

## Application of Modern Collective Ijtihād Approach in Islamic Banking: Analysis of AAOIFI's Juristic Methodology

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### Abstract

The Islamic Banking industry has observed many disputes regarding the legality of the shari'ah status of different products due to the contradictions in different schools of thought. That created the need to standardize and harmonize the industry's shari'ah practices. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has done tremendous work in standardizing and harmonizing different opinions of different schools. It designs products according to the needs and practices of the industry in a shari'ah-compliant way. Its shari'ah standards are developed through a rigorous and professional process. They are widely accepted globally in the Islamic banking industry. The development of the shari'ah standards is based on the application of the collective ijthād approach. This collective ijthād approach is not limited to a specific school of thought. Instead, it has benefited from all the schools and harmonized them, making it a unique collective ijthād approach. Hence, to find AAOIFI's collective ijthād approach, the study objective is to extract the juristic methodology of AAOIFI shari'ah standards. The method used for the analysis is qualitative content analysis. A sample of six standards from the 57 standards is selected based on purposive sampling. The coding is done on these six sample standards to deduce the embedded themes and categories related to the juristic methodology applied by AAOIFI. The findings were further verified by interviewing five experts. Therefore, the data analysis through coding and validation through experts' opinions, the study found that AAOIFI's juristic methodology is lenient, flexible, maintains equilibrium, avoids injustice and is not confined to a specific school of thought. Further study is recommended to analyse the criteria on which AAOIFI prefers one opinion over others among the schools. The study's results are expected to enhance the adoption of the AAOIFI's collective ijthād approach, globally, which will improve the standardization of the fatwa' practices in the Islamic banking industry.

**Keywords:** Collective ijthād, AAOIFI, Juristic methodology, Talfiq

### 1.0 Introduction

Islamic banking (IB) is a fast-growing industry. It has progressed globally in the last few decades and made its space in the industry due to its unique characteristics. However, the existence of different schools of thought in different parts of the world resulted in a lack of standardization in the fatwa and ijthād practices. As a result, several disputes about the legality of different products and practices have been observed, affecting the credibility, acceptance of the IB products and causing reputational risk. For instance disputes about tawarruq, bai' 'inah, mudarabah based takāful model, Islamic credit cards and others (Abubakar

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Siddique *et al.*, 2023; Malik, 2019). Lack of standardization resulted in wastage of wealth, time and resources of the Islamic financial institutions (Ercanbrack, 2019). That created the need to standardize and harmonize the industry's shariah practices.

For the purpose of standardization several institutions have played their role. Among these institutions AAOIFI is the oldest organization which has played a vital role by creating great convergence towards the norms characterized for harmonizing and standardizing the sharī'ah practices (ISRA, 2016). AAOIFI's sharī'ah standards are quite often referred in different Islamic finance literature as a benchmark which shows its credibility and acceptance in the Islamic finance industry. AAOIFI's sharī'ah standards have articulated a harmonized form of principles for the guidance of Islamic IFIs (Shabsigh *et al.*, 2017).

AAOIFI has used the collective *ijtihād* approach platform for making the sharī'ah standards. 20 prominent scholars from all over the world are included in AAOIFI's sharī'ah board from almost 13 countries. Scholars of all the schools of thought are included in the board. Therefore, AAOIFI's sharī'ah standards are not limited to a specific school, rather they have benefitted from all the schools (AAOIFI, 2017).

The AAOIFI sharī'ah standards are issued without mentioning the minority or opposite opinion to avoid confusion among the public. The standards are not considered a fatwa' that can be attributed to a specific member of the sharī'ah board. Furthermore, the "Basis of Sharī'ah Rulings" is given at the end of each standard, allowing users to determine the source on which the board has decided the ruling (Archer *et al.*, 2016). Usmani (2017) states that the standards are not a specific member's opinion rather they are the collective ruling issued by the sharī'ah board. Most of the time the provisions are decided with the agreement of all the members of the board. As disagreement is natural so in case of disagreement, the decision is taken on the majority basis. The disagreement opinion is written in the minutes but not mentioned in the final standard issued (AAOIFI, 2017).

Meera (2016) states that the reliability and importance of AAOIFI sharī'ah standards is mainly due to the comprehensive technical process of review they have adopted. In developing each standard, it takes up to 13 steps. The process begins with appointing the consultants and experts for a particular study, then they submit and present their work to a specific committee. After discussion with the committee, amendments are made according to the comments given by the committee's members. Then, an exposure draft is prepared. This exposure draft is distributed among the specialists and industry stakeholders to get their comments. A public hearing is organized, which includes participants from accounting firms, central banks, academics, sharī'ah scholars and others, in which the sharī'ah committee responds and review the comments. The deemed necessary amendments are done in the light of the comments received in the public hearing and the comments received in the written form by the specialists. In the end, after editing and double-checking, the formulation committee issues and publishes the standard. All this process shows the comprehensiveness of the juristic methodology used by AAOIFI.

The collective *ijtihād* approach applied by AAOIFI is different from the classical *ijtihād* approaches. For instance, the most important one include, the compilation of *Fatawa Hindiyah*, in the time of Muhammad Aurangzeb the emperor of Indian subcontinent and the *Majallah al-Ahkam al-Adliyyah* in the time of Ottoman empire. The main difference is that these classical collective *ijtihād* approaches were applied remaining within a specific school (Hanafi school). However, AAOIFI's collective *ijtihād* approach is not limited to specific school.

Abdullah *et al.* (2023) suggests that the industry has faced lack of standardization due to different juristic approaches used globally in different jurisdictions. Therefore, the differences between the juristic approaches can be minimized by minimizing the differences between the juristic methodologies. For which a new juristic methodology can be introduced for the Islamic finance industry, which will help in standardizing the fatwa' practices. That will ultimately enhance the standardization in the Islamic banking industry. As AAOIFI's sharī'ah standards are quite much accepted globally, therefore, it can be very crucial to find and analyse AAOIFI's juristic methodology which can add into the standardization process, from product based standardization to principles based standardization and will enhance the acceptability of AAOIFI sharī'ah standards.

## 2.0 Literature Review

*Ijtihād* is the primary tool for acquiring knowledge about sharī'ah rulings of those matters which are not

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explicitly mentioned in the primary sources of sharī'ah in any time and era (Al-Zarqā', 1985). It has been continuously practiced from the time of Prophet Muhammad Peace Be Upon Him, as mentioned in Hadith when Mu'ādh Bin Jabal R.A was sent to Yamen (Al-Tirmidhi:1327). The scholars (known as mujtahidīn; singular mujtahid) have been exerting their full ability for this noble cause in different eras, different areas and have guided the ummah in every field of life. Ghazali (1993) defines ijtihād as the full effort exertion of a jurist to seek the rulings of sharī'ah. Al-Umri (1984) defined it as the ability to derive practical rulings of sharī'ah from the detailed evidences. Zuḥailī (2006) has defined ijtihād as the process of deriving legal rulings from its detailed evidence in Islamic law. Weiss (1978) states that the theory of ijtihād assumes that the process of ijtihād is not to create new rulings but it is the process of elucidate the rulings which is present in the sources but yet concealed.

Ismā'īl (1998) states that collective ijtihād promotes the consultation system for decision related to legal sharī'ah rulings. Al-Sharfī (1997) explains that the decision taken through the process of collective ijtihād is more reliable and closer to being correct than the individual decision of a scholar. Qardāwī (1996) observes that the collective decision may bring up ideas that were hidden. It may clarify matters that were ambiguous or discuss those issues that were previously forgotten. This is one of the blessings of consultation (شوري) and fruits of teamwork.

Al-Sharfī (1997) defines it as the exertion of efforts by majority of jurists to obtain the level of inconclusiveness about a sharī'ah ruling, by the process of deduction in a way that all or most of them agree upon the ruling after consultation. Al-Ḥawli (2009) defines it as a group of scholars exerting their efforts in research and consultation according to a fundamental scientific method (deduction or application) to achieve a legal ruling whether it is rational or transmitted, conclusive or presumptive. Similarly, Al-Khalid (2009) defines it as a group of jurists exert their efforts in research and consultation to devise a legal ruling on an inconclusive issue.

This collective ijtihād approach has been used in the Islamic banking industry by different sharī'ah boards and fiqhi bodies to bridge between sharī'ah ruling with the modern issues of the banking industry. For an example the outline of the features of the collective ijtihād approach used by Al-Baraka Banking Group (ABG), is discussed by Hammad (2013), giving a glimpse of the juristic approaches of modern fiqhi bodies. He discusses that first, one should rely on the well-established rules in the Qur'an and Sunnah. All the opinions of the previous jurists and doctrines are considered concerning their evidence and arguments for arriving at a conclusion to prefer the most authentic one to relate them to a new event, if possible. General and specific appropriate proofs and principles are used to deduct the rulings of such new cases with no available examples in sharī'ah or jurisprudential disagreements. Those rulings based on customs and conventions will inevitably change with time to cope with the needs of modern times. The rulings should rely on the objectives of sharī'ah. Relaxation should be given in those common afflictions that are difficult to avoid under the rule of 'umum al-balwa' in this present time. Consideration should also be given to the consequences of the action while giving a legal ruling. Similarly, every stratagem (hilah) which uses a permissible action with an unlawful purpose should be nullified. While practicing ijtihād and fiqh, the distinction between immoderation in religion and eliminating the means leading to evils should also be observed.

Khan (2019) states that a clear theory of interpretation should be adopted by the sharī'ah boards in the development of new services and products, to achieve consistency in interpreting and deriving the rulings from its sources. Otherwise the Islamic finance issues will be mishandled. Bouheraoua et al. (2015) states that divergence of sharī'ah rulings and inconsistencies in sharī'ah interpretations is one of the main challenge faced by the industry to achieve cross border transactions and internationalization, despite of the establishment of significant number of international bodies to facilitate the cross border transactions and internationalization process. Harmonization among the sharī'ah rulings is prerequisite to achieve the standardization of such products that will be accepted in all the juristic schools. However, a very few studies are conducted to verify that the differences in sharī'ah rulings, their interpretations and differences in resolutions are the main weak point to achieve internationalization of Islamic finance, for this purpose Shaharuddin et al. (2012) and Laldin et al. (2012) have done comparative studies.

Ercanbrack (2019) criticizes the past studies done on standardization that their focus is only limited to the classical diversity of different schools and the immanence difficulties in reconciling the classical legal customs with the modern financial practices. The efforts of standardization related to interpretational

complexity is neglected in past studies, as well as the manner in which AAOIFI standards fail to reflect these. As a result, their acceptance and enforcement in municipal legal systems has been restricted. Therefore, a very weak research is available concerning to the driving forces behind the standardization process particularly the role of the market forces, municipal regulatory and legal challenges. Therefore, it will be beneficial to find the juristic methodology of AAOIFI shari'ah standards. However, there is very little research available related to the juristic methodology of AAOIFI shari'ah standards. Most of the research related to AAOIFI shari'ah standards are related to different specific shariah standards. However, few studies are found discussing the juristic methodology of AAOIFI shari'ah standards.

El-Halaby et al. (2021) has done a systematic literature review (SLR) which is claimed to be the only SLR done on AAOIFI standards until now. 46 previous studies published in 23 Scopus journals from 2000 to 2020, are included in the survey that are related to AAOIFI's accounting, auditing, shari'ah, governance and ethical standards. Among these papers only few papers are related to AAOIFI's shari'ah standards. Which shows lack of attention given to the shari'ah standards.

Mansuri (2014) have studied the concept of eclecticism (talfiq) and its role in modern fatwa' with respect to AAOIFI shari'ah standards. This study was published in a local journal in Urdu language. Similarly, Mansuri (2020) in his latest work has marked some general areas, not in-depth, related to juristic methodology of AAOIFI shari'ah standards. The legal methodology of AAOIFI shari'ah standards is discussed from two dimensions, its characteristics of ijthād and principles of fatwa'. The characteristics of ijthād include institutionalized collective ijthād, not limited to a specific school, specific ijthād (tajazzi fi al- ijthād). The principles of fatwa' include talfiq, avoiding stratagems (hiyal), observing maqāsid al-shari'ah, principle of blocking the means (sadd al-dharā'i'), original of permissibility principle, using shari'ah maxims in fatwa'.

Abdullah *et al.* (2023) suggests that for the Islamic financial industry a new juristic methodology can be introduced, which will assist in standardizing the fatwa' practices used in the industry. As the industry has faced lack of standardization due to different juristic approaches used globally in different jurisdictions. Therefore, the differences between the juristic approaches can be minimized by minimizing the differences between the juristic methodologies. That will ultimately enhance the standardization in the Islamic banking industry. Hence from the above discussion it is clear that AAOIFI has not disclosed its juristic methodology, neither any research has extracted it. Therefore, to fill this gap this study is designed to extract the detailed methodology of AAOIFI shari'ah standards, that is hoped to enhance the harmonization of the interpretation practices among the shari'ah boards working in the IB industry.

### 3.0 Methodology

The method used for this research is qualitative content analysis. The sampling technique used was purposive sampling. As according to purposive sampling the fertile examples or rich cases are taken as sample, to understand the knowledge deeply. Hence as the purpose was to analyse the juristic methodology of AAOIFI, so the standards in which AAOIFI has given detailed references of the Quran, Hadith and fiqh are taken. The 57 AAOIFI's shari'ah standards are published in 17 years from 2000 to 2016. Therefore, for selecting standards with in-depth and rich details, all the standards were divided in three parts according to the time that include: first part from 2000 to 2004, the second part from 2005 to 2009 and third part from 2010 to 2016. In these three parts of the time period, 21 standards are published in first part, 21 standards in second part and 15 standards in the third part. From each part two standards are selected as sample based on the criteria mentioned above. The purpose of dividing the sample into these parts was to get holistic knowledge about the juristic methodology of AAOIFI shari'ah standards.

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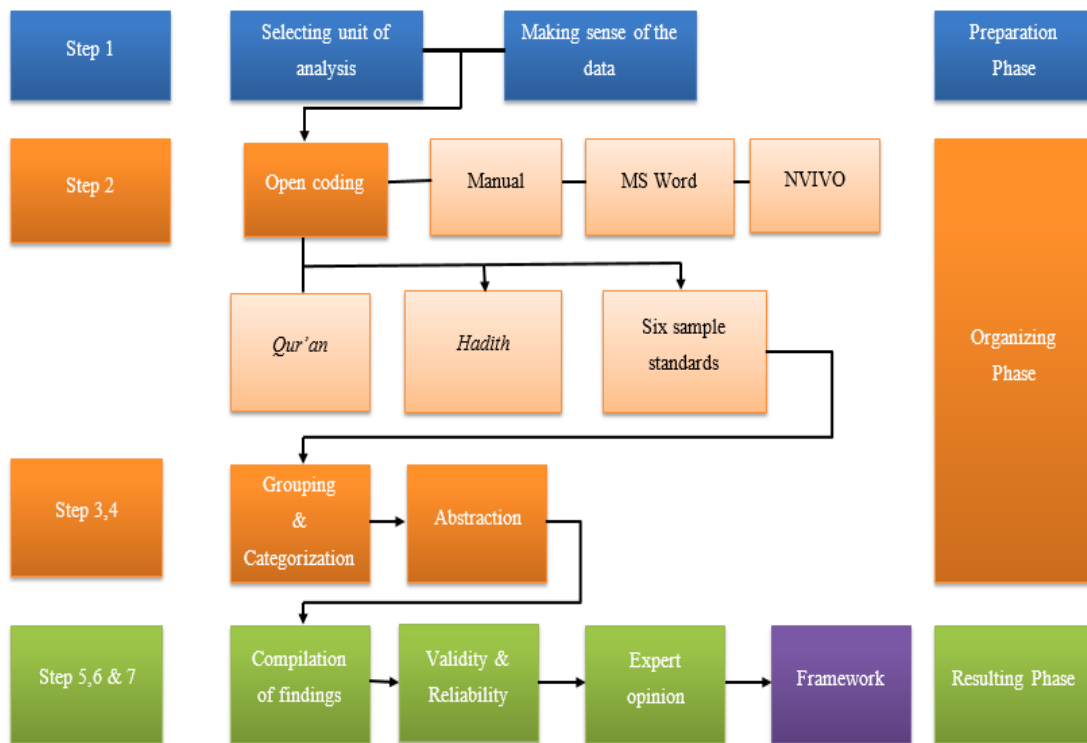


Figure 1: Process of Qualitative Content Analysis used in this study

The data analysis through qualitative content analysis was divided in seven steps as mentioned in Figure1. The first step was the selection of the unit of analysis. The unit of analysis selected was the Appendix (b) “Shari’ah basis of Standard”, of every standard. Before starting the coding process, the data was read again and again to make sense of the data.

The second step of the data analysis was the coding process. The coding process was divided into three portions, first coding was related to the Quranic verses, the second was related the Ahadith given and the third one was on the overall juristic methodology of AAOIFI shari’ah standards. The first and second part of the coding covered all the Quranic verses and Ahadith given in all (57) the shari’ah standards. However, the third part was limited to the six standards selected as the sample. In the beginning the manual coding was done. Afterwards when the researcher became familiar with the coding process, the software NVIVO 14 was used for coding. The initial coding (open coding) was done based on concepts found, phrases, ways of interpretations, given references, basis of the rulings given, bases of preference and others. All the coding was done in the light of the objectives of the study by using both the manifest and latent coding approaches.

The third step included the process of categorization which means merging the similar codes under wider subcategories and further under main categories. By doing so the data was reduced into fewer wider categories, that further conceptualized the logical and theoretical linkages inside and across the categories (Given, 2012).

The fourth step was called the abstraction which is basically the concept development stage. In this stage the categories which were merged in the stage of categorization, were further merged into wider main categories. This abstraction was done in the light of the objectives of the study to make sense from the data (Elo and Kyngäs, 2008) (Burnard, 1996; Polit and Beck, 2004). This process of merging subcategories into main wider categories continued until it was seen reasonable that now the findings are matching the research objectives and constructing a theory and is presenting a model of the juristic methodology of AAOIFI.

In the fifth stage of the data analysis, the findings and results of the study were compiled in a way that shows how the data has given results related to the knowledge of juristic methodologies by discovering the fundamentals of the juristic methodology of AAOIFI shari’ah standards and acquired deeper

understanding of it by extracting different dimensions of the juristic methodology of AAOIFI based on which shari'ah board of AAOIFI has developed the standard.

The sixth part was validation of the findings that is to check about the findings whether they are correct or not. For this purpose, the findings were well described by mentioning all the findings of the sample standards showing all the main categories (Graneheim and Lundman, 2004). Further the description is given in a manner showing how AAOIFI has extracted the rulings, that elaborated the juristic methodology of AAOIFI. It was tried that the findings should cover all the data comprehensively. Moreover, the findings were shown to another researcher to check the credibility of the coding process followed in the research.

The seventh step covers the validation of the findings by expert opinion through interviews. For which questions were asked through interviews related to the key findings of the study. On the basis of their feedback the findings of the study became more credible. Furthermore, their answers have validated the findings of the study related to the extracted juristic methodology of AAOIFI.

Reliability is another important concept in qualitative research, which means that the approach of the researcher should be stable or consistent. Which means that to get same results and findings if the research study is replicated in a different project or done by another researcher (Gibbs, 2007; Morse and Richards, 2002). Based on this reason the descriptions of the findings are mentioned with details, representing the linkages between the data and the findings by detailed descriptions, figures and tables (Polit and Beck, 2004).

#### 4.0 Result and Discussion

The findings extracted through coding has shown different dimensions of the juristic methodology of AAOIFI. First of all, the findings revealed that AAOIFI has used all the primary and secondary sources without any exceptions. That include Qur'an, Hadith, consensus (ijma), analogy (qiyās), istihsān, 'urf (market practice), opinion and practice of companions (qawl al sahabi), maqasid al- shari'ah, maslahah (interest), sadd al dharai', sharai' man qablanā, logic/ common sense, hiyal (makhārij), shari'ah maxim (qawā'id al fiqhīyah).

AAOIFI's juristic methodology related to Quran include that four methods of interpretation of the rulings from the Quran, which are called Dalalāt that include ibārah al-nass (explicit meaning), ishārah al-nass (alluded meaning), dalālah al-nass (inferred meaning) and iqtidāh al-nass (required meanings). These four methodologies are well aligned with the Islamic jurisprudence methodologies (Al-Shanqiti, 1958; Zuḥailī, 2006). Further, the findings disclosed that AAOIFI is taking ruling from the stories of the prophets. This finding align with the sharai' man qablanā (the laws revealed before us) which is one of the secondary source of shari'ah (Al-Usaimin, 2008). Furthermore, the findings concealed that AAOIFI is deducing the general meanings and themes of the verses and gave rulings based on those general themes, which is one of the dimension of the concept of maqasid al-shari'ah (Auda, 2008).

The findings related to Hadith revealed that AAOIFI is benefitting not only from siḥah sittah books (six authentic books) but also other than siḥah books, but with the condition that the Hadith must be an authentic one. Second finding deduced under Hadith methodology revealed that AAOIFI has given rulings based on mauquf Hadith (which is related to the companions of the Prophet PBUH in terms of words, actions, silent approvals and its chain (sanad) is not related or connected to the Prophet Peace Be Upon Him). The scholars have difference of opinion regarding this issue. Similarly, a mix point of view was found among the experts interviewed. However, according to the researcher's opinion, if the mauquf Hadith is authentic and it is creating ease, more practical, removing hardship and promotes justice then it should be considered, as AAOIFI takes any opinion of any scholar, then there should be no issue in considering the opinion of a companion.

Moreover, the findings have revealed the characteristics of AAOIFI's juristic methodology. These characteristics include flexibility, leniency, practicality, avoiding haram and doubtful activities, easiness, promoting real transactions and must not contradict the consensus and clear text.

As AAOIFI is related to the Islamic finance, the nature of ijtihād of AAOIFI is specific ijtihād which is called tajazzi al-ijtihād (fragmentation of ijtihād). Showing that AAOIFI's approach is in line with those scholars which accept the concept of tajazzi al-ijtihād. Same approach has been approved by AAOIFI in its

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standard no 29 “Stipulations and Ethics of Fatwa in the Institutional Framework” mentioning that a mufti can give fatwa’ if he is competent in the field of financial transaction (fiqh al-mu’āmlāt), although he is not competent in other fields (AAOIFI, 2015).

The overall approach of AAOIFI is that it relates the situation to the Qur’an and Hadith to extract rulings by using different tools and techniques like dalalāt, maqasid al sharī’ah approach, analogy, stories of the prophets and others. Further AAOIFI uses consensus opinion when available. Otherwise give preference between the available opinions of classical jurists, without limiting to a specific school. These preferences are not only random picking and choosing, rather they are based on sharī’ah principles and logical grounds.

### **5.0 Conclusion**

The study has analysed the collective ijtiḥād approach used in AAOIFI’s sharī’ah standards. AAOIFI’s ijtiḥād approach is fragmented ijtiḥād (tajazzi fi al-ijtiḥād). The characteristics of AAOIFI’s collective ijtiḥād approach found include flexibility, leniency, practicality, avoiding haram and doubtful activities, easiness, promoting real transactions and not contradicting the consensus and clear text. The study found that AAOIFI’s approach is benefitting from all the sources of sharī’ah including primary and secondary sources, without any exceptions. AAOIFI has widened the scope of ayāt al-ahkām by taking rulings from the stories of the prophets used in the Quran. Further, it is deducing the general meanings and themes from the verses the Quran and giving rulings based on those general themes, which is one of the dimension of the concept of maqasid al-sharī’ah. Moreover, AAOIFI has extracted rulings from the Quran based on the methodology of dalalāt. For the Hadith portion the study found that AAOIFI has taken authentic ahadith from siḥāh sittah and other than siḥāh sittah books. Further, it is found, in many cases, that AAOIFI has based its rulings on mauqūf ahadith, that is also widening the approach by including the opinions of the companions in the repository of viewpoints. AAOIFI’s collective ijtiḥād approach is not restricted to a specific school rather benefits from all the schools. Therefore, for the future research it is suggested to analyse the criteria on which AAOIFI prefers one opinion over others. That can give crucial framework for benefitting from all the schools of thought.

The study has given in-depth knowledge about the collective ijtiḥād approach used in AAOIFI’s sharī’ah standards. The study has provided valuable insights for the application of ijtiḥād and fatwa’ especially in the field of modern business transactions. Overall, the study found that AAOIFI’s collective ijtiḥād approach is harmonizing all the sources of sharī’ah, Quranic and Ahadith methodologies, benefitting from all the schools. Hence, the study further suggests for the future research, that based on the AAOIFI’s collective ijtiḥād approach a harmonized fatwa’ process and a collective ijtiḥād juristic methodological framework can be proposed, that can be presented to the sharī’ah boards of different countries. Hopefully it can enhance the adoption of the AAOIFI’s sharī’ah standards, globally, which will improve the standardization of the fatwa’ practices in the Islamic banking industry.

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