



Unfair Contract Terms in Malaysian Islamic Banks: Empowering Bank Consumers by Islamic Financial Literacy via Selected Ethical Framework

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Abstract

For too long, Malaysian bank consumers have been at the losing end due to unfair contract terms that are disproportionately biased favoring the Islamic banks and they have no alternative but to accept those detrimental terms or risk having their financing application be rejected. However, bank consumers seldom read the standard form contracts that Islamic banks offer before signing them. This paper aims to explore the role of Islamic financial literacy in educating bank consumers to avoid unfair contract terms in Islamic banking contracts. Adopting the qualitative method through content and comparative analysis methodology, this study provides an exploratory analysis on selected ethical literacy framework based on *Maqasid al-Shariah* to help integrate literacy to bank consumers which include Islamic education ethics, *Maqasidic* leadership model, Multidimensional model and Madani ethical framework introduced by the 10th Prime Minister of Malaysia, Anwar Ibrahim. Findings of this study conclude that the no reading problem of the standard form banking contracts by bank consumers could be improved by adopting *Maqasidic* Islamic financial literacy ethics. These *Maqasidic* Islamic literacy ethics empower bank consumers to apply their duty to read and be responsible to report unfair contract terms to Bank Negara Malaysia. This study suggests Islamic Banks to practice sustainable consumer banking by drafting fair contracts and strike out detrimental contract terms since responsible treatment to bank consumers ensure and generate banking growth. This study is important to government policy since sustainable and ethical banking practices on bank consumers help generate growth in the Islamic banking sector in Malaysia.

Keywords: Islamic financial literacy, empowering bank-consumer, *Maqasid al-Shariah*, sustainability of Islamic banks.

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1. Introduction

Standard form banking contracts allow Islamic banks to one-sidedly prepare a template set of contract terms in relation to the supply of banking goods and services without prior bargaining with bank consumers. The terms and conditions of standard banking contracts explain the nature and extent of the relationship between bank consumers and Islamic banks. These legal documents also explain the intended use of the banking services or products provided by the banks. For too long, Malaysian bank consumers face unfair contract terms heavily favoring Islamic banks, leaving them with no choice but to accept these terms or risk rejection of their financing applications.

Through the years, Bank Negara Malaysia (BNM) as the financial regulator has monitored unfair contract terms in standard consumer contracts of Malaysian banks. Table 1 below shows the existence of unfair terms during BNM's Consumer and Market Conduct Department (CMCD) thematic review from 2016 to 2019.

Table 1: Thematic reviews conducted by CMCD BNM

Year of Publication CMCD Report	Poor practices by Financial Service Providers (FSPs)	Supervisory and Enforcement actions taken by BNM CMCD
23 March 2016	Unfair terms and conditions	Two FSPs were required to revise contract terms that were deemed unfair or detrimental to bank consumers' interest
23 March 2017	Unfair terms and conditions	Banking institutions were required to revise the contract terms
28 March 2018	Imposition of exorbitant fees and charges on customers	3 FSPs were ordered to cease excessive fees and charges
27 March 2019	Some clauses in the financing contracts were found to be "disproportionately skewed in favour of the banking institutions" and detrimental to bank consumers	Banking institutions were ordered to revise their unfair terms and improve clarity by using plain language for both new and existing financing contracts by the end of 2019.

Source: [BNM \(2016-2019\)](#)

Overall, bank consumers seldom read the standard form contracts that Islamic banks offer before signing them. There are many factors that contribute to "no read problem" which include: (1) lengthy contract, unclear terms, full of legal jargons, are notoriously complex to understand such that bank consumers are unable to make informed decisions ([Karanicolas, 2021](#)); and (2) the substantive content imposes undue burden on bank consumers especially when bank consumers are required to indemnify the liability of Islamic banks for breach of contract.

Studies showed that Malaysian's financial literacy standing is low, for example in the 2018 Financial Capability and Inclusion Demand Side Survey by Bank Negara Malaysia (which covers 26 countries, of which 12 are Organisation for Economic Co-operation and Development (OECD) members) revealed that the current level of Malaysian's financial literacy need to be improved ([BNM, 2018](#)).

It is important to make an effort to read and understand these banking agreements, as they can have significant implications on the rights and responsibilities of bank consumers in having: (1) a fair, consistent, effective enforcement of financial consumer protection laws; (2) equip bank consumers with skills, knowledge, information and confidence to exercise their rights; and (3) provide bank consumers access to advice and redress ([The ASEAN Secretariat, 2024](#)).

This paper aims to explore the role of Islamic financial literacy (IFL) in educating bank consumers to avoid unfair contract terms in Islamic banking contracts. As a proactive action, bank consumers need to be financially literate which enable them to take measures to address the risks associated with unfair contract terms in standard form Islamic banking contracts. A higher standard of bank consumer financial knowledge is integral to a more competitive and dynamic Malaysia that benefits bank consumers and generates sustainability for the Islamic banking sector.

This study is structured as follows: Section 1 is an introduction and background to the study. Section 2 provides the theoretical context for the exploratory test of the study. It presents the literature review of various Islamic financial literacy (IFL) frameworks which include Islamic education ethics, *Maqasidic* leadership models, multidimensional ethics and Madani ethical framework introduced by the 10th Prime Minister of Malaysia, Anwar Ibrahim. Thereafter, it briefly presents the definition of IFL, *Maqasid al-Shariah*, and the regulatory framework to control unfair contract terms and no read problem while encouraging IFL. Section 3 describes the research methodology of the study. In addition, Section 4 analyses the findings of the study and proposed the way forward of a new IFL on consumer contract readability. Finally, Section 5 concludes the study with recommendations that Bank Negara Malaysia (BNM) and Islamic banks should be mindful that the majority of bank consumers accept standard form banking contracts without proper scrutiny. Ultimately, such information asymmetries and imbalance of bargaining power adversely impact not only bank consumers, but may also lead to market failures due to lack of competition and innovation. BNM as the financial consumer

regulator therefore plays an important role in monitoring banking practices and keeping unfair contract terms at bay. This study is important to government policy since fair treatment and ethical banking practices to bank consumers help generate growth in the Islamic banking sector in Malaysia.

2. Literature Review

This section analyses the general concept of the no-read problem of standard form consumer contract, Islamic Financial literacy (IFL), Bank Negara Malaysia's revised Policy Document on Fair Treatment of Financial Consumers, and the four selected IFL frameworks with emphasis on the central role of ethics in integrating banking literacy to bank consumers to empower them to read the banking contracts before signing them and subsequently to report unfair terms to BNM.

2.1. No-read Problem of Standard Form Consumer Contract

It is common for bank consumers to consent and sign the banking contract even if they seldom understood, pay attention to the contract terms or read the standard form contracts that Islamic banks offer (Bakar et al., 2019). These consumer contracts are also known as "fine print or boilerplate contracts, take-it or leave-it contracts and contracts of adhesion", are widely used when bank consumers acquire banking services (Nicholls, 2022). These agreements are relied upon for thousands of Islamic banking transactions per year and account for the vast majority of contracts signed by bank consumers (Muneeza et al., 2020).

The prevalence use of standard form consumer contracts in Islamic banks that are unreasonably lengthy and complicated often exacerbate the traditional "no-read" problem by bank consumers. This "unreadiness" of contracts creates opportunities for Islamic bankers as contract drafters to include unfair or unreasonable contract terms (Bakar et al., 2017). When bank consumers do not read the fine-print terms of the banking contracts, the problem of imperfect information about the contract terms can lead to efficiency losses from adverse selection and moral hazard and unfair treatment by the Islamic banks (Bakar et al., 2017). Moreover, for most bank consumers the language of standard form contracts is usually a hidden, non-salient attribute and therefore they cannot properly evaluate them when facing a lack of information (Ayres & Schwartz, 2014).

Bank consumers routinely accept standard form banking contracts which have already been the focal point of one legal battle: *CIMB Bank Berhad v Anthony Lawrence Bourke & Anor* [2018] 1 LNS 1887. In this case, the Federal Court held that "exclusion clauses in a loan agreement that absolved a party from all liabilities to pay compensation or damages for non-performance of contracts were void and unenforceable as it was an agreement in restraint of legal proceedings in breach of section 29 Contracts Act 1950 being contrary to public policy that agreements should be void for uncertainty". The principles laid down by the Federal Court on particular provision a loan agreement may have wider ramifications on the validity of limitation of liability clauses in Malaysia since it can be equally applied to exclusion clause in other agreement types. In the respective case, the courts will determine whether an exclusion clause in effect operates as an absolute restriction to a party's right to claim damages or otherwise. This means that exclusion clauses in banking contracts are still valid and enforceable if they do not offend section 29 of the Contracts Act 1950. The decision in the CIMB's has cleared any uncertainty in the banking industry to the effectiveness of properly drafted exclusion clauses in banking contracts.

In the light of the CIMB's case, the unfairness clause 12 of the standard form banking contract negates the Plaintiff's rights to a suit for damages, provide the general mechanism on the basis of which unfair treatment on bank consumers might be established. Such exoneration clauses within standard form banking agreements can harm the rights of bank consumers since these contracts are often unclear to read, it is "hundreds of pages long with lengthy and complex terms that even lawyers are unwilling to read" (Choi et al., 2024). It is due to this fact that standard form banking contracts with onerous exclusion clauses that exclude liability absolutely are patently unfair and unjust to bank consumers.

2.2. Islamic Financial Literacy (IFL) and Maqasid al-Shariah

Financial literacy refers to the "ability to understand and effectively use various financial skills, including personal financial management, budgeting, and investing" (Investopedia Dictionary, n.d.). The concept of bank financial literacy is associated with many concepts, including "financial knowledge, financial ability, financial education, and financial competence such as the use various financial skills, including personal management, budgeting, and investing" (Kevser & Doğan (2021).

From various studies the literal meaning of Islamic financial literacy (IFL) can be defined as the degree of

knowledge, awareness, and skill related to Islamic financial services (Yildiz & Kılıç, 2020) as well as “the ability to understand the concepts of money, debt, savings, expenditure, zakat, and other (Biplob et al., 2022). In other words, the IFL consists of five dimensions namely: (1) knowledge of Islamic finance; (2) Islamic financial communication skills; (3) the ability to use knowledge of Islamic finance for decision making; (4) actual use of Islamic financial instruments; and (5) financial trusts (Ahmad et al., 2022). In a nutshell, Islamic financial literacy refers to both knowledge in the capital market and financial behaviour of individuals shaped by their beliefs and financial skills (Farla et al., 2023).

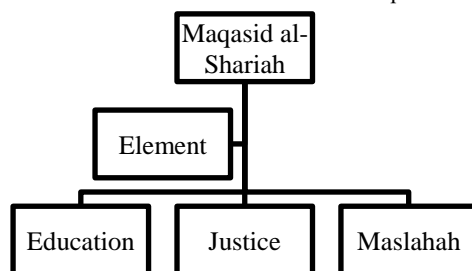
IFL is a prerequisite for bank consumers’ financial well-being. The duty to read doctrine is well-recognised in Al-’Alaq as the first Quranic revelation that came down to Prophet Muhammad which means, “Read! in the name of your Lord, Who has created (all that exists)” (96:1). In this first verse Allah stresses the importance of literacy by commanding the Holy Prophet to read or recite. The literacy value in verse 1 consists of four ethical values namely: “reading, research, writing, and teaching values” (Ahmad et al., 2022).

The principle of *Maqasid al-Shariah* (objectives of Shariah) can be applied to encourage IFL in Islamic banking to achieve bank consumer welfare and sustainable banking industry. For many decades Muslim scholars have developed a universal system of “higher objectives” called “*Maqasid*” which is in line with the Shariah that can be “integrated in the production of legal rulings, fatwas, and good-manners to bestow justice and mercy for the community” (Egypt’s Dar Al-Ifta, 2019). Significantly, *Maqasid al-Shariah* is one of the most important principles of Islamic jurisprudence used by Muslim scholars as a guideline and parameter to promote sustainable human well-being and state development, ensuring the economic, social and political policies conform to Shariah principles (Maidawa & Gokaru, 2024). Application of the *Maqasid al-Shariah* elements in all aspect of human life can promote positive values as propounded by the Islamic teaching (Anggraini et al., 2024). According to Ibn Ashur, *Maqasid al-Shariah* is a term that refers to the “preservation of order, achievement of benefit and prevention of harm or corruption, establishment of equality among people, causing the law to be revered, obeyed and effective as well as enabling the ummah to become powerful, respected and confident” (Wardi et al., 2023).

Abu Zahrah’s (1898-1974) *Maqasid al-Shariah* model is a popular performance system used to evaluate the context of IFL among bank consumers and to increase the reading interest on banking contracts amongst them. This framework categorised *Maqasid al-Shariah* into three dimensions which include: “to educate the individual (*tahdhib al-Fard*); establish justice *iqamah al- ‘Adl* and public interest (*maslahah*)” (Mohammad & Shahwan, 2013). Abu Zahrah places education dimension as the first foundation since it promotes trustworthiness in upholding the Shariah values, and consequently the other two dimensions of *Maqasid al-Shariah* can be realised (Antonio et al., 2020). In this context, education entails expanding one’s knowledge, learning new abilities, and raising consciousness (Bakar et al., 2020). As for the justice element, examples of the respective values include: eradicate unfairness, fair deals, fair dealing of employees, and fair treatment with the community (Mohammad & Shahwan, 2013). The third element of public interest requires consumers contracts to be developed based on Shariah-guided norms, and resources allocation (Sarif et al., 2017).

The three-dimensional components of Abu Zahrah’s *Maqasid al-Shariah* paradigm are depicted in Figure 1. According to Sarif et al. (2017), Abu Zahrah’s classification of *Maqasid al-Shariah* can be viewed from holistic development model and the relationships of God-Man-Universe for the betterment of human development. The *Maqasidic* human development model focuses on the betterment in wealth, health, freedom, security, spirituality, moderate, fair, access to adequate income, healthy life, balanced life, and educated human beings (Sarif et al., 2017). The notion of wellbeing is one of the instruments that may be used to help the community, particularly the business community, to adapt to change. In addition, *maslahah*, education and justice form an understanding on how Shariah spirit is practised. An introduction of new banking product to increase profit for Islamic banks is not good enough unless it is backed and complied by a solid Shariah authority (Bakar et al., 2019). According to Bakar et al., (2019), the Islamic bankers must be flexible and attentive to bring policy formulation to reconcile and facilitate innovation in Islamic banking contracts before reconciliation for a balanced and fair views.

Figure 1: Three dimensions of Abu Zahrah's Maqasidic IFL model



Source: Suhaim et al. (2017)

Placing education aspect as the basis of *Maqasid al-Shariah* is in accordance with the blueprint of BNM's Financial Sector Blueprint 2022-2026. For example, strategic Thrust 2 considers the quality of financial well-being of the community to be the first pillar for sustainable development of Islamic banks (BNM, 2022). The Strategic Priority 2 of the National Strategy for Financial Literacy to "Increase access to financial management information, tools and resources" as published by the Financial Education Network (FEN) in 2019 to guide Malaysia's financial education strategy over the next five years. The FEN was established in November 2016 to increase the level of financial literacy comprising of BNM, the Securities Commission, Ministry of Education, Employees Provident Fund, Malaysian Deposit Insurance Corporation, AKPK and Permodalan Nasional Berhad (BNM, 2022).

2.3. Regulatory Framework to control Unfair Contract Terms and the No-read Problem

2.3.1. International Standards to Regulate Unfair Contract Terms

International standards address unfair contract content by promoting fairness, clarity, and balance between contractual parties. These standards are embedded in a mix of binding conventions, guidelines, and national laws that regulate both consumer and business contracts globally. Key principles across these standards are: transparency (contract terms to be clear, understandable, and disclosed in advance); equity (a balance of rights and obligations between parties and prevent exploitation by the stronger party); good faith (both parties should act honestly, without misleading or taking advantage of the other), and consumer protection (consumers to be treated as a vulnerable party, and specific protections are in place to prevent unfair or imbalanced terms). The key frameworks and guidelines related to regulating unfair contract terms include:

First, the United Nations Convention on Contracts for International Sale of Goods (CISG). The CISG was established in 1980 and set out rules for contracts in international trade, with emphasis on fairness and reasonableness. Although the CISG does not explicitly address "unfair contract terms", it focuses on contract performance, remedies, and obligations that imply fairness and good faith between contracting parties (Alam, 2021).

Second, the European Union (EU) Consumer Protection Law specifically the "Unfair Contract Terms Directive (93/13/EEC)" aims to protect bank consumers from unfair terms with banks. It outlines a list of criteria to determine whether a terms is unfair which include: transparency (terms must be written in clear and understandable language); significant imbalance (a term must not create a significant imbalance in the contractual rights and obligations that detracts bank consumer); good faith (contract terms must not be in conflict with the good faith principle); and the directive also allows courts to modify or remove unfair terms and provide bank consumers with remedies.

Third, the Organisation for Economic Co-operation and Development (OECD) Guidelines for multinational enterprises promote responsible business conduct and recommends businesses to avoid exploiting their bargaining power in contracts, especially in cross-border transactions (Ingrams, 2023). The guidelines stress the importance of fairness and transparency in business dealings (Ingrams, 2023).

Fourth, the United Nations Commission on International Trade Law (UNCITRAL) has developed several conventions, model laws, and recommendations that indirectly address unfair contract terms. For example, the UNCITRAL Model Law on International Commercial Arbitration promotes fairness in dispute resolution, which includes the equitable enforcement of contract terms (Kristi, 2024). In addition, the UNCITRAL's Legislative Guide on Secured Transactions and Convention on the Use of Electronic Communications in

International Contract also contain provisions to protect unfair or unbalanced terms in commercial contracts (Kristi, 2024).

Fifth, the National Legal Systems of many countries have adopted domestic laws that provide mechanisms for regulating unfair contract terms. For example, in the Common Law jurisdictions like the United Kingdom and the United States of America the courts use doctrines like unconscionability or public policy to strike down or modify unfair contract terms, especially those that severely disadvantage one party or violate basic principles of fairness. As for the countries with Civil Law jurisdictions like France and Germany, consumer protection laws and contractual fairness principles are embedded in their civil codes. For instance, Germany's Burgerliches Gesetzbuch (BGB) includes provisions regarding the regulation of unfair contract terms.

Sixth, the World Trade Organisation (WTO) although it does not directly regulate unfair contract terms, however, it promotes fair trade practices and dispute resolution mechanisms that indirectly affect contract terms between trading nations (Widiarty, 2024). WTO agreements encourage the use of non-discriminatory and transparent contract provisions in international trade.

2.3.2. Malaysian Regulation on Unfair Terms: Guidelines on Fair Treatment of Financial Consumers (the revised FTFC)

Malaysia has always been one of the most regulated countries in the world. For many years, BNM has issued many guidelines as a regulatory response to ensure bank consumers become an integral component of the Islamic banking sectors. BNM continues to produce relevant policy documents to protect bank consumers from unfair terms in standard form consumer contracts.

Unfair terms in contract terms are regulated in Malaysia through the FTFC guideline issued by BNM on 6 November 2019 and came into effect on 6 May 2020. On 27 March 2024, BNM raised the bar for FSPs to treat bank consumers fairly by revising and enhancing the earlier policy document, introducing "a new principle and specific requirements for FSPs to consider and respond to the interests and needs of vulnerable consumers in conducting its business and operations" (BNM, 2024). The updated guideline sets out existing requirements and guidance for FSPs to "treat financial consumers fairly by adopting high standards of responsible and professional conduct and implement a culture where the interests of financial consumers are an integral part of FSP's business strategies and operations" (BNM, 2024). This policy document applies to all financial consumers (as defined by section 133 of Islamic Financial Services Act 2015), including "sophisticated and high net worth individuals, persons with disabilities and vulnerable consumer".

FSPs are expected to provide the appropriate support to vulnerable consumers, consistent with fair treatment of financial consumer outcomes. Throughout the revised policy document, BNM has supplemented existing and new requirements with illustrations of good and poor practices to facilitate industry implementation. The aims of the guidelines are:

- i. Foster high standards of responsible and professional conduct in Financial Service Providers (FSPs);
- ii. Promote a culture where the interests of financial consumers are an integral part of a FSPs business strategies and operations;
- iii. Set expectations for a FSP to effectively manage conduct risk;
- iv. Provide financial consumers with the confidence that a FSP exercise due care, skill and diligence, and acts fairly in its dealings with financial consumers; and
- v. To ensure that vulnerable consumers are to be treated fairly and equitably by the FSP and its staff, representatives and agents.

In promoting fair treatment to financial consumers, the FTFC has listed out six principles that FSPs should implement in their business which include:

- i. Principle 1: The Board of Directors and Senior management to set clear expectations on FTFC and incorporate it as part of their corporate culture and core values;
- ii. Principle 2: FSPs to ensure fair terms in standard contracts offered to financial consumers;
- iii. Principle 3: FSPs to provide financial consumers with information on financial products and services that are clear, relevant and timely;
- iv. Principle 4: FSPs to ensure their staff, representatives and agents practice due care, skill and diligence in dealing with financial consumers;

- v. Principle 5: FSPs to take reasonable care to ensure advice and recommendations provided to financial consumers are relevant to their financial needs; and
- vi. Principle 6: FSPs to handle complaints and claims of financial consumers promptly, fairly and effectively.

BNM has also included illustrations on good and poor practices in appendix 2 of the guideline which is non-exhaustive and intended as guidance to FSPs when implementing the requirements of the FTFC policy document. The FTFC also gives flexibility to FSPs to adopt other measures to achieve the intended outcomes of the guideline. The revised document also introduces specific requirements for dealing with vulnerable consumers and extend certain responsibilities to representatives and agents of a FSP to emphasise BNM's expectations on FSPs treatment to financial consumers (BNM, 2024).

In promoting fair dealing culture, the Islamic banks specifically the Board of Directors and senior management must demonstrate a commitment to fair treatment of vulnerable consumers including to establish and maintain appropriate policies, processes and accountability to ensure that the standard contract terms are fair to bank consumers (BNM, 2024). Here, the FTFC defines unfair terms as “terms that have the tendency to create significant imbalance, whereby it shifts the rights and obligations significantly in favour of the FSP to the detriment of bank consumers.” With regards to Principle 2 on fair terms in the standard contract, Appendix 5 has provided a list of non-exhaustive contract terms that may be regarded as unfair to bank consumers. Examples include: “high compensation fee for early contract termination, high penalty for breach of contract, exclusion of liability for breach of contract, unilateral variation by FSPs exclusive right on FSPs to interpret contract terms and terms that transfer risks to bank consumers which detriments them” (BNM, 2022).

2.4. Frameworks to control Unfair Contract Terms, No-read Problem and encourage IFL

This sub-section analyses four selected IFL frameworks to solve no-read problem of banking contracts amongst bank consumers which include: Islamic education ethics, *Maqasidic* leadership model, Madani ethical model, and Multidimensional IFL model.

2.4.1. Islamic education ethics

To promote Islamic financial literacy, Bakar et al., 2020 developed an Islamic finance educational ethics or the framework for financial educational ethics. The guiding principles are: “(1) the religious duty of Muslims to seek knowledge, the obligatory duty to practice and preach knowledge, (2) tawhid or accountability to Allah, (3) accountability and responsibility as (4) Caliphate; and (5) apply justice” (see Figure 2).

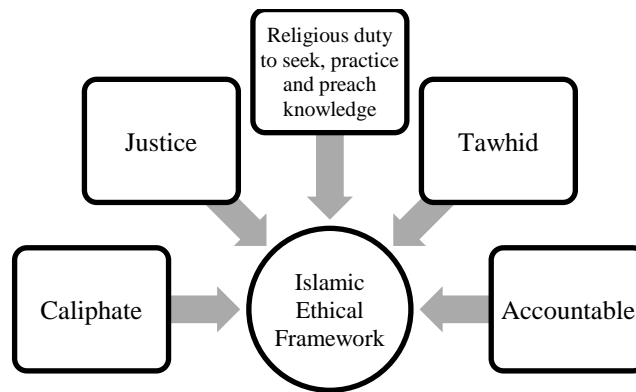
According to Bakar et al. (2020), this framework focuses on the role of Caliphate based on the values of integrity, morality, and trust such that all contractual dealings to be governed by the rules of fair dealing and justice. Islamic banks need to be transparent when offering their products by disclosing unfair terms rather than hiding onerous terms in footnotes and fine print under “other terms and conditions apply”. Although these contractual offerings are legal, however, not many bank consumers read the contract and even if they read them, they do not understand the legalese terms. As a Caliphate, Islamic banks need to highlight contractual literacy awareness on bank consumers with regards to their rights and for Islamic banks to avoid onerous contract content. To motivate bank consumers to read the contract content, Islamic banks need to practice transparency by “shortening and simplifying the contract terms and add quality tag to banking entity of respective local consumer association by statement like these contract terms are fair” (Bakar et al., 2020).

In this AFL framework, the concept of *tawhid* to Allah Almighty connotes the value of avoiding no-reading banking contract to acquiring knowledge on the rights of bank consumers in such contracts. In other words, bank consumers need to be vigilant whether the terms of contract are either procedurally or substantively unfair or both, and if so whether they can challenge such terms to be severable from the contract. Despite being pre-formulated and non-negotiable contracts, Islamic banks are discouraged to create any significant imbalance between the rights and obligations of the contracting parties.

As for the accountability and responsibility values, when negotiating, signing or performing a contract the duty of care is imposed on the Islamic banks not to derive or seek benefit from bank consumers without providing consideration or benefit that are disproportionate to the value of the respective banking services. In other words, Islamic banks to avoid using contract terms and conditions that exclude or limit the liabilities of the Islamic banks which are deemed unfair contract terms.

From these respective principles, bank consumers are expected to: “(1) fight against ignorance of Islamic financial knowledge; (2) should acquire Islamic finance knowledge to understand the principles and mechanism of Islamic banking; (3) to acquire Islamic banking knowledge based on the values and goals of *Maqasid al-Shariah*.”

Figure 2: Framework for Islamic educational ethics



These educational ethics expects the Islamic banks to: “(1) fulfill social responsibilities by being fair and reasonable when writing contractual terms; (2) ensure form and substance of contracts are Shariah compliant and Shariah based; (3) transparent, accurate and disclose all material terms and conditions to avoid unfairness; (4) fulfill their contractual obligations; (5) avoid exploitation and unfair contract terms; and (6) to innovate bank products that complies with *Maqasid al-Shariah*” (Bakar et al., 2020).

This framework promotes the importance of IFL specifically Islamic banking education on bank consumers since it is a religious duty to do so. Financial literacy acts as a defense against unfair contracts terms in banking contracts. Adhering to Islamic educational ethical framework helps to improve bank consumers’ no-read problem and contribute to better management of their financial affairs in Islamic banks. It is not the only solution but rather an added value to empower bank consumers to read contracts and be aware of their contractual rights at the same time to negotiate for fairer contract content.

2.4.2. Maqasidic Leadership Model

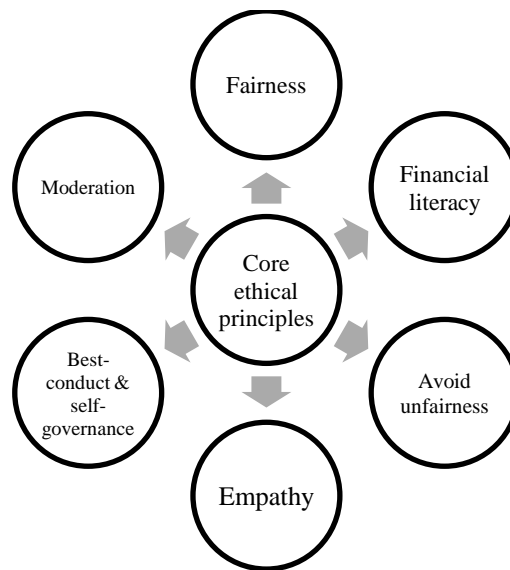
Bakar (2022) expanded the IFL *Maqasidic* values to promote reading of banking contracts and to protect bank consumers from unfair contract terms. This *Maqasidic* Leadership model include core values such as: “fairness, financial literacy, avoid unfairness, empathy, best conduct and self-governance, and *wasatiyyah* (moderation)” as shown in Figure 3. Considering that many bank consumers do not read the banking contract, this framework sets high standards of consumer fair treatment from banking contract with one-sided terms that are unfair or unjust.

Financial literacy values require Islamic bank to remind bank consumers before signing the contract to read and understand the contract content and make prominent clauses that affect their rights which include;

- i. Fairness (*adl wal 'ihsan*) means distributive justice whereby Islamic banks to take into account the legitimate interest of bank consumers in contract by complying with all local and international laws, rules and regulations of BNM and the Code of Ethics for banking institutions;
- ii. Islamic banks to avoid unfairness of unequal bargaining strength and practice social justice. Fairness should be practiced as part of the prudent corporate culture of Islamic banks. This value requires the Islamic banks to make the well-being of bank consumers an integral part of their banking strategies and operations;
- iii. Empathy. Islamic banks need to be ethical bankers who are fair, kind, caring, empathetic not sympathetic to bank consumers by practicing solidarity when contracting and conveying their business missions and visions prudently. Empathy also includes innovativeness; whereby Islamic banks apply new ideas to be consumer-centric;

- iv. Best conduct and self-governance. Professionalism here requires Islamic banks to respect bank consumers as individuals by assessing the fairness of a term as a whole in the context of the particular product or service. The risk of unfairness must be removed from a contract term and acting fairly in contracting with bank consumers. In addition, integrity as part of best conduct entails Islamic banks responding to the banking needs of bank consumers on a timely basis by taking into account developments in legislation and relevant case law on unfair terms in consumer contracts; and
- v. Moderation (*wasatiyyah*) requires Islamic banks to avoid extremism in contract content, such as one-sided exploitative contract terms that cause undue hardship to bank consumers.

Figure 3: *Maqasidic* Leadership model



This IFL framework focuses on the importance of readability of the prevalent type of consumer banking agreement. Apart from making bank consumers' well-being integral to their banking strategies and operations, Islamic banks need to prioritise being ethical bankers that implement good conduct and self-governance that promotes fairness and avoids extremism in the banker-customer relationship.

2.4.3. Malaysia Madani (Civilised Malaysia) ethical framework

It is a policy framework and government slogan introduced by Unity Government led by the 10th Prime Minister of Malaysia, Anwar Ibrahim. To rise again as the Asian Tiger, the Government outlined the MADANI framework which consists of six main thrusts namely: sustainable development (*kemampanan*), prosperity (*kesejahteraan*), innovation (*daya cipta*), values of respect (*hormat*), trust (*keyakinan*), and care and compassion (*Ihsan*) (Minister of Finance, 2023). This ethical framework is inclusive and encompasses the interests of all races, religions and regions in the country even though it emphasized the importance of Islamic teachings since it is the religion of the Federation.

According to the Prime Minister's, the MADANI framework focuses on the problem-solving process to build a better society on good moral values, especially among the younger generation (News Strait Times, 2023). This concept strengthens the Muslim faith, their morals and worship while at the same time it emphasised on the grace of goodness, stamp out poverty and safety for all races and religions. This call-for-action to enable bank consumers to better cope with greater contractual document uncertainty and financial complexity.

The core of Malaysia Madani philosophy is promoting of reading to understand knowledge by every citizen. IFL aspires to alleviate financial literacy levels, promote responsible financial behaviour and healthy

financial management attitudes, as well as upholding the Islamic principles to ensure that the cultural tradition of knowledge is embraced (Minister of Finance, 2023). Knowledge allows individuals to make informed decisions, understand complex Islamic finance concepts, solve problem, to protect oneself and one's family from becoming a tool or victims of ideologies that opposes Islamic views (Minister of Finance, 2023). This educational value of handling differences of opinion with wisdom represents a strategic investment in Malaysia's intellectual future.

UpToDate, there exist a join a collaborative effort between the government and private sectors, aimed to promote IFL in Malaysia. Table 2 below reflects the engagement in enhancing Islamic financial literacy to empower individuals and contribute to broader societal benefits.

Table 2: Examples of Malaysian Agencies fostering IFL

Agencies	Vision	Approaches	Strategic outcomes
Financial Education Network (FEN)	To deliver, monitor and measure financial literacy of Malaysians under the National Strategy of Financial Literacy	Intensifying financial education to elevate the financial literacy of Malaysians	Inculcate positive behaviour among targeted groups
Permodalan Nasional Bhd (PNB)	To strengthen the financial standing of the people across generations.	Inspiring young people to pursue knowledge and higher education	Hold annual financial literacy carnival & investment education activities
Employee Provident Fund (EPF)	To promote financial inclusivity and empower individuals to secure their financial future	Improve accessibility and ensure more Malaysians have sufficient social safety coverage upon retirement	Register for i-Akaun, join the i-Lindung insurance scheme, register for Shariah savings
Credit Bureau Malaysia Sdn Bhd (CBM)	To make the process of credit management more accessible and understandable	Provide a practical demonstration of how financial knowledge and tools can empower individuals	Provide access to credit reports, offer personalised advice to enhance credit scores
Agensi Kaunseling Dan Pengurusan Kredit (AKPK)	To build comprehensive consumer protection framework and ensure sustainability and resilience of the household sector	Provide free advisory, counselling and assistance to individuals on credit, financial management, education and debt restructuring	Conduct financial education programmes to the public

Source: [BNM \(2022\)](#)

Table 2 highlights the crucial role that agencies play in promoting IFL to build a financially savvy community. By equipping Malaysians with financial knowledge and tools necessary for effective financial management, the respective agencies help pave the way towards a future where financial empowerment and literacy are accessible for the society. The Madani philosophy on reading encourages bank consumers to read their banking contracts in full, in turn helps prepare them for the future when they have a better understanding of their contractual rights and responsibilities under the law. The journey towards financial literate and enlightened bank consumers begins with the simple act of reading the contract, and with the Madani philosophy on knowledge, bank consumers will avoid putting themselves at risk unnecessarily.

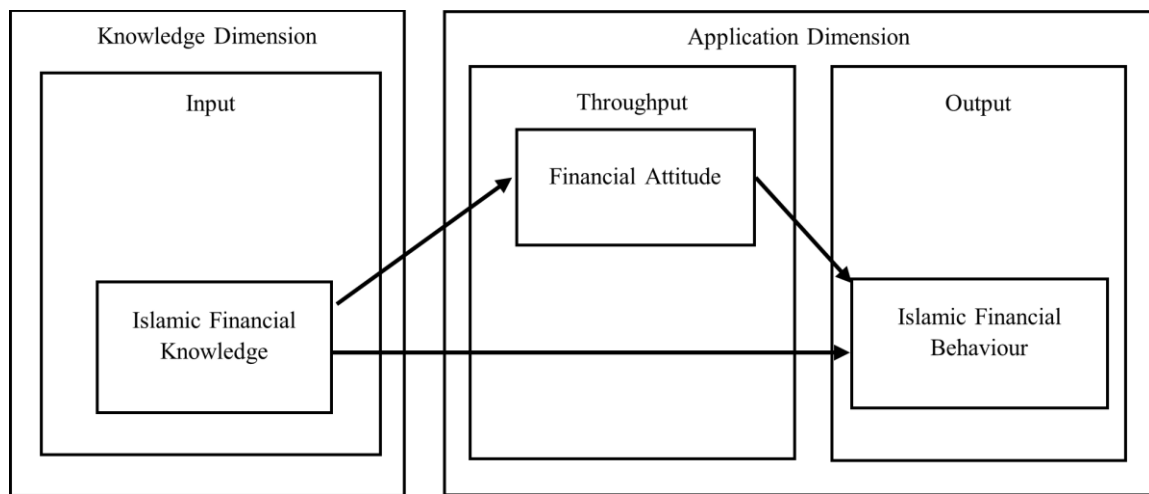
2.4.4. Multidimensional Islamic Financial Literacy Framework

[Nawi et al. \(2022\)](#) proposed the Multidimensional Islamic Financial Literacy Framework (Figure 5) which is denoted by three primary components such as: (1) Islamic financial knowledge; (2) Islamic financial attitudes, and (3) Islamic financial behaviour. These three primary components are further divided into three sub-components: Islamic financial products, Islamic philanthropy, and financial management. Firstly, the

component of Islamic financial knowledge is deployed as “input” which “assessed the knowledge on Islamic finance principles, products, philanthropy, and financial management”. Secondly, the Islamic financial attitudes as the “throughput” assessed the Islamic financial products, philanthropy, and financial management. The third component or “output” of IFL is financial behaviour which assessed individuals’ behaviour of Islamic financial products adoption, philanthropic behavior and behavior in personal financial management.

According to [Nawi et al. \(2022\)](#), bank consumers who intends to engage in Shariah-compliant banking behaviour may discover that they lack the necessary Islamic banking information and knowledge that would affect attitudes when dealing with Islamic banks. Therefore, the basis of this Multidisciplinary model views that a financial literate bank consumers must be well-versed in Islamic finance, have positive financial attitudes, and demonstrate prudent financial behaviour. However, this model is limited to only three components of IFL of financial knowledge and attitudes whereas other components that might also influence bank consumers’ IFL such as financial skills are not considered.

Figure 5: Multidimensional Islamic Financial Literacy Framework



This model opines that bank consumers are more likely to establish a long-term bank-customer relationship with Islamic banks to provide positive values such as loyalty and enhance satisfaction when they have a thorough understanding of Islamic banking operations ([Bakar et al., 2019](#)). The contractual relationship between Islamic banks and bank consumers is legal in nature which enable banks to maintain good relationship with their customers. Also, creating a real opportunity for bank consumers to read to address the no-reading contract problem, and avoiding terms written in fine print or written in legal language. The lack of IFL may lead to bank consumers making uninformed decisions due to inadequate information. Therefore, IFL is deemed as one of the most critical aspects to discourage no-reading of banking contract as well as to establish Islamic banking sustainability.

Based on this framework, bank consumers are said to be financially literate Muslim when they have sufficient knowledge on Islamic finance, positive financial attitudes, and good financial behaviours ([Nawi et al., 2022](#)). Therefore, understanding every aspect of bank consumers’ banking needs should be in tandem with the Islamic worldview.

3. Methodology

This study adopts the qualitative method through content and comparative analysis methodology as a research design. It provides an exploratory analysis on how Islamic ethical principles are applied to promote IFL and counter the no-read problem among bank consumers. It offers insights into how selected frameworks can contribute to contractual literacy among banking consumers to avoid unfair terms. As a comparative case study design, four ethical frameworks pertaining to IFL to ensure contract fairness from unfair contract terms in Islamic banking contracts are selected which include:

- i. Islamic education ethics (emphasizes the relationship between *Maqasidic* ethics and unfair contract terms);
- ii. *Maqasidic* leadership model (known for the interpretation of Islamic financial literacy in unfair contract content);
- iii. MADANI ethical framework (focused on socio-economic justice to achieve sustainable development); and
- iv. Multidimensional Islamic Financial Literacy framework (offers a contemporary approach with a focus on ethical issues in Islamic finance).

The data collected from the above frameworks are analysed from the perspective of Abu Zahrah's *Maqasid al-Shariah* principles while using the latter as a benchmark to evaluate how these frameworks directly influence IFL on bank consumers to avoid unfair contract content. This study also applies the library research that studies and explores databases such as: Elsevier (Scopus and Emerald Insight) and Web of Science related to the fairness in contract content and the ethics of financial literacy to avoid "no read" problem by bank consumers.

4. Findings and Discussions

This section maps out and compare the key components of the selected four ethical frameworks by benchmarking using Abu Zahrah's *Maqasid al-Shariah* principles and evaluate their success in promoting IFL to avoid unfair terms. This comparative method helps to strengthen the comparative analysis between Abu Zahrah's framework and the selected ethical frameworks such as: Islamic education ethics framework (Model 1), *Maqasidic* Leadership model framework (Model 2), Multidimensional IFL framework (Model 3) and Madani ethical framework (Model 4).

Table 3: Measuring Abu Zahrah's model against selected models

<i>Maqasid al-Shariah</i> Framework by Abu Zahrah	Islamic education ethics Framework (Model 1)	<i>Maqasidic</i> Leadership model Framework (Model 2)	Multidimensional Islamic Financial Literacy Framework (Model 3)	Madani ethical Framework (Model 4)
To educate the individual (<i>tahdhibal-Fard</i>)	Religious duty to seek, practice and preach knowledge	Financial literacy	Islamic Financial Knowledge	Sustainability
Establish justice (<i>iqamah al- Adl</i>)	Tawhid Justice Accountable	Avoid unfairness Moderation Fairness (<i>adl wal ihsan</i>) Empathy	Islamic Attitude	Ihsan Respect Trust
Public interest (<i>maslahah</i>)	Caliphate	Best conduct & self-governance	Islamic Financial behaviour	Innovation Prosperity

The study employs Abu Zahrah's *maqasid al-Shariah* model of education, justice, and *maslahah* as a performance system to evaluate the context of IFL among bank consumers and to increase the reading interest on banking contracts amongst them. There are several insights that can be derived from the above table based on Abu Zahrah's three division of the *maqasid al-Shariah* framework which include:

Firstly, the respective values similar to the value of educating the individual (*tahdhibal-Fard*) include Model 1 introduced values of religious duty to seek, practice and preach knowledge; Model 2 includes financial literacy ethic; Model 3 focuses on Islamic financial knowledge, and Model 4 suggested sustainability value. All values by the respective four models induce bank consumers to review the banking contract and impose the duty to read to increase the probability that the transaction is based on a well-informed decision, thus promoting bank consumer welfare. Moreover, contract reading can clarify the parties' obligations and rights. The duty to read can also reduce the probability of costly disputes arising from contractual misunderstandings. Overall, the duty to read has economic benefits, for example it promotes efficient reliance on banking contracts. An

incentive to read the banking contract increases the likelihood of mutually informed agreements that promote the welfare of both contracting parties. This encourages bank consumers to be aware of the information that is not available for them to evaluate.

Secondly, Values from the four models to establish justice (*iqamah al- 'Adl*) include: Model 1 with tawhid, justice, and accountable; Model 2 promotes the values of the duty to avoid unfairness, moderation, *ihsan*, and empathy; in Model 3 related value is Islamic attitude, and Model 4 proposes *ihsan*, respect, and trust. These values can potentially improve the attributes of no-read problems that make bank consumers aware of unfair contract content and empower them to make informed financial decisions. Bank consumers can hope that making contracts more readable will create further pressure on Islamic banks to draft clear and balanced contracts.

Thirdly, in relation to public interest (*maslahah*) the relevant values are Model 1 with caliphate value; Model 2 with best-conduct and self-governance, Model 3 has Islamic financial behaviour; and Model 4 suggests innovation and prosperity. For the benefit of bank consumers, Islamic banks need to draw conclusion that readable contracts must avoid using legal terms that are incomprehensible to the average bank consumer, unconscionable, excessively long, lacking proper sub-headings, written in rather small font, or deliberately presented to bank consumers at a late or uncomfortable time when reading becomes unlikely.

Fourthly, IFL may have a considerable role to minimise unfair contract terms cases by changing the attitudes and behaviours of bank consumers. The selected four IFL frameworks in this study have constructed IFL from the sources of the Shariah and found it suitable to implement IFL in financial awareness programs for bank consumers. This study found that IFL provides a comprehensive guideline for bank consumers to reduce the no-read problem. Furthermore, the study confirmed that IFL is effective to raise awareness among the Islamic banking sector to ensure contract content are fair and easy to understand.

Fifthly, exposure of these unfair terms to bank consumers will harm Islamic banks' reputations. Therefore, Islamic banks that worry about their reputation will avoid using one-sided contracts. Alternatively, rational bank consumers would respond to unreadable contracts by lowering their willingness to enter into transaction with Islamic banks. Islamic banks concern for good reputation is more likely to take the form of waiving one-sided contracts and excluding unfair terms. Such a strategy would portray Islamic banks as emphatic, kind, consumer friendly, or even generous.

In conclusion, the findings of this study conclude that the no reading problem of the standard form banking contracts by bank consumers could be improved by adopting the *Maqasidic* IFL ethics. These *Maqasidic* literacy ethics empower bank consumers to apply their duty to read to make informed financial decisions and be responsible to report unfair contract terms to BNM as the case may be. The IFL has a positive influence on the decision making by bank consumers to become a customer in Islamic banks. Reading the consumer contract is an action for bank consumers to obtain knowledge on their contractual rights and this process may lead them to make informed decisions. Reading also boosts communication skills between Islamic banks and bank consumers.

5. Conclusion and Recommendations

In the Islamic banking business in Malaysia, bank consumers are expected and presumed to read their contracts whereas the Islamic banks as contract drafters do not have a duty to draft readable contracts. This asymmetry creates a serious public policy challenge to the Malaysian government and financial regulator since bank consumers are expected to read unreadable contracts that is written in a way that dissuades them from reading such banking contracts. This, in turn, undermines the sustainability and efficiency of the Islamic banking sector while raising fairness concerns.

To make the impact of IFL on contract fairness more tangible and clearer in Islamic banking in Malaysia, this study suggests the Islamic banks can consider implementing the following concrete recommendations. By adopting these recommendations, Islamic banks in Malaysia can enhance their customers' understanding of Islamic finance and ensure that the impact of IFL on contract fairness becomes tangible and clear to bank consumers.

First, Islamic banks to hold educational programs on Islamic finance and contracts. Islamic banks can organise regular workshops and seminars for both customers and employees, explaining key concepts in Islamic finance contracts such as *Mudarabah*, *Musharakah*, *Ijarah*, and *Murabaha* along with how these contracts uphold fairness according to Shariah principles. Additionally, Islamic banks can develop interactive,

easy-to-understand digital learning tools like apps and websites that educate bank consumers through different Islamic finance contracts, highlighting the fairness principles, profit-sharing mechanisms, and risk distribution.

Second, clear and transparent banking documentation. Islamic banks to simplify consumer contracts by adopting plain language, easily understandable language contracts. This ensures that Islamic banks and bank consumers, regardless their financial literacy level, can understand the terms and conditions in promoting fairness. Islamic Banks to practice fair treatment to bank consumers based on values in *Maqasid al-Shariah* by drafting fair and readable contracts as well as striking out detrimental contract terms. Responsible treatment of bank consumers ensures and generates banking growth. A simplified presentation of banking contracts indeed improves bank consumers' understanding of those contracts.

Third, Islamic banks to customised IFL programs for different customer segments such as individuals, SMEs and corporate clients by focusing on the financial products most relevant to them, ensuring bank consumers fully understand the contractual commitments. Moreover, to provide customer support for IFL Islamic banks need to set up a dedicated accessible advisory service where bank consumers can ask questions about Islamic finance contracts, helping them to understand the fairness of their contracts and how their rights are protected. Islamic banks need to develop an online portal where frequently asked questions (FAQs) about Islamic finance contracts are addressed in simple terms. This will allow bank customers to gain clarity on their rights and obligations before entering into any agreement.

Fourth, Islamic banks should strengthen Shariah governance and monitoring. Regular Shariah audits should be conducted to ensure that banking contracts and products remain in line with Islamic principles, and that customer fairness is consistently maintained. These audits must be made transparent to the public, ensuring that bank consumers are reassured of the fairness of the agreements they enter into. Shariah advisory team need to be readily available for bank consumers to ask about the fairness of specific contracts and how they align with Shariah principles.

Fifth, Islamic banks need to practice sustainable consumer banking by publishing their "Charter of Fair Treatment to Customers" on their websites to show their commitment as ethical bankers by promoting IFL and demystify legal terms by incorporating clearer language in contracts. Moreover, feedback mechanisms like customer satisfaction surveys should also be incorporated to gauge bank consumers' understanding and satisfaction with contract fairness. This feedback can be used to refine educational materials, improve product transparency, and avoid unfair contract content. Islamic banks should also strengthen the grievance redress mechanism to address any complaints on unfair contract content, allowing Islamic banks to resolve issues promptly and maintain customer trust.

Sixth, Islamic banks to collaborate with educational institutions such as universities and schools to integrate IFL into the curriculum. This early exposure to IFL will help create a better understanding of Islamic banking and contract fairness in the long term. Internship and practical exposure programs should be set up that allow students to experience Islamic banking operations firsthand, particularly focusing on how IFL impacts contract fairness.

Finally, regulatory compliance and advocacy. BNM as the Financial regulator authority needs to craft an IFL legislation that addresses the no-reading banking contract problem. This legislation advocates for BNM to promote the *Maqasidic* duty to read as a pillar to creativity in the Islamic banking sector. BNM to support initiatives that improve financial knowledge among bank consumers. Moreover, such legislation allows BNM to grant a special tribunal, the Standard Contracts Tribunal, the power to review ex ante any potential unfair terms in consumer contracts ex ante which is outside the litigation context. Within this context, BNM can carry national campaigns aimed at raising awareness about financial fairness in Islamic contracts and how consumers can make informed decisions. Awareness campaigns on social media can be launched to explain the ethical and fair nature of Islamic finance and how the Islamic bank's products empower bank consumers through IFL and shared risk management.

In conclusion, financially literate bank consumers on Islamic finance principles help them make informed financial decisions throughout their life, which leads to sustained improvements in their living standard. Having the awareness, knowledge, skills, attitude and necessary behaviour are essential life attributes to make bank consumers interact responsibly with Islamic banks to build financial resilience. With bank consumers being confident that their well-being is integral to Islamic banks' corporate culture, in the long run, they will feel confident and empowered to make informed decisions that drive innovations, competition, and sustainable development of the Islamic banking sector. A creative bank consumer creates a progressive and sustainable

Islamic banking sector in Malaysia.

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