

Financial consumer protection principles in accordance with the Quran and Sunnah

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ABSTRACT

Consumer plays an essential role in the economy of a nation. In a competitive economy where the businesses and manufacturers may use exploitative means and unfair trade practices, there is an urgent need to protect the consumers against such malpractices. Financial consumers are of no exception. Reliable consumer protection helps to build consumer trust in financial institutions which subsequently contribute to the stability of the financial market. The Western scholars establish the existing standards and good practices on financial consumer protection based on ethics, however, it is also essential to develop Shariah standards and good practices for the Islamic finance industry because the different elements that exist between the Islamic and conventional finance industry. The purpose of this paper is to study the financial consumer protection mechanism from the Shariah sources of Quran and Sunnah. This paper is conceptual, mainly applying the content analysis approach that explores the works of Islamic scholars related to the concept of consumer protection.

1. Introduction

Within the recent decade, more attention is directed towards financial consumer protection since the aftermath of the global financial crisis (OECD, 2009). It was discovered that consumer protection is positively linked to financial stability (Poliakh, 2018). In order to maintain well-functioning and stable financial markets, consumers need to be well protected in order to retain their confidence and trust. Without support from consumers, financial markets cannot sustain in the long run (Bakar & Yasin, 2016). Global and international efforts to uphold financial consumer protection include the G20 high-level principles on financial consumer protection and also the World Bank's "Good Practices for Financial

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Consumer Protection” (Lukonga, 2015). These consumer protection principles and ethical practices are developed by Western scholars based on Western ethical theories

It is argued that the Western concepts and understanding of ethics is different and incomplete as compared to Islamic perspective of an ethical system that is determined by Allah (Al-Aidaros, Shamsudin, & Idris, 2013). Furthermore, the existing consumer protection principles and good practices were developed for the conventional finance industry which has products and services that are designed differently from those in the Islamic finance industry. Generally, the consumer protection principles and good practices can be applied as long as they do not contradict with the Shari'ah law, but the application is limited because consumer vulnerabilities in Islamic finance may not be fully covered (Lukonga, 2015).

This leaves room for the study of consumer protection from the Shariah perspective. Research and exploration of consumer protection from the Islamic perspective in the modern context are still limited, creating a paucity of reference resources in this particular field of knowledge (Khan, 2016). This paper attempts to contribute to the knowledge gap and aims to discuss the financial consumer protection principles as highlighted in the Quran and narrated in the Sunnah.

2. Financial Consumer Protection Principles from the Quran and Sunnah

The term “financial consumer protection” is a relatively modern terminology, which explains why the exact term is not found in the writings of classical Shariah scholars. Interestingly, Osman (2000) stated that the concept of “consumer” and “consumer protection” has been discussed by early Muslim jurists in their writings which proves that the practice was already in place, but it was not termed as “consumer protection”. Looking into the sources of the Quran and Sunnah, consumers are protected via two different mechanisms. The first mechanism is via *al-ma'mūrāt* or enjoinderment of absolute moral values and the second mechanism is through *al-manhiyyāt* or the prohibition of dishonourable practices. The combination of both mechanisms provides holistic and comprehensive protection for the consumers in ensuring that they receive fair treatment from the sellers or service providers.

2.1 Protecting consumers via enjoinderments from the Quran and Sunnah

These principles serve as a proactive measure to ensure financial consumer protection. Proactive measures are the efforts of preventing problems before they arise.

2.1.1 Fear of Allah and recall being in His observations

Fear of Allah will instill self-censorship for the sellers and service providers to obey His commands and to avoid His prohibitions. The fact that they fear of Allah without seeing Him builds self-control from within a person act accordingly and do practice good deeds rather than relying on external supervision as stated in the Quran in several verses such as: “*that Allah may test who fears Him unseen*” (*al-Maidah*, 5:94) and “*Who feared (Allah) Most Gracious Unseen*” (*Qaf*, 50:33). There is a hadith which states about the seven categories of people whom Allah will shade with His Shade on the Day of Judgement, and one of those categories include those recalls of being in Allah’s observation even when he is alone. The hadith goes by saying: “*And a man who remembers Allah when he is alone, and his eyes fill with tears*” (Ibn Kathir, 2003, vol. 9, p. 240; Muslim, 2007b, vol. 3: 2380).

This is the utmost principle that distinguishes conventional consumer protection from Islamic consumer protection whereby there is an additional layer of accountability to Allah on top of accountability to consumers. This plays an important in consumer protection as it hinders sellers from cheating and committing fraud to the consumers.

2.1.2 Truthfulness

Truthfulness is one of the fundamentals of consumer protection in any business transaction. Truthfulness or its Arabic equivalent *al-sidq* is one of the highly encouraged attitudes in Islam. Muslims are urged to be truthful as stated in the Quranic verse: “*O believers! Have a fear of Allah and be with those who are truthful in word and deed*” (*al-Tawbah*, 9:120). A truthful seller will be transparent and would not cheat in his contracts. Transparency in transactions will provide clear guidance to the contracting parties so that they are aware of their rights and obligations. Other narrations from the Sunnah that uphold the principle of truthfulness include:

“*The merchants will be resurrected on the Day of Judgement as immoral people except those that have taqwa of Allah and act righteously and speak the truth*” (Al-Tirmidhi, 2007, p. 25).

“*A truthful and trustworthy trader will be in the company of the prophets, the truthful men, and the martyr*” (Al-Tirmidhi, 2007, vol. 3: 1209)

The first hadith warns the businessmen who are dishonest in their business dealings that they shall be punished on the Day of Judgement. The following hadith indicates the superiority of the truthful and trustworthy businessman in such that they will be honoured with a distinct position in the Hereafter alongside the Prophets, the truthful men, and the martyrs on the Day of Judgement.

2.1.3 Trustworthiness

Trustworthiness or *al-amanah* in Arabic is also one of the fundamentals of consumer protection in business transactions. The Quran says: “*O you who have believed, do not betray Allah and the Messenger or betray your trusts while you know [the consequence]*” (*al-Anfal*, 8:27). This verse prohibits the betrayal of trust that the believers have accepted because of its effect on others (Ibn Kathir, 2003, vol. 3 p. 294), which in this case the effect is on the consumers. A trustworthy seller or service provider will ensure that consumers rights are acknowledged and fulfilled so that consumers will not be cheated or deceived. The widespread of fraud and betrayal of trust in the financial dealings of today’s world conforms to a hadith narrated by Hudhaifah which mentioned that: “*So there will come a day when people will deal in business with each other, but there will hardly be any trustworthy persons among them*” (Al-Bukhari, 1997b, vol. 8: 6497)

2.1.4 Cooperation in righteousness

Cooperation in righteousness is an obligation for all Muslims as mentioned in the Quran: “*Cooperate in righteousness and piety, and do not cooperate in sin and transgression*” (*al-Maidah*, 5:2). The implementation of cooperation in righteousness and piety by the community as a whole will create an environment where moral values and ethical behaviour will flourish, thus eliminating immorality and corruption at the same time. This, in turn, will provide strong assurance for consumer protection because members of the community will try to do good and to avoid harm to each other. Helping each other can promote towards upholding justice as mentioned in the hadith: “*Support your brother whether he was unjust or the victim of injustice*”. People asked, “*O Allah's Messenger! It is all right to help him if he is oppressed, but how should we help him if he is an oppressor?*” The Prophet said, “*By preventing him from oppressing others*” (Al-Bukhari, 1997a, vol. 3: 2444; Ibn Kathir, 2003, vol. 3, p.81)

2.1.5 Documentation of business transaction

The verse regarding documentation of debt or commonly known as *āyah al-day* is regarded as one of the most significant injunctions in Quran which relates to documentation of financial obligations: “*O you who believe! When you deal with each other, in transactions involving future obligations in a fixed*

period, put it in writing” (*al-Baqarah*, 2:282). Details of the transactions must be documented precisely and clearly to ensure impartiality and fairness to the contracting parties. We can observe that documentation of business transactions is already in practice and it is proven to be in line with the injunctions of the Quran.

2.1.6 Fulfilment of contracts

Not only the Quran required Muslims to document their contract, but it also stresses that these contracts or obligations must be fulfilled: “*O believers! Fulfil your contract obligations*” (*al-Maidah*, 5:1). The requirement to fulfil all contracts and covenants encompasses all transactions involving interactions between human and human among other things commercial contracts (sale, rent, partnership, will), marital contracts (marriage and divorce) and also other contracts as well.

2.2 Protecting consumers via prohibitions from the Quran and Sunnah

Contrary to the proactive measures mentioned above that prevent a problem from arising, these prohibition serves as a corrective measure to identify and eliminate the causes of a problem that has already occurred and aims at preventing the recurrence of the problem.

2.2.1 Prohibition of reducing weight and measurements

There are several verses of the Quran that highlights the prohibition of reducing weight and measurements. This shows that Islam views this as a serious crime and has repeatedly warned Muslims against it. Islam emphasizes heavily on fair treatment and impartial valuation of measure, weight, the price that belong to others as the Quran mentioned:

“*And O my people, give full measure and weight in justice and do not deprive the people of their due and do not commit abuse on the earth, spreading corruption*” (*Hud*,11:85).

“*And the heaven He raised and imposed the balance. That you do not transgress within the balance and establish weight in justice and do not make deficient the balance*” (*al-Rahman*, 55:7-9).

“*Woe to those who are fraudulent in (weighing and measuring). Those who, when they have to receive by measure from men, demand full measure. But when they have to give by measure or weight to men, give less than due.*” (*al-Mutaffifin*, 83:1-3).

“*And give full measure when you measure and weigh with accurate. That is the best [way] and best in result*” (*al-Isrā*’, 17:35)

“*And give full measure and weight with justice. We do not impose on any soul a duty except to the extent of its ability*” (*al-An’am*, 6:35).

From the above verses, the Quran addresses the issue of weight and measurement by commanding fair treatment and by threatening against those who are fraudulent in their business transactions. The Quran also affirms that giving full measurement and weight is respectable in this life and it is even better in the hereafter as it warrants a good reward. One of the distinctive features of consumer protection mechanism in Islam is the accountability not in this world but also the hereafter.

2.2.2 Prohibition of devouring the property of others wrongfully

Islam acknowledges and safeguards human rights over the property. Therefore, it is prohibited to devour on other’s property wrongfully as stated in the Quran “*O you who believe! Do not devour your property among yourselves falsely, except that it be trading by your mutual consent*” (*al-Nisa*’, 4:29). All

types of transactions that are unethical and transgress the rights of others are considered as devouring the property of others. This includes inter alia cheating, gambling, bribery, usury, monopoly, hoarding of essential goods. However, there is an exception to obtain the property from others which can be achieved through a valid trade is that mutually agreed by the contracting parties of the contract.

Mutual consent in a contract is attained when the contracting parties have the right or option to uphold or dissolve the agreement before they apart (Ibn Kathir, 2003, vol. 2, p.432). This is stated in the Sunnah whereby the Prophet said: "Each party to a transaction has the option (of cancelling it) so long as they have not separated" (Al-Bukhari, 1997a, vol. 3: 2079; Muslim, 2007c, vol. 4: 3853). Another similar hadith reported: "*When two men enter into a transaction, each one of them has the option (or cancelling) so long as they have not parted and are still together*" (Muslim, 2007c, vol. 4: 3855)

2.2.3 Prohibition of commercial fraud

Commercial fraud can happen in two ways: concealment of goods defect and reducing the quality of the goods. Goods defect sometimes may happen in circumstances that are within or beyond the sellers' or providers' control.

Nonetheless, it is the responsibility of the seller and the right of the consumer to receive the goods and services in good condition. Therefore, defects must be informed and revealed to the consumers consistent with the narration of the Prophet: "*The Muslim is the brother of another Muslim, and it is not permissible for a Muslim to sell his brother goods in which there is a defect, without pointing that out to him*" (Ibn Majah, 2007, vol. 3:283). Concealment of defect is also specifically prohibited in the hadith which states that: "*Whoever sells defective goods without pointing it out, he will remain subject to the wrath of Allah, and the angels will continue to curse him*" (Ibn Majah, 2007, vol. 3: 2247).

Reducing the quality of goods refers to mixing or substituting part of the selling goods with items that are of different or lower grade in terms of quality. Muslim narrates that the Prophet condemned a seller by saying "*He who deceives is not of us*" (Muslim, 2007a, vol. 1: 284). This happened because the seller tried to mix the excellent quality goods (dry corns) with lower or lousy quality goods (wet corns) in order to deceive consumers.

2.2.4 Prohibition of gharar trades

The Prophet PBUH has forbidden all kinds of trade that are risky (*gharar*) to protect the interest of the contracting parties. The reason ('*illah*) behind the prohibition revolves around two issues; the first issue is regarding the existence of anonymity (*jahalah*), in the subject matter of the contract. The second issue is regarding the existence of doubt (*shak*) in receiving one of the exchange items ('*iwad*') of the contract[†]. Examples of risky (*gharar*) trades include sale of undeliverable subject matter, sale of milk in the udder, sale of animal foetus in the womb, *bay' al-ma' dum*[‡], *bay' al-mulamasah*[§] Moreover, other prohibited

[†] The exchange item ('*iwad*') of a contract consists of two things: the subject matter itself (the goods) and the price of the goods (money or payment)

[‡] *Bay' al-ma'dūm* is a sale of an item that does not exist or not owned by the seller (Al-Tirmidhi, 2007, vol. 3: 1232). This does not apply to the sale of an item that exist and owned by the seller but not in possession of the seller at the time the contract is concluded.

[§] *Bay' al-mulamasah* is a sale with a prefixed price with closed eyes, or in the darkness just by the first touch of a hand. This is a dishonest and treacherous sale as the buyer does not have the opportunity to examine the subject matter before purchasing it. (Al-Bukhari, 1997a, vol. 3: 2144; Al-Tirmidhi, 2007, vol. 3: 1310; Muslim, 2007c, vol. 4, p.214)

sales (Al-Tirmidhi, 2007, vol. 3, p.42). These sales were previously practised by the Arabs during the Jahiliyyah period and were later prohibited by the Prophet.

From the above examples, it is understood that risky (*gharar*) trades are those that have uncertainty in the subject matter of the contract either in terms of attributes or in terms of ability to deliver. These uncertainties are factors that are within the control and capability of the contracting parties such as providing details of the subject matter (size, colour, dimension), determining the price of the subject matter and also deciding on the delivery date and place. The element of *gharar* can be eliminated when all the details of the subject matter are provided and the price, time and location of delivery determined.

2.2.5 Prohibition of exploitative commercial arbitrage (*talaqi al-rukban*)

Exploitative retail arbitrage or its Arabic term "*talaqī al-rukban*" is the practice of the city tradesman purchasing the goods of the rural tradesman at a far lower price before re-selling it in the market of the city at a higher price. The city tradesman takes advantage of the rural tradesman's obliviousness of the market price. In the past, this form of exploitative trade is practised by purchasing a load of goods before the caravan arrives in the market place (Chowdhury, 2015). This practice is prohibited based on the hadith: "*The Messenger of Allah PBUH forbade that a man in the city should be the commission agent of a man from the desert*" (Al-Bukhari, 1997a, vol. 3: 2158; Muslim, 2007c, vol. 4: 3824 - 3829). The prohibition aims to protect the interest of the rural tradesman from exploitation and to reduce the unnecessary intermediaries between the original seller and potential buyer who would result in artificial price hike of goods.

2.2.6 Prohibition of price manipulation

Price manipulation is the act of deceiving the consumer to pay a higher price in order to earn more profits deceitfully. One of the examples of price manipulation is through rigging and collusion or also known as *bay' al-najash*. *Bay' al-najash* happens when the seller plots with another fake buyer to increase the price of the goods to induce the potential buyer to pay a higher price. *Bay' al-najash* is a form of deception towards the consumer and it is prohibition by the Prophet through the narration of ibn 'Umar (Al-Bukhari, 1997a, vol. 3: 2142). Scholars unanimously agree that *bay' al-najash* is immoral and sinful. However, they disagree on the effect of *najash* on the validity of the contract (Al-Amine, 2008, p. 189).

2.2.7 Prohibition of false trading

During the Jahiliyyah period, it was common for the Arabs to make a false oath in promoting their goods. Nowadays, false advertising also happens when the seller displays goods that are different from their real condition. This will attract consumers to buy goods without knowing the real condition of the goods. False advertising is considered as an act of cheating and deceiving that are prohibited in Islam. The Prophet's hadith stated that on the Day of Judgement, Allah would not look with mercy at the sellers who promote their goods with false oaths (Al-Tirmidhi, 2007, p. 26).

3. Conclusion

This conceptual paper attempts to explore the financial consumer protection principles that are embedded within the verses of the Quran and the narrations of the Sunnah. Islam as a holistic religion aims to protect the interest of consumers as well as the sellers at the same time. Superficially, the sellers act as providers of goods and services to cater to the demand of consumer to gain profits. Islamically, the role of the sellers it is more than just catering goods and services for monetary gains; they play a

significant role in fulfilling the basic needs and necessities of the public. Therefore, the providers of goods and services should ethically conduct their businesses in order to ensure that the right of consumers are well protected when they enter into a business transaction. Future research is encouraged to further discuss and deliberate the practical implementations of Islamic financial consumer protection concepts in different sectors of Islamic finance in order to develop a comprehensive framework for consumer protection in Islamic finance.

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