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THE REGULATORY CHALLENGES FACING ISLAMIC BANKING: AN EMPIRICAL ANALYSIS FROM ILORIN, NIGERIA

*Hakeemat Ijaiya**

Abstract: This paper addresses the regulatory challenges facing Islamic banking in Nigeria with a view to streamlining the system's legal framework. An empirical method is adopted, with research being carried out using 150 respondents in Ilorin, Nigeria. The paper found that the challenges facing Islamic banking in Nigeria have had an overall negative effect on that sector's operation. The study concludes that, if the challenges are not addressed, Islamic banking will suffer setbacks in Nigeria. The paper recommends a regulatory framework for Islamic banking in Nigeria.

Keywords: Islamic Banking, Regulatory Framework, Regulatory Challenges, Nigeria.

Introduction

The Islamic banking system in Nigeria is faced with insufficient regulatory law.¹ This study is the outcome of a research project conducted in Ilorin, Nigeria. Ilorin is the state capital of Kwara, with a population of about 777,667.² The operation of Islamic banking in Ilorin faces regulatory challenges; this paper aims to address those challenges with a view to streamlining the Islamic banking legal framework in the country.

Literature Review

Many studies have been conducted on the regulatory challenges facing Islamic banking in Nigeria in order to upgrade the establishment and operation of that institution. However, most of these studies are focused on identifying the challenges that surround Islamic banks, with little work being done on an empirical approach.

A major problem facing Islamic banking in Nigeria is that of an insufficiency of laws to regulate the operation of the system. M. Chiroma et al identify the need to have a specific and distinct regulatory framework for shariah governance, which can be independent and distinct from the current and shadow legal framework provided by the Central Bank of Nigeria (CBN).³ M. U. Chapra said that commercial and Islamic banks both need to be properly regulated and supervised so that they remain healthy and do not become a source of systemic risk.⁴ On the need to create legal infrastructure conducive to the working of an Islamic banking system, N. A. Abdullahi suggested an exclusive regulatory framework that will provide for the regulatory treatment of various Islamic financial products.⁵ S. Abdurahman and H. Shittu suggested a comprehensive review of existing law in such a manner that the laws regulating conventional banking will not be the same as those regulating an Islamic system.⁶ The work done by all these authors, however, is not based on empirical fact, which is the focus of this study.

Legal Materials and Methods

This study relied on 150 questionnaires distributed in Ilorin to three groups: staff and customers of JAIZ Bank, experts on Islamic law, and students of Islamic law. The study is based on the researcher's assessment of the respondents' understanding of the questionnaire on regulatory challenges facing Islamic banking in Nigeria. The questionnaire consisted of two parts: demographic variables (respondents' personal information) and respondents' assessment of the regulatory challenges facing Islamic banking in Nigeria. The data collected from respondents and secondary sources on the regulatory challenges of Islamic banking in Nigeria will now be analysed.

The respondents were asked to give their personal information, the results of which are presented in Table 1:

Demography	Category	No.	%
Sex	Male	111	74%
	Female	39	26%
Grand Total		150	100%
AgeGroup	Under 25	45	30%
	26-35	32	21.33%
	36-45	41	27.33%
	46 or older	32	21.33%

Grand Total		150	100%
Religion	Muslim	143	95.33%
	Christian	7	4.67%
	Others	-	-
Grand Total		150	100%
Relationship with the Bank	Customer	73	48.67%
	Employee of Jaiz Bank	14	9.33%
	Others i.e. lawyers, judges etc	63	42%
Grand Total		150	100%

Table 1: Respondents’ Demographic Variables

As Table 1 indicates, from the total sample of 150 respondents, 111 (74 per cent) were male and 39 (26 per cent) female. Table 1 also shows the age characteristics of the respondents. According to the data, 45 respondents (30 per cent) were aged 25 and below, 32 (21.33 per cent) were 26-35, 41 (27.33 per cent) were 36-45, and 32 (21.33 per cent) were over 46.

Table 1 also reveals data regarding the religion of respondents: 143 (95.33 per cent) were Muslim and 7 (4.67 per cent) were Christian.

With regard to the relationship respondents had with the Islamic bank, 74 (48.67 per cent) were customers, 14 (9.33 per cent) employees, and 63 (42 per cent) were unrelated to the bank.

Results and Discussion

Regulatory Challenges

One of the major challenges facing Islamic banking in Nigeria is lack of regulation. To understand this issue more fully, one of the research questions asked was whether “the CBN regulations and guidelines are adequate for the operation of Islamic banks in Nigeria?” The perceptions of respondents towards this question are shown in Table 2, below.

Table 2

Valid	Frequency	Valid Percentage
No	104	69.33%
I do not know	19	12.67%
Yes	27	18%
Grand Total	150	100%

According to Table 2, 104 respondents (69.33 per cent) believed that CBN regulations and guidelines are inadequate for the operation of Islamic banks in Nigeria. By contrast, 27 (18 per cent) believed the CBN regulations and guidelines are adequate for the smooth operation of Islamic banks in Nigeria, while 19 (12.67 per cent) did not know (undecided). The CBN regulations and guidelines were meant to supplement an earlier CBN Act. This Act could not give the necessary support for the operation of Islamic banks, so the CBN guidelines were developed as persuasive delegated legislations, not principal law.

Another question addressed whether respondents thought “the CBN Act was designed to suit conventional banking?” Their perceptions are shown in Table 3, below.

Table 3

Valid	Frequency	Valid Percentage
No	28	18.67%
I do not know	19	12.66%
Yes	103	68.67%
Grand Total	150	100%

As shown in Table 3, 103 respondents (68.67 per cent) believed that the CBN Act was designed to suit conventional banking in Nigeria, while 28 (18.67 per cent) did not and 19 (12.66 per cent) did not know (undecided). Certainly, the CBN Act was in existence before Islamic banking was introduced in Nigeria. It logically follows, therefore, that the framers of the Act did not contemplate an Islamic banking system. The Act was rather fashioned to protect conventional banking. Indeed, the CBN regulations and guidelines only permit Islamic banking to operate within the existing laws meant for the conventional banking system.

Respondents were next asked whether “they consider it appropriate for Islamic Financial Institutions (IFIs) to be governed by different sets of regulations as they differ from conventional banks in many aspects, such as risk structure, form of ownership and governance from conventional banks.” The perceptions of respondents are shown in Table 4, below.

Table 4

Valid	Frequency	Valid Percentage
No	42	28%
I do not know	5	3.33%
Yes	103	68.67%
Grand Total	150	100%

As the data in Table 4 shows, 103 respondents (68.67 per cent) believed that ‘Islamic financial institutions (IFIs) should be governed by different sets of regulations’, while 42 (28 per cent) did not and 5 (3.33 per cent) did not know (undecided). This is significant as Islamic banking is based on Islamic law, which is distinct from the English law upon which conventional banking is based. Thus, for Islamic banking to operate successfully, it must be based principally on Islamic doctrine.

Most importantly, respondents were asked for their assessment of the current banking regulatory regime in Nigeria. A specific question was addressed to respondents regarding whether “they think that the current financial institutions’ regulatory regime, as those governing the initial paid up capital, pose certain setbacks to any on-going or future initiatives to establish Islamic banks in Nigeria?” The perceptions of respondents are shown in Table 5, below.

Table 5

Valid	Frequency	Valid Percentage
No	30	20%
I do not know	38	25.33%
Yes	82	54.67%
Grand Total	150	100%

As Table 5 depicts, 84 respondents (54.67 per cent) believed that the current financial institutions regulatory regime poses certain setbacks to any on-going initiatives to establish Islamic banks in Nigeria, while 30 (20 per cent) did not and 38 (25.33 per cent) did not know (undecided).

The responses to the above research questions indicate that, for the current legal and regulatory regime in control of the Nigerian Islamic banking sector to succeed and flourish, Islamic banks should be governed by a new set of laws premised on shariah.

Other Challenges

Other challenges highlighted by our research include: uncertainty about the applicable law; the nature of the existing banking and company laws; lack of special and separate legislation on Islamic banking; lack of qualified judges to handle matters in the High Court, Court of Appeal, or Supreme Court; legal constraints and restrictions affecting Shari'ah Courts and their handling of banking cases; and institutional and operational challenges.

(i) Uncertainty about the Applicable Law

Islamic banking in Nigeria operates under the CBN guidelines, which, as we have seen, are inadequate. The CBN guidelines are merely persuasive delegated legislations and not principal law. The application of the CBN regulations/guidelines have not therefore been given judicial recognition to ascertain their legality. In *Godwin Sunday Ogbaji vs. Central Bank of Nigeria and Attorney General of the Federation*,⁷ for example, the plaintiff challenged the actions of CBN in granting a banking licence to Jaiz Bank Plc to operate non-interest banking in accordance with the principles of Islamic commercial jurisprudence. The plaintiff asked the court to declare the licence issued to Jaiz Bank Plc illegal, null, and void. Justice Gabriel Kolawole struck out the suit because the plaintiff had no *locus standi* to institute the action. However, he remarked thus:

The licence issued to Jaiz Bank Plc by CBN to embark on Islamic Banking in the country would have been nullified if the plaintiff in the matter, Godwin Sunday Ogbaji had *locus standi* to institute the action... There is no provision in the Central Bank Act, 2007 and the Banks and Other Financial Institutions Act⁸ that empower CBN Governor to issue licence on non-interest financial institutions to operate under the principles of Islamic Commercial Jurisprudence without the approval of the Head of State through the Minister of Finance.

The decision in *Godwin Sunday Ogbaji vs. Central Bank of Nigeria and Attorney General of the Federation* created doubt concerning the judicial

recognition of the CBN guidelines and on the issuance of licences to operate Islamic banks in Nigeria.

(ii) Nature of the Existing Banking and Company Laws

Islamic banks in Nigeria came into existence in an environment where the laws, institutions, training, and attitudes are set to serve an economy based on interest. As such, because Islamic banks work on a profit and loss sharing basis (PLS), they do not come fully under the jurisdiction of the existing banking and company laws in the country.

The existing banking laws contain provisions that narrowly define the scope of Islamic banking activities within conventional limits. Islamic banking activities are subject to the same legal system as conventional banks, even though the nature and practice of an Islamic legal system is totally different. The BOFIA, CBN Act, and other laws are insufficient to ensure the smooth operation of Islamic banks in Nigeria. The issuance by CBN of guidelines for non-interest financial institutions does not satisfy the need for comprehensive substantive legislation.⁹ In order to meet the needs of Islamic banks, Nigerian policymakers must amend existing laws to be shariah compliant in order to create a level playing field for Islamic banks.

(iii) Lack of Special and Separate Legislation on Islamic Banking

There is no special and separate law for Islamic banking and finance in Nigeria.¹⁰ From the inception of Islamic financial services in Nigeria, the entire system has been regulated by municipal laws, regulations, and guidelines, such as the BOFIA, CBN Act, and CBN regulations or guidelines. This legislation, in most cases, does not consider the objectives of shariah in commercial transactions. Lack of a robust and comprehensive legal framework regulating Islamic banking is a serious lacuna in the operation of Islamic banking in Nigeria. According to L. S. Sanusi,¹¹ Islamic banking in Nigeria falls under the category of “specialized bank[ing]”. He said:

Non-interest banking and finance models are generally divided into two: those based on Islamic commercial jurisprudence and the other based on other established law on interest principle.

There is no appropriate law applicable to disputes arising in relation to the operation of Islamic banking because English law still applies to all such disputes, not Islamic commercial jurisprudence.

(iv) Lack of Qualified Judges to handle matters in the High Court, Court of Appeal, and Supreme Court

Most Nigerian High Court Judges lack knowledge of Islamic law.¹² Islamic law cases are therefore often decided without reference to any classical authority, in which judges are not trained.¹³ This amounts to a judicial high-handedness, with judges sitting over a matter without knowing the law governing it. Questions of interpreting, explaining, and propounding the rules of Islamic law, including Islamic banking law, can only be done by eminent jurists who are properly qualified in the fields of *usul al-fiqh* (Islamic jurisprudence), *fiqh al-muamalat* (Islamic commercial law), and other related core areas. Such jurists should also be familiar with the process of *ijtihad* (independent legal reasoning).¹⁴

(v) Legal Constraints and Restrictions affecting Shari’ah Courts in their handling of Banking Cases.

The Shari’ah Courts in Nigeria have no jurisdiction over banking matters. Islamic banking has been engaged in a running battle over this issue, of being sandwiched between the High Courts and the Shari’ah Courts. Unlimited jurisdiction is given to the High Courts, which comprise English-style courts manned by judges who are not required to be lettered in Islamic law.¹⁵ The jurisdiction of Shari’ah Courts, some of them manned by judges who are also jurists in Islamic law, is limited to matters of Islamic personal status (*ahwal ash-shakhsiyyah*), which does not include Islamic banking.¹⁶ The High Courts, however, have constitutional power to entertain banking matters in Nigeria, but do not apply Islamic law.¹⁷ This creates a serious problem regarding applicable law when handling banking matters.¹⁸ It would not therefore be out of place to have specialised courts within the existing court system, manned by judges qualified in the field of Islamic law who can handle Islamic banking and other Islamic law disputes.¹⁹ This is not a novel idea as we already have specialised courts for family, commercial, juvenile, and maritime issues within English Common Law.²⁰

(vi) Operational Challenges

To address the operational challenges facing Islamic banking in Nigeria, respondents were asked whether “the operation of Islamic banks needs Institutional rearrangement in order to accommodate the special institutional needs that Islamic banking requires?” The perceptions of respondents are shown in Table 6.

Table 6

Valid	Frequency	Valid Percentage
No	5	3.33%
I do not know	3	2%
Yes	142	94.67%
Grand Total	150	100%

As shown in Table 6, 142 respondents (94.67 per cent) believed that the operation of the Islamic banking system in Nigeria needs rearrangement in order to more effectively meet the demands of that system. By contrast, 5 (3.33 per cent) disagreed and 3 (2 per cent) were undecided.

Most Islamic banks operate under the conventional system, which is sometimes too cumbersome in view of the operational needs of the Islamic banking system. The operations, services, and activities of Islamic banking in Nigeria are conducted in compliance with conventional laws and principles, which affects the realisation of the shariah objectives of Islamic banking under Islamic law.

Conclusion and Recommendations

The different categories of respondent in this study were asked to identify the regulatory challenges facing Islamic banking in Nigeria and assess the adequacy of the existing legal framework with regards to the operation of Islamic banking in the country. Their responses were analysed based on their understanding of the research questions.

Although Islamic banking is doing very well and making great strides in Nigeria, this growth has not come without its challenges. If these challenges are met appropriately, at the right time, further growth of the industry can be expected. However, if they are neglected or unsuitable solutions proffered, an overall negative effect on the industry may result. It is recommended that:

- There is a need for a specialised legal and regulatory framework for Islamic banking in Nigeria. There should be a *lexspecialis* (specialised law) to act as a sound foundation for the operation of Islamic banking in the country and to complement existing legal and regulatory infrastructure.
- The Nigerian government should enact a distinct, independent, and comprehensive legal framework for the smooth running of Islamic banks.
- The Nigerian government should create awareness among the public about the legality of Islamic banking in the country.

- The CBN regulations/guidelines should be properly codified, harmonised, and made accessible to the public.
- The CBN, bank operators, and all other stakeholders should embark on sensitisation through public lectures, seminars, workshops, conferences, and symposia where scholars, university and college dons, as well as researchers can exchange ideas, cross-fertilise them, and proffer solutions to the challenges facing Islamic banking in Nigeria.
- The Islamic law of banking should be incorporated into the academic curricula of law faculties in Nigerian universities to cater for the growing need for trained personnel in the banking industry.

Notes

* *Hakeemat Ijaiya*, Faculty of Law, University of Ilorin. Email: ijaiyahakeemat@gmail.com.

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12. Abdulqadir Ibrahim Abikan, 'Integration of Islamic Financial Services: A Tug of Viability, Legality and Politics,' *Journal of Islamic Economics, Banking and Finance* 8, no. 1 (2012): 71-94.
13. See: Commissioner for Religious Affairs V. Tenqku Mariam (1970) 1MLJ 222, 231; Abikan, 'Integration of Islamic Financial Services,' 71-94.
14. Dalip Kaur V. Pegawai Polis Daerah and Anor (1992) 1 MLJ 1 (SC), 7. See Abikan, 'Integration of Islamic Financial Services,' 71-94.
15. S. 271, CFRN 1999.
16. These include matters of marriage, divorce, and guardianship of children. For a detailed discussion of jurisdiction, see A.A Oba, 'Shari'ah Court of Appeal in Northern Nigeria: The Continuing Crisis of Jurisdiction,' *The American Journal of Comparative Law* 52, no. 4 (2004): 859-900; Abikan, 'Integration of Islamic Financial Services,' 71-94.
17. Section 272 CFRN, 1999. Even the Federal High Court, which hitherto claimed jurisdiction in banking matters, was robbed of that jurisdiction regarding banker-customer relationships. See proviso to Section 251(1)(d) of the same Constitution; A.O. Sambo and A. B. Abdulkadir, 'Constitutional Challenges and Adjudication of Islamic Finance Disputes in Nigeria,' in *Essentials of Islamic Banking and Finance in Nigeria*, ed. K.I Dandogo et. al (Kano: Benchmark Publishers, 2013); A.O Sambo and A.B. Abdulkadir, 'The Continuing Influence of Common Law Judges and Advocates in the Adjudication of Islamic Finance Disputes in Nigeria,' in *Ethics, Governance and Regulation of Islamic Finance*, ed. Hatem A. El-karanshawy et. al (Qatar: Bloomsbury Qatar Foundation Journals, 2015).
18. See S. 277 LFRN, 1999. The consequence of this is that aggrieved parties are left with no remedy, other than for their dispute to be adjudicated by a law which is incompatible with what should ordinarily govern their transactions.
19. In some jurisdictions, like Malaysia, these problems were overcome by establishing specialised courts. Thus, a division was established within the Malaysian High Court, known as High Court, *Muamalaat* Division. All Islamic financial transactions are adjudicated by the said division. See I. M. Ahmad, and T. M. Buba, 'Shari'ah Governance and Dispute Resolution in Islamic Financial Institutions in Nigeria,' in *Islamic Banking and Finance: A Leaf From Theory to Practice: Proceedings of the 1st International Conference organized by IIIBF 17th-19th April, 2014*, ed. S.U.R Aliyu, K.B. Tahir, N. A. Ahmad, A. D. Muhammad, M. Idris, and A. Umar (Abuja: Benchmark Publishers Ltd, 2014), 560-72.
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