

## THE NEED TO ELIMINATE MISMANAGEMENT AND CORRUPTION IN ISLAMIC SOCIAL FINANCE INSTITUTIONS

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### ABSTRACT

During the COVID-19 pandemic, it became apparent that Islamic social finance (ISF) must be institutionalised due to inadequacies of Islamic commercial finance in providing adequate financial solutions to achieve financial inclusion. As such, the convergence of ISF with Islamic commercial finance is emerging while institutionalisation of ISF is gaining momentum globally. However, so far, there is no comprehensive governance code enacted to regulate the ISF institutions to guide them in the offering of their financial products and services within the parameters of Shari'ah, which include avoidance of corruption. Therefore, the objective of this research is to explore the existing mismanagement and corrupt practices found in managing the ISF and to recommend ways to overcome them. To meet its objective, this study adopts document analysis as its research methodology to review and discuss the selected management and corrupt practices of ISF institutions reported worldwide. It is anticipated that findings of this paper would assist policymakers, standard-setting bodies for Islamic finance, and ISF institutions to realise the significance of adopting good governance practices to take ISF to the next level. Further research could be undertaken to study the effectiveness of adopting good governance practices by ISF institutions and the implications of adopting such practices.

**Keywords:** Islamic Finance; Islamic Social Finance; *Sadaqah*; Social Governance Code; *Waqf*; *Zakat*.

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## **KEPERLUAN UNTUK MENGHAPUSKAN SALAH URUSAN DAN RASUAH DALAM INSTITUSI KEWANGAN SOSIAL ISLAM**

### **ABSTRAK**

Semasa pandemik COVID-19, telah jelas bahawa kewangan sosial Islam (ISF) perlu diinstitusikan disebabkan ketidakcukupan kewangan komersial Islam dalam menyediakan penyelesaian kewangan yang mencukupi untuk mencapai kewangan menyeluruh. Oleh yang demikian, penumpuan ISF dengan kewangan komersial Islam sedang terserlah manakala penginstitusian ISF menunjukkan momentum global. Walau bagaimanapun, setakat ini, tiada tatacara tadbir urus komprehensif yang digubal untuk mengawal selia institusi ISF bagi membimbing institusi terbabit dalam menawarkan produk dan perkhidmatan kewangan mereka mengikut parameter Syariah termasuk mengelakkan rasuah. Oleh itu, objektif penyelidikan ini adalah untuk meneroka salah urus dan amalan rasuah yang wujud dalam mengurus ISF dan mencadangkan cara untuk mengatasinya. Bagi mencapai objektif, kajian ini menggunakan analisis dokumen sebagai metodologi penyelidikannya untuk menyemak dan membincangkan pengurusan terpilih dan amalan rasuah institusi ISF yang dilaporkan di seluruh dunia. Adalah dijangkakan bahawa penemuan dari kajian ini akan membantu penggubal dasar, badan penetapan standard untuk kewangan Islam dan institusi ISF untuk menyedari kepentingan mengamalkan amalan tadbir urus yang baik untuk membawa ISF ke peringkat seterusnya. Penyelidikan lanjut boleh dijalankan untuk mengkaji keberkesanan menerima pakai amalan tadbir urus yang baik oleh institusi ISF dan implikasi menerima pakai amalan tersebut.

**Kata Kunci:** Kewangan Islam; Kewangan Sosial Islam; Sedekah; Tatacara Tadbir Urus Sosial; Wakaf; Zakat.

### **INTRODUCTION**

Islamic finance is divided into Islamic commercial finance and Islamic social finance (ISF). Compared to Islamic commercial finance, ISF is still lagging in terms of governance and standardisation of the concepts, products, instruments and institutions. The main reason for this is because ISF in the Muslim societies has been practiced as a decentralised matter which falls within the ambit of personal affairs of

the Muslim citizens outside the formal sector of the economy.<sup>1</sup> The institutionalisation of Islamic commercial finance emerged in the 20<sup>th</sup> century and led to a widespread adoption of Islamic finance for profit. This subsequently led to the emergence of social finance institutions which are non-profit entities that are established for a particular purpose of undertaking social finance activities. These include institutional set up of *waqf*, Islamic foundations, and other types of charitable organisations/NGOs that collect funds by means of social solidarity instrument. It was not until recently that attempt to create synergy between ISF and Islamic commercial finance has taken place due to sustainability or value-based intermediation initiatives taken in some parts of the world.<sup>2</sup> Islamic Financial Services Board (IFSB) has identified three modality for commercial integration where they have observed that via direct integration, third party integration and reverse integration.<sup>3</sup>

Despite the developments of ISF globally, a recent survey taken by IFSB on ISF activities has confirmed that one of the critical challenges faced in developing ISF is the absence of regulatory authority in the formal financial sector. In some countries, ISF is considered as an institution which merely manages charity or donations and does not require financial sector regulations to be applicable to them.<sup>4</sup> One main weakness that is found in ISF is the weak governance

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<sup>1</sup> M. Kabir Hassan, and Aishath Muneeza, Elements in the Economics of Emerging Markets: COVID-19 and Islamic Finance, (Cambridge University Press, June 2, 2022), <https://doi.org/10.1017/9781009189484>; M.Kabir Hassan, Aishath Muneeza, Adel M. Sarea, COVID-19 and Islamic social finance, (Routledge).

<sup>2</sup> Tok, E.; Yesuf, A.J.; Mohamed, A. Sustainable Development Goals and Islamic Social Finance: From Policy Divide to Policy Coherence and Convergence. Sustainability 2022, 14, 6875. <https://doi.org/10.3390/su14116875>; Hassan, M.K., Muneeza, A. and Sarea, A.M. (2022), "Introduction", Hassan, M.K., Muneeza, A. and Sarea, A.M. (Ed.) Towards a Post-Covid Global Financial System, Emerald Publishing Limited, Bingley, pp. 1-12. <https://doi.org/10.1108/978-1-80071-625-420211022>

<sup>3</sup> "Technical Note on Financial Inclusion and Islamic Finance. Islamic Financial Services Board: Kuala Lumpur," Islamic Financial Services Board, (2019): 92-96.

<sup>4</sup> "Technical Note on Financial Inclusion and Islamic Finance. Islamic Financial Services Board: Kuala Lumpur," Islamic Financial Services Board, (2019): 91.

of the institutions where sometimes cases of mismanagement and corrupt practices have been reported in the public domain. Since the institutions are not subjected to financial sector regulations, often these institutions are left to regulate the matters themselves in any manner they think best for the stakeholders.<sup>5</sup> In this regard, what is uniformly followed across the globe by these institutions are the Shari'ah rules which are applied to the type of instruments they use. So far, there is no Shari'ah standard-setting body that provides minimum governance requirements that need to be followed by these institutions to ensure they follow best practices. Different Shariah standards or governance requirements have been adopted for different ISF instruments or institutions such as *zakat* and *waqf*.

As regard corruptions, it is observed that there is limited research so far conducted in advocating the enactment of uniform governance codes applicable to the institutions by looking at the mismanagement and corrupt practices.<sup>6</sup> In this regard, there are some researchers who have conducted research to call for adopting a Shari'ah governance index to measure good governance for Islamic financial institutions (IFIs) to achieve ISF objectives.<sup>7</sup> The objective of this research is to explore the existing mismanagement and corrupt practices found in managing ISF and to recommend ways to overcome them. It is imperative to note that without formulating the minimum standards that should be applied in ISF, it would be impossible to have a uniform adoption of best practices among all countries across the globe.

This research paper is divided into five sections. Followed by the introduction, section two discusses accelerating the growth of ISF and section three presents the selected mismanagement and corrupt practices of ISF institutions. Section four highlights the

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<sup>5</sup> Kathryn Wortley, Lack of good practice solutions hinders development of Islamic social finance; <https://salaamgateway.com/story/lack-of-good-practice-solutions-hinders-development-of-islamic-social-finance>

<sup>6</sup> M. Kabir Hassan, and Aishath Muneeza, *Elements in the Economics of Emerging Markets: COVID-19 and Islamic Finance*, (Cambridge University Press, June 2, 2022), <https://doi.org/10.1017/9781009189484>.

<sup>7</sup> Nor Asila Nazmi, Rusni Hassan, and Abdul Rahim Abdul Rahman, Measuring Good Governance for Islamic Financial Institutions for Achieving Islamic Social Finance Objectives: The Need for Shariah Governance Index, Towards a Post-Covid Global Financial System (Emerald Publishing Limited, 2022), 91-102, <https://doi.org/10.1108/978-1-80071-625-420210005>.

recommendations to overcome the mismanagement and corrupt practices in Islamic social finance, followed by the conclusion.

### **ACCELERATING THE GROWTH OF ISLAMIC SOCIAL FINANCE**

Social finance has long been a means for Islamic finance to contribute to the world and community by balancing wealth in society and stopping economic exploitation. The recent crisis resulting from the COVID-19 pandemic seems to be a factor that accelerates the growth of ISF. The virus containment measures taken by the governments through the implementation of movement restriction orders adversely impact countries' economic activities and economic growth. Many companies in different parts of the world had to go into liquidation and the same fate was faced by individuals who had their own business activities to earn income.<sup>8</sup> Further, individuals also lost their jobs and income during this unprecedented event creating many to become poor and needy overnight.<sup>9</sup> Those individuals and companies who had taken financing facilities or loans from financial institutions also had no way to pay off their debts despite the debt moratoriums given by the central banks all over the world to those whose income were adversely affected by the pandemic.<sup>10</sup> Amid the pandemic, one significant realisation was that whether it was in conventional or Islamic finance, commercial financial institutions alone are not sufficient to provide relief to those in financial need, thus a synergy between Islamic commercial finance and ISF is required.

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<sup>8</sup> M. Kabir Hassan, and Aishath Muneeza, *Elements in the Economics of Emerging Markets: COVID-19 and Islamic Finance*, (Cambridge University Press, June 2, 2022), <https://doi.org/10.1017/9781009189484>; Hassan, M.K., Muneeza, A. and Sarea, A.M. (2022), "The Impact of the COVID-19 Pandemic on Islamic Finance: The Lessons Learned and the Way Forward", Hassan, M.K., Muneeza, A. and Sarea, A.M. (Ed.) *Towards a Post-Covid Global Financial System*, Emerald Publishing Limited, Bingley, pp. 15-36. <https://doi.org/10.1108/978-1-80071-625-420210001>

<sup>9</sup> Homi Kharas, "The Impact of COVID-19 on Global Extreme Poverty," *Brookings Future Development* 21, (2020). <https://www.brookings.edu/blog/future-development/2020/10/21/the-impact-of-covid-19-on-global-extreme-poverty/>

<sup>10</sup> M. Kabir Hassan, and Aishath Muneeza, *Elements in the Economics of Emerging Markets: COVID-19 and Islamic Finance*, (Cambridge University Press, June 2, 2022), <https://doi.org/10.1017/9781009189484>.

Islamic Financial Services Board (IFSB) refers ISF to as all those Shariah-compliant financing activities that are undertaken for “non-profit” and/or “societal welfare” purposes; that is, the underlying intention of the financial activity is to support charities, social causes and/or other welfare projects that do not contravene the principles of Shariah.<sup>11</sup> They divide the social finance instruments used in Islamic finance into two interrelated components: social solidarity instruments such as *sadaqah*, *waqf* and *qard*; and social finance institutions that are the non-profit entities that are established for the particular purpose of undertaking social finance activities such as institutions set up as *waqf*, Islamic foundations, and other types of charitable organisations/NGOs that collected funds by means of a social solidarity instrument.<sup>12</sup>

The list of ISF instruments and institutions are non-exhaustive as it is developing and evolving.<sup>13</sup> However, by looking at its practice in different parts of the world, the common types of ISF instruments and institutions are: *zakat*<sup>14</sup> (alms); *sadaqah* (charity); *waqf*<sup>15</sup> (endowment);

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<sup>11</sup> “Technical Note on Financial Inclusion and Islamic Finance. Islamic Financial Services Board: Kuala Lumpur,” Islamic Financial Services Board, (2019): 88.

<sup>12</sup> *Ibid.*

<sup>13</sup> Aishath Muneeza, “The Role of Technology in Enhancing Islamic Social Finance in Assisting Poor Communities in the Post COVID-19 Era,” *Journal of the Accounting and Auditing Organisation of Islamic Finance Institutions (AAOIFI)* 6, no. 1 (2021): 58-62.

<sup>14</sup> For example, see: Vima Tista Putriana, “Effectiveness of *Zakat* Community Development Program: A Case Study in West Sumatera,” *Journal of Islamic Finance* 10, no. 2 (2021): 1–17, <https://journals.iium.edu.my/iibf-journal/index.php/jif/article/view/592>; Nurul ‘Iffah M. A. Zaaba, and Rusni Hassan, “A Systematic Literature Review on *Zakat*,” *Journal of Islamic Finance* 10, no. 2 (2021): 101–111, <https://journals.iium.edu.my/iibfjournal/index.php/jif/article/view/600>.

<sup>15</sup> See: Muhammad Abdurrahman Sadique et al., “Socio-Legal Significance of Family *Waqf* in Islamic Law: Its Degeneration and Revival,” *IIUM Law Journal* 24, no. 2 (2016), <https://doi.org/10.31436/iiumlj.v24i2.275>.; Habeebah Simisola Fa-Yusuf, Saheed Abdullahi Busari, and Bilkis Lawal Shuaibu, “*Waqf* Effectiveness in Nigeria: Problems and Solutions,” *Journal of Islamic Finance* 10, no. 2 (2021): 79–89, <https://journals.iium.edu.my/iibf-journal/index.php/jif/article/view/598>.

*takaful* (Islamic insurance) for social purpose; Islamic microfinance<sup>16</sup>; and social *sukuk*<sup>17</sup> (Islamic bond). In Islamic microfinance, various Islamic finance contracts and gratuitous contract of *qard* (interest free loans) are used including the social *kafalah* (guarantee) scheme.

*Zakat* is the financial obligation that must be paid by every eligible Muslim for the benefit of the specific recipients (*asnaf*) as provided in the Quran.<sup>18</sup> There are two (2) types of *zakat*, namely *zakat al-mal* and *zakat al-fitr*. The former is paid by all Muslims who reached *nisab* (minimum amount required to pay *zakat* from wealth—at least 2.5% of income or wealth) and *hawl* (minimum number of time to pay *zakat* which is one (1) *hijri* year) from “zakatable” assets. Whereas *zakat al-fitr* is paid during the month of Ramadhan by the head of household on behalf of all his dependants if they possess food in excess of their needs. *Sadaqah* is a charity or a non-obligatory amount of money paid to help the needy and poor.<sup>19</sup> Comparing to *zakat*, *sadaqah* can be performed by anyone without specific rules except to have the good intention to help another.<sup>20</sup> Normally when *zakat* is paid, any excess amount over the obligatory *zakat* amount is considered as charity.<sup>21</sup> *Waqf* is an irrevocable religious endowment which is a voluntary dedication of one’s wealth or a portion of it, either in cash or kind, for the benefit of selected individuals of group of people

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<sup>16</sup> For example, see: Mukhtar Arif Siraj et al., “Potential Solutions to Financing Problems among the Poor: A Case of Baitul Maal Wa Tamwil (BMT) in Indonesia,” *Journal of Islamic Finance* 10, no. 2 (2021): 26–37, <https://journals.iium.edu.my/iiibf-journal/index.php/jif/article/view/594>.

<sup>17</sup> Mahadi Ahmad, Yahaya Yunusa Bambale, and Mahamad Ibrahim Adam Zain. “Social Impact Bond (SIB): A Shari’ah Appraisal,” *IJUM Law Journal* 27, no. 1 (2019): 181–208, <https://doi.org/10.31436/iiumlj.v27i1.408>.

<sup>18</sup> Qur’ān, 9: 60. The Quran provides that there are eight (8) beneficiaries of *zakat* that are the poor; the needy, the amil (those employed to administer the funds); the *muallaf* (those who have embraced Islam; those in bondage; those in debt; those who strive in the cause of Allah; and for the wayfarer.

<sup>19</sup> M. Kabir Hassan, and Aishath Muneeza, *Elements in the Economics of Emerging Markets: COVID-19 and Islamic Finance*, (Cambridge University Press, June 2, 2022), <https://doi.org/10.1017/9781009189484>.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

identified by the person giving it<sup>22</sup>. Social *takaful* is the Islamic insurance to the needy to protect themselves from future uncertainties for which the contributions for it are given by the government or a third party.<sup>23</sup> Islamic microfinance is set up to help the “unbankable” or population to obtaining financing. Islamic microfinance is a charity-based microfinance instruments whose target audience are extremely poor and economically inactive, who needs funds for daily consumption of life.<sup>24</sup> It is targeted for those who engage or wish to engage in an economic activity and needs financing. Social sukuk is a type of financial or investment instrument that does not only provide financial results but also give attention to societal and environmental issues, whereby the proceeds of the sukuk will be used for social purpose.<sup>25</sup> Among the purpose of social sukuk is the elimination of social crisis such as homelessness, unemployment, lack a quality education, poverty, and socio-economic security.

It is imperative to note that there are specific Shari’ah rules applicable to each Islamic social finance instrument and institution stated. Therefore, the specific rules applied to the respective Islamic social finance instruments cannot be generalised to all and this shall be a rule observed in enacting the governance code applicable to them. However, apart from these specific Shari’ah rules, there are certain general administrative rules in collection, management and disbursement of the social funds received that could be made uniform to all of these instruments which could be observed by the institutions

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<sup>22</sup> Ibid. Abdel Mohsin, M.I. and Muneeza, A. (2020). The institution of waqf: an innovative financial tool for socio-economic development. Kuala Lumpur, Malaysia: Pearson.

<sup>23</sup> The difference between social Takaful and micro-Takaful is that in micro takaful the schemes designed for the financially excluded population is made affordable to the participants at micro level and they pay the Takaful contributions; whereas in case of social takaful, the contributions are paid by any third party and the focus is on providing takaful coverage to the poor and the financially excluded. See: Aishath Muneeza, “The Role of Technology in Enhancing Islamic Social Finance in Assisting Poor Communities in the Post COVID-19 Era,” *Journal of the Accounting and Auditing Organisation of Islamic Finance Institutions (AAOIFI)* 6, no.1 (2021): 58-62.

<sup>24</sup> M. Kabir Hassan, and Aishath Muneeza, *Elements in the Economics of Emerging Markets: COVID-19 and Islamic Finance*, (Cambridge University Press, June 2, 2022), <https://doi.org/10.1017/9781009189484>.

<sup>25</sup> Ibid.



offering them irrespective of the geographical location they are in. For instance, Nor Razinah Mohd Zaina and Engku Rabiah Adawiah Engku Ali<sup>26</sup> have identified some problems in implementing ISF in the Organization of Islamic Cooperation (OIC) countries where there was an absence of standardisation of laws for collection of *zakat*, *sadaqah* and *waqf*, as well as the existence of corrupt practices. Having such uniformity will boost the confidence of stakeholders and collaborators and will ensure that like Islamic commercial finance, ISF will be acknowledged in the formal sector of the economy where higher level of financial inclusion can be achieved. One of the key prioritised areas to shape the post pandemic global Islamic financial system is to enhance the role of ISF. To promote this agenda of Islamic finance, enacting a solid and comprehensive governance framework is essential to unlock the full potential of Islamic finance in the world.

#### **RESEARCH METHODOLOGY AND SELECTED MISMANAGEMENT AND CORRUPT PRACTICES OF ISLAMIC SOCIAL FINANCE**

This study adopts document analysis as its research methodology to review and discuss the selected management and corrupt practices of ISF institutions reported worldwide. The document includes reports from ISF institutions such as the Zakat Pulau Pinang (Pusat Urus Zakat), *waqf* board of India, Brunei Islamic Religious Council and Singapore Islamic Religious Council.

Over the years, there are a number of mismanagement and corrupt practices of ISF that have been reported in the public domain from various parts of the world that indicates the weak governance practices of the institutions. As such, this section highlights some of these issues to understand that mismanagement and corrupt practices do exist in handling ISF. As evident from below, most of these issues relate to corrupt practices and mismanagement that occurs due to self-interest of the persons entrusted with the authority to manage them; and thus underline the importance of good governance practices in the institutions.

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<sup>26</sup> Nor Razinah Mohd Zain and Engku Rabiah Adawiah Engku Ali, "An Analysis on Islamic Social Finance for Protection and Preservation of Maqāsid al-Sharī'ah," *Journal of Islamic Finance (Special Issue)*, (2017): 133 – 141.

a) Zakat Penang corruption scandal

In May 2017, it was reported in Malaysia that five Penang Zakat officers including its chief executive officer (CEO) were arrested for allegedly accepting valuable items, cheques and cash from contractors as incentives to be awarded projects or work-related programmes.<sup>27</sup> It was also reported that the CEO, was also believed to have helped himself to education aid and scholarships for his child without going through the Penang Islamic Affairs Department.<sup>28</sup> From this scandal, it is evident that even religious institutions managing *zakat* are not free from governance issues and there is a need to have good governance practices in place to ensure such incidents do not repeat.

b) Malacca *waqf* land bribery scandal

In May 2017, it was reported that a businessman was remanded for four days for his alleged involvement in a corruption case related to the procurement of *waqf* (Islamic endowment) land owned by the Al-Hamideen Mosque located in Bukit Cina in the state of Malacca.<sup>29</sup> He was arrested to facilitate investigations under Section 16 (a) of the Malaysian Anti-Corruption Commission (MACC) Act 2009. In relation to this case, the MACC also remanded two other individuals, a 61-year-old former mosque chairman and his 46-year-old former secretary – over a *waqf* land deal.<sup>30</sup> From this scandal, it is evident that in the case of endowments, if the property is not properly managed it may lead to a huge loss to its beneficiaries and breach the trust entrusted by the endower.

c) Judicial panel report in India exposes corruption resulting from religious elite managing *waqf* land.

In India, it was reported in 2002 that the commission pointed its finger at Hamimul Hoda, a migrant labourer from Bihar who had

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<sup>27</sup> Audrey Dermawan, “Penang *Zakat* to Conduct Internal Investigation into Graft Scandal,” 2017, <https://www.nst.com.my/news/nation/2017/05/242275/penang-zakat-conduct-internal-investigation-graft-scandal>.

<sup>28</sup> Ibid.

<sup>29</sup> Kelly Koh, “Malacca Wakaf Land Bribery Scandal: Businessman Remanded,” 2017, <https://www.nst.com.my/news/nation/2017/05/236608/malacca-wakaf-land-bribery-scandal-businessman-remanded/>.

<sup>30</sup> Ibid.

worked his way up to the *Waqf* Board as a member and had three successive runs until its dissolution.<sup>31</sup> By then, Hoda, together with Asadur Rahman, *Waqf* Board commissioner, had spun a web of corruption in sale, lease and had rented of many of the 8,044 properties under the board's management. This includes the 11,000-sq ft plot in Kolkata's prime Shakespeare Sarani area, where the market price rules at Rs 2,800 per sq ft, was gifted away to an obscure firm for a rent of Rs 6,000 per month and a Rs 2.5-lakh donation to a Muslim hostel.<sup>32</sup>

d) India's Maharashtra state has suspended a former head of a Muslim organisation in charge of land endowments

It was reported in 2017 that the State of Maharashtra, India, has suspended a chief executive of a Muslim organisation in charge of land endowments amidst the growing concern that *waqf* land and property dedicated for religious or charitable use were being illegally sold to developers.<sup>33</sup> The State's land department revealed that Naseem Banu Patel misused her power as the head of the organisation by declaring *waqf* land endowed for religious or charitable purposes, as non-*waqf* for sale to a developer.<sup>34</sup>

e) *Waqf* tribunal orders removal of Pir Mohammed Shah Dargah trustees

In 2021, it was reported that in Gujarat of India, the Gujarat State *Waqf* Tribunal ordered for the removal of all 21 Trustees of Pir Mohammed Shah Dargah trust as the revenue received for the trust was lower than what it could be if it was managed properly.<sup>35</sup> It was found that the rental amounts collected vary from Rs 50 to Rs 57,000, and if

<sup>31</sup> Sumit Mitra and Suman Chakrabarty, "Judicial Panel Report Exposes Corruption Resulting from Religious Elite Managing Wakf Land," 2002, <https://www.indiatoday.in/magazine/states/story/20020715-judicial-panel-report-exposes-corruption-resulting-from-religious-elite-managing-wakf-land-794911-2002-07-15>.

<sup>32</sup> *Ibid.*

<sup>33</sup> Rina Chandran, "Fears of Misuse of Muslim '*Waqf*' Property in India as Official Suspended," 2017, <https://www.reuters.com/article/us-india-landrights-waqf-idUSKBN16D1TN>.

<sup>34</sup> *Ibid.*

<sup>35</sup> "Gujarat: *Waqf* Tribunal Orders Removal of Pir Mohammed Shah Dargah Trustees," The Times of India, 2021, <https://timesofindia.indiatimes.com/city/ahmedabad/waqf-tribunal-orders-removal-of-pir-mohammed-shah-dargah-trustees/articleshow/87766835.cms>.

the rent is fixed as per the *jantri* rates<sup>36</sup>, the income of this *waqf* may increase considerably which could be used for the benefit of the poor and needy. The Tribunal also observed that the trustees in this case did not even assist the poor at the time of COVID-19 when the beneficiaries needed help from such trusts the most.

f) *Waqf* estates are game for land sharks

In 2020 the *waqf* boards entrusted by law in India to manage *waqf* lands did not function well in most of the states.<sup>37</sup> It was reported that Karnataka Board of *Waqfs* had more than 43,000 properties which they were negligent in managing for the past three and half years. Though the election to select mutawallis (custodians) happened in February 2019, the government delayed the formation of the Board until January 2020. A similar situation is found in the state of Tamil Nadu where the Board is in limbo for the past eight months and to overcome the situation, in September 2019, the state government had taken over the administration of the Board claiming that the number of nominated members exceeded the legal threshold provided in the *Waqf* Act. Further, two board members were dismissed after it was found that they were involved in corrupt practices.<sup>38</sup>

g) Doubts over Brunei Islamic Religious Council (Majlis Ugama Islam Brunei or MUIB) in assisting the poor using zakat

It is reported in the midst of the pandemic in 2020 that His Majesty Sultan Haji Hassanal Bolkiah has questioned the commitment of the religious authorities in helping the underprivileged, commenting that poor *zakat* (tithe) management still persists.<sup>39</sup> The MUIB is responsible for the collection and disbursement of *zakat* but there are doubts over its proactiveness in helping the poor. His Majesty commented this due to the concerns that *zakat* applicants and recipients were said to have visited the Religious Council office repeatedly to settle the matters, and

<sup>36</sup> Jantri (Jantri of Gujarat Land Value Certificate) is a legal document that specifies the rate of building or land at regular intervals. The unit rate of the land or building is fixed by the Gujarat government periodically.

<sup>37</sup> Mukhtar Arif Siraj, “*Waqf* Estates are Game for Land Sharks,” 2020, <https://www.siasat.com/waqf-estates-are-game-land-sharks-1852649/>.

<sup>38</sup> Ibid.

<sup>39</sup> Rasidah Hj Abu Bakar, “HM Raises Concerns of Poor *Zakat* Management,” 2020, <https://thescoop.co/2020/09/16/hm-raises-concerns-of-poor-zakat-management/>.

the difficulty of members of the public to reach the department via telephone.<sup>40</sup>

h) Mismanagement of *waqf* and *zakat* by Singapore Islamic Religious Council (Majlis Ugama Islam Singapura or MUIS) highlighted in Audit Reports

It is reported that the audit reports published about MUIS have highlighted some governance concerns in the way *waqf* and *zakat* were managed. Based on the auditor general report of 2012/2013, there were irregularities in the tendering process to award contracts to constructing and repairing of buildings and it was told to Asia Sentinel that some of the buildings were used as massage parlours, and a Chinese temple<sup>41</sup>. Further, there have been some cases of refusal or delay in providing assistance to bury those who died without any relatives in Singapore.<sup>42</sup> Also, for the mishandling of family *waqfs*, some families have brought court cases against MUIS.<sup>43</sup> It has also been stated that one main concern relating to accountability and transparency of *waqf* property management in Singapore is that, the responsibility to manage it is given to Wares Investments Pte Ltd. which is a private company that is not subject to the audits made by the Auditor General and therefore, the details of the financial transactions are nether available to clients or to the general public to scrutinise.<sup>44</sup> In the Auditors report of

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<sup>40</sup> Ibid.

<sup>41</sup> This issue was clarified by MUIS stating that using the concept of “*istبدال*”, the *waqf* land has been changed to another place. See: Nigel Chua, “MUIS Addresses Claims that Charitable Endowment of Land was Mismanaged, Occupied by Chinese Temple,” 2021, <https://mothership.sg/2021/06/muis-geylang-wakaf-land-chinese-temple/>.

<sup>42</sup> Nigel Chua, “MUIS Addresses Claims that Charitable Endowment of Land was Mismanaged, Occupied by Chinese Temple,” 2021, <https://mothership.sg/2021/06/muis-geylang-wakaf-land-chinese-temple/>.

<sup>43</sup> Nigel Chua, “MUIS Addresses Claims that Charitable Endowment of Land was Mismanaged, Occupied by Chinese Temple,” 2021, <https://mothership.sg/2021/06/muis-geylang-wakaf-land-chinese-temple/>.

<sup>44</sup> Murray Hunter, “Singapore: Alleged Financial and Operational Irregularities at MUIS – Analysis,” 2021, <https://www.eurasiareview.com/16062021-malaysia-alleged-financial-and-operational-irregularities-at-muis-analysis/>.

2018/2019, a weakness in the zakat system management was identified where it was stated that any officer in MUIS can have access to the accounts irrespective of their job function and they are able to bring changes to the information.<sup>45</sup> This means that the zakat management system used then was prone to the risk of unauthorised activities being performed on the system.<sup>46</sup>

i) “*Zakat-Deaths*” in Bangladesh: An old story of piety and power

It has been reported in 2015 a total of 27 people have died including 23 women and 4 children in a stampede that occurred in a struggle to collect “free clothes supposed to be handed in as *zakat*.”<sup>47</sup> It was also stated that this was not the first time such an incident happened in the country. These incidents occurred when the number of clothes distributed were less than the number of receivers, resulting in the stampede.<sup>48</sup>

j) Mismanagements in *zakat* highlighted by “Shaykh’s Clothing” initiative that has been set up in support for victims of spiritual abuse in North American Muslim communities.

The lawyer of “Shaykh’s Clothing,” Danya Shakfeh defines spiritual abuse in the context of fundraising as when someone uses religion, religious obligations (i.e. *zakat*) or religious credibility to dishonestly acquire or spend funds.<sup>49</sup> They have also authored a Code of Conduct for Accountability of Islamic Leadership to overcome such issues encountered. Danya also described the ways in which Muslim fundraisers use manipulative fund-raising tactics as follows:

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<sup>45</sup> Ibid.

<sup>46</sup> Murray Hunter, “Singapore: Alleged Financial and Operational Irregularities at MUIS – Analysis,” 2021, <https://www.eurasiareview.com/16062021-malaysia-alleged-financial-and-operational-irregularities-at-muis-analysis/>.

<sup>47</sup> Taj Hashmi, “*Zakat-Deaths* in Bangladesh: An Old Story of Piety and Power,” 2015, <https://www.thedailystar.net/op-ed/%E2%80%9Czakat-deaths%E2%80%9D-bangladesh-old-story-piety-and-power-113527>.

<sup>48</sup> Ibid.

<sup>49</sup> Chelby Daigle, “*Zakat* and Spiritual Abuse: Challenging Manipulative Fundraising in Muslim Communities,” 2019, <https://muslimlink.ca/stories/zakat-ramadan-spiritual-abuse-challenging-manipulative-fundraising-in-muslim-communities>.

“Similar to any other organisation, they host fundraisers, run online campaigns, and ask for zakat donations during Ramadan. The difference is the way they tell you why you should donate to them. Reliable and transparent organisations will provide clear budgets, allocations, and past spending as reasons why you should donate to them. Ideally, a transparent Islamic educational organisation’s fundraising pitch would be something like “we need \$10,000 to support our new institute which requires \$5,000 for computer equipment and \$5,000 in building materials to renovate the space we are using to better accommodate students.” In contrast, organisations that are manipulative in their fundraising rely on vague and emotional appeals, so for example another Islamic educational organisation says “we need \$10,000 in order to foster Islamic scholarship in North America”. How will that \$10,000 specifically be spent to “foster Islamic scholarship”? If an organisation cannot be specific on how it intends to spend donations and how it has spent donations in the past, do not donate to such an organisation. Our Code of Conduct provides a lot of guidance as to how donors can demand transparency. It’s absolutely necessary, and it will not happen unless we demand it.”<sup>50</sup>

She further states that if the fundraiser insists the matter to be urgent or paid in cash or not provide annual report, then these should be red flags and one should not engage in dealing with such fundraisers. Danya also shared some of her personal experience where she has dealt with spiritually abusive fund raising which she described as follows:

“I volunteered in an organisation that was purportedly keen on spreading Islamic knowledge around the world. When I eventually got to learn about the finances of this organisation it was jaw-dropping how unethical the fundraising and zakat collection were, how there was zero oversight, and no accounting for the money received. Additionally, I learned how poorly treated the students and some teachers were by the organisation’s leadership. There was zero accountability, and there was a high turnover rate among volunteers and staff because of the behaviour of one of the organisation’s leaders who is considered a person with religious authority. When people ever complained about this person’s behaviour to other people with religious authority, they were told by these people that this individual runs a cause that benefits others so they should not speak out. I later found out many of these same respected persons with religious authority receive handsome honorariums from the zakat fund of this organisation, so it’s of course in their interest to

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<sup>50</sup> *Ibid.*

suppress any negative exposure. Ultimately, I parted with the organisation myself due to unreasonable demands put on me as a volunteer and witnessing such unethical practices.”<sup>51</sup>

Section 3 of the Code of Conduct for Islamic Leadership on financial dealings proposed by Danish Qasim and Danya Shakfeh<sup>52</sup> provides, among others, that:<sup>53</sup>

1. The “figure of influence” who is formally employed and is in a leadership or executive position in a school or Institute, shall not be the sole signatory of the Institute's financial transactions.
2. The Institute shall annually publish a report on *zakat* collected and details of its disbursement.
3. When the Institute collects *zakat* funds for specific categories of persons, it shall publish and make publicly available the criteria of such persons/categories and shall also declare the amount paid to the individuals.
4. All loans between the Institute and an individual shall be transacted in the presence of two independent witness and the terms shall be in writing in a valid contract, which include the following terms:
  - a. The amount being loaned,
  - b. The financial institution and bank account where the funds will be deposited and stored,
  - c. The payback terms including loan fees, length of time and instalments amount.
  - d. The reasonably anticipated usage of the funds, and
  - e. The default terms.
5. The Institutes shall, every year, provide an accounting report made publicly available to donors.

The above incidents highlighted the stakeholders and public apprehension on the administrative weaknesses of the few selected ISF

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<sup>51</sup> Ibid.

<sup>52</sup> A summary explanation provided for this chapter can be found from: Danish Qasim and Danya Shakfeh, “Summary explanation of Code of Conduct for Islamic Leadership,” 2019. <https://inshaykhsclothing.com/summary-explanation-of-code-of-conduct-for-islamic-leadership/#financial-dealings>.

<sup>53</sup> Danish Qasim and Danya Shakfeh, “Code of Conduct for Islamic Leadership,” 2019. <https://inshaykhsclothing.com/about-our-code-of-conduct-of-islamic-spiritual-leaders/>.



institutions. The concerns are not specific to certain types of institutions or specific countries but rather it is the global concerns. Thus, it is timely for the institutions to seriously consider adopting good governance practices.

## RECOMMENDATION

To overcome the mismanagement and weak governance practices found in ISF, it is recommended the ISF to adopt some uniform practices across the globe which will provide the basic guidelines to follow. Weak governance leads to ethical issues and therefore, to adhere to ethical standards that ought to be followed in Shari'ah in terms of institutional governance and human governance, it is imperative to follow certain uniform standards across the globe that shall not be compromised at any cost. In this regard, it is essential to note that these uniform governance practices derived from the enacted code for ISF institutions in addition to the specific Shari'ah rules applied to different forms of Islamic financial instruments and institutions which is offered by such institutions.<sup>54</sup> This means that if the social finance institution deals with *zakat*, then the Shari'ah rules related to *zakat* collection and disbursement derived from Shari'ah must be followed. However, in the administration matters related to the institution, what is stated in this proposed governance code must be followed. In enacting the principles of this proposed governance code, the existing governance issues previously highlighted are considered. There are ten key areas relevant to the proposed governance code, namely: achieving institution's objectives; Islamic leadership and decision making; human governance; integrity; internal control mechanisms; board effectiveness; equality, diversity and sustainable practices; transparency and accountability; discharging of fiduciary duty with due diligence and care; and Information technology risk management and personal data protection.

Each of these key areas are discussed below.

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<sup>54</sup> Salina Kassim, Rusni Hassan, and Siti Nadhirah Kassim. "Good Governance and Sustainability in Islamic Microfinance Institutions," *Journal of Islamic Finance* 7, no. 2 (2018): 021-028, <https://journals.iium.edu.my/iiibf-journal/index.php/jif/article/view/298>; Rusni Hassan, Syed Musa Syed Jaafar Alhabshi and Adnan Yusoff, "Towards Providing the Best Shari'ah Governance Practices for *Waqf* Based Institutions," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* (2017): 165-185.

- 1) Achieving institution's objectives: The institution shall ensure that the policies and standard operating procedures implemented within the institution aligns with the objectives of the institution. There should be no co-mingling of non-related activities with the operation of the institution even though such activities might be noble initiatives. In short, the board entrusted with the role of heading the institution must have a clear understanding of the objective of the social financial institution and must deliver what is being promised in an effective and sustainable manner. In this regard from the beginning from whom the funds will be collected, how it is managed and how it will be distributed and invested shall be enacted and followed. The operational model chosen should align with the objectives of the institution.
- 2) Islamic leadership and decision making: The board heading the ISF institution ought to consider the Islamic leadership and decision-making process in managing the institution. For instance, the concept of *Shura* (consultation) among stakeholders must be promoted while ensuring that Islamic ethical value culture is instilled within the institution. In this regard, it would be prudent for the institution to form two board committees: Shari'ah Committee; and direct stakeholders committee. The Shariah committee will consist of Shari'ah experts whose role will be to ensure Shari'ah compliance is achieved in all operation of the institution while the direct stakeholders committee will include elected contributors of fund and beneficiaries of the institution who will be representing all contributors and beneficiaries. The purpose of having the direct stakeholders committee is to ensure that board of the institution always know the concerns of the direct stakeholders of the institution and can periodically improve their products and services offered. Further, proper policies must be enacted to have convenience in collection and distribution of funds received. In this regard, a reasonable approach using balance of convenience ought to be formulated even to screen and identify the eligible receivers while strategic partnerships ought to be entered to locate and reach out to the most deserved *zakat* recipients. For instance, decisions could be made to partner with humanitarian

- agencies<sup>55</sup> and in terms of collection and distribution, technology could be adopted in easing the process<sup>56</sup>.
- 3) Human governance: Even though the institutional governance principles are enacted, such implementation within the institution might be ineffective if the individuals working at all levels of the institution does not have good consciousness, sincerity and integrity. Therefore, it is imperative for the institution to have human governance principles codified and there should be continuous trainings and awareness activities provided to the board and staff of the institution to spiritual development of them to train them to fight against satanic forces that will assist in eliminating unethical practices like corruption. If volunteers are involved in the operations, special emphasis should be given to include them as part of this.
  - 4) Integrity: The board and staff of the institution shall always promote ethical practices in discharging their role as a trustee. Without integrity it would be impossible to gain the confidence trust of public on the products and services offered by the institution. As such, it is imperative to instil and promote the values of the institution not only at institutional level; but at individual level as well. To ensure this regular exercise to check the existence of imbalance of power among individuals must be checked and internal control mechanisms should be put in place to eliminate any misuse of power. In this regard, it is imperative to enact a whistle blower policy that will ensure that there is check and balance within the organisation where misuse of power could be stopped in a timely manner even for any reason if it happens.
  - 5) Internal control mechanisms: It is imperative for the ISF institutions to put in place internal control mechanisms which

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<sup>55</sup> Jemilah Mahmood, Kabir Hassan, and Aishath Muneeza, *Internationalization of Zakat to Serve Humanity in the Midst of COVID-19: using International Organizations as Intermediaries of Zakat, Towards a Post-Covid Global Financial System*, Emerald Publishing Limited, 2022.

<sup>56</sup> Aishath Muneeza, "Pandemic Innovation for *Zakat*: The Potential of Crypto *Zakat*," *IF Hub* 4, (2020): 19-25; Aishath Muneeza, "Enhancing *Zakat* Distribution with IoT: Eliminating Multiple Registration by Poor to Receive *Zakat*," *Indian Centre for Islamic Finance (ICIF) Newsletter* 7, no. 2 (2021): 16-17.

are: risk management; internal review; and audit. Apart from mitigating operational risks using these internal control mechanisms, there is also an additional layer of internal control mechanisms that needs to be applied by the ISF institutions to manage Shari'ah non-compliance risk by having established Shari'ah risk management, Shari'ah review and Shari'ah audit as well. In short, the board of the institution shall ensure that control and risk assessment, and management systems are set up within the institutions and they are being monitored in a timely and effective manner. Even in family-based institutions, proper internal control mechanisms must be established. Further, money laundering concerns<sup>57</sup> ought to be considered and such risks need to be managed properly by implementing "know your customer" requirements.

- 6) Board effectiveness: In order to establish good governance practices within the institution, it is imperative for the board to work and discharge its duties effectively as a team utilising the required balance of skills, knowledge, expertise and experience to make informed decisions. Therefore, the board of the institution shall not only include people from Shariah background; but should also include those who are from financial background. As such, board's composition and terms of reference shall be formulated to suit the nature of the institution. It is also imperative to periodically monitor the effectiveness of the board and review if required the rules applied to them. Having permanent boards shall be eliminated and a maximum tenor for board members can be formulated. To avoid misuse of power, the board members should be stopped from having discretionary powers and privileges that lead to corrupt practice. Proper yardsticks to use discretionary power and no privilege that leads to corrupt practices must be entertained.
- 7) Equality, diversity and sustainable practices: The board of the Islamic finance institution shall ensure that it adopts policies that promote equality, diversity and sustainability within the organisation to make better decisions. In this regard, social

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<sup>57</sup> Maruf Adeniyi Nasir, "Compatibility of Islamic finance and Anti-Money Laundering Laws: A Myth or Reality?" *IIUM Law Journal* 26, no. 1 (2018): 55, <https://doi.org/10.31436/iiumlj.v26i1.344>

impact on the institution needs to be measured and monitored to ensure the data collected would assist the organisation to formulate policies that will have a value-based intermediation approach. at the same time, financial inclusion by providing financial stability to the beneficiaries should be given priority over one-time assistance programs.

- 8) Transparency and accountability: The ISF institution must put in place a systematic and continuous way of disclosing material information related to the funds received, managed, disbursed and invested to the stakeholders. Further, there should be a mechanism put in place to manage the queries made by the public in a timely and convenient manner. The social impact created by ISF institution also must be disclosed to stakeholders.
- 9) Discharging of fiduciary duty with due diligence and care: Reasonable standard of care shall be observed by the Islamic financial institution in discharging its duties and due diligence and care must be observed in all its dealings. This means that as a trustee, the institution shall fulfil its obligations as promised. If not, under the law, they shall be held accountable for the breach of fiduciary duty.
- 10) Information technology risk management and personal data protection: With Industry 4.0, technology is being integrated to all aspects of our lives and as such, even in managing the institution, using of technology becomes common. Therefore, it is imperative for ISF institutions to manage information technology risk and at the same time the personal data of stakeholders received must be kept and used in a confidential manner. The information received about beneficiaries shall not be disclosed to third parties without consent and even if there is no specific law governing such issues in a country where the institution operates, the institution shall be mindful of such issues and should follow best practice.

## CONCLUSION

There is no doubt that “corporate images tag with the prefix Islamic needs to be gauged with similar scale of measurements.”<sup>58</sup> However, this does not mean that Islamic financial institutions would not be subject to best practices that ought to be adopted in managing the modern institutions using good corporate governance rules. The selected case studies of mismanagement and corrupt practices from different parts of the world discussed in this paper indicate the need to enact the minimum set of guidelines or a uniform code for the ISF institutions to follow. If such guidelines or code are aligned, and not contradict, with the Shari’ah, they could be applied to achieve common good by avoiding what is detrimental to humankind. As such, it is imperative to enact a proper code that could be adopted by the ISF institutions across the globe. It is hoped that findings of this paper will assist policy makers and standard setting bodies for Islamic finance and ISF institutions to realise the significance of adopting good governance practices to take ISF to the next level. Further research could be undertaken to study the effectiveness of adopting good governance practices by the ISF institutions and the implications of adopting such practices.

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<sup>58</sup> Aishath Muneeza and Rusni Hassan, “Shari’ah Corporate Governance: The Need for a Special Governance Code,” *Corporate Governance* 14, no.1 (2014): 120-129.