

## UNFAIR CONTRACT TERMS IN MALAYSIAN ISLAMIC BANKS: EMPOWERING BANK CONSUMERS BY ISLAMIC EDUCATION ETHICS

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### Abstract

**Purpose of study:** The purpose of this study is to examine the importance of Islamic education ethics-based on the objectives of Shariah (*maqasid al-Shariah*) to bank consumers in raising their knowledge about their contractual rights and obligations since better-decision making empowers them to avoid unfair contractual terms in transactions with Islamic banks and manage their financial affairs responsibly.

**Methodology:** Using qualitative analysis, this study reviews previously selected literature on Islamic education ethics and applies *maqasid al-Shariah* as a benchmark to determine the importance of Islamic financial literacy education. To emphasize such importance, the contents of both primary and secondary data are analyzed which include: official websites of Bank Negara Malaysia, books, academic journals, newspapers, and related industry reports.

**Result:** Results shows that the Islamic educational ethics based on *maqasid al-Shariah* empowers bank consumers to improve their reading habits in making informed choices to assert their rights by being aware of the content and fairness of contract terms towards raising their financial literacy standard in avoiding unfair contractual terms and be equipped with Islamic financial knowledge and skill to demand for equitable contractual terms.

**Applications of this study:** This study is important to Malaysian bank consumer empowerment since applying Islamic education ethics contributes to sound financial choice and better-decision making of whether or not to contract with IBs since having no basic knowledge of contractual rights and obligations with Islamic banks, then they have little defense against one-sided and unfair contractual content.

**Novelty/Originality of this study:** Because bank consumers do not read their contracts; this study promotes Islamic education ethics in empowering bank consumers to improve financial literacy in avoiding unfair contractual terms while making informed financial decisions and increase acceptability of Islamic banking products. This study contributes to the literature on Islamic ethics specifically on Islamic financial literacy educational ethics base on *maqasid al-Shariah*.

**Keywords:** Bank Consumer Empowerment, Islamic Education Ethics, Islamic Banks, Unfair Terms, Malaysia, *Maqasid al-Shariah*.

### INTRODUCTION

Over the past thirty years, the Islamic banking industry has presented an ever-widening set of innovative Shariah-compliant financial products to Malaysian bank consumers from simple *murabahah*-base home financing to more complex *musharakah mutanaqisah* or the combination of *musharakah mutanaqisah* with *ijarah muntahiyah bittamleek* home financing (Haneef, 2016). Furthermore, the increased number of global Shariah-compliant assets and the rapid pace of product innovation are also related to the growth of Islamic banks (IBs) and their need to control liability in the marketplace (Noor & Nor, 2016). However, with bank consumers being overwhelmed with credit opportunities provided by Islamic banks (IBs), there is considerable discomfort regarding the widespread use of standard form contracts underpinning the transactions made between IBs and bank consumers. Although standard form contracts promote the smooth functioning of the economy in relation to efficiency and transaction-cost reducing benefit, the concern is that these contracts are biased towards IBs and so may include unfair and one-sided terms since bank consumers often do not read or understand the contract terms (Bakos et al., 2014). The unusual weakness of bargaining power on the consumer widens the disparity of unequal bargaining power existing between both contracting parties (Thal, 1988). Consequently, modern consumerism today is pegged by the problem of lack of truly informed and consensus consent in consumer contracts, due to unfair business practices that suppliers apply while advertising and marketing their products, during and after the purchase of products (Radoncic, 2014). In a nutshell, the main cause of the problem of unfair contract terms is the use of 'standard form' contract or 'contract of adhesion' made on pre-formulated and non-negotiable contract terms that are overly protective of the business concerned by minimizing their risks and exempt from liability (Sharrock, 2010).

It is perhaps not surprising that bank consumers do not read the T&Cs that they sign and disempowered themselves by accepting blindly the long and complex contractual content which provides the possibility for IBs to include unfair contractual terms. Part IIIA of the Malaysian Consumer Protection Act 1999 states that in any agreement with a bank consumer, "a term should be deemed unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer". Empowering the consumers through education or

disclosure of the information is often used as a means to tackle asymmetries of bargaining power between consumers and businesses (Mak, 2012). According to Mak (2012), consumer empowerment depends on their ‘financial literacy’ which entails the ability to understand complex financial products and their knowledge of financial products and services in assessing the risks in making informed decisions regarding the suitability of financial products to their financial situation. In this manner, financial literacy means “the confluence of financial, credit and debt management and the knowledge that is necessary to make financially responsible decisions that are integral to everyday lives” (Zucchi, 2018). Financially literate individuals having the required attitude, behaviour and knowledge will be rational in managing themselves to manage their cash and related subjects to enable them in maintaining their lives (Er & Mutlu, 2017).

On the other hand, Islamic financial literacy is the ability to manage financial resources according to the “stock of knowledge acquired through education, skill, and experience specifically related to Islamic finance concepts and products” as stated by Islamic teachings (Abdullah & Chong, 2014). Islamic finance education is the process by which people improve their understanding on the concept of money in Islam, Islamic financial products, services, concepts, zakat, Islamic inheritance, permissible and non-permissible financial transactions and services, prohibited elements in Islamic financial system to name a few (Lahsasna, 2016). The aim of Islamic financial literacy and education is to ‘increase the level of financial literacy to transform human behaviour, inculcating good financial behaviour and discipline to be practiced in daily lives’ by adopting the educational ethics of Islam based on the ethical principles of universal values as offered by the Quran (Hashim, 2014). Lack of awareness by individuals or having a low level of know-how on Islamic financial systems and lack of Islamic financial literacy will result in the perception that financing transactions can only be performed according to the conventional system of banking (Er & Mutlu, 2017) whilst being ignorant on the fundamental principles of Islamic finance such as the prohibition of charging interest (*riba*), uncertain interest (*gharar*) and gambling (*maysir*) (Antara et al., 2016).

Given the non-existence of conventional financial literacy curriculum resource that addresses financial literacy focusing on Islamic finance concept, hence this paper attempts to fill such gap by constructing the importance of Islamic educational ethics for Islamic financial literacy. Consequently, this study examines the potential of Islamic educational ethics and argues that the bank consumer behaviour informed by such ethical values which are geared towards the objectives of Shariah (*maqasid al-Shariah*), may bring about a different banking system characterized by equal bargaining power, fair contract terms, less disparity in wealth and income, and more genuine human happiness.

This study is structured as follows: Section 1 is an introduction to the study. In section 2, the review of literature introduces the concept of financial consumer empowerment via financial literacy as developed by literature. Section 3 describes the methodological framework of the study. Section 4 describes the Islamic education ethics on financial education and the development of the consumer empowerment agenda with an emphasis on financial literacy in Malaysia before 2005 until the present time. This section also illustrates the importance of Islamic educational ethics as well as constructing the educational ethics of Islamic financial literacy and education (IFLE) as guided by the higher objectives of Shariah through values-based banking (VBI) as a tool mechanism in protecting bank consumers from unfair terms in consumer contracts. In addition, Section 4 analyzed the findings of this study and discussed the new directions of Islamic educational ethics by improving the IFLE landscape of bank consumers in Malaysia. Finally, Section 5 concludes the study with recommendations to encourage IBIs to empower consumers through ‘consumer activism’ and consumer awareness based on the educational ethics of Islam, towards the realization of justice and fairness in protecting their interests from unfair contract terms and empower them to make informed financial decisions.

## LITERATURE REVIEW

### The Rationale of Financial Literacy for Financial Consumers

Financial literacy has been an important tool to strengthen the financial resilience of bank consumers, especially where they are disadvantaged from relative power compared to IBs that they deal with (Ali, 2013). Financial knowledge or financial literacy which is “a type of investment in human capital, has important implications for welfare and policies intended to enhance levels of financial knowledge in the larger population” (Lusardi & Mitchell, 2014). Being financially literate will provide consumers with the necessary knowledge, skills, and tools to make informed financial decisions with confidence whilst providing them with the capability to strengthen their well-being by accumulating, managing and preserving wealth (Lantara & Kartini, 2015). There are many benefits of being financially capable for life-long financial sustainability which includes: empowered consumers are able to protect themselves from unfair market practices by taking necessary actions when treated unfairly by financial providers, consumers can demand better financial services, active consumerism contributes in driving efficiency in the financial services industry and consumers’ participation in the financial system which supports the financial inclusion agenda towards raising their standard of living (Ali, 2013).

To comply with the higher objectives of Shariah (*maqâsid al-SharĒ’ah*) of promoting justice and welfare in society, “Islamic banks have to participate in improving the level of financial literacy of their customers to ensure the financial literacy program of the bank educates the customer on how to manage his or her spending and how to fulfil their financial obligations responsibly, such that the old way which is based on caveat emptor (let the buyer beware) has to stop” (Haneef & Smolo, 2014). In relation, to compliment product innovation by IBIs, BNM encouraged codes of good

conduct and best practices as well as other types of self-regulation related to financial consumer protection such as promoting financial literacy program, writing consumer contracts in plain language and without legal jargon, and promoting risk-sharing in business undertaking (Noor et al., 2017). Furthermore, it has been the corporate social responsibility of Islamic financial institutions and businesses to develop financial literacy on Islamic products and debt management based on Islamic business ethics on the demand to justice and brotherhood (Hassan & Salma, 2009). More emphasis is also required to maintain the quality of service, avoid actual banking practices drifting away from core principles of Islamic finance, increase consumer awareness especially the affluent younger generations and financial literacy to sustain the link of Islamic banking and the real sector (Mohieldin, 2012). Being financially literate is also important among youths or students during their transition into adulthood since they need to understand basic financial concepts like credit management or balancing chequebooks and, make financial decisions such as investment and saving money for their future (Rahman et al., 2018).

Financial illiteracy has a negative impact on personal and family finance in processing economic information to make informed decisions on household finances, since shortfalls may lead to making serious and irreversible financial decision mistakes closely tied to savings, retirement planning and wealth accumulation (Lusardi & Mitchell, 2011). The shortfall of financial literacy is likely to impact financial capability in making ends meet, managing financial products, and possessing skills and knowledge in making financial decisions or provisions for unexpected emergencies (Lusardi, 2011). Moreover, financially illiterate people would impact their retirement wealth and investment due to lack of understanding of simple economics to carry out computations on compound interest, hence would cause them to make suboptimal financial decisions (Hastings & Mitchell, 2011). Financial literacy will influence the behaviour of individuals since less financially literate individuals may have trouble to deal competently with their financial affairs (D'Acunto et al., 2015).

Financially literate bank consumers on Islamic banking and finance matters can collectively increase competition in the IBIs whilst motivating them to operate in a responsible, transparent and efficient manner (Abuznaid, 2006). Empowered bank consumers enhance market discipline and promote financial stability to Islamic Banking Institutions (IBIs) (Sairally, 2007). Thus, IBIs would be more competitive internationally to provide quality goods and services for their customers, to the extent of supporting long-term financial planning for banking consumers (Lusardi & Mitchell, 2014).

### Islamic Ethics and Education

In western vocabulary, the term 'ethics' was derived from the Greek 'ethos' which means "appropriate and rational", whereas in Islamic thought the comparable word for ethics in Islam is *akhlaq* knowledge of morality (*ilm-ul-akhlaq*) and is called the "science of ethics" which means "good character" (Siddiqui, 1997). In Islam, the social and moral dimension of education is about understanding and learning to follow the divine law or Shariah which integrates political, social and economic life of individuals and society at large into a common religious world view (Halstead, 1995). Concern for acquisition and dissemination of knowledge is deeply rooted in Islamic culture to the extent that Quran makes it compulsory (*fard*) on believers to acquire education together with the concepts of unity (tawhid) and trusteeship (caliphate) that carry substantive implications for the need of education (Hussain, 2004). Knowledge-seeking is identified as worship (ibadah) and obligatory for every man and woman in Islam since it is an important aspect of the Islamic way of life (Halstead, 2004). Islam recognizes that knowledge is key to success and has a significant impact on the economic, political and well-being of humanity.

The goal of "education in Islam is to produce good human being (*al-insan al-salih*) capable of delivering their duties as servants of Allah and His vicegerent (*caliphate*)" (Yasin et al., 2013). Education influences in inculcating goodness in individuals (Al-Attas, 1980). The debate on developing education should start with the focus on the Islamic principle of public benefit (*maslahah*) as an ethical filtering mechanism and on the responsibilities of concerned parties as part of the ethical education process (Rahman, 2003). The practice of knowledge relates to ethics and morality through promoting good and forbidding wrong, which the Quran refers to as '*amarma'rufnahimunkar*' with consequences. According to Gulen (1999) since the reasons behind man's creation are to see, understand and teach learned knowledge to others, those who neglect to learn and teach are as good as being dead even if in reality they are alive (Agai, 2002). Islamic education presents a continuous effort in delivering knowledge, skill as well as emotional experience based on the Quran and Sunnah of the Prophet (peace be upon him) (Halim Tamuri, 2007). The Quran while respecting humanity gives superiority to the class of educated individual who knows.

Muslim scholars defined the Islamic philosophy of education to comprise of three concepts: (1) *tarbiyyah*, emphasis on the education process is on individuals' physical and intellectual development; (2) *ta'dib* emphasizes on nurturing good human beings capable of noble and ethical conduct approved by Islam in conducting and positioning himself justiciable in society; and (3) *ta'lim* where the basis for education process is to teach and learn (Yasin et al., 2013).

Most important of all, all effective teaching and learning from the Islamic perspective must be value-based which incorporates an ethical dimension of education in making it a powerful vehicle for character and moral building in achieving the real purpose of education in Islam. By acquiring knowledge would bring individuals closer to God and in which it must be linked to values and goals of spreading truth and justice. The Caliph has to instill and practice Islamic values in real life by being faithful and pious. The Prophet Muhammad (pbuh) also stressed the reward in acquiring

knowledge that: “He who acquires knowledge acquires a vast portion that anyone going in his way to search of knowledge, God will make easy for him the way paradise”.

### Causes and consequences of non-readership

It has become a common phenomenon for consumers not to read standard form contracts in consumer transactions. Standard scholarly commentary on consumer contracting has found that the relevance of standard form contracts has been undermined by the overwhelming evidence that consumers do not read their standard form contracts since the fine print constitutes a reasonable challenge to unfair deals (Wilkinson-Ryan, 2017). Aleecia (2008) estimated that the average reader would require around 154 hours of reading time dedicated to reading privacy policy alone (McDonald & Cranor, 2008). Moreover, recent empirical research has found that “individuals spend almost three times more time to review standard form contracts when less information is provided post-contract” and that there exists a relationship between standard form contract readership and contract performance based on the greater time spent reviewing such contract (Eigen, 2012). As such, since it is onerous for consumers to read the fine print and lengthy contract terms, providing terms post-contract has become preferable to suppliers (Posner, 2010). The non-readership or “unreadness” of form contracts provide a leeway for drafters to engage in unfair trade practices by enforcing unfavorable or unfair terms (Ben-Shahar, 2009).

Many causes account for the universally unread contracts or non-readership phenomenon, one of which is stated by Lord Reid in *Suisse Atlantique Societed’Armenent Maritime SA v. NV Rotterdamsche Kolen Centrale* (1967) that significant ‘inequality or superiority of bargaining power’ as a causal factor for non-readership (at 406):

*“In an ordinary way the customer has no time to read them, and if he did read them he would probably not understand them. And if he did understand and object to any of them, he would generally be told he could take it or leave it. And if he then went to another supplier the result would be the same. Freedom of contract must surely imply some choice or room for bargaining. At the other extreme is the case where parties are bargaining on terms of equality and a stringent exemption clause is accepted for a quid pro quo or other good reason.”*

Second, the lengthy, unreadable pages with terms and conditions in fine print are “annoying, alienating, and even degrading” to the extent of degrading the institution of contract for individual autonomy (Ben-Shahar, 2013). Fine print or small print is prevalent which often include terms and conditions of the contract or other relevant information in footnotes or a supplemental document that the drafters do not want to call for buyers’ attention and although it is essential to read even understand them when entering into an agreement, in reality, people do not read them since there is little opportunity to negotiate over the terms (Wilkinson-Ryan, 2013).

Other prevalent factors contributing to non-readership include: contract terms are too long and time-consuming to read through, the terms are all the same, the ‘take-it-or-leave-it’ terms give no choice but to agree, terms might not be important, consumers trust the business as being reputable, and the contract terms are irrelevant (Plaut & Bartlett, 2012). This pragmatic reality of the “unreadness” of a contract is because people find reading is boring, alienating, time-consuming, but most of all is pointless since it is the product that people want and not the contract (Ben-Shahar, 2009). People do not read the contracts due to the following reasons: even if they do read it is not worth the time since they would not understand them, reading the terms would not lead to access to the supplier that impose fairer terms, anything harmful would be unenforceable, the company has the power that over buyer that buyer has to adhere to terms, and buyers believe that no misfortune would befall onto them (Radin, 2012).

### METHODOLOGY

This study has adopted a qualitative analysis that reviews previously selected literature on Islamic education ethics and applies *maqasid al-Shariah* as a benchmark in determining the importance of Islamic educational ethics. To emphasize such importance, the contents of both primary and secondary data are analyzed which include: official websites of Bank Negara Malaysia, books, academic journals, newspapers, and related industry reports.

### RESULTS AND FINDINGS

#### The Importance of Islamic Financial Education in Islam

Islam is the religion of knowledge and it becomes the religious duty of Muslims to seek knowledge ‘from cradle to grave’. This study argues that the most effective tool in protecting bank consumers from unfair contract terms in IBs is through IFLE based on Islamic ethics. Applying these Islamic financial concepts ensures that bank consumers understand Islamic finance, inculcate good financial behaviour and develop skills to enable them to function as socially responsible consumers.

Financial literacy in Islam is important because it is a ‘religious duty for Muslims to care about the prohibition of *riba*, *maysir* as well as *gharar* because only consumers know best the details of their financial affairs’ (Siddiqui & Usmani, 1994). Creating a ‘financially literate Muslim generation globally by financial literacy education curriculum based on Islamic education ethics will provide them with skills and initial knowledge in managing their financial well-being, which is vital to empower the economic well-being of the ummah towards an empowered Islamic civilization (Ahmad,

2010). The growth in Islamic banking and finance can be seen through the expanding numbers of products and services that are Shariah-compliant such that the substance of contract for Islamic products should be looked into due to its implication for the realization of *maqasid al-Shariah* (Dusuki, 2009).

Bank consumers should follow Islamic ethics on education towards inculcating responsible financial behaviour in forming their attitude towards the consumption of Islamic banking goods and services. This indicates that it is important for banking consumers to be equipped with Islamic financial knowledge and skills to gain the benefits of economic growth and be aware of the content as well as the quality of T&Cs in Islamic banking contracts. Such a positive attitude of the bank consumers which is guided by Islamic ethical values will be rewarded in this world and the Hereafter. Islam has also detailed measurements to establish a consumer-friendly environment in the market place to curb trade practices that affect consumers or violate any of their basic rights. This indicates that trade practices that cause harm to consumers such as *riba*, *hilah*, cheating, unfair contract terms to name a few, are strictly condemned by SharĒ'ah while practices that protect the necessary interests of consumers are encouraged. The Prophet Muhammad (peace be upon him) is a role model of an ideal Muslim consumer. He was a mercy to all mankind. The Quran (An-Nahl 16:64) has mentioned this that (as translated by Abdullah, 1938):

“{And We sent down the Book to thee for the express purpose, that thou shouldst make clear to them those things in which they differ, and that it should be a guide and a mercy to those who believe}”.

The institutionalization of Islamic banks is aimed at operating according to the tenets of Islamic Muamalat principles, which are identified as the avoidance of *riba*, *maysir*, *hilah*, and *gharar* whilst promoting the ethical business practices like fairness, just and transparency (Razak, 2015). In practice, the Quran (Al-Baqarah 2: 282) requires important T&Cs of contract including the price, deliverability, quality, quantity, and the existence of goods and services to be fixed and reduced in writing to minimize the risk of uncertainty. It is important to read the T&Cs of a contract since reading them would add to bank consumers' knowledge about their respective rights and obligations, and inform them on other relevant aspects related to the consumption of banking goods and services such as dispute resolution, delivery information, etc. Since all acts of individuals, including Islamic banking activities, should realize *maqasid al-Shariah*, it makes IFLE more important for Muslims.

In increasing awareness on consumer rights to a contract, Islamic financial education is important to bank consumers when they seek the Islamic financial system in obliging their finances in a Shariah-compliant manner rather. Hence, bank consumers are responsible to seek an Islamic financial education and literacy due to the following reasons: (a) bank consumers are solely responsible to take care of their hard-earned money; (b) they themselves best know the details of their financial affairs; (c) they must know the basics of financial products that match their financial objectives of wealth creation or accumulation and; (d) it is their religious duty to understand Islamic finance for the prohibition of sins such as interest (*riba*), gambling (*maysir*) and uncertainty (*gharar*) (Ahmad, 2010).

### **Constructing a Financial Educational and Literacy Ethics of Islam**

Islam as a way of life propounds the guiding principles for all aspects of human life, including the financial aspect. The term Islamic finance refers to financial activities that conform to Shariah law. The growing importance of Islamic banks and Shariah-compliant financial innovation makes it important that Islamic banking players have a deep understanding of product knowledge. The Quran provides many guiding principles that bear the substantive importance of knowledge and as a source of ethical guidance. Read (*iqra*) was the first word revealed in the Quran indicating the obligation on every Muslim to seek knowledge and in the process to educate themselves and be educated (Al-'Alaq 96:1-5). It is revealed in the Quran that those who are knowledgeable are not equal to the ignorant such that only people with understanding will be mindful and receive admonition (Az-Zumar 39:9). Allah will grant wisdom to the chosen ones and to whom wisdom is granted certainly receive an abundant reward, and only those with understanding and intelligence will take heed (Al-Baqarah 2:269). The priority of being educated has also been manifested by the Prophet Muhammad (pbuh) as “only two persons is enviable: those whom Allah bestowed wealth and spend it righteously, and those Allah granted wisdom which he adjudges and teaches others”. Islamic teaching also discourages exploitation, unfair practices, the concentration of wealth and ignorance in financial management. These concepts may influence attitudes, behaviour, and values of people's ethical beliefs in dealing with Islamic finance.

However, the core and fundamental axiom underlying the educational ethics in Islam, which is also the unique feature of Islamic banking is the belief in the unity and oneness of Allah or *tawĒd* (Iqbal & Mirakhor, 2011). *TawĒd* means “unification” or “asserting oneness” but with reference to Allah it means “realizing and affirming Allah's unity in all of man's action which directly or indirectly relate to Him, He is omnipotent, omnipresent and the sustainer of the world and mankind” (Bhat, 2018). This principle includes the recognition that all creation has one Creator, Allah such that He ultimately owned everything. It also protects a believer's morality by making him open-minded, tolerant and caring while promoting good morals towards constructing an ideal society (Bhat, 2018). Hence, in fulfilling an effective role as the caliphate of Allah, the human need to work hard toward social unity to construct their society and to preserve such unity.

This concept also defines the status of man as a caliphate or God's messenger on earth to bring about change beneficial to humankind with equity, justice, benevolent and prosperity (Quran 57:25). At some point in life, humans will be called

to account to Allah on their worldly deeds in the life in the Hereafter and be judged accordingly. The unity of Allah puts emphasis on being accountable in the relationships of the individual to Allah, to fellow individuals and the whole of humanity (Raman & Bukair, 2013). To achieve the promised rewards in the Hereafter, all Muslims must verily fulfill the will of Allah such that all deeds must be in line with the teachings of Islam. In general, individuals are expected to be socially responsible to other community members to the extent of putting community welfare above and beyond individual rights.

The concept of the unity of Allah gives rise to broader accountability which includes the spheres of socio-economic, business management, business shareholders, politics, economy, and financial dealings. In relation, by accepting this affirms that all business transactions must comply with the Shariah rules and principles. Shariah is associated with many positive attributes. The higher objectives of Shariah or *maqasid al-Shariah* is found based on individual benefit as well as the community, whereby the Shariah laws are designed in protecting these benefits as well as facilitating improvement and perfecting the quality of life for humans on this earth (Kamali, 1999). According to Al-Ghazali, a prominent Muslim philosopher (died 1111), the higher objectives of Shariah or *maqasid al-Shariah* promote the “wellbeing of all mankind through safeguarding their faith (*din*), their human self (*nafs*), their intellect (*aql*), their posterity (*nasl*), and their wealth (*mal*). Whatever that ensures the safeguarding of these five serves the public interest and is desirable” (Chapra, Khan, & Al Shaikh-Ali, 2008).

One of the ultimate aims of *maqasid al-Shariah* is the preservation of wealth through its value protection which makes knowledge on property management more important than ever (Table 1). According to Lahsasna (2016) to protect property needs knowledge on IFLE such as to better manage property, wealth and finances according to Shariah law of contract, Islamic law of inheritance, zakat calculation and the prohibited trading practices in Islam. Intellect is also a gift from Allah which differentiates humans from animals. In ensuring the benefits of intellect to humanity, Shariah promotes intellect through education by making it a human right for everybody. By being educated on Islamic banking matters, it increases awareness in bank consumers to make sound decisions in spending their wealth. It also helps bank consumers to examine the quality of products and services to secure and safeguard their interests in Islamic banking transactions.

**Table 1:** Maqasid al-Shariah

Protection of Faith	→	Wealth preservation through acquisition and development
Protection of Life	→	Preservation of wealth from damage
Protection of Posterity	→	Protection of wealth through the protection of ownership
Protection of Property	→	Preservation of wealth through its value protection
Protection of Intellect	→	Preservation of wealth through its circulation

Source: (Lahsasna, 2016)

Abu Zahrah classified *maqasid al-Shariahas* “to educate the individual (*tahdhibal-Fard*), establish justice (*iqamah al-‘Adl*) and public interest (*maslahah*)” (Mohammad & Shahwan, 2013). Educating the individual is prioritize before justice and public interest since it seeks to make every individual a trustworthy messenger of Allah to benefit others and introduces the values of Shariah, and it is through educating the individual that Shariah realizes its social objectives (Kamali, 2008). Kamali (2008) also opined that the laws of Quran and Sunnah seek the establishment of justice, eliminating prejudice, alleviating hardship, promote cooperation as well as mutual support within family and society. The framework of *maqasid al-Shariah* is a promising inclusive human development policy that prevents destruction in society, enhance human development and well-being by incorporating social justice, human rights, health, income (endogenous) and educating people to be more aware of their worldly needs as well as their responsibility in protecting them (Oladapo & Ab Rahman, 2017).

Islamic financial literacy or Islamic finance education may be considered as a gift that Allah offered to His creatures, thus making education a priority for believers to bring change for the society towards becoming more just and for the better exemplified of the Caliphate. Since Allah has given humans the management of the earth to humans as the Caliphate, thus it is essential for humans to educate themselves to carry out such missions. The Quran (Al-Baqarah 2:30) has clearly stated that:

“{Behold, thy Lord said to the angels: "I will create a vicegerent on earth." They said: "Wilt Thou place therein one who will make mischief therein and shed blood? Whilst we do celebrate Thy praises and glorify Thy holy (name)?" He said: "I know what ye know not.}"

In such a relation, since Islam being a mercy for the Universe, the universal values required that the Islamic society be just and maintain harmony as an equilibrium of the earth. In effect, Islam as a “complete way of life prescribes a complete code of conduct for everyday human life in all its spheres and manifestations” (Abuznaid, 2006). In this regard, it can be deduced that in fulfilling the status as the Caliphate of Allah, knowledge, and education play a pivotal role in obtaining justice and equilibrium in the society.

#### Development of Islamic Financial Education and Literacy in Malaysia

Despite the growth of the global financial sector, the global financial crisis (GFC) of 2007-2009 persisted to happen. Among such contributing factors for the GFC is the lack of financial education and literacy in the financial markets, especially among investors and consumers (Lahsasna, 2016). At the international level, the aftermath of GFC has seen multilateral organizations like “Organisation for Economic Co-operation and Development” (OECD) and World Bank coming up with guidelines and standards focussing on “financial consumer protection” (FCP). 2011 saw the “Group of 20’s Finance Ministers and Central Bank Governors” (G20), OECD, “Financial Stability Board” (FSB) and relevant international organizations released their “10 High-Level Principles on Financial Consumer Protection”.

In 2012 the World Bank produced its ‘39 Good Practices for Financial Consumer Protection’ (GP) by financial services. Principle 9 requires financial institutions to provide a written copy on general and specific terms and conditions that apply to financial products and services. Principles 32-36 of the World Bank guidelines stipulate broad-based financial education and literacy programs to be provided by many organizations, are related to consumer empowerment and financial literacy encompassing all age groups (World Bank, 2012). Similarly, Principle 5 of OECD and G20 outlines the increase of financial literacy and awareness to make it accessible via related channels in a simple form to be easily comprehended by consumers while Principle 2 requires financial service providers to treat their customers equitably, honestly and fairly at all level of their relationship (OECD, 2011). Fair treatment to consumers should be integrated as part of good governance and corporate culture of financial service providers.

With FCP being evolved rapidly, policy approaches for such protection have also substantially increased and in 2017 World Bank expands the 2012 edition by incorporating new approaches related to a digital channel, innovative products, and business models while expanding on priority areas such as supervisory techniques, effective disclosure as well as fair business practices. The 2017 GP also includes further detail on the effective implementation of supervisory techniques and regulatory approaches. On unfair terms and conditions, the new GP prohibits financial service providers from using any unfair term or condition in a consumer agreement and if it is still used then they should be void and legally unenforceable. This GP aims to reduce the scope of financial service providers in abusing their dominant position relative to consumers based on contractual T&Cs dictated by the provider.

At the national level, the government of Malaysia and Central Bank of Malaysia or Bank Negara Malaysia (BNM) have been instrumental in empowering financial consumer through financial education by promoting financial education initiatives at the national level such as formulation of policies & setting strategic direction, setting strategic direction and identifying target groups and priority areas. The FCP and empowerment framework in Malaysia is provided by the Financial Sector Blueprint 2011-2020 which promotes economic growth by emphasizing strengthening the capacity of financial institutions, improving the overall well-being of consumers/ community, promoting financial education, and ensuring that financial institutions follow fair market practices. The government and BNM are instrumental in initiating financial education and to ‘provide the necessary knowledge, skills and tools for consumers in making informed financial decisions with confidence and by having the financial capability to do so allows financial consumers to build/ accumulate, manage and preserve wealth in strengthening their position, empower them to protect themselves against poor market practices and demand for better financial services’. In relation, BNM defines financial literacy to include an understanding of “rights and obligations of contracting parties, opportunities and the associated risks and costs as a result of participation in the financial system”.

As for the current financial literacy roadmap, in 2016 the Financial Education Network (FE Network) was established and co-chaired by BNM and Securities Commission (SC). The FE Network is responsible for articulate a five-year national strategy with objectives, strategic outcomes, and identify priority areas as well as target groups for financial literacy. It will develop a national strategy to elevate financial literacy among Malaysians with the primary focus on three main thrusts of clarity, collaboration, and commitment. According to Deputy Governor of BNM, Abdul Rasheed Ghaffour ‘clarity’ depicts a clear vision in realizing the financial well-being of Malaysians by shaping the society in having responsible financial behaviour, able to manage finances well while achieving financial security. People with a high sense of financial well-being tend to have the financial freedom of choice in enjoying life when they live within their means while making responsible financial decisions. To reach out to all Malaysians, ‘collaboration’ by stakeholders including regulators, non-governmental associations, private and public sectors and consumers to leverage on one another’s strengths and expertise in realizing the desired outcome of improving financial literacy in Malaysia. Hence, as a longer-term target, the national financial literacy strategy will be aligned under the Finance Cluster initiative of ‘Transformasi Nasional (TN50)’. TN50 is Malaysia’s new 30-year transformation plan post-2020, which charts Malaysia’s strive to becoming among the top 20 countries in the world economic development, nation well-being, and innovation.

In 2017, BNM collaborated with the Islamic finance industry to issue guidance documents to encourage Malaysia’s “Islamic financial institutions” to adopt a values-based system that generates positive social impact to help the industry into a new growth area. The adoption of ‘Values-based Intermediation (VBI)’ is expected to lift the role of Islamic banking to a higher level and strengthen the impact of Malaysian Islamic banking institutions (IBIs) towards a sustainable financial ecosystem. According to BNM, VBI connotes the intermediation function of IBIs through conduct, practices, and “offerings that generate positive and sustainable impact to economy, community, and environment, without compromising the financial returns” of the shareholders to deliver the intended outcome of *maqasid al-Shariah*.

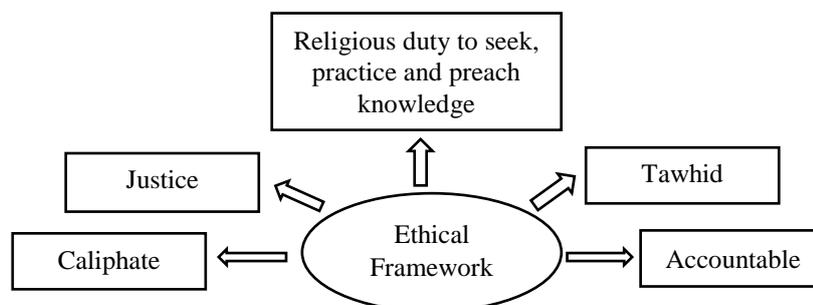
Underpinned by Shariah as its moral compass, VBI encourages the drive towards entrepreneurial mindset, customer/community empowerment, good self-governance, and ethical behaviour. The benefits expected to be delivered by VBI are: (1) greater innovation, enhanced efficiency and effective ecosystem for the financial industry; (2) improved standard of living, fair and transparent treatment for consumers; (3) realigning business focus for government with national agenda and; (4) empowering financial consumers through effective financial education while strengthening consumer protection framework; (5) strengthening financial stability function of regulators.

Thus far, according to the “President of the Association of Islamic Banking and Financial Institutions Malaysia (AIBIM), Datuk Adissadikin, only nine from the 27 Islamic financial institutions in Malaysia have adopted the VBI system”. Although the VBI concept is on a voluntary basis the manner and form to be adopted vary between the institutions. However, the adoption of VBI will have a significant impact on IBIs’ decision making as well as their banking portfolios.

## DISCUSSION

The modern theory on consumer contracts in Islamic banking is focused on the unread fine print drafted by dull, guild-captured in-house lawyers who create a contract with boilerplate language or language was taken from other firms and, often consumers are blamed for failing to read the bad terms (Hoffman, 2018). Because bank consumers do not read their contracts, Islamic banks can include unfair terms worse without lowering the price of products offered. Moreover, although info on Islamic banking product terminologies is easily accessible through various mediums, bank customers are not attempting to understand them better (Raffick, 2015). Hence, better IFLE is important for bank consumers and Malaysia’s economy since their improved financial literacy is key in helping them to make informed financial decisions and would increase the acceptability of Islamic banking products.

Findings in this study suggest that ethics related to education include the concept of *tawîÊd*, such as accountability to God, revelation as a source of ethical guidance, brotherhood, to acquire knowledge is a sacred duty, to practice and preach knowledge is another crucial obligation, justice and belief in life in the Hereafter appear to be the unique features of Islamic banking and educational ethics. Islamic educational ethics is seen as the backbone in constructing a solid foundation for future growth and prosperity of IBIs in Malaysia. In Islam, ethics in business is relevant to the way of life of Muslims which also compliments the universal ethical values (Hasanuzzaman, 2003). This study developed an Islamic financial educational framework based on five guiding principles: *tawîÊd*, the obligatory duty of Muslims to seek knowledge, practice and preach it, justice (*ÑadÊlah*), accountability and responsibility as Caliphate (Figure 1). From each principle, the practical expectations from bank consumers are expected to: (1) fight against ignorance of Islamic financial knowledge; (2) should at least acquire sufficient knowledge on Islamic finance to enable understanding the principles and mechanism of Islamic banking; and (3) acquiring Islamic financial knowledge must be linked with values and goals of *maqasid al-Shariah*.



**Figure 1:** Framework for Educational Ethics

As for the Islamic banks, by this educational ethical framework they are expected to: (1) fulfill social responsibilities by being fair and reasonable when writing contractual terms; (2) ensure form and substance of contract are shariah-compliant and shariah based; (3) transparent, accurate and full disclosure of material information so that no party has the advantage over the other; (4) fulfill their contractual obligations; (5) avoid exploitation and unfair contract terms; and (6) to innovate bank products that complies with *maqasid al-Shariah*.

Islamic banking education would create literacy on both IBs as the seller of banking products and bank consumers as buyers of products, to be rational and reasonable in setting the T&Cs of the contract which allows them to act fairly with each other. Rational also means the ability to identify self-interest, while reasonable when they acknowledge fairness and terms of a contract, even at the cost of their interest. IBS has a duty of care to educate bank consumers on product knowledge, and their underlying Shariah principles, This ethical conduct requires IBs to also have a knowledge of their duty to observe high ethical standards and wider accountability to consider the wider impact of the transaction financed, to extend beyond maximizing profit for shareholders to the social or other consequences of such actions. Rational bank consumers would acquire product knowledge and be aware of their rights in ensuring a fair outcome of the contract with IBs.

Another central theme concerning Islamic educational ethics is justice or fairness. Bank consumers as borrower or buyer, due to their limited options to shop around for better contractual terms, are not negotiating under fair terms. Bank consumers, due to unequal bargaining power and exploitative financing structures, are not given a fair chance to negotiate for better contract terms. Fairness requires IBs to provide truthful and full disclosure of information about the product, its type, and cost. Bank consumers need to know the subject matter of any sales contracts which is considered as one of the conditions that validate a contract ([Haneef & Smolo, 2014](#)).

Islamic banking education framework also focusses on the role of Caliphate on the thrusts of integrity, morality, and trust, such that all contractual dealings be governed by rules of fair dealing and justice. However, in practice critics claim that IBs lack transparency when offering their products. They often show exciting product highlights to entice bank consumers but hide less exciting and onerous terms in footnotes and fine print under 'other terms and conditions apply'. Even if such contractual offerings are legally permissible but not many consumers read or understand the legalese agreement even if they read them. In Islam, such practice is unethical; although it may be good for IBs it may not always be good for broader social goals. Islamic banking education will create awareness and literacy on the consumer to be aware of their rights and for IBs to avoid exploitation in terms of unfair terms. The European Commission report (2016) provided some potential solutions in motivating consumers to read T&Cs before making a purchase which include: 'increasing transparency' by shortening and simplifying the T&Cs, as well as 'creating effortless awareness' by adding a quality tag to the business entity with the presence of the relative consumer association logo of the respective country accompanied by the statement like "these T&Cs are fair" ([Elshout, Elsen, Leenheer, Loos, & Luzak, 2016](#)).

IBs are under a duty of care to avoid uncertainty in contract terms (*gharar*), including the prohibitions against unethical conduct, as well as to achieve the goals of social justice that characterize Islamic banking. They need to educate bank consumers on the limited scope of debt financing under Shariah. IBs should also be transparent and accountable when offering credit facilities. Similarly, bank consumers who require credit must be responsible for ensuring that they do not acquire debt impulsively. Moreover, BNM as financial regulators in Malaysia also has the responsibility to ensure both IBs as sellers of product and buyers (bank consumers) conform to ethics on good governance. IBs need to be responsible and innovative in bringing about new Islamic banking offering which has understandable risks and exposure and transparent disclosure of information written in short and simple language. Bank consumers need also to be responsible for reading and understanding agreements to play a decisive role to be prudent and aware of the risks involved. Above all, both IBs and bank consumers need to respect property rights and contractual obligations in the pursuit of the Caliphate of Allah.

The concept of *tawfīd* implies that Allah is the only source of value and norms in Islamic banking operations, such that by acquiring knowledge would bring individuals closer to Allah. Muslims follow the guidance of Allah enthusiastically on the belief that it will help bring them closer to Allah in guiding them to attain happiness and success in this life and the Hereafter. In other words, the operations of IBs should be aligned with *maqasid al-Shariah* and Islamic duty of care by embracing environmental, social and moral standards towards the protection of human interest in the world and Hereafter.

The idea of combining modernity and creative intellectual models of thought, within the *maqasid al-Shariah* system of Islam with a focus on the central role of ethics in financial education, is a unique approach. Islamic banking education and literacy when pursued and practiced with humility would lead to dignity, justice, and IBs being responsive to more discerning demands of bank consumers. Proficiency in Islamic banking will contribute to greater consumer empowerment in making competent financial decisions.

## CONCLUSION

To summarise, this study has sought to explain the importance of Islamic finance education in understanding Islamic finance, of which responsibility primarily rests upon the shoulders of the banking consumers themselves. It is important for banking consumers to raise their understanding of Islamic finance because it is a religious duty. If banking consumers have no basic knowledge of their rights and obligations in T&Cs of Islamic banking consumer contracts, then they have little defense against one-sided contracts that contains unfair contract terms.

Financial education and literacy play a key role in BNM's mandate as a financial regulator in ensuring adequate FCP. It has also been an important tool to strengthen the financial resilience of bank consumers, especially where they are disadvantaged from relative power compared to IBs that they deal with. Improved financial literacy knowledge has a profound impact on bank consumers as well as their ability in providing better future financial management while avoiding the unfair content of Islamic banking consumer contracts. Recently, emerging trends in bank scandals and turmoil in financial markets are becoming more profound for bank consumers to understand basic Islamic finance in exercising their rights to fair, reasonable and just terms while avoiding the setbacks of debt. Bank consumers need to have the knowledge to know about their rights and obligations in the contractual terms and conditions (T&CS). Although bank consumers have to decipher more complex financial products of IBs knowledge on Islamic finance will empower them to make informed choices and ready to assert their rights by being aware of the content and fairness of the T&Cs. Even if the task is not easy but a better understanding and more knowledge on Islamic finance can ease such burden tremendously.

This study offers a solution to improve bank consumers' reading behaviour by adhering to Islamic educational ethics. Bank consumers need to seek financial knowledge guided by values of Islamic educational ethics and *maqasid al-Shariah* to raise their standard in looking after themselves. Bank consumers need to be financially literate and be equipped with Islamic financial knowledge and skill to manage their financial affairs responsibly in IBs. This may also contribute to sound financial choice and better-decision making by banking consumers whether or not to contract with IBIs.

### LIMITATION AND STUDY FORWARD

Islamic education ethics is an added value and not the only solution to empower bank consumers to be aware of their contractual rights and obligations towards negotiating for fairer contract content with Islamic banks. However, this study acknowledges that Islamic education ethics is central in producing responsible and ethical bank consumers as well as to develop effective consumer protection from unfair terms.

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