Legal Language as Contractual Infrastructure: Standardising Malay and Shariah Terminology for Contracting Parties in Islamic Banking in Malaysia

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ABSTRACT

The use of the Malay language in Islamic banking contracts is important to the communication of contractual rights, obligations, and Shariah requirements to all contracting parties. Beyond the general promotion of Malay-language documentation, the governance of Malay legal and Shariah terminology warrants particular attention as an element of contractual and legal infrastructure. Terminological consistency, conceptual accuracy and institutional coordination may support contractual understandability, meaningful consent, legal certainty and the fair treatment of contracting parties. This study adopts qualitative doctrinal legal research and conceptual analysis, drawing on Malaysian constitutional and statutory provisions, regulatory materials, relevant institutional mandates and judicial decisions concerning the statutory role of the Shariah Advisory Council and the respective functions of the Council and the civil courts. The analysis identifies four interconnected challenges: potential terminological inconsistency across contractual documents, preservation of legal and Shariah accuracy, fragmentation of institutional responsibilities, and the gap between documentary compliance and meaningful understanding by contracting parties. In response, the study proposes an Integrated Governance Framework comprising five dimensions: normative foundation, institutional coordination, operational implementation, terminological validation, and contractual understanding and legal outcomes. The framework recognises the complementary but distinct roles of Bank Negara Malaysia, the Shariah Advisory Council, Dewan Bahasa dan Pustaka, Islamic financial institutions, and relevant experts, while respecting their respective legal mandates. The study contributes by conceptualising terminology governance as contractual infrastructure that connects linguistic precision, Shariah integrity, and the rights and obligations of contracting parties. The proposed framework is normative and conceptual; its institutional feasibility and practical outcomes require future consultation and empirical assessment.

Keywords: Islamic banking; Malay language; Shariah governance; contractual rights; legal certainty.

INTRODUCTION

The language of a contract is not merely a means of presenting commercial terms. It defines and communicates the rights, obligations, responsibilities, and legal consequences governing the relationship between contracting parties. In Islamic banking, this function carries an additional dimension because contractual documents must convey both the legal effects of financial transactions and the Shariah principles underlying the products. The accuracy and consistency of the language used are therefore important to contractual interpretation, the understanding of obligations and the proper implementation of Shariah-based transactions.

Malaysia provides an important legal and institutional setting for examining this relationship. Article 152 of the Federal Constitution recognises Malay as the national language. The Islamic Financial Services Act 2013 (IFSA 2013) establishes the regulatory framework for Islamic financial institutions and imposes

requirements relating to Shariah compliance. In addition, the Central Bank of Malaysia Act 2009 (CBMA 2009) establishes the Shariah Advisory Council (SAC) and provides for its statutory role in the ascertainment of Islamic law in Islamic financial business. These constitutional and statutory arrangements form the legal context within which Malay legal and Shariah expressions are developed and applied in Islamic banking documentation (Federal Constitution, art. 152; Islamic Financial Services Act 2013; Central Bank of Malaysia Act 2009, Part VII).

Islamic banking contracts incorporate concepts derived from Arabic jurisprudence, Islamic commercial law and contemporary financial practice. Terms such as *murabahah*, *mudarabah*, *musyarakah*, *wakalah* and *tawarruq* refer to particular contractual arrangements with distinct legal and Shariah implications. Their use in Malay-language documentation involves more than direct translation. The expressions adopted must preserve the substantive meaning of the underlying concepts, communicate the relevant contractual effects and remain consistent across agreements, product disclosure sheets and other related documents. Where Arabic expressions are retained, adequate explanations are also necessary to convey their meaning and implications to the parties concerned. This requirement is consistent with the broader objective of Shariah governance, which seeks to strengthen the integration of Shariah considerations into the business and operational activities of Islamic financial institutions (Bank Negara Malaysia, 2019).

The central concern is therefore not simply whether Islamic banking contracts are prepared in Malay, but whether the language used accurately reflects the legal and Shariah substance of the transactions. Inconsistent expressions, ambiguous descriptions or inadequate explanations may create difficulties in identifying the nature of a contractual arrangement and understanding the rights and obligations arising from it. Research on legal communication has demonstrated that the linguistic structure of legal documents can affect readers' ability to comprehend contractual propositions. Masson and Waldron (1994), for example, found that simplifying words and sentence structures could improve comprehension, although difficulties in understanding complex legal concepts remained. Similarly, Martínez et al. (2022) identified linguistic features that contribute to the processing difficulties associated with legal language. These findings suggest that improving contractual communication requires attention not only to the choice of words but also to the way legal concepts and obligations are expressed.

This concern is particularly relevant in standard-form financial contracts, where documentation is generally prepared by financial institutions. Clear and consistent contractual language can contribute to meaningful consent and fair communication, although linguistic clarity alone does not necessarily establish contractual validity or guarantee that every contracting party fully understands the transaction. It should instead be considered alongside disclosure requirements, contractual design and applicable consumer-protection safeguards.

The development and application of appropriate Malay legal and Shariah expressions also involve several institutions with distinct responsibilities. Bank Negara Malaysia (BNM) exercises regulatory and supervisory functions over Islamic financial institutions, while the SAC performs its statutory role in ascertaining Islamic law for Islamic financial business. Dewan Bahasa dan Pustaka (DBP), under the Dewan Bahasa dan Pustaka Act 1959 (Revised 1978), has functions that include developing the national language, standardising its use and formulating appropriate terminology. Islamic financial institutions, in turn, are responsible for applying relevant legal, regulatory and Shariah requirements in their products, agreements and disclosure documents. These institutional functions are complementary but distinct. Effective coordination must therefore preserve the respective legal mandates and areas of expertise of each institution rather than assume that any single institution possesses authority over all aspects of language, law and Shariah compliance (Bank Negara Malaysia, 2019; Dewan Bahasa dan Pustaka Act 1959).

Against this background, this study addresses three research questions: (1) How can the standardisation of Malay legal and Shariah expressions support contractual understandability, meaningful consent and legal certainty for contracting parties in Islamic banking? (2) What legal, institutional and conceptual challenges affect the development and consistent application of standardised expressions? (3) What governance framework can integrate linguistic accuracy, Shariah validation, regulatory requirements and the legitimate interests of contracting parties?

The study adopts qualitative doctrinal legal research and conceptual analysis, examining relevant constitutional and statutory provisions, regulatory materials, institutional responsibilities and judicial decisions. It seeks to conceptualise the governance of Malay legal and Shariah expressions as an integral element of contractual infrastructure rather than a matter of translation or linguistic presentation alone. On this basis, the study proposes an Integrated Governance Framework comprising five dimensions: normative foundation, institutional coordination, operational implementation, terminological validation, and contractual understanding and legal outcomes. The proposed framework aims to strengthen the relationship between linguistic precision, Shariah integrity, and the protection of the rights and obligations of all contracting parties.

LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

Legal Language, Contractual Meaning and Understandability

Legal language performs a substantive function in contractual relationships by communicating the rights, obligations, responsibilities, and legal consequences of an agreement. The precision of contractual language is particularly important in financial transactions, where contractual provisions may determine payment obligations, the allocation of financial risks, remedies and the termination of contractual relationships. However, technical precision and accessibility do not always coincide. Expressions that are familiar to legal practitioners or Shariah scholars may remain difficult for other contracting parties to understand, particularly where specialised financial concepts are involved.

The relationship between legal language and contractual understanding has been examined in studies on the comprehensibility of legal documents. Masson and Waldron (1994) found that simplifying words and sentence structures could improve the comprehension of legal contracts among non-expert readers. Nevertheless, their findings also indicated that simplified language alone did not eliminate difficulties in understanding complex legal concepts. Similarly, Martínez et al. (2022) demonstrated that certain linguistic features, including complex sentence structures and difficult-to-process expressions, could reduce the comprehension and recall of legal texts. These findings highlight the importance of improving contractual communication without compromising the substantive accuracy of legal concepts.

Contractual understandability should be distinguished from the legal requirements governing contract formation and validity. The use of accessible language does not, by itself, establish informed consent, nor does the presence of technical expressions automatically invalidate an agreement. Nevertheless, clear explanations and consistent expressions can assist contracting parties in identifying the nature of a transaction and understanding their respective obligations. They may also contribute to more coherent contractual interpretation by financial institutions, legal practitioners and courts.

This consideration is particularly relevant to Islamic banking because contractual documents must communicate both the commercial arrangement and the Shariah principles governing the transaction. The language adopted must therefore preserve the substantive meaning of the underlying contract while enabling the parties to identify their respective rights, responsibilities and obligations. Accordingly, contractual understandability is not merely a matter of linguistic accessibility but also concerns the accurate communication of legal and Shariah concepts.

Malay Legal Language and the Malaysian Institutional Context

The constitutional recognition of Malay as the national language under Article 152 of the Federal Constitution provides an important context for the development of Malay as a language of law and specialised financial practice. The development of Malay legal language requires the capacity to express complex legal concepts accurately while maintaining linguistic clarity and consistency. This is particularly challenging in Islamic finance, where expressions may originate from Arabic jurisprudence, be explained through English-language financial practice and subsequently be incorporated into Malay contractual documentation.

Dewan Bahasa dan Pustaka (DBP) has an important role in developing, standardising and expanding the use of Malay. Its statutory functions under the Dewan Bahasa dan Pustaka Act 1959 (Revised 1978) provide an institutional basis for its contribution to language development and terminology standardisation. Nevertheless, linguistic standardisation alone cannot determine the legal effect or Shariah validity of a financial transaction. The development of expressions for Islamic banking therefore requires collaboration between language specialists, legal experts and qualified Shariah scholars. Each contributes a distinct form of expertise: linguistic specialists assess the appropriateness and consistency of language; legal experts examine its relationship with statutory and contractual principles; and Shariah scholars assess whether the expressions preserve the substantive requirements of Islamic law.

The institutional context is further shaped by the Islamic Financial Services Act 2013 (IFSA 2013) and the Central Bank of Malaysia Act 2009 (CBMA 2009). IFSA 2013 establishes the regulatory framework governing Islamic financial institutions and imposes statutory requirements relating to Shariah compliance. The CBMA 2009 provides for the establishment and statutory functions of the Shariah Advisory Council (SAC), including its role in the ascertainment of Islamic law in Islamic financial business. These legal arrangements establish the institutional environment within which Malay legal and Shariah expressions are developed and applied in Islamic banking documentation.

Shariah Concepts, Translation and Conceptual Accuracy

Islamic banking documentation incorporates concepts derived from Islamic jurisprudence and commercial law, including *murabahah*, *mudarabah*, *musyarakah*, *wakalah* and *tawarruq*. These expressions do not merely identify financial products; they represent contractual arrangements with distinct elements, conditions, sequences and legal consequences. Their use in Malay documentation therefore requires careful consideration of the underlying legal and Shariah substance.

Direct translation may not always adequately convey the meaning of a specialised Islamic financial concept. Equally, retaining an Arabic expression without an appropriate explanation may limit the ability of contracting parties to understand the nature of the transaction. The challenge is to ensure that the Malay expression and its accompanying explanation accurately reflect the underlying concept without distorting its legal or Shariah implications.

Four considerations are particularly relevant to this process. First, conceptual accuracy requires the expression and its definition to represent the substantive meaning of the underlying contract. Second, consistency requires the same concept to be communicated uniformly across contractual agreements, product disclosure sheets, application forms and other related documents. Third, linguistic appropriateness requires expressions to be clear and suitable for their intended context. Fourth, Shariah integrity requires that the language used does not alter or misrepresent the relevant principles and requirements of Islamic law.

These considerations are interdependent. A consistently used expression may still be inappropriate if its meaning is conceptually inaccurate. Similarly, a technically accurate expression may not adequately serve its contractual purpose if its meaning is not explained to the relevant parties. The development of Malay legal and Shariah expressions must therefore integrate linguistic quality with legal and Shariah validation. This approach is consistent with the broader regulatory emphasis on embedding Shariah considerations within the governance, business and risk-management activities of Islamic financial institutions (Bank Negara Malaysia, 2019).

Contractual Communication, Rights of Parties and Legal Certainty

The relationship between Malay legal language and Islamic banking contracts has also been examined by Markom and Mohd Arif (2026), who investigated the empowerment of Malay in Islamic banking contract documentation in Malaysia. Their study highlighted the importance of standardising legal and Shariah expressions to improve contractual understandability, reduce differences between the meanings intended by financial institutions and those understood by customers, and support meaningful contractual assent. The study also proposed a legal infrastructure framework incorporating normative, institutional, operational,

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terminological and outcome dimensions. While these findings establish the relevance of language standardisation to Islamic banking documentation, further consideration is required regarding the governance arrangements through which linguistic accuracy, legal consistency and Shariah integrity can be coordinated within the respective institutional mandates. In particular, the relationship between language development, Shariah validation, regulatory oversight and the contractual interests of all parties warrants a more integrated conceptual examination. The present study addresses this dimension by examining terminology governance as contractual infrastructure and proposing an institutional governance framework that extends the analysis beyond documentary standardisation and customer understanding.

Standardisation of contractual documents and standardisation of legal expressions are related but distinct processes. Document standardisation generally concerns format, structure, presentation and the use of standard clauses, whereas the standardisation of legal and Shariah expressions concerns the consistent representation of the concepts underlying the contractual arrangement. Documents may adopt similar formats while describing comparable legal concepts through different expressions or definitions. Such variations do not necessarily establish legal inconsistency, but they may create avoidable difficulties in contractual communication and interpretation.

The importance of clear contractual communication extends to all parties involved in Islamic banking transactions. Customers need to understand the nature of the financial arrangement and the obligations they undertake. Financial institutions require accurate expressions to describe product structures, contractual responsibilities, and the allocation of risks. Other parties, including service providers and intermediaries, may also need to identify their respective roles and responsibilities within a contractual arrangement.

Bank Negara Malaysia's Policy Document on Fair Treatment of Financial Consumers, revised on 27 March 2024, reinforces the importance of fair treatment and the consideration of consumer interests in the conduct of financial service providers. The policy requires financial service providers to adopt responsible and professional standards of conduct and to embed the interests of financial consumers in their business strategies and operations (Bank Negara Malaysia, 2024b). Although the policy does not prescribe a comprehensive system for standardising legal and Shariah expressions, its emphasis on fair consumer outcomes provides a relevant regulatory context for improving contractual communication. The significance of accurate language, however, is not confined to consumer protection. It also supports the ability of financial institutions and other contracting parties to identify the legal nature of their relationships and the consequences arising from their agreements.

Consistent contractual language may contribute to legal certainty by reducing avoidable ambiguity and facilitating the identification of contractual rights and obligations. However, linguistic uniformity cannot independently guarantee legal certainty. The latter also depends on the applicable legal framework, the substantive content of contractual provisions, and their interpretation by the relevant authorities. Accordingly, standardisation should be understood as a supporting mechanism for sound contractual communication and interpretation rather than a substitute for substantive legal requirements.

Although the earlier study by Markom and Mohd Arif (2026) established the importance of empowering Malay in Islamic banking contracts and proposed a legal infrastructure framework, the present study addresses a distinct but related research concern. The earlier study examined the challenges of Malay-language contractual documentation and drew on exploratory stakeholder evidence to support a broader framework for strengthening the use of Malay in Islamic banking contracts. The present study, by contrast, adopts a doctrinal and conceptual approach to examine how legal and Shariah terminology can be governed through coordinated institutional responsibilities and defined validation procedures. Its contribution lies in specifying the governance process through which terminology may be proposed, linguistically assessed, examined for legal and Shariah accuracy, considered within the relevant regulatory context, adopted for use, implemented, and periodically reviewed. It also clarifies the boundaries between DBP's terminology-coordination mandate, the SAC's statutory Shariah-ascertainment function, BNM's regulatory responsibilities and the implementation duties of Islamic financial institutions. Accordingly, the present study does not claim to introduce the general idea of legal infrastructure or terminology standardisation.

Rather, it advances the discussion by developing a more specific institutional and procedural model for governing Malay legal and Shariah terminology as contractual infrastructure in Islamic banking.

Terminology Governance as Contractual Infrastructure

The concept of contractual infrastructure in this study refers to the legal rules, institutional relationships and operational mechanisms that support the communication and application of legal and Shariah concepts in contractual relationships. Within this understanding, the consistent use of Malay legal and Shariah expressions forms part of the infrastructure through which contractual rights, obligations and responsibilities are communicated. Its function therefore extends beyond the preparation of a glossary or the translation of technical expressions.

An effective governance arrangement requires procedures for identifying, developing, validating, adopting, applying and periodically reviewing specialised expressions. It must also establish clear institutional responsibilities and ensure that linguistic decisions remain consistent with applicable legal and Shariah requirements. This approach is particularly important in Islamic banking because the same contractual concept may appear in different products, documents and institutional processes, potentially creating variations in its expression and interpretation.

The relevant institutions in Malaysia have distinct but complementary responsibilities. Bank Negara Malaysia exercises regulatory and supervisory functions over Islamic financial institutions and issues applicable regulatory and policy requirements. The SAC performs its statutory function in ascertaining Islamic law for Islamic financial business within the scope of the CBMA 2009. DBP contributes linguistic expertise and supports the development and standardisation of Malay. Islamic financial institutions are responsible for applying relevant legal, regulatory and Shariah requirements in their products and contractual documentation. Legal practitioners, academics, Shariah scholars and other relevant experts may further contribute specialised knowledge and practical perspectives.

The distinction between the respective institutional mandates is particularly important. In *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd* [2019] 3 MLJ 561, the Federal Court considered the statutory functions of the SAC under sections 56 and 57 of the CBMA 2009 and their relationship with the adjudicative role of the civil courts. The decision illustrates the importance of recognising the SAC's statutory Shariah-ascertainment function without conflating it with the courts' responsibility to determine disputes. In the context of the present study, this distinction reinforces the need to coordinate linguistic, legal and Shariah expertise without assigning powers beyond the respective institutional mandates.

The distinction between the institutional regulatory framework and the contractual arrangements entered into by Islamic financial institutions further illustrates the importance of this approach. At the institutional level, consistent language can support regulatory compliance, Shariah governance and the development of coherent documentation practices. At the contractual level, it can assist in expressing the nature of transactions, the rights and obligations of parties, contractual responsibilities and the allocation of risks. Both levels are interconnected because institutional requirements must ultimately be reflected accurately in the agreements and communications governing financial transactions.

Based on these considerations, this study conceptualises terminology governance as an integral component of contractual infrastructure and proposes an Integrated Governance Framework comprising five dimensions: (i) normative foundation; (ii) institutional coordination; (iii) operational implementation; (iv) terminological validation; and (v) contractual understanding and legal outcomes. The framework seeks to connect the constitutional and regulatory basis for language development with institutional responsibilities, practical implementation, and the protection of the legitimate interests of all contracting parties. It provides the conceptual foundation for examining how Malay legal and Shariah expressions can be developed and applied consistently without compromising legal accuracy, Shariah integrity or the respective mandates of the relevant institutions.

RESEARCH METHODOLOGY

This study adopts a qualitative doctrinal legal research approach complemented by conceptual analysis. Doctrinal legal research is appropriate for examining, interpreting and synthesising legal rules, principles and institutional arrangements derived from authoritative legal sources (Hutchinson & Duncan, 2012; Bhat, 2020). It enables the study to identify the applicable legal framework, examine the respective mandates of relevant institutions and analyse judicial principles governing Islamic financial transactions and contractual interpretation. Conceptual analysis further assists in clarifying the relationship between Malay legal and Shariah expressions, contractual understandability, meaningful consent, legal certainty and the rights and obligations of contracting parties. These approaches provide the basis for developing a normative governance framework grounded in the legal and institutional context of Malaysia.

The primary sources comprise the Federal Constitution, particularly Article 152; the Contracts Act 1950 (Act 136); the Central Bank of Malaysia Act 2009 (Act 701); and the Islamic Financial Services Act 2013 (Act 759). These instruments were selected because they provide the constitutional, contractual and regulatory foundations relevant to the use of Malay, the formation and interpretation of contractual obligations, Shariah compliance and the institutional governance of Islamic financial business. The study also examines relevant Bank Negara Malaysia policy documents and regulatory materials concerning Shariah governance, product transparency and disclosure, and the fair treatment of financial consumers. These materials were selected according to their direct relevance to the communication of contractual rights and obligations and the institutional responsibilities involved in Islamic banking.

Judicial decisions were selected purposively according to their relevance to the statutory role of the Shariah Advisory Council (SAC), the relationship between Shariah ascertainment and judicial adjudication, and the interpretation of contractual language and rights. The principal decisions are *Mohd Alias bin Ibrahim v RHB Bank Bhd & Anor* [2011] 3 MLJ 26, *Tan Sri Abdul Khalid Ibrahim v Bank Islam (M) Bhd* [2013] 3 MLJ 269 and *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd* [2019] 3 MLJ 561. The decision in *Wan Badaruddin bin Che Wan Basor Ali v CIMB Bank Bhd & Anor* [2025] 11 MLJ 760 is considered for its illustrative relevance to contractual interpretation, terminology and jurisdictional boundaries, rather than as direct authority on Islamic banking. The selection is therefore issue-based and purposive, not intended to constitute an exhaustive review of all Malaysian decisions concerning Islamic financial contracts. Secondary sources comprise academic literature on doctrinal legal research, Islamic financial law, Shariah governance, legal language and terminological standardisation.

The analysis is conducted in three stages. First, the study identifies and interprets the normative and institutional framework governing the use of Malay in the legal context, Islamic financial business and the ascertainment of Shariah principles. Particular attention is given to the statutory functions and institutional boundaries of the relevant authorities. Second, it critically examines the legal and conceptual requirements for effective governance of Malay legal and Shariah expressions, focusing on conceptual accuracy, linguistic appropriateness, consistency, preservation of Shariah meaning and the communication of contractual rights and obligations. This stage also considers the distinction between formal documentary compliance and the extent to which contractual language may facilitate meaningful understanding among contracting parties. Third, the findings are synthesised into a proposed five-dimensional governance framework. The framework is assessed through normative and conceptual reasoning, particularly its internal coherence, relevance to the identified legal issues and compatibility with the statutory mandates of the institutions concerned. This process of systematic interpretation and synthesis is consistent with the analytical function of doctrinal legal research (Bhat, 2020).

The study is confined to the Malaysian legal and institutional context. It does not involve interviews, surveys, contracting-party comprehension testing or a systematic comparative audit of contractual documents issued by Islamic financial institutions. Accordingly, the study does not seek to establish the prevalence of inconsistent legal or Shariah expressions in current banking contracts, nor does it claim to demonstrate empirically that standardisation has improved contractual understanding or reduced disputes. Its findings and proposed governance framework are therefore normative and conceptual in nature. Further

institutional consultation and empirical evaluation would be necessary to assess the framework's practical feasibility, implementation and outcomes.

Legal and Institutional Challenges in Standardising Malay Legal and Shariah Terminology

Terminological Inconsistency across Islamic Banking Documentation

Islamic banking products are communicated through multiple documents, including financing agreements, product disclosure sheets, application forms, terms and conditions, explanatory materials and digital interfaces. The same contractual concept may appear in different forms across these documents. Where definitions are incomplete or terminology varies, parties may find it difficult to connect the product description with the operative contractual provisions. This is a potential governance risk that requires documentary examination; the present doctrinal study does not claim that every institution or product exhibits such inconsistency.

Terminological consistency should not be pursued through mechanical uniformity. Different contracts may have different legal characteristics and should not be forced into a single label. The objective is to ensure that the same concept is accurately and consistently expressed, while genuine differences between contractual structures remain visible.

Preservation of Legal and Shariah Conceptual Accuracy

Standardisation may itself create legal and Shariah-related risks if the selection of Malay equivalents prioritises linguistic convenience over the substantive meaning of the underlying contractual concepts. In Islamic banking, different Shariah contracts embody distinct legal structures, obligations and risk allocations. For instance, sale-based arrangements such as *murabahah*, partnership-based arrangements such as *mudarabah* and *musyarakah*, and agency-based arrangements such as *wakalah* cannot be treated as conceptually interchangeable. Their respective legal consequences depend on the essential elements of the contracts, the sequence of transactions, the allocation of risks and the duties assumed by the contracting parties. The distinct requirements governing these contracts are reflected in the Shariah Standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI, n.d.). Accordingly, standardisation must preserve these substantive distinctions rather than merely establish a uniform Malay expression. Each standardised expression should be accompanied by a definition that accurately reflects the relevant contractual structure and applicable Shariah requirements.

This concern is particularly significant because the translation of Arabic Shariah expressions into Malay is not necessarily a straightforward linguistic exercise. Alhomoud (2022) explains that translating Shariah legal expressions involves semantic, contextual, pragmatic, and cultural challenges, particularly where the source-language concepts do not have direct equivalents in the target language. The author emphasises that an inaccurate translation may affect the legal meaning of contractual provisions and the rights of contracting parties. Similarly, Ali et al. (2021), in their comparative analysis of bilingual dictionaries of Islamic finance and economy, highlight the importance of specialised terminological resources in communicating concepts within Islamic finance. These studies indicate that the translation and standardisation of Islamic financial expressions require more than linguistic equivalence; they require an understanding of the underlying legal and Shariah concepts.

The challenge is therefore to achieve linguistic accessibility without sacrificing conceptual accuracy. A direct translation may fail to capture the technical meaning of a term within Islamic commercial jurisprudence (*fiqh al-muamalat*). Conversely, retaining Arabic terminology without an adequate explanation may create difficulties for parties who are unfamiliar with its legal and Shariah implications. Markom and Mohd Arif (2026) similarly emphasise the importance of strengthening Malay legal and Shariah expressions in Islamic banking contracts to support contractual understandability and legal certainty. In this regard, the Bank Negara Malaysia (BNM) Shariah Governance Policy Document (2019) provides an important institutional context by emphasising the responsibilities of Shariah committees in providing sound advice and ensuring that the operations and activities of Islamic financial institutions comply with Shariah

requirements. This governance approach reinforces the need for specialised Shariah expertise in validating the substantive meaning of Islamic financial concepts.

Where an Arabic term is retained, the relevant contractual document should provide a clear Malay explanation when the term is first introduced or whenever its meaning is material to the rights and obligations of the parties. Where a Malay equivalent is adopted, the validation process should document the original Arabic expression, its legal and Shariah definition, the context in which it is used and any limitations on its application. Such documentation would provide a basis for consistent usage across contractual agreements, product disclosure documents and explanatory materials, while allowing distinctions between different contractual arrangements to be maintained.

The preservation of conceptual accuracy therefore requires a coordinated validation process involving the relevant linguistic, legal and Shariah expertise. Linguistic validation should ensure that the Malay expression is appropriate and understandable, while legal and Shariah validation should establish that the expression accurately conveys the substantive characteristics and implications of the underlying contract. Neither dimension should operate independently of the other. Ultimately, standardisation should not merely produce uniform expressions but should ensure that the language used in Islamic banking contracts faithfully communicates the legal and Shariah substance of the transaction to all contracting parties.

Judicial clarification of the SAC's statutory role: implications for terminology governance

The judicial interpretation of the statutory functions of the Shariah Advisory Council (SAC) provides an important legal foundation for determining institutional boundaries in the governance of Malay legal and Shariah terminology in Islamic banking. Three judicial decisions are particularly relevant: *Mohd Alias bin Ibrahim v RHB Bank Bhd & Anor* [2011] 3 MLJ 26, *Tan Sri Abdul Khalid Ibrahim v Bank Islam (M) Bhd* [2013] 3 MLJ 269 and *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd* [2019] 3 MLJ 561. Although these cases did not directly concern the standardisation of Malay terminology, they clarify the statutory role of the SAC in ascertaining Shariah matters and distinguish that function from the judicial responsibility of civil courts to determine disputes and the legal rights and liabilities of parties. This distinction is relevant to the proposed governance framework because it identifies the limits within which Shariah expertise may contribute to the validation of specialised Islamic financial concepts.

In *Mohd Alias bin Ibrahim v RHB Bank Bhd & Anor* [2011] 3 MLJ 26, the High Court considered the constitutional validity of sections 56 and 57 of the Central Bank of Malaysia Act 2009 (CBMA 2009). The constitutional challenge raised concerns that requiring courts to refer Shariah questions to the SAC, and giving binding effect to the SAC's ruling, would amount to an impermissible transfer of judicial power to a non-judicial body. In addressing this issue, the court distinguished the SAC's function of ascertaining the applicable Islamic law from the court's responsibility to adjudicate the dispute. The SAC was not entrusted with determining the entire civil action or deciding the parties' contractual rights and liabilities. Rather, its role concerned the Shariah question arising in the proceedings. This distinction provides an important basis for understanding the complementary functions of Shariah expertise and judicial adjudication.

The distinction was further considered in *Tan Sri Abdul Khalid Ibrahim v Bank Islam (M) Bhd* [2013] 3 MLJ 269, which concerned an Islamic financing facility based on *bay' bithaman ajil* (BBA). The proceedings raised questions concerning the application of Shariah principles to the financing arrangement and the statutory mechanism for referring such questions to the SAC. The Court of Appeal considered the operation of sections 56 and 57 and rejected the contention that the statutory reference mechanism deprived the civil court of its judicial function. The decision illustrates that the ascertainment of a Shariah question by the SAC does not displace the court's responsibility to determine the dispute, consider the relevant evidence and decide the legal consequences arising between the parties. The case therefore reinforces the distinction between determining the applicable Shariah principles and adjudicating the contractual dispute (Badarulzaman, 2014).

The Federal Court's decision in *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd* [2019] 3 MLJ 561 provides the leading constitutional authority on sections 56 and 57 of the CBMA 2009. By a

majority of five to four, the Federal Court upheld the constitutionality of these provisions. Section 56 establishes the statutory mechanism under which a court or arbitrator dealing with proceedings relating to Islamic financial business is required to take into consideration published SAC rulings or refer a Shariah question to the SAC where appropriate. Section 57 gives binding effect to a ruling made by the SAC pursuant to such a reference. The majority distinguished the SAC's statutory function of ascertaining Islamic law from the judicial function of resolving the dispute as a whole. Accordingly, the SAC's ruling addresses the Shariah question referred, while the court or arbitrator retains responsibility for determining the dispute and its legal consequences. Kunhibava and Yeo (2019) identify this decision as a significant constitutional development in clarifying the legal status and functions of the SAC within Malaysia's Islamic financial regulatory framework.

These judicial authorities have a specific implication for the proposed terminology governance framework. The SAC's statutory authority to ascertain Islamic law should not be interpreted as conferring a general mandate to approve Malay linguistic expressions or administer national language standards. Its expertise is relevant to validating the Shariah substance of specialised Islamic financial concepts. Conversely, Dewan Bahasa dan Pustaka (DBP) contributes linguistic and terminological expertise but does not independently determine the Shariah validity or legal effect of a financial contract. BNM's regulatory responsibilities and the contractual and Shariah governance obligations of Islamic financial institutions must likewise be exercised within their respective statutory and institutional mandates. The distinction is essential to avoid conflating linguistic validation, Shariah ascertainment, regulatory oversight and judicial interpretation.

The cases therefore support an approach based on complementary institutional expertise rather than the concentration of all terminology-related responsibilities in a single authority. A coordinated governance process should distinguish the respective contributions of linguistic specialists, Shariah authorities, legal experts, regulators and Islamic financial institutions. Such coordination would allow Malay expressions to be assessed for linguistic appropriateness while ensuring that their legal and Shariah meanings are preserved. It would also reduce the risk of institutional overlap by ensuring that each validation function is performed by the body with the relevant expertise and legal authority.

The significance of language in contractual interpretation is further illustrated by the High Court decision in *Wan Badaruddin bin Che Wan Basor Ali v CIMB Bank Bhd & Anor* [2025] 11 MLJ 760. Although the dispute concerned a conventional joint fixed deposit account rather than an Islamic banking product, the judgment illustrates how Malay expressions may become relevant to the legal characterisation of a transaction and the determination of parties' respective rights. In particular, the Court considered the expression *pemberian ikhlas* used in the plaintiff's affidavit in the context of a claim involving *hibah*. The judgment also referred to the fourth edition of *Kamus Dewan*, published by DBP, in considering the meaning of the Malay term *alang* as a gift or giving. The decision demonstrates that ordinary Malay expressions may acquire legal significance when they are used to describe arrangements that raise specific legal or Shariah questions. It therefore illustrates the importance of distinguishing the ordinary linguistic meaning of an expression from its technical legal or Shariah meaning.

The judgment also highlights the distinction between contractual entitlement and beneficial ownership. The Court considered the effect of a survivorship clause in a joint account and distinguished the surviving account holder's operational entitlement to receive the funds from the question of beneficial ownership. The clause could provide a basis for the bank to release the funds to the surviving account holder and obtain a good discharge, but did not, by itself, conclusively determine beneficial ownership. This distinction is relevant to contractual communication because expressions concerning entitlement, ownership, authority to receive payment and beneficial interests may carry different legal consequences. Inaccurate or imprecise language may obscure these distinctions and affect how contracting parties understand the rights conferred by a contractual arrangement.

Nevertheless, the decision must be understood within its specific jurisdictional context. The Court distinguished the determination of *hibah*, which fell within the jurisdiction of the Kedah Shariah High Court, from the interpretation and application of the survivorship clause, which remained a matter for the civil courts. The Court also clarified that section 56 of the CBMA 2009 was not applicable because the account

involved conventional banking rather than Islamic financial business. Accordingly, *Wan Badaruddin* is relied upon here as an illustrative decision concerning language, contractual interpretation and jurisdictional boundaries, rather than as direct authority on the regulation of Islamic banking terminology.

Taken together, these decisions demonstrate the importance of clearly distinguishing linguistic expertise, Shariah ascertainment and judicial interpretation in the governance of Malay legal and Shariah expressions. For Islamic banking contracts, this supports a coordinated standardisation framework in which DBP contributes linguistic expertise, the SAC addresses Shariah questions within its statutory mandate, BNM performs its regulatory functions, and Islamic financial institutions implement validated expressions in their contractual documentation. The civil courts retain their judicial responsibility to interpret contractual provisions and determine the rights and liabilities of parties. Such an approach promotes institutional coordination while respecting the distinct legal authority and expertise of each relevant institution.

Institutional Fragmentation and Coordination

The development and standardisation of Malay legal and Shariah terminology involve several institutions with distinct areas of expertise and statutory responsibilities. In Malaysia, the Dewan Bahasa dan Pustaka (DBP) has an established statutory mandate to develop and standardise terminology in the national language. Section 5(1)(iv) of the Dewan Bahasa dan Pustaka Act 1959 (Act 213) identifies the development and standardisation of terminology as one of its statutory objectives, while section 6A designates DBP as the sole coordinating authority for composing, devising and standardising terminology in the national language (Dewan Bahasa dan Pustaka, 1959). Nevertheless, this linguistic coordination mandate does not extend to determining the Shariah validity of financial contracts or adjudicating their legal effects.

In Islamic financial services, the Shariah Advisory Council (SAC) of Bank Negara Malaysia performs a distinct statutory function in ascertaining Islamic law for the purposes of Islamic financial business under the Central Bank of Malaysia Act 2009. Its role is complemented by the responsibilities of institutional Shariah Committees, which provide advice and oversight on Shariah matters within individual financial institutions. Bank Negara Malaysia, in turn, establishes the regulatory and supervisory framework governing Islamic financial institutions, including the expectations set out in its Shariah Governance Policy Document (Bank Negara Malaysia, 2019). These institutional responsibilities demonstrate that terminology governance requires coordination across linguistic, legal, Shariah and regulatory domains rather than unilateral determination by any single institution.

Without a clearly defined coordination process, institutions may develop parallel glossaries, adopt different expressions for similar legal concepts or provide guidance that is inconsistent across contractual documents. Such fragmentation may affect the consistency with which contractual rights, obligations and Shariah concepts are communicated to contracting parties.

Accordingly, coordination should establish a transparent procedure identifying the institution responsible for proposing a term, assessing its linguistic appropriateness, validating its legal and Shariah meaning, considering any relevant regulatory implications and overseeing its implementation. The process should also maintain a record of the approved expression, its authoritative definition, relevant Arabic terminology where applicable, and the contractual context in which it should be used.

A further requirement is the establishment of a periodic review mechanism. Standardised expressions should be reconsidered when relevant legislation, Bank Negara Malaysia policy documents, SAC rulings or Islamic financial product structures change.

This would help ensure that the terminology remains linguistically appropriate, legally accurate, and consistent with prevailing Shariah requirements. Importantly, such a mechanism should operate within the existing statutory mandates of the respective institutions rather than create a new authority with overlapping powers. The objective is to establish an integrated coordination process that connects linguistic standardisation with legal interpretation, Shariah validation, and regulatory implementation.

Documentary Compliance and Meaningful Understanding by Contracting Parties

A financial institution may satisfy formal documentation and disclosure requirements while one or more contracting parties still struggle to understand specialised terminology used in the contractual documents. This distinction is important because the existence of a written agreement, glossary or standardised clause does not, in itself, establish that the parties have understood the nature and implications of the transaction. Research on the comprehension of legal contracts indicates that simplifying legal language can improve understanding, although difficulties may remain where the underlying legal concepts are complex (Masson & Waldron, 1994). The degree of understanding may also differ between institutional and individual parties and may be influenced by document design, language proficiency, the quality of explanations, product complexity, access to professional advice and the circumstances in which the contract is entered into.

The regulatory framework in Malaysia also recognises the importance of effective disclosure and clear communication of financial product information. Bank Negara Malaysia's Policy Document on Product Transparency and Disclosure (2024a) strengthens disclosure requirements, including requirements relating to the use of Bahasa Melayu and product disclosure sheets, intending to facilitate consumers' understanding and informed financial decisions. Similarly, the revised Policy Document on Fair Treatment of Financial Consumers (2024b) emphasises responsible conduct and appropriate support for consumers, particularly those in vulnerable circumstances (Bank Negara Malaysia, 2024a, 2024b). Although these policy requirements are directed primarily at financial consumers, they illustrate the broader regulatory importance of ensuring that contractual and product information is communicated effectively.

Terminology standardisation should therefore be treated as one component of sound contractual communication and governance rather than a sufficient measure of contractual understanding. It can improve consistency and provide a stable basis for explanation, but it should be accompanied by accessible definitions, clear allocation of rights and obligations, appropriate disclosure and effective channels for clarification. Particular safeguards may be necessary where bargaining power, language proficiency or access to technical advice is unequal. Ultimately, the legal significance of a particular term must be assessed within its contractual, statutory and, where relevant, Shariah context. Accordingly, standardised terminology should support meaningful communication between contracting parties without being treated as conclusive evidence that they have understood or accepted every legal and Shariah implication of the transaction.

A Proposed Integrated Governance Framework for Malay Legal and Shariah Terminology

This study proposes an Integrated Governance Framework to guide the development, validation, and application of Malay legal and Shariah terminology in Islamic banking contracts. The framework is normative and does not create new statutory powers. It promotes coordinated terminology governance while respecting existing institutional mandates and preserving the meaning of legal and Shariah concepts.

Normative Foundation

The framework is grounded in Article 152 of the Federal Constitution, the Contracts Act 1950, the Islamic Financial Services Act 2013 (IFSA) and the Central Bank of Malaysia Act 2009 (CBMA). These laws, together with relevant Bank Negara Malaysia (BNM) policy documents and Shariah standards, provide the legal and regulatory context for terminology governance. However, they do not expressly establish a comprehensive statutory obligation to create a national Malay Islamic finance terminology database. Any binding requirement must therefore be introduced through an appropriate legal or regulatory instrument.

Institutional Coordination

This dimension promotes coordination among BNM, the Shariah Advisory Council (SAC), DBP and Islamic financial institutions according to their respective mandates. BNM provides regulatory oversight, the SAC contributes Shariah guidance within its statutory role, DBP coordinates national language terminology, and

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financial institutions implement validated expressions in their documentation and operations. Input from legal experts, linguists, practitioners, and consumer representatives may further strengthen the process. Such coordination should not transfer or overlap the statutory powers of existing institutions.

For implementation purposes, the proposed coordination mechanism may operate through a sequence of defined procedures. First, an Islamic financial institution, regulator, professional body or relevant expert may submit a proposed term together with its source expression, definition and intended contractual context. Second, DBP may assess the linguistic appropriateness and consistency of the proposed Malay expression within its terminology-coordination mandate. Third, legal and Shariah assessments should be undertaken by appropriately qualified experts and the relevant institutional Shariah governance functions to ensure that the proposed expression preserves the underlying contractual meaning and Shariah requirements. Where a question concerning the ascertainment of Islamic law arises within the statutory scope of Islamic financial business, the SAC's role under the CBMA 2009 must be respected; this does not mean that the SAC is required to approve every linguistic expression. Fourth, BNM may consider any relevant regulatory implications within its existing supervisory and policy-making functions. Following these assessments, the validated terminology may be adopted by the relevant institution or through an appropriate regulatory or standard-setting instrument, depending on the intended legal effect. Islamic financial institutions should then implement the adopted terminology across relevant agreements, product disclosure sheets and related communication materials. Finally, a review should be initiated when relevant legislation, regulatory policy, SAC rulings, product structures or identified implementation issues warrant reconsideration. This proposed procedure is intended to facilitate coordination and accountability without transferring or creating statutory powers.

Operational Implementation

Validated terminology should be applied consistently across financing agreements, product disclosure sheets, application forms, terms and conditions, websites and digital platforms. Financial institutions should establish internal drafting and review procedures involving their legal, Shariah, product and compliance functions. Version control, staff guidance and periodic review should also be implemented to accommodate changes in legislation, regulatory requirements, Shariah guidance and product structures.

Terminological Validation and National Repository

Terminology validation should be guided by four principles: conceptual accuracy, terminological consistency, linguistic appropriateness and Shariah accuracy. A proposed national repository could record preferred Malay expressions, original Arabic or English terms, definitions, legal and Shariah meanings, contexts of use and validation records. The repository should allow new terms to be proposed, existing entries reviewed, and alternative expressions documented. Its legal effect would depend on the instrument through which any particular standard is adopted.

Contractual Understanding and Legal Outcomes

The final dimension focuses on improving contractual communication for all contracting parties. Standardised terminology should be supported by accessible explanations, clear definitions and accurate statements of contractual rights and obligations. Evaluation may consider consistency across documents, accuracy of definitions, availability of explanations, requests for clarification, and appropriate comprehension assessments. These indicators are proposed for future evaluation; standardisation alone cannot establish actual understanding or guarantee legal certainty.

The five dimensions operate as an integrated cycle in which the legal foundation guides institutional coordination, validation informs implementation, and evaluation of contractual communication supports continuous improvement. This approach enables terminology governance to remain responsive to legal developments, Shariah requirements, financial innovation and the needs of contracting parties.

CONCLUSION

This study has examined the governance of Malay legal and Shariah terminology in Islamic banking contracts as an element of contractual and legal infrastructure, extending the discussion beyond language use and document standardisation to encompass conceptual accuracy, consistency, validation and meaningful communication among contracting parties. The analysis identified four interconnected challenges: terminological inconsistency, preservation of legal and Shariah conceptual accuracy, institutional fragmentation, and the gap between documentary compliance and meaningful contractual understanding. The judicial decisions in *Mohd Alias*, *Tan Sri Abdul Khalid,* and *JRI Resources* further demonstrate the importance of respecting the SAC's statutory Shariah-ascertainment function and the courts' continuing adjudicative role. In response, the study proposed an Integrated Governance Framework comprising five dimensions: normative foundation, institutional coordination, operational implementation, terminological validation, and contractual understanding and legal outcomes. The framework positions BNM, the SAC, DBP, Islamic financial institutions, and relevant experts as contributors with complementary but distinct responsibilities, while proposing a national terminology repository to support the systematic recording and application of validated expressions. The study's principal contribution lies in repositioning Malay legal and Shariah terminology from a matter of translation or document presentation to one of contractual infrastructure and institutional governance, linking linguistic precision and Shariah integrity with contractual understandability, meaningful consent, fair treatment, and legal certainty. Nevertheless, the framework is normative and conceptual, as the study does not empirically measure terminological variation or test contracting parties' understanding. Future research may therefore examine its feasibility and practical effectiveness through comparative documentary analysis, institutional consultation and appropriate comprehension assessments. Ultimately, coherent and properly governed Malay terminology can support clearer communication of Islamic banking contracts while preserving the legal and Shariah substance of the transactions.

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