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Unpacking Consent in the Digital Age: A Review of Abdullah Saeed's Hermeneutics and Habermas's Communicative Action Theory on Online Standard-Form Contracts

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Abstract

The digital revolution has completely changed how we transact, making standard-form contracts like "terms and conditions" a common part of our lives. This article examines a crucial question: is the 'one-click' consent we give truly based on genuine willingness (*'an tarāḍin*), considering that users are in a much weaker position and often lack complete information? Recognizing that rigid, traditional Islamic legal (*fiqh*) perspectives are insufficient to address this challenge, this research employs two new approaches. First, it uses Abdullah Saeed's theory to look beyond mere written rules to uncover the substantive justice that is the core objective of Sharia (*maqāṣid al-sharī'ah*). Second, Jürgen Habermas's theory is applied to deconstruct how digital contracts often operate unilaterally, leaving no room for fair dialogue. Drawing on a case study of several Sharia-based digital applications in Indonesia, this article argues that consent in the digital age is no longer merely about the absence of physical coercion. More importantly, true willingness demands real justice and an agreement process that is transparent, equal, and free from domination by any party. In conclusion, this article offers concrete recommendations for digital platforms, regulators, and fatwa institutions on how to design contracts that are more ethical, fair, and truly in line with the spirit of Sharia.

Keywords: Digital Contracts, Mutual Consent, *Maqāṣid al-Sharī'ah*, Substantive Justice, Communicative Action

1. Introduction

Indonesia's digital economy is undergoing unprecedented acceleration, consistently projected as the dominant force in Southeast Asia and with a continuously soaring valuation.[1] This phenomenal

[1] Temasek Google and Bain & Company, *e-Conomy SEA 2023: Reaching for new heights* (2023).

growth is driven by a convergence of widespread internet penetration, near-universal smartphone adoption,[2] and the proliferation of a digital services ecosystem that permeates every aspect of life, from e-commerce and financial technology (*fintech*) to transportation and healthcare services.[3] This socio-economic transformation, while often celebrated as a catalyst for progress and financial inclusion,[4] has simultaneously induced a paradigmatic shift in the practice of *muamalah*, or civil transactions, from personal, face-to-face negotiation models to interactions mediated by algorithms and digital infrastructure.

At the heart of the legal architecture supporting this digital economy lies a foundation that is ubiquitous yet conceptually fragile: the standard-form contract. Every significant digital interaction, whether opening a social media account, making a purchase, or accessing a financing facility, culminates in a uniform contractual ritual: the user is presented with a link to a long and dense "Terms and Conditions" document, which is then validated with a single click on an "I Agree" button.[5] In the view of cyber law, this action is functionally equated with a binding manifestation of consent, a modern epiphenomenon of *ijab* and *qabul* (offer and acceptance).[6]

However, behind this facade of technical efficiency lies a profound paradox of consent.[7] Islamic contract law (*fiqh al-'uqūd*) establishes the principle of sincere and informed mutual consent, *'an tarāḍin minkum'* (QS. An-Nisa': 29), as the *conditio sine qua non* for the validity of any contract. This principle transcends mere formality; it is an ethical guarantee that the exchange of value is built upon the pillars of justice, transparency, and the absence of exploitation.[8] Ironically, the standardized "consent" mechanism in the digital economy operates as the very antithesis of these values. Users, when faced with dozens of pages of complex legal text, rationally choose not to read it, a calculation economists call "rational ignorance," where the cost of understanding the contract far exceeds the perceived benefit. [9] Consequently, the "consent" given is degraded into a legal fiction, a consent without knowledge, a commitment without understanding.[10]

This condition leads to the central problem this article seeks to investigate: How can the concept of consent (*'an tarāḍin*), which is the cornerstone of Islamic contract law, be authentically understood and actualized within the environment of digital standard-form contracts, which is structurally marked by extreme asymmetries of power and information? This fundamental question gives rise to a series of intertwined sub-questions. It is necessary to examine whether the conceptual aspects of *fiqh muamalah*, in both its classical and contemporary variants that focus on the formality of *ijab-qabul* and the absence of physical coercion, are still adequate to assess the validity of consent

2 Simon Kemp, "Digital 2024: Indonesia," DataReportal, 2024.
3 BPS, *Statistik E-Commerce 2023* (Badan Pusat Statistik, 2023).
4 OJK, *Strategi Nasional Literasi Keuangan Indonesia 2021-2025* (Otoritas Jasa Keuangan, 2022).
5 Omri and Schneider Ben-Shahar Carl E., *More than you wanted to know: The failure of mandated disclosure* (Princeton University Press, 2014).
6 Tariq Ramadan, "Click-wrap agreements from Islamic law perspective," *Journal of Islamic Law Review* 17, no. 1 (2021): 1–24.
7 Florencia Marotta-Wurgler, "Even more than you wanted to know about the failures of mandated disclosure," *Jerusalem Review of Legal Studies* 12, no. 1 (2015): 108–22.
8 M. Umer Chapra, *The Future of Economics: An Islamic Perspective* (The Islamic Foundation, 2000); Imran Ahsan Khan Nyazee, *Islamic Jurisprudence (Uṣūl al-Fiqh)* (The International Institute of Islamic Thought, 2002).
9 Ian and Schwartz Ayres Alan, "The no-reading problem in consumer contract law," *Stanford Law Review* 66, no. 3 (2014): 545–610; Russell B. Korobkin, "Bounded rationality, standard form contracts, and unconscionability," *The University of Chicago Law Review* 70, no. 4 (2003): 1203–95.
10 Yannis and Marotta-Wurgler Bakos Florencia and Trossen, David R., "Does anyone read the fine print? Consumer attention to standard-form contracts," *The Journal of Legal Studies* 43, no. 1 (2014): 1–35.

in 'click-wrap' contracts.[11] Furthermore, the analysis must delve into how elements of interface design, clause complexity, and choice architecture systematically undermine the user's capacity to provide meaningful consent.[12] Subsequently, this demands an exploration of alternative theoretical frameworks from outside the discipline of *fiqh*, such as hermeneutics and critical theory, which could potentially enrich the analysis and offer a way out of the formalist impasse.

To address this challenge, this article will deconstruct and reconstruct the meaning of consent through an interdisciplinary approach. The goal is to demonstrate the limitations of formalistic *fiqh* analysis, to build an alternative analytical framework by integrating Abdullah Saeed's contextual hermeneutics and Jürgen Habermas's theory of communicative action, and to formulate practical recommendations for a more just and ethical digital contract ecosystem. Abdullah Saeed's hermeneutical approach is chosen for its capacity to shift the focus of interpretation from a literal-textual reading to a meaning-oriented one that prioritizes the higher objectives of Sharia (*Maqāṣid al-Sharī'ah*) and the contemporary socio-economic context.[13] Meanwhile, Jürgen Habermas's theory of communicative action provides a sociological-philosophical analytical tool for dismantling the procedural deficits in the formation of "consent," by sharply distinguishing between consensus reached through rational dialogue and compliance produced by instrumental power.[14]

The scope of the analysis will cover the theoretical foundations in *fiqh*, the elaboration of both analytical frameworks, and a mini case study of standard-form contract practices in popular Sharia digital applications in Indonesia to ground the theoretical analysis.

2. Literature Review

Studies on standard-form contracts in the digital age have extensively highlighted the systemic failure of traditional consent mechanisms. Empirical research by Bakos, Marotta-Wurgler, and Trossen indicates that users rarely read "terms and conditions" before providing consent,[15] a phenomenon Ayres and Schwartz describe as the "no-reading" problem in consumer law.[16] Radin argues that this practice has eroded user rights and the rule of law, rendering consent a mere legal fiction.[17] This issue is further compounded by the findings of Ben-Shahar and Schneider, who state that mandated disclosure has failed to provide meaningful protection due to a level of complexity that exceeds users' cognitive capacity.[18] In the context of interface design, Brignull has identified the prevalence of "dark patterns," or manipulative designs that systematically steer users toward decisions that are disadvantageous to them, further emphasizing the power asymmetry between digital platforms and consumers.[19]

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[11] Edmon Makarim, *Kompilasi Hukum Telematika* (RajaGrafindo Persada, 2005).
[12] Daniel J. Solove, "Privacy self-management and the consent dilemma," *Harvard Law Review* 126, no. 7 (2013): 1880–903.
[13] Abdullah Saeed, *Interpreting the Qur'an: Towards a contemporary approach* (Routledge, 2006).
[14] Jürgen Habermas, *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society* (Beacon Press, 1984).
[15] Yannis Bakos, Florencia Marotta-Wurgler, dan David R. Trossen, "Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts," *The Journal of Legal Studies* 43, no. 1 (Januari 2014): 1–35, https://doi.org/10.1086/674424.
[16] Ian Ayres dan Alan Schwartz, "The No Reading Problem in Consumer Contract Law," SSRN Scholarly Paper no. 2341840 (Rochester, NY: Social Science Research Network, 17 Oktober 2013), https://papers.ssrn.com/abstract=2341840.\\uc0\\u8221{} SSRN Scholarly Paper no. 2341840 (Rochester, NY: Social Science Research Network, 17 Oktober 2013
[17] Margaret Jane Radin, *Boilerplate: The fine print, vanishing rights, and the rule of law* (Princeton University Press, 2013).
[18] Omri Ben-Shahar dan Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press, 2014), https://doi.org/10.2307/j.ctt5hhrqj.
[19] Harry Brignull, *Deceptive design: How to recognise and challenge it* (Deceptive Design, 2023).

Within the discourse of Islamic law, the study of digital contract validity is growing but remains debated. Ramadan (2021) has analyzed *click-wrap agreements* from a Sharia perspective, highlighting the challenges in verifying the parties' free will.[20] More specifically, Aslami, et. al. examined the concept of *'an taradin* (mutual consent) in online trading by referring to Surah An-Nisa verse 29, although their focus tends to remain on transactional formalities.[21] On the other hand, literature on Sharia compliance in Indonesian fintech, such as studies by Hosen and Asrori , as well as Takidah and Kassim, reveals compliance gaps in Peer-to-Peer Lending practices, where aspects of transparency and contractual fairness are often overlooked. Kasim further adds that ambiguity in contemporary business contracts may introduce gharar, undermining the contract's validity.[22] Nevertheless, there is a scarcity of studies that specifically connect these defects in digital consent with deeper philosophical approaches to reconstruct the meaning of willingness.

To bridge the gap between legal formalism and substantive justice, this research integrates hermeneutics and critical social theory. Saeed offers a *Maqasid al-Shari'ah* framework that emphasizes contextual Islamic reform oriented toward universal values, such as justice, which is relevant to the analysis of contract substance.[23] Meanwhile, Habermas's theory of communicative action provides an analytical tool for understanding distorted communication in the formation of agreements.[24] Theologou and Stelios utilize this perspective to explain the colonization of the *lifeworld* by technology, a concept that aligns with the loss of dialogical space in digital contracts.[25] By synthesizing the insights of Saeed and Habermas, this article seeks to fill a gap in the literature by offering an interdisciplinary perspective on how the concept of consent should be re-understood amid digital power asymmetries.

3. Method

This research utilizes a qualitative method with an interdisciplinary approach, integrating Islamic legal theory and critical social theory to examine the validity of consent (*'an tarāḍin*) in digital standard-form contracts. The analytical framework combines Abdullah Saeed's contextual hermeneutics, which prioritizes *Maqāṣid al-Sharī'ah* and substantive justice, with Jürgen Habermas's theory of communicative action, which provides a lens for evaluating the procedural rationality of the agreement process. By moving beyond the traditional, formalistic fiqh perspective, this study deconstructs the legal standing of the "one-click" consent mechanism to determine whether it meets the ethical requirements of fair dealing and mutual understanding amid the inherent power and information asymmetries of the digital economy.

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[20] Ramadan, "Click-wrap agreements from Islamic law perspective."

[21] Nuri Aslami, Nurul Izzah, dan Azhari Akmal Tarigan, "The Concept Of Taradin In Online Buying The Study of Surah An-Nisa' Version 29," *Al-Masharif: Jurnal Ilmu Ekonomi Dan Keislaman* 9, no. 2 (Desember 2021): 2, https://doi.org/10.24952/masharif.v9i2.4764.

[22] Sinta Kasim, "Aspek Hukum Gharar Dalam Kontrak Bisnis Syariah Kontemporer," *El-Fata: Journal of Sharia Economics and Islamic Education* 4, no. 1 (April 2025): 1.

[23] Abdullah Saeed, "Maqasid al-Shari'a and the reform of Islamic thought: An appraisal," dalam *The Objectives of Islamic Law: The Promises and Challenges of the Maqasid Al-Shari'a* (Palgrave Macmillan, 2014), 47–66.

[24] Habermas, *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society*; Jürgen Habermas, *The Theory of Communicative Action, Vol. 2: Lifeworld and System: A Critique of Functionalist Reason* (Beacon Press, 1987).

[25] Kostas Theologou dan Spyridon Stelios, "The Gradual Unavoidable Colonization of the Lifeworld by Technology," dalam *The Ethics Gap in the Engineering of the Future*, ed. oleh Spyridon Stelios dan Kostas Theologou (Emerald Publishing Limited, 2024), 105–16, https://doi.org/10.1108/978-1-83797-635-520241006.

The primary data sources for this study are the "Terms and Conditions" (T&C) documents and privacy policies of several leading Sharia-compliant digital platforms in Indonesia, serving as the specific objects of research. The sample includes digital banking applications such as Bank Jago Syariah, Hijra Bank, and Bank Aladin Syariah, as well as Sharia-compliant peer-to-peer (P2P) lending platforms such as AMMANA and ALAMI Sharia. Data collection involved a critical textual analysis of these documents to identify clauses indicative of "defective consent," specifically focusing on unilateral amendment rights, broad limitations of liability, opaque fee structures, and extensive data usage permissions. These primary findings are supported by secondary data drawn from classical and contemporary *fiqh* literature, Indonesian financial regulations (OJK), and scholarly discourse on consumer protection.

4. Result and Discussion

The Dilemma of Consent in Standard-Form Contracts: A Fiqh Perspective from Classical to Digital

The normative foundation of Islamic contract law is deeply rooted in an ethical imperative that gives consent an axial position. The primary textual evidence is the word of Allah in Surah An-Nisa': 29, which explicitly contrasts wrongful economic activity (*al-akl bi al-bāṭil*) with trade supported by mutual consent (*tijāratan 'an tarāḍin minkum*). Classical Islamic exegetes and jurists have consistently interpreted this verse as an affirmation that contentment of the soul or sincere will (*al-ṭīb* al-nafs) is an absolute prerequisite for the validity of any exchange of property.[26] This principle is further reinforced by the corpus of hadith, including the famous saying of the Prophet Muhammad PBUH, "Verily, a sale is only valid based on mutual consent". Based on this normative foundation, the *fuqaha* (Islamic jurists) then formulated a technical apparatus to ensure the manifestation of consent. The abstract, internal consent must be externalized through a verifiable formula, known as ṣīghah al-›aqd (contractual formula), which traditionally consists of *ijāb* (offer) and *qabūl* (acceptance).[27]

However, the validity of this expression of consent depends on its freedom from a series of defects of will (*'uyūb al-irādah*) that could corrupt it. To ensure its authenticity, consent must be free from pathological elements meticulously mapped by the *fuqaha*. Among these is coercion (*al-ikrāh*), defined as a threat that compels a person to perform a contractual act against their free will, whether in the form of perfect coercion (*ikrāh tāmm*) which eliminates choice altogether, or imperfect coercion (*ikrāh nāqiṣ*) which only mars consent without nullifying it.[28]

Furthermore, consent must also be free from excessive uncertainty or speculation (*al-gharar*), which refers to significant ambiguity regarding the object, price, or other essential determinations in the contract that could potentially lead to disputes. The prohibition of *gharar* aims to guarantee transparency and an adequate level of knowledge (*al-'ilm*) for all parties.[29] Another defect of will is deception (*al-tadlīs*), which is the act of one party intentionally concealing defects or manipulating

[26] Aslami, Izzah, dan Tarigan, "The Concept Of Taradin In Online Buying The Study of Surah An-Nisa' Version 29."as a direction and guide for humans, requires Muslims to understand the verses of the Qur'an. The Qur'an has set rules for humans in seeking sustenance, one of which is by way of muamalah or trading (buying and selling

[27] Wahbah Al-Zuhayli, *Al-Fiqh al-Islāmī wa Adillatuhu* (Dār al-Fikr, 2008); Muwaffaq al-Din Ibn Qudamah, *Al-Mughnī* (Maktabat al-Qāhirah, 1968); Muhammad Iqbal Sanjaya, "Keralaan Dalam Transaksi Jual Beli Menurut Teks Ayat Dan Hadis Ahkam Jual Beli (Telaah Yuridis Dan Sosiologis)," *SENTRI: Jurnal Riset Ilmiah* 1, no. 2 (Oktober 2022): 2, https://doi.org/10.55681/sentri.v1i2.255.

[28] Kuat Ismanto, "Principle of Utmost Good Faith Dalam Perjanjian Asuransi: Studi Asas Hukum Perjanjian Syariah," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 7, no. 2 (Desember 2012): 293–310, https://doi.org/10.21274/epis.2012.7.2.293-310.

[29] Kasim, "Aspek Hukum Gharar Dalam Kontrak Bisnis Syariah Kontemporer."

information to mislead the other party.[30] Collectively, these conditions construct an ideal where consent is the product of sufficient knowledge and free will, expressed through a transparent ritual of offer and acceptance.

A conceptual challenge arises when this ideal framework confronts the reality of the standard-form contract, or, in modern Arabic legal terminology, *al-'aqd al-iz'ān* (adhesion or submission contract).[31] The term itself, not found in the classical *fiqh* corpus and borrowed from the Egyptian civil law tradition, refers to a contractual phenomenon where one party, typically holding a monopolistic position or dominant market power, dictates all terms and conditions, while the other party has only a binary option: accept or reject in entirety.[32]

The presence of this contract form in modern economic life has divided the landscape of contemporary *fiqh* thought into two main, dialectically opposed currents.[33] The first current, representing the majority view, tends to accept the validity of adhesion contracts with certain conditions. The main argument centers on the principles of public interest (*maslahah 'āmmah*) and pressing need (*ḥājah*), stating that in a mass economy, individual negotiation for every essential service is a practical impossibility that would cause widespread hardship (*masyaqqah*).[34] Figures like Ali al-Qaradaghi and most modern fatwa institutions, including the National Sharia Council (MUI) in Indonesia, generally adopt this view, stipulating that such contracts must be free of clauses that explicitly violate Sharia or that cause clear injustice.[35] In this perspective, consent is understood as constructive consent (ridhā ḥukmī), in which a person's action in accessing a service is taken as implicit consent.

On the other hand, a more critical second current voices deep concern, arguing that the inherent "submission" in these contracts fundamentally injures the principle of *'an tarāḍin*. They contend that the extreme power asymmetry creates a form of non-physical coercion that can be categorized as moral or juridical coercion (*ikrāh ma'nawī* or *ikrāh ḥukmī*).[36] For this camp, the focus of analysis is not merely on the presence or absence of prohibited clauses, but on the structural justice of the entire contract. They call for judicial or state intervention to rebalance the parties' positions and eliminate oppressive clauses (*al-shurūṭ al-ta'assufiyyah*).[37] This critical perspective correctly identifies a crucial failure in the majority view: its inability to distinguish between "consent to access a service" and "consent to the specific, often unfair, terms of that service." While the majority assumes that choosing a service implies consent to its terms, the critical view recognizes that in a digital world where services like banking are essential infrastructure, the choice is often between participation in the economy and exclusion. Platforms leverage this necessity, bundling access with self-serving clauses. The user's click, therefore, is an act of consent to the service driven by necessity, which is

[30] Ahmad Sofwan Fauzi, "Transaksi Jual-Beli Terlarang; Ghisy atau Tadlis Kualitas," *Mizan: Journal of Islamic Law* 1, no. 2 (November 2017): 2, https://doi.org/10.32507/mizan.v1i2.9.

[31] Muhammad Ibrahim Zayd, *Al-Wajīz fī Sharḥ al-Qānūn al-Madanī: Nazariyyat al-Iltizām* (Dār al-Nahḍah al-'Arabiyyah, 2004).

[32] Nahum Rakover, "Standard contracts in Jewish law and in the context of the modern state," dalam *Jewish Law Association Studies* (1993), 6:159–70; Abd al-Razzaq Ahmad Sanhuri, *Masādir al-ḥaqq fī al-fiqh al-islāmī* (Ma'had al-Dirāsāt al-'Arabīyah al-'Āliyah, 1952).

[33] Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge University Press, 2009).

[34] Muhammad Sa'id Ramadan Al-Buti, *Ḍawābiṭ al-Maṣlaḥah fī al-Sharī'ah al-Islāmiyah* (Mu'assasat al-Risālah, 2001); Ali Muhyiddin Al-Qaradaghi, *Fiqh al-Mu'āmalāt al-Māliyyah al-Mu'āṣirah* (Dār al-Bashā'ir al-Islāmiyyah, 2016).

[35] AAOIFI, *Shari'ah Standards* (Accounting and Auditing Organization for Islamic Financial Institutions, 2015); DSN-MUI, *Himpunan Fatwa Dewan Syariah Nasional* (DSN-MUI dan Bank Indonesia, 2000).

[36] Muhammad Utsman Syubair, *Al-Mu'āmalāt al-Māliyah al-Mu'āṣirah fī al-Fiqh al-Islāmī* (Dār al-Nafā'is, 2001); Zayd, *Al-Wajīz fī Sharḥ al-Qānūn al-Madanī: Nazariyyat al-Iltizām*.

[37] Susan E. Rayner, *The Theory of Contracts in Islamic Law* (Graham & Trotman, 1991).

then fallaciously treated as genuine, informed consent to every single clause. The concept of *ikrāh ma'nawī* accurately diagnoses this conflation as the core of the problem, a systemic coercion that the formalistic majority view overlooks.

The digital context not only replicates but significantly amplifies and accelerates this dilemma. The scale, speed, and intangible nature of online transactions create an environment far more fertile for the erosion of meaningful consent [38]. This phenomenon has also permeated Indonesia's rapidly growing digital Sharia economy sector. The growth of Sharia *fintech* and other Islamic-themed digital services shows encouraging vitality, yet the underlying contractual practices often adopt conventional patterns without adequate critical reflection.[39]

An analysis of standard-form contract practices in several popular Sharia digital applications in Indonesia can illustrate this problem concretely.[40] In the Sharia digital banking sector, for example, services such as Bank Jago Syariah, Hijra Bank, or Bank Aladin Syariah offer exceptional convenience for account opening and transactions.[41] However, this process is always preceded by agreement to lengthy "General Terms and Conditions" that, in many cases, contain problematic clauses.[42] One of the most common is the unilateral amendment clause, which grants the bank the right to change the terms and conditions at any time, with the customer's continued use of the service after the amendment deemed consent.[43] From a *fiqh* perspective, such a clause is highly vulnerable as it can unilaterally alter the essence of the contract and inject an element of future *gharar*. [44] Similarly, limitation-of-liability clauses, often drafted very broadly, can conflict with the principle of guarantee (ḍamān) in fiqh if they release the bank from liability even in cases of negligence.[45]

[38] Joshua A. T. Fairfield, *Owned: Property, privacy, and the new digital serfdom* (Cambridge University Press, 2017).

[39] Raditya Ascarya and Sukmana, "The Role of Islamic fintech in Promoting Financial Inclusion in Indonesia," *Journal of Islamic Monetary Economics and Finance* 7, no. Special Issue (2021): 25–50.

[40] Muh Rizwan Azzahidi dan Nurmu'izzatin Zaharatul Parhi, *Analisis Kepatuhan Akad Baku Peer to Peer Lending Syariah Terhadap Fatwa DSN MUI Nomor 117 DSN-MUI/II/2018 (Studi Kasus Pada PT. Qazwa Mitra Hasanah) | MANAZHIM*, 24 Januari 2023, https://ejournal.stitpn.ac.id/index.php/manazhim/article/view/2723; Didik Gunawan, "Penerapan Smart Contract Dalam Keuangan Syariah: Tinjauan Literatur Tentang Integrasi Cryptocurrency Dan Blockchain," *Jurnal Ilmiah Ekonomi Islam* 11, no. 01 (April 2025): 01, https://www.jurnal.stie-aas.ac.id/index.php/jei/article/view/16651; Hosen, "Sharia compliance of fintech peer-to-peer lending in Indonesia: A critical review."

[41] Muhammad Bahanan dan Hardian Dwi Utomo, "Studi Komprehensif Terhadap Risiko Pembiayaan Pada Bank Digital Syariah," *I'THISOM : Jurnal Ekonomi Syariah* 4, no. 1 (April 2025): 1, https://doi.org/10.70412/its.v4i1.177; Mahmud Yusuf, Sumarno Sumarno, dan Parman Komarudin, "Bank Digital Syariah Di Indonesia: Telaah Regulasi Dan Perlindungan Nasabah," *Al-Infaq: Jurnal Ekonomi Islam* 13, no. 2 (Desember 2022): 2, https://doi.org/10.32507/ajei.v13i2.1654.

[42] Syahrul and Sari Lubis Mulyani, "Analysis of legal protection for sharia digital bank customers in Indonesia," *Al-Iktisab: Journal of Islamic Economic Law* 7, no. 1 (2023): 1–15.

[43] Jason Elian, "Meninjau Asas Keseimbangan Berkontrak Dalam Kontrak Syarat Dan Ketentuan Yang Dapat Berubah Sewaktu-Waktu Tanpa Pemberitahuan Sebelumnya Di Indonesia," *Jurnal Preferensi Hukum* 4, no. 2 (Juli 2023): 159–70, https://doi.org/10.22225/jph.4.2.6498.159-170.

[44] Devia Candrawati dan Eny Sulistyowati, "Analisis Yuridis Pencantuman Klausula Baku Tentang Perubahan Biaya Pengelolaan Dana Investasi Secara Sepihak Oleh Pelaku Usaha Pada Polis Asuransi Jiwa PT. Prudential Life Assurance," *NOVUM : JURNAL HUKUM* 11, no. 1 (2024): 13–22, https://doi.org/10.2674/novum.v2i2.54154; Muhamad Secha Aulia Danova dan Widhi Cahyo Nugroho, "Perjanjian Baku Yang Di Atur Otoritas Jasa Keuangan Pada Pinjaman Online," *Media Hukum Indonesia (MHI)* 3, no. 3 (Juni 2025): 3, https://doi.org/10.5281/zenodo.15582229; Abdul Ghafar Ismail, "The practice of bay' al-'inah and bay' al-dayn in Malaysian Islamic financial markets," *Islamic Economic Studies* 21, no. 1 (2013): 73–98; Muhammad Yudistira, Yuhelson Yuhelson, dan Erny Kencanawati, "Tanggung Jawab Notaris Terhadap Akad Murabahah Yang Diubah Secara Sepihak Dan Mengakibatkan Kerugian Bagi Salah Satu Pihak," *SENTRI: Jurnal Riset Ilmiah* 2, no. 12 (Desember 2023): 12, https://doi.org/10.55681/sentri.v2i12.1893.

[45] Siti Anisah dan Catur Septiana Rakhmawati, "Klausula Pembatasan Dan Pengalihan Tanggung Jawab Pialang Berjangka Dalam Kontrak Baku Pemberian Amanat Secara Elektronik On-Line," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 1 (April 2017): 1, https://doi.org/10.20885/iustum.vol24.iss1.art7; Zubair Hasan, "Legal issues in the Islamic banking and finance industry," *ISRA International Journal of Islamic Finance* 3, no. 1 (2011): 159–63; Jacqueline Angelina Kwari dan Anastasia Suhartati, "Penerapan Prinsip Limitation of Liability Terhadap Tanggung Jawab Platform E-Commerce Dalam Kasus Fake Order Di Indonesia," *Journal of Scientech Research and Development* 7, no. 1 (Juni 2025): 1, https://doi.org/10.56670/jsrd.v7i1.1053.

These problematic practices are not confined to the digital banking sector; they also manifest clearly in the Sharia peer-to-peer (P2P) lending *fintech* ecosystem, such as those run by AMMANA or ALAMI Sharia.[46] Here, in addition to the agreed margin or *ujrah*, there is often a complex fee structure, including platform fees, insurance, and late payment penalties (*ta'zīr*), the transparency of which can be an issue. If not clearly detailed from the outset, this risks falling into the category of *gharar* or *jahālah* (ignorance) that can invalidate the contract.[47] Furthermore, clauses regarding the use of personal data, in which users grant broad permission to the platform to access, process, and share their data, address the most fundamental issue of consent. The extent to which users truly understand the scope of the permission they grant is an open question that directly intersects with the principles of protecting property and privacy (*hifẓ al-māl wa al-'irḍ*) in Islam.[48] Even on large e-commerce platforms that offer dedicated halal product segments, the contract binding users is the platform's general contract, which is often insensitive to Sharia principles, especially regarding dispute-resolution mechanisms.[49]

This series of examples underscores the struggles of fiqh formalism. Formally, *qabūl* has occurred through a click. No identifiable physical coercion is present. Substantially, however, the consent formed is extremely fragile, built on a foundation of ignorance and subject to an asymmetrical power structure. It is here that the need for a deeper, more critical analytical framework becomes an intellectual necessity.

Abdullah Saeed's Hermeneutics: Towards Substantive Justice in Consent

Abdullah Saeed is among the most influential intellectual voices advocating methodological reform in contemporary Islamic legal thought. Through a series of important works, including *Interpreting the Qur'an: Towards a Contemporary Approach*, Saeed launches a sharp critique of approaches he deems ahistorical, textualist-literal, and isolated from the struggles of social reality.[50] As an alternative, he proposes a progressive and contextual hermeneutical framework, or theory of interpretation, that stands on several fundamental pillars.[51]

The first pillar is the necessity of moving from text to context, where Qur'anic verses, especially those that are legal-specific, must be understood not only through their occasions of revelation (*asbāb al-nuzūl*) but also within the broader historical, social, and economic matrix in which the text first interacted. Next, Saeed proposes a hierarchy of values within the text, where universal and timeless ethical values, such as justice, compassion, and human dignity, must take primacy over particular

[46] Awaliyah Alifi dan Wahyu Dwi Agung, "Sharia Fintech Growth in Industry Revolution 5.0 - Alami Sharia Study Case," *El-Arbah: Jurnal Ekonomi, Bisnis Dan Perbankan Syariah* 7, no. 2 (September 2023): 2, https://doi.org/10.34005/elarbah.v7i2.2513; Khasanudin Khasanudin dan Budi Santoso, "Analysis of Financial Technology Product Contracts Peer to Peer Lending Syariah Platform Ammana.Id," *Journal of Law and Legal Reform* 3, no. 2 (April 2022): 2, https://doi.org/10.15294/jllr.v3i2.54623.

[47] Muhammad Syafii Antonio, Yulizar D Sanrego, dan Muhammad Taufiq, "An Analysis of Islamic Banking Performance: Maqashid Index Implementation in Indonesia and Jordania," *Journal of Islamic Finance* 1, no. 1 (2012): 12–29; Annisa Fithria, "Exploring the Application of Sharia Contracts on Islamic Fintech Peer-to-Peer Lending in Indonesia," *AL-HIKMAH: INTERNATIONAL JOURNAL OF ISLAMIC STUDIES AND HUMAN SCIENCES* 5, no. 6 (Desember 2022): 6, https://doi.org/10.46722/hikmah.v5i6.327; Takidah dan Kassim, *The Shariah Compliance of Islamic Peer-to-Peer (P2P) Lending Practices in Indonesia*.

[48] Mohammad Hashim Kamali, *Islamic commercial law: An analysis of futures and options* (Ilmiah Publishers, 2000); Ismail Koto dkk., "Perlindungan Hukum atas kekayaan Intelektual Perspektif Hukum Islam," *Jurnal Yuridis* 10, no. 2 (Desember 2023): 66–73, https://doi.org/10.35586/jyur.v10i2.7142.

[49] Miftahul Huda, "The practice of buying and selling online in Islamic law perspective: A case study of e-commerce platforms in Indonesia," *Journal of Southwest Jiaotong University* 55, no. 6 (2020).

[50] Saeed, *Interpreting the Qur'an: Towards a contemporary approach*.

[51] Abdullah Saeed, *Freedom of religion, apostasy and Islam* (Ashgate, 2004).

rules bound by context. These universal values are the true manifestation of *Maqāṣid al-Sharī'ah* (the higher objectives of Sharia).[52] The following pillar is the revitalization of the role of critical reasoning (*ijtihād*), which demands the full engagement of the intellect, deep knowledge of the modern world, and the intellectual courage to translate the universal values of the Qur'an into concrete solutions for contemporary problems.[53] Reasoning using Saeed's hermeneutics rejects intellectual isolationism. Instead, it encourages constructive dialogue between the Islamic scholarly tradition and modern social sciences, philosophy, and ethics to enrich the relevance of Islamic law.[54]

When this hermeneutical lens of Saeed is applied to the principle of *'an tarāḍin* in the context of digital standard-form contracts, it produces a radical analytical shift from formal validity to substantial justice. This approach first forces us to ask a fundamental question: what is the ethical value at the core of the command *'an tarāḍin* itself? The answer transcends the mere ritual of agreement; it is the embodiment of transactional justice (*'adl*) and the prevention of all forms of exploitation. In the context of 7th-century Arab society, whose trading practices were fraught with *gharar*, fraud, and usury, this command served as a transformative ethical principle, aiming to humanize and civilize the marketplace.[55] Consequently, any modern contractual mechanism that, despite being formally "agreed" to, systematically perpetuates injustice and creates space for exploitation has, in essence, betrayed the original spirit of the principle of *'an tarāḍin*.

Consent, in Saeed's hermeneutical perspective, cannot be understood in a vacuum detached from its socio-economic context. Consent given under the pressure of extreme power asymmetry is not authentic consent. Islamic law, with its strong emphasis on protecting the weak (*mustaḍ'afīn*), should actively challenge and deconstruct these unjust structures, not grant them theological legitimacy through formalistic justifications.[56] Thus, true consent demands the prerequisite of "freedom to negotiate" or, at a minimum, "freedom from oppressive clauses".[57]

In turn, *Maqāṣid al-Sharī'ah* serves as the ultimate touchstone. A digital standard-form contract must be analyzed holistically in light of its impact on the higher objectives of Sharia. This approach effectively transforms the *Maqāṣid* from a lofty philosophical concept into a concrete, operational tool for auditing contracts. In the context of *hifẓ al-māl* (protection of property), the question is whether the contract fairly protects the user's financial and digital assets or disproportionately shifts all risks to the weaker party.[58] In relation to *hifẓ al-nafs wa al-'irḍ* (protection of life and honor/privacy), privacy policy clauses that allow unlimited exploitation of personal data constitute a direct threat to individual dignity and privacy in the digital age.[59] Even in connection with *hifẓ al-'aql*

[52] Jasser 'Awdah, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach* (The International Institute of Islamic Thought, 2008); Saeed, "Maqasid al-Shari'a and the reform of Islamic thought: An appraisal."

[53] Muhammad Mujtaba Abdulkadir dan Halima Ibrahim Bature, "Aligning Maqasid Al-Shari'ah and Ijtihad: A Framework for Contemporary Islamic Jurisprudence: التوفيق بين مقاصدالشريعة والاجتهاد: اطار للفقه الاسلامي," *Journal of Arts and Sociological Research*, advance online publication, 27 Mei 2025, https://doi.org/10.70382/ajasr.v7i6.030; Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge University Press, 1997); Aulia Ranny Priyatna dkk., "Menuju Fikih Dinamis: Kontribusi Jasser Auda Dalam Transformasi Teori Hukum Islam," *JSHI: Jurnal Syariah Hukum Islam* 4, no. 1 (Juni 2025): 1, https://doi.org/10.47902/jshi.v4i1.396.

[54] Abdullah Saeed, *Islam and human rights* (Edward Elgar Publishing, 2013).

[55] Timur Kuran, *Islam and Mammon: The economic predicaments of Islamism* (Princeton University Press, 2004).

[56] Farid Esack, *Qur'an, Liberation & Pluralism: An Islamic Perspective of Interreligious Solidarity Against Oppression* (Oneworld Publications, 1997).

[57] Radin, *Boilerplate: The fine print, vanishing rights, and the rule of law*.

[58] Muhammad Ayub, *Understanding Islamic Finance* (John Wiley & Sons, 2007).

[59] Dwi Nirwana dkk., "Analisis Kebijakan Keamanan Cyber: Study Kasus Implementasi Perlindungan Data Pribadi Dalam Era Digital | JIIP - Jurnal Ilmiah Ilmu Pendidikan," *JIIP (Jurnal Ilmiah Ilmu Pendidikan)* 7, no. 7 (2024): 7364–73; Erna Priliasari, "Perlindungan Data Pribadi Konsumen Dalam Transaksi E-Commerce," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 12, no. 2 (Oktober 2023), https://doi.org/10.33331/rechtsvinding.v12i2.1285.

(protection of the intellect), contracts intentionally designed to be difficult to understand through the use of obscure legal language and deceptive interface designs (dark patterns) can be considered an attack on the user's capacity to make rational decisions.[60] This move is radical; it argues that a contract designed to be unreadable is an affront to the protection of the intellect, and a privacy policy enabling data exploitation is an affront to the protection of dignity.

Saeed's hermeneutical approach, therefore, has profound implications for the evolution of *fiqh muamalah*. It urges Islamic legal experts to broaden their line of questioning from simply "is there a usurious clause?" to "is the entire structure of this contract just?", "does it protect the rights of the more vulnerable party?", and "does it promote transparency or conceal potential exploitation?". The logical conclusion is that a standard-form contract that is formally agreed to via a "click" but substantially violates the principles of justice, data protection, and transparency must be considered to have defective consent from a *maqāṣid* perspective. This provides a solid theological foundation for the necessity of regulatory intervention and the development of more ethical contract standards, as ensuring substantive justice is inseparable from upholding the Sharia itself.[61]

Jürgen Habermas's Theory of Communicative Action: Rationality and Dialogue in Contracts

If Abdullah Saeed's approach provides the theological-ethical foundation for defining what a contract should achieve (namely, substantive justice), then Jürgen Habermas's theory of communicative action offers a sociological-philosophical framework for understanding why the modern contractual process often fails and how, ideally, it should proceed. In his monumental work, *The Theory of Communicative Action*, Habermas diagnoses the pathologies of modern society through a sharp conceptual distinction between two social realms: the Lifeworld (*Lebenswelt*) and the System (*System*).[62]

The Lifeworld is the realm of social interaction mediated by language, culture, and the search for mutual understanding; it is here that social solidarity is built and individual identities are formed. The characteristic action of this realm is communicative action, an interaction in which participants are oriented towards achieving consensus through rational argumentation, free from coercion. In contrast, the System consists of the economic subsystem (mediated by money) and state administration (mediated by power). This realm operates according to the logic of functionality and efficiency, where the dominant actions are instrumental and strategic, an interaction where actors treat the environment and other people as means to achieve predetermined goals. The pathology of modernity, according to Habermas, is the phenomenon of the "colonization of the Lifeworld by the System," where the instrumental logic of money and power increasingly encroaches upon and conquers realms that should be governed by communication and mutual understanding, including the process of forming agreements.[63]

The "consent" process for digital standard-form contracts is a paradigmatic example of this colonization. The formation of a contract, ideally a communicative act aimed at achieving a mutually beneficial agreement within the Lifeworld, has been reduced to a purely instrumental act dictated

[60] Brignull, *Deceptive design: How to recognise and challenge it*; Saul Greenberg, "Dark patterns in human-computer interaction," dalam *The Wiley Blackwell Encyclopedia of Social and Political Movements* (John Wiley & Sons, 2021), 1–2.
[61] Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oneworld Publications, 2008).
[62] Habermas, *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society*; Habermas, *The Theory of Communicative Action, Vol. 2: Lifeworld and System: A Critique of Functionalist Reason*.
[63] Jean L. and Arato Cohen Andrew, *Civil society and political theory* (MIT Press, 1992).

by the logic of the System (in this case, the digital platform). The platform's goal is not to engage in dialogue to achieve mutual understanding with the user regarding rights and obligations. Its goal is instrumental: to maximize its legal protection and minimize liability as efficiently as possible.[64] In this process, the user is not treated as an equal dialogue partner but as a variable to be managed to achieve the final goal: obtaining formal consent. The "consent" itself is often not a product of free choice but an unavoidable prerequisite for accessing services that have become essential social infrastructure, driven by the mediation of money and power [65]. This framework provides the language to explain the user's felt experience of powerlessness and alienation; the user enters the interaction expecting a "Lifeworld" activity of mutual agreement but is instead processed by a system whose only goal is instrumental extraction of consent.

The failure of this contractual process to meet the standards of communicative action becomes clearer when tested against the four "validity claims" (*Geltungsansprüche*) that, according to Habermas, must be redeemable in any utterance oriented towards understanding.[66]

1. The claim to intelligibility is deliberately violated by the use of dense legal language inaccessible to non-experts.
2. The claim to factual truth becomes obscure when certain clauses hide the actual data collection practices or the scope of risks transferred to the user.
3. The claim to truthfulness/sincerity of the speaker is nullified when a platform declares its commitment to user privacy, yet its design architecture maximizes data extraction.
4. Finally, and most crucially, the claim to normative rightness—the conformity of an action with mutually recognized norms of justice—is blatantly violated by clauses that are inherently unjust and one-sided.

Because the standard-form contract approval process provides no space for users to question, clarify, or challenge these validity claims, the resulting "consent" is not a product of communicative rationality but an artifact of a skewed power relation.[67]

This Habermasian approach does not naively demand individual negotiation for every digital transaction, a clearly utopian demand in the scale of the modern economy. Instead, it encourages us to think creatively about how the principles of communicative action can be institutionalized into the architecture of the contractual process itself.[68] This means a shift towards interface and process designs that proactively enhance intelligibility, for example, through the use of summaries, visualizations, and layered design. It also means promoting sincerity by transparently highlighting the most burdensome clauses for users. Furthermore, it means creating space, however limited, for "discourse" by providing responsive Q&A channels or structured feedback mechanisms. Thus, Habermas's theory provides a philosophical foundation for demanding that contracts be not only

[64] Omri Ben-Shahar, "The Myth of the 'Opportunity to Read' in Contract Law," SSRN Scholarly Paper no. 1162922 (Rochester, NY: Social Science Research Network, 18 Juli 2008), https://doi.org/10.2139/ssrn.1162922.\\uc0\\u8221{} SSRN Scholarly Paper no. 1162922 (Rochester, NY: Social Science Research Network, 18 Juli 2008

[65] Theologou dan Stelios, "The Gradual Unavoidable Colonization of the Lifeworld by Technology."

[66] Habermas, *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society*; Thomas McCarthy, *The Critical Theory of Jürgen Habermas* (MIT Press, 1978).

[67] Danova dan Nugroho, "Perjanjian Baku Yang Di Atur Otoritas Jasa Keuangan Pada Pinjaman Online."such as unilateral interest rate hikes and unauthorized modifications of repayment deadlines. This study analyzes the regulations by the Financial Services Authority (OJK

[68] Iris Ebert, "The limits of contract law in the digital age," *International Journal of Law and Information Technology* 26, no. 4 (2018): 318–41.

"available to be read" but also, in principle, "discussable," thereby creating pressure for platforms to evolve from pure instrumental logic towards a process that at least simulates the prerequisites of a fair and rational dialogue.[69]

Integration and Recommendations: Weaving Substantive and Procedural Justice

Although born from distant intellectual traditions, Abdullah Saeed's hermeneutical framework and Jürgen Habermas's critical theory exhibit a powerful conceptual synergy when applied to the problem of digital standard-form contracts. They converge on a crucial point: a firm rejection of empty formalism and an emphasis on creating the conditions that enable fair and rational agreements.

Saeed, with his *maqāṣidī* hermeneutics, provides the *telos*, or substantive ethical goal, of a just contract. He answers the question, "What kind of contract is ethically acceptable from an Islamic perspective?" with the answer: a contract that upholds justice, protects the weak, preserves dignity, and promotes transparency. On the other hand, Habermas, with his theory of communicative action, offers praxis, or a rational procedural framework. He answers the question, "Through what kind of process can consent be considered valid and not co-opted?" with the answer: through a process that approximates the ideals of domination-free dialogue, where parties have equal opportunity and claims can be openly questioned.

The integration of these two frameworks gives rise to a concept that can be termed "Procedural Maqāṣid": an approach in which the higher objectives of Sharia cannot be achieved without fair, transparent, and communicative contractual procedures. Substantive justice (Saeed) and procedural justice (Habermas) become two sides of the same coin; a contract cannot be called just from a *maqāṣidī* perspective if its formation process is communicatively flawed. The following table provides a comparative summary of the analytical frameworks discussed.

Analytical Dimension	**Traditional Fiqh**	**Abdullah Saeed's Hermeneutics**	**Jürgen Habermas's Theory**
Core Principle	Formal Validity	Substantive Justice	Procedural Rationality
Object of Analysis	The *act* of agreement (*ijab-qabul*)	The *outcome* of the contract	The *process* of agreement
Criterion for Validity	Presence of offer/acceptance; absence of clear defects (physical coercion, etc.)	Alignment with *Maqāṣid al-Sharī'ah* (justice, protection, etc.)	Fulfillment of validity claims (intelligibility, truth, sincerity, rightness) in a domination-free dialogue
Primary Weakness in Digital Context	Ignores power asymmetry and "rational ignorance"	Requires a framework to assess the process itself	Requires a substantive ethical goal to aim for

[69] Christina A. Mulligan, "A Habermasian approach to the regulation of technology," *Ethics and Information Technology* 21 (2019): 1–13.

Based on this integrative framework, the reform agenda towards an ethical digital contract ecosystem demands a synergistic, multi-pronged approach that targets the levels of platform design, regulatory frameworks, and institutional *ijtihad*.

At the platform level, a revolution must begin with a paradigm shift from "minimal legal compliance" to "ethical, user-centric contract design." This can be achieved through layered design, where the first layer provides an easily digestible visual summary, the second offers a more detailed yet structured explanation, and the third presents the complete legal document. Furthermore, platforms have an ethical responsibility to proactively avoid the use of dark patterns interface designs that deceive or coerce users into giving consent.[70] A more sophisticated approach is to implement just-in-time notices, in which consent is requested contextually at the moment a relevant feature is about to be used, rather than through a blanket approval at the beginning.[71]

Efforts at the platform level must be supported and driven by smart and proactive regulatory intervention. Regulators, such as the Financial Services Authority (OJK) and the Ministry of Communication and Informatics, must move from merely requiring the existence of "consent" to regulating the quality of that consent. This includes mandating radical transparency by requiring platforms, especially in the financial sector, to adopt a layered design format as an industry standard, as could be mandated in a revision of the OJK Regulation on Consumer Protection.[72] Furthermore, regulators need to develop a "blacklist" of unfair clauses that are automatically null and void, in line with global consumer protection regulations. On the other hand, the government can provide incentives in the form of a "safe harbor" for platforms that voluntarily adopt contract standards exceeding the minimum requirements and have been certified by an independent body.

The third pillar of this reform agenda is responsive institutional *ijtihad*, pioneered by fatwa institutions and the Islamic scholarly community. The National Sharia Council-MUI is challenged to issue a new fatwa that specifically addresses the criteria for a just digital contract, moving beyond general fatwas on contracts. This fatwa must integrate substantive criteria grounded in Maqāṣid with procedural criteria grounded in transparency and communicative justice. To translate this fatwa into supervisory practice, a "Sharia Contract Compliance Scorecard" could be developed. Sharia Supervisory Boards would use this instrument to audit contracts not only for the absence of prohibited elements but also for their level of clarity, fairness of clauses, and data protection mechanisms.[73] Finally, Islamic universities must actively promote interdisciplinary research that combines *fiqh* studies with law, information technology, and the social sciences to produce innovative solutions at the intersection of Sharia and technology.[74]

[70] Arvind and Toubiana Narayanan Vincent and Barocas, Solon and Nissenbaum, Helen and Boneh, Dan, "A tutorial on the interfaces between web privacy and web security," *Foundations and Trends in Privacy and Security* 3, no. 3–4 (2020): 177–331.

[71] Florian and Balebako Schaub Rebecca and Cranor, Lorrie Faith, "Designing effective privacy notices and controls," *IEEE Internet Computing* 21, no. 3 (2017): 90–95.

[72] OJK, *Peraturan Otoritas Jasa Keuangan Nomor 1/POJK.07/2013 tentang Perlindungan Konsumen Sektor Jasa Keuangan* (Otoritas Jasa Keuangan, 2018).

[73] Norazida Abd dan Terdpaopong Ghani Kitikorn, "Development of shariah audit scorecard for Islamic financial institutions," *Journal of Islamic Accounting and Business Research* 11, no. 9 (2020): 1779–98.

[74] Ahmad Baehaqi, "Interdisciplinary Islamic studies in Indonesian Islamic higher education: A bibliometric analysis," *Qudus International Journal of Islamic Studies* 10, no. 1 (2022): 185–224.

5. Conclusion

This article has sought to deconstruct and reconstruct the concept of consent within the realm of digital transactions. Its primary finding is that the conceptual apparatus of *fiqh muamalah*, which has historically focused on the formality of *ijab-qabul* and the absence of physical coercion, exhibits significant limitations when confronted with the complexity and inherent power structures of digital standard-form contracts. The phenomenon of the "click" of consent, in many cases, is more a form of systemically coerced acquiescence than an authentic expression of informed willingness.

By integrating two powerful theoretical lenses, a richer and more nuanced understanding can be achieved. Abdullah Saeed's contextual hermeneutics shifts the analytical focus to substance, demanding that every contract be tested against the standards of justice, non-exploitation, and alignment with *Maqāṣid al-Sharī'ah*. Complementarily, Jürgen Habermas's theory of communicative action directs attention to procedure, diagnosing the current consent process as an instrumental act that fails to meet the standards of rational dialogue and calling for a more communicative and equitable process. The synthesis of these two approaches yields a vision of true consent as an ethical consensus: an agreement that is not only substantively just but also achieved through a transparent, non-domination procedure.

The implications of this analysis are transformative, both practically and theoretically. On a practical level, it challenges the status quo of the digital industry to evolve from a design centered on unilateral legal risk minimization to one centered on the user and ethics. It also provides an intellectual justification for regulators to design smarter interventions and for Sharia institutions to undertake more relevant and courageous *ijtihad*. On a theoretical level, this article demonstrates the vitality of an interdisciplinary approach in contemporary Islamic legal studies. By opening a fertile space for dialogue between *fiqh*, Qur'anic hermeneutics, and critical social theory, we can formulate answers that are not only contextually relevant but also deeply rooted in the Islamic intellectual tradition and aligned with the demands of universal justice.

Although this article has offered a comprehensive analytical framework, this intellectual journey still opens up various avenues for urgent further research. Empirical studies on how users in Indonesia understand, or more often, misunderstand, the terms and conditions of digital services would be invaluable for validating and enriching the theoretical analysis. The development and testing of contract user interface (UI) prototypes that apply the principles of communicative design, as well as deeper theoretical exploration of relevant *fiqh* concepts such as *istiḥsān* and *i'tibār al-ma'ālāt*, will continue to enrich this discourse.

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