



## **BOOK REVIEW**

### **SHARIAH MINDS IN ISLAMIC FINANCE: AN INSIDE STORY OF A SHARIAH SCHOLAR**

*by Mohd Daud Bakar, Amanie Media, 2016, xl + 322 pp., ISBN 978-967-13789-0-8*

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This book is a pioneer in providing an insight into the mind of a Shariah scholar from an insider's perspective. Another special thing about the book is that it is written by Dr. Mohd. Daud Bakar, whom I consider to be an authoritative figure and genuine example of a Shariah scholar in Islamic finance. He has been actively involved in many fundamental works that shape the current world of Islamic finance since the past two decades. Reading the book convinced me that the author is very passionate and sincere in developing a better financial industry that fulfills the Shariah requirement.

The book is organized into 13 chapters. The first four chapters focus on the definition, roles, expectations and significance of Shariah scholars in Islamic finance. Chapters 5 and 6 discuss the methodology adopted by individual Shariah scholars and the thinking process from the emergence of a problem to the issuance of fatwa, while Chapter 7 deals with the approach to different thinking processes that lead to differences in *fatwā*. These three chapters are the highlight of the book since they explain the thinking process of the Shariah minds. The following chapters are dedicated to answering several contemporary issues which negatively affect the public view on Shariah scholars, the performance and contributions of the Shariah scholars. The closing three chapters are the personal views and experience of the author with regard to wish list, career path and daily routine of Shariah scholars.

The main strength of the book is that all discussions and opinions of the author are well articulated and supported by the author's real life experience and examples. Many issues addressed in the book provide additional discernments on many controversies that are plaguing the public perception on contemporary Islamic finance. The narrative style applied throughout the book provides a relaxing

yet interesting way to understand how the minds of Shariah scholars work. Although the author was trained in law, he was able to maintain simple and less technical arguments throughout the book. Any law jargon and *fiqh* idioms used are immediately followed by definitions. The author reminds the readers that the book is written based on the author's sole point of view. Hence, it lacks inferential analysis in which the conclusions drawn by the author remain as a personal opinion and should not be simply generalized to others.

I find the elaborations on the journey to becoming a Shariah scholar very interesting. Apart from mastery of classical *fiqh* knowledge through formal education, the author suggests that students scrutinize Shariah resolutions and to be close to Shariah scholars as apprentices. They need to ensure that the fatwas issued are practical within the financial system, and they need to maintain good personality. Once at the top, they should continue their routines of doing research to ensure their minds remain sharp and mentor new scholars to push the frontiers of Islamic finance.

Most of the discussions in the book are focused on scholars who sit in Shariah advisory boards of Islamic financial institutions and not necessarily any scholars in Islamic finance. Furthermore, only three chapters actually describe the thinking method applied by these Shariah advisory board members while the other chapters merely elaborate the personal opinion of the author on other issues related to the job scope of these members and answering the critiques thrown at them.

There is only a little exposure as to how economics, which is the canopy of finance, and the *Maqāṣid al-Sharī'ah*, affect the thinking process. The author seems to be defending the Shariah scholars from various critics, especially Muslim economists. The rigid financial regulatory requirements have led to a lower Shariah standard to allow for an operational financial system. This is actually a clear example of an application of *Maqāṣid al-Sharī'ah* where, for the sake of public interest, the economy needs to have an operational financial system. It seems that Shariah scholars are always under pressure to issue fatwa that could accommodate the many imperfect environments in the financial sector. This excuse is actually acceptable based on various legal maxims in Shariah to which no other scholars, economists included, would object. Unfortunately, the author missed to highlight that the Shariah scholars should always remind the industry that these "wrong but realistic" fatwas are issued as temporary solutions based on the strictly unfavorable conditions, and

at the same time they should stress on gradual transitions to the ideal fatwa on higher ethical ground.

I agree with the author that the objectives of Shariah should only be the overall guiding principles that should direct the overview; they are not supposed to be the main evidence to determine the legality of specific financial contracts. Unfortunately, some Shariah scholars tend to overemphasize the technical aspects of financial contracts such that they tend to overlook the overall impact of such contracts upon the realization of Shariah objectives in the long run as part and parcel of the general equilibrium of the economy. Furthermore, the author tends to limit the scope of the discussions on *Maqāṣid al-Sharī'ah* to poverty eradication and equitable distribution as addressed by Muslim economists, ignoring many other economic goals in harmony with *Maqāṣid al-Sharī'ah*. The author stated that wealth creation is more fundamental to distributive goals emphasized by Muslim economists, but he may have overlooked that Muslim economists view that wealth should be created from real activities where finance plays a supportive role only.

The author claims the stringent regulatory framework leaves the Shariah scholars with few options other than trying to accommodate the current regulatory framework by discounting Islamic finance even to the minimum allowable Shariah level. Not only that, even if disagreements occur between Shariah scholars, the author urges them to respect and appreciate the different views, or offer an alternative fulfilling the regulatory compliance. Therefore, it is not surprising if the public tend to think that Shariah scholars use ruses and tricks to sneak around Shariah rulings in their verdicts, and that Islamic finance mimics conventional finance where the only difference is the absence of *ribā* (interest), *gharar* (uncertainty), and *maisir* (gambling) in the technical papers of the former. Nevertheless, I agree that to have a minimum state of an operational Islamic finance is better than nothing. At this level, the contributions of the current and past Shariah scholars should be acknowledged, and it should be the responsibility of the future Shariah scholars to try improving the industry so that the high values of Islamic finance could be passed on to society. Using the same argument style of the author, I may also refute by suggesting that idealism, theories and high values are not constraints but they form the objective equation that should be realized at the maximum level possible subject to the technical constraints imposed by the conventional regulatory compliance. It is very unfortunate that the author dedicates pages to criticize Muslim economists, which may send a wrong signal that they are the enemies

of Islamic finance, rather than trying to convince regulators and industry players of the advantages of Islamic finance that could only be fully reaped if the existing regulatory framework is changed.

The author also highlighted that there is no evidence to support the claim of Muslim economists that debt-based financing is least preferred to equity-based financing, while there are prayers made by the Prophet (blessings and peace be upon him) in which he asked for protection from debt, and in some other situations he gave stern warning with regard to debt. These hadiths should be enough to convince any Shariah scholar that debt is unfavorable and should be avoided as much as possible. Unfortunately, under the auspices of Shariah advisory boards, the current trend in Islamic finance is not reflecting the progressive steps toward decreasing debt.

The author also calls for a clear separation of sphere of influence between Shariah scholars and Muslim economists, where the latter should avoid overseeing the Shariah compliance of the contracts and should instead focus on analyzing market data and trends. The author failed to realize that it does not take one to be a Muslim economist to analyze market data; any economists can deal with figures and statistics collected from the data. What differentiates Muslim economists from other economists is that the former embed revelation as the primary guiding principle in their efforts to comprehend the data and make inferential conclusions. Obviously when they sense the market is not behaving according to the guidelines derived from revelation, they would air their comments and critiques.

The book managed to clarify the real role of Shariah scholars in Islamic finance, which seems to be limited to evaluation and endorsement of financial products, marketing materials, and audit reports proposed by the industry based on various *fiqh* rulings. Based on this finding, I tend to conclude that the Shariah mind works mostly following a legal algorithm shaped by various maxims in performing analogical analysis between new financial products and the classical *fiqh* rulings while the aggregate socio-economic impact is simply ignored. This description fits Shariah advisory board members but not necessarily Shariah scholars who should be at the forefront of finding solutions and suggesting improvements. Therefore, it is unsurprising that the roles of Shariah scholars in Islamic finance are limited to a reactionary behavior toward the industry demands instead of a progressive attitude toward promoting the objectives of Shariah in the market. The Shariah scholars are in serious need of a wakeup call from the industry to move on, and this suggests that they lack creativity to initiate the efforts to look for solutions inherent in revelation. Even the

author suggests that Shariah scholars should be actively involved with the task of instilling the culture of internal Shariah compliance in the financial institutions.

Despite the several disagreements that I have pointed out, the book is worth reading by all involved and interested in Islamic finance. The Shariah scholars need to work harder to clear many negative public perceptions, and this book arrives at the right time for this. The first-hand experience shared by the author who walked a long journey to be among the great Shariah scholars of today would be able to enlighten everyone on the current state of Islamic finance. Although many barriers exist in terms of conventional regulatory compliance, Shariah scholars strive to produce realistic fatwas to ensure a workable Shariah compliant financial system, which is a big achievement. The author managed to convince me that the current state of Islamic finance, despite its numerous weaknesses, should not be rejected totally; instead it should be embraced and improved by continuing the legacy of these great minds. The book should be able to guide aspirant young Shariah scholars to be in the vanguard in ensuring the future of Islamic finance.