

# The Nature of the Administrative Relationships between the Shari'ah Board and the Stakeholders in Brunei Darussalam

Mazin Abdulhameed Dawood Hassan<sup>1\*</sup>, Mohd Hairul Azrin Haji Besar<sup>2</sup>,  
Jainatul Halida Binti Jaidin<sup>3</sup>

<sup>1</sup>Institute of Policy Studies, Universiti Brunei Darussalam, Brunei Darussalam

<sup>2</sup>School of Business and Economics, Universiti Brunei Darussalam, Brunei Darussalam

<sup>3</sup>Sultan Hassanah Bolkuah Institute of Education, Universiti Brunei Darussalam,  
Brunei Darussalam

\*[20H8850@ubd.edu.bn](mailto:20H8850@ubd.edu.bn)

## Article Info

Submitted : December 21, 2023

DOI: 10.20885/ijis.vol6.iss2.art3

Accepted : February 7, 2024

Published : February 11, 2024

## Abstract

*Corporate governance involves a set of administrative relationships between a company and other stakeholders. The shareholders and management should take part in protecting the interests of all stakeholders by making decisions and building policy framework processes that fulfill the stakeholders' needs. As far as Islamic corporate governance (ICG) is concerned, the institution of the Shari'ah board comes into the picture and plays a crucial role in favoring the interest of the stakeholders by ensuring that all corporation activities are in line with the Shari'ah principles. This paper attempts to examine the administrative relationships between the SB and other stakeholders by looking at the duties, roles, and responsibilities of the SB toward other stakeholders and vice versa in Brunei Darussalam. For this purpose, it relies on doctrinal and Islamic worldview methodologies and uses both content and legal analysis methods. After the discussion, it is concluded that the administrative relationship between the Shari'ah board and other stakeholders may take the form of imamah (ultimate authority), wilayah (specific authority), ta'limiyah (educational), or istishariyah (consultative) relationship, depending on the type of relevant stakeholder. Nonetheless, to align the administrative relationship between SB and other stakeholders with these notions, further legal and regulatory amendments need to be made to the Bruneian Shariah governance framework.*

**Keywords:** *Shari'ah board; stakeholders; administrative relationship; Shari'ah governance; Brunei Darussalam*

## INTRODUCTION

Corporate governance involves a set of relationships between a company's management, its board, its shareholders, and other external stakeholders (OECD *Principles of Corporate Governance 2004, Preamble*). As regards Islamic Corporate Governance (ICG), apart from the role of the shareholders in the process of decision-making and policy framework and the role of the community to provide mutual cooperation to protect the public interest and stimulate the social well-being, the *Shariah* board (SB), known as *Shariah* Advisory Board (SAB) in Brunei Darussalam, plays a crucial role to ensure that all corporation activities are in line with the *Shariah* principles. This paper considers the duties, roles and responsibilities of the SB towards the stakeholders and vice versa according to the laws and regulations of Brunei Darussalam and relates them to the Islamic jurisprudence for the purpose of defining the administrative relationship between the SAB and the other stakeholders. The stakeholders addressed in this paper are limited to the bank, the customers, the judiciary, the government, the Brunei Darussalam Central Bank (BDCB), and His Majesty the Sultan and Yang Di-Pertuan. The remainder of this study is structured into the following two core themes: (i) the administrative relationship between the SAB and the bank, and (ii) the administrative relationship between the SAB and the community including the customers, the *Shariah* Financial Supervisory Board (SFSB), the judiciary, the government, the BDCB and His Majesty the Sultan and Yang Di-Pertuan. Literature shows that researchers of Islamic corporate governance agree that ICG takes into account the welfare of the whole Islamic society (Fatima et al., 2019). In the context of an Islamic bank, the Islamic society includes BOD, managers, shareholders, SB, customers, and regulators (Alnasser & Muhammed, 2012; Jamaludin, 2021). According to (Iqbal & Mirakhor, 2004), the relationships between these stakeholders are based on concepts of the right of property and contract. The former principle requires the stakeholders to acquire property through lawful means and not to waste or squander it. It also gives them

the right to jointly own it. Under the latter principle, the managers should fulfill their explicit and implicit obligations toward other stakeholders under the partnership contract namely *mushārah* and *muḍarabah* (Besar, 2019). Therefore, each stakeholder is a steward in the eyes of the others and, thus, should act in the spirit of partnership (Bhatti & Bhatti, 2010). However, this is not without a challenge. It is not clear how to resolve disagreements between the SB, management, and the directors (Samra, 2020).

The authors of the ICG dig further to examine the principles governing the relationship between the stakeholders of the ICG. Some of these principles govern the decision-making process like *shura* (consultation), and *hisbah* (effective *Shari'ah* supervision) (Alnofli, 2021). Others address the agency problem such as accountability, transparency, and adequate disclosure (Aziz & Ghadas, 2022). The authors also considered the duties, roles, and responsibilities of the bank, and external stakeholders towards the SB and vice versa. One study drew attention to the confidential relationship between the SB and the bank where the former is bound not to disclose the bank's secret information to other institutions and the fiduciary relationship between the SB and the customers where the former is obliged to disclose all *Shari'ah* matters including the *Shariah* reports and *fatwas* of the SB to the stakeholders (Grassa, 2013b; Malkawi, 2013).

However, according to (Grassa, 2013; Samra, 2020), the existing *Shariah* governance system brought to the surface some challenges surrounding the administrative relationship between the SB, the bank, and the customers. These challenges include the possibility of breaching the duty of confidentiality by the members of SB who work for more than one Islamic financial institution and the absence of the liability of the members of the SB if they derelict in their supervisory or advisory duties. To face these challenges, some *Shari'ah* governance models established additional, external, bodies and entrusted them with *Shari'ah* supervisory powers over SBs. One example of these bodies is the central SB which is empowered to validate or repeal decisions of the private SBs

in order to supervise the SBs and harmonize their resolutions (Hamza, 2013). Another example of these bodies the international SBs such as the SB of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the SB of the Islamic Development Bank (IDB), and the Islamic Financial Service Board (IFSB) which are authorized to issue *Shariah* governance standards. A further example of these bodies is the consultant SBs such as the Institute of Islamic Banking and Insurance (UBI), the International Institute of Islamic Finance (IIIF), and the Islamic Banking and Finance Institute of Malaysia (IBFIM) which provide supervisory or advisory service to Islamic banks on *Shari'ah* matters (Malkawi, 2013). Besides these bodies, (Grassa, 2013b) pointed out that SBs should abide by the *fatwas* of the International Council of *Fiqh* Academy and other SBs (ICFA) and its criteria for issuing *fatwas* to ensure that their decisions are based on valid reason.

Nevertheless, the above-mentioned literature does not define the administrative relationship between SB and external participants of the ICG from the angle of ICG. The work carried out by (Hassan et al., 2022), on the other hand, examined the duties, roles, and responsibilities of the external key players of the ICG and defined the administrative relationship between them from the angle of ICG. However, this study is only relevant to the jurisdiction of Bahrain. Thus, considering that the governance system in another Muslim country may vary from that of Bahrain due to differences in the *Shari'ah* governance model and the state's system of governance, the current study attempts to define the administrative relationship between the SB, the bank, and main external actors within the jurisdiction of Brunei Darussalam from the point view of the ICG. The nature of these administrative relationships provides a governance and legal framework underlying the duties, roles, and responsibilities of the SB.

## RESEARCH METHODS

This study uses doctrinal legal research methodology for understanding the duties, roles, and responsibilities of the SB and the stakeholders towards each other as per the law of Brunei Darussalam. The legal rules are obtained from the primary source of law, these are the Bruneian legislation (Ahmad, 2020, p. 124). The Bruneian legislations referred to include the Constitution of Brunei Darussalam 1959, statutes including Syariah Supervisory Board Order 2006, Subordinate Courts Act (CAP 6), Supreme Court Act (CAP 5), Syari'ah Courts Act (184), Companies Act (CAP 39), and Notice to Financial Institutions on Syariah Governance Framework (Notice No. IFAU/N/1/2018) and the Guidelines on the Islamic Product Approval Process under Section 14 of the Syariah Financial Supervisory Board Order 2006. It also makes use of content analysis of documentary materials such as the written resolutions of the SAB of the Islamic banking industry in Brunei Darussalam accessible online. This is to consider the practice of Islamic banks in the country where appropriate.

Besides, this study relies on the Islamic worldview methodology. It refers to the *Quran* and authentic *Sunnah* as written in *Ṣaḥīḥ al-Bukhari* and *Ṣaḥīḥ Muslim*, and the practice of the companions as well as the opinions of Al-Mawardi, Al-Jouwayni and Al-Ghazali because they are scholars of Islamic law of governance and political Islam and belong to *Shafi'i madhab* which is officially followed in Brunei Darussalam (Constitution of Brunei Darussalam 1959, article 1). This is to examine the duties, roles, and responsibilities of the concerned stakeholders toward each other and define the nature of the administrative relationship between them from an Islamic perspective.

## RESULTS AND DISCUSSION

### **The Administrative Relationship between the Shariah Board and the Bank**

The Memorandum of Association and Articles of Association of every Islamic bank shall stipulate for the establishment of a SAB consisting of at least three Muslim religious scholars of which two are citizens of Brunei Darussalam (Islamic Banking Order 2008, article 8 (2) (g)). It aims to ensure that the operation of the banking business does not involve any element that is contrary to *hukum al-shar* (the laws of Islam according to the *Shafi'i*, *Hanafi*, *Maliki* or *Hanbali* sect of the Ahli Sunnah *Waljamaah*) (Islamic Banking Order 2008, article 8 (2) (g); Syariah Financial Supervisory Board Order 2006, article, 2). In pursuit of the essential objective of the SAB mentioned above, the SAB shall fulfill the following roles: Firstly, it issues pronouncements on the oversight role on *Shari'ah* financial matters related to the bank's business operations and activities. Secondly, it approves *Shari'ah* policies and procedures and relevant documentation. Thirdly, it advises the bank on *zakat* and *Shari'ah* non-compliant income (Notice to Financial Institution on Syariah Governance Framework, appendix (3)). These roles are supported by the verse "Ask the people of knowledge if you do not know" (Surat al-Anbiya, 21:7). It is also a practical application to the principle of *shura* (consultation) which is required by the verse "consult them in the conduct of affairs. And when you make a decision, put your trust in God; God loves the trusting" and the verse "And those who respond to their Lord, and pray regularly, and conduct their affairs by mutual consultation, and give of what We have provided them" (Surat al-Imran, 3:159 and Surat Ash-Shurah, 42:38). Fourthly, it reviews findings and reports carried out by the *Shariah* review and *Shariah* audit function. In this concern, Islam commands people to judge themselves. Shaddad Ibn Aws narrated that the Prophet Muḥammed (P.B.U.H.) said: "The clever person is the one who subjugates his soul and works for what is after death. And the incapable is the one who follows

his desires and merely hopes in Allah. [He said:] The meaning of his saying: “Who subjugates his soul”, is to say the one who reckons with his soul in the world, before he is reckoned with, on the Day of Judgement ([Jami‘ at-Tirmidhi, Ḥadith no.2459](#)).

The decisions, views, and opinions taken by the SAB are binding on the BOD and the management under the concept of *ta‘ah* (obedience) ([Notice to Financial Institution on Syariah Governance Framework, section 11.3](#)). On this matter, Allah (*S.W.T*) said “*O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you*” ([Surat an-Nisa‘, 4:59](#)). On the other hand, the SAB is accountable for its decisions, views, and opinions toward the bank ([Notice to Financial Institution on Syariah Governance Framework, section 9.2](#)). Although the Bruneian *Shari‘ah* governance system does not provide punishment against the members of the SAB if they violate their duties, the shareholders may dismiss any member found guilty.

By agreement, the shareholders are bound to appoint the members of the SAB, and remuneration and expenses relating to the appointment will be borne by the bank. Rejection to do so would amount to a violation of the contract between the shareholders and the bank will not be granted a license for carrying on the business ([Islamic Banking Order 2008, article 8 \(2\) \(g\)](#)).

It seems that the SAB, like the BOD, holds a position of trust and confidence. Therefore, in parallel with the BOD, the SAB shall act solely for the benefit of the bank ([Martin, 2013](#)). This is based on the concept of *amānah* which requires satisfying the rights of Allah and the people that are secretly trusted to the others ([Ibn Kathir, 1999, p. 339](#)). On this matter, Allah said “God instructs you to give back things entrusted to you to their owners. And when you judge between people, do justice. God’s instructions to you are excellent. God is All-Hearing, All-Seeing” ([Surat an-Nisa, 4:58](#)). This verse is addressed to the Muslim rulers ([Al-Tabari, 2001, p. 171](#)).

However, *amanah* is slightly different from the director's fiduciary duty in that it requires the SAB to act in good faith in what they believe to be *Shari'ah* ruling and not only in the best interests of the bank (Gower, 1992). This is because the essential objective of the SAB is spiritual and not material in nature. *Amanah* also necessitates that the SAB must not exercise the powers conferred upon them for purposes different from those for which they were conferred. For instance, they should not prevent the bank from offering or terminating a contract with another party because the latter is their enemy. *Amanah* also dictates that the SAB must not place themselves in a position in which their personal interests or duties to other persons are liable to conflict with their duties to the company without the informed consent of the company. For example, they are not allowed to permit, revoke, or modify a contract in which they themselves are involved for their own advantage. In this context, the BDCB Notice to financial institutions on the Syariah Governance Framework calls for objective and informed judgment. In pursuit of this, it enshrines the independence of the SAB from any undue influence (Notice to Financial Institution on Syariah Governance Framework, section 11.1).

Just like directors, the members of the SAB are banned from using confidential or sensitive information obtained while serving in any manner that could be detrimental to the bank on the basis of the *amanah* (Gower, 1992; Notice to Financial Institution on Syariah Governance Framework, sections 13.1). This information includes decisions of the BOD and the management, their internal memorandum or reports in connection with matters presented or to be presented to the SAB and the information on a new product or business transaction that has not been made public, and any other information that the bank has indicated it to be confidential (Notice to Financial Institution on Syariah Governance Framework, sections 13.2.2, 13.2.3, 13.2.4, 13.2.6, 13.2.8).

Moreover, *amānah* binds the SAB to sufficiently disclose information in the bank's annual financial report on cases of *Shari'ah* non-compliance including those resulting in their fault, misconduct, and negligence (Gower, 1992; Notice to



Financial Institution on Syariah Governance Framework, section 9.2). The duty to disclose non-*Shari'ah* matters publicly is specifically mentioned in the *Quranic* verse “Allah said those who suppress the proofs and the guidance We have revealed after We have clarified them to humanity in the Scripture, God curses them, and the cursers curse them. Except those who repent and reform and proclaim. Those I will accept their repentance. I am the Acceptor of Repentance; the Merciful.” (Surat al-Baqarah, 2:130).

In view of the foregoing discussion, it can be seen that the bank founded the SAB while the SAB owns supervisory and advisory authorities over the bank on the basis of *muhasabat al-nafs* and *shura* (consultancy). However, these authorities are constrained by the principle of *amanah*.

## **The Administrative Relationship between the Shariah Board and the Community**

According to the Bruneian ICG, the SAB should be involved in different administrative relationships with community components. It associates with the customers, SFSB, judiciary, central bank, the government, and the Sultan as follows:

### ***The Administrative Relationship between the Shariah Board and the Customers***

The SAB should clearly explain the Shari'ah concept of the product or services and how it is implemented in practice for the information of the customer because the Islamic bank is under a duty to maintain product transparency towards the customers. (Guidelines on the Islamic Product Approval Process under Section 14 of the Syariah Financial Supervisory Board Order 2006, section 3.5). This also closes the door to *gharar* (sale of non-existent or undefined goods) which is prohibited in Islam as Abu Huraira reported that the Messenger of Allah (P.B.U.H.) forbade a transaction determined by *throwing stones* and the type which involves *gharar* (uncertainty) (Saḥīḥ Muslim, ḥadīth no.1513).

Moreover, the practice shows that the SAB receives questions relating to *Shari'ah* matters from the customers through the management and answers them (Rani et al. 2020). It also makes its resolutions available to the general public (Shariah Advisory Body Resolutions | Bank Islam Brunei Darussalam, 2022). Moreover, the SFSB may, with the approval of the Minister of Finance, cause any of its decisions to be published in the Gazette for general information (Syariah Financial Supervisory Board order 2006, article 23). This is to give notice to the people and warn them before taking any action against the offenders. This is in line with the verse “No burdened soul carries the burdens of another, nor do We ever punish until We have sent a messenger.” (Surat al-Isra, 17:15).

The members of the SAB are also legally bound to keep customer information such as account balance and transactions confidential by the principle of *amanah* mentioned above (Notice to Financial Institution on Syariah Governance Framework, section 13.2.1; Bruneian Islamic banking Order 2008, article 58 (1)). Failure to do so would render them guilty of an offense and liable on conviction to a fine not exceeding \$150,000, imprisonment for a term not exceeding 3 years, or both (Islamic Banking Order 2008, article 58 (6)).

In light of the foregoing, the SB possesses advisory authority over the customers. This authority is restricted by the principle of *amanah* to the limit of the negative duty of confidentiality without throwing on the SB a positive duty to disclose *Shari'ah* matters raised by the customers.

### ***The Administrative Relationship between the Shariah Board and the Shariah Financial Supervisory Board***

The SFSB is one of the bodies of the BDCB. It includes the *Mufti* of Brunei Darussalam, four experts in Islamic knowledge or experience in *fiqh al-mu'amalat*, and two experts in banking, economics, finance, law, or any other related discipline (Syariah Supervisory Board Order 2006, article 6). It was established to supervise the SAB of all Islamic banks. For this purpose, it is empowered to approve the appointments, reappointment, or reject the members

of the SABs (Syari'ah Supervisory Board Order 2006, article 14 (1); Notice to Financial Institution on Syariah Governance Framework, section 11.8). This is similar to the manner by which *imams* (leaders) are appointed in Islam where a special group of scholars representing the *ummah* (Muslim community) known as *ahlu al-hilli wa al-aqd* is charged with a *farḍ kifayyah* (obligation can be fulfilled by one or a limited number of people and not imposed on every Muslim individually) to do so. They consider the people suggested for *imamah* (*ahlu al-imamah*) on merits before making their choice (Al-Mawardi, 1960). Two events from Islamic history prove this. The first event is where the oath of allegiance to Abu Bakr Al-Siddiq (R.A.) was made by five persons. Similarly, 'Umar Ibn Al-Khattab (R.A.) set up a council of six persons so that one of them should take on the *imamah* with the acceptance of the other five which was concluded by the appointment of 'Uthman Ibn 'Affan (R.A.) (Al-Mawardi, 1960).

It also shall approve or reject new banking products before they enter the market upon application of the Islamic bank (Syari'ah Supervisory Board Order 2006, article 15 (1)). On the part of the members of the SAB, they should be diligent in notifying the bank about new products and implementing the decisions of the SFSB otherwise they, together with the bank, would be guilty (Syari'ah Supervisory Board Order 2006, article 16 (1)). Nevertheless, the SAB of such an Islamic bank should discuss, endorse, and approve the new products and services before they make the application (Guidelines on the Islamic Product Approval Process under section 14 of the Syariah Financial Supervisory Board Order 2006, sections 3.4 and 21).

The SAB shall also advise on the matters that may be referred to by the SAB especially those that involve ambiguity or are subject to different opinions with the intention to harmonize the Islamic rulings as required by the SGF (Notice to Financial Institution on Syariah Governance Framework, section 14.2). This measure is consistent with the *Shafi'i* school of jurisprudence in two ways. In one way, it confirms that the right "*al-haq*" ruling is one and cannot be multiplied (Al-

Jouwayyni, 1987). Hence, Muslim scholars must endeavor to reach it alone and reject invalid rulings. In another way, it requires consulting only the best scholar (s), in this case, the SFSB, if they are more than one scholar available (Al-Ghazali, 2014). In this regard, Wabisah-Bin-Ma'bad (R.A.) reported: *I came to the Messenger of Allah (P.B.U.H) and he (P.B.U.H.) said, "You have come to ask about righteousness." I said, "Yes." He (P.B.U.H.) said, "Consult your heart. Righteousness is that about which the soul (inner consciousness) feels at ease and the heart feels tranquil. And wrongdoing is that which wavers in the soul and causes uneasiness in the breast, even though people have repeatedly given their legal opinion in its favor* (Musnad Al-Imam Ahmad Ibn Hanbal, *hadith no.17545*). By looking at the SFSB members mentioned above it seems that they are the preferable group of scholars because of the following reasons; first, they must be experts in a variety of linked fields and not only Islamic religion as the case may be with SAB. Second, the *mufti* of the country should be one of the members. Third, they are greater than SAB in number. Thus, referring such matters to them is well justified. In brief, the SFSB members are distinguished scholars. They possess supervisory, advisory, and administrative authorities which dominate those of the SAB.

### ***The Administrative Relationship between the Shariah Board and the Judiciary***

The SABs are bound to make reference to the judgments, decisions, or awards of courts or tribunals (Notice to Financial Institution on Syariah Governance Framework, section 14). This is to respect the powers of the courts to hear and decide cases and make certain orders regardless of their grade and jurisdiction (Bruneian Supreme Court Act, articles 16,17,18,19; Bruneian Subordinate Act, articles 17 and 180; Bruneian Syariah Courts Act, article 6 (2)). This is also to ensure that the court judgments are enforced which is a primary function of the state in Islam (Al-Mawardi, 1960). It also promotes the independence of the judiciary which is followed by Omer Ibn Al-Khattab (R.A.)

for the first time in Islamic history (Al-Zuhaili, 1997). It also ensures the consistency of the *Shari'ah* rulings.

On the other hand, both the court and arbitrator may seek the SFSB advice on legal disputes and court proceedings relating to Islamic financial business or any *Shari'ah* issues arising from the bank's business operations in pursuance of the principle of *shura* (Syariah Supervisory Board Order 2006, article 17). This option finds support from the *Sunnah* as the Prophet Muḥammed (P.B.U.H) consulted his companions while occupying the position of a judge. For instance, the Prophet Muḥammed (P.B.U.H) asked a group of Muslims in the incident of *al-Ifk* by saying "what would you suggest to me with regards to the people insulting my wife?" before Allah (*S.W.T.*) commanded the Muslims to flog the slanderers (Sahih Al-Bukhari, ḥadith no. 7370). In short, the court has the final say on disputed *Shari'ah* matters for the sake of judicial independence, the supremacy of the law, and legal certainty.

### ***The Administrative Relationship between the Syariah Board and the Government of Brunei Darussalam and the Brunei Darussalam Central Bank***

Both the Minister of Finance and the BDCB possess legislative power to regulate the activities of the SABs. The former may issue written directives on *Shari'ah* matters on Islamic banking business based on SFSB advice, and, thus, impart a legal effect to it (Syariah Supervisory Board Order 2006, articles 5 (1)). Similarly, the latter may issue any directive concerning the duties and roles of the SAB and its relationship with the board of directors and the management on the grounds of public interest (Autoriti Monetari Brunei Darussalam Order, 2010 sections 32 and 54 (1)). These directives include the Notice to Financial Institutions on Syariah Governance Framework (Notice No. IFAU/N/1/2018) and the Guidelines on the Islamic Product Approval Process under Section 14 of the Syariah Financial Supervisory Board Order 2006 to name a few.

In addition, the Minister of Finance shall participate in making recommendations for the appointment of six members of the SFSB and set its functions (Syariah Supervisory Board Order 2006, articles 6 (c) and 4 (1)). The members of the SFSB, in turn, are accountable to the Minister of Finance. They are bound to report to him all the activities conducted per calendar year, and he may impose a penalty against any member of the SFSB who violates the Syariah Financial Supervisory Board Order 2008 (Syariah Supervisory Board Order 2006, articles 13 and 18 (1)) but not if they act in good faith (Syariah Supervisory Board Order 2006, articles 20).

In light of the aforementioned, the BDCB and the Minister of Finance each have the authority to enact legislation that controls the SAB's operations. Additionally, the SFSB is explicitly subject to the recommendatory and disciplinary authority of the Minister of Finance.

### ***The Administrative Relationship between Shariah Board and His Majesty the Sultan and Yang Di-Pertuan***

His Majesty the Sultan and Yang Di-Pertuan possess both the supreme legislative and executive powers over all matters in Brunei Darussalam including the structure of the SB (Constitution of Brunei Darussalam 1959, articles 39 and 4 (1)). These powers vary depending on the type of SB. As for the private SAB, His Majesty the Sultan and Yang Di-Pertuan authorize the CBB and the Minister of Finance to make binding directives for the SAB. Their power, mentioned above, is secondary because it is derived from the authority of His Majesty the Sultan and Yang Di-Pertuan. Nevertheless, their directives, as mentioned above, contain detailed prescriptions of the roles and activities of the SAB towards the stakeholders while the laws of the Sultan are concerned with the main duties of the members of the SAB such as the duty to ensure that the bank's operations are in line with *Hukum Shar' i*, the duty not to disclose confidential information except to the court upon its request (Islamic Banking Order 2008, articles 2 (g) and 58 (5)).

The SFSB, on the other hand, is thoroughly regulated by the law of His Majesty the Sultan and Yang Di-Pertuan, that is the Syariah Financial Supervisory Board Order 2006. Furthermore, His Majesty the Sultan and Yang Di-Pertuan are empowered to appoint at least 6 members of the board and approve the appointment of the deputy chairman (Syariah Supervisory Board Order 2006, article 6 (1) (c) and 6 (2)). Because the authority of His Majesty the Sultan and Yang Di-Pertuan extends to making laws in respect of matters relating to the Islamic religion with or without the advice of the Religious Council, and this authority is the highest, the rulings and opinions of the SAB and SFSB shall be in line with the laws made by Him (Constitution of Brunei Darussalam 1959, article 3 (4)).

Bearing the above in mind, His Majesty the Sultan and Yang Di-Pertuan possess legislative and administrative powers over all the affairs of the SB including the structure of the SB and its duties. These powers can also be delegated to the Minister of Finance and BDCB.

## CONCLUSION

It can be concluded from the discussion above that the nature of the administrative relationships between the SB and stakeholders is generally a *hakim* (ruler)--*mahkum* (subject) and consultant and consultee relationships. This is manifested in the binding character of the *fatwas*, decisions, directives, or legislations of those taking the position of *hakim* and/or their responsibilities towards those in the place of *mahkum* under the principle of *amanah*. However, this relationship takes several forms depending on the scope of the authority of the party who occupies the place of the *hakim*. Within this relationship, other types of administrative relationships may also take place.

The SAB-bank, and SAB-SFSB administrative relationships, are based on *wilayah* (authority). Both the SAB and the SFSB are *wali* (ruler). The SAB is a *wali* to the bank and the SFSB is a *wali* to the SAB. Consequently, the bank in the

former case and the SAB in the latter case are subjects. However, the former is *wali khaṣṣ fi a'mal khaṣṣah* (private ruler with a specific mandate) because it works only for the relevant bank, while the latter is *wali 'am fi a'mal khaṣṣah* (public ruler with specific mandate) because it works for all Islamic banks in Brunei Darussalam. In addition, the former deals only with *Shari'ah* matters, while the latter deals with both *Shari'ah* and administrative matters. Apart from being *wali*, the SAB is *mu'allim* (educator) while the bank is a *tilmidh* (learner) when the former teaches the latter *Shari'ah* aspects of Islamic banking and finance. As for the administrative relationship between the SAB and the customers, it may take the form of adviser and advisee when the former receives questions from the latter, fiduciary and beneficiary when the former keeps the information of the latter secret, or adjudicator and litigator relationships when the former resolves the complaints on *Shari'ah* matters submitted by the latter.

The administrative relationship between the judiciary and SB is similar to that between SAB and SFSB. Although the authority of the judiciary is confined to settling disputes presented to it, it may apply to any person or corporation residing in the country. Yet, this authority is wider than that of the SFSB since it gives effect to any matter raised therein whether it involves the legality of new banking products, ambiguity, or differences of opinions as the case with the SFSB or not. The administrative relationship between the judiciary and SB may also turn into consultant-a consultee relationship when the former requests information from the SFSB on *Shari'ah* matters relating to disputes before it.

When it comes to the administrative relationship between the SB and both the Minister of Finance and the BDCB, it is also based on *wilayah*. However, the Minister of Finance and the BDCB are in the place of *wali 'am fi a'mal 'ammah* (public ruler with a general mandate) which is a higher rank than that of the SFSB. This is because they lay the foundations of the system under which all SBs function.



As regards the administrative relationship between the SB and His Majesty the Sultan and Yang Di-Pertuan, it is premised on *imamah al-kubra* (great leadership) by which the latter possesses a supreme and ultimate power to defend the religion (*ad-din*) and administer worldly life matters (*ad-duniyah*) of the SBs all over the country. Further amendments should be introduced into the *Shari'ah* governance system and banks' contractual framework for each administrative relationship to make them suit the concepts underlying these administrative relationships.

As for the administrative relationship between the SAB and the bank, the BDCB *Shari'ah* governance framework should be reformed to add the following; First, it should bind the SAB members to act with reasonable care and skill by analogy with the fiduciary duty forced on the directors on the ground of *amanah*. Second, it should bind SAB members to disclose cases of *Shari'ah* non-compliance and how they are settled and not only to give an overall view on the state of *Shari'ah* compliance in the bank. This is to fulfill its religious duty to disclose material matters and repudiate the faults that occurred. Third, it should impose a liability on the SAB for breaching their fiduciary duty towards the bank especially if the breach occurs deliberately. Fourth, it should oblige the SAB and the *Shari'ah* department to raise the awareness of the bank staff of *Shari'ah* aspects of Islamic banking through an appropriate method.

As for the administrative relationship between the SAB and the customers, the *Shari'ah* governance framework should first oblige the SAB to give information on the complaints they receive and how they have been sorted out in its annual report as required by the principle of transparency. Second, it should bind the SAB to publish a reasonable number of their resolutions together with their evidence, and any changes on them and present regular lectures on *Shari'ah* aspects of Islamic banking and finance through appropriate channels such as the bank's official website and social media on the basis of the principle of transparency Third, it should grant the customers the right to appeal the decisions

of the SAB to the SFSB and not to the SAB itself. This is to ensure an independent and masterly review of these decisions given that the SFSB is in the place of *ahlu al-hil wa al-'aqd*. Fourth, it should compel SABs to answer customers' questions and settle their complaints on *Shari'ah* matters because they are competent in *Shari'ah* matters.

For the administrative relationship between the SFSB and the government, the *Shariah* governance framework should give the executive and the legislative council a choice to consult the SFSB for relevant *Shari'ah* matters relating to Islamic banking and finance in times of need on the ground of *shura*. This is because the SFSB ranked in a position higher than all SABs in the country.

This research study is limited to only one country, leaving room for much further development. Further research can include a larger-scale study involving different countries and different models of the *Shari'ah* governance framework. Similarly, corporations featured in this research study are limited to one Islamic bank. This caused other corporates to be eliminated from the study. Thus, further development can focus on other Islamic industries like Islamic insurance companies to expand the scope of this research study or have a larger number of banks included to enrich its depth.

## References

- Ahmad, N. (2020). *Introduction To Legal Method*. UNISSA Press.
- Ahmed Ibn Ḥanbal (2001). *Musnad Al-Imam Ahmed Ibn Ḥanbal* (Said Al-Irnaud and Adil Murshid (Ed.)). Beirut: Muasasat Al-Risalah.
- Al-Tabari. (2001). *Tafsir Al-Tabari* (A. Al-Turki (Ed.)). Damascus: Dar Hajr lil Tiba'a wa Al-Nashir.
- Alnasser, S. A. S., & Muhammed, J. (2012). Introduction to corporate governance from an Islamic perspective. *Humanomics*, 28(3), 220–231. <https://doi.org/10.1108/08288661211258110>
- Alnofli, A. (2021). Corporate Governance In Islamic Financial Institutions. *International Journal of Fiqh and Usul-Al-Fiqh Studies*, 6(2), 65–73.
- Aziz, H. A., & Ghadas, Z. A. A. (2022). Corporate Governance Framework for Shariah Compliant Corporation. *Proceedings of the International Joint*

*Conference on Arts and Humanities 2021 (IJCAH 2021)*, 618, 528–532.  
<https://doi.org/10.2991/assehr.k.211223.092>

- Besar, M. (2019). Corporate Governance: Infusing Muamalah Contracts in Shareholders' Relationship. *Research in Corporate and Shari'ah Governance in the Muslim World: Theory and Practice*, 79–86.  
<https://doi.org/10.1108/978-1-78973-007-420191006>
- Bhatti, M., & Bhatti, M. I. (2010). Toward Understanding Islamic Corporate Governance Issues in Islamic Finance. *Asian Politics and Policy*, 2(1), 25–38. <https://doi.org/10.1111/j.1943-0787.2009.01165.x>
- Companies Act (CAP 39), the Government of Brunei Darussalam
- Constitution of Brunei Darussalam 1959, the Government of Brunei Darussalam
- Fatima, S., Bilal, M., & Muhammad Ishtiaq. (2019). Shari'ah Compliant Corporate Governance. *Journal of Managerial Science*, 14(4), 170–197.
- Gower, L. C. B. (1992). *Gower's Principles of Modern Company Law* (fifth edit). Sweet & Maxwell Ltd.
- Grassa, R. (2013a). Shariah supervisory system in Islamic financial institutions: New issues and challenges: A comparative analysis between Southeast Asia models and GCC models. *Humanomics*, 29(4), 333–348.  
<https://doi.org/10.1108/H-01-2013-0001>
- Grassa, R. (2013b). Shari'ah Governance System in Islamic Financial Institutions : New Issues and Challenges. *Arab Law Quarterly*, 27(2), 171–187.
- Guidelines on the Islamic Product Approval Process under Section 14 of the Syariah Financial Supervisory Board Order 2006, Brunei Darussalam Central Bank
- Hamza, H. (2013). Sharia governance in Islamic banks: effectiveness and supervision model. *International Journal of Islamic and Middle Eastern Finance and Management*, 6(3), 226–237.  
<https://doi.org/10.1108/IMEFM-02-2013-0021>
- Hassan, M., Besar, M., & Jaidin, J. (2022). The Nature of the Administrative Relationship between the Shariah Board and the Stakeholders in the Kingdom of Bahrain. *Journal of Islamic Finance*, 11(2), 48–55.
- Ibn Kathir. (1999). *Tafsir Ibn Kathir* (S. Al-Salamah (Ed.)). Dar Taiba lil Nashir wa Al-Tawzi'.  
<https://ia802902.us.archive.org/24/items/43005PDF/tqa2.pdf>
- Iqbal, Z., & Mirakhor, A. (2004). Stakeholders Model of Governance in Islamic Economic System. *Islamic Economic Studies*, 11(2), 43–63.

- Islamic Banking Order 2008, Brunei Darussalam, the Government of Brunei Darussalam
- Jamaludin, A. (2021). The Islamic Models Of Corporate Governance Turkish Journal of Computer and Mathematics Education Research Article. *Turkish Journal of Computer and Mathematics Education*, 12(11), 874–878.
- Malkawi, B. H. (2013). *Shari'ah Board in the Governance Structure of Islamic Financial Institutions*. 61(3), 539–577.
- Martin, E. (Ed.). (2013). *Oxford Dictionary of Law* (seventh). Oxford University Press.
- Notice to Financial Institutions on Syariah Governance Framework, Brunei Darussalam Central Bank
- OECD Principles of Corporate Governance 2004, Organization for Economic Cooperation and Development
- Samra, E. (2020). Corporate governance in Islamic financial institutions. *Journal of Governance and Regulation*, 9(2), 75–82. <https://doi.org/10.22495/jgrv9i2art5>
- Al-Bukhari, Muhammad. *Sahih Al-Bukhari*. Damascus: Dar Ibn Kathir, 2002.
- Muslim, Abu Al-Hassan. *Sahih Muslim*. Edited by Nazir Abu Qutaibah. Al-Riad: Dar Taiba lil Nashir wa Al-Tawzi', 2006.
- Shariah Advisory Body Resolutions | Bank Islam Brunei Darussalam*. (n.d.). Retrieved September 15, 2022, from <http://www.bibd.com.bn/media-centre/shariah-advisory-body-resolutions/>
- Subordinate Act (CAP 6), the Government of Brunei Darussalam
- Supreme Court Act (CAP 5), the Government Brunei Darussalam
- Syariah Courts Act (184), the Government of Brunei Darussalam
- Syariah Financial Supervisory Board Order, 2006, the Government of Brunei Darussalam