

ENSURING FAIRNESS AND TRANSPARENCY IN TRANSACTIONS

Islamic Property Law and Contracts

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This paper delves into the core principles of Islamic contracts and property law, shedding light on their pivotal role in upholding justice and transparency in business transactions. The central inquiry addresses whether the Islamic property law of contract fully aligns with constitutional values, fostering fairness in contractual relations. The research holds significance as it advances our understanding of Islamic contracts and property law, offering valuable insights for decision-makers, legal professionals, and those engaged in property transactions under Islamic law. By assessing the standards that ensure justice and transparency, this study aims to contribute to more ethical practices and equitable outcomes in property dealings, thereby supporting a just and transparent economic system. Employing a qualitative content analysis approach, the paper

scrutinizes Islamic legal sources and scholarly opinions to unravel the main principles and regulations governing property transfers. Utilizing QDA Miner Lite software for analysis, the qualitative content analysis provides a systematic exploration of textual sources, enabling a comprehensive understanding of the mechanisms that underpin fairness and transparency in transactions. Ultimately, the paper seeks to enrich existing knowledge on Islamic property law and contracts while proposing recommendations for reinforcing fairness and transparency in property transactions within the Islamic legal framework.

KEYWORDS: Islamic Contracts; Property law; Justice; Transparency; Qualitative Content Analysis

INTRODUCTION

God Almighty is the Creator who manages the affairs of His creation. He knows the human soul and its love for money, as mentioned in many places in the Qur'an, «وَتُحِبُّونَ الْمَالَ حُبًّا جَمًّا» (*Sūrat al-Fajr*, 20) “And you love money with an extreme love.” Therefore, He enacted laws that regulate contractual financial matters between individuals and between individuals and Companies.

Islam's legal theory departs greatly from Western legal thought. According to Islamic philosophy, there is only one God, known as “Allah,” who created all of the components that make up the planet and the cosmos and who alone oversaw their formation. The basic legal Islamic philosophy is this, “*Ulama*” «علماء», or Islamic scholars, assert that the Qur'an contains all the fundamental legal rules that must be followed by society at all times to conduct itself in a civilized manner. In the Qur'an or hadith (the sayings and actions of Prophet Muhammad), certain legal concepts are not explicitly mentioned (Abdul Jalil, Rahman, 2010).



Islamic jurisprudence, which involves interpreting the divine Islamic law called *Shari'a*, relies on two primary sources: the legislation found in the Qur'an and the recorded precedents of "case law" in the Hadith literature. Other sources, such as the writings of notable scholars, also contribute to Islamic jurisprudence. In the field of commercial law within Islam, known as "*fiqh al-mu'amalat*" «فقه المعاملات» Islamic jurisprudence serves as a regulatory framework, with the principles of natural justice as its foundation. Contracts are vital in Islamic commerce, just as they are in any commercial activity. Having a good understanding of contract law, therefore, is crucial for facilitating commercial transactions. As Islamic finance products become more widely available worldwide, it becomes increasingly important to have a basic understanding of Islamic commercial contract law (Anwar, 2021).

Islamic legal literature contains elements of a general theory of contracts due to the broad range of contracts covered under Islamic law. In essence, a contract (*'aqd*) is an agreement between two individuals that hold legal validity and has significant consequences (Moqbel, Ahmed, 2020).

The significance of contract law is emphasized by the Islamic faith. The Islamic law of contracts has certain clauses to guarantee successful economic dealings between the firms. Islam solely forbids interest or usury on business transactions, as stated explicitly in the Qur'an "ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا" (*Sūrat al-Baqarah*, 275). In the holy Qur'an, Allah (God) declares that while conducting business is acceptable, taking interest (*ribā*) on loans is not. This verse from the holy Qur'an warns the business sector against making loans with fixed interest rates. It encourages the wealthy to grant "*qard al-ḥasan*", «القرض الحسن» loans, or loans with no interest, to the poor and needy to assist them in meeting their necessities (Ahmad, 2010). Thus, Islam recognizes contracts as lawful as long as there is no "*gharar*" (uncertainty) or "*ribā*" (interest) in the deal.



“Bona fides,” often known as good faith, has a long history in the Western legal system. Over the subsequent years, it played a substantial role in the development of Roman contract law and aimed to imbue a sense of fairness throughout the entirety of civil law. There has been significant discussion recently regarding the potential role it may play in the development of a theory of unconscionability that would promote more equitable contractual relationships while also acting as a counterweight to the prevalent concept of contract freedom. The traditional view of law is that there is almost perfect market competition and that parties actively bargain over the specifics of their agreement. The fundamental justifications for a contract’s legal power are its contractual autonomy and the parties’ consent. A key issue in modern contract law is finding the right equilibrium between the freedom and integrity of contracts and the principles of fairness. While courts strive to uphold agreements that are entered into freely and willingly by the parties involved in order to maintain legal and commercial certainty, much of the law emphasizes the primacy of contract integrity over considerations of fairness (Hutchison, 2018).

Given the recent trend, it is evident that the notion of “fairness” has become increasingly important in certain types of contracts. For instance, labor legislation has emphasized the significance of fairness in different aspects of employment contracts. Likewise, the Consumer Protection Act has emphasized the importance of fairness in contracts involving consumers. In reality, the Consumer Protection Act may serve as a potent indication of the legislature’s present legislative beliefs to combat unfair dealing in such a wide range of transactions that consumers participate in. The Constitution requires that the common law of contract acknowledges and upholds a level of equitable treatment, guided by good faith and influenced by constitutional values, between individuals who enter into contracts. This standard should directly apply to courts when resolving contractual disputes. The notion



of equitable treatment has become customary in civil law systems, and there are indications, particularly in consumer law, that such standards are increasingly recognized on an international level. It is important to highlight those numerous jurisdictions, despite lacking the Western constitutional value system, have effectively moved away from strict formalism in contract enforcement and instead focus on regulating private behavior to achieve substantial fairness (Louw, 2013).

The protection provided to buyers under Islamic contract law is superior to that under English law. Prophet Muhammad stated 1,400 years ago that sellers have to reveal any faults in goods to the buyer if they are aware of them, as mentioned in the corpus of *hadith*. In contrast, English law does not impose a duty on sellers to disclose defects in goods, even if they are aware of them. However, under Islamic law, it is the seller's responsibility to inform the buyer of any defects in the goods prior to the sale. Consequently, if the seller fails to disclose a defect that they are aware of, the buyer has the legal right, according to Islamic contract law, to cancel the sale contract and receive a refund. Unfortunately, despite this clear legal discrepancy, such a right is not available under English contract law (Abdul Jalil, Rahman, 2010).

The English legal system and the Islamic legal system have similarities in terms of court types, functions, lawmaking procedures, and court procedures. These similarities are being adopted in Muslim countries. However, the main difference between the two lies in the lawmaking process. In Muslim countries, laws are created by the Parliament with the condition that they do not contradict Islamic law principles. These principles include the belief in Allah as the sole Creator and the accountability of individuals for their actions in the Hereafter. The Islamic legal system relies on the Qur'an, Sunnah, *Ijma'*, and *Qiyās* as fundamental sources, which are not present in the English legal system (Louw, 2013).

Javid & Mandajin (2018) did a study about five types of contracts in an Iranian bank called "*Shahr*," and their compliance with



Islamic contracts. The researchers employed integrated content analysis as their methodology. The results of the study, which sought to compare Islamic contracts and Islamic banking support contracts, indicated that there is a high level of compliance, reaching up to 82%, in three categories of banking contracts: purchase of items, design, procurement, and commissioning of systems, and service and maintenance of equipment. Furthermore, there is a compliance rate of up to 91% in two types of contracts: assignment of interests and the right to use land and property rent. These contracts adhere to the conditions and recommendations of Islam, particularly those mentioned in the debt verse. Moreover, there are no notable distinctions observed among the five categories of banking contracts regarding their adherence to the recommendations found in religious verses. However, it is important to note that the study is limited to a specific type of local bank contract and does not encompass contracts typically associated with Islamic banking, such as *Murābaha*, *Muḍāraba*, and *Mushāraka*. Additionally, the article does not place significant emphasis on the concept of good faith or fairness as the primary variable of discussion.

(McCormack, 2009) did a paper explaining the philosophies and reasoning behind the contracts used in Muslim nations to sell commodities. The aim was to emphasize the notable similarities and differences between commercial contracts in the United States and those in the Middle Eastern Muslim countries. Western contract theory is often divided into three categories: (a) business dealings between companies, (b) business dealings between people, and (c) contracts related to family matters. These classifications can also be subdivided into various types of contracts, including pension, insurance contracts, landlord-tenant, franchise, prenuptial, charity, and employment, etc. Common law contracts are distinguished by the lack of a defined set of laws or regulations that dictate the formation, execution, violation, and remedies of a contract. Instead, the principles governing contracts



are derived from precedent set by past court cases. The principle of *stare decisis* guarantees that rulings made by higher courts have binding authority over lower courts, unless they are reversed or overturned. By examining past judicial decisions, especially those from appellate courts, a general rule can be established. The constraint of Western law lies in Christianity, which has exerted a substantial impact on the common law heritage in the United States and other Western legal systems. Traditionally, however, Christianity does not directly address commercial transactions. Christian canon law primarily centers around the church, church property, and marriage, encompassing a limited scope. During the early development of the common law tradition, ecclesiastical courts were responsible for cases related to canon law, while secular courts handled a wide range of disputes, including those involving commercial law. In contrast, Shari‘a law governs all facets of Muslim life, including contracts and commercial transactions.

It is becoming increasingly acknowledged that the conflict between upholding contractual obligations and ensuring fairness is a matter of concern for courts. The principle of freedom of contract allows parties to decide whether or not to enter into a contract, who they contract with, and the terms of the agreement. Ideally, contracts should be the result of voluntary decision-making, free from external interference, and with the parties exercising their autonomy. Judges exercise caution and avoid interfering with mutually agreed contractual terms. They also strive to separate their personal beliefs from the adjudication process. Consequently, there are situations where unfair and unjust contracts may be enforced, disadvantaging the weaker party. The focus has shifted towards prioritizing certainty over fairness. The court’s role primarily revolves around ensuring procedural fairness rather than substantive fairness. However, there is an argument that modern contract law should allow judges some flexibility by incorporating open-ended standards like good faith



and reasonableness to promote fairness and protect disadvantaged parties. The issue of unfair contracts extends beyond consumer agreements and affects contract law as a whole. The problem of unfair terms and the exploitation of freedom of contract by more powerful parties may exist in other areas of contract law and should be addressed. There is an argument that fairness should be the primary consideration in all contracts to prevent the constant prioritization of freedom and contract sanctity over fairness and equity (Mupangavanhu, 2015).

Fairness and transparency are fundamental to upholding a just and equitable society in the areas of property law and contracts. In the framework of Islamic property law, which is firmly based on the ideals of justice, equality, and moral behavior, this is especially true. Islamic contracts and property law seek to provide a framework that upholds the rights of all parties, advances societal welfare, and assures the fair distribution of resources and wealth. We can learn how Islamic property law upholds fairness and openness in transactions by analyzing its guiding ideas and practices, and this will be helpful for other legal systems looking to improve their frameworks. This paper explores the main tenets of Islamic property law and contracts, highlighting their significance in fostering fairness and transparency in various transactions. The research problem for this paper is to address the need for a deeper understanding of how Islamic property law and contracts promote fairness and transparency in transactions. It aims to investigate the practical implications of these principles in addressing contemporary challenges and to identify potential areas of improvement in their implementation. It aims to answer the following questions:

1. What are the key principles and guidelines of Islamic property law and contracts that promote fairness and transparency in transactions?



2. How do these principles and guidelines ensure equitable outcomes in property transactions within an Islamic legal framework?
3. How do Islamic property law and contracts compare to conventional property law and contracts in terms of ensuring fairness and transparency in transactions?
4. What are the implications of the findings for policymakers, legal practitioners, and individuals involved in property transactions within an Islamic legal framework?

The paper is divided into the following sections: Introduction, Literature Review, Methodology, Research Design, Data Analysis and Results, Discussion of the Results, and Conclusion.

LITERATURE REVIEW

In this section, the previous studies done in the field of Islamic property law and contracts will be summarized. *Uṣūl al-fiqh*, also known as the foundation of Islamic law, is the study of how the rules of *fiqh* are derived from their origins. The origins primarily lie in the Qur'an and Sunnah, which are the main sources of the *Shari'ah*. *Uṣūl al-fiqh* involves the examination of these sources and the methodology used to derive legal rulings. While the Qur'an and Sunnah do not provide a specific methodology, they offer indications from which the rules of *Shari'ah* can be inferred. The methodology of *uṣūl al-fiqh* includes reasoning methods such as analogy (*qiyās*), juristic preference (*istiḥsān*), the presumption of continuity (*istiṣḥāb*), and the rules of interpretation and deduction. These methods aid in correctly understanding the sources and making *ijtihād* (Quraishi & Kamali, 2000).

In the realm of civil transactions and commerce, the Qur'an established that mutual agreement is the standard and fundamental aspect of all contracts. The main reform introduced by



the Qur'an regarding property was the concept of *istikhlāf*, which states that all property belongs to God. As the vicegerent of God, man is merely a trustee and his exercise of ownership rights is subject to the well-being of society, overseen by the government. In terms of international relations, treaties, conduct of war, and treatment of prisoners of war, a set of principles were established to promote justice and respect for human dignity. Relations between individuals were to be governed by the principles of freedom and equality, and the state was equally bound to uphold and protect these values (Mupangavanhu, 2015).

“Equity” is a legal concept in the Western legal system that is based on the notion of fairness and conscience. It is considered legitimate because it is rooted in the belief in natural rights or justice that goes beyond the laws established by the government. Likewise, in Islamic law, the principle of *istihsān* and the concept of equity in Western law are both derived from the idea of fairness and conscience. They both allow for deviation from a specific legal rule when its enforcement would result in unjust outcomes. Nonetheless, the primary distinction between the two lies in the basis of equity, which is rooted in the concept of natural law, whereas *istihsān* finds its foundation in the underlying values and principles of the *Shari'ah*. *Istihsān*, as an important component of *ijtihād*, has played a crucial role in the development of Islamic law to adapt to the changing needs of society. It has served as a valuable instrument in facilitating flexibility and progress within Islamic law (Mupangavanhu, 2015).

The term *'aqd* (contract) is used predominantly to refer to two-party transactions in the classic books of Islamic law, when one side makes an offer and the other accepts it. But this word also refers to responsibilities in other spheres of life, such as duties to a higher power in religion, interpersonal duties in marriage, political duties in treaties, and business duties in certain contracts. Instead of being employed just as a technical term, it appears that the term *'aqd* is used in its etymological sense, which communi-



cates the concept of “tying up” or binding, as seen in the word “obligation” origin. One could argue that a comprehensive theory of contracts could have been derived from the Qur’an, as it states, “You who believe, fulfill contracts” “يَأْتِيهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ” (*Sūrat al-Mā’idah* 5:1). This verse emphasizes the importance of honoring and fulfilling contractual obligations. It encourages believers to be faithful and true to their agreements (Hassan, 2002).

Islamic legal reasoning and practice, as observed in the major schools of Islamic law, consistently referred to two principles of justice that guided and ensured the fairness of commercial and other transactions in the Islamic world, regardless of whether one acknowledges the possibility of developing a formal theory of contract from it. These are well-known and widely accepted concepts in Western legal study and reasoning: commutative justice and liberality. Equality is the main idea of commutative justice and acts as its major subject. Numerous laws, tenets, and the general framework of Islamic contracts may all be comprehended via the equality lens. Two particular regulations and two guiding concepts will be examined in order to demonstrate this. According to the first rule, (i) ownership of the item being sold is transferred right away at the completion of the contract, which is normally when the offer and acceptance happen. The idea of *istighlāl*, or unjust exploitation, is the subject of rule (ii) in the second section. Two further concepts that are important to different kinds of contracts are (iv) *gharar* (uncertainty) and (iii) *ribā* (usury). These ideas are clear and significant in Islamic jurisprudence’s whole field of contract law (Quraishi & Kamali, 2000).

The definition of *ribā* and *gharar* as well as the justification for their prohibition from the standpoint of justice and openness in Islam shall open this section. Theoretically, *ribā* may be used in more situations than loans. Any transaction involving the exchange of two or more values is susceptible to corruption via *ribā*. This covers transactions involving barter and money exchange, which are especially susceptible to *ribā*. In actuality, the



widespread perception is accurate since the ban on *ribā* primarily pertains to the exclusion of interest payments and earnings from money loans. The Qur’anic passages mentioning *ribā* primarily allude to loan arrangements. Furthermore, trade transactions are likewise seen by the Prophet’s Tradition (*sunnah*) as being subject to *ribā*. Unlike *ribā*, the range of applications for *gharar* has grown dramatically over time. The Holy Qur’an forbids games of chance because it stresses how important it is to shield people from taking on too much danger. All transactions should be free from speculation and uncertainty as a general norm, which was developed from the notion of protecting the weak against exploitation by the powerful. Only when both parties are fully aware of the values being traded can this be accomplished. *Gharar* is used in several contemporary processes that were not common in the Prophet’s days. *Gharar* in sales contracts was the most common situation that early Muslim jurists dealt with. A lot of the definitions of *gharar* that are out there are lacking. *Gharar*, according to Ibn Qayyim al-Jawziyya, is the subject matter—whether or not it is real—that the vendor is unable to provide to the buyer. Another writer compared *gharar* to an erratic subject, like a fish in the water or a bird in the air. But this term was meant to address people who mistook *gharar* for the unknown (*majhūl*). The interest-free lending practices used by the newly founded institutions are *takāful* (mutual guarantee), *muḍāraba* (commend a partnership), *ijāra* (lease contract), *ijāra wa iqtinā’* (rent-purchase contract), *mushāraka* (partnership), and *murābaha* (cost-plus-profit contract) (Hasanuzzaman & Saleh, 1991).

The obligations within the sale contract can be divided into those that are applicable to the buyer and those that apply to the seller. One of the main obligations of the seller is to ensure that the title of the property is transferred to the buyer. Additionally, the seller is responsible for delivering the goods within the agreed-upon timeframe, providing the correct quantity and quality of the goods, and overall acting in good faith. Islamic law places a strong



emphasis on justice and fair dealings in transactions, drawing guidance from the Qur'an and hadith. When a breach of contract occurs, particularly when the resulting damages are minimal or negligible, a court adhering to Islamic principles should carefully consider the potential undue hardship that may be caused to one party by the repudiation of the contract. Therefore, Islamic contract law appears to align with, or at least be compatible with, the common law concept of the innominate term (Choudhury, 2011).

Islamic contract law is rooted in ethical considerations, particularly in the contract of sale, which establishes a moral foundation for interactions between parties. Islam upholds principles such as justice, fairness, equality, and equitability. The ethical considerations within the sale contract aim to ensure that both parties engage in fair and transparent behavior, preventing any undue suffering as a result of the contractual relationship. These ethical obligations may have both legal and moral implications and typically apply to both parties involved. Below are three examples of ethical obligations placed on the parties within the contract. Firstly, both parties need to refrain from exploiting the contract in a way that leads to acquiring excessive profits. Determining the point of excessive profit is subjective and can potentially be a source of disagreement. The prohibition of risk (*gharar*) and gambling (*maysir*) are closely linked to the issue of excessive profits. Both risk and gambling within the sale contract can enable one party to gain an excessive advantage, which justifies the ethical basis for prohibiting them. Secondly, the parties should be truthful and provide transparent disclosure of information. Honesty and open communication are crucial in maintaining the integrity of the contract. Thirdly, the parties are required to assist each other in facilitating the smooth conduct of the contract, whenever possible. The Prophet has emphasized the importance of showing mercy and kindness towards others in business dealings, as Allah is merciful to those who display mercy (Hasanuzzaman & Saleh, 1991).



According to common law, the seller must behave honestly both when the contract is being formed and when it is being carried out. This implies that in all of their contractual interactions, the parties must be real and truthful. External or communal norms and standards that are imposed upon the parties decide what constitutes good faith. It is applicable to all sale transactions and is important for understanding, completing, and restricting the responsibilities resulting from a contract, including via collaboration and fiduciary duties (Hasanuzzaman & Saleh, 1991).

METHODOLOGY

Qualitative content analysis is now considered standard practice in the social sciences when it comes to text analysis methodologies. We start by outlining and clarifying the core ideas of content analysis. Although it is often acknowledged that the purpose of content analysis is to analyze information obtained from many communication channels, it is crucial to remember that content analysis encompasses more than just looking at the content itself. Alternatively, it might be reinterpreted as the application of trustworthy and legitimate techniques to determine precise details of the text's original source or other relevant elements. This demonstrates that content analysis has expanded beyond its initial focus on content (Mayring, 2015). In a summary by Pool (1959), three main objectives of content analysis are identified: describing texts, making inferences about the factors that influenced the texts, and making inferences about the effects of the texts.

The central aspect of content analysis is the category system. Even when conducting qualitative analysis, it is important to define the objectives of the analysis in terms of categories. The category system is the main tool used for analysis and it promotes the objectivity of the process, allowing others to replicate or understand the analysis. Qualitative content analysis should



focus on constructing and justifying categories, but there is limited guidance available in standard resources on content analysis. Finding a certain structure inside the material is its goal. A system of categories is used to apply this structure to the content. Every textual piece that falls into one of the categories is methodically taken out of the source. A few essential elements must be addressed in order to provide a broad description of the structuring process: the central aspects of the structure must be properly identified, derived from the research topic, and theoretically supported. These dimensions can be further broken down into specific traits or principles. Ultimately, a category system is produced by combining the dimensions and values (Choudhury, 2011).

Using computer software would be beneficial for conducting a qualitative content analysis, whether it is inductive or deductive. This is because most texts nowadays are already in digital format, and dealing with large volumes of text can be challenging. There are various programs, known as Computer Assisted Qualitative Data Analysis (CAQDAS), available for this purpose. Although these programs are primarily designed for Grounded Theory, they can still be utilized for Qualitative Content Analysis. However, effectively implementing all the necessary steps and procedures for content analysis can be a complex task (Choudhury, 2011).

Content analysis is a research method that aims to draw reliable and valid conclusions about a particular context based on data. Its purpose is to generate knowledge, offer new perspectives, present information, and provide practical guidance. The goal is to provide a concise and comprehensive description of the phenomenon under study, resulting in the identification of concepts or categories that accurately describe it. It is common practice to build a model, conceptual system, conceptual map, or categories using these ideas or categories. Depending on their desire, the researcher can use the terms “concept” or “category” interchangeably.



The next stage, if the researcher chooses to use inductive content analysis, is to organize the qualitative data. This method includes abstraction, category formation, and open coding. Writing headers and comments in the text as you read it is known as open coding. After that, the written text is read again, and any headers that are required are noted in the margins to ensure that every detail is covered. After that, these headings are collected from the margins and placed onto coding sheets. At this point, categories are created at will. The lists of categories are arranged into broad headings after the open coding procedure. By integrating related or dissimilar categories into larger, more general categories, this grouping aims to reduce the total number of categories. Often, deductive content analysis is used by academics who wish to look at current data in a different way. Testing different categories, notions, models, or hypotheses may be part of this process. The following stage, if deductive content analysis is selected, is to make a matrix of categories and code the information according to these categories. The goal of the study will determine the kind of analysis matrix that is employed, whether it is confined or not. It usually expands on earlier research, including theories, models, mind maps, and literature reviews (Pool, 1959).

RESEARCH DESIGN

In this section, the researcher will explain the different methodologies of qualitative content analysis, the sample size, and the type of software used for the analysis.

Scholars view content analysis as a flexible approach to studying textual material. It includes a variety of analytical techniques, ranging from interpretative and subjective studies to textual analyses that are more systematic and exacting. The research challenge at hand, as well as the researcher's theoretical and substantive interests, influence the choosing of a particular content analysis



technique. Although content analysis's adaptability has made it useful for a range of academics, its general use may have been hampered by the lack of a defined definition and standard operating methods. Although there is a substantial body of research on content analysis techniques, Hsieh et al. (2005) identified three primary methods: conventional, directed, and summative, which will be discussed in the following section.

Conventional content analysis is typically used in research designs intended to provide a description of a specific occurrence. This kind of design is especially appropriate in cases when the body of study or theory on the topic is very small. Rather than using predefined categories, researchers let the categories, and their names come to them organically from the data rather than imposing any preconceived ideas. They dive deeper into the data to find new meaning, which is also known as inductive category formation. Many qualitative approaches start with the same approach to research design and analysis (Hsieh et al., 2005).

The second strategy is directed content analysis, when a phenomenon may already have an imperfect theory or body of earlier research that might benefit from more explanation. A qualitative researcher may choose to use a guided approach to content analysis in certain circumstances. Based on their differences on the role of theory, Potter and Levine-Donnerstein (1999) would categorize this as a deductive use of theory. A directed approach to content analysis aims to conceptually develop or validate a theoretical framework or theory. The research issue can be more specifically defined and predictions about the variables of interest or their interactions can be made using existing theory or research. Thus, it becomes easier to ascertain the original coding scheme or the connections between various codes. Deductive category application is a common term used to describe this procedure (Mayring, 2000). Depending on the specific research issue, one of two methodologies might be used to start the coding process in the directed content analysis methodology. Reading the transcript



and marking any passage that at first glance appears to reflect the phenomena may be helpful if the goal is to locate and classify every instance of a certain phenomenon. The next stage of the analysis would be to give all of the highlighted paragraphs preset codes. A new code would be allocated to any text that could not be classified using the original coding system.

The third strategy is summative content analysis. When conducting a study that uses a summative strategy, the first step is to pinpoint and measure certain words or textual material. This quantification aims to investigate the context in which the words or material are utilized, rather than to infer meaning. Manifest content analysis is the practice of examining how certain words or content occur in written material (Potter & Levine-Donnerstein, 1999). At this point, the analysis would be deemed quantitative as it would just be calculating the frequency of particular words or material. But a summative approach to qualitative content analysis incorporates latent content analysis in addition to word counts. Examining the material and exploring the hidden meanings inside the words or content is known as latent content analysis. Finding the word's or content's hidden or implicit significance is the main goal of this kind of analysis.¹⁹

In summary, all approaches to qualitative content analysis adhere to a similar analytical procedure that consists of seven core components. These steps include developing the research questions that must be answered, choosing the sample to be examined, specifying the categories to be used, laying out the coding procedure and training the coders, carrying out the coding procedure, assessing the reliability of the analysis, and, at the end, analyzing the coding process's output (Kaid, 1989).



THE SAMPLE

The researcher has collected 31 papers of related content to the topic using the tool <https://www.connectedpapers.com>, where in this tool a title of a paper is inserted and related topics are auto-generated in a graph form, thus, papers can be collected. See Figure 1 for an example.

The software used for the qualitative content analysis is called QDA Miner Lite, which is an open source, free, and user-friendly edition of other well-known computer-assisted qualitative analysis software. It is designed to facilitate the analysis of textual data. The researcher will use a combination of the methods mentioned above in addition to word statistics using WordStat 2023 software for the word statistics and further content analysis.

DATA ANALYSIS AND RESULTS

The first step of using QDA Miner Lite software is importing the papers into a new project as shown in Figure 3.

The second step is determining the categories (codes and themes) of content analysis with their definitions. This process is done after analyzing the sample of the literature and extracting relevant information (see Tables 1 and 2).

The third step is to code the documents in QDA Miner Lite and the fourth is to run the code frequency function (Figures 2, 4, 5).

Next, each of the coded texts were added in the WordStat 2023 tool and it generated the following results:

First: Contractual Obligations' Variable (Figures 6, 8, 11, 12).

Second: Fairness and Equity Variable (Figures 7, 9, 13, 14).

Third: Ownership Rights Variable (Figure 18).

Fourth: Prohibited Transactions Variable (Figures 10, 15, 16).

Fifth: Transparency and Disclosure Variable (Figures 17, 19).



Code	Code's Definition
Ownership Rights	Refers to the legal rights and responsibilities associated with owning property in Islamic law.
Contractual Obligation	Refers to the terms and conditions that parties must adhere to in a contract governed by Islamic property law.
Fairness and Equity	Refers to the principles of justice and equality that underpin Islamic property law and contracts.
Transparency and Disclosure	Refers to the requirement for parties to provide clear and accurate information during property transactions in accordance with Islamic law.
Prohibited Transactions	Refers to specific types of transactions that are considered unlawful or unethical in Islamic property law.

TABLE 1: Codes and their Definitions.

Theme	Theme's Definition
Shari'a Compliance	Focuses on the extent to which property laws and contracts adhere to the principles and guidelines of Shari'a (Islamic law).
Social Justice	Explores how Islamic property law and contracts aim to promote fairness and equality in society.
Ethical Considerations	Examines the ethical dimensions and moral values embedded in Islamic property law and contracts.
Legal Framework	Analyses the legal framework and regulatory mechanisms that govern property transactions in Islamic law.
Role of Islamic Scholars	Investigates the role of Islamic scholars in interpreting and applying property laws and contracts.

TABLE 2: Themes and their Definitions.

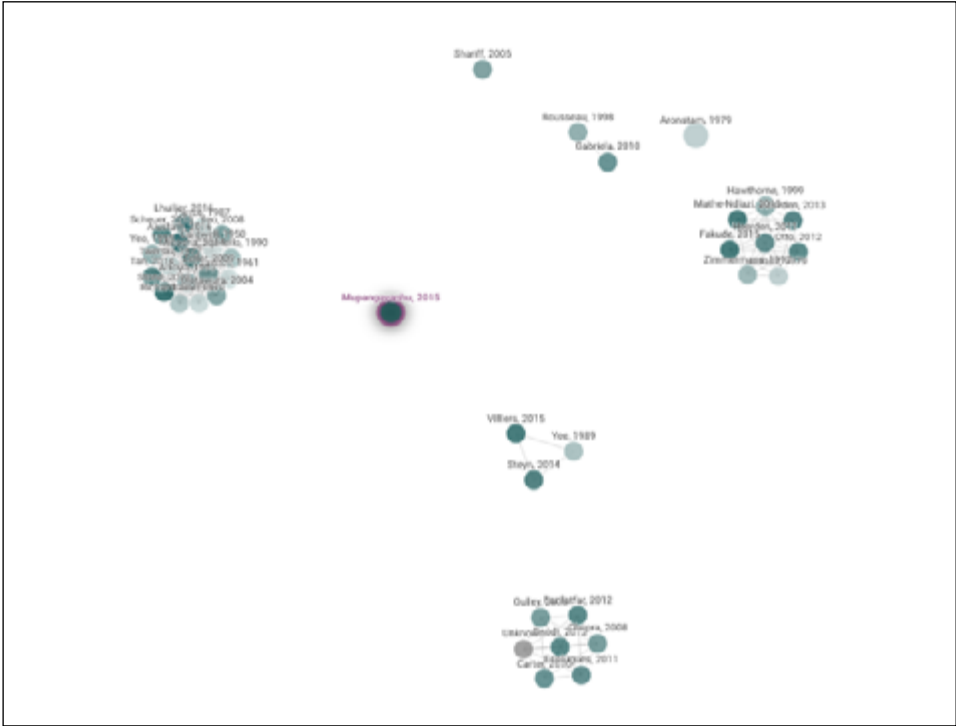


FIGURE 1: Connected Papers Tool.

	Count	% Codes	Cases	% Cases
<ul style="list-style-type: none"> ◆ Social Justice <ul style="list-style-type: none"> ◆ Fairness and Equity 	365	46.6%	22	71.0%
<ul style="list-style-type: none"> ◆ Sharia'a Compliance <ul style="list-style-type: none"> ◆ Ownership Rights 	19	2.4%	8	25.8%
<ul style="list-style-type: none"> ◆ Legal Framework <ul style="list-style-type: none"> ◆ Contractual Obligations 	232	29.6%	21	67.7%
<ul style="list-style-type: none"> ◆ Ethical Considerations <ul style="list-style-type: none"> ◆ Transparency and Disclosure 	39	5.0%	11	35.5%
<ul style="list-style-type: none"> ◆ Role of Islamic Scholars <ul style="list-style-type: none"> ◆ Prohibited Transactions 	129	16.5%	24	77.4%

FIGURE 2: Variables and Themes Code Frequency's Analysis in QDA Miner Lite.

CASES:	
▶	A Comparative Study of Islamic Contracts and Islamic Banking Support Contracts
	A Path to the Oasis Shari'ah and Reason in Islamic Moral Epistemology
	Classical Classification of Divine Rule
	Commercial Contracts in Muslim Countries of the
	Constitutional Framework of Good Governance under the Islamic Legal System
	CONTRACT DOCTRINE, PREDICTABILITY AND THE NEBULOUS EXCEPTION
	CONTRACT OF KAFĀLAH (GUARANTEE)
	CONTRACTS IN ISLAMIC LAW
	Economic_and_Commercial_Relations_of_the_prophet_Muhammad_with_the_jews
	Fairness a slippery concept The common
	Financing and returns of Shari'ah compliant contracts
	Flexibility and Shari'ah Compliance of Islamic
	Good_faith_principle_of_contract_law_for_the_islamic_banking_system
	Is Fair Market Competition Regulated under Syariah Law. 2014
	Islamic Finance in Europe
	Islamic Law of Contract is Getting Momentum
	Obligations_in_the_contract_of_sale
	Principles of Islamic Jurispendence
	Risk Management of Financial Instruments in Islamic Banks
	Stipulation in Contract from Islamic and Malaysian Legal
	The Classical and Modern Juristic Methodologies and Their
	THE GREATEST GOOD FOR THE GREATEST NUMBER OF PEOPLE AN ISLAMIC
	THE LAW OF CONTRACT IN SOUTH AFRICA
	The Need of Ijtihad for Sustainable Development in Islam
	THE PROFIT GAIN FROM ISLAMIC LAW OF CONTRACT
	The State As Essential Value
	THE UNDERSTANDING OF FACTS IN JUDICIAL PROCESS
	Treatment of Migrant Workers the Islamic Prespective
	UNFAIR DISMISSAL STUDY IN OMANI LABOUR LAW
	Unlawful Gain and Legitimate Profit in Islamic Law
	YET ANOTHER CALL FOR A GREATER ROLE FOR GOOD FAITH IN THE.v16i5

FIGURE 3: The Sample Research Papers.

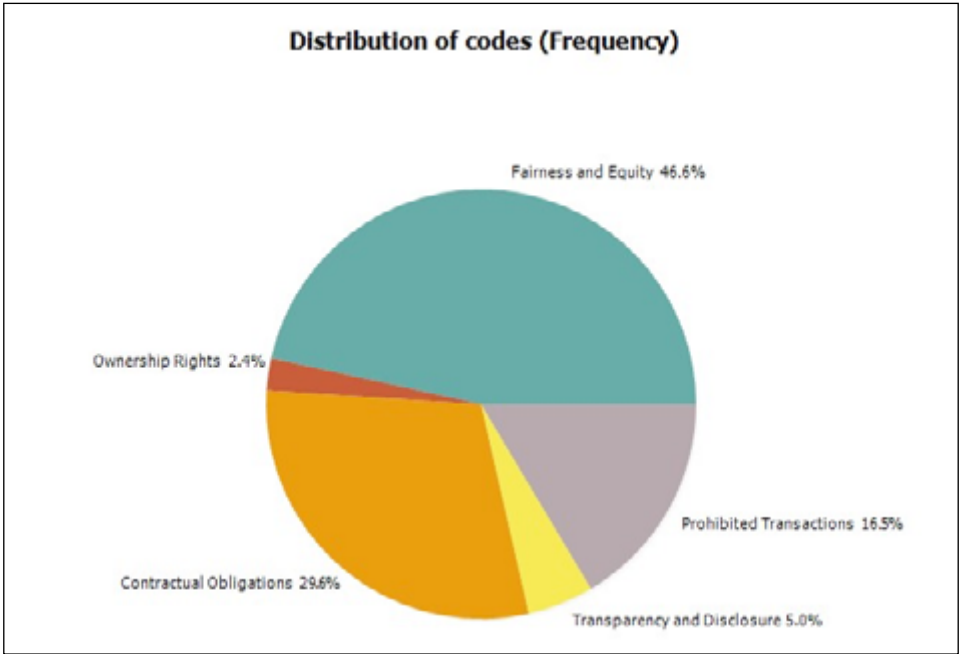


FIGURE 4: Distribution of Codes (Frequency) Graph.

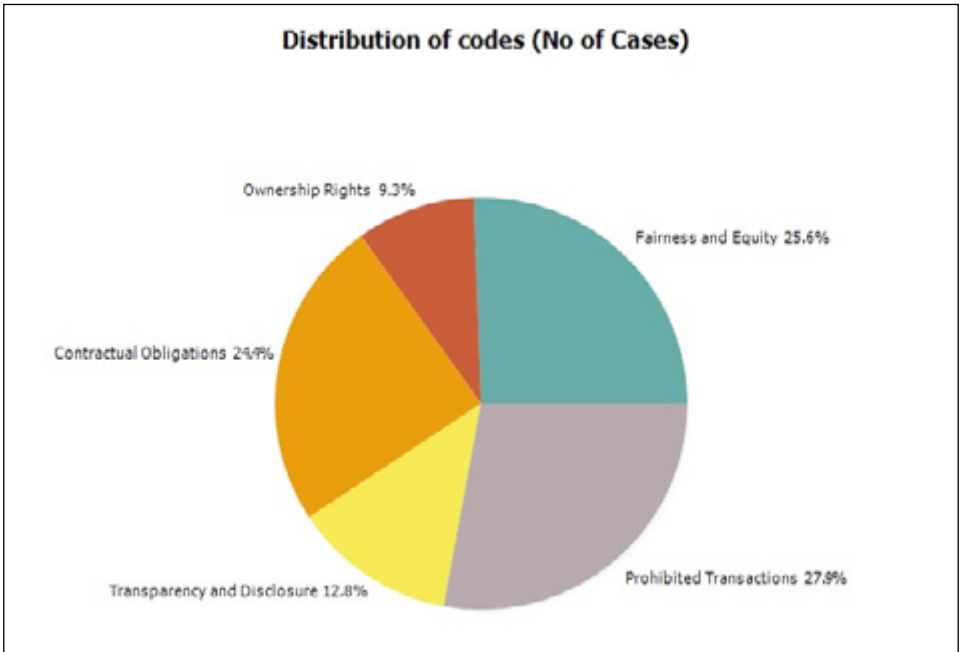


FIGURE 5: Distribution of Codes (No of Cases) Graph.

NO	TOPIC	KEYWORDS	COHERENCE (NPMI)	EIGENVALUE	FREQ	CASES	% CASES
1	SELLER BUYER	SELLER; BUYER; PRICE; PAY; GOODS; DELIVERY; OBLIGATION; PAID; DUTY; OBJECT; ITEM; PAYMENT; GOOD; AGREED; SALE; CASE	0.439	3.25	178	60	26.09%
2	PRINCIPAL DEBTOR	GUARANTOR; DEBT; LIABILITY; DEBTOR; GUARANTEE; FINANCIAL; PARTY; AGREEMENT	0.399	2.78	41	16	6.96%
5	ISLAMIC LAW CONTRACT	PRINCIPAL DEBTOR; LAW; CONTRACT; ISLAMIC; MATTER; PARTIES; SUBJECT; FREE; VALID; CONSENT; TERMS; INVALID; REPUDIATE; BREACH; LEGAL; MAKE; CONDITIONS CONTRACT LAW; FREEDOM OF CONTRACT; ISLAMIC CONTRACT LAW; TERMS OF THE CONTRACT; ISLAMIC LAW; FREE CONSENT; SANCTITY OF CONTRACT; ISLAMIC LAW OF CONTRACT; COMMON LAW; VALID CONTRACT; EMPLOYMENT CONTRACT;	0.333	2.13	265	118	51.30%
3	OFFER AND ACCEPTANCE	OFFER; ACCEPTANCE; MUSLIM; CONCLUDED; MARRIAGE; JURISTS; TRANSACTIONS; PROPERTY; OBJECT; SALE	0.221	2.35	39	22	9.57%
4	MATTER SUBJECT	OFFER AND ACCEPTANCE; MARRIAGE CONTRACT; MATTER; SUBJECT; UNCERTAINTY; TIME; GHARAR; DELIVERED; COMMODITY; SALE; OWNERSHIP; SALAM; AFTER; CONTRACT; BANK	0.201	2.20	73	52	22.61%

FIGURE 6: Contractual Obligations Code's Word's Main Topics and Keywords.

NO	TOPIC	KEYWORDS	COHERENCE (NPMI)	EIGENVALUE	FREQ	CASES	% CASES
2	ISLAMIC BANKING SYSTEM	BANKING; SYSTEM; ISLAMIC; ECONOMIC; SOCIAL; SOCIETY; TRANSACTIONS; PRINCIPLE; BASED; FAIR; INTEREST; COMMUNITY SOCIAL JUSTICE; ISLAMIC BANKING SYSTEM; ISLAMIC BANKING; ECONOMIC JUSTICE; JUSTICE AND FAIRNESS; SUBSTANTIVE; FAITH; LAW; GOOD; CONTRACT; EQUITY; GREATER; COMMON; FAIRNESS; CONCEPT; ROLE; CONTRACTUAL	0.282	3.09	76	36	9.86%
4	GOOD FAITH CONTRACT LAW	GREATER SUBSTANTIVE EQUITY; SUBSTANTIVE EQUITY; LAW OF CONTRACT; SOUTH AFRICAN; COMMON LAW OF CONTRACT; CONTRACT LAW; CONTRACTUAL RELATIONS; GOOD FAITH; REASONABLENESS AND FAIRNESS; PARTIES; POLICY; PUBLIC; CONTRACTING; FREEDOM; CONTRACT; VOLUNTARY; COURTS CONTRACTING PARTIES;	0.247	2.12	160	93	25.48%
1	CONTRACTING PARTIES		0.163	3.50	9	9	2.47%
3	COMMUTATIVE JUSTICE	COMMUTATIVE; JUSTICE; LIBERALITY; ARISTOTLE; DISTRIBUTIVE; CORRECTIVE; VOLUNTARY; TRANSACTIONS COMMUTATIVE JUSTICE; COMMUTATIVE JUSTICE AND LIBERALITY; DISTRIBUTIVE JUSTICE; CORRECTIVE JUSTICE;	0.132	2.37	100	73	20.00%
5	GOOD FAITH PUBLIC POLICY	GOOD; FAITH; POLICY; PUBLIC; REASONABLENESS; PRINCIPLE REASONABLENESS AND FAIRNESS; GOOD FAITH; PUBLIC POLICY;	0.094	2.05	49	39	10.68%

FIGURE 7: Fairness and Equity Code's Word's Main Topics and Keywords.



FIGURE 8: Contractual Obligations Coded Text's Phrases Frequencies in a Graph Form.



FIGURE 10: Prohibited Transactions Coded Text's Phrases Frequencies in a Graph Form.

Distribution of phrases (Frequency)

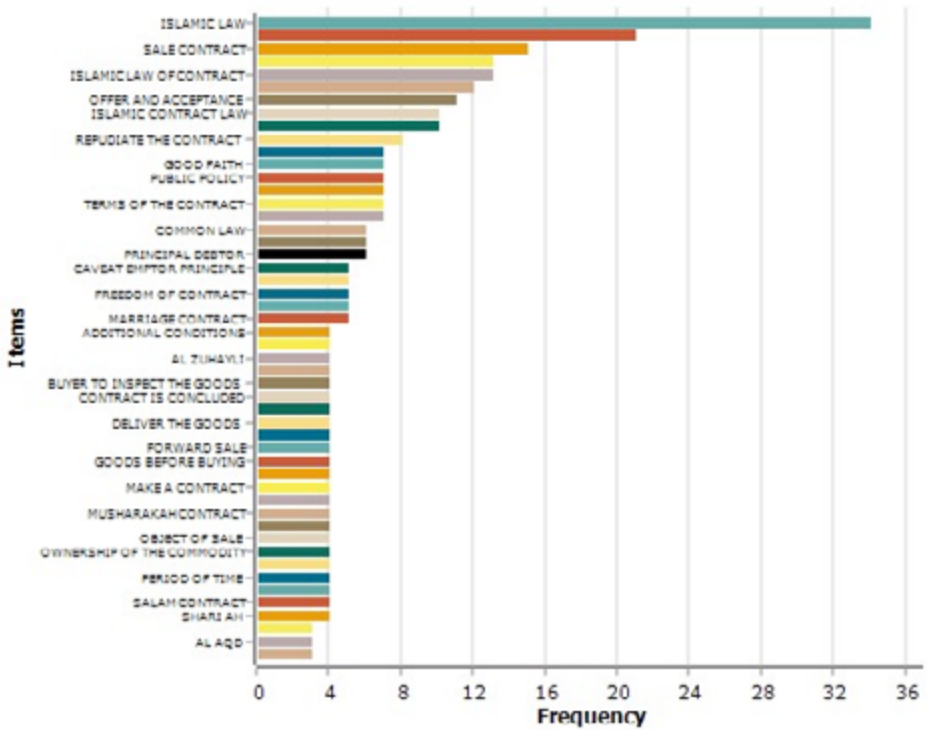


FIGURE 11: Contractual Obligations Coded Text's Phrases Frequencies in a Bar Chart Form.

Distribution of keywords (Frequency)

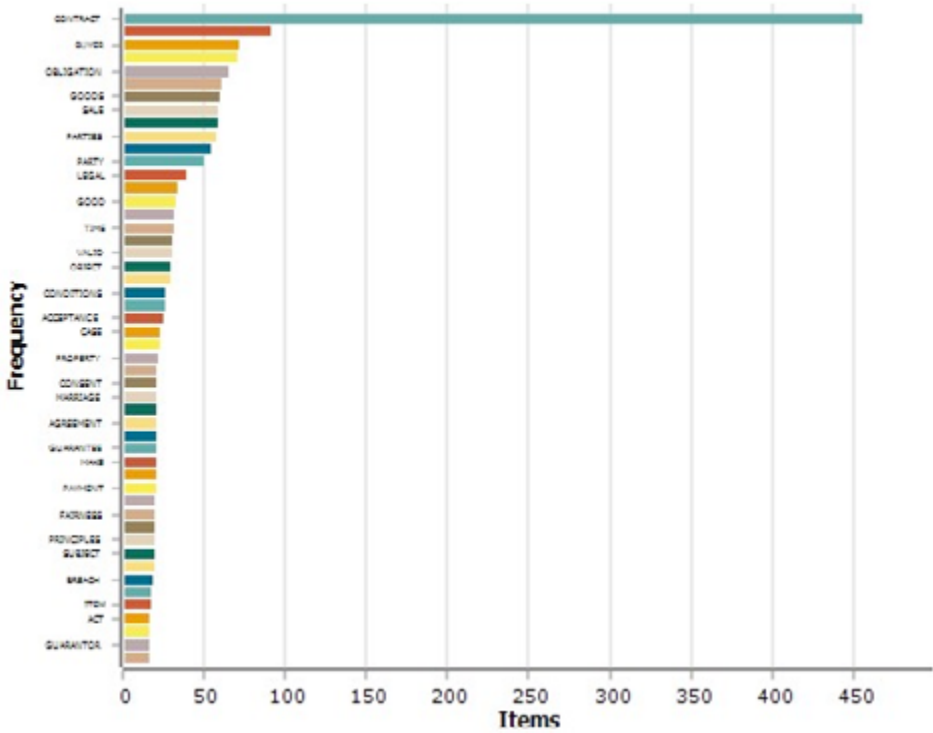


FIGURE 12: Contractual Obligations Coded Text's Word Frequencies in a Bar Chart Form.

Distribution of phrases (Frequency)

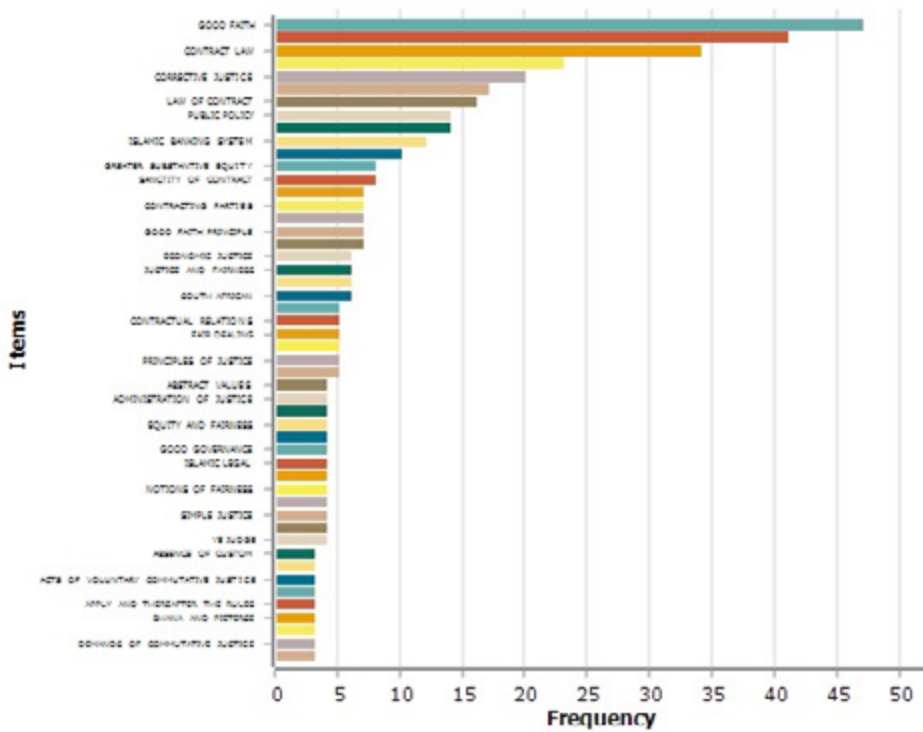


FIGURE 13: Fairness and Equity Coded Text’s Phrases Frequencies in a Bar Chart Form.

Distribution of keywords (Frequency)

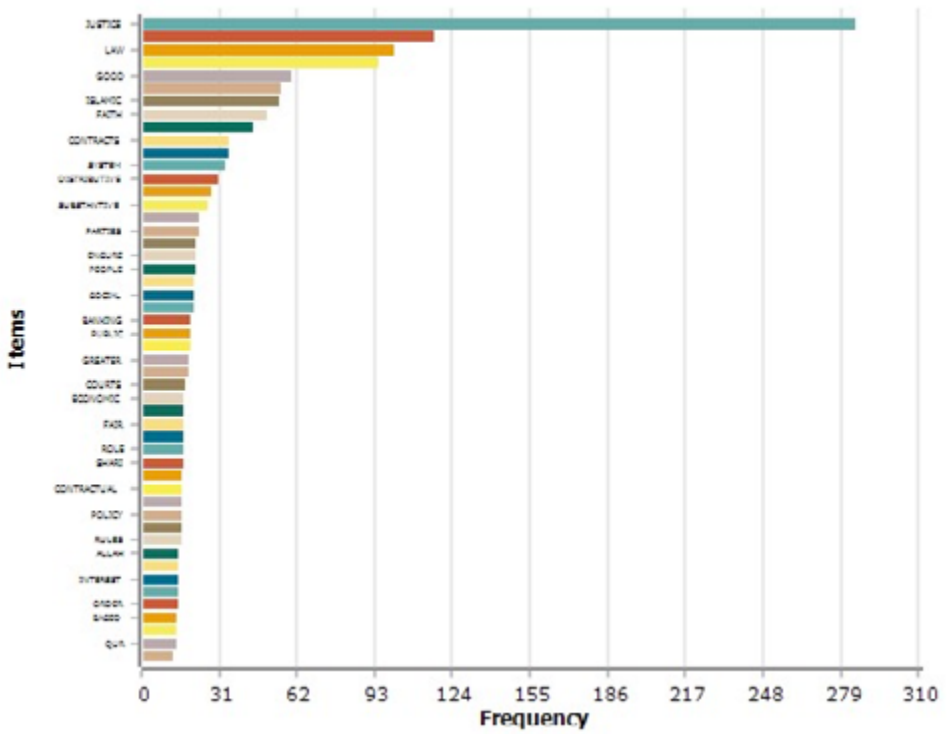


FIGURE 14: “Fairness and Equity” Coded Text’s Word Frequencies in a Bar Chart Form.

Distribution of phrases (Frequency)

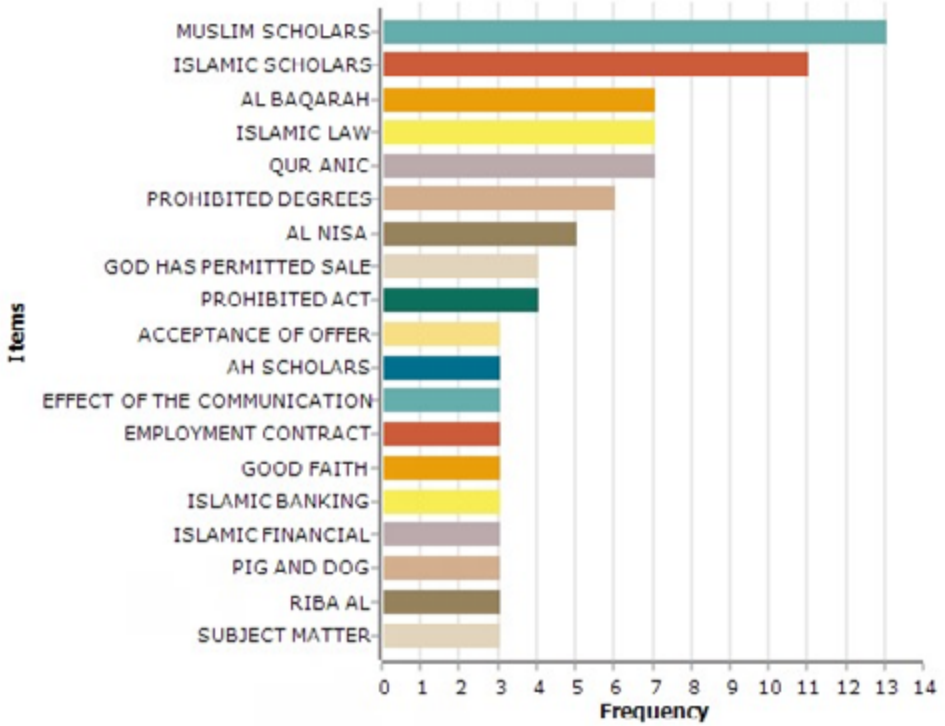


FIGURE 15: Prohibited Transactions Coded Text's Phrases Frequencies in a Bar Chart Form.

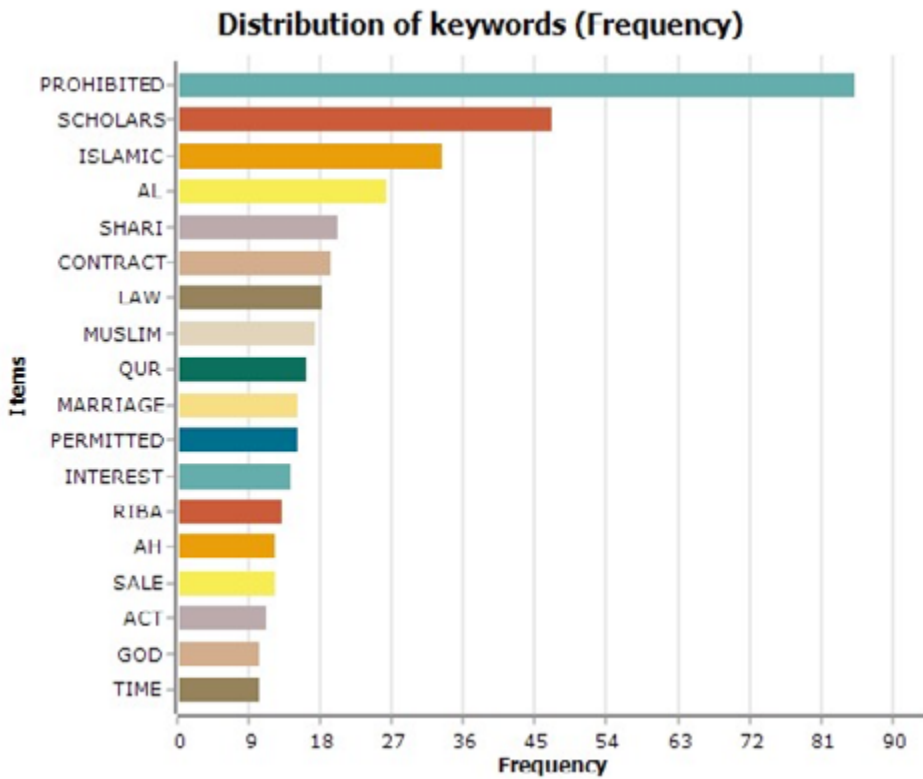


FIGURE 16: Prohibited Transactions Coded Text's Word Frequencies in a Bar Chart Form.

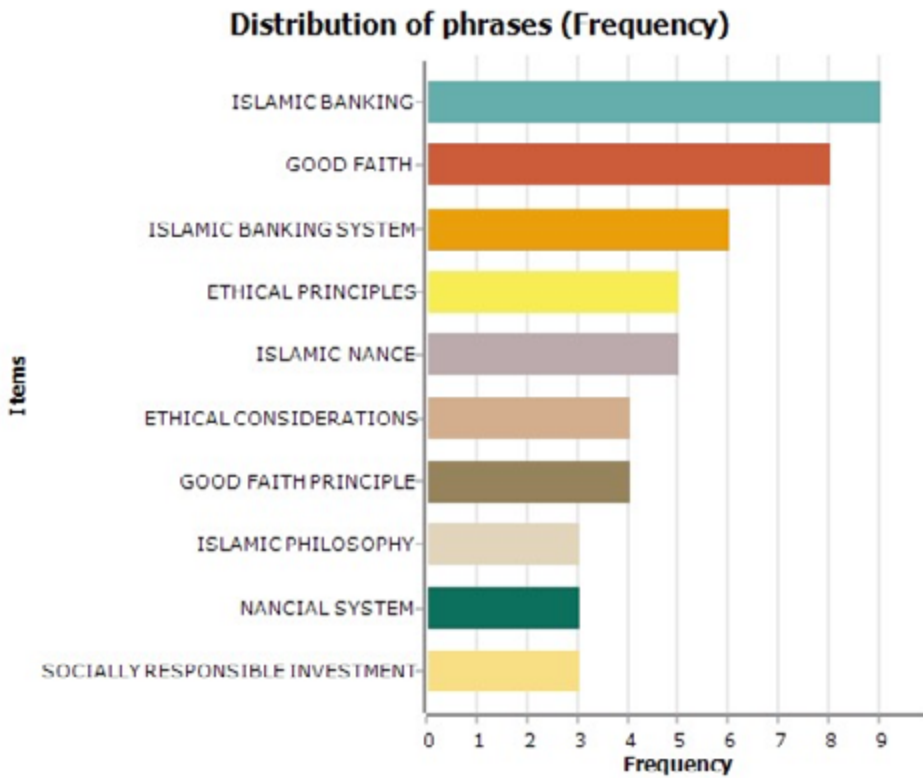


FIGURE 17: Transparency and Disclosure Coded Text's Phrases Frequencies in a Bar Chart Form.

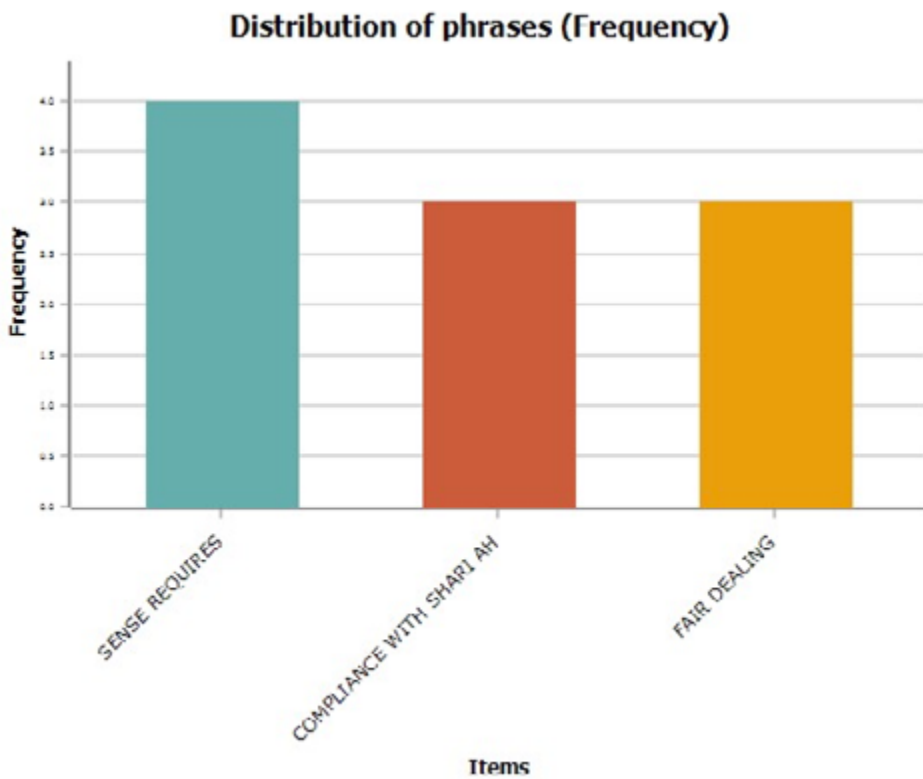


FIGURE 18: “Ownership Rights” Coded Text’s Phrases Frequencies in a Bar Chart Form.

Distribution of keywords (Frequency)

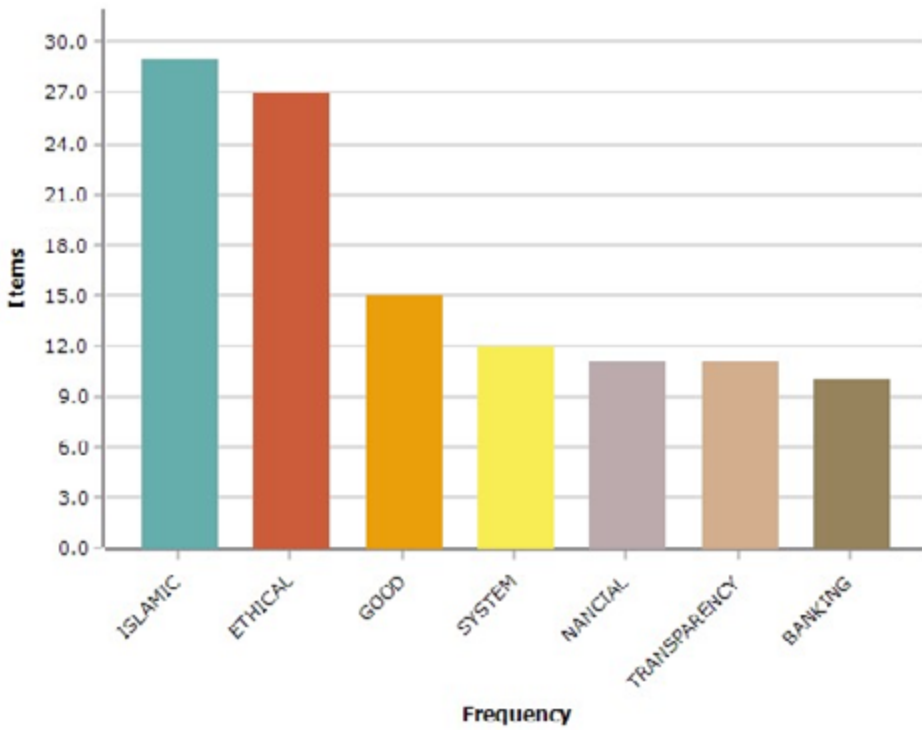


FIGURE 19: Transparency and Disclosure Coded Text's Word Frequencies in a Bar Chart Form.

DISCUSSION OF THE RESULTS

In this section the researcher will discuss the results of the content analysis and word statistics graphs mentioned in the previous section with the aim of answering the research questions.

First, we will look at the results from the codes and count frequency from QDA Miner Lite software. We see that the code with the most hits is “Fairness and Equity” under the theme of “Social Justice” with count of 365 representing 46.6% of the total codes. Followed by the code “Contractual Obligations” under the theme “Legal Framework” with a count of 232 and 29.6% of the total codes. Followed by the code “Prohibited Transactions” under the theme of “Role of Islamic Scholars” with a count of 129 and 16.5% of the total codes. Followed by the code “Transparency and Disclosure” under the theme “Ethical Considerations” with a count of 39 and 5% of the total code. Followed by the code “Ownership Rights” under the theme “Shari’a Compliance” with a count of 19 and 2.4% of the total code.

When collecting the research papers sample, the research focused on the main paper theme to use in connected papers tool to be about fairness and justice in Islamic contracts as it is this paper’s main topic. We will go through each of the results of the previously mentioned code from the WordStat 2023 tool in the coming section.

For the first code “Fairness and Equity” under the theme of “Social Justice”: we inserted all the coded text phrases into WordStat 2023 tool and we got the following results for main topics and keywords: the first most frequent topic is “Good Faith Contract Law” with keywords such as “Substantive,” “Faith,” “Law,” “Good,” “Contract,” “Equity,” “Fairness,” etc. The second most frequent topic is “Commutative Justice” with keywords such as “Commutative,” “Justice,” “Liberality,” “Distibutative Justice,” “Corrective Justice,” etc. The third most frequent topic is “Islamic Banking System” with keywords such as “Banking System,” “Islamic,”



“Economic,” “Society,” “Transaction,” “Principle,” “Interest,” etc. The fourth most frequent topic is “Good Faith Public Policy” with keywords such as “Good,” “Faith,” “Public,” “Policy,” and “Reasonableness”. The fifth most frequent topic is “Contracting Parties” with keywords such as “Parties,” “Policy,” “Public,” “Contracting,” “Freedom,” “Contract,” “Voluntary,” and “Courts”.

	✓FREQUENCY	NO. CASES	% CASES	LENGTH	TF • IDF
GOOD FAITH	47	39	10.68%	2	45.6
COMMUTATIVE JUSTICE	41	38	10.41%	2	40.3
CONTRACT LAW	34	31	8.49%	2	36.4
DISTRIBUTIVE JUSTICE	23	22	6.03%	2	28.1
CORRECTIVE JUSTICE	20	19	5.21%	2	25.7
ISLAMIC BANKING	17	10	2.74%	2	26.6
LAW OF CONTRACT	16	16	4.38%	3	21.7
PUBLIC POLICY	14	14	3.84%	2	19.8
SUBSTANTIVE EQUITY	14	14	3.84%	2	19.8

FIGURE 20: The Top 10 Most Frequent Phrases for The Code “Fairness and Equity”.

In Figure 20 above the researcher chose only the top 10 most frequent phrases to discuss due to the limitation of scope of this paper. By discussing those phrases we aim to answer our research questions, and we will start with research question number 3. How do Islamic property law and contracts compare to conventional property law and contracts in terms of ensuring fairness and transparency in transactions?

Since these phrases compare to the conventional property contract law and transactions; we will discuss the first phrase “Good Faith” which we can define as “Being truthful and adhering to reasonable commercial standards of fair dealing” (Houh, 2005). “Good Faith” is a concept that holds great importance and is distinctively relevant. It is natural for both parties to expect that they will act in good faith towards each other throughout their contractual interactions. Additionally, moral obligations require them to behave in this manner. Good faith not only plays a significant role



in contractual matters, but it is also interconnected with various other legal principles such as implied promise, custom and usage, fraud, negligence, and estoppel. These principles serve important functions in this field by complementing, restricting, and qualifying specific legal rules and contract terms. Furthermore, some of these principles also establish independent grounds for liability, separate from the contractual obligations (Summers, 1968).

Most civil laws in Europe have a generic clause on good faith. Furthermore, several codes provide special guidelines that also address the idea of good faith. Additionally, a lot of the specific guidelines included in these regulations are seen to be particular implementations of the good faith concept. The majority of legal systems distinguish between objective and subjective good faith. The term “subjective good faith” usually refers to a person’s subjective mental state in which they do not know something or are under no duty to know something. In property law, this idea is very important, especially in situations involving “bona fide acquisition”. Conversely, objective good faith—which is what the general good faith provisions relate to—is typically seen as a benchmark for the conduct of the parties involved in a contract. It entails behaving in accordance with or in opposition to the good faith maxims (Hesselink, 2010).

This section will address the second, third, and fourth phrases that pertain to justice. While “commutative justice” permits people to keep their riches without others profiting at their expense, “distributive justice” guarantees that every individual has the required wealth to satisfy their requirements. The primary goal of contract law is to protect each person’s share of wealth, which is the aim of commutative justice. To ensure that everyone has the resources to live a decent life, this share is intended to be protected. It is important that no one is enriched by taking from another, and that no one gains at the expense of someone else’s loss. According to Gordley, the school of Salamanca developed the initial contract theory, which focused on the principles of prom-



ise-keeping, generosity, and fairness. This theory was influenced by the philosophies of Aristotle and Aquinas (Hawthorne, 2015). “Corrective justice” aims to rectify past injustices by analyzing the connection between the wrongdoer and the victim. This perspective on private law can be differentiated from “distributive justice,” which focuses on the fair distribution of wealth and other resources among the entire population. In contrast, “corrective justice” specifically addresses the resolution of disputes within private relationships among individuals (Bridgeman, 2003).

For the second code “Contractual Obligations” under the theme “Legal Framework,” we inserted all the coded text phrases into the WordStat 2023 tool and we got the following results for main topics and keywords: the first most frequent topic is “Islamic Law Contracts” with keywords such as “Islamic Contract Law,” “Freedom of Contract,” “Terms of the Contract,” “Matter,” “Parties,” “Subject,” “Free,” “Valid,” “Consent,” “Terms,” “Invalid,” “Repudiate,” “Breach,” “Legal,” “Conditions,” etc. The second most frequent topic is “Seller Buyer” with keywords such as “Seller,” “Buyer,” “Price,” “Goods,” “Delivery,” “Obligation,” “Paid,” “Duty,” “Object,” “Item,” “Payment,” “Good,” “Agreed,” “Sale,” and “Case”. The third most frequent topic is “Matter Subject” with keywords such as “Matter,” “Subject,” “Uncertainty,” “Time,” “*Gharar*,” “Delivered,” “Commodity,” “Sale,” “Ownership,” “*Salam*,” “After,” “Contract,” and “Bank”. The fourth most frequent topic is “Principal Debtor” with keywords such as “Guarantor,” “Debt,” “Liability,” “Debtor,” “Guarantee,” “Financial,” “Party,” “Agreement,” and “Principal Debtor”. The fifth and last most frequent topic is “Offer and Acceptance” with keywords such as “Offer,” “Acceptance,” “Muslim,” “Concluded,” “Mirrage”, “Jurists”, “Transactions”, “Property”, “Object”, “Sale”, “Offer and Acceptance”, “Mirrage Contract”.

This code section aims to answer the research question No: 2. How do the principles of Islamic property law and contracts ensure equitable outcomes in property transactions within an Islamic legal framework?



In order to answer this question, we will further look into the results of the top 10 most frequent phrases of “Contractual Obligations” in Figure 21 below.

We will start with the definition of contracts. A contract can be described as a series of actions agreed upon by two or more parties, resulting in obligations where one party can demand certain actions from the other party, who is obligated to fulfill them. If the obligations are one-sided, the contract is considered unilateral. Conversely, if both parties have obligations, it is considered bilateral. The Arabic word for contract, *‘aqd*, carries a broader meaning of tie or bond compared to the term “contract” in Common law. It encompasses personal relationships, including matrimonial law, this paper focuses on Islamic contracts of property (Shimizu, 1989).

	√FREQUENCY	NO. CASES	% CASES	LENGTH	TF • IDF
ISLAMIC LAW	34	28	12.17%	2	31.1
CONTRACT LAW	21	18	7.83%	2	23.2
SALE CONTRACT	15	15	6.52%	2	17.8
CONTRACT OF SALE	13	12	5.22%	3	16.7
ISLAMIC LAW OF CONTRACT	13	12	5.22%	4	16.7
EMPLOYMENT CONTRACT	12	10	4.35%	2	16.3
OFFER AND ACCEPTANCE	11	10	4.35%	3	15.0
ISLAMIC CONTRACT LAW	10	10	4.35%	3	13.0
SUBJECT MATTER	10	7	3.04%	2	15.2
REPUDIATE THE CONTRACT	8	5	2.17%	3	13.3

FIGURE 21: The Top 10 Most Frequent Phrases for the Code “Contractual Obligations”.

In this section we will cover terms such as “Islamic Law of Contracts” by discussing the characteristics of the Islamic law of contracts.

First: Simplicity of formality: Under Islamic law, contracts are considered valid when one party makes a valid offer, and the other party accepts it. Unlike Roman law, Islamic law did not adhere to strict formalities in its early development. Roman law, on the



other hand, maintained formal symbolism for a significant period. Even a minor mistake or negligence in the procedural forms could invalidate an otherwise fair claim (Abd Rahman, 2000).

Second: Immediate transfer of ownership at the meeting: The transfer of ownership should occur immediately upon the formation of a contract, according to the principle. This principle is closely linked to the prohibition of *ribā* (usury). In Islamic law, it is advised to avoid future transfers, as they involve elements of speculation or risk that can lead to unforeseeable gains or losses. For instance, in a sale contract, if you state that you have purchased something and received it, you are obligated to immediately pay the price at the time of the transaction. The same applies in reverse: if you state that you have sold something, you cannot delay the delivery of the goods until a later date. In contrast, Western law promotes transactions that involve future transfers, which are essential for modern business operations (Abd Rahman, 2000).

Third: Stress on oral testimony: Unlike contemporary legal systems, contracts in Islamic law did not necessarily require the presence of written documents as a prerequisite. The spoken word of an honest Muslim was considered more reliable than a mere piece of paper or information that could be questioned or forged. This reliance on religious standards is also evident in the judicial oath, as oral testimony is given priority based on the belief that a Muslim would not lie under oath (Abd Rahman, 2000).

Fourth: Prohibition of *ribā*: Islamic law strictly forbade the practice of *ribā* (interest), which is seen as essential in modern economic activities. This concept influenced the entire body of contract law in a broader sense. Due to the significant importance attributed to *ribā* by Islamic law, it forms the basis for many restrictions that limit the freedom of contract within the Islamic legal framework (Abd Rahman, 2000).

Fifth: Easiness in rescinding contracts: The distinction between Western and Islamic law lies in the fact that Islamic law considers unilateral rescission of a contractual relationship as natural and



acceptable in certain circumstances, whereas Western law would typically emphasize the continuation of the contract. In comparison to Western law, it is indeed true that Islamic law tends to allow for easier cancellation of contracts (Abd Rahman, 2000).

According to classical scholars, the second term, “Sale Contract,” is one of the fundamental contracts and can refer to a wide variety of agreements, such as a *salam* sale, a *muqayyadah* exchange of commodities, a *sarf* exchange of money, an *istisnād* contract of manufacture, or a *wafd* sale with the right of redemption. The exchange of property for property is referred to as *bay‘* in Arabic. It might be interpreted as a buy or a sell. Classical academics have often used a literal view of the technical meaning of sale, defining *bay‘* as the “exchange of property for property in a distinct manner” (Zahraa & Mahmor, 2001).

The third term is “Offer and Acceptance,” which Mejlle defines an offer as the initial proposal made to dispose of property, which serves as proof of the disposition. Another explanation of an offer is that it is the first proposal made by one of the parties during negotiations or when reaching an agreement. Acceptance, on the other hand, is the word spoken secondly to finalize the disposition of property, and it completes the agreement. Both the *Shari‘ah* and common law require acceptance to be absolute and unconditional, meaning it must align with the terms of the offer (Abd Rahman, 2000).

The fourth term is “Subject Matter,” which is a crucial component of a valid contract, and it refers to something that both parties involved in the contract focus on when creating it. Depending on the type of contract, the subject-matter can be goods or services. Both Islamic law and Common law consider the subject-matter to be an important element of a contract (Talib, 2017).

For the third code is “Prohibited Transactions” under the theme of “Role of Islamic Scholars,” and in its discussion we aim to answer the first research question: (1) What are the key principles



and guidelines of Islamic property law and contracts that promote fairness and transparency in transactions?

The first most frequent keyword is “Muslim Scholars,” which in the coming section we will discuss their role in promoting transparency in Islamic contracts. Islam prohibits any business transactions that result in exploitation or injustice for any party involved. To guarantee that no party unfairly profits at the expense

	√FREQUENCY	NO. CASES	% CASES	LENGTH	TF • IDF
MUSLIM SCHOLARS	13	13	10.16%	2	12.9
ISI AMIC SCHOLARS	11	10	7.81%	2	12.2
AL BAQARAH	7	7	5.47%	2	8.8
ISLAMIC LAW	7	7	5.47%	2	8.8
QUR'ANIC	7	7	5.47%	2	8.8
PROHIBITED DEGREES	6	6	4.69%	2	8.0
AL NISA	5	5	3.91%	2	7.0
GOD HAS PERMITTED SALE	4	4	3.13%	4	6.0
PROHIBITED ACT	4	4	3.13%	2	6.0
ACCEPTANCE OF OFFER	3	3	2.34%	3	4.9

FIGURE 22: The Top 10 Most Frequent Phrases for The Code “Prohibited Transactions”.

of another, it requires that all financial and business interactions be done with openness, accuracy, and the disclosure of all pertinent facts. Some scholars determined the main prohibited elements in financial contracts which are as the following: it must be free from *ribā*, *gharar*, *qimār*, and *maysir*”; also, the subject matter should be *halal*, and free from fraud, deception, and coercion, contracts must be on mutual consent. Based on their legality, Muslim scholars divide contracts into three categories: *ṣaḥīḥ* (valid), *bāṭil* (void), and *fāsid* (voidable or irregular). A contract’s *mahal al-‘aqd* subject matter must to be legitimate (*halal*) in accordance with *shari‘ah*. This suggests that the material ought to be clean and devoid of any contaminants related to law or religion. Consequently, any substance that is considered ritually unclean and has restrictions



on its disposal cannot be used as an item for sale, such as wine, pig, intoxicants, and blood (Saiti & Abdullah, 2016).

The third most frequent term is *Al-Baqarah* which refers to the *sūrah*, which includes verses about prohibited transactions in contracts. One of the predominant verses is verse 275. «الَّذِينَ يَأْكُلُونَ» الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۗ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۗ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ ۗ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۗ هُمْ فِيهَا خَالِدُونَ» (275). The explanation of the verse is that “usury” means an increase on something, and the increase is “usury”. Rather, the word “*rabiyya*” was called “*rabiyya*”, (1) because of its increase in size and its extension over what was leveled on the ground from what was around it, from their saying: “*Rabiyah yarbū*”. From that, it was said: “So-and-so is in the usury of his people.” (2) What is meant is that he is in high status and honor among them, so the origin of “usury” is infinity and increase. Then it is said: “So-and-so raised usury,” that is, he decreased [his money, when] he transformed it into an excess. (3) Rather, it was said to the educator: “profitable” because of his weakening the money that he currently had over his debtor, or because of his increasing it due to the term that he delays it to, thus increasing it to the term that he had before his debt was due on him (القرآن الكريم (تفسير سورة البقرة تفسير الطبري n.d., الكريمة). To put it differently, the term *ribā* refers to an abundance, expansion, surplus, growth, or increase. In Islamic law, *ribā* is defined as a surplus of goods or an excess in return that is received without an equivalent value in exchange. In a broader sense, *ribā* is considered as a predetermined excess or surplus that goes beyond the amount of a loan received by the creditor, subject to certain conditions and within a specified time-frame. The prohibition of *ribā* was established around the 8th or 9th year after the *Hijrah* (Arabic century) (Jalil & Rahman, 2010).

Another term is “*Al-Nisā*” which refers to *Sūrat al-Nisā*, which includes a verse about prohibited transactions in contracts. «يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۚ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ



His Messenger, “do not consume your wealth among yourselves unjustly.” He says: Do not consume each other’s wealth with what has been forbidden to you, such as usury, gambling, and other things that God has forbidden you, “unless it is commerce.” Likewise: “O you who have believed, do not consume your wealth among yourselves unjustly, unless it is a trade with your mutual consent.” As for “they devour their wealth among themselves unjustly,” it means usury, gambling, undervaluation, and injustice, “unless it is a trade,” so that he may gain a thousand in a dirham if he can 29 الآية (تفسير سورة النساء) (n.d.).

The verse elucidates the guidelines for acquiring sustenance in both permissible and impermissible ways. It distinguishes between legitimate means of seeking livelihood and wrongful actions such as deceit, fraud, and perjury. The Qur’an establishes a clear boundary between what is acceptable and what is not when it comes to procuring life’s necessities. It emphasizes the importance of considering the public interest and ensuring that transactions are conducted with the consent and satisfaction of all parties involved, fostering mutual benefit, fairness, and voluntary participation (Aslami, et al., 2021).

The fourth code is “Transparency and Disclosure” under the theme “Ethical Considerations”.

The first term is “Islamic Banking.” Islamic banking is characterized by its adherence to the principles of Islamic finance and economics, which includes the prohibition of interest. Islamic banks provide interest-free loans and equity-based solutions like *mudārabah* and *mushārahah* in place of conventional lending. In *mushārahah*, the bank and the customer form a partnership in which the bank shares risk and makes investments in the client’s business. Profits are distributed according to a predetermined ratio, and both parties bear the loss if the business incurs any. *Mudārabah*, on the other hand, is a trust financing arrangement based on profit and loss sharing. One of the debt-like products in Islamic banking is *Murābahah*, which is a form of cost-plus



	∇FREQUENCY	NO. CASES	% CASES	LENGTH	TF - IDF
ISLAMIC BANKING	9	6	15.00%	2	7.4
GOOD FAITH	8	7	17.50%	2	6.1
ISLAMIC BANKING SYSTEM	6	4	10.00%	3	6.0
ETHICAL PRINCIPLES	5	5	12.50%	2	4.5
ISLAMIC NANCE	5	5	12.50%	2	4.5
ETHICAL CONSIDERATIONS	4	4	10.00%	2	4.0
GOOD FAITH PRINCIPLE	4	3	7.50%	3	4.5
ISLAMIC PHILOSOPHY	3	2	5.00%	2	3.9
NANCIAL SYSTEM	3	3	7.50%	2	3.4
SOCIALLY RESPONSIBLE INVES	3	3	7.50%	3	3.4

FIGURE 23: The Top 10 Most Frequent Phrases for The Code “Transparency and Disclosure”.

financing. It is accompanied by other products such as *Ijārah* (operating lease) and *Istisnā’* (progressive payment). However, *Murābahah* is the most widely used form of financing in Islamic banks, constituting a significant percentage compared to other Islamic financial instruments (Khan, 2011).

The term “Ethical Principles” implies that Islam gives utmost importance to ethical values in the lives of human beings. Essentially, Islam is a moral and ethical framework for human conduct that is derived from divine instructions and guidelines. The ethical principles in Islam are rooted in the Qur’an, which serves as the basis for the religious system. Thus, there is not much of a difference between Islamic ethics and Islam. Islam’s canonical, penal, civil, and moral laws are intertwined and should not be seen as distinct legal systems or schools of study (Joni Tamkin, 1999).

“Social responsibility” refers to the practice of conducting business in a way that preserves the environment, treats workers fairly, acts impartially toward rivals, maintains integrity and fairness in transactions, shows concern for society and its less fortunate members, and gives all stakeholders’ interests equal weight without sacrificing the interests of shareholders. If this is the core of corporate social responsibility, then the idea is in line with the tenets of both Islamic law and faith. When correctly understood,



CSR is not only a suggestion but a responsibility for every Muslim. It's interesting to note that Sharia, despite its ancient roots, has comprehensive rules for trade and proper conduct for merchants and other businesspeople (Taman, 2011).

The last code is "Ownership Rights" under the theme "Shari'ah Compliance".

The term "Fair Dealing" can be explained by *Mejelle*, which they focus on a particular subject known as contracts of honesty (*'aqd al-amānah*), in which the acceptance of a contract is dependent on the information provided by the other party. These contracts operate on the belief that the buyer trusts the seller to disclose the true price without requiring them to swear an oath or provide evidence. Consequently, it is crucial to protect these contracts from any form of dishonesty or potential dishonest behavior (Yusuf Sani, et al., 2018).

	FREQUENCY	NO. CASES	% CASES	LENGTH	TF - IDF
SENSE REQUIRES	4	2	10.00%	2	4.0
COMPLIANCE WITH SHARIAH	3	3	15.00%	4	2.5
FAIR DEALING	3	3	15.00%	2	2.5

FIGURE 24: The Top Most Frequent Phrases for The Code "Ownership Rights".

CONCLUSION AND RECOMMENDATIONS:

In conclusion, this paper illuminates the pivotal role of fairness and transparency within the context of Islamic property law and contracts. It underscores the foundational principles of justice, honesty, and mutual consent that serve as the bedrock of Islamic transactions. Emphasizing the paramount importance of upholding these principles, the paper contends that doing so is essential for preserving trust and integrity in business dealings within Islamic societies. This study contributes significantly to our comprehension of Islamic contracts and property law, offering



invaluable insights for decision-makers, legal professionals, and individuals engaged in property transactions under Islamic law. By scrutinizing the standards that ensure justice and transparency in transactions, the study aspires to foster ethical behavior and equitable outcomes in property deals, ultimately bolstering a just and transparent economic system. Employing a qualitative content analysis approach, the research method involves a meticulous examination of relevant Islamic legal sources and scholarly opinions to identify the primary principles and regulations governing property transfers in Islamic law. The qualitative content analysis is conducted using QDA Miner Lite software, revealing the most recurrent phrases from the coded content in the methodology—an essential framework and set of keywords for future research endeavors.

Policy Recommendation: Drawing from the insights uncovered in this research paper, policymakers and legal authorities should enact the following measures aimed at fortifying fairness and transparency within Islamic property law and contracts: Reinforce the Legal Framework: Develop and rigorously enforce a comprehensive legal framework aligned with Islamic principles of fairness and transparency. This framework should delineate clear guidelines for property transactions, emphasizing informed consent, disclosure of information, and safeguards against fraud or exploitation. Promote Education and Awareness: Initiate educational campaigns to enhance awareness among individuals and communities regarding their rights and responsibilities in property transactions. This includes educating both buyers and sellers about the paramount importance of fairness, transparency, and adherence to Islamic principles within contractual agreements. Establish Dispute Resolution Mechanisms: Create efficient and accessible dispute resolution mechanisms, such as arbitration or mediation, specifically designed to address property-related conflicts. These mechanisms should be guided by Islamic principles, ensuring a fair and impartial resolution of disputes that promotes



trust and confidence in the legal system. Encourage Ethical Business Practices: Foster a culture of ethical business practices among entities and professionals involved in property transactions. This can be achieved through the implementation of industry codes of conduct, professional certifications, and incentives for businesses demonstrating a steadfast commitment to Islamic principles in their operations.

By implementing these policy recommendations, stakeholders can actively contribute to the establishment of a resilient and just property market that upholds the values of fairness and transparency inherent in Islamic principles.

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