



The Stick and Carrot Approach to Moneylenders' Self-Regulation in Klang Valley, Malaysia

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ABSTRACT

The vital role played by the moneylending industry in Malaysia resulted in 1,496 licensed moneylenders registered within the Klang Valley, in 2020. Even though the Moneylenders Act 1951 exist to protect the industry, law enforcement is a challenge to the regulator. This is evident as many borrowers' complaints were made towards the moneylenders on poor self-regulation and questionable business practices. In understanding this gap, the main research objective is to gain insights on licensed moneylenders self-regulation in the moneylending process involving the borrowers. The Interpretative Phenomenology Analysis approach was used in extracting four themes from the twelve licensed moneylenders' experiences. It was discovered that many of the moneylenders lacked the understanding of their rights and duties as stipulated in the Act. The apprehension of self-regulation amongst the licensed moneylenders was gravely misleading and require the regulator's re-educational intervention. The first implication of the study is for the moneylenders and associations representing them. They must take remedial action to educate members on the value of practising business ethics in closing on the disparity found in their self-regulation throughout the moneylending process. The second implication is for the regulator to assess moneylenders practical adherence when introducing new business requirements.

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INTRODUCTION

Historically, people who lend money with interest have been branded as problematic for conducting unethical business practices (Schwartz and Robinson, 2018). In Malaysia, the moneylenders who are licensed by the Ministry of Housing and Local Government (MHLG) are expected to abide by the Moneylenders Act 1951 (MLA). Also, the licensed moneylenders have varied business practices which were either operated as a family-owned business, private entity or as an extension services by the big conglomerates (Ministry of Housing and Local Government Malaysia, 2019).

The phrase “moneylender” denotes anyone who carries, advertises, announces or holds himself as carrying on the business of moneylending as mentioned in Section 2 of the MLA. Similar to a code of conduct, the MLA has provisions governing the licensed moneylenders where two rights and eleven duties are expected to have complied (Table 1). However, there have been many instances where the licensed moneylenders betrayed the borrowers’ trust and reflect poorly on the industry (Justin, 2019; Abdullah and Hanafi, 2007).

Table 1 Licensed moneylenders’ code of conduct

Rights:

1. Charge simple interest in cases of default.
2. Take action.

Duties:

1. A valid moneylender’s license.
2. Provide a moneylending agreement in a prescribed form.
3. Display the licence at all times.
4. Keep accounts accurately.
5. Supply information.
6. Charge authorized expenses only.
7. Provide a receipt.
8. Regard to security.
9. Serve documents.
10. Do not fraudulently induce any person to borrow.
11. Comply with the relevant written law.

Source: Moneylenders Act 1951

The negative metaphor “stick” reflects the enforcement and prosecutions by the regulator which resulted in some moneylenders fearing the new rapid changes happening within the industry. The positive metaphor “carrot” reflects the need to create a self-regulated moneylending environment that meets consumer expectations of receiving their rightful protection.

The self-regulation concept among traders is not new but has been spearheaded by the Ministry of Domestic Trade, Co-operatives and Consumer Affairs with the formulation of the Malaysian National Consumer Policy (NCP) (Dasar Pengguna Negara) in 2002 to provide better consumer protection (Sabri, 2014). Local historical literature (Singh, 2017; Suppiah, 2014) indicate the influencing role of moneylending in guiding the country’s economic transformation to where it is today while there are some authors (Markom et al., 2015; Arif, 2009) who are cautious whether moneylenders are consumers friend or foe.

Research in the United States of America discloses that transparency is weak among payday lenders who entice borrowers to take loans without full knowledge of their commitment (Schwartz and Robinson, 2018). According to Sabri (2014), the National Consumer’s Protection Consultative Council together with the Ministry of Domestic Trade and Consumer Affairs developed the Malaysian Business Code of Ethics (Rukun Niaga) to assist the consumers and the traders.

Traders are encouraged to abide by the code consisting of honest business conduct, be responsible towards clients, society and environment, have courteous behaviour, moderate deals in their business, clients treated fairly and have passion for business success (Ministry of Domestic Trade and Consumer Affairs, 2015). Besides, Sabri (2014) coined the term ‘smart consumers’ which means consumers are becoming knowledgeable and demand that the traders comply with these codes. According to Afida Mastura et al. (2014), self-regulation means the business environment is managed well with ethical business practices.

Likewise, the licensed moneylenders’ self-regulation requires them to manage and deal with their business in an ethical manner which has a direct repercussion on the borrowers’ confidence towards the moneylending industry. In 2019, the MHLG introduced the i-KrediKom mobile application which enables consumers to access, evaluate information on licensed moneylenders and put in any complaints. As such, it is

timely and important that the perception of licensed moneylenders towards their self-regulation is studied. Thus, the main research question leading to this study is “How the licensed moneylenders’ perceive self-regulation in the moneylending process in Klang Valley?”

REVIEW OF LITERATURE

Theoretical Support

The Public Interest Theory of Regulation in Figure 1, was found to be most suitable as this microeconomic theory focuses on the protection and well-being of consumers with the intervention of regulation (Hantke-domas, 2003). Besides the role of the MHLG, the aim of using this theory is to analyse the self-regulation of the MLA among the licensed moneylenders during the moneylending process. The proposal by Awrey and Judge (2020) is adopted which suggests that the dynamic shift of financial regulation should be towards improving the processes rather than solely on problems recognition. Thus, the research framework is derived from The Public Interest Theory of Regulation (Hantke-domas, 2003) where the regulation of licensed moneylenders backed by the MLA is extended into three stages of self-regulation adherence (Figure 2). For ease of analysis, the moneylending process is divided into Stage 1: pre-contract, Stage 2: contract transaction and Stage 3: post-contract (Figure 2) which are elaborated below.

Stage 1: Pre-contract

The first stage, pre-contract is where borrowers information search and evaluation process occurs before the moneylender decides to continue in the next stage, which is the contract transaction stage. Karnani (2009) offers a strong opposing view that expecting microcredit businesses to practice self-regulation is not possible. Instead, protection of borrowers rights through regulation in the interest rates cap, loan repayment and process transparency is beneficial (Karnani, 2009). Kingston (2017) suggests that during the pre-contract stage, four pieces of important information that needs to be made known by the licensed moneylenders to the borrowers. They are late payment penalties, interest rates charged within the law, repayment amount and due dates until the loan is fully repaid (Kingston, 2017). However, among the licensed moneylenders a gap of knowledge on their role as per the moneylending law may affect the quality of the service offered to their borrowers.

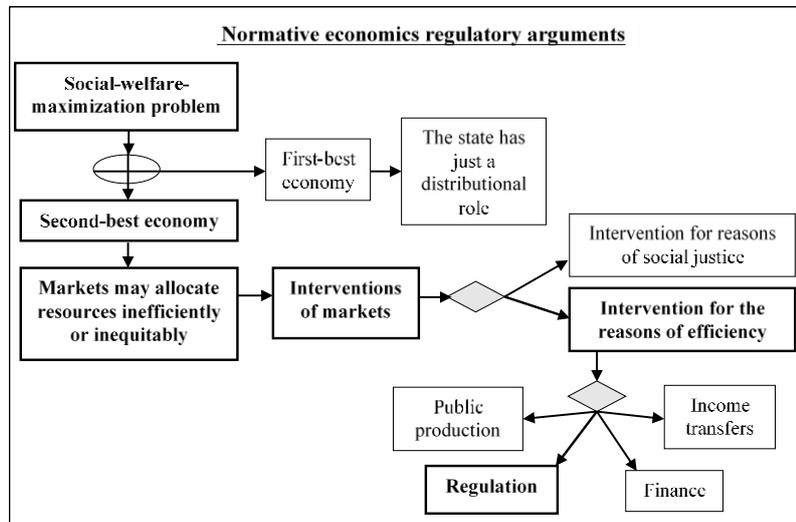
Stage 2: Contract transaction

The second stage, contract transaction, ideally matters on the terms and obligations are already willingly established between the borrower and the lender as mentioned in the first pre-contract stage (Kingston, 2017). The study by Arif (2006) defines that the moneylending contract binds both the borrower and the moneylender. This critical stage requires ethical self-regulation among the lenders as it involves the moneylending documents signed by both parties and money disbursed to the borrowers (Leyshon et al., 2006). In Malaysia, an element of haste and wrongful practices can be found in the moneylending contract transaction process with loan approvals completed in less than 24 hours (Zolkepli, 2020). As such, to study the gap of compliance with the moneylending code of ethics, the moneylenders’ conduct during the contract transaction stage was analysed with the requirement of the MLA.

Stage 3: Post-contract

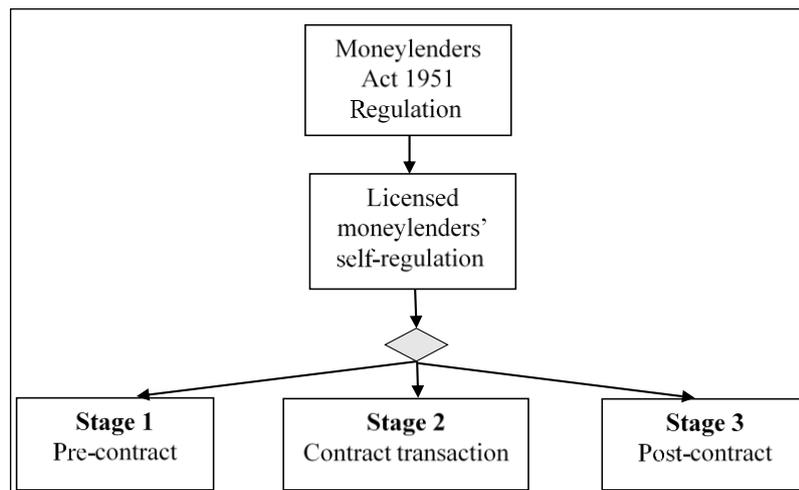
The third stage, the post-contract transaction may be satisfactory where the moneylenders receive payments from the borrowers on time (Figure 2). However, in some instances, the experience may be unsatisfactory where the moneylenders have issues with the borrowers resulting in bad debts. The unresolved licensed moneylenders’ grievances with the borrowers have not benefitted the industry as some of them resort to unethical methods of demanding their over-due payments (Nelson, 2018). Not many literatures discuss the complaints that moneylenders have against the borrowers, regulator and non-governmental organisations (NGOs). The few authors who have studied the moneylending complaints and redress in Malaysia highlighted the lack of legal discourse from the standpoint of the borrowers (Markom et al., 2015) but not from the view of licensed moneylenders. To be noted, the MLA is “an act for the regulation and control of the business of moneylending, the protection of borrowers of the monies lent in the course of such business, and matters connected therewith”

(Moneylenders Act, 1951). Furthermore, Section 10B of the MLA provides the regulator with the power to investigate complaints made by the borrowers against the licensed moneylenders but not vice versa where a gap on complaint handling mechanism exists.



Source: Hantke-domas (2003)

Figure 1 The Public Interest Theory of Regulation



Adapted from: The Public Interest Theory of Regulation by Hantke-domas (2003)

Figure 2 The study research framework

Self-regulation

A review of the literature in the financial sector (Wanyama, 2019; Schwartz and Robinson, 2018; Chien and Ann, 2015) suggests that the main components of self-regulation are building trust, no intentional harm to customers, compliance towards the law and regulation. In the context of this study, the four key factors that influence licensed moneylenders self-regulation throughout the moneylending process are trustworthiness (Abdullah and Hanafi, 2007), guarantee borrowers' safety (Leyshon et al., 2006), full MLA compliance (Arif, 2009) and conforming with the MHLG business operational requirements (Ministry of Housing and Local Government Malaysia, 2019). Voluntary self-regulation among the financial service providers weakens when there is a crisis in the financial sector and government regulation is required to fill the gap (Combs and Zhang, 2020).

The definition of self-regulation as given by the Organisation for Economic Co-operation and Development (OECD) is "industry self-regulation concerns groups of firms in a particular industry or entire industry sectors that agree to act in prescribed ways, according to a set of rules or principles" (Organisation for

Economic Co-operation and Development, 2015). According to Cox (2008) when a financial industry faces a problem, a cyclical four-stage system of inquiry is conducted which is to identify the issue, level of self-regulation, scope of the failure and adequacy of the legislation. The same four-stage system is applied in the study when understanding the problems encountered within the licensed moneylending industry. For instance, in the first stage, the identified issue is borrowers unjust treatment during the moneylending contract transaction process. The second stage is the assessment of licensed moneylenders self-regulation compliance with the MLA when handling the borrowers. The third stage is the scope of non-compliance among the licensed moneylenders discovered during the study. The fourth stage is the analysis of the regulator's role and MLA's adequacy for the current demand of the industry. It is opined that a fruitful approach would be to take proactive action on the potential issues within the financial service industries that may trigger problems in the future. Likewise, the result of this study is to motivate the stakeholders to strive for commendable self-regulation in the moneylending industry and avoid big issues in the future.

According to de Bos et al. (2018) introducing new laws in the Dutch banking sector itself was not sufficient to improve the industry. However, the success depends on the industry members wanting to make the changes and demonstrate to the consumers that their business is conducted ethically following the law (de Bos et al., 2018). Hence, within the context of this study, whether the licensed moneylenders' demonstrate good conduct as per the MLA in the moneylending process is analysed.

RESEARCH METHODOLOGY

Guided by Creswell (2013), the research methodology apt for this study was inductive as scant information could be found on the licensed moneylenders in Malaysia. The qualitative research method opted was due to the challenging process in gaining access among the licensed moneylenders business community within the Klang Valley. Besides, the Heideggerian phenomenology (Heidegger, 1927) method allowed deep insights into the experience of the licensed moneylenders, resulting in 2-year fieldwork from September 2017 to October 2019.

A key informant was identified during the pilot data collection stage in 2018 and another during the actual data collection stage in 2019 which assisted in accessing more samples. The time spent between the researcher and the licensed moneylenders increased the research validity as suggested by Creswell and Miller (2000) that prolonged engagement is important to build trust with the informants. Thus, the informants are likely to share willingly with the researcher's interview questions. The informants were also encouraged to ask questions and seek clarifications which facilitated improvements on the interview guide.

The selection of moneylenders' samples criteria was that they are Malaysian citizens, who have experience operating a valid licensed moneylending business within the Klang Valley, Malaysia. After considering the difficulty in accessing the licensed moneylenders, the convenience sampling method was taken to seek those who were willing to be interviewed, of which some participants also recommended other moneylenders and within reach to the researcher for follow-up clarifications. To increase the likelihood of obtaining the samples, Klang Valley was chosen as the research location of the study as having the highest number of licensed moneylenders at 1,496 as displayed in Table 2.

Table 2 Licensed moneylenders' statistics in Klang Valley in 2020

Location	Licensed moneylenders
Selangor	913
Federal Territory of Kuala Lumpur	580
Federal Territory of Putrajaya	3
Total	1,496

Source: Ministry of Housing and Local Government (2021)

Research Validity

To enhance the research validity, the triangulation procedure of systematically sorting the multiple pieces of evidence of data such as interviews, observations and documents to search for common emerging themes as suggested by Creswell and Miller (2000) was adapted. A key advantage of using triangulation is where three methods were used for data collections (Table 3). It consisted of observing the moneylenders operating business sites, face to face semi-structured interviews and the analysis of documents given by the moneylenders as well

as from supportive literature. Table 3 also shows the licensed moneylenders' demographic background. The final twelve varied samples included 6 owners, 2 managers and 4 employees who are involved in the licensed moneylending business operations between 5 to 30 years (Table 3).

Interview Guide

The semi-structured interviews were based on the interview guide with the focus on self-regulation practices among the licensed moneylenders. The interview guide consisted of two sections where the first sets of questions were regarding demographic information. The second sets of questions were on the moneylending contract transaction process based on the MLA. The decision to include primary data from the 5 participants who were unwilling to record their conversation but allowed notes to be taken was based on the suggestion by Chong (2008) that they too provide the underlying rich information for analysis.

The justification of using 12 interviews is based on Saunders et al. (2018) that data saturation has been attained when there is nothing more to learn on the phenomena that are being studied. Besides, another indication is when no new codes are generated from additional interviews which signal data saturation (Hennink et al., 2017). Likewise, in the present study, the code saturation occurred in the seventh participant's interview, but the researcher continued with the interviews. Guided by Morse (2015) on sampling suitability, the decision to stop at the 12th interview was established by the expert peer reviews consent that the samples are adequate for the study.

Out of the 12 moneylenders approached, 7 gave written consent to be interviewed formally and voice recorded. The other 5 moneylenders gave verbal consent but declined to be voice recorded and shared their views informally, with some providing vital documents for the researcher to understand the daily workings of lending money (Table 3). The researcher kept a memo file and reflexivity journal to be aware of herself and the phenomena that are being studied. It helped in bracketing the researcher's reaction when reacting to the responses received from the interviewees during data collection.

Table 3 Moneylenders triangulation of data sources

Pseudonym Employee / Owner	Location	Years in business	Interview type	Observation of business operations	Provide documents for analysis
ML1 Owner	Kuala Lumpur	15	Informal	Yes	Yes
ML2 Owner	Kuala Lumpur	9	Formal	Yes	No
ML3 Manager	Kuala Lumpur	10	Informal	Yes	Yes
ML4 Manager	Kuala Lumpur	5	Formal	Yes	No
ML5 Owner	Kuala Lumpur	20	Formal	Yes	Yes
ML6 Owner	Kuala Lumpur	30	Formal	Yes	Yes
ML7 Owner	Kuala Lumpur	5	Formal	Yes	No
ML8 Employee	Kuala Lumpur	12	Informal	No	Yes
ML9 Employee	Selangor	5	Informal	Yes	Yes
ML10 Owner	Selangor	15	Informal	No	Yes
ML11 Employee	Selangor	20	Formal	Yes	No
ML12 Employee	Selangor	10	Formal	Yes	No

The data analysis process involved transcribing from the first interview, conducting open coding and identifying emerging themes (Saldana, 2015). This process was repeated by constantly comparing the relevance of the interview guide in answering the aim of the research throughout the 12 interviewees. Guided by Smith et al. (2009), the themes were identified from recurring sub-themes among the participants. Thus, the interview transcripts were transcribed verbatim and uploaded into the NVivo Plus data management software where 4 themes were gathered from 9 sub-themes as shown in Figure 3 thematic map.

RESULTS AND DISCUSSION

The results are bent towards an indication of inferior licensed moneylenders' self-regulation during pre-contract, contract transaction and post-contract. Even though the moneylending industry is governed by the MLA, the intervention from the regulator to uplift the industry is unsatisfactory due to the gap in addressing the grievances of the licensed moneylenders. Currently, the regulator and licensed moneylenders are working solitarily. This is ascertained by the findings of this study that insufficient licensed moneylenders' self-regulation is contributed by little awareness of the moneylending law, intentionally influencing borrowers, dominating the moneylending contract transaction process and lack of channels to complain. Unfortunately, the borrowers are denied protection as revealed by the four themes and corresponding sub-themes.

Theme 1: Licensed moneylenders' poor awareness of the moneylending law

The first theme licensed moneylenders' poor awareness of the moneylending law means that the licensed moneylenders' knowledge and compliance towards their rights and duties according to the MLA. Theme 1 findings reflect licensed moneylenders lack understanding of the law which affects the moneylending process in Stage 1: pre-contract, Stage 2: contract transaction and Stage 3: post-contract (Figure 2). It comprises the discussion of the following two sub-themes.

Sub-theme 1: Ignorant about the moneylending law

In the moneylending community, some of them seem to be detached from the application of the MLA. For instance, licensed moneylender ML2 had no clue on the existence of the MLA and requested for a copy to be given to him. He exclaimed, "Oh, there is a Moneylenders Act ah? I didn't know". Subsequently, a copy of the Act was given to him after the interview. The results of this study suggest a worrying trend on the varied information reach of regulatory changes among the moneylenders. It points to non-standardized business conduct during the pre-contract, contract transaction and post-contract transaction among the moneylenders that causes non-compliance to the MLA.

Different understanding of what constitutes their responsibilities according to the law exists among the operation staffs. Some moneylenders' business operations are run by managers who have no clue about the role of the MLA. For instance, when ML2 who is the Manager of a moneylending office in Selangor was asked regarding the use of MLA as a guide in their business operations he mentioned "the boss knows" without much deliberation. This indicates that awareness of the compliance to the MLA varies according to the individual moneylenders' business operations setup. Thus, the consequence is that the licensed moneylenders' did not conform to self-regulation as non-standard compliance practices do not guarantee the consumers would be treated fairly throughout the three stages of the moneylending contract.

In a study by Lokanan (2017) among the investment dealers in Canada, the author argued that self-regulation is not possible in the financial sector. The contributing factors were besides compliance reluctance among the investment dealers, regulatory sanctions were not applied with enough severity, inadequate enforcement by the police and the provincial securities commissions due to the weak fragmented regulation (Lokanan, 2017). Furthermore according to D'Alvia (2018), unlike other businesses, the financial service providers were prevented from practising self-regulation as they encounter high risks when providing funds for bailouts and schemes involving deposits to their clientele. Likewise, in the local context, the licensed moneylenders' primary focus is on increasing the profit gained from their loans rather than willingly self-regulate throughout their engagement with the borrowers'.

Sub-theme 2: Selective compliance with the moneylending law

The majority of the moneylenders claim to comply with the MLA where they have given copies of the moneylending contracts to the borrowers and have the originals kept with them as proof. In reality, this finding contradicts as many borrowers complained of not given a copy of their signed contract and repayment receipts by their licensed moneylender (Justin, 2019). The example shared by ML5 was that the practice in his company is that they will show the MHLG compliance officer that all the agreement copies are signed and stamped. Additionally, the corresponding copies of repayment receipts are filed together for the respective clients. ML5

revealed the deceptive nature of documentary compliance when he said “that is all internal, that’s it, to satisfy the requirement of the MHLG but really in practice, we do not follow”:

Another reason for non-compliance of the MLA among the licensed moneylenders interviewed is the difficulty to sustain their moneylending operating costs. The reason given is that to renew their moneylending licence they need to show documentary proof of RM500,000 in profit for 3 years in a row to MHLG. However, the present interest rates at twelve per cent per annum for a secured loan and eighteen per cent per annum for an unsecured loan is not sufficient for their business. The practice of doing business undercover by charging higher interest rates is prevalent to all the moneylenders interviewed where they complain of taking the forced risk of being caught by the MHLG.

As justified by ML5 the reason they succumb to such unethical business practice is that “you can’t blame us, you just calculate 1.5 per cent, how much we need to lend out to cover our cost. If RM100,000 loan, it is only RM1,500 in return? How can we survive? Might as well work somewhere else. Not worth giving loan right?”. Licensed moneylenders lack of knowledge and non-compliance to the MLA may contribute to the lost opportunity to retain existing or new potential customers due to bad review from disgruntled consumers.

Theme 2: Licensed moneylenders’ influence in the pre-contract information search and evaluation

The second theme licensed moneylenders’ influence in the pre-contract information search and evaluation entails how they search for potential customers. Theme 2 findings reflect the superior role of the licensed moneylenders involving the moneylending process in Stage 1: pre-contract (Figure 2). It comprises two sub-themes.

Sub-theme 1: Prohibited referral commission given to customers

All the 12 licensed moneylenders’ source new customers via referrals from existing borrowers or people who were acquainted with them. They do not entertain walk-in customers as it is difficult to trace in the event of default in payment. The issue is that there have been cases the borrowers were enticed by the licensed moneylenders by giving them a commission which is against the MLA, thus not meeting the basic tenets of self-regulation. Hence, this suggests that licensed moneylenders place less attention on the borrowers’ consumer protection aspects which results in a bad image on their business conduct.

Sub-theme 2: Loan given for unproductive reasons

The MLA does not require information on the reasons the loan is approved to borrowers whether it is meant for personal or business use (Rahman, 2007). Instead of helping, an unproductive loan may be detrimental to the borrowers. Licensed moneylenders ML4, ML5, ML6 and ML7 revealed that the main reasons people come to them were to pay off their existing debts with other financial service providers. Given the situation where borrowers are desperate for money, according to ML2 and ML4, the process of signing the contract with the borrowers and disbursement of the loans are usually completed in a few hours, with no mention of the attestation process. One flaw found in the practice of ML2 and ML4 is the breach of the requirement of Section 27(1). The MLA Section 27(2) requires the Commissioner for Oaths to be physically present in front of the licensed moneylender and borrower before attesting to the contract. There is a deprivation of borrowers right to seek clarifications on the terms and conditions from the Commissioner for Oaths or re-consider the need for such loan.

Whereas licensed moneylenders ML11 and ML12 shared that most of their borrowers seek a loan for consumption and have difficulty in repayment. A similar example was given by licensed moneylender ML2, that people come to borrow money from him as a final choice after failing to obtain loans elsewhere. Since there is no borrowing cap in Malaysia, such borrowers are subject to manipulation due to difficulty in making repayment, which breaches licensed moneylenders self-regulation.

Theme 3: Disparate moneylending contract transaction process

The third theme moneylending contract transaction process found that a recurrent experience among the interviewees was that it was decided by the respective licensed moneylenders based on what was deemed as correct by them. Theme 3 findings reflect the licensed moneylenders non-conformance during the critical stage of the moneylending process in Stage 2: contract transaction (Figure 2) which comprises of three sub-themes.

Sub-theme 1: Ambivalent to customers rights

Some of the licensed moneylenders were found to be unsure of what are their responsibilities in ensuring borrowers rights were protected. The sub-theme ambivalent to customers rights was derived when the responses garnered a various level of knowledge on the MLA's provisions among the moneylenders interviewed. An example of the poor understanding of the first provision is shown by licensed moneylender ML2 "My rights, ah. Of course, customer borrows, then you have to pay back the loan". Whilst, another example of both the provisions, is indicated by licensed moneylender ML6 who was unsure "...what right and what action is that ah? Such behaviour points to non-accountability towards borrowers and an inability to self-regulate.

Under the MLA, the rights towards borrowers consist of charging simple interest if borrowers' default which is covered by the MCLR, Schedule J, item 2 (1) and Schedule K, item 2 (1) and take action against borrowers which is covered by the MCLR, Schedule J, item 3 (1)(a) and (b), as well as Schedule K, item 5 (1)(a) and (b). The revelation by ML2 and ML6 demonstrated that there is a different understanding among them on what constitutes their role to ensure borrowers well-being are protected. If left unchecked, the wrong comprehension among licensed moneylenders may lead to charging excessive rates and enforcing action against the borrowers as they deem fit which contravenes the provisions of the MCLR. This behaviour goes against the principle of self-regulation in doing business with honesty.

Sub-theme 2: Dubious responsibilities towards customers

The sub-theme dubious responsibilities towards the customers came up in the discussion by ML7 that the repayment schedule and accounts prepared are a pretentious act to address the requirement by the regulator. He reveals the situation when dealing with borrowers "to be honest ah, we are filling up the repayment schedule because of the requirement of the government. So, what we do is put 1 year, 2 years or 5 years maximum. Principal plus interest, 80% of the cases only pay interest... nobody pays the principal as and when they get gratuity, EPF or bonuses then the borrower come and pay us".

The licensed moneylenders expressed dissatisfaction that their requests for higher interest rates that have been unchanged since 1951, were ignored by MHLG. Some licensed moneylenders resorted to giving out a bigger amount of personal loans with a longer duration than the amount requested by borrowers' just to cover their lending costs. The licensed moneylenders went on to justify why they charge higher than the lawful interest rates is to compensate for the risks that they are taking with the borrowers. This is a breach of ethics that opposes the basic requirement of self-regulation.

The MLA, Section 18 states the duty of keeping the original copy of the moneylending agreement and account in permanent books. The findings show that all the licensed moneylenders interviewed practice a charade in their business operation by having two sets of accounts. One set of the account which is in permanent books together with borrowers attested contracts is for compliance with Section 18 of MLA and reporting to the MHLG. Whereas the other set of account is for their internal monitoring. The main reason the moneylenders interviewed said they have to succumb to such unethical business practices is their inability to sustain their increasing operating costs. However, such practices are detrimental which gives an image of lack of self-regulation in the licensed moneylending industry.

It was found that unknowingly some of the licensed moneylenders were already practising compliance with the MLA but licensed moneylender ML7 linked the compliance to these duties means high operational costs but where possible, he selectively complies to satisfy the regulator's reporting requirement. As he put it "You see it all depends on the incumbent moneylender as he cannot afford staffs to fulfil the duty to provide documents to all his clients". The MCLR, Schedule J, item 4 and Schedule K, item 6 states that the lender shall, concerning the moneylending business, conform to the provisions and requirements of the MLA and any written law for the time being in force affecting the business.

A few moneylenders were found to be having an upper say from the start to the end of the contract. As an example, moneylender ML4 stated: "The stamping fee usually the borrower has to pay, we deduct upfront from the loan amount as many borrowers do not know about the stamp duty and other processing fees". This means the licensed moneylenders may charge the borrowers any amount in the pretext of collecting stamp duty and processing charges.

However, under the law, the licensed moneylenders have no rights to entice the borrowers to pay unauthorised charges. For instance, the MLA Section 23 states the prohibition of unauthorised charges other than stamp duties and fees payable by law. Instead of protecting borrowers well-being, this example proves how

the licensed moneylender unknowingly was harming borrowers rights. Bakar et al. (2020) stressed that financial self-regulation encompasses abstaining from unfair contract terms.

Furthermore, it was found that refreshment training on compliance among the active moneylending license holders upon the 2-year renewal application was seriously lacking. This is disturbing as there has been a surge of 19% issuance of new moneylending licences within seven years from 1,061 in 2012 to 1,266 in 2019 as reported by the Ministry of Housing and Local Government. However, the ability to self-regulate among the licensed moneylenders' and especially their employees who interact with the borrowers was unascertained.

It was posited during the study that the weakness of the moneylending industry is that there is no formal training given to test the moneylenders' competency regarding their rights and duties for a new licensee. The present regulator's standardized monitoring and enforcement efforts resulted in poor self-regulation among the licensed moneylenders which ultimately led to the deprivation of consumer rights (Kuala Lumpur Consumers Safety Association, 2015).

Sub-theme 3: Employing debt collectors

During the study, some of the licensed moneylenders do employ debt collectors to seek repayment from the defaulted borrowers. This behaviour of using the debt collectors to force borrowers to make repayment is a breach of the law as stated in the MLA Section 29B. Thus, the licensed moneylenders need to be re-educated that such practices must stop as it is opposing the act of self-regulation.

Theme 4: Licensed moneylenders' unresolved complaints and lack of avenues to lodge complaints

The fourth theme is the licensed moneylenders' unresolved complaints and lack of avenues to lodge complaints. Theme 4 findings reflect the licensed moneylenders' dissatisfaction regarding the moneylending process in Stage 3: post-contract (Figure 2). This theme consists of two sub-themes which is outstanding moneylending complaints and inadequate channels to complain.

Sub-theme 1: Outstanding moneylending complaints

The sub-theme "unresolved moneylending complaints" means the source of perils that licensed moneylenders face which has four areas; detrimental business conditions, bad debt borrowers, non-governmental organisations interference, and regulator's constant changes in the implementation strategies. This represented the root cause of their problems and working environment that contributed to inferior self-regulation

Detrimental business conditions explain the unproductive forces that were jeopardising the licensed moneylenders business operations due to overwhelming operating costs, lower business margins and a threat from the big players. Thus, many of the existing family-owned moneylending business complain that they have lost a few of their existing customers who have gone to these new conglomerates of lenders. As licensed moneylender ML4, who has been in the business for more than thirty-five years brought up his increasing operating cost and grievances towards the situation of the industry. He mentioned, "When I started moneylending long ago the rent of the office was RM800 per month, the staff salary was around RM1200, the interest rate was still the same... Today I am paying RM5,000 rental and RM2,800 for staff salary ... see how far we have come".

According to the association that represent licensed moneylenders in Malaysia, the Malaysian Punjabi Licensed Moneylenders Association, "30% to 40% of its members encounter bad debt borrowers" (The Borneo Post, 2019). Similarly, all the moneylenders interviewed in this study mentioned that they are facing increasing bad debts customers every year. As an example, moneylender ML5 who has a legal background pointed out that "this industry is having a very high non-performing loan. There is no mechanism that the government has put in place within the Act which will help the moneylenders to mitigate their loses". Skiba and Tobacman (2019) in their study believed that payday borrowers who were declared bankrupt were non-recoverable loss to lenders. As a result, the licensed moneylenders are demotivated to embrace full self-regulation due to unavoidable costs.

Licensed moneylender ML2 iterated that public perception is that licensed moneylenders have no problems when in reality they are facing numerous challenges. The first is interference from NGOs representing borrowers who claim to be cheated. Most often the moneylender is blamed without a fair hearing of what transpired. In his case, eventually, the NGOs realised their mistake and advised the borrower to settle the balance loan directly with ML2.

Another licensed moneylender, ML5 questioned the non-governmental organisations' motives and his experience dealing with them where he claims the borrowers were on the losing end. He noted, "Borrowers are often under misguided information and often believe that these non-governmental organisations are extended arms of the governments". Consequently, the licensed moneylenders distrust the NGOs and vice versa which hampers the effort of self-regulation.

The complaint towards the regulator is on the non-inclusivity experienced by the moneylenders when it comes to changes in their business operation requirements and the MLA. Moneylenders felt that when the regulator, MHLG decides to implement new initiatives such as i-KrediKom, the licensed moneylenders were left in the dark and their opinions were not considered, such as voiced out by ML5 which was agreed by ML6 during the interview. He said, "New initiatives are only known to us when they are implemented, like the i-KrediKom".

Sub-theme 2: Inadequate channels to complain

Two of the licensed moneylenders are members of the Malaysian Licensed Moneylenders Association (MiLMA) and ten are members of the Malaysian Punjabi Licensed Moneylenders Association (MPLMA). However, being members of these associations is a namesake as shared by ML2: "Well, as far as I know, there is no such platform in place for us to complain. I think it is very unfair to the moneylenders because we have no one turn to, except to the moneylenders association who cannot do much to assist us".

Another licensed moneylender ML12 despaired that: "Now MiLMA only represents their members, MPLMA also only represent their members, some are not members of any associations. I also do not know where to complain if got a problem. These associations are also not strong". The licensed moneylenders felt the past effort by the associations were futile as they do not have a strong voice to lodge complaints to the regulator on their behalf. Even if they complain they were not confident that any action against the borrower would follow through.

According to ML4, unlike borrowers, there was no clear guidance for licensed moneylenders to lodge complaints against borrowers, resulting in no action taken by him. The inability of licensed moneylenders to put in their grievances to the regulator may affect their cooperation towards regulatory compliances. Consequently, the borrowers may face the brunt from the licensed moneylenders which impede self-regulation.

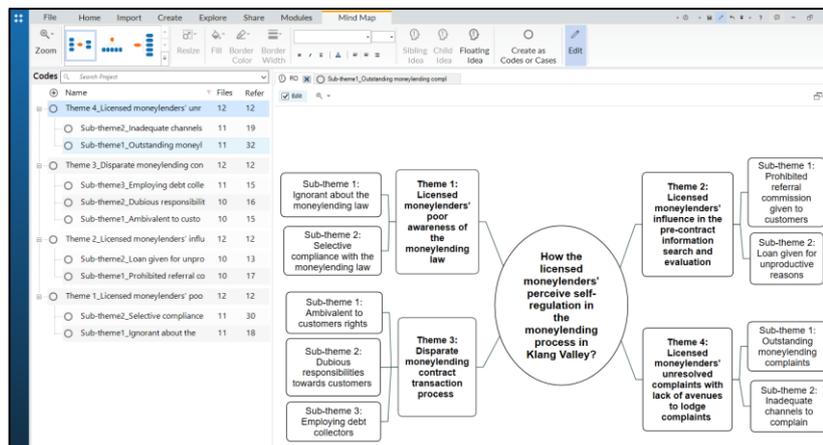


Figure 3 NVivo thematic map

CONCLUSIONS

The results of this study revealed that the perception of the licensed moneylenders on self-regulation is seriously misleading and in dire need of re-education intervention from the regulator. The present study extends the study by Arif (2009) in the context of moneylending law and regulation application by the moneylenders in practice. Therefore, this study sheds new knowledge in the area of understanding the moneylenders' behaviour in complying with self-regulation.

The first implication is to the regulator, that when deciding on a new policy and introducing regulatory requirements, the practical adherence among the licensed moneylenders needs to be investigated. The important role of the regulator is to enforce awareness and comprehension of any new rules among the moneylenders. Series of seminars and follow-up sessions of engagements with moneylenders as well as their staffs would enhance the professionalism of the industry. The regulator may consider seeking the licensed moneylenders' opinions on what needs to be done to further improve their communication and complaints mechanism. The licensed moneylenders need to be made aware that to stay relevant, the only choice is for them to quickly adapt to the new name change and abide by the new signboard requirements. Failure to do so will certainly cause a perishing moneylending business.

The second implication of the study is for the licenced moneylenders and the associations representing moneylenders to take action to educate their members on the importance of practising business ethics in closing on the discrepancy found in their self-regulation during the entire moneylending process. Licensed moneylenders must equip themselves to apply their rights and duties towards borrowers for self-regulation to be fully realised within the Malaysian regulated moneylending landscape.

This study, therefore, would be of value to policymakers in understanding the mechanics involved in implementing self-regulation among the licensed moneylenders. The practice of Kenyan regulator could be emulated where moneylenders' are taught the code of conduct and an independent disciplinary committee is established to handle breach in self-regulation (Wanyama, 2019).

Another approach is the adaptation of the co-regulation as promoted by the OECD as the way forward where the licensed moneylenders willingly conduct self-regulation compliance with the government's regulation (Organisation for Economic Co-operation and Development, 2015). To uplift the industry, licensed moneylending firms that do not comply with self-regulation should be given re-education and a timeline to meet the expected standards, otherwise, their operating licenses may be revoked by the MHLG.

Concerning this study, several limitations were encountered such as the location concentration was only within the Klang Valley, the issue of access to the participants and their willingness to be voice recorded. One finding of this study to be noted for future research is the non-responsive attitude of the majority of gatekeepers and licensed moneylenders approached. Moreover, following the IPA's small sample size (Smith et al., 2009) the results are not generalizable but represent the perspectives of the twelve participants who were interviewed.

To understand the self-regulation phenomena better, similar future studies may consider expanding to other states in Malaysia. In overcoming the issue of accessing the licensed moneylenders, the assistance of MHLG to make it mandatory participation among those selected would generate a much better response rate for future studies.

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REFERENCES

- Abdullah, N. and Hanafi, H. (2007) "A comparative approach of moneylending activities practiced by the financial institution and "Ah Long" in Malaysia", University of Malaya, Malaysia, pp. 257-267. Available at: http://eprints.um.edu.my/13509/1/a_comparative_approach_of_money.pdf
- Afida Mastura, M. A., Elistina, A. B. and Syuhaily, O. (2014) *Perlindungan pengguna ke arah memperkasakan pengguna di Malaysia*. Serdang: Malaysian Consumer and Family Economy Association. ISBN 9789834276447
- Arif, A. M. M. (2006) Moneylenders law in Malaysia: a comparative study with the United Kingdom (Doctoral dissertation, University of Hull). Available at: <https://hydra.hull.ac.uk/resources/hull:15167>
- Arif, A.M.M. (2009) "The Licensing System under the Malaysian Moneylenders Act 2003", *International Journal of Economics and Management*, 3(1) pp. 1-21.

- Awrey, D. and Judge, K. (2020) "Why Financial Regulation Keeps Falling Short", *Columbia Law and Economics Working Paper*, (617). Available at: https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3608&context=faculty_scholarship
- Bakar, N. M. A., Yasin, N. M. and Teong, N. S. (2020) "Banking ethics and unfair contract terms: evidence from conventional and Islamic banks in Malaysia", *Journal of Islamic Management Studies*, 2(2) pp. 11-26.
- Chien, T. H. and Ann, H. J. (2015) "The Influence of Communication, Empowerment and Trust on Organizational Ethical Climates", *International Journal of Economics & Management*, 9(S), pp.23-44.
- Chong, H. G. (2008) "Measuring performance of small-and-medium sized enterprises: the grounded theory approach", *Journal of Business and Public Affairs*, 2(1) pp. 1-10.
- Combs, D. R. and Zhang, N. (2020) Competing or Complementary? Government-Regulation and Self-Regulation in the Global Financial Sector, in *Academy of Management Proceedings*, 2020(1) p. 18351. Briarcliff Manor, NY 10510: Academy of Management.
- Cox, D. (2008) "Financial services regulation and corporate governance", *Governance, Risk, and Compliance Handbook: Technology, Finance, Environmental, and International Guidance and Best Practices*, pp.553-561.
- Creswell, J. W. (2013) *Qualitative inquiry and research design. Choosing among five approaches*. (3rd ed.). Sage Publications.
- Creswell, J. W. and Miller, D. L. (2000) "Determining validity in qualitative inquiry. Theory into practice", 39(3) pp. 124-130.
- D'Alvia, D. (2018) "Law and the market: private actors and self-regulation towards a new role of public international law", *European Business Law Review*, 29, pp. 929-948.
- de Bos, A., Galle, A. and Jans, M. (2018) "Reshaping the governance of the Dutch banking sector: impact of the Dutch Banking Code", *Journal of Banking Regulation*, 19(2), pp. 101-117.
- Hantke-Domas, M. (2003) "The public interest theory of regulation: non-existence or misinterpretation?", *European Journal of Law and Economics*, 15(2), pp.165-194.
- Heidegger, M. (1927) *Being and time. A translation of sein und zeit*. (J. Stambaugh, Trans.). Albany, State University of New York Press. (Original work published 1953). Available at: <http://www.naturalthinker.net/trl/texts/Heidegger,Martin/Heidegger,%20Martin%20-%20Being%20and%20Time/Being%20and%20Time.pdf>
- Hennink, M. M., Kaiser, B. N. and Marconi, V.C. (2017) "Code saturation versus meaning saturation: how many interviews are enough?", *Qualitative Health Research*, 27(4), pp.591-608.
- Justin, Z. (2019) Cops arrest licensed moneylender who allegedly roughs up his customers. *The Star*, 31 July Available at: <https://www.thestar.com.my/news/nation/2019/07/31/cops-arrest-licensed-moneylender-who-allegedly-roughs-up-his-customers> (Accessed: 13 September 2020).
- Karnani, A. G. (2009) "Regulate microcredit to protect borrowers", Ross School of Business Working Paper (1133) pp. 1-21. Available at: https://deepblue.lib.umich.edu/bitstream/handle/2027.42/64054/1133_Karnani.pdf?sequence=1
- Kingston, J. (2017) "An Exploratory Review of Moneylender Services", Available at: <https://jftc.gov.jm/wp-content/uploads/2017/10/market-study.-moneylender-services.pdf>
- Kuala Lumpur Consumers Safety Association. (2015) Take out loans from licensed companies. Know your rights as consumers. Available at: <http://www.themalaysiantimes.com.my/take-out-loans-from-licensed-companies-know-your-rights-as-consumers/>
- Leyshon, A., Signoretta, P., Knights, D., Alferoff, C. and Burton, D. (2006) "Walking with moneylenders: The ecology of the UK home-collected credit industry", *Urban Studies*, 43(1). pp. 161-186.
- Lokanan, M. (2017) "Self-regulation and compliance enforcement practices by the Investment Dealers Association in Canada", *Journal of Financial Regulation and Compliance*.
- Markom, R., Ismail, R., Yusoff, S. S. A. and Zakuan, Z. Z. M. (2015) "The institutional framework of financial consumers in Malaysia: A legal study. The Social Sciences", 10(1), pp.41-45.
- Ministry of Domestic Trade and Consumer Affairs (2015) *Malaysian Business Ethics*. Available at: [http://ebook.kpdnhp.gov.my/ebook/doc/Business_Ethics2014\(English\)/index.html](http://ebook.kpdnhp.gov.my/ebook/doc/Business_Ethics2014(English)/index.html)
- Ministry of Housing and Local Government Malaysia (2021) Licensed moneylenders' 2020 statistics in Klang Valley.
- Ministry of Housing and Local Government Malaysia (2019) Available at: https://emaps.kpkt.gov.my/emaps/emaps/umum/cari_ppw_sc.cfm (Accessed: 24 June 2019)

- Moneylenders Act 1951 (Act 400) and Regulations (2016, May 20) International Law Books Series.
- Morse, J. M. (2015) "Data were saturated", *Qualitative Health Research*, 25(5), pp. 587-588.
- Nelson, B. (2018) Dream wedding becomes a nightmare. *The Star*, 19 April. Available at: <https://www.thestar.com.my/news/nation/2018/04/19/dream-wedding-becomes-a-nightmare-dad-harassed-for-failing-to-repay-loan-for-sons-big-day/#7Ehvqfpo5wvkt1lo.99>
- Organisation for Economic Co-operation and Development (2015) Industry self regulation: Role and use in supporting consumer interests, OECD Digital Economy Papers, No. 247, OECD Publishing, Paris. Available at: <http://dx.doi.org/10.1787/5js4k1fjqkwh-en>
- Rahman, A. S. (2007) "Development of consumer credit laws in Malaysia". *Journal of International Commercial Law and Technology*, 2(2), pp. 68-75.
- Sabri, M. F. (2014) "The development of consumer protection policies in Malaysia", *International Journal of Business and Social Research*, 4(6), pp. 98-108.
- Saldana, J. (2015) The coding manual for qualitative researchers. Sage Publications.
- Saunders, B., Sim, J., Kingstone, T., Baker, S., Waterfield, J., Bartlam, B. and Jinks, C. (2018) "Saturation in qualitative research: exploring its conceptualization and operationalization", *Quality & Quantity*, 52(4), pp. 1893-1907.
- Schwartz, M. S. and Robinson, C. (2018) "A corporate social responsibility analysis of payday lending", *Business and Society Review*, 123(3), pp. 387-413.
- Singh, A. (2017) "Nuances of Chettiar financing at British Malaya, c. Mid-1870s to early 1890s", *Sejarah: Journal of the Department of History*, 26(1).
- Skiba, P. M. and Tobacman, J. (2019) "Do payday loans cause bankruptcy?", *The Journal of Law and Economics*, 62(3), pp.485-519.
- Smith, J. A., Flowers, P. and Larkin, M. (2009) Interpretative phenomenological analysis: Theory, method, research. London: Sage, pp. 49-107.
- Suppiah, U. (2014) "History of moneylending during British era: A case study of Chettiers as the major moneylenders", *Universiti Utara Malaysia and Malaysian Historical Society*, pp. 850-867.
- The Borneo Post (2019 April 4) "Licensed moneylenders to tap into RAMCI's credit information tools" Available at: <https://www.pressreader.com/malaysia/the-borneo-post/20190404/283038350909248>
- Wanyama, R. (2019) "The movable property security rights act and the legitimisation of moneylenders by implication". Available at: http://erepository.uonbi.ac.ke/bitstream/handle/11295/107825/Wanyama_The%20Movable%20Property%20Security%20Rights%20Act%20and%20the%20Legitimation%20of%20Moneylenders%20by%20Implication.pdf?sequence=1
- Zolkepli, F. (2020) Moneylenders: let us resume business. *The Star*, 21 April. Available at: <https://www.thestar.com.my/news/nation/2020/04/21/moneylenders-let-us-resume-business>