FAIRNESS AND DISPUTE AVOIDANCE IN ISLAMIC BANK FINANCING

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ABSTRACT

The purpose of this paper is to examine whether and how fairness influences dispute avoidance in Islamic bank financing process. The approach used is exploratory qualitative research, based on semi-structured interview. Data were gathered from small scale entrepreneurs operating an account with Islamic bank, which previously used or are using Islamic financing products in northern Nigeria. The findings from participants show that; fairness has tremendous influence on customers’ perception of disagreements and disputes, as fair treatment leads to dispute avoidance. Fair treatment in determining prices and terms during negotiations, as well as transparency, determines action of Jaiz Islamic bank as fair or not fair. It is recommended that; due to customers’ high expectation for fairness from Islamic bank, a little misunderstanding may lead to disagreement that leads to conflict. Islamic bankers therefore, should be innovative in conflict management through fairness in all customer related issues. The study contributes to literature of fairness, as making fair treatment a fundamental issue in conflict avoidance process. Particularly in northern Nigeria, where fairness is based on perception.

Keywords: Fairness, dispute avoidance, Islamic financing, northern Nigeria, small businesses.

1. INTRODUCTION

Islamic bank’s financing contracts has a beginning and ending, from credit proposal initiation to repayment. But, banking relationship is supposed to be unending business relationship, which may likely involve intermittent lending-borrowing processes. However, in any social relationship, one may not rule out the possibility of perceiving the action of another as unfair based on circumstances. Little disagreement with client causes feeling of unfair treatment, which may cause disputes. In this study, dispute avoidance is considered as a best way of dispute management process of taking care of negative perceptions, actions, or inactions on financing contract that may lead to misunderstandings.

The essence of dispute avoidance is to achieve benefits (Maslahah), prevent hardship (Mafsadah), avoid harm (Darar) as well as protection of wealth, which are core objectives of Shari’ah. Meanwhile, Sadd al-zarai is a fundamental shari’ah concept of avoiding any action
that may eventually lead to conflict, even if the action is permitted. This is in accordance with Sajoo, (2014), who states that, any legally allowed action lacking fairness is violating the idea of Shari’ah. Fairness and dispute management (dispute avoidance) are some of the basis of achieving a cardinal objective of wealth creation and protection (Hifzul-ma’al) in accordance with Shari’ah.

Dealings with one another justly are the only reason that can sustain perception of fairness and conflict-free relationship as stated in the holy Qur’an that:

“And eat up not one another's property unjustly (in any illegal way e.g. deceiving), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully”

(Al-Bakara2:188)

From the tafsir of ibn-Kathir, (2000 p. 247), Ali bin Abi Thalhah reported that Ibn Abbas commented on the above, that the verse was revealed in connection to an indebted man who denied the loans because the lender has no evidence to claim his money.

Small scale clients may likely perceive actions of Islamic bankers as unfair over small issues, this is due to the high expectation for ethical practice than in conventional banks, while Islamic banks are expected to treat clients more fairly, (Wajdi Dusuki, 2008; Wajdi Dusuki, & Irwani Abdullah, 2007 and Metawa, & Almossawi, 1998). However, not all clients may show their displeasure when they feel aggrieved, some may rather back-out of patronage quietly (Malhotra, Agarwal, & Ndubisi, 2010).

1.1 Problem Statement

Clients perceive fairness as being treated fairly without considering the circumstances of the other party. Often, client perceives transaction as unfair, which likely affects their business relationship with their bank. Perception of unfair treatment leads to misunderstanding in business process, misunderstanding if not avoided, may lead to disputes and disputes, for whatever the reason may not be a welcome development (Guo & jiang, (2015). This is because, litigations whether successfully or unsuccessfully resolved, is likely to affect continuation of business relationship (Kerwin, Jordan and Turner, 2015). There is also higher expectation of fair and ethical practice in Islamic financing than in conventional financing (Lukonga, 2015). It is as well disturbing that, in most Muslim countries, once there is a dispute, it is conventional courts that can rule the case, even for Islamic finance related cases (Oseni, 2015).

Several empirical studies have been conducted on the customers’ perceptions of specific Islamic finance contracts such as Musharakah, Murabaha, Ijarah, Bai-Bithamanil-Ajil, Tawarruq and Mudharaba (Sajoo, 2014), but they did not consider studying how fairness can lead to avoiding dispute. There are also other studies like that of Oseni, Adeyemi and Mohamed Zain, (2015); Oseni and Ahmad, (2015) and Oseni, (2015), focusing on dispute resolution in Islamic finance contracts. But, the studies did not consider the role of fairness in avoiding dispute. Other similar studies like those of Hudon, (2007), focused on fairness in relation to other variables like trust, but, they did not look at how fairness influences conflict.
1.2 Objectives of the study

The paper aims at exploring the relationship of fairness and dispute avoidance in Islamic financing contracts from customers’ perspective. That is to see how fair financing business lead to avoidance of disputes, and to assess what clients may consider as fairness in financing process. The study serves as a mind opener to clients of Islamic banks in understanding most appropriate ways of avoiding conflict, easy way of aggrieved customer to seek redress, that can help save relationship in compliance to shari’ah objective.

2. LITERATURE REVIEW

2.1 Fairness and fair treatment

Human beings are naturally self centered to the extent that, they perceive treatment as fair, if only they are treated fairly (Sekhon, Roy, & Devlin, 2016), particularly on benefit seeking situations. Therefore, it is not easy to say an action is fair or unfair, it is when the situation is not favourable to the person. From Islamic perspective, fairness can be explained from Al-nawawi-hadith narrated as follows:

On the authority of Saad bin Malik Al-Khudar (RA) that the messenger of Allah (SAW) said: "There should be neither harming nor reciprocating harm." (Related Ibn Majah, Al-Daraqutni and others).

40 Ahadeeth of Imam Nawawi (RA), Hadeeth number 32

From the above Hadith, if neither harm nor reciprocating harm can take place, then conflict cannot arise. Even if disagreements occur, the situation can be understood and remedied due to harm-free intent of both parties. Therefore, every individual prefers to be treated with utmost fairness (Aggarwal & Larrick, (2012), the essence of ethical consideration is to ensure no one is harmed.

Li and Jain (2015), state that, consumer’s fairness perception is based on an equal sharing of economic surplus the benchmark for fairness or what consumers consider as “most fair” vary across different industries and competitive contexts. In another study, consumers’ perception of price as unfair has a tremendous negative impact on consumer trust and loyalty (Garbarino and Lee, 2003). While in the study of Engelmann, & Strobel, (2004), perception of fairness depends on client’s level of inequality aversion. Other clients’ perception of fairness is centred on price charged. Hudon, (2007) assert that, charging lower rates must be encouraged, but not be imposed in lending.

Turvey, Kumar & Rong, (2015) found that, fairness, altruism and reciprocating fair treatment is what sustained informal and benevolent lending. Sekhon, Roy & Davlin, (2016) found that transparency in channels of communication play an important role in determining fairness perception among UK’s financial service customers. Tarrahi, Eisend, &Dost, (2015) in their analysis of fairness perception on price change, they suggest that motives for changing price influences perception of price fairness. Roy, Devlin & Sekhon, (2015) made a study relating fairness, trustworthiness, and customer trust, they found that customers based their trustworthiness on perceived fair treatment. In a related study by Lewicki, & Wiethoff, (2000), when there is trust in customer to business relationship, conflict may unlikely occur.
and when trust breaks, there would be likelihood for conflict. Rothenberger, (2015) in a paper on fairness through transparency, suggest that, transparency, availability of information and disclosure influences client’s judgments of fairness. Kerwin, Jordan & Turner, (2014) observed perceptions of fairness and justice predicts the perception of disagreements and conflicts in an inverse relationship.

2.2 Dispute avoidance

The art of avoiding dispute requires an innovative process (Thompson, Vorster & Groton, 2000). Brewer, (2007) identified conventional processes of avoiding dispute through product disclosure and mediation respectively. In Islam, there are various ways to manage dispute, as identified from fiqhbooks of the prominent Islamic scholars (al-Duri, 2002; al-Jabali, 2006; al-Khassaf, 1978; Haidar, 1925; Sambo & Kadouf, 2014). The major contribution of this study is linking the two concepts (Islamic and conventional) of dispute avoidance process through fairness as discussed in the Table 1 below.

Table 1: Proposed categorisation of dispute avoidance process

<table>
<thead>
<tr>
<th>Stage of dispute</th>
<th>Corrective measure</th>
<th>Fiqh-based mechanism</th>
<th>Intervention mechanism</th>
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<tbody>
<tr>
<td>Dispute avoidance</td>
<td>Fairness in business transactions</td>
<td>Nasihah (counselling or sincerity in financing process) and good faith</td>
<td>Ensure fairness in quality, cost, terms, transparency, and clauses,</td>
</tr>
</tbody>
</table>

Dispute can be avoided if parties involved can inculcate the spirit of sincerity (Al-nasihah) in their contracts (Danuri, et. al., 2015) through effective risk management, proper credit assessment, good intent, disclosure as well as price and terms’ bargaining. However, some scholars consider Nasihah as sincere advice, while, others consider Nasihah as counselling to handle disagreements and conflict. The concept of Nasihah according to Al-Ghazali, encompasses how Muslims interact with one-another in their life by being fair to ALLAH (SWT), His book, His messenger and the overall humanity, as supported by the narration of an authentic hadith that:

“The Prophet Muhammad (SAW) said, “The religion is An-nasihah (sincerity). The companions asked; to whom? The Prophet (SAW) said, “To Allah, His book, the Messenger, the leaders of the Muslims and the common folk.”

Sunan an-Nasa’i, The Book of al-Bay’ah Book 39, Hadith 49

The literal meaning of Al-nasihah is to give advice, counselling, sermon or sincere advice in interactions. According to Zarabozo (1999), Nasihah is any form of action or statement that contains an intention of truthfulness, goodness or sincerity by a person to his common folk, to ensure sincerity and fairness among people in any social interaction. The absence of Al-nasihah may cause clients’ dissatisfaction and grievance, which may result to disagreements and disputes.

Eligibility, readability, and comprehensiveness of contract clauses is a measure to avoid disputes, (Staugas, 2002), he also added that, compromise, negotiations, clear communication, openness, trust, fairness, and flexibility are major strategies for dispute prevention from early stage. He also recognized the permissibility and importance of conscionable manner and
good faith to avoid disputes. Li & Jain, (2015) found that, contracting parties are expected to be fair, reasonable, and conscionable, and requires parties to conduct themselves in good faith and to co-operate towards achieving the objective of the contract. Danuri, Suhaimi, Hussain, Mustaffa & Jaafar, (2010) looked at the possibility of using dispute avoidance procedure in business; they found that, cost implication is the major issue that can hinder application of dispute avoidance procedure.

3. METHODOLOGY

The paper is based on qualitative approach using some set of unstructured interviews, with the aim of presenting practical findings on how fairness can help in avoiding disputes. The study used primary source of data from discussions made with fifteen (15) Jaiz Islamic bank customers. Researcher used the approach of Miles & Huberman, 1994; as a guide, which justifies the need to study how bank clients perceive the cause of dispute and how it can be managed through fairness in Islamic bank’s financing relationship.

The unit of analysis (Miles and Huberman, 1994) is customers of Islamic bank, as individuals defining the social reality or a phenomenon to be researched regarding their perceptions of the workability or otherwise of adopting fairness to avoid dispute. Participants were identified from the bank’s credit officers who volunteered to give details of some selected entrepreneurs, the selected interviewees are those that must have experience by participating in a minimum of two financing cycles from the Islamic banking financing (Patton, 1987).

Collected interview responses were systematically reduced to simplified coded sentences, displayed in an organised form, using N vivo to enable drawing a meaningful conclusion of fairness and dispute avoidance from Islamic perspective (Miles, Huberman, & Saldana, 2013). The methods of Patton, (1987) are adopted in initiating data management and analysis process, which consist of developing themes in the form of main themes and sub-themes categorization, by looking at and interpreting the patterns in such a way that it can contribute to knowledge.

The interviews were conducted between the periods of June and September 2016, covering primarily small-scale borrowers in Islamic bank. Out of the 20 interview invitations, 15 cooperated and participated, after following them up to their business premises. It was conducted at their convenience, and their responses from the required number for the interview process. Each of the 15 informants was asked the following questions:

1. How do see the relationship of fairness in financing contract, and possibility of avoiding misunderstandings that lead to dispute?
2. How do you see the role of clear and open communication (transparency) during negotiations in relation to perception of fairness?
3. How do you the role of favourable prices to you in financing, in relation to fairness?
4. How do you see financing contract agreement clauses in relation to ambiguities, comprehension and fairness?
5. How do you see repayment plan (terms) structure in relation to convenience, and fairness?
6. How do you see your perception of service quality in terms of efficiency, in relation to fairness?

4. Discussion of findings

The main theme of the interview analysis is the respondents’ perceptions on the possibility of avoiding dispute due to fair dealings. The sub-themes for the above theme are cost of financing, fair repayment terms of financing, transparency in negotiations, fair service quality and fairness in clauses. The following figure shows the pattern of responses from the informants:

![Diagram: Responses of the informants on perception of fairness in financing relationship]

**Fig. 1: Responses of the informants on perception of fairness in financing relationship**

Below, are the discussions on the main themes and sub-themes which emerged from the data analysis gathered from the interviews:

Respondents’ perceptions on the role of fair financing contracts in dispute avoidance as follows:

1. Customer’s positive perception of fairness in financing leads to avoiding dispute, due to direct relationship of perceived fairness and mindset to understand and accept contract offer with good faith

2. Clear and open communication (transparency) during negotiations of financing offer allow clients to understand every detail about the financing contract, hence, reducing the chances of unfairness perception and avoid dispute

3. Favourable prices of financing services to customer enable him to see the cost of financing contract as fair. The perceived fairness leads him to avoid any chances of subsequent dispute
4. Customers hardly read and comprehend clause’s notes drafted by Jaiz bank. Therefore, they may not see if there is any ambiguity that may lead to dissatisfaction, and subsequently leads to dispute.

5. If repayment plan and other terms of financing are flexible and favourable, clients feel easiness and convenience, and they perceive these terms as fair, and it leads to avoiding disputes.

6. Quality of services offered in terms of efficiency, has no relationship with customers’ perception of fairness. Efficiency does not lead customer to perceive financing relationship as fair and avoiding conflict.

It can be deduced from the above discussants that; fair treatment has influence over clients’ perception of disagreements and disputes, because all the informants have subscribed to that assertion. The more a customer perceived Jaiz Islamic bank as unfair in terms of cost of financing, repayment plans or transparency in contract deals, the more chances it creates for him to understand, agree with the bank, and avoid any dispute in the future. This is shown from the response of most of the informants from the figure above. Finally, customers did not see an impact of contract clauses and service quality on dispute avoidance, they responded that; they don’t usually read the former and the latter is more applicable to general banking services than financing contract and perception of fairness.

4. RECOMMENDATIONS

Consequently, with this uniformity of informants’ perception of fairness in financing, it is indeed more appropriate for Jaiz Islamic banks’ decision makers to adopt a mechanism for dispute management largely based on ensuring fairness and fair treatment of one another to avoid dispute occurrences as in the study of Shen, Lin, Tang & Hsiao, (2016). This is possible by employing fair prices, terms, and transparency. Jaiz bank also needs to educate customers to read and understand any financing clause and its implication, before they sign a financing contract.

From the informants’ responses, it is learnt that; they rely so much on Jaiz bank’s fairness in financing contract and their perception of fairness make much influence on their understanding and satisfaction. Due to this customers’ high expectation for fairness from Islamic bank, a little misunderstanding may lead to disagreement that may subsequently lead to conflict. Therefore, it is recommended that Islamic bankers, should be innovative in conflict management through fairness in all customer related issues, particularly financing contracts. Meanwhile, fairness is fundamental in Islamic finance business Daly & Frikha, (2016).

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