

Regulation not Mere Legislation: The Issue of Enhancing Islamic Banking Performance Across Nigeria

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Abstract

The subsisting economic hardship underscores the promotion of financial stability through inclusive financial regulations. The low-performance of conventional policies warrants the striving for uniform regulation and protection of conventional and non-interest financial institutions. In Nigeria, financial regulations do not pay attention to inventive Islamic financial products and Islamic delivery mechanisms. This situation does not help to achieve a positive performance in Islamic banking services in the country. Via a review of previous literature, this paper aims to discuss the policies of the Central Bank of Nigeria (CBN) on conventional and Islamic banking systems. The review outcomes suggest that only restricted policies are available for non-interest financial institutions across Nigeria, and the existing protections are far from creating long-term welcoming results. According to the review outcomes, many studies are not conclusive about the particular aspects that need improvements between regulation and legislation of financial institutions in Nigeria. We argue that existing regulations do not treat all financial systems equitably, and thus, it becomes difficult for Islamic financial institutions to contribute efficaciously and positively to the country's economic growth. A such, this paper recommends the re-composition of the regulatory framework on equitable protection basis for every financial institution across Nigeria. This review contributes to the existing literature on the heightening of the economic and financial system across Nigeria by proposing regulation and legislation amendments. Further research may explore how effective policies can be formulated to achieve a positive performance of Islamic banking in Nigeria.

Keywords: Financial Institution, Financial Regulation, Legislation, Regulation

Introduction

The 2008 global financial catastrophe increasingly drew the attention of policymakers to financial regulation and supervision. A large number of regulators focused on upgrading financial stability and attenuating financial disproportion for macroeconomic effects. Despite the ultimate interest of many regulators in achieving this goal, Nigeria financial regulators seem to be at the deliberation stage of applying a level-play approach to both the conventional and Islamic banking systems in the country. An understanding instance behind that partial and unequal protection is the fear of criticisms against matching protection of financial institutions. Perhaps Ishaq & Abdul Majid (2019) argued that regulators are independent of direct allegations of interested parties in society (Ishaq & Abdul Majid, 2019). Hence, regulations can be enhanced, amended, and enacted to refine Islamic banking services in Nigeria.

Regulators of the Central Bank of Nigeria (CBN) need to strike an equitable balance between conventional and non-conventional institutions across the country (Cihik & Hesse, 2010). In the effort of generating stable and effective performance for Islamic financial institutions, CBN regulators are expected to guaranty rigorous Shariah compliance of Islamic financial products, services, and institutions, as weak and low adherence to Shariah compliance may lead the industry to failure and prematurely break-down. CBN regulators must guarantee safety, reduce failures and strengthen financial foundations through supervisory and regulatory frameworks toward ensuring financial stability and efficiency. CBN regulators as the financial experts at the central level need to predetermine risk assessment in the financial institutions including Islamic banks. Aside from that, competition is actively needed for converting efforts and actions into profits and dividend incomes. The restriction of competition amounts to economic stagnation, as commercial entities will lack the motivation to enhance performances (Rajesh, 2009).

Banking policy plays a significant function in activating the growth of a financial sector and balancing the economy for financial and economic objectives. The possible implication of Islamic banking being a Profit and Loss Sharing System is that there is potential for immediate and future tension from the regulatory angle as non-interest financial principles contradict conventional structure. CBN authorities are expected to act the part of a decisive developmental role in the success of Islamic Banking and Finance (IBF) in a conventional setting. It is worth stressing that CBN's role includes fostering a conducive environment for Islamic banking services and activities. By developing this environment, a level playing field should be provided for all financial institutions with no extraordinary protection for any particular banking system.

The effectiveness of banking policies is seen from a prosperous economic perspective. A financial system is deemed exhaustive when it entails inclusive legal infrastructure, robust regulatory and supervisory framework, diverse market players, tax inducements, effective and contemporary payment systems, and unprejudiced requirements, recognition, demands, and protection services. The introduction of Islamic finance products, potentials, and initiatives are pointless in the absence of supportive regulatory and supervisory infrastructure. To this end, the paper endeavors to evaluate the consideration of CBN regulatory policy towards the development of the IBF system among others. The focal point is a profound dissection of the policies and regulations issued to both conventional and Islamic financial institutions across Nigeria. The composition of the CBN Act and policies,

Banks and Other Financial Institutions (BOFIA), Companies and Allied Matters Act (CAMA), and other Guidelines shall be closely scrutinized to identify over-protection, normal-protection, and below-protection. Islamic financial institutions are poorly and inadequately sheltered if each component including audits, legal structures, accounting systems, and payment systems are not equitably armed with Full-fledged operations and corroborating mechanisms.

Regulation Concept

Regulation is commonly used for controlling behavioral threats in society. The term is mostly exercised by the public agency to monitor community values (Selznick, 1985). It is a recent fact that regulation is seen as an economic mechanism that develops ethical objectives of financial markets. Regulatory bodies are assigned with the creation of legal infrastructures representing social purposes designed by the operational laws. The regulation covers certain commitments such as licensing; certifying; specifying rates; providing bond-insurance requirements; itemizing disclosure documents; issuing liability rules; listing prohibitions; displaying tax incentives or disincentives and publicizing subsidized products.

Effective regulation provides the capacity to identify issues, simplify them, develop sustainable objectives, anticipate market or industry competitions, reduce compliance costs, handle consistent enforcement, determine short and long-term ethical standards, secure payment and clearing systems, as well as control unforeseeable risks and compete with global regulations. Regulation entails provision to ascertain the veracity of claims to compliance and measurement for rescuing ill-compliance parties. Regulation ensures accommodative and affordable implementation of industry contracts and services. The regulatory framework is dangerous amidst issues such as information asymmetry, non-inclusion of all products regulation, high cost of debt enforcement, and the existence of vague policies.

Regulation fortifies stakeholder's confidence in the activities of financial institutions. Regulations coordinate and enhance the initiatives of advancing procedures and instruments for effective operations and risk administration of conventional and non-conventional banks. In financial regulation settings, the institution structures comprise the consideration and verdict of political authorities, feature and immensity of the financial sector, and predominant existing model in the nation's central bank. Sustainable financial regulatory infrastructure is heavily influenced and predicted by international standards and financial crisis reports (Mukhtar, 2010).

Financial regulation may appear in three institutional structure models across the world. The model may either be "Multiple Agency Regulator, Unified Regulator, and Common Regulator". The multiple Agency Regulator model connotes that every financial activity falls under the portfolio of a specialized agency. Unified Regulator model combines the entire active institutions into a sole institution, and then apply prudential and market ethic standard in the financial sector. Perhaps, Common Regulator model employs a single regulator to two-three financial sectors. Although, the structure of Nigeria financial regulation depends on the Multiple-Agency Regulator Model that has markedly contributed to the development of the financial sector as Central Bank of Nigeria (CBN) and Nigeria Deposit Insurance Cooperation (NDIC) cooperatively manage financial institutions; National Insurance Cooperation (NAICOM) controls Insurance Companies and Securities and Exchange Commission manages the Securities Firm (Gummi, 2015). As a matter of importance, the model undoubtedly generates more pellucidity of responsibilities and accountabilities.

One achievement alongside the implementation of the Multiple Agency Regulator model in a country like Nigeria is that the probability of flexing objectives will be workable. The unambiguous objective of each agency shall contribute in no small measure to regulatory failure as any policy malfunctioning enables the professional attention of the affected agency. However, the drawback of this model is that it trivializes the regulatory burden of agencies and regulators. Responsible agency, sector, or department will be energetically identified in the course of nonfulfillment. By and large, there may also be a certainty of reproducing regulatory efforts. Given this mix implications, financial regulators must conduct a feasibility study of suitable and productive regulatory models and policies in Nigeria.

Financial Regulations in Nigeria's Financial Sector

Early studies highlighted that regulation, stability, and supervision of the banking sector falls under the legal responsibility of CBN and National Deposit Insurance Corporation (NDIC) in the Nigerian context. Section 31-32 of BOFIA (1991) empowered CBN Governor to assign a Director of Banking Supervision (DBS) for the supervisory task over banks and other financial institutions across Nigeria. The DBS shall sporadically review each bank's affairs and access bank accounts and vouchers across the country. NDIC, on the other hand, is statutorily commissioned to help minority authorities conceptualizing and executing banking policy. Financial supervisors are also bound with rescheduling banking activities.

Nigeria's regulatory framework designs early detection of problems affecting banks, stock exchange, and other financial institutions. The regulation observes the compliance degree of banks with BOFIA provisions and monetary policies. The regulation provides a foundation for scrutinizing, analyzing, and dealing with information of financial institutions. The structure identifies the banking system, trends, and economic development scheme in the industry. The regulatory provisions likewise determine the efficacy of banks' internal control systems. The regulators are statutorily protected to sort for deficiency remedial measures in the regulatory standard (Section 31, CBN Act, 2007).

NDIC guaranties deposit of failure insured bank; protect depositors from potential problems; provide accommodative facilities; safeguard assets and sanction non-compliance banks of regulatory initiatives (Central Bank of Nigeria, 2010). Hence, the absence of considering regulatory infrastructure towards the development of Islamic banking is a repetition of an unsophisticated and undeveloped approach. Banking regulation is a salient pillar for economic stability and prosperity. It raises liquidity, normalizes recession and weak fiscal conditions. Regulatory policies determine the degree of financial institutions' performance. Effective banking regulations expedite productive investments with funds allocation.

Role of the Central Bank of Nigeria

The Central Bank of Nigeria (CBN) maintains the position of the main stakeholder in the Nigerian financial system. The ultimate function of CBN is to control, regulate and monitor financial institutions across Nigeria. CBN is concerned with issuing currency, managing the nation's international reserves, ensuring monetary stability, providing a sound financial system, granting and revoking bank licenses, as well as controlling Open Market Operations (OMO), reserve needs, discount window, margin requirements, and foreign-exchange operations.

One of the fundamental functions of CBN is to financially transform individual, investments, and savings into productive material results. This transformation process may

be executed through financial institutions and capital markets. CBN needs to ensure the functioning of a domestic and internationally competitive market, facilitation of monetary policy, sound macroeconomic environment, competitive market infrastructure, a competitive market economy, effective corporate governance practices, comprehensive and corresponding tax framework, surveillance mechanisms, analytical tools for economic phenomena, pro-cyclicality instruments and the establishment of stakeholders and financial industries consultative channels.

The CBN guidelines are expected to have the capacity of identifying problems and establishing the place and moment of intervention. However, CBN regulatory policies lack Shariah governance framework, measurement of loan and deposit frees of Islamic banks, and Shariah-compliant investment instruments. Shehu (2015) argued that Islamic banks are also barred from operating interbank transactions with conventional banks (Shehu, 2015).

Financial Laws: Islamic Financial Provisions in Nigeria

Constitutional Provision

As there is potential for future tension regarding the gap between rich and poor people, recognition had been made by the constitution for individual involvement in economic activities (Section 16 (1d)). Permission of religious liberty is a substantial attestation for expanding religious ideologies and faith plans and initiatives, of which Islamic banking is included (Section 38(1)). Commerce association is another valid justification for considering the enhancement of Islamic banking services in Nigeria (Section 40, CFRN 1999).

Company and Allied Matters Act (CAMA, 1990) Endorsement

CAMA 1990 is the preeminent business law in Nigeria (Nwafor, 2016). It is the establishing Act for Corporate Affairs Commission across the country. Section 16 (1) of the Act is deemed feasible to be cited as a tool for proposing the acknowledgment of Islamic financial institutions to the Minister under the Act. The section justifies disclosure of the needful procedures to expand Islamic banking services and activities. It creates methods of achieving IBF objectives in a secular country like Nigeria. Aside from that, the formation of any industry is statutorily buttressed in section 18 of the same Act. Section 20 (4) authorizes the establishment of a foreign company. However, the Act disregards the recognition and incorporation of Islamic financial institutions. Perhaps, Islamic banking acknowledgment in this Act shall in small measure contribute to the patronage, publicity, acceptance, and growth of IBF in Nigeria.

Investment and Services Act (ISA, 2007)

ISA integrates governing laws of the Nigerian Capital Market and broadens the roles and responsibilities of regulatory authorities (Oyebode & Aluko, 2012). The Act provides provisions for local and foreign investments in Nigeria (Nwogu, 2011). It is a resourceful reference for the establishment of the Securities and Exchange Commission (SEC), investors' protection fund and investments, and securities tribunal (Section 1, 197 & 274, ISA). The SEC enables adequate regulatory protection for the Nigerian capital market (Section 38, ISA). Despite that the capital market is acknowledged in ISA (2007), there is no provision for the establishment of Islamic Capital Market therein, however, Islamic Capital Market is equally and statutorily recognized alongside Conventional Capital Market in Capital Market and Services Act in the Malaysia context (Section 316, CMSA, 2007).

Banks and Other Financial Institutions Act (BOFIA, 1991)

Even though actions and functions of BOFIA are appropriately controlled by Central Banks and Securities and Exchange Commission, history shows that BOFIA is legislated for financial services and activities across Nigeria. It is indeed important to boldly state that the Act designed the elementary foundation of Islamic banking in Nigeria. The Act categorized Islamic banks as specialized banks in the country (Sanusi, 2011). The non-interest financial institutions were exempted from exhibiting lending and deposit interest rates (Section 23(1), BOFIA 1991). The CBN Governor was statutorily authorized to disconnect Profit and Loss Sharing (PLS) Banks from BOFIA provisional modifications (Section 52, BOFIA 1991). Furthermore, Section 61 explained certain features of Islamic banking services adhering to Shariah standards. The provision indicates the existence and setting up of Islamic banking and Islamic capital market within the Nigerian context.

Central Bank of Nigeria (CBN Act, 2007)

The categories of Nigeria's banking system are based on commercial banks, merchant banks, and specialized banks. The subdivisions of specialized banks consist of non-interest banks, microfinance banks, development banks, and mortgage banks (Section 1 of the Framework for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria, 2011). The CBN management released a framework for non-interest banks through the model of the Islamic window. Every conventional bank offering Shariah products and services is barred from displaying conventional products contradicting Islamic standards under the same conventional scene (Section 2 (a), Central Bank Act, 2007). The Act similarly established Shariah Advisory Committee (SAC) (Section 2 (c) Central Bank Act, 2007).

Tax Provisions for Non-Interest Financial Institutions in Nigeria

According to the power vested in the Federal Inland Revenue Service (FIRS) Establishment Act, 2007, an enabling framework following CBN guidelines was issued to ensure equal treatment between conventional and non-interest financial institutions. The regulatory infrastructure is categorized into six parts. The first part focuses on preliminary issues, covering title, scope, and regulatory objectives. The second part concentrates on home finance, diminishing *Musharaka*, *Murabaha*, and *Ijara*. The third part deals with project finance and highlights *Murabaha*, *Mudarabah*, *Musharakah*, and parallel *Istisna* tax issues. The fourth part covers commodity finance, vehicle asset finance, *Murabaha* under commodity finance, *Mudarabah* under vehicle asset finance, *Ijarah* vehicle asset finance, and diminishing *Musharakah* vehicle asset finance. While part five addresses direct investment, *Mudarabah*, and *Musharakah* tax implications, the final part represents investment bond, *Sukuk*, *Sukuk* financial products, terms interpretation, and non-interest miscellaneous issues.

Issues in Nigeria Financial Regulation against the Expansion and Development of Islamic Financial Institutions

Certain financial provisions heavily lean in the opposite direction as they collectively collapse the financial system in Nigeria. Failure of banks corporate governance; weak interest of investors; limited disclosure, ineffective transparency of banks financial status, substantial missing elements in the regulations, a biased level of treatment and supervision, and frailties in the business environment negatively shared and contributed to the ill-functioning progress of several financial institutions across the country (Anyawu, 2010).

Islamic finance requires additional approaches than a conventional system to achieve economic objectives. A conventional loan of 12 months fixed-rate interest with a single bullet repayment cost of Islamic commodity Murabaha transaction includes three different transactions starting from the bank to the customer, and down to another distinct purchaser. Therefore, Islamic financial institutions need exceptional and protective laws to avoid double taxation charges on assets. Similarly, Islamic financial instrument profits are not equally receiving tax relief consideration as conventional debt instruments in the Nigerian context. Conventional debt instruments are structurally exempted from VAT and income taxes. Loan advance interest payments share the same relief in the absence of no consideration for Murabahah and Ijarah-based financing (Kabir & Ishaq, 2014).

Notwithstanding, taxation is an essential element for developing financial structure, tax neutrality is one of the significant points that need to be addressed in any financial regulatory infrastructure but was excluded in Nigeria financial regulation, as observed in the unequal treatment draft against Islamic financial regulation. Aside from that, the stamp duty exemption has not been specifically considered for Islamic financial institutions.

Nigeria's financial regulations provide no attention to inventive Islamic financial products and Islamic delivery mechanisms. Financial regulatory provisions disregard the facilities of public sensitization, Islamic service quality, and Islamic product awareness. It is necessary to enhance the dynamism of financial infrastructure, credit information, and secured transactions for all financial institutions in Nigeria. The potential outcome of excessive confidence in government policies on banking formal pledges is infertile and unproductive.

It is indeed difficult to spot a positive performance in Islamic banking services alongside the absence of Shariah standard terminologies, absence of interbank Islamic money market, obstructive environment for the capital market, and mix policies with other financial institution counterparts. Certain financial terminologies may be inconsistent with Shariah principles, but may concurrently logically represent interest-based transactions. Shariah compliance source and Shariah compliance investment structures are also missing in the regulatory infrastructure.

The source and destination of IFI funds is another setback in Nigeria's financial regulatory policies. It is unhealthy and unethical to finance Islamic activities with interest-based funds. It is safe to ensure Islamic investments conform to Shariah principles. Non-halal sources allowed by conventional standards may include contradicting components in the sight of Shariah.

There is a need for statutory provision stating that both public and private companies can issue shares or debentures to the entire public. Definition of Sukuk is yet to be included under the debenture provision in the Company Act. Towards these challenges, Ishaq & Abdul Majid (2019) highlighted some major points for considering the legal framework of Islamic banking in Nigeria inconclusive. Vague terminologies used in these regulatory frameworks are conflicting and delicate to place the solid structure of the Islamic banking system. Several products, businesses, and activities of Islamic banking were lacking considerable recognition in the regulatory infrastructure. Ishaq & Abdul Majid (2019) also added that the absence of regulatory objectives and plans for the Islamic banking system in the regulations may likewise be estimated as a weak concern to the existence and survival of IBF in Nigeria.

Shariah compliance mechanisms cannot also be captured in the regulatory infrastructure. Takaful product which is at a level equivalent to conventional insurance is lacking regulatory support. Thus, it is recognized that a more organized and constructive

regulatory framework is required for the evolution and transformation of the Islamic banking system in Nigeria. In all probability, if all these highlighted points are addressed and considered in the regulation, there is a likeliness that it will positively strengthen IBF status in Nigeria.

Conclusion

This paper presented a review of literature on the policies of the Central Bank of Nigeria (CBN) on conventional and Islamic banking systems. According to the outcomes, only restricted policies are available for non-interest financial institutions across Nigeria, and the existing protections are far from creating long-term welcoming results. Additionally, many studies are not conclusive about the particular aspects that need improvements between regulation and legislation of financial institutions in Nigeria. While attributing insufficiency to the regulatory structure of Nigeria's financial system, it is unsuitable and unprofessional to overlook the efforts and continuous attempts leveled alongside the developments and standardization of Islamic banking practice across Nigeria. By and large, legal and regulatory supports exist alongside every growth of IBF in the country, however, the statutory recognition of many products, operations, applications, and services seem to be below the expected standard. The Islamic banking system is largely steered by Islamic law principles and as such, Shariah experts are the most qualified specialist to evaluate Shariah compliances.

Among the factors that delay the progress of Islamic banking in Nigeria is the ill-composition of the regulatory framework. Cross purposes coupled with inter-country policies also identified the need for government intervention during international coordination. Policy instruments including treasury, supervisors, central banks, to mention a few, are necessary integral in perfecting transnational coordination and matching policy objectives. The stability, standards, and safety of financial institution that determines veracity, domestic satisfaction, and international endorsement are controlled by financial supervision and regulation. The initiative support of the Financial Regulation Council of Experts (FRACE) should largely support the growth and development of Islamic banking. The Financial Regulation Council of Experts (FRACE) needs to be cognizant of necessary documents and information of IBF operations before *Fatwa* (the issuance of legal opinion). It is inappropriate for the legal opinion to contradict the existing banking operations.

There are sustainable initiatives that can address regulatory lacunas in Nigeria. A step-by-step approach is advantageous to long-term strategies. A large number of Islamic financial instruments need regulatory backup to satisfy borrowers and investors. Islamic interbank market initiative can be employed to unite institutions and instruments together. A significant recommendation toward the adjustment of financial regulations is the inclusion of Islamic principles alongside the entire provisions. This study is limited to a review of literature on the policies of the Central Bank of Nigeria (CBN) on conventional and Islamic banking systems. Further research may explore how effective policies can be formulated to achieve a positive performance of Islamic banking in Nigeria.

References

- Anyawu, C. M. (2010). An overview of current banking sector reforms and the real sector of the Nigerian economy. *Economic and Financial Review*, 48(4), 31-63.
- Central Bank of Nigeria. (2010). Financial stability report. Retrieved from: <https://www.cbn.gov.ng/out/2013/ccd/fsr%20june%202012.pdf>

- Cihik, M., & Hesse, H. (2010). Islamic banks and financial stability: An empirical analysis. *Journal of Financial Services Research*, 38(2), 95-113.
- El-Mubarak, I. A. M. O., & Abdul Majid, T. M. (2019). Proposed solutions to the legal issues affecting the applicable laws of Islamic Banking in Nigeria. *International Journal of Research and Innovation in Social Science*, 3(10), 176-180.
- Kabir, T. H., & Ishaq, A. S. (2014). *Taxation of institutions offering non-interest financial services in Nigeria: A theoretical exploration*. Paper presented at the 1st Conference on Islamic Financial Literacy, Kuala Lumpur, Malaysia.
- Mukhtar, A. (2010). Effective Financial Regulation Structures: Issues and Challenges. *Zenith Economic Quarterly*, 5(2), 25-35.
- Oyebode, G., & Aluko, O. F. (2012). Nigerian Corporate Finance Legislation. Retrieved from: [http://www.iflr1000.com/pdfs/Directories/5/Nigeria%20\(662671\)%20i.pdf](http://www.iflr1000.com/pdfs/Directories/5/Nigeria%20(662671)%20i.pdf)
- Nwafor, A. O. (2016). Revisiting the Contractual Effect of the Company's Constitution in Corporate Operations. *Corporate Ownership & Control*, 13(4), 649-657.
- Rajesh, K. (2009). Competitiveness and emerging markets. *Business Strategy Series*, 10(1), 90-95.
- Sanusi, L. S. (2011). *Islamic Finance in Nigeria: Issues and challenges*. Lecture delivered at Markfield Institute of Higher Education, Leicester: UK.
- Selznick, P. (1985). Focusing organizational research on regulation. *Regulatory Policy and the Social Sciences* 1(1), 363-367.
- Shehu, U., Aliyu, R. (2015). *Developing Islamic liquidity management instruments: Resolving the impasse between Central Bank of Nigeria (CBN) and Jaiz Bank Plc*. Paper presented at the 1st Conference on Islamic Financial Literacy, Kuala Lumpur, Malaysia.
- Nwogu, T. (2011). *Legal framework for the protection of investment in Nigeria* (Unpublished Master's thesis). European University Budapest, Hungary.
- Gummi, U. M. (2015). Financial regulations and Nigeria's banking sector. *Journal of Research in Business and Management*, 3(11), 05-13.