Harmonization Of Islamic Law In National Legal System A

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Athenian and Alexandrian Neoplatonism and the Harmonization of Aristotle and Plato by Ilsetraut Hadot deals with the Neoplatonist tendency to harmonize the philosophies of Plato and Aristotle.

Highlighting the impact of current globalization on financial markets, this topical book challenges the universality of Western property rights and interprets Islamic finance in Europe as part of a plural financial system, where different conceptions of economic justice(s) co-exist and influence each other. The contributing authors analyse key economic development and social integration issues from an Islamic perspective and outline the European approach to accommodating Islamic finance, with particular regard to the peculiarities of individual nation-states. Set in this context, the book presents financial pluralism as a device to enhance a level playing field in the global marketplace, as well as to foster a plural open society. Providing a comprehensive and methodological guide to Islamic finance in Europe, this book will prove an illuminating and informative read for academics, students and policymakers with an interest in the impact on financial regulation of an increasingly globalized world.

Mona Samadi examines the sources of gender differences within the Islamic tradition, with particular focus on guardianship, and describes the opportunities and challenges for advancing the legal status of women.

As an introduction to the complex issue of harmonization of legal and regulatory structure of the European financial system and Islamic finance, this is a useful and welcome volume. The ideas, insights and practical issues addressed in the informed papers that compose the book should be valuable for academics and students of finance, and to those who provide legal and financial services. The book will be helpful also to European regulators who have yet to appreciate the importance of Islamic finance and its potential contribution to financial globalization as well as to European economic growth. Abbas Mirakhor, Former Executive Director, International Monetary Fund, US This timely book examines the authorization of Shari ah-compliant intermediaries as either credit institutions or as investment companies in the European Union. The contributing authors explore the key topics of this area through differing yet parallel perspectives for example, comparing economic and legal standpoints, looking at both European and national levels and considering both academic and technical approaches. The book discusses the common origin of Islamic and Western traditions in commercial and banking transactions, reviewing a period in which the Italian merchants and their organizations drove the rebirth of post-medieval society in trade and law. The editors investigate whether the Islamic banking and financial model complies with the European framework, spelling out the different experiences in single Member States (Germany, France, Italy, and the United Kingdom). Notwithstanding the obstacles to being authorized as domestic credit

institutions, they conclude that the access of Islamic intermediaries is suitable and may have positive effects on European integration, as well as increasing the competition among the stand-still operators and evoking the ethical dimension of banking and finance. The book also highlights how Islamic banking would make the industry more inclusive. This multidisciplinary book will appeal greatly to economics and legal scholars with an interest in European and international banking and financial law, as well as postgraduate students in international law and banking law. Practitioners and regulators will also find this book an invaluable resource.

The question harmonization between Islam and human rights is one of the most debatable issues in contemporary discourse among Muslim academics. At the root of the controversy lies the question about the legitimacy of such an academic engagement. This is primarily because the common perception is that the notion of human rights as embodied in Universal Declaration of Human Rights and its supplementary documents is bound by its underlying humanistic assumptions about humans which are anathema to the Islamic concept of human beings as bond-servants and vicegerents of God on earth. Accordingly, its reconcilability with Islam in general and with Shari`ah in particular is a divisive issue among Muslim thinkers. Approaches range from vehement rejection to liberal treatment even to the extent of compromising fixed parts of Islamic law. A middle of the road approach within the framework of Islamic legal methodology of harmonization is still in the making. It is with this agenda in perspective that the authors of this book have engaged on various topical issues on the subject. The central theme emerging from the papers is that the discourse on harmonization between Islam and human rights should be conducted through a critical engagement with both international human rights theories and Muslim intellectual legacy within the parameters and non-negotiable principles of the Qur`an and Sunnah about humans and their rights.

This paper aims at developing a better understanding of Islamic banking (IB) and providing policy recommendations to enhance the supervision of Islamic banks (IBs). It points out and discusses similarities and differences of IBs with conventional banks (CBs) and reviews whether the IBs are more stable than CBs. Given the risks faced by IBs, the paper concludes that they need a legal, corporate and regulatory framework as much as CB does. The paper also argues that it is important to ensure operational independence of the supervisory agency, which has to be supported by adequate resources, a sound legal framework, a well designed governance structure, and robust accountability practices.

Understanding the corporation means understanding its legal framework, but until recently the origins and evolution of corporate law have received relatively little attention. The topical chapters featured in this Research Handbook, contributed by leading scholars from around the world, examine the historical development of corporation and business organization law in the Americas, Europe, and Asia

from the ancient world to modern times, providing an invaluable resource for both further historical research and scholars seeking the origins of present-day issues. The Second Formation of Islamic Law offers a new periodization of Islamic legal history in the eastern Islamic lands.

Islamization and Activism in Malaysia examines aspects of the increasing political and social profile of Islam in Malaysia and describes how different kinds of activists in Malaysia have sought to protect fundamental liberties and to improve the state of democracy in Malaysia. In particular, focus is paid to activists who engage with electoral process, the law and the public sphere, and in particular, to movements that cut across or combine these realms of action. Spanning the period of the Prime Ministership of Abdullah Badawi, Julian C. H. Lee's grounded analysis examines the most important issues of that period including the freedom of religion case of Lina Joy, the Islamic state debate, and events surrounding the 8 March 2008 general elections.

By analyzing legislative and judicial actions in a selection of Muslim and non-Muslim States in relation to the rights of the child in criminal matters, this book identifies the possible harmonization between the obligations of international human rights law (e.g. the UN Convention on the Rights of the Child [UNCRC]) and the criminal justice systems within each State, particularly Islamic law (Sharia).The book features introductory chapters on child offenders in criminal law and Islamic law, and country reports (from rapporteurs) on Afghanistan, Egypt, Lebanon, Iran, Malaysia, Nigeria, Pakistan, Spain, Turkey, the United Arab Emirates, as well as the UK. Among other issues, the book discusses: the definition of 'child' in criminal law * the rights for child offenders under international law (UNCRC, the Beijing Rules, etc.) * the rights of the child under Islamic regional instruments * Islamic law, as it relates to child offenders * the age of criminal liability * the death penalty * the role of the judiciary in criminal cases within Muslim jurisdictions. Theoretical and comparative research methods highlight that the position of Islamic law on the age of criminal liability and the legal rights of child offenders is nuanced, both through the way various ways Islamic criminal law is implemented and the role of the judiciary in expanding the protection of juvenile offenders.

Islamic Finance has experienced rapid growth in recent years, showing significant innovation and sophistication, and producing a broad range of investment products which are not limited to the complete replication of conventional fixed-income instruments, derivatives and fund structures. Islamic Finance represents an elemental departure from traditional interest-based and speculative practices, relying instead on real economic transactions, such as trade, investment based on profit sharing, and other solidary ways of doing business, and aims to incorporate Islamic principles, such as social justice, ecology and kindness, to create investment products and financial markets which are both ethical and sustainable. Products created according to Islamic principles have shown a low correlation to other market segments and are relatively

independent even from market turbulences like the subprime crisis. Therefore, they have become increasingly popular with secular Muslims and non-Muslim investors, as highly useful alternative investments for the diversification of portfolios. In Islamic Capital Markets: Products and Strategies, international experts on Islamic Finance and Sharia'a Law focus on the most imminent issues surrounding the evolution of Islamic capital markets and the development of Sharia'a-compliant products. The book is separated into four parts, covering: General concepts and legal issues, including Rahn concepts in Saudi Arabia, the Sharia'a process in product development and the integration of social responsibility in financial communities; Global Islamic capital market trends, such as the evolution of Takaful products and the past, present and future of Islamic derivatives; National and regional experiences, from the world's largest Islamic financial market, Malaysia, to Islamic finance in other countries, including Germany, France and the US; Learning from Islamic finance after the global financial crisis; analysis of the risks and strengths of Islamic capital markets compared to the conventional system, financial engineering from an Islamic perspective, Sharia'a-compliant equity investments and Islamic microfinance. Islamic Capital Markets: Products and Strategies is the complete investors' guide to Islamic finance.

I.B.Tauris in association with the Institute of Ismaili Studies Sharia has been a source of misunderstanding and misconception in both the Muslim and non-Muslim worlds. Understanding Sharia: Islamic Law in a Globalised World sets out to explore the reality of sharia, contextualising its development in the early centuries of Islam and showing how it evolved in line with historical and social circumstances. The authors, Raficq S. Abdulla and Mohamed M. Keshavjee, both British-trained lawyers, argue that sharia and the positive law flowing from it, known as fiqh, have never been an exclusive legal system or a fixed set of beliefs. In addition to tracing the history of sharia, the book offers a critique concerning its status today. Sharia is examined with regard to particular issues that are of paramount importance in the contemporary world, such as human rights; criminal penalties, including those dealing with apostasy, blasphemy and adultery, commercial transactions, and bio-medical ethics, amongst other subjects. The authors show that sharia is a legal system underpinned by ethical principles that are open to change in different circumstances and contexts, notwithstanding the claims for `transcendental permanence' made by Islamists. This book encourages new thinking about the history of sharia and its role in the modern world.

The legal treatment of sexual behavior is a subject that receives little scholarly attention in the field of Middle East women’s studies. Important questions about the relationship between sexuality and the law and about the societies enforcing that relationship are rarely addressed in the current literature. Elyse Semerdjian’s "Off the Straight Path" takes a bold step toward filling that gap, offering a fascinating look at the historical progression of Islamic law’s treatment

of illicit sex. Semerdjian provides a comprehensive review of the concept of zina, sexual indiscretion, exploring the diverse interpretation of zina crime as presented in a variety of sources from the Qur'an and hadith to legal literature. She then delves into the history of legal responses to zina within the specific community of Aleppo, Syria. Drawing on a wealth of shari 'a court records, Semerdjian brings to life Syrian society during the Ottoman period. With vivid detail, she describes specific women's lives and experiences as their cases are presented before the court. Semerdjian argues that the actual treatment of zina crimes in the courts differs substantially from sentences prescribed by codifed Islamic jurisprudence. In contrast to the violent corporal punishments dictated in the Islamic legal code, the courts often punished crimes of sexual indiscretion with nonviolent sentences, such as removal from the community. Employing exceptional insight, "Off the Straight Path" presents a powerful challenge to the traditional view of Islamic law, enabling a richer understanding of Islamic society.

The essays in this book highlight the most important ways in which domestic, international, public, and private legal systems interact with each other. The initial essays provide a theoretical overview of the study of legal harmonization—that is, of the nature and character of communication, accommodation, amalgamation, or resistance among legal systems. These interactions occur within horizontal relationships, between political institutions operating at the same level of authority. Vertical relationships between political institutions whose relationships are hierarchical have given rise to different patterns of interaction. New legal orders are being created through the adoption of international legal instruments that may reach nation-states, private entities, and individuals. Each has the potential for significantly affecting the sources of authority over public and private actors. Other essays illustrate the many ways in which communication between legal systems produce very real, if very different, effects across the world.

The heated discussion of harmonization has been conferred high priority in Islamic banking and finance industry recently. This occasioned to bounteous debates among scholars concerning how to resolve the impair variance of opinions among Shariah scholars of diverse schools of thoughts (Mazahib). This miscellany eventually augment the confusion among the Islamic banking and financial circle and its market participants regarding the acceptability of specific features of Islamic financial contracts and operations. Incontrovertibly, this has hampered the progress of Islamic financial institutions due to the unharmonized Islamic financial contracts. In addition, the application of non-Islamic laws such as the English common law or the conventional law to resolve disputes in Islamic banking is a big challenge. In line with this, the present paper therefore mainly focuses on discussion of harmonization in Islamic banking and finance industry. As such, the paper attempts to present an overview on harmonization of Shariah accepted guidelines with respect to IBF's sales contracts. This paper is expected to make significant contributions towards the development of the industry in the future.

Traditionally, conflict of law rules designate only national substantive law as the applicable law. Many unifying and harmonizing substantive law instruments of both States and non-State organizations, however, are designed specifically for application

to cross-border relationships. Achieving this objective is, generally, hindered by conflict of law rules. The requirements which non-national law needs to fulfil in order to be accepted as the law governing a cross-border relationship deserve clarification. Not only uniform law, such as the CISG and the envisaged European substantive law instrument for the law of obligations, but, particularly, instruments which are aimed at harmonizing substantive law, challenge the established systems of conflict of laws. In seeking a positive approach towards the application of a law other than national law various aspects need to be considered: (1) is the decision taken by a court or an arbitral tribunal; (2) what field of law (contract/delict/tort or family relationships) is involved; and (3) the objective or subjective (choice by the parties) designation of the applicable law.
This research â?? undertaken from a comparative perspective with a view to identifying any patterns followed by Islamic countries in making declarations and reservations to the main international human rights treaties â?? measures and analyzes to what extent Sharia affects the ratification and implementation of human rights norms by Muslim States. An analysis of the various roles of Sharia reveals different approaches in the use of Islamic considerations by Muslim States. At an international level, Sharia has always been used upon the ratification of international human rights treaties to limit the scope of the State's engagement. Internally, however, some recent examples of legislative amendments and judicial activities demonstrate that Sharia is and can be used to achieve a better translation of human rights norms into domestic practice.
This book will be of great interest to practitioners, policymakers and academics, as well as students, particularly postgraduate students, of law and business throughout the world.
The relevance of intellectual property law has increased dramatically over the last several years. Globalization, digitization, and the rise of post-industrial information-based industries have all contributed to a new prominence of IP law as one of the most important factors in driving innovation and economic development. At the same time, the significant expansion of IP rules has impacted many areas of public policy such as public health, the environment, biodiversity, agriculture, and information in an unprecedented manner. The growing importance of IP law has led to an exponential growth of academic research in this area. This book offers a comprehensive overview of the methods and approaches that could be used as guidelines to address and develop scholarly research questions related to intellectual property law. In particular, this volume aims to provide a useful resource that can be used by IP researchers who are interested in expanding their expertise in a specific research method or seek to acquire an understanding of alternative lenses that could be applied to their research. This edited collection is one of the largest compilations, to date, of existing methods and approaches from different lenses, perspectives, and experiences from a diverse group of scholars who derive from a wide range of countries, backgrounds, and legal traditions. This diversity, both regarding the topics and the authors of the contributions, is a fundamental feature of this collection, which seeks to assist IP researchers across many countries in the developing and developed world. This is an open access title available under the terms of a CC BY-NC-ND 4.0 International licence. It is offered as a free PDF download from OUP and selected open access locations.
This book examines the challenges of the implementation of Islamic law in Malaysia. Malaysia is a pertinent jurisdiction to explore such challenges given its global focus,

colonial history and institutions, and the intersection of the Shari'ah and secularism/multiculturalism. The resultant implementation challenges are underpinned by three factors that make Malaysia an important jurisdiction for those interested in understanding the place of Islamic law in the global context. First, Malaysia is often considered as a model Islamic country. Islamic law is a source of law in Malaysia. The Islamic law legal system in Malaysia operates in parallel with a common law legal system. The two systems of law generally are in harmony with one another. Nevertheless, occasional cross-jurisdictional issues do arise, and when they do, the Malaysian judiciary has been quite efficient in solving them. The Malaysian experience in maintaining such harmony between the two legal systems provides lessons for a number of countries facing such challenges. Second, Malaysia has a developed Shari'ah court system that interprets and applies Islamic law predominantly based on the Shafi'i school of thought. While, for the most part, the approach has been successful, there have been times when the implementation of the law has raised concerns as to the compatibility of Islamic law with modern principles of human rights and common law-based values. Third, there have been cases where Islamic law implementation in Malaysia has gained global attention due to the potential for wider international implications. To do justice to this complex area, the book calls on scholars and practitioners who have the necessary expertise in Islamic law and its implementation. As such, this book provides lessons and direction for other countries that operate a dual system of secular and Islamic laws.

This groundbreaking book offers in-depth analysis of the modern Islamic state, applying a quantitative measurement of how Muslim majority nations meet the definition. Content for the book was developed through extensive debate among a panel of distinguished Sunni and Shia Muslim scholars over seven years.

This contextual analysis of Islamic financial law challenges our understanding of both Islamic law and global financial markets.

Constitutionalism in Islamic Countries: Between Upheaval and Continuity examines the question of whether something similar to an "Islamic constitutionalism" has emerged out of the political and constitutional upheaval witnessed in many parts of North Africa, the Middle East, and Central and Southern Asia. In order to identify its defining features and to assess the challenges that Islamic constitutionalism poses to established concepts of constitutionalism, this book offers an integrated analysis of the complex frameworks in Islamic countries, drawing on the methods and insights of comparative constitutional law, Islamic law, international law and legal history. European and North American experiences are used as points of reference against which the peculiar challenges, and the specific answers given to those challenges in the countries surveyed, can be assessed. The book also examines ways in which the key concepts of constitutionalism, including fundamental rights, separation of powers, democracy and rule of law, may be adapted to an Islamic context, thus providing valuable new insights on the prospects for a genuine renaissance of constitutionalism in the Islamic world in the wake of the "Arab spring."

This volume examines the important question of whether or not international human rights and Islamic law are compatible. It asks whether Muslim States can comply with international human rights law whilst adhering to Islamic law. The traditional arguments on this subject are examined and responded to from both international human rights and Islamic legal perspectives. The volume engages international human rights law in theoretical dialogue with Islamic law, facilitating an evaluation of the human rights policy of modern Muslim States. International Human Rights and Islamic Law formulates a synthesis between these two

extremes, and argues that although there are differences of scope and application, there is no fundamental incompatibility between these two bodies of law. Baderin argues that their differences could be better addressed if the concept of human rights were positively established from within the themes of Islamic law, rather than by imposing it upon Islamic law as an alien concept. Each article of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as well as relevant articles of the Convention on the Elimination of All Forms of Discrimination against Women are analysed in the light of Islamic law. The volume concludes that it is possible to harmonise the differences between international human rights law and Islamic law through the adoption of the 'margin of appreciation' doctrine by international human rights treaty bodies and the utilization of the Islamic law doctrines of 'maqâsid al-sharî'ah' (the overall objective of Sharî'ah) and 'maslahah' (welfare) by Muslim States in their interpretation and application of Islamic law respectively. Baderin asserts that Islamic law can serve as an important vehicle for the guarantee and enforcement of international human rights law in the Muslim world, and the volume concludes with recommendations to that effect.

The growing presence of Islamic banking needs to be accompanied by the development of effective regulation and supervision. This paper examines the results of the survey conducted by the International Monetary Fund to document international experiences and country practices related to legal and prudential frameworks governing Islamic banking activities. Although a number of countries have made considerable progress in creating legal, regulatory, and supervisory frameworks that accommodate Islamic banking, there are substantial differences. This paper also identifies a number of challenges faced by regulatory and supervisory agencies regarding Islamic banking.

"Harmonizing Similarities" is a study of the legal distinctions (al-fur?q al-fiqhiyya) literature and its role in the development of the Islamic legal heritage. This book reconsiders how the public performance of Islamic law helped shape legal literature. It identifies the origins of this tradition in contemporaneous lexicographic and medical literature, both of which demonstrated the productive potential of drawing distinctions. Elias G. Saba demonstrates the implications of the legal fur?q and how changes to this genre reflect shifts in the social consumption of Islamic legal knowledge. The interest in legal distinctions grew out of the performance of knowledge in formalized legal disputations. From here, legal distinctions incorporated elements of play through its interactions with the genre of legal riddles. As play, books of legal distinctions were supplements to performance in literary salons, study circles, and court performances; these books also served as mimetic objects, allowing the reader to participate in a session virtually. Saba underscores how social and intellectual practices helped shape the literary development of Islamic law and that literary elaboration became a main driver of dynamism in Islamic law.

Partnership-based was widely practised in the pre-Islamic period. The practice was so commonly prevalent among the muslim and non-muslim. This book is hoped to be of assistance to those who wish to discover the shariah contracts for partnership and the methods of structuring the current Islamic financial products and instruments through adopting either an existing Islamic contract or by combining two or more thereof. As for students and lecturers, this book is sought to be a reference for Islamic banking and finance related courses. It can also be a reference to the general members of the public who are interested to learn about the basic principles in the paramaterizing the shariah rulings for Islamic partnership contracts and to obtain issues about the Islamic banking and financial products. All readers may realize, that the first two chapters have briefly discussed the introduction to fiqh and shariah and the rule-making process of the areas in Islamic law. The main purpose of the book is to provide a more comprehensive understanding of the principles and basis of adopting the shariah contracts for Islamic financial products, as well as enabling the harmonization of the Islamic financial practices into shariah parameters of each contract. Nevertheless, the basic

and important discussion on fiqh, shariah and the procedure of law-making process is believed to be sufficiently covered in this book.

In Scribal Harmonization Cambry G. Pardee examines the earliest Greek manuscripts of the Synoptic Gospels for evidence that scribes altered the text of the Gospels—either deliberately or inadvertently—in ways that reduced discrepancies between them.

This book looks at how Muslims in Indonesia struggle to reconcile radically different sets of social norms and laws.

This volume explores the recent decision by Egypt to constitutionalize shar??a and analyzes the Egyptian judiciary's attempts to argue that shar?'a is consistent with human rights. It will interest anyone studying Islamic law, constitutional thought in the Middle East, or Islam and human rights.

The money laundering (ML) and terrorist financing (TF) risks associated with conventional finance are generally well identified and understood by the relevant national authorities. There is, however, no common understanding of ML/TF risks associated with Islamic finance. Some are likely to be the same as in conventional finance, but there may also be different risks. This is notably due to: (i) the complexity of some Islamic finance products; and (ii) the nature of the relationship between the institutions and their clients. The limited capacity and experience in the supervision of Islamic finance, especially in jurisdictions that face higher ML/TF risk factors represents an additional vulnerability. The Financial Action Task Force (FATF) standards are implemented without any form of tailoring to the specificities of Islamic finance. The FATF, the Islamic finance standard-setters, and the national regulators should seek a greater understanding of the specific ML/TF risks that may arise in Islamic finance and develop an appropriate response.

This volume seeks to introduce and deepen the understanding of Islam and its role in politics as encountered in different national and transnational contexts in Southeast Asia, eschewing the neo-orientalist approach that has informed public discourse in recent years. In Encountering Islam, the book lingers beyond the summary moment and reflects on the multiple impressions, suppressions and repressions, whether coherent or incoherent, associated with Islam as a socio-political force in public life. To this end, it is not adequate simply to represent the divergent identities associated with Islam in Southeast Asia, whether embedded in state-endorsed orthodoxy or Islamic movements that contest such orthodoxy. It is also important to examine religious minorities in political contexts where Islam is dominant and Muslim communities in national contexts where they are minorities. By situating these religious identities within their larger socio-political contexts, this volume seeks to provide a more holistic understanding of what is encountered as Islam in Southeast Asia.

The research involves an analysis of the juristic differences between the scholars of Malaysia and Middle-East including Bahrain and Kuwait in the realm of Islamic banking. Disagreements exist in juristic views and rulings particularly between

Malaysia and other governments. Debt financing is the central area where disagreements exist between the scholars of Malaysia and Middle-East. Broadly speaking, the Middle-Eastern scholars prohibit debt trading while the Malaysian scholars in official rulings permit it. The research will also look into the legal and regulatory aspects of the Islamic financial industry as the principles of the Islamic banks are alien to the existing legal structure applicable to the financial sector in general and to the banking sector in particular. The present research is an effort to look at the two divergent approaches from an Islamic jurisprudential perspective. It was revealed that usul al-fiqh has failed to stimulate ijtihad. Ijtihad is a central term with regard to law making in Islamic law. Nonetheless, ijtihad has been held responsible for making Islamic law un-systematic due to the lack of a standard application. A renowned modern jurist, Zaki Badawi has emphsised on the use of maqasid oriented approach to ijtihad for the development of Islamic financial system. The same approach has been suggested by Hashim Kamali, whereby he proposed the extension of the theory of maqasid to ijtihad. The issue of disagreement is very significant and has a far reaching impact on the Islamic banking industry worldwide. It can be said that disagreement is unavoidable, but at the same time, there exist a reconciliatory mechanism in Islamic law to harmonize different interpretations from jurisprudential perspective which is the central theme of the present research. However, the issue of disagreement could be resolved from either juristic or administrative perspectives or both. Harmonization of the different views amongst the scholars from the different schools of thought is necessary to enhance the global development of Islamic banking and finance. The study is mainly based on library research and is analytical, descriptive and comparative. The methodology that was used contains different mechanisms of usul al-fiqh such as ijtihad, istihsan and its other supplementary proofs were applied to the existing juristic differences. The maqasid oriented approach to ijtihad can help to make the legal theory relevant to the needs of the Muslim world. It is recommended that any further move in this direction be made under the purview of siyasah shariyyah. MaÎlaĺah requires that juristic differences be harmonized for the sake of promotion and prosperity of the Islamic banking industry.