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From Islamic Law to Modern Financial Regulation: Integrating *Maqāṣid al-Sharī'ah* into Indonesian Legal Framework

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ABSTRAK

Indonesia, sebagai negara dengan populasi Muslim terbesar di dunia, telah melakukan berbagai upaya legislatif dan regulatif yang signifikan untuk mengintegrasikan prinsip-prinsip hukum Islam ke dalam kerangka ekonomi modern. Penelitian ini mengkaji transformasi hukum Islam, khususnya melalui perspektif maqāṣid al-sharīʿah (tujuan-tujuan syariat), ke dalam arsitektur regulasi keuangan kontemporer di Indonesia. Penelitian ini menggunakan metodologi penelitian hukum normatif-empiris dengan pendekatan kualitatif melalui analisis terhadap peraturan perundang-undangan sebagai sumber hukum primer, instrumen regulasi yang diterbitkan oleh Otoritas Jasa Keuangan (OJK), fatwa Dewan Syariah Nasional–Majelis Ulama Indonesia (DSN-MUI), serta wawancara semi-terstruktur dengan 15 informan kunci yang terdiri atas regulator, pakar syariah, dan praktisi. Hasil penelitian mengungkapkan tiga dimensi utama transformasi, yaitu adaptasi normatif melalui model legislatif-referensial, transplantasi kelembagaan melalui tata kelola kewenangan ganda antara OJK dan DSN-MUI, serta hibridisasi prosedural dalam mekanisme kepatuhan. Penelitian ini juga mengidentifikasi adanya dual-compliance friction (gesekan kepatuhan ganda) yang masih berlangsung antara tata kelola syariah dan regulasi keuangan konvensional, yang tercermin dalam ketegangan pada aspek substantif, kelembagaan, dan prosedural. Lebih lanjut, penelitian ini mendokumentasikan munculnya pergeseran menuju penalaran regulatif yang berbasis maqāṣid dalam tata kelola keuangan syariah di Indonesia, yang menawarkan arah baru yang menjanjikan bagi harmonisasi antara etika ekonomi Islam dan tuntutan regulasi modern. Penelitian ini menyimpulkan bahwa hermeneutika legislasi yang berorientasi pada maqāṣid al-sharīʿah berpotensi meningkatkan koherensi regulasi, mengurangi gesekan kepatuhan, serta memperkuat fondasi etis hukum ekonomi syariah di Indonesia.

Kata kunci: Hukum Islam, *Maqāṣid al-Sharī'ah,* Regulasi Keuangan, Transformasi Hukum, Indonesia.

ABSTRACT

Indonesia, as the world's largest Muslim-majority nation, has undertaken significant legislative and regulatory efforts to integrate Islamic legal principles into its modern economic framework. This study examines the transformation of Islamic law particularly through the lens of *maqāṣid al-sharī'ah* (objectives of Islamic law) into Indonesia's contemporary financial regulatory architecture. Employing a qualitative normative-empirical legal research methodology, this research analyzes primary legislative texts, regulatory instruments from the Financial Services Authority (Otoritas Jasa Keuangan, OJK), fatwas of the National Sharīʿah Board (Dewan Syariah Nasional–Majelis Ulama Indonesia, DSN-MUI), and semi-structured interviews with 15 key informants comprising regulators, Sharīʿah scholars, and practitioners. The findings reveal three critical dimensions of transformation: normative adaptation through a legislative-referential model, institutional transplantation via dual-authority governance between OJK and DSN-MUI, and procedural hybridization in compliance mechanisms. The study identifies a persistent "dual-compliance friction" between Sharīʾah governance and conventional financial regulation, manifesting in substantive, institutional, and procedural tensions. Importantly, the research documents an emergent shift toward maqāṣid-based regulatory reasoning within Indonesian Islamic finance governance, offering a promising pathway for harmonizing Islamic economic ethics with modern regulatory demands. The study concludes that maqāṣid-oriented legislative hermeneutics can enhance regulatory coherence, reduce compliance friction, and strengthen the ethical foundations of Indonesia's Islamic economic law.

Keywords: Islamic Law, *Maqāṣid Al-Sharīʾah*, Financial Regulation, Legal Transformation, Indonesia.

Introduction

Indonesia's Islamic finance industry has experienced remarkable growth over the past two decades, positioning the country as one of the most dynamic markets in the global Islamic financial landscape. According to the Financial Services Authority (*Otoritas Jasa Keuangan*, OJK), by December 2023, Indonesia's Islamic banking sector recorded total assets of approximately IDR 802.27 trillion (approximately USD 51.4 billion), representing an 8.09% market share of the national banking industry a significant increase from merely 2.6% in 2010 (OJK, 2024). Beyond banking, the Islamic capital market has flourished, with outstanding sovereign *ṣukūk* (Islamic bonds) reaching IDR 703.38 trillion and Sharīʿah-compliant listed stocks comprising approximately 52% of total listed equities on the Indonesia Stock Exchange (IDX, 2023). The *takāful* (Islamic insurance) sector, microfinance institutions (*Baitul Mal wa Tamwil*, BMT), and *zakāh-waqf* institutions further expand the ecosystem. This phenomenal growth has been undergirded by a complex legislative and regulatory infrastructure, including Law No. 21 of 2008 on Sharīʿah Banking, Law No. 19 of 2008 on Sovereign *Ṣukūk*, and numerous OJK regulations and DSN-MUI fatwas. As Kamali (2008) observes, the integration of Islamic law into modern economic frameworks requires more than technical compliance it demands a purposive engagement with the *maqāṣid al-sharīʿah* to ensure that regulatory structures genuinely advance Islamic economic justice rather than merely mirroring conventional instruments under Islamic labels.

Scholarly attention to Indonesia's Islamic economic law has grown substantially. Ascarya (2007) provided foundational analyses of Islamic banking contracts (*akad*) within the Indonesian regulatory context, mapping the relationship between classical *fiqh* categories and their statutory expressions. Wirdyaningsih et al. (2005) examined the legal framework of Islamic banking from a comparative law perspective, while Djamil (2013) analyzed the role of DSN-MUI fatwas in shaping Islamic financial regulation. Nurhasanah and Sunandar (2020) explored the harmonization of Islamic commercial law with Indonesia's Civil Code (*Kitab Undang-Undang Hukum Perdata*, KUHPerdata) and

Commercial Code (*Kitab Undang-Undang Hukum Dagang*, KUHD). Internationally, El-Gamal (2006) critiqued the phenomenon of *Sharī'ah* arbitrage, and Hallaq (2009) analyzed the epistemic rupture between classical Sharīʿah and modern state law. However, critical gaps persist: most Indonesian studies remain doctrinal and descriptive, cataloguing legal instruments without systematically analyzing the *transformation mechanisms* through which *fiqh* principles are converted into enforceable regulations, and the actual integration of *maqāṣid al-sharīʿah* into regulatory practice has received minimal empirical scrutiny.

This article responds to identified scholarly gaps by undertaking a systematic, multi-dimensional analysis of how Islamic legal principles are transformed into enforceable modern economic regulations within Indonesia's specific constitutional, legal, and institutional context. Rather than treating the integration of Islamic law into economic regulation as a purely doctrinal exercise, this study examines it as a complex socio-legal phenomenon involving normative reinterpretation, institutional negotiation, and procedural innovation. The three specific objectives are: (1) to identify and categorize the principal normative mechanisms through which classical *fiqh al-muʿāmalāt* principles are adapted into Indonesia's modern economic regulatory framework, analyzing the legislative-referential model; (2) to analyze the institutional architecture governing the transformation particularly the dual-authority relationship between OJK and DSN-MUI and empirically document the "dual-compliance friction" that emerges from this institutional arrangement; and (3) to evaluate the extent to which *maqāṣid al-sharīʿah*-based reasoning has been integrated into Indonesian regulatory practice and its potential as a hermeneutical framework for resolving compliance tensions.

This study advances three interrelated hypotheses. First, Indonesia's transformation of Islamic law into modern economic regulation follows a distinctive *legislative-referential model* in which state legislation establishes the regulatory framework while delegating substantive Sharīʿah normative content to DSN-MUI fatwas creating a two-tiered normative structure that offers flexibility but generates enforcement ambiguities. Second, the institutional relationship between OJK and DSN-MUI produces a condition of *dual-compliance friction* defined as structural tensions arising when compliance with one normative authority generates risks of misalignment with the other manifesting in substantive, procedural, and temporal dimensions. Third, and most critically, an emerging *maqāṣid al-sharīʿah*-based regulatory reasoning offers the most promising jurisprudential pathway for resolving dual-compliance friction, enabling Indonesia to move beyond form-based Sharīʿah compliance toward substance-based economic justice.

Maqāṣid al-sharīʿah refers to the higher objectives, purposes, and rationales underlying Islamic legal rulings, representing the teleological dimension of the Sharīʿah that orients all legal prescriptions toward the realization of human welfare (*maṣlaḥah*) and the prevention of harm (*mafsadah*). The concept was initially articulated by early Uṣūl al-Fiqh scholars such as al-Juwaynī (d. 1085) and al-Ghazālī (d. 1111), who classified human interests into three hierarchical tiers: *ḍarūriyyāt* (essentials), *ḥājiyyāt* (complementary needs), and *taḥsīniyyāt* (embellishments). The theory was comprehensively systematized by Abū Isḥāq al-Shāṭibī (d. 1388) in *al-Muwāfaqāt*, establishing that all Sharīʿah rulings serve the protection of five essential values (*al-kulliyyāt al-khams*): religion (*dīn*), life (*nafs*), intellect (*ʿaql*), progeny (*nasl*), and wealth (*māl*). Muḥammad al-Ṭāhir Ibn ʿĀshūr (d. 1973) expanded the maqāṣid framework to encompass broader societal objectives including freedom, equality, and civilizational development (Ibn ʿĀshūr, 2006). Jasser Auda (2008) proposed a groundbreaking "systems approach" reconceptualizing maqāṣid as an open, multi-dimensional purposeful system. In the economic domain, the maqāṣid paradigm translates into operative principles: preservation and growth of wealth (*ḥifẓ al-māl*), equitable wealth distribution (*tadāwul al-tharwah*), prohibition of exploitation (*manʿ al-ẓulm*), and the promotion of productive over speculative economic activity. Kamali (2008) further refined the maqāṣid classification to distinguish between general, specific, and partial maqāṣid enabling scholars and regulators to identify specific objectives that Islamic commercial regulations are designed to achieve without reducing every economic question to abstract theological principles.

Fiqh al-muʿāmalāt constitutes the comprehensive body of classical Islamic jurisprudence governing civil and commercial transactions, encompassing contracts (*ʿuqūd*), property rights (*ḥuqūq maliyyah*), obligations (*iltizāmāt*), and dispute resolution mechanisms. Derived from the Qurʾān, Sunnah, *ijmāʿ*, and *qiyās*, along with supplementary sources such as *istiḥsān*, *maṣlaḥah mursalah*, and *ʿurf*, *fiqh al-muʿāmalāt* operates under the foundational principle that "the default rule in transactions is permissibility" (*al-aṣl fī al-muʿāmalāt al-ibāḥah*), granting it inherent flexibility and adaptability to changing economic conditions (al-Zuḥaylī, 2003). The core prohibitions include *ribā* (interest/usury), *gharar* (excessive uncertainty), *maysir* (gambling), and transactions involving *ḥarām* commodities. From these prohibitions emerge permissible contracts forming the building blocks of modern Islamic finance: *murābaḥah* (cost-plus sale), *mushārakah* (equity partnership), *muḍārabah* (profit-sharing investment), *ijārah* (leasing), *salam* (forward sale), *istiṣnāʿ* (manufacturing contract), *wakālah* (agency), *kafālah* (guarantee), and *ṣukūk* (asset-backed Islamic securities). In Indonesia, the application of *fiqh al-muʿāmalāt* is mediated through DSN-MUI fatwas that adapt classical contract categories to specific regulatory and market conditions, often drawing selectively from different *madhāhib* through *talfīq* (eclectic combination) or *takhayyur* (selection).

Legal transplantation theory provides a critical analytical framework for understanding how legal rules, principles, and institutions are transferred across legal systems. The theory originates from Watson's (1974) seminal work arguing that borrowing from other legal systems constitutes the most fertile source of legal development. Watson's thesis was challenged by Legrand (1997), who contended that "legal transplants are impossible" because legal rules are inseparable from their hermeneutical, cultural, and epistemological traditions. A mediating position articulated by Frankenberg (2010) and Kahn-Freund (1974) acknowledges that while complete transfer of legal meaning is unattainable, *functional* transplantation of legal mechanisms is routinely achieved, albeit with inevitable transformations in meaning and social effect. In Indonesia, legal transplantation theory illuminates two distinct processes: first, Indonesia's modern legal system itself is a product of historical transplantation from Dutch colonial law (*Burgerlijk Wetboek*, *Wetboek van Koophandel*) what Lev (2000) describes as "legal pluralism by colonial design"; second, the integration of Islamic commercial law into this inherited architecture constitutes a *reverse transplantation* in which principles originating from the *fiqh* tradition are transplanted into a state-regulatory architecture characterized by codification, hierarchical enforcement, and statutory rigidity. Mallat (2007) describes this as "selective appropriation," wherein specific *fiqh* doctrines are reformulated as statutory provisions, inevitably losing some of their original juristic richness in the process.

Regulatory pluralism refers to the simultaneous operation and interaction of multiple normative orders within a single regulatory domain, challenging the positivist assumption that the state holds a monopoly over the production and enforcement of binding legal norms (Berman, 2012; Griffiths, 1986). In the context of financial regulation, regulatory pluralism manifests when distinct normative frameworks Sharīʿah, conventional commercial law, international financial standards (Basel Accords, IOSCO principles), and indigenous customary law (*adat*) concurrently govern the same transactions. Indonesia exemplifies a particularly complex form of regulatory pluralism where Islamic banking institutions must simultaneously comply with national banking legislation and OJK prudential regulations; Sharīʿah requirements as articulated in DSN-MUI fatwas; Bank Indonesia monetary policy instruments; tax regulations; and corporate law requirements under Law No. 40 of 2007. This multi-layered regulatory environment exhibits all three dimensions identified by Black (2008): *normative pluralism* (multiple sources of authority coexist without clear hierarchical resolution), *institutional pluralism* (parallel governance structures exercise overlapping jurisdiction), and *procedural pluralism* (different compliance pathways apply to different aspects of the same institution's operations). Indonesia's Pancasila-based constitutional order creates a distinctive regulatory environmentwhat Salim (2015) calls "negotiated Sharīʿah" in which Islamic economic principles must be integrated through legislative accommodation rather than constitutional mandate.

Legal harmonization denotes the process of coordinating and reconciling differences between distinct legal systems or regulatory regimes to achieve coherence and reduce conflicts, without necessarily requiring complete unification (Leebron, 1996). In the Islamic finance context, harmonization operates at two critical levels: *intra-Islamic harmonization*, which seeks to reduce inconsistencies among Sharīʿah interpretations across Muslim-majority jurisdictions; and *inter-systemic harmonization*, which addresses alignment of Islamic financial principles with conventional regulatory frameworks. Intra-Islamic harmonization in Indonesia is complicated by the plurality of *fiqh* opinions across the four Sunni *madhāhib*. The DSN-MUI has adopted a pragmatic approach, drawing eclectically from different schools to issue fatwas responsive to market needs while maintaining Sharīʿah integrity a methodology described by Anwar (2018) as *ijtihād jamāʿī* (collective juristic reasoning). At the inter-systemic level, Indonesia faces the challenge of aligning Sharīʿah-derived regulatory requirements with a legal infrastructure built predominantly on Dutch civil law principles. Effective harmonization, as argued by Nurhasanah and Sunandar (2020), requires a paradigm shift from *form-based* harmonization toward *substance-based* harmonization redesigning legal categories to accommodate the distinctive economic substance of Islamic financial transactions a shift that inherently invokes *maqāṣid al-sharīʿah* as the common normative ground upon which both Islamic and conventional regulatory objectives can converge.

This study introduces the concept of "dual-compliance friction" (*friksi kepatuhan ganda*) as an original analytical framework for understanding the structural tensions that emerge when Islamic financial institutions must simultaneously satisfy two distinct normative regimes: the Sharīʿah governance regime administered by DSN-MUI and the prudential-regulatory regime administered by OJK and Bank Indonesia. Dual-compliance friction is defined as the condition in which the requirements, processes, or outcomes mandated by one normative authority generate risks of non-compliance, operational inefficiency, or normative dilution within the other. The concept builds upon existing scholarship on regulatory conflict in plural legal orders (Griffiths, 1986; Michaels, 2009) but provides a more precise analytical vocabulary tailored to the specific dynamics of Islamic finance regulation. In the Indonesian context, dual-compliance friction manifests in four documented forms: (a) *substantive friction* arising when a Sharīʿah-compliant product structure conflicts with or creates complications under tax law or securities regulation (e.g., the double taxation problem in *murābaḥah* financing); (b) *institutional friction* emerging when DSN-MUI's advisory authority clashes with OJK's supervisory jurisdiction; (c) *procedural-temporal friction* occurring when DSN-MUI fatwas and OJK regulations operate on different development timelines; and (d) *epistemological friction* arising from fundamental differences in the reasoning methodologies of Sharīʿah scholars and financial regulators.

Research Methodology

This research selects Indonesia as the primary analytical site and focuses specifically on the Islamic finance regulatory ecosystem encompassing the Sharīʿah banking sector, the Islamic capital market, and the emerging Islamic fintech domain. The selection of Indonesia is justified on several grounds. First, Indonesia is the world's largest Muslim-majority nation with approximately 87% of its 278 million citizens identifying as

Muslim (Badan Pusat Statistik [BPS], 2023), making its regulatory choices influential for the broader global Islamic finance industry. Second, Indonesia occupies a unique position in the comparative landscape: it possesses a comprehensive but still-developing regulatory framework that is neither fully mature (as Malaysia's) nor nascent, making it an ideal site for studying the transformation process *in medias res*. Third, Indonesia's distinctive constitutional-legal architecture Pancasila-based state ideology, Dutch colonial legal heritage, and pluralistic religious landscape creates a regulatory environment qualitatively different from both theocratic models and secular common law systems. The unit of analysis is the *regulatory-normative interface*: the specific legal mechanisms, institutional arrangements, and compliance procedures through which classical *fiqh al-muʿāmalāt* principles are translated into enforceable modern economic regulations. The research focuses comparatively on three regulatory sub-domains: Sharīʿah banking regulation, Islamic capital market regulation, and Islamic fintech regulation.

This study employs a qualitative normative-empirical legal research design, combining doctrinal analysis of legal texts (*penelitian hukum normatif*) with empirical investigation of institutional practices and stakeholder perspectives (*penelitian hukum empiris*). The normative dimension involves systematic analysis of statutory texts, regulatory instruments, judicial decisions, and fatwa documents to map the formal legal architecture of Islamic economic regulation in Indonesia. The empirical dimension investigates how this formal architecture operates in practice how regulators, Sharīʿah scholars, and market participants interpret, implement, negotiate, and sometimes contest the regulatory framework. The research is further classified as *comparative-analytical*, engaging in selective comparison with Malaysia's regulatory framework (as the globally recognized benchmark) and AAOIFI/IFSB international standards (as primary international reference points). Both primary and secondary data are utilized. Primary data comprise: (a) legislative texts (Law No. 21/2008, Law No. 19/2008, and related government regulations); (b) OJK regulations governing Islamic banking, capital markets, and fintech; (c) DSN-MUI fatwas and methodological guidelines; (d) selected Religious Court decisions relevant to Islamic finance disputes; and (e) semi-structured interview transcripts. Secondary data include academic literature, institutional reports, and comparative law commentaries.

The primary empirical data comprise 15 key informants selected through purposive and snowball sampling techniques. Informants were selected based on four criteria: (a) expertise demonstrated knowledge and professional experience of at least five years; (b) institutional relevance current or recent affiliation with institutions directly involved in Islamic economic regulations; (c) representativeness coverage of the principal institutional actors in Indonesia's Islamic finance regulatory ecosystem; and (d) accessibility. Informant categories are distributed as follows: (i) three DSN-MUI members or former members, including at least one member of the fatwa commission (*Badan Pelaksana Harian*, BPH-DSN); (ii) three OJK regulatory officials from the Sharīʿah Banking

Supervision Department and Islamic Capital Market Directorate; (iii) two Bank Indonesia officials from the Sharīʿah economic and finance department; (iv) four senior Islamic finance practitioners comprising two Sharīʿah compliance officers from Islamic commercial banks and two legal counsel from law firms specializing in Islamic financial transactions; and (v) three academic experts from Indonesian universities with published research in Islamic economic law. All informants were provided with informed consent forms detailing the research purpose, confidentiality procedures, and their right to withdraw.

Data collection was conducted using four complementary techniques over eight months (January-August 2024). First, *documentary analysis* (*studi dokumen*) involved systematic retrieval, classification, and annotation of legal texts, regulatory instruments, fatwas, and institutional reports from official databases including the *Jaringan Dokumentasi dan Informasi Hukum* (JDIH) of OJK, the DSN-MUI online fatwa database, Bank Indonesia's regulatory repository, and the Supreme Court's decision database (*Direktori Putusan Mahkamah Agung*). A total of 47 primary legal documents were identified and analyzed in depth. Second, *semi-structured interviews* (*wawancara semi-terstruktur*) were conducted with 15 key informants using a pre-designed interview protocol containing open-ended questions organized around four thematic clusters: normative adaptation mechanisms, institutional dynamics between OJK and DSN-MUI, experiences of dual-compliance friction, and perspectives on *maqāṣid*-based regulatory reasoning. Each interview lasted 60-120 minutes, conducted in Bahasa Indonesia either in person or via secure video conference (Zoom), audio-recorded with consent, and transcribed verbatim within 48 hours. Third, *non-participant observation* was conducted at two DSN-MUI plenary sessions (*sidang pleno*) and one OJK public consultation (*konsultasi publik*) on draft Islamic banking regulations. Fourth, *archival research* was conducted at the DSN-MUI secretariat in Jakarta, examining historical fatwa deliberation records (*risalah sidang*) for selected fatwas, tracing the evolution of methodological approaches particularly the increasing incorporation of *maqāṣid* reasoning over time.

Data analysis was conducted using three integrated analytical techniques applied iteratively throughout the research process. First, *normative legal analysis* (*analisis hukum normatif*) examined the formal structure, content, and internal consistency of Indonesia's Islamic economic regulatory framework, employing statutory interpretation using grammatical, systematic, historical, and teleological interpretation methods; hierarchical analysis following Hans Kelsen's norm hierarchy theory as adapted in Indonesia's Law No. 12/2011; and comparative analysis juxtaposing Indonesian regulatory provisions with Malaysian counterparts and relevant AAOIFI/IFSB standards. Second, *thematic content analysis* (*analisis isi tematik*) was applied to interview transcripts, observation field notes, and archival documents using a coding framework derived from the study's theoretical constructs: normative adaptation, institutional transplantation, procedural hybridization, dual-compliance friction (and its sub-types), and *maqāṣid*-based reasoning. Coding proceeded through deductive and inductive phases, with the qualitative data analysis software NVivo 14 managing the coding process and facilitating cross-referencing between data sources. Third, *legal hermeneutical analysis* (*analisis hermeneutika hukum*) examined how different actors DSN-MUI scholars, OJK regulators, practitioners interpret and reinterpret the same Islamic legal principles within their respective institutional contexts, focusing on the interpretive divergences that give rise to dual-compliance friction.

Results and Discussion

Normative Adaptation Mechanisms: Indonesia's Legislative-Referential Model

The analysis of Indonesia's legislative and regulatory texts reveals a distinctive *legislative-referential model* of normative adaptation in which state legislation establishes the regulatory framework and enforcement mechanisms for Islamic finance, while delegating the substantive determination of Sharīʿah compliance to an external religious body DSN-MUI. Law No. 21/2008 on Sharīʿah Banking exemplifies this model: Article 1(12) defines "Sharīʿah principles" (*prinsip syariah*) as "Islamic law principles in banking activities based on fatwas issued by an institution that has authority in determining fatwas in the field of Sharīʿah," while Article 26 stipulates that Sharīʿah banking activities must comply with Sharīʿah principles as determined by MUI fatwas, which are then operationalized through OJK regulations. This creates a two-tiered normative structure: Tier 1 consists of state legislation and OJK regulations providing the legal shell licensing requirements, capital adequacy rules, governance structures, consumer protection provisions, and sanctions; Tier 2 consists of DSN-MUI fatwas providing the substantive Sharīʿah content permissible contract types, specific transactional conditions, and prohibited practices. A senior OJK official confirmed: "We set the regulatory boundaries the prudential standards, the licensing, the supervision. But for what is *halal* or *haram*, for the specific *akad* structure, we defer to DSN-MUI. That is their domain" (Informant OJK-2, personal communication, March 15, 2024).

The legislative-referential model exhibits four defining characteristics. First, *normative bifurcation*: the separation of regulatory authority (OJK) from normative authority (DSN-MUI) creates a structurally bifurcated system in which no single institution possesses both Sharīʿah expertise and regulatory enforcement power. Second, *referential ambiguity*: while Law No. 21/2008 references DSN-MUI fatwas as the source of Sharīʿah principles, the legal status of fatwas within Indonesia's formal legal hierarchy (*hierarki peraturan perundang-undangan*) as defined by Law No. 12/2011 remains ambiguous fatwas are not listed among the recognized types of legislation (*jenis peraturan perundang-undangan*), creating uncertainty about their binding force. DSN-MUI Informant DSN-3 acknowledged: "Technically, our fatwas are not *peraturan perundang-undangan*. Their binding force derives from their adoption by OJK into OJK regulations. But in practice, the industry treats them as *de facto* binding." Third, *selective codification*:

OJK regulations selectively codify DSN-MUI fatwa provisions, sometimes simplifying, modifying, or supplementing the fatwa content a practice that informants identified as both necessary for regulatory clarity and potentially problematic for Sharīʿah integrity. Fourth, *adaptive flexibility*: the referential model allows DSN-MUI to issue and revise fatwas in response to market innovations (e.g., fintech, green *ṣukūk*, cryptocurrency) without requiring legislative amendment, providing responsiveness that more codified approaches may lack.

This legislative-referential model is deeply rooted in Indonesia's constitutional-legal and socio-political context. Constitutionally, Indonesia's Pancasila-based state ideology and the 1945 Constitution's accommodation of religion without theocratic establishment create a framework in which Sharīʿah cannot be directly codified as state law but can be *referenced* by state law as a source of normative content a position the Constitutional Court (*Mahkamah Konstitusi*) has affirmed in several decisions. Institutionally, the model reflects the historical role of MUI as a quasi-governmental religious advisory body established in 1975, whose fatwas have traditionally occupied a space between moral-religious guidance and legal-regulatory authority a space that DSN-MUI has increasingly formalized since its establishment in 1999. Politically, the model represents a pragmatic compromise what Salim (2015) characterizes as the "politics of accommodation" providing institutional space for Sharīʿah application in specific domains without extending it to the general legal system. Comparatively, Indonesia's model differs significantly from Malaysia's *legislative-integrative* approach, where the Islamic Financial Services Act 2013 directly codifies specific Sharīʿah requirements within the statute and grants binding legal authority to the Shariah Advisory Council (SAC) of Bank Negara Malaysia under Section 56 of the Central Bank of Malaysia Act 2009.

Institutional Transplantation and Dual-Compliance Friction

The research documents significant institutional transplantation dynamics within Indonesia's Islamic finance regulatory ecosystem and provides detailed empirical evidence of dual-compliance friction operating across all three regulatory sub-domains studied. The principal institutional innovation is the establishment of a dual-authority governance structure comprising OJK (as state financial regulatory authority) and DSN-MUI (as Sharīʿah advisory authority), supplemented by institution-level Sharīʿah Supervisory Boards (*Dewan Pengawas Syariah*, DPS) at each Islamic financial institution. This three-layer institutional architecture creates multiple points of normative interaction and potential friction. Interview data reveal that 12 of 15 informants identified the OJK–DSN-MUI relationship as the most critical and most tension-prone institutional dynamic in the Indonesian Islamic finance regulatory system. A DSN-MUI member stated: "There is a fundamental tension. We [DSN-MUI] are responsible before God for the Sharīʿah integrity of the industry. OJK is responsible before the state for prudential stability. These are not always the same thing" (Informant DSN-1, personal communication, February 22, 2024).

The analysis reveals complex, multi-dimensional relationships between institutional design, normative authority, and dual-compliance friction. Four specific friction types are empirically documented. *Substantive friction* is most prominently observed in the taxation of Islamic financial transactions: the classification of *murābaḥah* as a sale (*jual beli*) rather than a financing arrangement subjects the transaction to VAT (*Pajak Pertambahan Nilai*, PPN) on the underlying commodity a tax burden absent in conventional lending making Islamic banking products more expensive and competitively disadvantaged. Although Government Regulation No. 25/2009 provided partial tax neutrality, practitioners reported implementation inconsistencies persist in regional tax offices. *Institutional friction* manifests in the product approval process: DSN-MUI issues fatwas authorizing specific financial products, but OJK must subsequently translate these fatwas into regulatory provisions (*POJK*) before institutions can legally offer the products a sequential process that informants reported can take six months to two years, during which market opportunities may be lost. *Procedural-temporal friction* arises from asynchronous regulatory cycles: DSN-MUI's fatwa issuance process follows its own deliberative timeline, while OJK's regulatory cycle follows bureaucratic planning and public consultation procedures, creating windows of regulatory vacuum. *Epistemological friction* was particularly evident in the fintech domain, where DSN-MUI scholars encountered fundamental conceptual challenges in categorizing algorithmic matching processes and platform intermediation within classical contract theory.

The observed dual-compliance friction operates within several contextual factors specific to Indonesia's legal and institutional environment. First, the *constitutional ambiguity of Sharīʿah's legal status* provides no clear framework for resolving conflicts between DSN-MUI fatwas and state regulations unlike Malaysia where the Central Bank of Malaysia Act 2009 explicitly establishes the SAC's rulings as binding on courts and arbitrators. In Indonesia, friction is managed through informal negotiation, inter-institutional coordination meetings (*rapat koordinasi*), and personal relationships between key officials a finding consistent with Salim's (2015) characterization of "negotiated Sharīʿah." Second, *capacity constraints of DPS members* exacerbate friction at the institutional level: several practitioner informants reported that DPS members often lack sufficient expertise in modern financial regulation and accounting standards, leading to compliance interpretations that satisfy neither authority optimally. Third, the *rapid pace of financial innovation* particularly in fintech, digital banking, and sustainable finance intensifies procedural-temporal friction by continuously generating new product categories that outpace the deliberative capacity of both DSN-MUI and OJK. Informants from the fintech sector reported the most acute friction, with one practitioner stating: "We need regulatory sandboxes that allow Sharīʿah and prudential assessment to happen *simultaneously*, not sequentially" (Informant Practitioner-3, personal communication, May 12, 2024).

Maqāṣid-Based Legislative Hermeneutics as a Harmonization Strategy

The research documents a discernible and accelerating shift toward *maqāṣid*-based reasoning within Indonesia's Islamic finance regulatory ecosystem, evidenced across all three institutional pillars: DSN-MUI, OJK, and the practitioner community. At the DSN-MUI level, the most significant development is the 2023 revision of DSN-MUI's fatwa methodology (*Pedoman Penetapan Fatwa*), which explicitly incorporates *maqāṣid al-sharīʿah* assessment as a required stage in the fatwa deliberation process. A DSN-MUI member explained: "Previously, our fatwa methodology was heavily focused on *dalīl* [textual evidence] and *qiyās* [analogy]. The revised methodology now requires us to explicitly assess every proposed fatwa against the five *maqāṣid* particularly *ḥifẓ al-māl* [wealth preservation] before issuing a ruling. This is a fundamental methodological shift" (Informant DSN-2, personal communication, April 3, 2024). At the OJK level, the 2023–2028 Indonesian Islamic Finance Roadmap explicitly references *maqāṣid al-sharīʿah* as a guiding principle for regulatory development (OJK, 2023). At the practitioner level, informants from Islamic banks reported increasing use of *maqāṣid* reasoning to justify innovative product structures particularly in areas such as green *ṣukūk*, social impact *ṣukūk*, and Islamic microfinance that may not fit precisely within established DSN-MUI fatwa categories but demonstrably advance maqāṣid objectives.

The emergent shift toward *maqāṣid*-based reasoning carries significant strategic implications for the future trajectory of Indonesia's Islamic economic law. The research identifies a *layered harmonization strategy* as the most promising approach, comprising three integrated levels: (i) the *maqāṣid level*, establishing shared foundational objectives prohibition of exploitation (*manʿ al-ẓulm*), promotion of risk-sharing (*mushārakah fī al-mukhāṭarah*), wealth circulation (*tadāwul al-tharwah*), transparency (*shaffāfiyyah*), and social justice (*ʿadālah ijtimāʿiyyah*) as the common normative ground upon which both Sharīʿah and conventional regulatory objectives can converge; (ii) the *fiqh-operational level*, permitting flexibility in specific contractual structures while ensuring substantive Sharīʿah integrity; and (iii) the *regulatory-technical level*, developing measurable compliance standards, reporting templates, and supervisory protocols compatible with both Sharīʿah requirements and OJK prudential standards. A senior academic informant articulated this vision: "The future of Indonesian Islamic economic law is not more fatwas or more OJK regulations. It is a shared *maqāṣid* framework that both DSN-MUI and OJK can work within where they evaluate products not by whether they match a specific *akad* category from the 13th century, but by whether they genuinely advance economic justice, protect consumers, and prevent exploitation" (Informant Academic-1, personal communication, June 20, 2024).

The *maqāṣid*-based approach offers substantial value and concrete opportunities in several dimensions. First, it enhances *substantive authenticity* by moving beyond the "Sharīʿah arbitrage" critique toward a regulatory paradigm that evaluates products based on their genuine contribution to Islamic economic objectives. Second, it facilitates *regulatory convergence with international sustainability frameworks*: the *maqāṣid* objectives of wealth preservation, environmental stewardship, and social justice align substantively with the UN Sustainable Development Goals (SDGs) and ESG criteria, creating opportunities for Indonesia to position its Islamic finance industry as a global leader in ethical and sustainable finance. Third, it enables *product innovation* in areas where classical *fiqh* categories are insufficient, such as Islamic fintech, cryptocurrency regulation, and climate finance by providing a principled basis for *ijtihād* anchored in established Sharīʿah objectives. Fourth, it strengthens *inter-institutional coordination* between OJK and DSN-MUI by providing a shared language and evaluative framework that both institutions can employ. Fifth, it offers a pathway toward *judicial capacity building* by equipping Religious Court judges with a purposive interpretive methodology for resolving Islamic finance disputes. Informants cautioned, however, that the *maqāṣid* approach must be accompanied by rigorous methodological safeguards to prevent its instrumentalization as a blanket justification for abandoning established *fiqh* principles: "Maqāṣid without *uṣūl* [methodology] is not reform it is chaos," warned one DSN-MUI member (Informant DSN-1, personal communication, February 22, 2024).

The Legislative-Referential Model: Theoretical and Practical Significance

The identification of Indonesia's distinctive legislative-referential model of normative adaptation carries profound theoretical significance. Theoretically, it demonstrates that the transformation of Islamic law into modern economic regulation is not a monolithic process but is fundamentally shaped by the constitutional-legal architecture of the receiving jurisdiction. Indonesia's model represents neither a "secularization" of Islamic law nor an "Islamization" of state law, but rather what this study terms a *negotiated normative symbiosis*: a mutually dependent relationship in which neither the state regulatory apparatus nor the religious advisory body can independently govern Islamic finance. This finding challenges Watson's (1974) transplantation thesis: in Indonesia, the "transplantation" of *fiqh* principles into statutory regulation is not a simple transfer but a *transformative negotiation* in which the principles are abstracted from their classical juristic ecosystem, filtered through DSN-MUI, selectively codified by OJK, and recontextualized within a Dutch-derived commercial law framework. The concept of "politically functional ambiguity" embedded within this model reveals a dimension of the transformation process that purely doctrinal analysis would not capture: the strategic maintenance of legal uncertainty as a mechanism for managing the unresolved political tension between Pancasila secularism and Islamic normativity.

The first hypothesis that Indonesia's transformation follows a legislative-referential model characterized by normative bifurcation, offering flexibility but generating enforcement ambiguities due to the uncertain legal status of fatwas is substantially confirmed by the findings. The documentary analysis of Law No. 21/2008, OJK regulations, and DSN-MUI fatwas demonstrates the two-tiered normative structure hypothesized, and informant testimony consistently corroborates the practical operation of this bifurcation. The hypothesis regarding enforcement ambiguity is specifically confirmed by: (a) the absence of DSN-MUI fatwas from the formal *hierarki peraturan perundang-undangan* under Law No. 12/2011; (b) documented instances in which OJK regulatory translations of DSN-MUI fatwas modified substantive Sharīʿah content; and (c) the absence of a clear legal mechanism for resolving conflicts between DSN-MUI interpretations and OJK regulatory positions. However, the hypothesis requires one important refinement: the enforcement ambiguity is not merely a technical legal gap but a *politically functional* ambiguity a deliberate constructive ambiguity that allows the Indonesian state to accommodate Islamic economic law within the Pancasila constitutional framework without resolving the fundamental question of Sharīʿah's status as a formal source of positive law.

Institutional Dynamics and Dual-Compliance Friction: Structural Significance

The empirical documentation of four types of dual-compliance friction across all three regulatory sub-domains demonstrates that friction is not an incidental byproduct of regulatory immaturity but a *structural feature* of any system that seeks to integrate two fundamentally different normative orders within a single regulatory domain. This finding carries three critical implications. First, the policy aspiration of eliminating dual-compliance friction entirely is unrealistic friction is the inevitable consequence of genuine normative pluralism, and its complete elimination would require either the subordination of Sharīʿah governance to state regulation (undermining the Islamic identity of the financial system) or the subordination of state regulation to Sharīʿah governance (raising constitutional concerns in a Pancasila-based state). The policy objective should therefore be *friction management* rather than friction elimination. Second, different types of friction dominate in different regulatory sub-domains, suggesting that harmonization strategies must be domain-specific rather than uniform. Third, the identification of epistemological friction as a distinct and significant category previously undertheorizedreveals that the transformation challenge extends beyond institutional coordination to encompass fundamental *cognitive and methodological differences* between Sharīʿah reasoning and regulatory reasoning, arguably the deepest and most resistant layer of dual-compliance friction.

The second hypothesis that the institutional relationship between OJK and DSN-MUI produces dual-compliance friction manifesting in substantive, procedural, and temporal dimensions is strongly confirmed and extended by the findings. All hypothesized friction types are empirically documented through both informant testimony and documentary evidence. The hypothesis is extended by the identification of a fourth friction type *epistemological friction* not originally anticipated, which proves particularly significant in the rapidly evolving fintech domain. The diagnostic utility of the dual-compliance friction framework is validated by its ability to: (a) distinguish between friction types requiring different resolution strategies (e.g., substantive friction in taxation requires legislative amendment, while epistemological friction requires capacity building and methodological innovation); (b) identify the institutional locus of friction; and (c) predict where friction is likely to intensify as new regulatory challenges emerge. The hypothesis's prediction that friction is managed through informal negotiation rather than formal legal mechanisms is confirmed by multiple informants who described reliance on *rapat koordinasi* (coordination meetings), personal relationships, and institutional goodwill as the primary friction-management tools a finding that underscores the fragility of the current system and its vulnerability to personnel changes or political shifts.

Maqāṣid Hermeneutics as Resolution: Potential and Limitations

The documented emergence of *maqāṣid*-based regulatory reasoning across all three institutional pillars of Indonesia's Islamic finance ecosystem signals a potentially paradigmatic shift in how Islamic economic law is conceptualized and operationalized in Indonesia. If sustained and methodologically grounded, this shift could fundamentally alter the trajectory of the transformation process by reframing the relationship between *fiqh* and regulation from one of *translation* (how to codify specific *fiqh* rules into regulatory provisions) to one of *shared purposiveness* (how to achieve common ethical-economic objectives through complementary normative frameworks). This reframing directly addresses the root cause of dual-compliance friction: the absence of a shared evaluative framework that both DSN-MUI and OJK can employ to assess the same financial products and practices. Under a *maqāṣid*-based approach, a product would be evaluated not solely by its conformity to specific classical contract categories or its compliance with prudential standards, but by its contribution to shared objectives wealth preservation, equitable distribution, transparency, social welfare that both institutions recognize as legitimate. This approach also aligns Indonesia's Islamic finance regulatory paradigm with global trends in values-based financial regulation, including the EU's Sustainable Finance Taxonomy and the UN Principles for Responsible Investment.

The third hypothesis that *maqāṣid al-sharīʿah*-based legislative hermeneutics offers the most promising jurisprudential pathway for resolving dual-compliance friction receives substantial but importantly qualified support from the findings. Supporting evidence includes: (i) the documented institutional adoption of *maqāṣid* reasoning by both DSN-MUI (methodological reform) and OJK (policy roadmap), suggesting growing bilateral acceptance; (ii) informant consensus (13 of 15 informants) that *maqāṣid*-oriented evaluation criteria would be more conducive to inter-institutional coordination than form-based criteria; and (iii) documented instances in which *maqāṣid* reasoning enabled innovative solutions to dual-compliance friction (e.g., the approval of *cash waqf linked ṣukūk* by invoking the maqāṣid objective of poverty alleviation). However, three critical qualifications define the conditions for realization: first, *methodological rigor* 11 of 15 informants expressed concern that *maqāṣid* reasoning without robust anchoring in *uṣūl* *al-fiqh* principles risks becoming an open-ended justification for abandoning established Sharīʿah standards; second, *institutional capacity* the effective operationalization of *maqāṣid*-based reasoning requires DPS members, OJK regulators, and practitioners with dual competencies in Islamic jurisprudence and modern finance; and third, *political viability* the shift must be navigated within Indonesia's politically sensitive religious landscape. The hypothesis is therefore confirmed directionally but contingently.

Conclusion

This study yields three principal findings that constitute original contributions to knowledge. First, the systematic identification and characterization of Indonesia's *legislative-referential model* of normative adaptation with its defining features of normative bifurcation, referential ambiguity, selective codification, and adaptive flexibility provides an original analytical taxonomy that advances beyond the existing literature's descriptive treatment of Indonesia's Islamic finance legal framework. The concept of "politically functional ambiguity" embedded within this model reveals a dimension of the transformation process that purely doctrinal analysis would not capture. Second, the theorization and empirical documentation of *dual-compliance friction* as a four-dimensional phenomenon provides both scholars and policymakers with a precise diagnostic framework that names and categorizes regulatory tensions previously described only in general terms. The identification of *epistemological friction* as a distinct and significant category particularly salient in the fintech domain constitutes a novel theoretical contribution that extends existing scholarship on regulatory pluralism (Griffiths, 1986; Michaels, 2009). Third, the empirical documentation of an emergent but systematic shift toward *maqāṣid*-based regulatory reasoning across all three institutional pillars of Indonesia's Islamic finance ecosystem and the articulation of a *layered harmonization strategy* that operationalizes this shift provides a concrete, evidence-based pathway for future regulatory development.

The theoretical framework combining *maqāṣid al-sharīʿah*, *fiqh al-muʿāmalāt*, legal transplantation theory, regulatory pluralism, legal harmonization, and the original concept of dual-compliance friction proves analytically productive in addressing the research questions. Each theoretical lens contributes a distinct analytical dimension: *maqāṣid* provides the normative lens for evaluating transformation quality; *fiqh al-muʿāmalāt* supplies substantive content knowledge; legal transplantation theory offers vocabulary for analyzing cross-systemic transfer; regulatory pluralism contextualizes the coexistence of multiple normative orders; legal harmonization provides evaluative criteria for assessing integration strategies; and dual-compliance friction captures dynamic tensions at the institutional interface. The qualitative normative-empirical methodology combining doctrinal analysis of 47 primary legal documents with semi-structured interviews of 15 key informants, non-participant observation, and archival research enables both normative depth and empirical richness. The triangulation of documentary, interview, and observational data enhances the reliability of findings. Acknowledged limitations include: the qualitative design does not permit statistical generalization; purposive sampling of informants introduces potential selection bias; and the comparative dimension with Malaysia and international standards, while valuable, is necessarily selective.

This study acknowledges several limitations that establish the agenda for future research. First, the focus on the supply side of Islamic economic law without systematic incorporation of the *demand-side perspective* particularly the experiences and perceptions of consumers, business owners, and retail investors, limits the comprehensiveness of the analysis. Future research should investigate how dual-compliance friction and *maqāṣid*-based regulatory shifts are experienced by end-users, employing survey methodologies and consumer behavior analysis. Second, the study's *temporal scope* captures a snapshot of a rapidly evolving regulatory landscape; longitudinal research tracking *maqāṣid*-oriented regulatory frameworks over five to ten years would be essential for assessing the durability and effectiveness of this paradigmatic shift. Third, the study identifies the need for a *maqāṣid metrics system* capable of translating abstract objectives into concrete, measurable compliance criteria a critical area for future interdisciplinary research. Fourth, the *judicial dimension* of the transformation warrants dedicated empirical investigation, as interview data suggest significant judicial capacity gaps. Fifth, future research should explore the *digital governance dimension*: how regulatory technology (regtech), Sharīʿah-compliant artificial intelligence, and blockchain-based compliance systems can manage dual-compliance friction in real-time. Finally, a fully comparative study extending the analysis to multiple Muslim-majority jurisdictions (Malaysia, Saudi Arabia, Pakistan, Turkey, Bahrain) and secular jurisdictions with significant Islamic finance sectors (United Kingdom, Luxembourg, Singapore) would enable broader theorization of the relationship between constitutional-legal architecture and Islamic economic law transformation models.

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