

Conference Paper

Classical Islamic Fatwa Framework in Mu'amalat for Islamic Banking Institutions

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The objectives of Mu'amalat in Islamic law is for a man to achieve human wellbeing (Al-Falah Wa Al-Salah) and to eliminate economic injustice and unfairness. One of the ways to achieve this aim is through an effective operation of Islamic banking institutions according to Islamic Jurisprudence. Thus, existing literatures on Islamic banking institutions seems to suggest the inadequacy and the failure to comprehensively settle many aspects of economics and financial problems of the world, especially the Muslims. In Mu'amalat, a Muslim must ensure that the buying and selling transaction are set according to religious guidelines, so that one can avoid falling into forbidden transactions and unlawful forms of earning. In order to achieve the objectives of this study, through documentary review of existing literatures, narratives, as well as conceptual approach of analysis are used to present a sound legal theory of Fatwa under Islamic Jurisprudence. At the end, this paper proves that the use of classical Islamic Fatwa indicates that it provides one of the best forms of eliminating economic injustice and unfairness that sufficiently provides for the endeavours toward sustainable human wellbeing. Other financial institutions might use and adopt classical Islamic Fatwa in Mu'amalat aspect for better and smooth take-up of other types of Islamic financial institutions regarding Fatwa issuance.

Keywords: classical Islamic Fatwa, banking institutions, Mu'amalat, sustainable, human well-being

1. Introduction

The Islamic legal system fulfilled all classical and contemporary issues, since 1440AH years ago, undeniably no single matter occurred without admitting and understanding its judgment from *Sharia* point of view. Hence, people can only reach the Islamic rules and *Fatwas* through *Sharia* academies of *Fatwa* in an international, national and/or institutional level, it has been considered and believed that the collective *Fatwa* is more regarded and considered compare to the right than that of an individual [1]. Furthermore, classical Islamic *Fatwa* have been used to overcome many religious, political, social and economic challenges in achieving human wellbeing through different Islamic organizations as well as institutions for Islamic *Fatwa* issuance. Likewise, in *Mu'amalat* aspect

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through Islamic banking institutions, the practices of *Sharia* advisors and supervisors would have a lot to achieve to eliminate the economic injustice and unfairness [2].

However, once the bank is regulated as an Islamic bank then all its *Mu'amalat* affairs and business transaction should be directed and addressed base on Islamic jurisprudence, and the religious consideration must be matter of concern in all its services. Therefore, it is suggested that Islamic banking institutions should have their own banking act under classical Islamic *Fatwa* which can provide a legal support to the banks and their customers that will be fully *Sharia* compliant [3].

This study is aimed to achieve its main objective of exploring the classical Islamic *Fatwa* framework in achieving human wellbeing (*Al-Falah Wal- Salah*) and eliminating the economic injustice and unfairness through the *Mu'amalat* aspect within the Islamic banking institutions. In view of this, the specific objectives of this study include the identification of classical Islamic *Fatwa* (IFF) to show an effective operation of Islamic banking in *Mu'amalat* aspect under IFF and to show how an effective operation of Islamic banking can be established under IFF. In order to achieve the objectives, a documentary review of existing literatures, narrative analysis as well as conceptual approach of analysis would all carry along to present a sound legal theory of classical *Fatwa* in *Mu'amalat* aspect under Islamic Jurisprudence.

2. Introduction to Islamic Fatwa

Primarily, *Fatwa* is a Muslim religious practice which relates to the thoughts and actions for an individual or community on any special issue, which effects religious, social, economic and other human endeavor. The institution of *Fatwa* plays an important role in contemporary society where different people and different legal regimes exist. It can be utilized as an instrument of social, economic, political and religious control. Besides that, in some countries like Malaysia, the *Fatwa* has been institutionalized and used in all round of day to day administration and every activity related to human endeavor. Interestingly, the Malaysian *Fatwa* has been considered as a religious verdict that assists in regulating Muslim conduct of activities in the country [4,5].

The term *Fatwa* literally means, "The answer in respect of an event", that is the notification of the decision of the law in respect of a rule. It is defined technically as:

"The elucidation of legal rules in respect of an issue as a reply to a question of a questioner- irrespective of whether such a question is specific or general and whether the question is raised by individuals or a group. In other words, it is an opinion on a point of law expressed by Islamic Mufti who is intellectually sound and has attained

the age of discretion and is able to deduce religious ruling from the Qur'an, Hadith, Ijma 'and Qiyas together with the instrumental sciences" [6].

Moreover, the term *Fatwa* principally refers to Islamic legal verdicts. It is an Arabic term that relates to some compound words and phrases revealed in the verses of *Qur'an* such as *Iftaa* (Issuing Islamic verdict or the act of *Fatwa* by *Mufti*), *Istiftaa* (request for an Islamic verdict from Islamic *Mufti*), *Mufti* (a person who issues an Islamic verdicts and according to *Qur'an*). The Almighty Allah has used the terms at several occasions, especially in referring to the concept of asking questions or seeking clarifications on matters with a view of providing the responses [4,7].

There are nearly nine verses in the *Qur'an* that begins with either of the two phrases *Yastaftunaka* or *Yas alunak* (They asked you questions) that are of legal nature in which most of them are *Medinan Suwar*. (Chapters that are revealed before migration) The question posed and responses given are on variant social, economic and political aspects. It has been established that *Qur'an* is the primary discursive source for *Fatwa*, so also the prophetic practice was instrumental in establishing of *Fatwa* as a legal practice in Islam. This is understood that the *Qur'an* and *Sunnah* are viewed as a divine text and hence needs no rational justification to support its position, although the Prophet's Muhammad PBUH authority is also from a theoretical point of view unquestioned in Islam. Nonetheless, His authority is derived from the *Qur'anic* discourse. Quran 3, 31 – 32 and Quran 16, 64 [6,8].

In contemporary transactional jurisprudence (*Fiqh Mu'amalat Mu'asara*) which is the mother of many jurisprudence issues nowadays contemporary situation such as Islamic banking products under Islamic economics, some examples of these transactions are, but not limited to *Mudarabah*, *Musharaka*, *Ijara*, *Qard alhasan*, *Murabaha* and many others. However, there is no doubt that commerce and business are among the transactions that are necessary required in the life of mankind, this is because Allah has commended Muslims to seek after gaining provision and sustenance for themselves according to the proper channels generally, and specifically He said in many verses of the Glorious Quran, such as:

"Those who devour usury will not stand except as stands one whom the Evil One by his touch hath driven to madness. That is because they say: "Trade is like usury but God hath permitted trade and forbidden usury. Those who after receiving direction from their Lord desist shall be pardoned for the past; their case is for God (to judge); but those who repeat (the offence) are companions of the fire: they will abide therein (forever)". Surah Al- Baqarah 2, Verse 275.

“O ye who believe! When the call is proclaimed to prayer on Friday (The Day of Assembly), Hasten earnestly to the Remembrance of God, and leave off Business (and traffic) : That is best for you If ye but knew” “And when the Prayer Is finished, then may ye Disperse through the land, And seek of the Bounty of God : and celebrate The Praises of God Often (and without stint) : That ye may prosper”. Surah Al-Jumu’ah 62, Verses 9 – 10.

“On the Day when their tongues, their hands, and their feet Will bear witness against them as to their actions”. and “By men whom neither Traffic nor merchandise Can divert from the Remembrance of God, nor from regular Prayer, Nor from the practice of regular Charity: Their (only) fear is For the Day when Hearts and eyes Will be transformed (In a world wholly new)” Surah Al-Nur 24 Verses 24 and 37.

“For ye do worship idols Besides God, and ye invent Falsehood. The things that ye Worship besides God have No power to give you sustenance: Then seek ye sustenance From God, serve Him, and be grateful to Him: To Him will be your return”. Surah Al-Ankabut 29 Verse 17.” i.e.

According to interpretation of the above verses, Many Islamic scholars including [8,9] are in view of considering proper channels and due process collectively and individually before, within and after the commencement of business transaction which is the effort of maintaining *Sharia* compliance mechanism through *Fatwa* issuance within all the Islamic banking services [10]. However, it is exactly what would promote the practices of *Sharia* advisors in accordance with the classical Islamic *Fatwa* within the aspect of *Mu’amalat* as outlined by [8,11].

Notwithstanding, concerning commerce buying and selling, there are certain business transaction prohibited by *Sharia* Islamic law which are available in conventional counterpart [8,12]. The Prophet Muhammad PBUH also, has forbidden Muslims from certain types of business transactions due to what they contain from sinful means of earning and what is found in them from dangers to mankind and taking of wealth unjustly. As a result, Islamic manners and spiritual qualities as well as ethics of *Mufti* in the *Fatwa* declaration under classical Islamic *Fatwa* in *Mu’amalat* aspect are reflected through many passages of the Glorious Qur’an that refer to individual and collective Muslim believers including *Sharia* board members and bank managers of Islamic bank which is the best way in achieving human wellbeing as well as eliminating the economic injustice and unfairness in *Mu’amalat* aspect while seeking *Fatwa* for the commencement of new banking products from bank managers side, and approving products for proper transactions of *Mu’amalat* aspect through issuing *Fatwa* for maintaining *Sharia* compliance from *Sharia* advisors side [13,14].

3. Classical Islamic Fatwa Framework in Mu'amalat Aspect

Islamic *Fatwa* is among the highest Islamic positions and religious task in which the *Mufti* is reporting on Almighty Allah behalf as he inherited the knowledge of Prophet Muhammad PBUH. For this reason, early Islamic scholars are very much fair and careful about the task of *Fatwa* [15]. The task of *Ifta'* according to Mu'amalat aspect in Islamic jurisprudence was built under pillars (*Arkaan*) as well as conditions (*Shurut*). The pillars (*Arkaan*) of *Fatwa* are four as follows; The Islamic scholar who would oversee the *Fatwa* (*Mufti*), the questioner who would state out the question (*Mustafti*) the main question or subject matter raised upon the *Fatwa* board (*Mustafti fih*) and the last but certainly not the list the answer of *Fatwa* by *Mufti* (*Mustafti bihi*) [1,6].

Furthermore, the qualifications of *Mufti* are as follows:

1. Maturity/sense.
2. Being a male is not matter, since qualified female Islamic scholar can strongly deliver the task of issuing *Fatwa*.
3. Also being alive is not condition, since a view of dead scholar can be used as valid *Fatwa* and can be implemented in practical activities.
4. Being a knowledgeable enough within at least the knowledge area of school of law (*Madhab*) that the *Mufti* belongs to.
5. Consultation of other scholars with different experience before declaring his *Fatwa* (*Shura* system/ collective *Ijtihad*) more especially in aspect of Mu'amalat contemporary issues.
6. He must to be vast in Jurisprudence and its related knowledge such as *Maqasid*, *Nadhariyaal fihiyya* and *Fiqh Almuqaran*. viii- Justice (*Adalah*) it refers to personals good character and complete Islamic moral and attitudes for Islamic *Mufti*, i.e., to be very obedient to the laws of Almighty Allah, humbleness, kindness, trustworthy, integrity and gentleness [6,12].

In the case of questioner (*Mustafti*) Management of Islamic banks: He/they should as much as possible speak true and straightforward to his questions. He/they should neither add something nor remove any thing from exactly the incident that acquired whom he wants clarify from the *Mufti*, less assume he disobeyed the said rules, he can be declared as lair, and bear all the responsibility of the *Fatwa* and its consequences , since the *Mufti* can only issue *Fatwa* according to the question of *Almustafti* and only

Allah knows the unseen matters. Again, the issue of *Almustafti fihi* or the main question of the *Fatwa*, if it's among the *Al'ahkam-athsabita* (rulings based on the revealed texts) then the *Mufti* would issue *Fatwa* and support it with verses and Hadith. While if it is among *Al'ahkamu dhanniya* (rulings based on rationality) */Ijtihadiyya* the *Mufti* should exercise *Ijtihad* and issue his *Fatwa* accordingly [1,6,12].

Also, *Mustafti fihi* must occur before the question take place. Islamic scholars did not allow seeking *Fatwa* on issues that are yet to take place, such as issuance of some bank product in Islamic banks. They quoted Imam *Shafi* who in respect of that recited a verse from the Qur'an (Surah Al-Maidah, 5: 101). "O you who believe! Do not ask about things that would trouble you if disclosed to you. But if you were to ask about them while the Quran is being revealed, they will become obvious to you. God forgives that. God is Forgiving and Clement".

The last of the pillars is *Mustafti bihi* or the answer of the *Mufti* which is the main *Fatwa* declared by *Mufti* as well as Islamic laws [1,6,16].

These four pillars of Islamic *Fatwa* if observed and considered at the banking institutions in respect of *Fatwa* issuance with regards to approval or disapproval of banking products and other available transactions within the *Mu'amalat* aspect, then human well-being (*Al-Falah Wal- Salah*) would be achieved and the economic injustice and unfairness would be eliminated as well, since both *Sharia* board members and bank managers are advised to possess Islamic manners and spiritual qualities as mentioned by Islamic jurists [17,18], then all the activities of the Islamic banking institution which are regarded as *Mu'amalat* transactions would be set according to religious guidelines [19-21].

The following conceptual framework in Figure 1 shows how the pillars of classical Islamic *Fatwa* relates to the *Mu'amalat* aspect that deals with all activities of Islamic bank such as presentation of the new products from the bank managers site. Issuance and declaration of *Fatwa* regarding the selected products as well as approval or disapproval of banking products and other available business transactions of *Mu'amalat* aspect.

The conceptual framework in Figure 1 shows how the pillars of classical Islamic *Fatwa* relates to the *Mu'amalat* aspect that deals with all activities of Islamic bank such as issuance of the new products from the bank managers side and the issuance of *Fatwa* regarding the selected products as well as all the manners related to that.

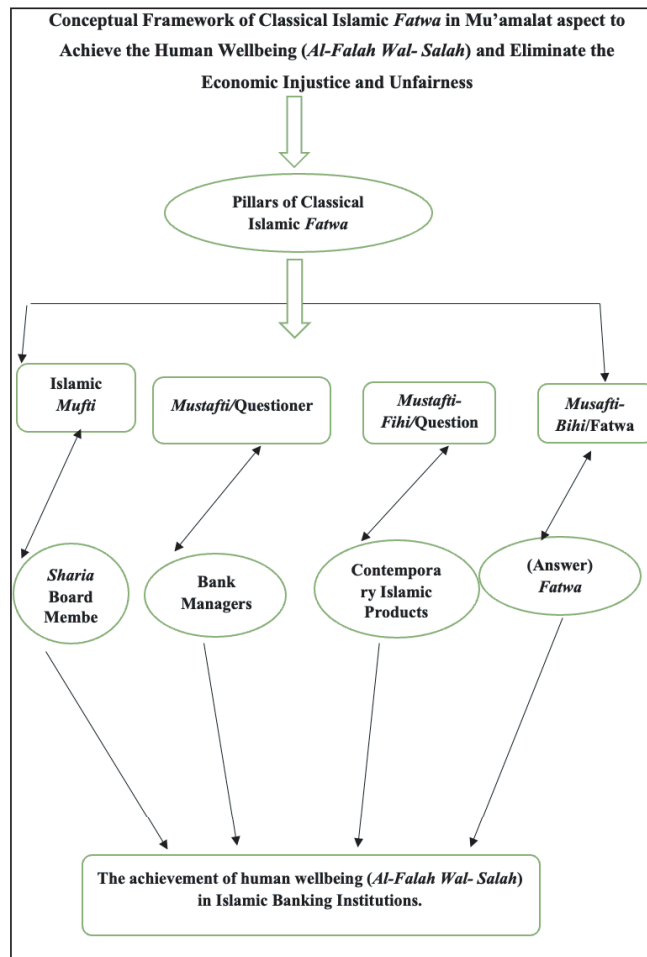


Figure 1: Conceptual Framework of Classical Islamic *Fatwa* in Mu'amalat aspect to Achieve the Human Wellbeing (*Al-Falah Wal- Salah*) And Eliminate the Economic Injustice and Unfairness.

4. Discussions

In accordance with the objectives discussed in this paper, there are various factors that influence the task of *Sharia* advisors, supervisors and bank managers in Islamic banking institutions as mentioned earlier through the conceptual framework. The factors include sincerity, *Attaqwa/wara'* (God fearing) and observance of Allah in all the business transaction which are aspects of *Mu'amalat*. Almighty Allah has said it all in support of the above-mentioned aspect of classical Islamic *Fatwa* as Islamic manners, ethics and spiritual qualities in order to be observed thoroughly. Allah says:

“And fear the day when ye shall be brought back to God. Then shall every soul be paid what it earned, and none shall be dealt with unjustly”.

Surah Al-Baqarah 2, Verse 281;

“And establish the evidence (As) before God. Such Is the admonition given to him who believes In God and the Last Day. And for those who fear God, He (ever) prepares A way out.” “And He provides for him from (sources) he never Could imagine. And if Anyone puts his trust In God, sufficient is (God) For him. For God will Surely accomplish His purpose: Verily for all things Has God appointed A due proportion”. “And for those who Fear God, He will Make their path easy”.

Surah Al-Talaq 65, Verses 2 – 4;

“But verily over you (Are appointed angels) To protect you, Kind and honorable, writing down (your deeds): They know (and understand) All that ye do”.

Surah Al’Infitar 82, Verses 10 – 12;

“Behold, two (guardian angels) Appointed to learn (his doings) Learn (and note them), One sitting on the right and one on the left. Not a word does he Utter but there is A sentinel by him, Ready (to note it)”.

Surah Qaaf 50, Verses 17 – 18;

“And they have been commanded No more than this: To worship God, Offering Him sincere devotion, being True (in faith); To establish regular Prayer; And to practice regular Charity; And that is the Religion Right and Straight”.

Surah Al-Bayyinah 98, Verse 5 [22].

Many literatures related to classical Islamic *Fatwa* in *Mu’amalat* aspects were in support of working together between all the pillars of Islamic *Fatwa* and adopt its core components in order to achieve an effective operation of Islamic banking in *Fatwa* activities. This is similar to *Sharia* board members and bank managers of Islamic bank who stands as *Mufti and Mustafti* in Islamic banking institutions respectively , while in respect of the Question raised for the *Fatwa* and the issuance of *Fatwa* as the answer of the stated questions, the above mentioned conditions need to be observed in order to have complete compliance of all the pillars of classical Islamic *Fatwa* in *Mu’amalat* aspect.

Again, if all pillars of classical Islamic *Fatwa* in *Mu’amalat* aspect are being observed as suggested by this paper toward the commencement of business transactions, then human wellbeing (*Al-Falah Wal-Salah*) would be achieved and the economic injustice and unfairness would be eliminated as well.

Therefore, one of the main differences between this study and the previous studies is conceptualizing classical Islamic *Fatwa* in *Mu'amalat* aspect with *Sharia* governance of Islamic banking institutions through business transaction in seeking and issuing the Islamic *Fatwa* [13,23,24].

5. Conclusion

At the end, this study proved that the use of classical Islamic *Fatwa* in *Mu'amalat* aspect would be the best way of eliminating the economic injustice and unfairness and achieving human wellbeing as well.

However, this research concluded that stakeholders of Islamic bank might lose confidence on *Sharia* advisors due to the different of objectives between bank managers and *Sharia* board members which may lead to economic injustice and unfairness; and therefore, the comprehensive compliance of *Sharia* may remain active in regulatory laws only, and inactive in practical transaction of the Islamic banking institutions, then the customers and general public would stay away from using Islamic banks as solutions to their financial and *Mu'amalat* transactions so as to avoid falling in to forbidden transaction and unlawful forms of earning [20].

Nonetheless, the regulatory authorities and the senior management of the banks need not interfere on the *Sharia* supervisors and advisors' decisions within their supervisory and advisory activities of the bank, since all are advised to possess Islamic manners and spiritual qualities as shown earlier under classical Islamic *Fatwa*. Hence, the perceptions of the regulatory authorities are very important when seeking *Fatwa*. The voices should be heard by the policy makers as well as Islamic banking institutions, as a result, possessing Islamic manners and spiritual qualities as they would possess the best of standards in refusing to compromise with any interest that lead to forbidden transactions and unlawful forms of earning, then, all the activities of the Islamic banking institutions which are related to the *Mu'amalat* aspects would rightly be set according to Islamic religious guidelines.

As a matter of suggestion for a future research, other financial institutions might use and adopt classical Islamic *Fatwa* in *Mu'amalat* aspect for better and smooth take-up of other types of Islamic financial institutions regarding *Fatwa* issuance.

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