

# FRAMEWORK FOR SHARIAH COMPLIANT FINANCIAL REMEDIES FOR LATE INTERIM PAYMENT FOR CONSTRUCTION WORKS

Group member

PRODUCT  
ID - 81

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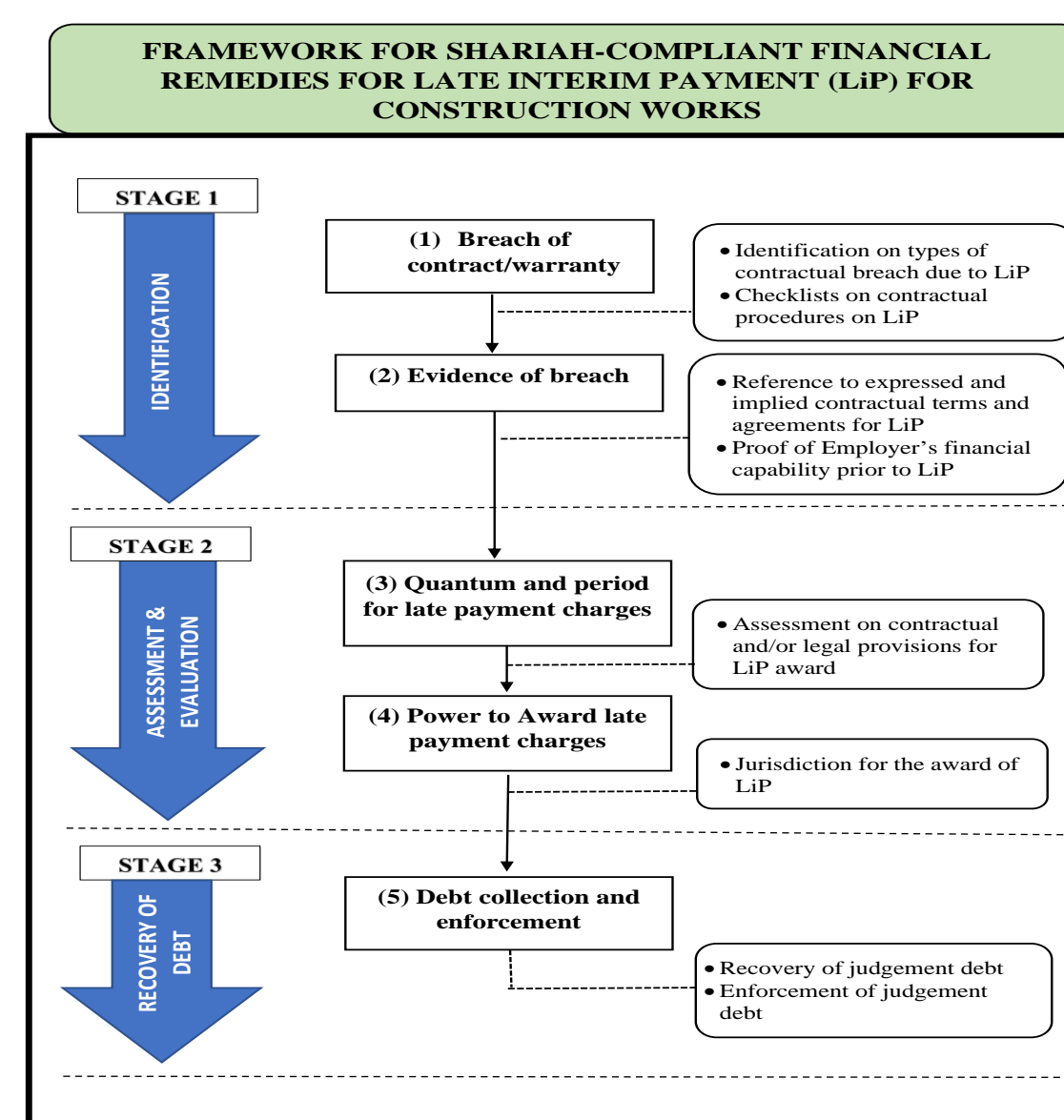
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## ABSTRACT

Payment default is perennial in the construction industry. Under Malaysian law, an employer's failure to make a timely interim payment towards its contractor as agreed in the construction works contracts, gives the contractor the right to claim for interest on the delayed interim payment amount. Unfortunately, the striking resemblance of *riba* within this practice, is deemed not in compliance with the Shari'ah. In addition, several other conventional principles and practices within the construction works' contractual provisions and the Malaysian law contradict the teachings of the Al-Quran and the As-Sunnah. Therefore, the Framework for Shariah Compliant Financial Remedies for Late Interim Payment for Construction Works was developed. This framework aims to harmonise the current practices and provisions of late interim payment charges for construction works with the Shari'ah. The framework consists of three main phases: identification, assessment and evaluation and recovery of debt. This framework has great potential and capability to be implemented in Malaysia and globally. It also serves as part of the Islamisation agenda for the betterment of the ummah.

Keywords: Shariah Compliant, Construction Works, Late Interim Payment

## PRODUCT DESCRIPTION/ INNOVATION IN BRIEF



Item	Tasks	Checklist	Dalil on Shariah Compliance
1	Unfulfilled interim payment obligations	Once Sometimes (state frequency) Always (state frequency)	Al-Bukhari, Sahih Al-Bukhari, Volume 3, Book 37, No. 487: Narrated by Abu Huraira: The Prophet said, "Procrastination (delay) in paying debts by a wealthy person is injustice."
2	Conditions precedents to interim payment	Certified by contract administrator Certificate issued by contract administrator Exceed Period of Honouring Certificate Available	Al-Quran (5:87) "O believers! Do not forbid the good things that Allah has made lawful to you, and do not transgress the bounds of what is right (in the matter of those which has made lawful) for Allah does not love the transgressors"
3	Rights to set-off amount of interim	Not available	

Item	Tasks	Checklist	Dalil on Shariah Compliance
4	Terms & Agreements on interim payment	Expressed conditions (clause) Implied conditions (clause)	Al-Quran (2:282): "O believers! When you contract a debt from one another for a fixed period, put it in writing... And surer for testimony and is the best way to remove all doubt between you..."
5	Sufficiency of proof on late interim payment/s	Evidence submitted by the main contractor Evidence submitted by the Employer	40 Hadith Nawawi No. 33: Narrated by Ibnu Abbas, The prophet said: "The burden of proof is on him who alleges, the oath on he who denies"
6	Considerations on client's financial conditions that leads to late interim payment/s	Musir (Solvent Employer) Mu'sir (Insolvent Employer) Muta'assir (Financially constraint Employer)	Al-Quran (2:280): "But if the debtor is in a hard time, grant him a delay until he can pay his debt"

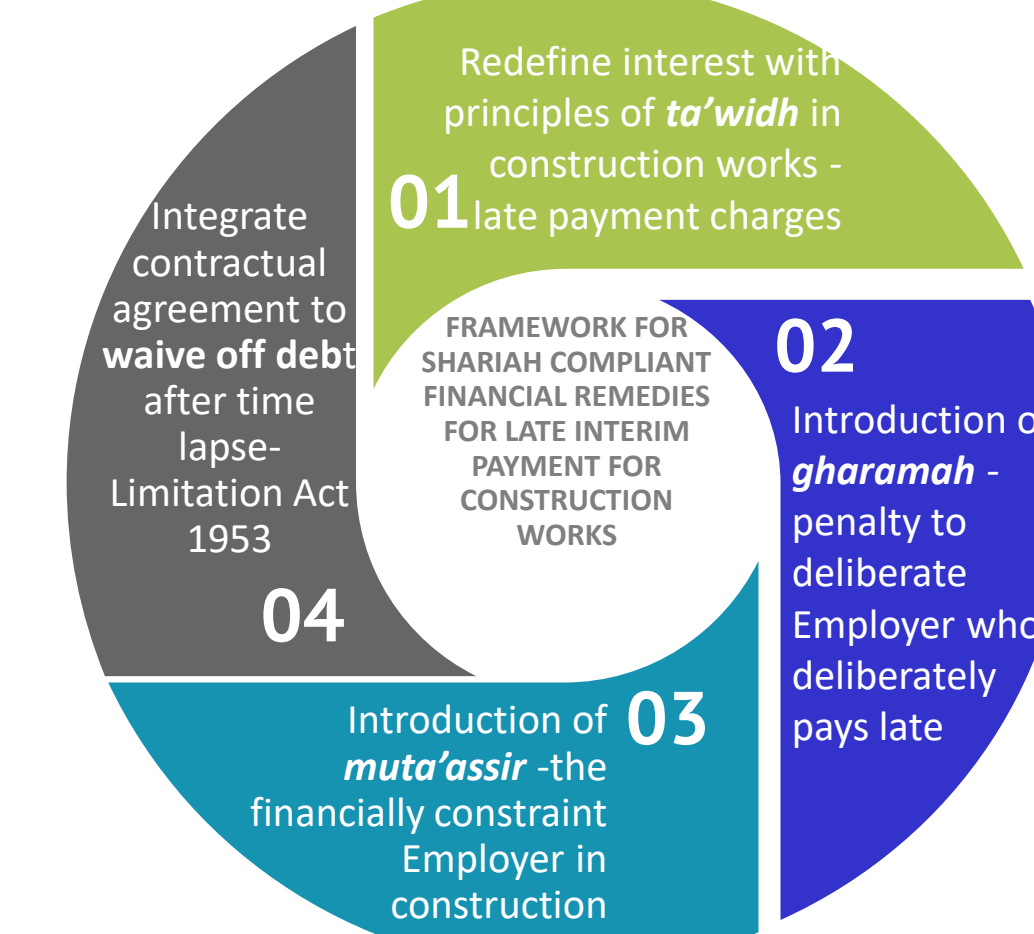
Item	Tasks	Criteria	Assessment & Evaluation	Dalil on Shariah Compliance
7	Rates	Direct losses Indirect losses Opportunity loss		Sahih Muslim, Chapter 2, Book 010, No. 3614: Narrated by Abu Huraira: The Prophet forbade a transaction determined by throwing stones, and the type which involves some uncertainty (gharar)
8	Formula	Simple interest As deemed fit by judiciary – based on actual losses		Al-Quran (3:130): "O believers! Devour not usury (riba), doubling and redoubling its rate many time..."
9	Assessment	Late payment charge as rights (ta'widh) Late payment charge as discretionary (ta'dir) Late payment charge as penalty (gharamah) Combined Late payment charges (ta'widh + gharamah)		Islamic legal maxim: "The fundamental in every contract is justice"
10	Limitation	Can be taken as income (ta'widh) Cannot be taken as income (gharamah) Not exceeding the principal amount of late interim payment/s		Al-Quran (2:188) "Do not eat property among yourselves by false means (unjustly) nor give bribery to the judges so that you may knowingly eat up a part of the property of others sinfully"
11	Calculation	Per annum basis Calculation on date of breach		Al-Quran (2:190) "... but do not commit aggression, for Allah does not love transgressors"
12	Duration	Pre- award (from date of breach – date of award) Post award (date of award – full payment)		Islamic legal maxim: "A matter recognised by custom is like a (contractual) stipulation"

Item	Tasks	Criteria	Assessment and Evaluation	Dalil on Shariah Compliance
13	Based on contractual agreement	Actual losses only (ta'widh) Penalty only (gharamah)		Al-Quran (17:34): "...And fulfil every covenant..."
14	Based on Discretionary empowerment	Actual losses + penalty (ta'widh + gharamah) According to judicial decision (ta'dir)		Al-Quran (4:58): "Truly, Allah commands you to hand back your trust to their (rightful) owners, and (Allah) command you whenever you have to judge between people, to pass judgement upon men with fairness..."

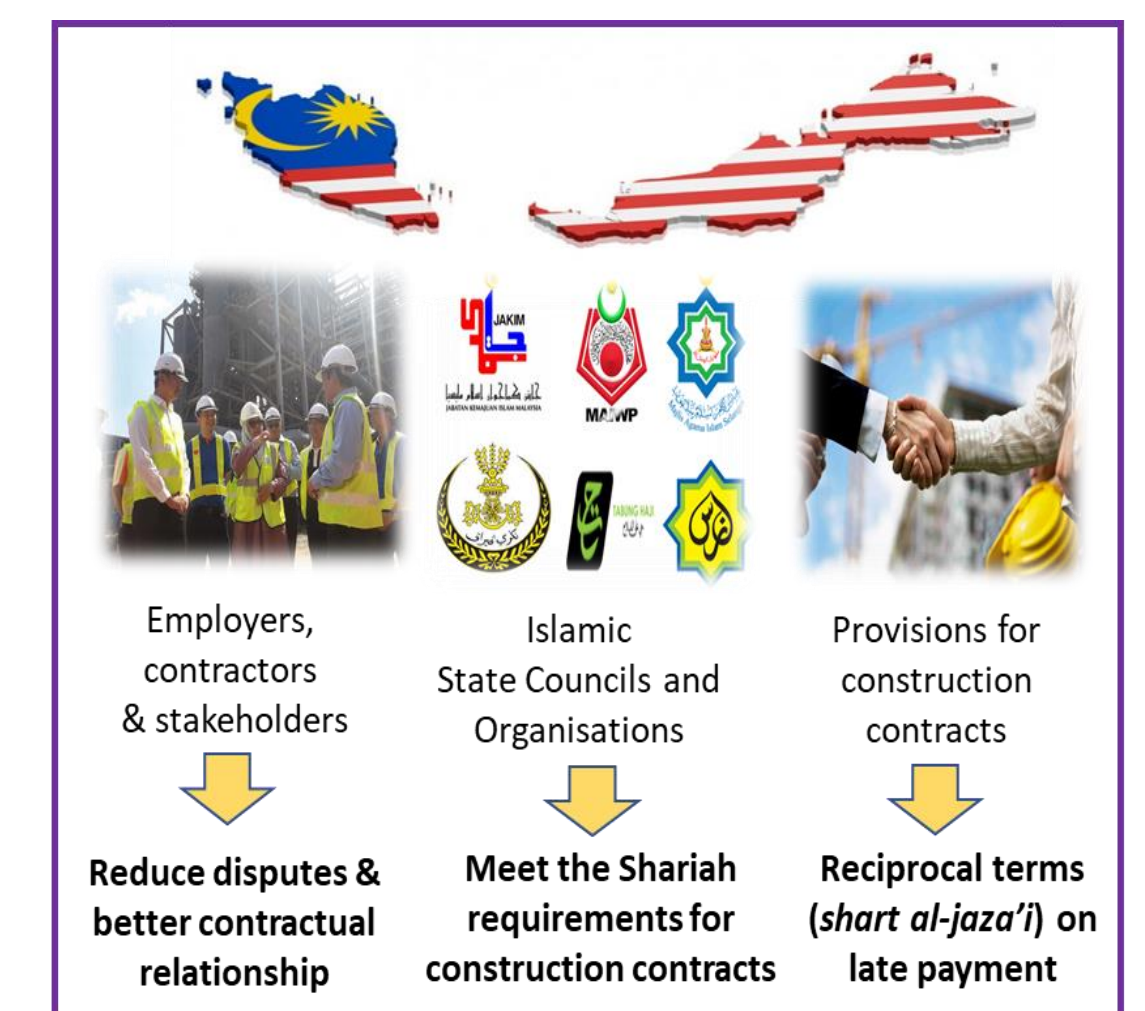
Item	Tasks	Procedure	Recommendation	Dalil on Shariah Compliance
15	Claim for debt judgement (principal + LIP)	Reference to legislation or alternative dispute resolutions to receive the award on debt judgement	According to the procedure stated in each dispute resolution methods	Al-Bukhari, Sahih Al-Bukhari, The Book of Representation (or Authorisation), Chapter 3, No. 1066: Narrated by Abu Huraira: A man came to the Prophet demanding his debt and behave rudely. The companions of the prophet intended to harm him, but the Prophet said (to them): "Leave him, for the creditor (owner of a right) has the right to speak"
16	Full payment of debt judgement (principal + LIP)	Application for enforcement of award on debt judgement from the court	Notice on claim for direct payment from Employer's corporation Only applicable for appeal with good and justifiable cause through a higher jurisdiction than the ones granting the award	Al-Bukhari, Sahih Al-Bukhari, The Book of Loans, Payment of Loans, Freezing of Property and Bankruptcy, Chapter 2, No. 1102: Narrated by Abu Huraira: The Prophet said: "Whoever takes the money of the people with the intention of repaying it, Allah will repay it on his behalf, and whoever takes it in order to spoil it, then Allah will spoil him"
17	Waive of debt judgement (principal - LIP)	None. Maintain the amount of judgement debt inclusive of late payment charges Reduced the amount of judgement debt of late payment charges Eliminate judgement debt on late payment charges	Through mutual agreement and reduced to writing Through contractual provision, mutual agreement and reduced to writing	Imam Muslim, Sahih Muslim, The Book of Jihad, Chapter 17, No. 1084: Abdullah bin 'Amr bin Al-'As narrated: The Prophet said: "All the sins of a Shahid are forgiven except debt" Al-Bukhari, Sahih Al-Bukhari, The Book of Sales (Bargain), Chapter 11, No. 994: Narrated by Jabr bin Abdullah: The prophet said: "May Allah's mercy be on him who is lenient in his buying, selling, and in demanding back his money" Al-Quran (57:18): "Surely those men who give Sadaqah (alms) and those women who give Sadaqah and have advanced a good loan to Allah, for them it will be multiplied, and for them there is a noble reward"

## SIGNIFICANCES & IMPACTS

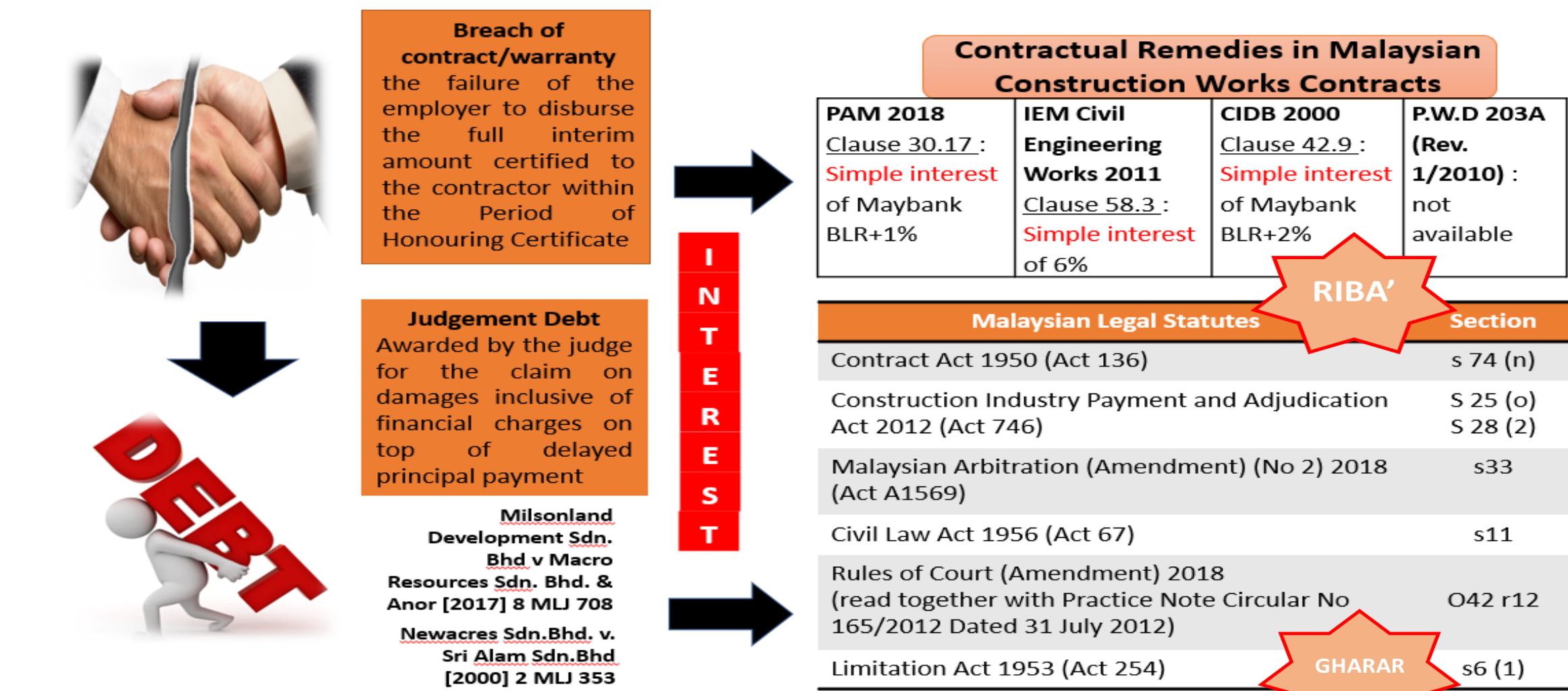
### SHARIAH IN BUILT ENVIRONMENT RESEARCH



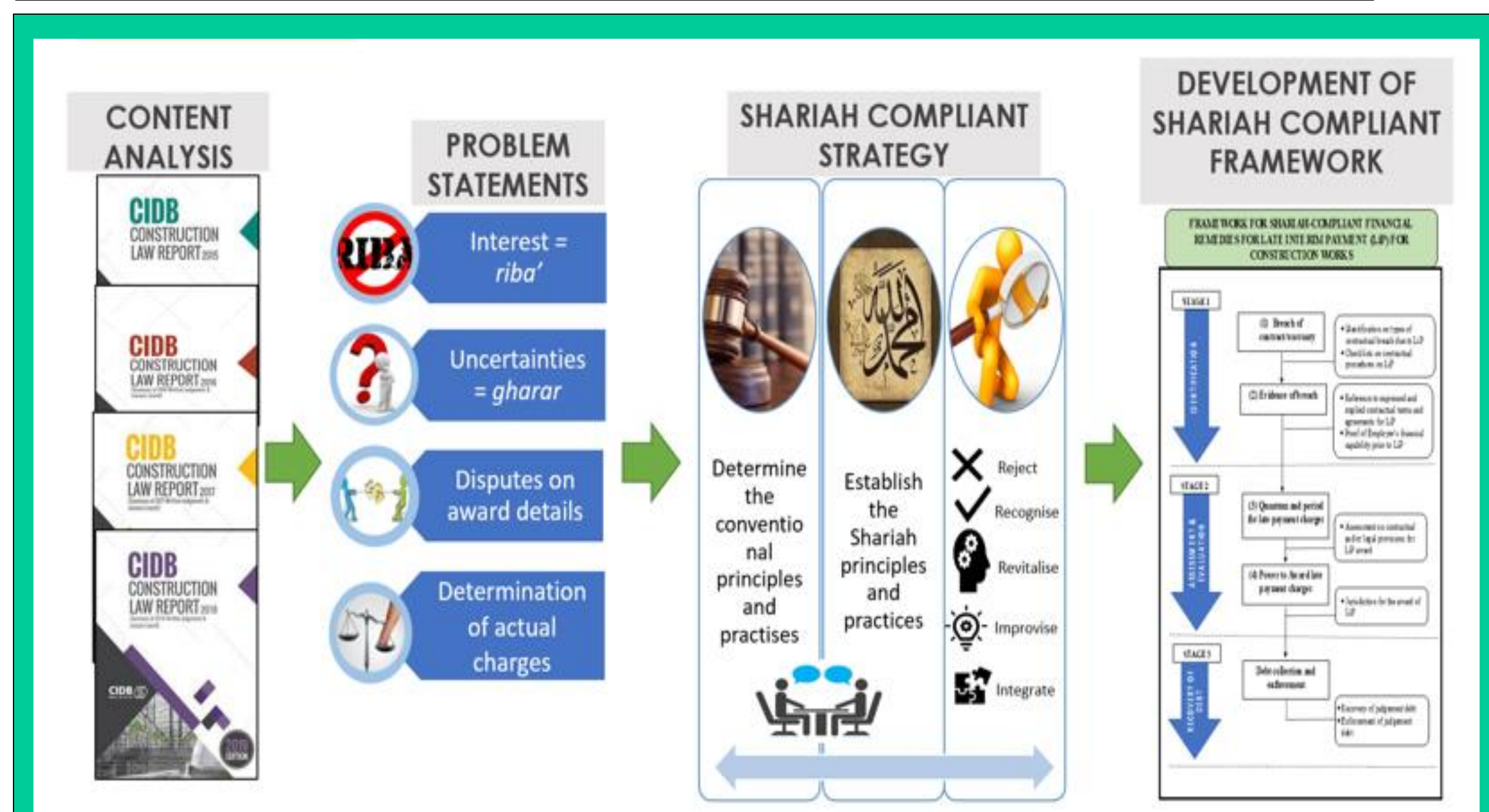
### NATIONAL, INDUSTRY & UMMAH



## INTRODUCTION



## METHODOLOGY



## SHARIAH COMPLIANCES

- Interest (Riba') free
- Reduced uncertainties (Gharar)
- Fair ('Adl) to all parties
- Freedom of contract (Huriyyah al-Taaqud)

## COMMERCIALIZATION & NOVELTY

- Supplementary provision in other construction works contracts down the supply chains by replicating the procedures and checklists
- Alternative guidelines for the award of a construction dispute resolutions regarding late payments

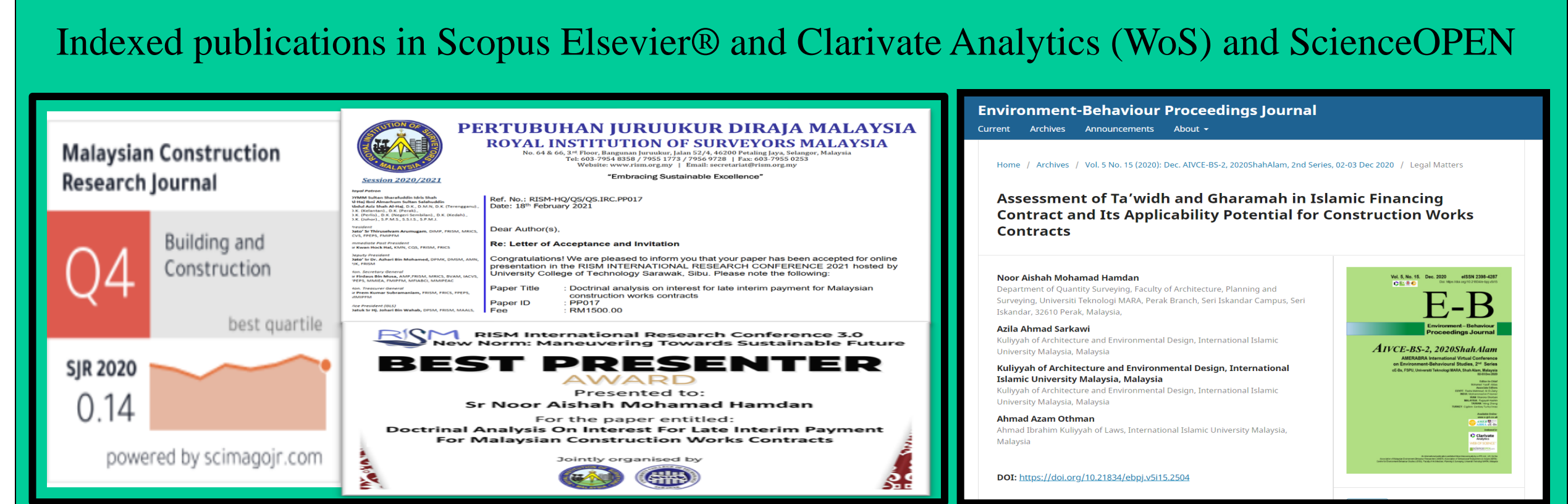
**Aim**  
To develop a Shariah compliant framework for financial remedy for late interim payment in construction works.

**Novelty & Uniqueness**  
To date, there is no Shariah compliant financial remedy framework that cater specifically for construction works contracts in relation to late payment by the Employer towards the contractors.

This framework could be harmonised with the existing legal guidelines and statutes: CIPAA 2012 – S25(o) Contract Acts 1950 – S75 Rules of Court 2012 – O4212A I-Arbitration Rules – Rules 6 (g)(i)



## AWARDS :: PUBLICATION



"LEADING INNOVATION"