that beyond capacity building, effective regulation needs to consider basic structural and legal design issues.

Studies in Southeast Asia indicate a split, some Islamic banks align their corporate disclosures with AAOIFI standards to strengthen Shariah governance, while others remain hesitant likely due to cost issues and regulatory misalignment (Zain et al., 2025). This emphasizes the reality that without strong national level enforcement mechanisms and commitment from relevant authorities, even the most well designed and high quality frameworks tend to remain largely aspirational and fail to achieve their intended impact in practice.

Overall, the data from various jurisdictions reveal the core tension between the merits of consistency and the realities of local diversity. Centralized models like Malaysia's improve clarity but could hold back innovation a bit. Decentralized systems in those in the GCC allow flexibility but could risk inconsistency. In Muslim minority nations such as Mauritius, basic institutional development is essential before harmonization can succeed. International institutions offer guidance, but adoption varies without integrated legal implementation. These findings suggest that a hybrid model, combining global baseline standards with local adaptation could effectively balance consistency with situational flexibility, making things clearer and limiting 'Shariah arbitrage' in Islamic finance.

Conclusion

This study finds that making banking the same everywhere is still a hard problem because different places have different rules about how to follow Shariah. They also have legal systems, how they control banks and how good their institutions are. The study looked at places and saw that Malaysia has a system where one group makes the rules about Shariah. This system helps make sure the rules are the same. It is more clear and fair when new products are approved. There are still problems. These problems include making sure the groups that check if things are Shariah-compliant are independent and honest. Also there is a need to better include Shariah risks in how banks manage all their risks. In places like the Gulf Cooperation Council countries the system is not so centralized. This allows freedom and being able to change rules easily. It also leads to different opinions about what is allowed under Shariah. This can cause problems when banks from places work together. The case of Mauritius shows that places where Muslims are not the group have bigger problems. These problems include not having laws people not knowing much about Shariah and not having enough experts, in Shariah. These results show that one way to make banking the same everywhere might not work the same in every place.

The study adds something to what is already known by showing that making Islamic banking standards the same everywhere should be seen as a mix of global rules and local laws not as exactly the same everywhere. Looking at Malaysia the GCC countries and Mauritius shows how different ways of managing things affect how rules are followed how banks work across borders and how Islamic rules are applied. The study also shows how important groups like AAOIFI and IFSB are in creating shared rules, about finance, accounting and safety. These groups do not do well when the rules they create are not followed by local laws. So the study gives a comparison that supports a mix of rules, where some rules are the same everywhere and others are changed to fit local needs. This way it helps different legal systems work together better while still respecting their laws and how they understand Islamic rules.

Based on these findings policymakers should work closely together. This includes regulators, Shariah scholars and Islamic financial institutions. The goal is to make regulatory rules more consistent across countries. There should be focus on

using common minimum standards. These standards come from groups like AAOIFI and IFSB. Each country should still be able to adjust them. They can do this based on their legal system and local institutions. Policymakers should also think about ways to recognize each other's Shariah rulings and regulatory decisions. This would help with -border transactions in the Islamic finance sector. It would also cut down on repeating the approval steps and compliance checks. At the level regulators need to build stronger systems for Shariah governance. Transparency should be improved. Institutions must grow in capacity. Shariah risk management needs to get better. This is especially important, in places where Islamic banking's still new or not fully developed.

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