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Standardisation of legal documentation in Islamic home financing in Malaysia: A literature survey

Mohd Yusoff S.S.^a ✉, Oseni U.A.^b ✉

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^a IIUM Institute of Islamic Banking and Finance, International Islamic University, Kuala Lumpur, Malaysia

^b Istanbul Sabahattin Zaim University, Halkalı Mahallesi, Halkalı Caddesi, Küçükçekmece, İstanbul, Turkey

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Purpose: This paper aims to provide an analytical literature survey of selective studies on legal documentation in Islamic home financing with particular reference to Malaysia.

Design/methodology/approach: This study adopts the legal positivist methodology, with particular

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reference to inclusive legal positivism which takes into consideration the possibility of moral values challenging positive law. Within the context of this study, though positive law provides for rules that govern contractual matters in Islamic home financing, standardisation is a functionality of maslahah (or public interest) which transcends the mandatory provisions of positive law but helps to protect the interest of all stakeholders. This is analysed through a systematic literature review which aims to provide practical insights into industry practices relating to Islamic home financing in Malaysia. Findings: This paper provides information on the standard documentation used by conventional banks and existing practices of diverse models of legal documentation in the home financing sector within the Islamic financial services industry in Malaysia. It also recognises the need for standard documentation that is not only Shari'ah-compliant but also consumer-friendly, as the terms of any standard financing agreement ought to ensure consumer protection. There is also the need for a Shari'ah-compliant Sales and Purchase Agreement, as it forms part of the complete set of legal documentation for Islamic home financing. Research limitations/implications: It is not an exhaustive study, as it did not consider practices in other jurisdictions offering Islamic financial services and products but only focusses on Malaysia. Though one may not generalise the findings of this study, Malaysia remains a leading model and a global hub for Islamic financial services and products. Practical implications: A very useful source of information on the current state of legal documentation in Islamic home financing in Malaysia and the prevailing practices in the industry, which may serve as a guide for policymakers such as the Association of Islamic Banks in Malaysia (AIBIM) to embark on a full scale project of standardisation of all the legal documentation used in Islamic home financing. Originality/value: This study fulfils an identified need of standardisation of legal documentation used in Islamic home financing in Malaysia and offers practical help to policymakers and future researchers starting out on systemic reforms. © 2019, Emerald Publishing Limited.

Author keywords

Islamic finance documentation ; Islamic home financing ; Legal documentation ; Malaysia ; Standardization of agreements

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👤 Oseni, U.A.; Istanbul Sabahattin Zaim University, Halkalı Mahallesi, Halkalı Caddesi,
Küçükçekmece, İstanbul, Turkey; email:umaroseni@gmail.com
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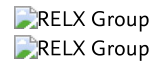
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