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Bridging Juristic Divides: A Comparative Analysis of Malaysian and Gulf Cooperation Council (GCC) Countries' *Fatwas* in Islamic Banking

Mohamed Fairooz Abdul Khir[a], Mohamad Akram Laldin[b]
Syafwendi Syafril[c*]

[a,b] *School of Graduates and Professional Studies, INCEIF University, Kuala Lumpur, Malaysia*
[c] *Shariah Business Management, Faculty of Islamic Economics and Business, UIN Raden Intan Lampung, Lampung, Indonesia*

**Corresponding author: syafwendis@radenintan.ac.id*

Abstract
Persistent divergence in Shariah rulings governing Islamic finance has generated ongoing debate regarding the feasibility and desirability of standardization across jurisdictions. While juristic plurality (*ikhtilāf fiqhī*) is an established feature of Islamic jurisprudence, excessive fragmentation in fatwas poses regulatory and operational challenges for Islamic financial institutions operating in an increasingly cross-border environment. This study examines the possibility of Shariah harmonization by conducting a comparative doctrinal analysis of selected fatwas issued by centralized and decentralized Shariah governance bodies, with particular reference to Malaysia and Gulf Cooperation Council (GCC) jurisdictions. Employing a qualitative legal methodology grounded in comparative fiqh and *uṣūl al-fiqh*, the study analyzes key Shariah resolutions related to core Islamic banking instruments, including financing, guarantees, liquidity management, and contractual undertakings. The findings demonstrate that divergences in fatwas do not stem from an absence of Shariah reasoning, but rather from methodological differences in interpretive approaches, juristic prioritization, and regulatory context. Importantly, the study clarifies that scholarly disagreement reflects legitimate interpretive variance and that instances of polemical dismissal among scholars represent ethical concerns (*akhlāq al-ikhtilāf*) rather than jurisprudential principles. The paper argues that rigid standardization risks undermining *ijtihād* and juristic plurality, while uncoordinated divergence threatens legal certainty and market confidence. As a normative contribution, the study advances a middle-path framework of coordinated harmonization through apex Shariah bodies and collective *ijtihād*, preserving the dignity of *mujtahids* while enhancing regulatory coherence. This approach offers a pragmatic pathway for strengthening Shariah governance and fostering sustainable growth in the global Islamic finance industry.
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Keywords: *Fatwa, Islamic banking, Malaysia, GCC Countries*

1. Introduction

The fundamental difference between Islamic and traditional banking lies in their foundational principles and the guidelines they follow. It is widely recognized that all activities and operations in Islamic banking must adhere to Shariah law. Therefore, stakeholders in Islamic banks, including customers, governments, Shariah advisors, shareholders, and managers, must ensure that the bank's operations do not violate any Shariah rulings. This makes the resolutions (*fatwas*) issued by a bank's Shariah board crucial, as they offer essential guidance and establish a standard for the bank to follow in its daily operations and product development (Bhuiyan et al., 2020).

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In this context, *fatwas* (Shariah resolutions) are crucial for advancing, regulating, and overseeing the growth of Islamic banking and finance (Khan, 2007; Devi & Hamid, 2024; Syafril, 2025). They also ensure that the practice of Islamic banking aligns with the authentic principles of Islamic finance. Given their importance, scholars have outlined several roles of fatwas, including: 1) resolving ambiguous issues in banking and finance by providing Islamic rulings, 2) issuing resolutions and standards as required by the industry, 3) clarifying what is permissible and what is prohibited in financial transactions within banking and finance, and 4) ensuring that Islamic law requirements are met when new products are developed, prior to their marketing (Lahsasna, 2010; Zaini & Shuib, 2021; Suhendar et al., 2023).

In certain countries, each Islamic Financial Institution (IFI) is permitted to independently issue *fatwas*, whereas other countries centralize the issuance of *fatwas*, rendering them obligatory for all IFIs within their jurisdiction. The Middle Eastern countries exemplify the former approach, while Malaysia and Indonesia illustrate the latter. This divergence has resulted in notable differences in the adoption of *fatwas* between these two groups (Zaidi, 2008; Setyowati et al., 2023). A pertinent example of this discrepancy is the issue of the leakage of Islamic funds into non-Islamic investments. In Malaysia, Islamic funds are prohibited from being diverted into the conventional *ribā*-based financial market. This is clearly articulated in the resolution of the Shariah Advisory Council (SAC) of Bank Negara Malaysia (Bank Negara Malaysia, 2010).

According to the resolution by BNM, all Islamic financial transactions in Malaysia must fully adhere to Shariah principles. In contrast, in the GCC (Gulf Cooperation Countries), conventional banks are permitted to generate funds to recapitalize institutions based on *ribā* or to engage in activities that may not align with Shariah investment standards (Kuwait Financial House, 2011). Another instance is the practice of *bay' al-'īnah*, which is temporarily permitted in Malaysia but is strictly forbidden in Middle Eastern nations because it is considered a loophole for *ribā al-jāhiliyah*. It has been noted that the GCIBFI (General Council for Islamic Banks and Financial Institutions) conducted a comparative analysis of 6000 fatwas, revealing that only 10% of the opinions are contested, while scholars concur on the remaining 90% (Hasan, 2009).

The study seeks to compare Malaysian *fatwas* on Islamic banking with those of the GCC countries and subsequently quantitatively assess the differences identified. The findings are expected to facilitate an understanding of the extent of divergence between the *fatwas* issued by these two jurisdictions. Furthermore, the study aims to elucidate the Shariah foundations underlying the resolutions adopted by the respective *fatwa*-issuing bodies. This research is pivotal for advancing the harmonization and standardization of Shariah rulings in Malaysia and the GCC countries by examining the Shariah justifications of the *fatwas*, particularly in instances where significant discrepancies exist. Additionally, this study serves as a valuable resource for members of the Islamic finance community, enabling them to discern the differences and similarities in *fatwas* on Islamic banking between Malaysia and the GCC countries. The initial section of the paper will provide a concise explanation of the concepts of fatwa and *khilāf* to offer a clear understanding of their true nature from a Shariah perspective. Subsequently, the methodology employed to compare the fatwas will be elucidated. Thereafter, the findings will be presented and analyzed from various perspectives. Finally, the paper will explore the concept of standardization as a proposed solution for addressing inconsistencies in interpretation.

2. Literature Review

2.1 The Nature of Fatwas

The meaning of *fatwa* must be thoroughly examined to know whether or not *fatwas* are binding in nature. Literally, the word *fatwa* is derived from the verb *aftā*, or its noun *ifta'*, which connote two important meanings. Firstly, *fatwa* means seriousness, which implies being serious and quiet. *Al-fatā*, which is translated as 'young man' or 'one in the prime of life', connotes one who possesses these qualities. Secondly, *fatwa* means an explanation or clarification, more particularly, an explanation of an unclear matter (Lahsasna, 2010; Salleh et al., 2021; Ansori, 2022)

A *fatwa* is defined as an Islamic ruling on a specific point of Islamic law, issued by a recognized authority based on sound evidence (Lahsasna, 2010). It serves as a response to an ambiguous Shariah matter, involving the declaration and explanation of the Shariah ruling, and is characterized by its non-binding nature (Al-ZuÍaylī, 1998; Shaharuddin, 2015; Zaini & Shuib, 2021). The non-binding aspect implies that the *mustaftī*, or the individual seeking the Shariah ruling, is not compelled to adhere to the issued *fatwa*; consequently, a person who chooses not to follow it should not face punishment. Furthermore, the non-binding nature of a *fatwa* distinguishes it from *qaḍā,* a judgment delivered by a judge (Kermeli, 2000; Ali, 2022). *Qaḍā* also involves the declaration and explanation of a Shariah ruling, but it is inherently binding. This distinction is clearly articulated by *Muṣṭafā al-Ruhaybānī* in his scholarly work *Maṭālib Uli al-Nuhā fi Sharh Ghāyat al-Muntahā:*

"Fatwa is the clarification of the Shariahruling for the person asking about it. It is a nonbinding notification, while qaḍ'ā *(judgment) is the clarification of the Shariahruling and enforcing compliance with it. Hence, qaḍā differs from fatwa in that it is binding."* (Muṣṭafā al-Ruhaybānī, n.d.)

In contemporary Islamic finance, it is a standard procedure that the *fatwa* issued by the Shariah board of an IFI is obligatory for the *mustaftī,* which is the IFI itself. This requirement is explicitly outlined in the Shariah standards set by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).

"The institution is obliged to follow the fatwa once it is issued, regardless of whether it meets the satisfaction of the management or not. This obligation holds true when the fatwa entails enforcement or prohibition of a certain act. When the fatwa entails permissibility of the act in question, the institution has the right to refrain from following it, if it believes that for practical needs it has to do so. In this case, however, rejection of the board's fatwa should be reported to the General Assembly of the institution" (AAOIFI, 2017).

According to AAOIFI guidelines, an institution should not adhere to the *fatwa* of other Shariah advisory boards unless its own board grants permission (AAOIFI, 2017). This guideline is intended to avoid the practice of combining the views of two *mujtahids* to form a new ruling that neither would individually endorse (*talfīq*) and selecting the most lenient opinion from different schools of thought (*tatabbu' al-rukhas*) without adhering to their specific criteria (AAOIFI, 2017).

2.2 *Al-Khilāf* (Disagreement) in *Fatwa*

A *fatwa* is the result of a scholar's *ijtihād* on the Shariah matter at hand. Hence, it can be said that a mufti is a *mujtahid* as well as a jurist who has the task to provide the Islamic ruling on various religious issues presented to him based on sound evidence and a proper methodology of *ijtihād* as prescribed in Islamic jurisprudence. Therefore, the issuer of *fatwa* must possess the minimum requirements of being *mujtahid* such as having sufficient knowledge of the Qur'ān, the Sunnah, *ijmā'* and *khilāf* (consensus and disagreement), Arabic language, *ushūl al-fiqh* (the methods of Islamic jurisprudence) and *maqāsid al-Sharī'ah*. In addition, a mufti in an Islamic finance issue must have deep and comprehensive understanding of the objectives of the Shariah with regard to Islamic finance and should be well acquainted with the operations of contemporary Islamic finance and the context in which it operates (Lahsasna, 2010; Ismail, 2021).

In recent academic discussions, there has been a notable increase in the debate surrounding the alignment of fatwas within the global Islamic banking sector. The primary conflict lies between the commercial need for uniformity and the maintenance of juristic diversity (khilāf). Advocates for harmonization contend that in a globally connected market, differing fatwas lead to considerable operational challenges. These challenges include heightened compliance expenses, legal ambiguities in international contracts, and reputational risks linked to "fatwa shopping" (Oseni, Abu U. F. Ahmad, et al., 2016; Oseni, 2017; Hakim, 2018; Zaini & Shuib, 2021). The absence of standardization is viewed as a key factor in market fragmentation, obstructing the smooth movement of capital and the creation of globally recognized products, especially in the sukuk market where structural variations can discourage international investors (Khan, 2007; Mukhlisin et al., 2015; Devi & Hamid, 2024; Syafril, 2025). The emergence of Islamic fintech has further intensified these demands, as digital platforms need standardized Shariah guidelines to function effectively across various jurisdictions (Mun'im et al., 2025). On the other hand, a strong opposing view warns against the dangers of enforced standardization. Scholars such as Shaharuddin (2016) and Mohamad (2024) stress that juristic diversity is not a defect but a characteristic of Islamic law, showcasing the flexibility of ijtihād (independent legal reasoning). They argue that a uniform code could hinder the Shariah's capacity to adjust to distinct local circumstances and socio-economic demands, potentially undermining the higher objectives (*maqāṣid*) of Islamic law for the sake of commercial ease.

The discussion has evolved from a simple "for or against" argument to a more detailed examination of the methods and extent of harmonization. The emphasis is now on creating robust Shariah governance structures that can accommodate, rather than eradicate, juristic differences. A significant amount of research has been done comparing the centralized Shariah advisory councils in Malaysia and Indonesia with the decentralized, institution-specific boards common in the GCC (Kismawadi, 2025; Mukhlisin et al., 2015; Soualhi & Bouhraoua, 2018; Zakariyah, 2015). Although centralized systems encourage national uniformity, their decisions may not be widely accepted internationally. This has increased the importance of international standard-setting organizations like the AAOIFI and the Islamic Financial Services Board (IFSB). Nonetheless, their impact is still debated; while AAOIFI's standards are highly regarded, they are not universally adopted, and the process of their development has been criticized for allegedly lacking representation from all major juristic schools (El-Halaby et al., 2021; Elhalaby et al., 2023). The challenge of achieving a truly global consensus via collective *ijtihād* (*ijtihād jamāʿī*) remains formidable, hindered by deep-seated methodological differences between regions (Shaharuddin, 2015).

In response to these challenges of governance, scholars are proposing innovative approaches and methodologies to foster greater alignment. One emerging area is the application of Regulatory Technology (RegTech) to map and analyze the global landscape of *fatwas*, using data analytics to identify patterns of convergence and divergence in real-time (Buchak et al., 2018; Rabbani et al., 2020). Another prominent idea is a multi-layered harmonization model, which proposes alignment on universal principles (*uṣūl*) at the global level, consensus on product structures at the regional level, and flexibility for specific applications at the local level (Ercanbrack, 2019; Yussuf et al., 2021; Paksi, 2022). This approach respects both the need for global standards and local contexts. Furthermore, there is a growing consensus that bridging juristic divides requires enhanced academic-industry collaboration to ensure that Shariah rulings are both jurisprudentially sound and commercially viable. Understanding the enduring influence of traditional *madhhab* (schools of thought) on contemporary *fatwa* issuance is also critical, as historical legal traditions continue to shape modern interpretations (Kok et al., 2022). This new wave of research moves beyond governance structures to explore practical tools and frameworks for achieving what some term "managed divergence" or "dynamic harmonization".

Despite the breadth of theoretical, conceptual, and governance-focused discussions, a significant research gap persists in the empirical and quantitative assessment of the issue. The existing literature is abundant with prescriptive studies on achieving harmonization but lacks descriptive studies that systematically assess the actual extent of fatwa divergence among major Islamic finance jurisdictions. A recent review specifically advocates for more data-driven, comparative analyses to advance the harmonization debate beyond anecdotal evidence and theoretical frameworks (Mukhlisin et al., 2015; Shaharuddin, 2015; Tunnur & Amalia, 2024; Devi & Hamid, 2024). Without a clear, quantitative understanding of where the similarities and differences truly exist across various core banking principles, efforts toward standardization remain speculative. This study seeks to address this critical gap by offering a detailed, quantitative comparison between the foundational Shariah resolutions of Malaysia and the GCC, thereby anchoring the harmonization debate in empirical evidence and pinpointing the most promising areas for future consensus-building.

2.3 Ethics of Disagreement

Since the time of the Companions, mujtahids have frequently held divergent views on judicial matters, a phenomenon that persists to the present day. Provided these disagreements were not motivated by self-interest or a desire to create discord, it can be posited that they were all pursuing the correct path. Their primary objective was to address ambiguous Shariah issues and elucidate the truth for the *Ummah*, with the sole aim of seeking the pleasure of Allah S.W.T (Ismail, 2021). Consequently, differences in fatwas should not lead us, as *muqallids* (followers), to conflict; rather, we should respect each other's perspectives. Classical scholars have established exemplary standards for managing disagreements in juristic opinions with mutual respect. It was customary for them to support the judgments of those who issued sound verdicts, irrespective of their legal schools.

The ethics of *Fatwa* in Islamic banking and finance are debated because *Fatwas*, while authoritative, often provide non-binding interpretations that influence product design and regulatory compliance. The literature highlights that multiple Shariah interpretations and differing Fatwas create ethical disputes and uncertainty for both practitioners and customers (Ullah et al., 2016). *Fatwa* shopping, where banks seek favorable rulings, exacerbates tensions surrounding legitimacy, trust, and appropriate risk-taking in Islamic finance (Oseni, Abu Umar Faruq Ahmad, et al., 2016; Oseni, 2017). Governance mechanisms, particularly Shariah Supervisory Boards, are crucial for ethical assurance, but research questions their effectiveness and the legitimacy they provide when *Fatwas* differ, affecting consistent practice in the Islamic banking sector (Haridan et al., 2018). In jurisdictions like Indonesia, Fatwas from the DSN-MUI guide contracts (e.g., *murabahah*), yet empirical work shows misalignment between Fatwas and actual practice, underscoring governance and enforcement gaps (Ibrahim & Salam, 2021; Maulani et al., 2023). There are ongoing calls for standardization, harmonization of Fatwas, and stronger consumer protection frameworks to align normative guidance with real-world banking, ensuring ethical consistency across markets (Devi & Hamid, 2024; Khan, 2019).

In conclusion, the ongoing debate regarding ethical disagreements stemming from differing fatwa interpretations highlights the inherent complexities within Islamic banking practices. The reliance on varying interpretations of Islamic law has critical implications for consistency, transparency, and the credibility of Islamic financial institutions. There is a compelling need for deliberative efforts to harmonize fatwas and develop robust frameworks that reconcile differing opinions while reflecting the ethical tenets of Islamic finance. This cohesion is paramount not only for the success of Islamic banks but also for the trust and confidence of stakeholders, including consumers, regulators, and the broader financial community.

3. Methodology

This study compares various *fatwas* on Islamic banking issued by Malaysia and the GCC countries. It proceeded by collecting *fatwas* related to Islamic banking resolved by the selected *fatwa*-issuing bodies in the two areas. Each *fatwa* is further examined and analyzed, mainly in relation to its verdict on the permissibility or impermissibility of the act, or its permissibility with conditions. Then comparison is made of these *fatwas* to produce the percentage of differences and similarities between them. In order to provide clearer understanding of the methodologies used in this study, this section delineates the scope of the research, and the analytical methods employed.

3.1 Scope of Research

This study adopts a comparative doctrinal approach to examine divergences and convergences in Shariah rulings (fatwas) governing Islamic banking practices across jurisdictions. The analysis focuses on Shariah resolutions issued by leading fatwa authorities in Malaysia and selected Gulf Cooperation Council (GCC) jurisdictions, reflecting two dominant models of Shariah governance in Islamic finance: centralized and decentralized systems.

For Malaysia, this study relies on the Second Edition of the Shariah Resolutions in Islamic Finance published by the Shariah Advisory Council (SAC) of Bank Negara Malaysia (BNM) in 2010. This edition consolidates and refines Shariah rulings issued since the establishment of the SAC and reflects a more mature phase of Malaysia’s Islamic finance regulatory framework. Importantly, under the Central Bank of Malaysia Act, SAC resolutions are legally binding on Islamic financial institutions and courts, rendering them authoritative expressions of Malaysian Shariah positions in Islamic banking. The second edition is therefore methodologically preferable, as it incorporates doctrinal refinements, regulatory clarifications, and harmonization efforts that were not fully captured in the first edition, while still maintaining continuity with earlier rulings.

In contrast, Shariah governance in GCC countries is largely decentralized, with fatwas issued by institutional Shariah boards or transnational juristic bodies. Accordingly, this study selects five prominent fatwa-issuing institutions to represent prevailing Shariah interpretations in the Middle East: (i) Dubai Islamic Bank (DIB), (ii) Dallah al-Barakah Bank (DAB), (iii) Kuwait Finance House (KFH), (iv) the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), and (v) Majmaʿ al-Fiqh al-Islāmī (Islamic Fiqh Academy). These bodies were chosen due to their historical influence, cross-border impact, and frequent citation by Islamic financial institutions and regulators within GCC jurisdictions.

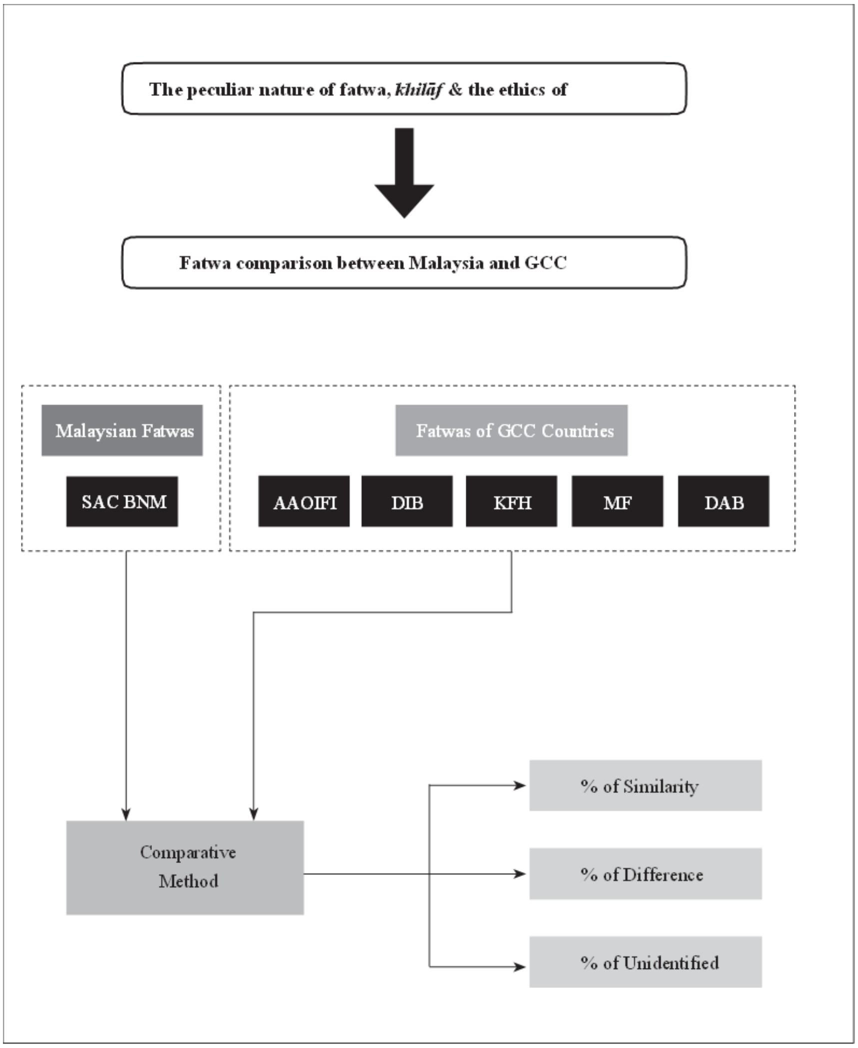

Figure 1: Flow Chart of the Paper
Source: Author's own

The study compares twelve selected Shariah resolutions, namely: *ʿīnah, mushārakah mutanāqiṣah, taʿwīḍ, gharāmah, hibah* on bank deposits*, ibrāʾ, tawarruq, qard, kafālah bi al-ujrah, muḍārabah, waʿd, and hibah in muḍārabah* contracts. These resolutions are deliberately selected for three interrelated reasons. First, they represent core contractual and operational instruments in Islamic banking, directly affecting financing, deposits, guarantees, default management, and profit distribution. Second, these concepts are jurisprudentially contested, with notable differences in acceptance, structuring, or conditionality across jurisdictions, making them particularly suitable for comparative analysis. Third, many of these resolutions (such as *ʿīnah, tawarruq, taʿwīḍ, and gharāmah*) sit at the intersection of legal form and Shariah substance, thus revealing deeper methodological differences in *uṣūl al-fiqh*, *maqāṣid al-Shariah* reasoning, and regulatory pragmatism between Malaysia and GCC fatwa authorities.

Table 1: Selected Shariah Principles

No.	Shariah Principle	No.	Shariah Principle
1.	*Wa'd Mulzim* (Binding Promise)	7.	*Hibah* (Gift) in a *Muḍārabah* Contract
2.	*Bay' al-'Īnah* (Sale and Buyback)	8.	*Muḍārabah* (Silent Partnership)
3.	*Kafālah bi al-Ajr* (Fee for a Guarantee)	9.	*Qarḍ* (Loan of a Fungible)
4.	*Tawarruq Fiqhī*	10.	*Ibrā'* (Rebate)
5.	*Mushārakah Mutanāqisah*	11.	*Ta'wīḍ* (Compensation)
6.	*Hibah* (Gift) on a Bank Deposit	12.	*Gharāmah* (Penalty)

Source: Author's own

The comparative analysis is conducted by systematically examining the doctrinal basis, juristic reasoning, and practical implications of each resolution across the selected bodies. While the study is necessarily limited to one Malaysian authority and five GCC-based institutions, this design allows for a focused yet meaningful comparison between centralized and decentralized Shariah governance models. The findings are intended to illuminate patterns of convergence and divergence in contemporary Islamic banking fatwas and to contribute to ongoing discussions on Shariah harmonization and regulatory consistency in Islamic finance.

3.2 Method of Analysis

Fatwas concerning the twelve Shariah principles mentioned above were gathered from the numerous *fatwas* issued by the chosen Shariah boards. A comparative approach was then utilized to identify the differences and similarities among these *fatwas*, based on three legal values attributed to the principles: permissibility, impermissibility, and permissibility with conditions. Therefore, similarity and difference refer to the likeness and variance in the aforementioned values. For instance, there is only *x*% difference in the permissibility of Shariah Principal Y whereas only *q*% difference occurs in Shariah Principal Z. The following formula is used to calculate the percentage of difference and similarity of the *fatwas*:

$$\frac{P_1}{A} \text{ x } 100\% = D_1 \qquad \frac{P_2}{A} \text{ x } 100\% = D_2$$

Where:

P_1 = The number of the compared fatwa-issuing bodies that have similar resolutions to that of BNM

P_2 = The number of the compared fatwa-issuing bodies that have different resolutions from that of BNM.

A = Total number of the compared fatwa-issuing bodies

D_1 = Percentage of similarity

D_2 = Percentage of difference

BNM resolved that juristic issue A is permissible. AAOIFI and DAB resolved that it is impermissible while DIB, KFH and MF resolved that it is permissible with conditions. This case shows that only one *fatwa*-issuing authority aligns with BNM's decision, while four others have differing resolutions. Here, we demonstrate how this operates.

(a) Percentage of similarity:

$$\frac{P1}{A} x\ 100\% = D1; P1 = 1\ and\ A = 5$$

1/5 x 100% = 20%, Hence the similarity is 20%.

(b) Percentage of similarity:
$\frac{P2}{A} x\ 100\% = D2; P2 = 4\ and\ A = 5$

4/5 x 100% = 80%, Hence, the percentage of difference is 80%.

In some cases, certain *fatwa*-issuing authorities might not have released any fatwas concerning specific Shariah principles. As a result, an extra column labeled "unidentified" is added to the formula. This column indicates the percentage of *fatwa*-issuing bodies that have not issued any fatwas on the Shariah principles being compared. The percentage of the unidentified is calculated using the following formula.

$$U = 100\% - (D_1 + D_2)$$

Where:
U = Percentage of unidentified
D1 = Percentage of similarity
D2 = Percentage of difference

BNM determined that legal issue B is not allowed, whereas AAOIFI and DAB concluded that it is acceptable. On the other hand, DIB's decision aligns with BNM's, while MF and KFH have not issued any rulings on the matter. This situation illustrates that only one fatwa-issuing authority (DIB) shares a similar decision with BNM, two authorities have differing resolutions, and two others have not made any decisions on the issue. Consequently, the percentage of unidentified is as follows.

BNM resolved that juristic issue B is impermissible, whereas AAOIFI and DAB resolved that it is permissible. On the other hand, DIB's decision aligns with BNM's, while MF and KFH have not issued any rulings on the matter. This situation illustrates that only one *fatwa*-issuing authority DIB shares a similar decision with BNM, two authorities have differing resolutions, and two others have not made any decisions on the issue. Consequently, the percentage of unidentified is as follows:

(c) Percentage of unidentified: $U = 100\% - (D_1 + D_2)$

Suppose $D_1 = 1/5 \times 100\% = 20\%$
$D_2 = 2/5 \times 100\% = 40\%$
$U = 100\% - (20\% + 40\%)$
$U = 40\%$

Based on the above calculation, the percentage of the unidentified is 40%. In other words, 40% of the compared *fatwa*-issuing bodies have no resolution regarding this issue.

Moreover, as for the analytical part of this study, the following three steps are employed. Fisrtly, comparison is made between the selected *fatwa*-issuing bodies on the three different legal values assigned to the twelve Shariah principles namely, permissibility, impermissibility and, permissibility with conditions. Secondly*,* the percentage of differences and similarities between the *fatwas* issued in Malaysia and GCC countries is highlighted along with instances of unidentified *fatwas*.Thirdly*,* the substantive justification of each *fatwa*, which comprises the essential factors causing the difference of opinion, is elucidated to nurture mutual respect among *fatwa*-issuing bodies in particular and the Islamic finance community in general.

In addition to the qualitative doctrinal analysis, this study incorporates limited descriptive statistical observations as a supplementary analytical tool. These quantitative elements are employed solely to illustrate patterns emerging from the comparative Shariah analysis and to contextualize institutional practices across jurisdictions. They are not intended to generate independent empirical claims, test hypotheses, or establish causal relationships. Accordingly, the primary methodological orientation of this research remains normative and comparative in nature, with statistical observations serving a supportive and corroborative function to reinforce the legal findings.

4. Results and Discussion

4.1 Comparative Examination of *Fatwas*

This section analytically discusses the findings and results of the comparative examination of *fatwas* related to the twelve Shariah principles. Percentages of difference and similarity for each *fatwa* are presented along with the legal justifications.

4.1.1 Wa'd Mulzim (Binding Promise)

All *fatwa*-issuing bodies agree that a promise is binding upon the promisor. The binding nature of the promise in this context implies that the promisor is obliged to fulfill the promise; failure to do so without justification necessitates compensation for any damages incurred due to the non-fulfillment of the promise (Majma' al-Fiqh al-Islāmī, 1988). However, Majma' al-Fiqh al-Islāmī has determined that the fundamental ruling of a promise is that it is morally binding. It becomes legally binding if it is contingent upon the fulfillment of an obligation and the promisee has already incurred expenses based on such a promise. This resolution is adhered to by DAB (DAB, 2007), BNM (BNM, 2010), and KFH, which state that their *fatwa* is derived from the Mālikī opinion that a promise becomes binding if it creates an obligation, and this obligation arises due to the promise (KFH, 2011). Thus, it is evident that the resolution of Majma' al-Fiqh al-Islāmī aligns with the Mālikī opinion. Furthermore, AAOIFI contends that the customer may be compelled to fulfill their obligation based on the general texts of the Qur'ān and Sunnah, which mandate the fulfillment of obligations and undertakings based on recent fatwa found in Shariah Standards no. 49 regarding unilateral promises (AAOIFI, 2017). DIB does not clearly mention the Shariah justification of its resolution.

Table 2: *Wa'd Mulzim* (Binding Promise)

<table>
<tr><th>Fatwa issued by:</th><th>Permissible</th><th>Im-permissible</th><th>Permissible with condition</th><th>Justification (reason)</th><th>Similarities</th><th>Differences</th><th>Unidentified</th></tr>
<tr><td>BNM</td><td></td><td></td><td>1</td><td>Refer to some Mālikī Opinion</td><td rowspan="6">100%

(5/5 x 100%)</td><td rowspan="6">0%

(0/5 x 100%)</td><td rowspan="6">0%

[100% - (100% + 0%)]</td></tr>
<tr><td>AAOIFI</td><td></td><td></td><td>1</td><td>General sources of the Qur'ān and Sunnah</td></tr>
<tr><td>DAB</td><td></td><td></td><td>1</td><td>Refer to MF</td></tr>
<tr><td>MF</td><td></td><td></td><td>1</td><td>None</td></tr>
<tr><td>KFH</td><td></td><td></td><td>1</td><td>Refer to Mālikī opinion</td></tr>
<tr><td>DIB</td><td></td><td></td><td>1</td><td>None</td></tr>
</table>

Source: Author's own

In summary, no *fatwa*-issuing authority forbids the use of a binding promise in Islamic banking. They believe that a promise becomes binding when it establishes an obligation. Therefore, the *fatwa* released by BNM in this context is exactly the same as the GCC's *fatwa*. This complete alignment suggests that this fatwa could be standardized across all IFIs.

4.1.2 ʻInah Contract (Sale and Buy-back)

Ba'i al-Inah is a controversial Islamic financing structure involving a two-step "sell-and-buy-back" transaction between two parties, designed to generate immediate cash. A seller sells an asset to a buyer on deferred payment, then immediately repurchases it for a lower price in cash, creating an implicit interest-based loan.

It has been observed that all the *fatwa*-issuing bodies in the Middle East prohibit its exercise in Islamic banking and finance, arguing that it leads to the circumvention of *ribā* or serves as a loophole for *riba* (AAOIFI, 2017; KFH, 2011; DAB, 2007). This study discovered that only the SAC of BNM permits its application in Islamic banking. The SAC of BNM adopted the view of the Shafi'i School and set forth two conditions for the validity of *ʻīnah* (BNM, 2010; Abdullah Saif Al Nasser & Datin, 2013): Firstly, the transaction must adhere to the format specified by the Shafi'i School. (The *ʻīnah* used in the industry does not comply with this.) Secondly, the item involved in the transaction must be a non-ribawi good, meaning it can be sold on a deferred payment basis.

Table 3: *Bayʿ al-ʻInah* (Sale and Buy-back)

***Fatwa* issued by:**	**Permissible**	**Impermissible**	**Permissible with condition**	**Justification (reason)**	**Similarities**	**Difference**	**Unidentified**
BNM			1	Shafi'i School Opinion	0% (0/5x100%)	100% (5/5x100%)	0% [100%-(100%+0%)]
AAOIFI		1		Circumvent of *riba*			
DAB		1					
MF		1					
KFH		1					
DIB		1					

Source: Author's own

In addition to that, BNM acceptance of *Bayʿ al-ʿĪnah* is grounded in a juristically defensible position within classical Islamic law, particularly the Shāfiʿī school, which permits the transaction so long as each sale contract independently fulfills its essential pillars and conditions without explicit stipulation of an unlawful intention. From this perspective, Shariah validity is assessed on contractual form rather than inferred economic outcomes, distinguishing *Bayʿ al-ʿĪnah* from explicit *ribā*. Beyond doctrinal permissibility SAC of BNM adopts a *maqāṣid*-oriented regulatory approach, recognizing *ḥājah ʿāmmah* (public need) during the formative stages of Malaysia's Islamic banking industry, where the absence of viable Shariah-compliant financing instruments could have undermined financial inclusion and market stability. The allowance of *Bayʿ al-ʿĪnah* thus served to preserve broader objectives such as wealth circulation and institutional viability, while remaining subject to strict operational safeguards to prevent the transaction from degenerating into a prohibited legal stratagem (*ḥīlah fāsidah*).

4.1.3 Kafālah bi al-Ajr (Charging a fee on Guarantee)

Kafālah bi al-Ajr is an Islamic sharia-compliant guarantee contract (*kafalah*) where a guarantor (bank or institution) agrees to fulfill the obligations of another party (*makful anhu*) in exchange for a fee (*Ajr*). Common in Islamic banking, it is frequently used for bank guarantees, letters of credit, and financing products to facilitate transactions.

There are two contrasting viewpoints on this matter. BNM permits charging a fee for the guarantee without specifying that the fee must not surpass the actual costs (BNM, 2010), whereas other *fatwa*-issuing authorities allow the guarantor to set a specific fee and recognize it as income, provided it does not exceed the actual expenses (AAOIFI, 2017; KFH, 2011; DAB, 2007; DIB, n.d.; Majma' al-Fiqh al-Islāmī, 1988). BNM's decision is based on Wahbah al-Zuhayli's view, which allows it due to *maslahah* and community needs. BNM permits *kafālah bi al-ajr* based on a Shariah interpretation that recognizes the permissibility of charging a fee for services (*ujrah*) associated with guarantee arrangements, rather than for the guarantee (*kafālah*) itself. While classical jurists generally viewed *kafālah* as a gratuitous contract (*tabarru'*), the Shariah Advisory Council (SAC) adopts a contemporary fiqh approach that distinguishes between the charitable nature of the guarantee and the legitimate costs, expertise, and operational risks involved in providing professional guarantee services within modern financial institutions. From a *maqāṣid al-Shariah* perspective, allowing *kafālah bi al-ajr* facilitates trade, credit enhancement, and risk mitigation in Islamic banking, thereby supporting market efficiency and financial intermediation, provided that the fee is linked to actual administrative services and does not function as compensation for assuming liability in a manner analogous to *riba* (BNM, 2010; Biancone et al., 2020).

On the other hand, among those who insist that the fee for *kafālah* should not exceed actual costs, only DIB and AAOIFI provide a clear rationale. They argue that *kafālah* is a charity-based contract and cannot treat as commercial contract, making it impermissible to charge a fee. AAOIFI further explains that a guarantee implies a willingness to cover the debt if the principal debtor defaults. In such cases, the guaranteed individual must repay the guarantor. If a fee is charged for the guarantee, it constitutes an excess over the loan, which is considered riba (BNM, 2010; DIB, n.d.). Nonetheless, all *fatwa*-issuing bodies allow the bank, as guarantor, to claim for actual expenses (DIB, n.d.) Consequently, the fatwa issued by BNM in this context is entirely different from the GCC, as illustrated in table 4.

Table 4: Kafālah bi al-Ajr (Charging a Fee on Guarantee)

***Fatwa* issued by:**	**Permissible**	**Impermissible**	**Permissible with condition**	**Justification (reason)**	**Similarities**	**Difference**	**Unidentified**
BNM	1			Refer to Zuhayli and Ali Abdalla's opinion	0% (0/5x100%)	100% (5/5x100%)	0% [100%-(100%+0%)]
AAOIFI			1	Kafalah is charity and its considered a loan			
DAB			1	None			
MF			1				
KFH			1				
DIB			1	*Kafalah* is charity			

Source: Author's own

4.1.4 Tawarruq (Comodity Murabahah Financing)

Five *fatwa*-issuing bodies, namely: BNM, AAOIFI, DAB, DIB, and KFH, resolved that *tawarruq* is permissible (AAOIFI, 2017; BNM, 2010; DAB, 2007; DIB, n.d.; KFH, 2011). Their resolutions do not explicitly specify the type of *tawarruq*, is it organized or non-organized *tawarruq*. However, some of them laid down certain guidelines which indicate that the type they consider lawful is non-organized *tawarruq*. For example, AAOIFI allow traditional *tawarruq* to use in Islamic finance and classifies organized *tawarruq* as non-compliant. In organized *tawarruq,* the client delegate the institution or its agent to sell, on his behalf, a commodity that he purchased from the same institution, and similarly, the institution accept such delegation

(Kahf & Habbani, 2016; AAOIFI, 2017; Ahmad et al., 2017). KFH put a condition that the bank should not act as an agent to sell the commodity (security) on behalf of the customer (KFH, 2011). DIB and DAB stipulated that the *tawarruq* arrangement must be free from *'īnah* arising from the involvement of a third party in the financial arrangement (DAB, 2007; DIB, n.d.). In contrast, it is found that only MF made a clear resolution that the current practice of *tawarruq* is not permissible on the ground that it contains the element of *riba* (Majma' al-Fiqh al-Islāmī, 1988).

Table 5: Tawarruq (Commodity Murabahah Financing)

<table>
<tr><th>Fatwa issued by:</th><th>Permissible</th><th>Impermissible</th><th>Permissible with condition</th><th>Justification (reason)</th><th>Similarities</th><th>Difference</th><th>Unidentified</th></tr>
<tr><td>BNM</td><td></td><td></td><td>1</td><td rowspan="5">Sales transaction</td><td rowspan="6">80%
(4/5x100%)</td><td rowspan="6">20%
(1/5x100%)</td><td rowspan="6">0%
[100%-(80%+20%)]</td></tr>
<tr><td>AAOIFI</td><td></td><td></td><td>1</td></tr>
<tr><td>DAB</td><td></td><td></td><td>1</td></tr>
<tr><td>MF</td><td></td><td>1</td><td></td></tr>
<tr><td>KFH</td><td></td><td></td><td>1</td></tr>
<tr><td>DIB</td><td></td><td></td><td>1</td><td>None</td></tr>
</table>

Source: Author's own

However, BNM permits organized *tawarruq* based on a Shariah position that recognizes its validity as a series of independent and properly executed sale contracts, each fulfilling the essential pillars and conditions of sale under Islamic law. The SAC adopts a form-based juristic approach, supported by recognized opinions within the Ḥanbalī and contemporary fiqh discourse, which allow *tawarruq* so long as genuine asset ownership, possession, and transfer occur, and the transactions are not contractually interlinked in a manner that renders them a disguised *ribā*-based loan. From a *maqāṣid al-Shariah* perspective, BNM views organized *tawarruq* as addressing *ḥājah ʿāmmah* (public need) by providing liquidity and financing solutions essential for the functioning and competitiveness of Islamic banks, while imposing strict operational controls (such as third-party commodity platforms and sequencing requirements) to prevent the arrangement from degenerating into a prohibited legal stratagem (*ḥīlah*).

4.1.5 Mushārakah Mutanāqisah (Diminishing musharakah)

Mushārakah Mutanāqisah (MM) or "Diminishing Partnership" is a Shariah-compliant financing structure where a bank and a customer jointly purchase an asset (e.g., house or car). The customer gradually buys out the bank's equity share over time through rental payments, ultimately becoming the sole owner. It combines partnership (*musharakah*), leasing (*ijarah*), and sale (*bai*) contracts

All *fatwa*-issuing bodies agree on the permissibility of *mushārakah mutanāqisah* with some conditions that must be completely met. In other words, this unanimous view signifies 100% of similarity of *fatwa* in this case between the *fatwa*-issuing bodies of the Middle East and SAC BNM. There is no argumentative explanation provided in their resolutions since this contract is a partnership contract, which is absolutely permissible in Islam. However, they have set different conditions that must be fulfilled (BNM, 2010; DAB, 2007; DIB, n.d.; KFH, 2011; Majma' al-Fiqh al-Islāmī, 1988). SAC BNM only put one condition: that the combining of *ijārah* and *mushārakah* must be concluded separately, while DAB, KFH and DIB opined that the selling price of the shares must be at market price or as pre-agreed by both contracting parties. The most complete explanation about its general rulings and conditions are as presented by *Majma' al-Fiqh al-Islāmī* and AAOIFI.

Table 6: *Mushārakah Mutanāqisah* (Diminishing *Musharakah*)

***Fatwa* issued by:**	**Permissible**	**Impermissible**	**Permissible with condition**	**Justification (reason)**	**Similarities**	**Difference**	**Unidentified**
BNM			1				
AAOIFI			1				
DAB			1	None	100% (5/5x100%)	0% (0/5x100%)	0% [100%-(100%+0%)]
MF			1				
KFH			1				
DIB			1				

Source: Author's own

4.1.6 Hibah on a Bank Deposit

There are two opinions regarding this issue: impermissibility, and permissibility with conditions. Majma' al-Fiqh al-Islāmī is the only *fatwa*-issuing body that has yet to issue a resolution on this case. Three other bodies, namely: BNM, AAOIFI and DAB, argue for its permissibility with conditions. BNM and AAOIFI stipulate that the practice of *hibah* should not become a norm and a condition (AAOIFI, 2017; BNM, 2010).

DAB prescribes six conditions for giving *hibah* on a *qarḍ* (DAB, 2007). Firstly, there must be no pre-existing agreement nor any required conditions. Secondly, *hibah* should not become customary. Thirdly, giving *hibah* is not an obligation on the bank, and the customers have no right to ask for it. Fourthly, the distribution scheme must have various forms in terms of the divided proportion of profit and the amount of the account. Thus, the distribution is not to be limited to those who have funds in excess of a certain amount (for example) or to those who have deposited their funds for a certain period. Fifth, the distributed amounts should be taken from the profit of the shareholders with the approval of the management board as their representative. Lastly, the bank must attach these rules or principles when they are going to announce the rewards.

Nonetheless, DAB fails to offer any rationale for the decision. The critics of this Shariah principle include KFH and DIB (DIB, n.d.; KFH, 2011). DIB contends that the party assuming responsibility is entitled to the profit, following the principle "al-kharāj bi al-ḍamān" (revenue is linked to liability) (DIB, n.d.). Since the customer does not assume any risk of loss, the bank should not offer hibah on the customer's deposit. In summary, 50% of fatwa-issuing authorities consider the provision of hibah on bank deposits permissible under certain conditions; 33.33% oppose it; and 16.67% have an unclear stance. Additionally, 40% of the fatwa-issuing bodies in the Middle East align with SAC BNM's resolution on this matter, while another 40% hold a differing view. The opinion of the remaining 20% is unspecified.

Nonetheless, DAB fails to offer any rationale for the decision. The critics of this Shariah principle include KFH and DIB (DIB, n.d.; KFH, 2011). DIB contends that the party assuming responsibility is entitled to the profit, following the principle *"al-kharāj bi al-ḍamān"* (revenue goes with liability) (DIB, n.d.). Since the customer does not assume any risk of loss, the bank should not offer hibah on the customer's deposit. In summary, 50% of *fatwa*-issuing authorities consider the provision of *hibah* on bank deposits permissible under certain conditions; 33.33% oppose it; and 16.67% have an unclear stance. Additionally, 40% of the *fatwa*-issuing bodies in the Middle East align with SAC BNM's resolution on this matter, while another 40% hold a differing view. The opinion of the remaining 20% is unspecified.

Table 7: *Hibah* on a Bank Deposit

***Fatwa* issued by:**	**Permissible**	**Impermissible**	**Permissible with condition**	**Justification (reason)**	**Similarities**	**Difference**	**Unidentified**
BNM			1	None	40% (2/5x100%)	40% (2/5x100%)	20% [100%-(40%+40%)]
AAOIFI			1				
DAB			1				
MF	-	-	-				
KFH		1					
DIB		1		*Al-kharaj bi al-daman*			

Source: Author's own

4.1.7 *Hibah* in a *Muḍārabah* Contract

Regarding the Shariah issue of *hibah* on a *muḍārabah* contract, only BNM and DAB have issued an opinion. Both of them resolved that *hibah* on a *muḍārabah* contract is impermissible. BNM justifies its resolution on the premise that the *muḍārabah* contract is based on profit sharing. If the practice of offering *hibah* is allowed, it can affect the very nature of the *muḍārabah* contract (BNM, 2010). Moreover, DAB states that *hibah* on a *muḍārabah* contract is not permissible even if it is not preconditioned. In consequence, the reward or any profit gained from a conventional bank must be allocated for charity (DAB, 2007). The other *fatwa*-issuing bodies, namely: AAOIFI, MF, KFH and DIB, have not commented on this issue. Therefore, only 20% of the *fatwa*-issuing bodies in the Middle East have a similar resolution to SAC BNM's resolution, while the resolution of 80% of them is unidentified.

Table 8: *Hibah* in a *Muḍārabah* Contract

***Fatwa* issued by:**	**Permissible**	**Impermissible**	**Permissible with condition**	**Justification (reason)**	**Similarities**	**Difference**	**Unidentified**
BNM		1		Contravene the nature of *mudarabah* contract	20% (1/5x100%)	0% (0/5x100%)	80% [100%-(20%+0%)]
AAOIFI		-		None			
DAB		1					
MF		-					
KFH		-					
DIB		-					

Source: Author's own

4.1.8 *Muḍārabah*

Mudarabah is a Shariah-compliant partnership agreement where one party (the capital provider, *Rabb-ul-Mal*) supplies 100% of the funds for a project, and the other (the manager, *Mudarib*) provides expertise, management, and labor. Profits are shared based on a pre-agreed ratio, while financial losses are borne solely by the capital provider, provided the loss did not result from the manager's misconduct or negligence.

It is agreed that all scholars permit the practice of the *muḍārabah* contract (BNM, 2010; DAB, 2007; DIB, n.d.; KFH, 2011; Majma' al-Fiqh al-Islāmī, 1988). The *muḍārabah* contract, which is based on profit-and-loss sharing, is perceived as the main contract that distinguishes Islamic banking from conventional banking. AAOIFI argues that the permissibility of this contract is based on the Qur'ān, Sūrah al-Muzzammil, verse 20, *Hadiths*, and the statement of Ibn al-Mundhir, who mentioned that there is consensus among the scholars that the *muḍārabah* contract is valid (AAOIFI, 2017). Hence, it can be concluded that the resolutions of *fatwa*-issuing bodies in the Middle East are similar to SAC BNM's resolution.

Table 9: *Muḍārabah*

***Fatwa* issued by:**	**Permissible**	**Impermissible**	**Permissible with condition**	**Justification (reason)**	**Similarities**	**Difference**	**Unidentified**
BNM	1			None	100% (5/5x100%)	0% (0/5x100%)	0% [100%-(100%+0%)]
AAOIFI	1			*Qur'an Hadiths* and *Ijma'*			
DAB	1			None			
MF	1						
KFH	1						
DIB	1						

Source: Author's own

4.1.8 Qarḍ (Loan)

All *fatwa*-issuing bodies agreed that *qarḍ* is permissible in the Shariah as long as it is free from interest (AAOIFI, 2017; BNM, 2010; DAB, 2007; DIB, n.d.; KFH, 2011; Majma' al-Fiqh al-Islāmī, 1988). The permissibility of *qarḍ* is legally justified based on the Qur'ān, the Prophetic tradition (Sunnah) and legal consensus (*ijmāʻ*) (BNM, 2007/2010). To conclude, the *fatwas* of the *fatwa*-issuing bodies in the Middle East on this case are 100% similar to that of SAC BNM. In addition, BNM and AAOIFI view that any benefit like *hibah* of added value that is made a condition of a loan contract is prohibited. Nevertheless, it is allowed to give *hibah* provided it is not preconditioned (AAOIFI, 2017; BNM, 2007/2010). As regard to *hibah* on a *qarḍ*, it has already been discussed under *hibah* on a bank deposit. In contrast, DIB resolved that it is prohibited to give the current account holders more than their balance. This is because it is considered profit, and profit belongs to the bank that has borne the risk; as the Prophet (peace be upon him) said, "*al-kharāj bi al-ḍamān* (revenue goes with responsibility)" (DIB, n.d.). Meanwhile, AAOIFI, KFH and MF state that it is permissible for a lending institution to impose a service charge on a loan contract that is equivalent to the actual amount directly spent on such services (AAOIFI, 2017; KFH, 2011; Majma' al-Fiqh al-Islāmī, 1988). Since BNM did not mention charging a fee on *qarḍ* in its first edition of *Shariah Resolutions in Islamic Finance*, we cannot compare Malaysia with the GCC countries on this issue.

Table 10: *Qarḍ* (Loan)

***Fatwa* issued by:**	**Permissible**	**Impermissible**	**Permissible with condition**	**Justification (reason)**	**Similarities**	**Difference**	**Unidentified**
BNM	1			*Sunnah and Ijma*			

AAOIFI	1			None	100% (5/5x100%)	0% (0/5x100%)	0% [100%-(100%+0%)]
DAB	1						
MF	1						
KFH	1						
DIB	1						

Source: Author's own

4.1.9 Stipulation of Ibrā' in the Contract

Ibrā' is an Islamic legal term referring to the waiver, release, or relinquishment of a right to collect a debt or claim. In Islamic finance, it acts as a rebate provided by a financier to a customer who settles a sale-based financing, such as *Murabahah*, before the agreed term.

BNM resolved that Islamic banks may stipulate an *ibrā'* clause in Islamic financing agreements for customers who make early settlement. This *fatwa* is justified on the basis of public interest (*maslahah*). SAC BNM argued that the inclusion of an *ibrā'* clause in the agreement may remove confusion on the issue of uncertainty in price (*gharar*). In this regard, the bank is bound to honor its promise with the inclusion of an *ibrā'* clause in the financing agreement (BNM, 2007/2010). This resolution refers to Shaykh Musṭafā al-Zarqa's opinion in his book *al-Madkhal al-Fiqhī al-'Ómm* that the inclusion of a condition in financial contracts such as a sale contract is permissible under Islamic law if the inclusion is made for the purpose of protecting the interests of the transacting parties and it does not contradict the principle of sale and purchase (BNM, 2007/2010). In contrast, all *fatwa*-issuing bodies in the Middle East do not allow the stipulation of *ibrā'* in thecontract as a condition (AAOIFI, 2017; DAB, 2007; DIB, n.d.; KFH, 2011; Majma' al-Fiqh al-Islāmī, 1988). Stipulation of *ibrā'* up-front will be tantamount to *riba* (DAB, 2007; DIB, n.d.; Majma' al-Fiqh al-Islāmī, 1988). Moreover, KFH emphasizes that stipulating it up-front or after the contract either verbally or in writing is all impermissible (KFH, 2011). Early settlement must come solely from the willingness of the customer without any oral or written condition stipulated up- front (KFH, 2011). In addition, the customer should not request for a certain amount to be deducted on account of his early settlement of the debt (DIB, n.d.). To sum up, all the *fatwa*-issuing bodies in the Middle East have a different opinion from SAC BNM on this issue; the former parties disallow it and the latter allows it. Hence the difference is 100%, as highlighted in Table 10.

Table 11: Stipulation of *Ibrā'* in the Contract

***Fatwa* issued by:**	**Permissible**	**Impermissible**	**Permissible with condition**	**Justification (reason)**	**Similarities**	**Difference**	**Unidentified**
BNM	1			*Maslahah*	0% (0/5x100%)	100% (5/5x100%)	0% [100%-(0%+100%)]
AAOIFI		1		Mimics Interest based loan			
DAB		1		*Riba*			
MF		1					
KFH		1					
DIB		1					

Source: Author's own

4.1.10 Ta'wīḍ (Late Payment Charge)

Ta'widh is an Islamic finance concept referring to compensation charged by an Islamic financial institution to a customer for actual losses incurred due to the customer's deliberate negligence or breach of contract (wanprestasi), such as delayed payments. It is a compensatory, not punitive, fee based on real costs, distinct from riba (usury)

All *fatwa*-issuing bodies in both Malaysia and the Middle East agreed on the permissibility of *ta'wīḍ*. They resolved that Islamic banks may impose compensation on defaulters who fail to meet their obligations to pay back the financing amount as agreed in the contract. However, the amount of *ta'wīḍ* should not exceed the actual loss suffered by the financier (AAOIFI, 2017, 2017; BNM, 2010; DAB, 2007; DIB, n.d.; Majma' al-Fiqh al-Islāmī, 1988). Dallah al-Barakah and AAOIFI hold that the customer should bear all legal and other expenses incurred by the creditor in order to recover his debt (AAOIFI, 2017; DAB, 2007). Moreover, Majma' al-Fiqh al-Islāmī resolved that the loss that can be compensated includes actual financial loss incurred by the partner, any other material loss, and the gain he was certain of obtaining and that he missed as a result of his partner's default or delay in repayment of debt. It does not include moral losses (Majma' al-Fiqh al-Islāmī, 1988).

The permissibility of charging *ta'wīḍ* is based on the following arguments (BNM, 2010). First, the *Hadiths* narrated by al-Bukhārī: "Procrastination by a rich (debtor) is injustice." Another *Hadiths* narrated by Ibn Mājah and al-Dāraquṭnī states, "(There is) neither harming nor reciprocating harm (in Islam)." Second, delay in debt payment can be compared with *ghasb* (usurpation) of valuable property. The common *'illah* (ratio legis) is obstructing the owner's use of his property and the other party exploiting it in an oppressive way. Lastly, it refer to legal maxim *al-ḍarar yuzāl* (harm should be removed). Meanwhile, Dubai Islamic Bank argues for its permissibility based on the above *Hadiths* and the permissibility of *ta'zīr bi al-māl*. However, the amount of *ta'zīr* can only be determined by a court (DIB, n.d.).

In conclusion, the *fatwas* of the *fatwa*-issuing bodies in the Middle East on this matter are similar to the resolution of SAC BNM. The similarity is 100% and the difference is 0%.

Table 12: *Ta'wīḍ* (Late Payment Charges)

<table>
<tr><th>Fatwa issued by:</th><th>Permissible</th><th>Impermissible</th><th>Permissible with condition</th><th>Justification (reason)</th><th>Similarities</th><th>Difference</th><th>Unidentified</th></tr>
<tr><td>BNM</td><td>1</td><td></td><td></td><td>Hadiths qiyas on ghasb and legal maxim (al-darar yuzal)</td><td rowspan="6">100% (5/5x100%)</td><td rowspan="6">0% (0/5x100%)</td><td rowspan="6">0% [100%-(100%+0%)]</td></tr>
<tr><td>AAOIFI</td><td>1</td><td></td><td></td><td rowspan="5">Preventing Harm to the Creditor based on principle la darar wa la dirar</td></tr>
<tr><td>DAB</td><td>1</td><td></td><td></td></tr>
<tr><td>MF</td><td>1</td><td></td><td></td></tr>
<tr><td>KFH</td><td>1</td><td></td><td></td></tr>
<tr><td>DIB</td><td>1</td><td></td><td></td></tr>
</table>

Source: Author's own

4.1.11 Gharāmah (Penalty) on Debt

Gharāmah is a monetary penalty or fine imposed by Islamic financial institutions on customers who delay in settling their debt or financing payments. Unlike *ta'widh* (actual compensation for losses), *gharāmah* is punitive, intended to encourage discipline, and must be channeled to charitable bodies rather than recognized as income by the bank.

There are two opinions regarding this issue. Two *fatwa*-issuing bodies opine that it is not permissible while others argue that it is permissible to charge *gharāmah* (penalty or late-payment charge). BNM, AAOIFI, DAB and KFH allow *gharāmah* provided it is not acknowledged as income, and it must be channelled to charity (AAOIFI, 2017; BNM, 2010; DAB, 2007; KFH, 2011). Moreover, the bank may not utilize it to pay any tax imposed on its asset as that will protect the assets (DAB, 2007). AAOIFI argued that *gharāmah* is considered as a commitment to make a donation, which is well established in the Mālikī School(AAOIFI, 2017). In contrast, MF and DIB view that imposing *gharāmah* (penalty) on debt is not allowed (DIB, n.d.; Majma' al-Fiqh al-Islāmī, 1988). The latter (DIB) argued that it is similar to, "*Give me more time; I will give you more money*", whereby this is considered *ribā* as unanimously agreed by the jurists (DIB, n.d.). To conclude, 60% of the *fatwa*-issuing bodies in the Middle East have the same opinion as BNM while 40% of them have a different opinion.

Table 13: *Gharāmah* on Debt

***Fatwa* issued by:**	**Permissible**	**Impermissible**	**Permissible with condition**	**Justification (reason)**	**Similarities**	**Difference**	**Unidentified**
BNM			1	None	60% (3/5x100%)	40% (2/5x100%)	0% [100%-(60%+40%)]
AAOIFI			1	Refer to opinion of Maliki's Jurist			
DAB			1	None			
MF		1					
KFH			1				
DIB		1		*Riba*			

Source: Author's own

4.2 General Overview of the Percentage of Similarities and Differences of *Fatwas* on Islamic Banking Between Malaysia and GCC Countries

This section highlights the overview of the percentage of similarities and differences between *fatwas* on Islamic banking issued in Malaysia and GCC countries. The summary of the percentage of similarities and differences related to the compared Shariah contracts and principles is highlighted in Figure 2.

Figure 2: Summary of the Percentage of Similarities and Differences between Malaysia's Resolutions and GCC

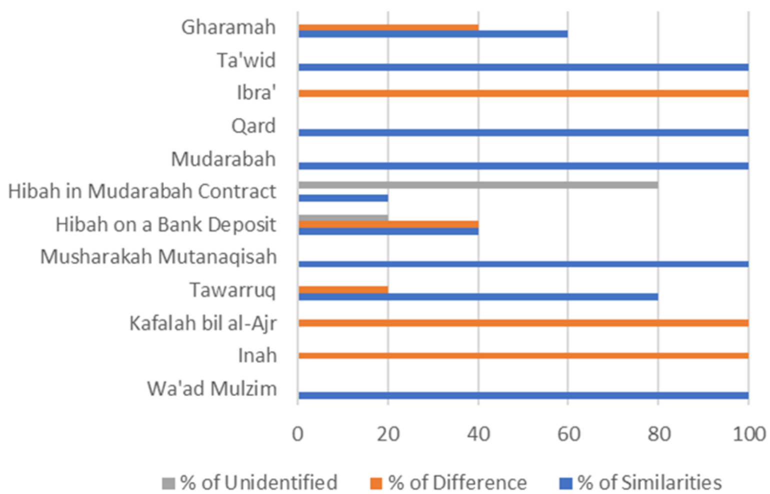

Figure 2: Countries' Resolutions
Source: Author's own

Figure 2 demonstrates that there is complete agreement among the respected fatwa-issuing bodies in GCC countries and Malaysia on five out of twelve Shariah principles: *ta'wīḍ, qarḍ, muḍārabah, mushārakah mutanāqisah, and wa'd mulzim*. This 100% agreement indicates that the Middle Eastern *fatwa*-issuing bodies share the same juristic views as Malaysia on these Shariah principles. Conversely, there is a complete divergence in the *fatwas* issued by the Middle Eastern and Malaysian bodies concerning three Shariah principles: *'īnah, kafālah bi al-ajr,* and the stipulation of *ibrā'* in contracts. This total difference signifies that the Middle Eastern bodies hold distinct juristic opinions from Malaysia on these Shariah contracts. In contrast, there is a 20% agreement on *hibah* in a *muḍārabah* contract and a 20% disagreement on the *tawarruq* contract. The 20% agreement suggests that only one *fatwa*-issuing body in the Middle East aligns with Malaysia's view on *hibah* in a *muḍārabah* contract. Similarly, the 20% disagreement in the case of *tawarruq* indicates that only one Middle Eastern body differs from Malaysia's opinion.

Figure 2 also shows a 40% agreement in *fatwas* related to *hibah* on bank deposits, while a 60% agreement is noted on *gharāmah* on debt. The 40% agreement implies that only two Middle Eastern *fatwa*-issuing bodies share the same juristic opinion as Malaysia regarding *hibah* on bank deposits, whereas the 60% agreement indicates that three Middle Eastern bodies align with Malaysia on *gharāmah* on debt. Additionally, Figure 2 reveals that some *fatwa*-issuing bodies have not yet issued resolutions on certain Shariah principles and contracts. For instance, only one selected *fatwa*-issuing body in GCC countries has issued a fatwa on *hibah* in a *muḍārabah* contract, while the others have remained silent, categorizing them as "unidentified" fatwas, which account for 80%.

On average, the percentage of similarity and difference between BNM and the fatwa-issuing bodies represented by Majma al-Fiqh al-Islāmī (MF), Kuwait Finance House (KFH), Dubai Islamic Bank (DIB), Dallah al-Barakah (DAB), and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) is depicted in Figure 3.

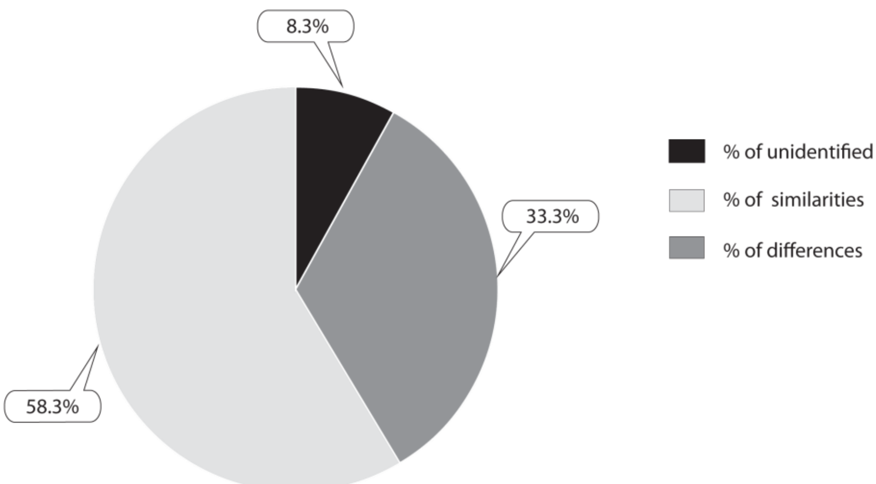

Figure 3: Overall Percentage of Similarity and Difference between Malaysia's Resolutions and the Middle East's Resolutions
Source: Author's own

Figure 3 indicates that the average percentage of similarity is 58.3%, the average percentage difference is 33.3% and the average percentage of unidentified *fatwas* is 8.3%.

While the core findings of this study are derived from doctrinal and comparative Shariah analysis, selected descriptive statistical observations are presented to support and contextualize these findings. The statistics do not constitute a novel empirical contribution; rather, they provide an illustrative overview of observed tendencies that align with the jurisprudential patterns identified in the legal analysis. As such, the quantitative results are interpreted cautiously and are used only to reinforce, not to replace, the study's primary normative conclusions.

4.3 The Possibility of Standardization

Differences in fatwas have been an inherent feature of Islamic jurisprudence since the earliest period of Islam and reflect the dynamic nature of *ijtihād*. A mujtahid may revise a legal opinion upon encountering stronger evidence, changing circumstances, or new factual realities that warrant a reassessment of the applicable Shariah ruling. Such variation is neither anomalous nor indicative of inconsistency in Shariah methodology. Rather, it demonstrates the intellectual vitality of Islamic law and its capacity to respond to diverse contexts. However, while juristic plurality (*ikhtilāf fiqhī*) is doctrinally legitimate, its practical implications for Islamic banking remain a subject of ongoing debate.

From an institutional perspective, Islamic banks argue that excessive divergence in Shariah rulings across jurisdictions may hinder market confidence, complicate product structuring, and impede cross-border transactions. Empirical and doctrinal studies suggest that a lack of convergence in Shariah standards can undermine regulatory clarity and create uncertainty in compliance practices, thereby constraining industry growth (Hakim, 2013; Shaharuddin, 2015; Devi & Hamid, 2024; Syafril, 2025). Consequently, proponents of harmonization argue that a degree of standardization could enhance stability and facilitate the sustainable expansion of Islamic finance without negating legitimate juristic diversity (Abdul Hamid, 2008; Antonio & Rusydiana, 2008).

Debates surrounding standardization are often intensified by high-profile fatwas that diverge sharply from dominant scholarly positions, such as Muḥammad Ṭanṭāwī's ruling on the permissibility of certain forms of bank interest. While this fatwa was strongly contested, it is important to emphasize that such rulings were not issued in the absence of Shariah reasoning. Rather, they were grounded in specific interpretive methodologies and readings of ribā, even if rejected by the majority. Similarly, subsequent endorsements by al-Azhar's Islamic Research Institute reflected collective scholarly deliberation rather than arbitrary opinion. Disagreement over conclusions, therefore, should not be conflated with a lack of scholarly rigor or Shariah legitimacy.

Classical and contemporary scholars have consistently affirmed that juristic disagreement is natural and, within limits, beneficial. Wahbah Al-Zuhayli (2010) emphasized that divergence in juristic rulings is unavoidable in any legal system and that most disagreements arise at the level of interpretive detail (*furūʿ*), not foundational principles (*uṣūl*). He further argued that such differences constitute a mercy for the Ummah, allowing flexibility across cultures and circumstances. Importantly, the presence of disagreement does not justify dismissing alternative opinions as un-Islamic or deficient. Disrespect among scholars reflects an ethical lapse (*akhlāq al-ikhtilāf*), not a jurisprudential principle, and should be clearly distinguished from legitimate scholarly critique.

Opposition to rigid standardization is primarily rooted in two concerns. First, enforcing uniform Shariah rulings risks marginalizing *ijtihād*, thereby weakening the very mechanism that ensures Shariah's adaptability across time and place. Second, given the plurality of recognized schools of law, mandatory standardization may implicitly privilege one juristic methodology over others, undermining the inclusivity of Islamic legal tradition. This concern is historically illustrated by Imām Mālik's refusal to impose al-Muwaṭṭaʾ as a binding legal code despite its scholarly authority, reflecting an early recognition of the dangers of enforced uniformity.

Accordingly, contemporary proposals favor coordinated harmonization rather than absolute standardization. Initiatives such as AAOIFI's Shariah standards and the establishment of national apex Shariah bodies represent pragmatic models that preserve juristic plurality while ensuring regulatory coherence. These bodies do not negate scholarly disagreement but channel collective *ijtihād* to provide authoritative guidance for Islamic financial institutions. A globally representative supreme Shariah board, as envisaged by some scholars, could further enhance convergence on critical issues while respecting the dignity, independence, and scholarly legitimacy of all mujtahids involved.

5. Conclusion and recommendation

This study has examined the enduring debate on Shariah standardization in Islamic finance through a comparative analysis of juristic opinions and institutional fatwas across centralized and decentralized governance systems. The findings confirm that divergence in Shariah rulings is not indicative of methodological weakness or absence of Shariah reasoning, but rather reflects legitimate differences in interpretive approaches, juristic prioritization, and regulatory contexts. Such plurality is deeply rooted in Islamic legal tradition and constitutes a defining strength of Shariah jurisprudence, particularly in matters of *muʿāmalāt*. However, when translated into the operational domain of Islamic banking, uncoordinated divergence may undermine legal certainty, regulatory consistency, and stakeholder confidence, especially in cross-border financial activities.

The study concludes that absolute standardization of Shariah rulings is neither feasible nor desirable, as it risks marginalizing *ijtihād* and undermining the dignity and independence of mujtahids. At the same time, unchecked fragmentation in fatwas poses practical challenges to the sustainable development of the Islamic finance industry. Accordingly, a balanced approach that distinguishes between foundational principles (*uṣūl*) and interpretive details (*furūʿ*) is essential for reconciling juristic plurality with institutional stability.

The findings of this study have significant practical implications for the global Islamic finance industry, particularly for regulators and financial institutions. First, Islamic finance regulators and standard-setting bodies should pursue coordinated Shariah harmonization rather than rigid standardization, focusing on high-impact commercial practices where legal certainty is critical. This may be achieved through structured dialogue and collective ijtihād among leading Shariah scholars. Second, the global Shariah institutions such as AOIFI should strengthen collaboration mechanisms to issue interpretive guidance that respects juristic diversity while narrowing unnecessary divergences. Third, Shariah governance frameworks should explicitly promote ethical norms of scholarly disagreement (*akhlāq al-ikhtilāf*), ensuring that intellectual critique remains methodologically rigorous and professionally respectful.

Finally, future research should adopt longitudinal and empirical approaches to assess how harmonization initiatives influence market confidence, regulatory efficiency, and Shariah compliance outcomes across jurisdictions, thereby enriching policy-oriented discourse in Islamic finance.

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