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Recontextualizing the Juridical Foundations of Islamic Banking Contracts through the Lens of *Qawāʿid Maṣrafiyyah*

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Abstract

This research analyzes the regulatory complexities inherent in Islamic banking contracts by adopting the framework of *qawāʿid maṣrafiyyah* (Islamic banking legal maxims), aiming to establish a more actionable and context-sensitive model of *sharīʿah*-compliant legitimacy. It critically addresses the lack of innovation in contract development, which is primarily attributed to the entrenched influence of rigid and literalist *fiqh* interpretations that narrowly frame legal reasoning within the dichotomy of *ḥalāl* and *ḥarām*. Through a content analysis approach combined with the methodological tools of *uṣūl al-fiqh*, this study endeavors to revitalize the operational relevance of legal maxims, particularly in addressing the complex realities of modern Islamic financial transactions. The ultimate goal is to broaden the interpretive framework available to Islamic legal scholars, enabling them to craft more responsive and forward-looking contractual models that align with the evolving dynamics of the global banking landscape. Key contributions of this study include: (1) the formulation of a normative and adaptable regulatory structure for Islamic banking contracts; (2) the reconfiguration of *qawāʿid maṣrafiyyah* as a practical and situationally attuned regulatory alternative; and (3) the inductive derivation of these maxims from the empirical challenges encountered in the Islamic banking industry.

Keywords: *Qawāʿid Maṣrafiyyah, Sharīʿah-Compliant Contract,* Islamic Banking, Islamic finance

1. Introduction

Islamic ethical ontology articulates the imperative of an integrative paradigm encompassing three mutually reinforcing dimensions of relational existence: the vertical or transcendental nexus with the Divine (*ḥabl min Allāh*), the horizontal relationality among human agents (*ḥabl min al-nās*), and the ecological interconnection with the natural cosmos (*ḥabl min al-ʿālam*). These triadic relational modalities collectively forge the foundational moral architecture essential for the realization of a

madani (civilizational) society, an epistemic and axiological construct rooted in normative ethics and spiritual transcendence. This is particularly salient in domains where social interaction assumes a transactional form, such as in contractual engagements (*ʿuqūd*), wherein the ethical valence of each act acquires juridical and theological significance.[1]

From this ontological premise, the human being is construed not merely as an autonomous subject, but as an inherently interdependent social actor embedded within a matrix of ethical obligations and reciprocal commitments. Such embeddedness necessitates the cultivation of collective moral consciousness and a shared normative alignment (*al-iltizām al-musytarak*), which in turn serves as the sine qua non for the materialization of shared welfare and holistic benefit (*maṣlaḥah musytarakah*).[2] Ultimately, this integrative and relational ethic constitutes the core telos of the Islamic social order. This inclusive, justice-oriented paradigm transcends atomistic individualism in favor of a harmonized moral cosmopolitanism.

Within the epistemic construct of *muʿāmalah,* the normative edifice of Islamic transactional jurisprudence, two interdependent paradigms are axiologically indispensable for preserving the ontological coherence of any contractual formulation (*ʿaqd*): the adabiyyah and madaniyyah dimensions. The *adabiyyah* paradigm articulates the transcendent moral substratum that undergirds economic transactions, serving as a meta-ethical compass that infuses such engagements with spiritual intentionality and ethical gravitas. This dimension is instantiated through the embodiment of foundational virtues, including veracity, uprightness, reverence for human dignity and entitlements, and an unwavering adherence to fiduciary trust (*amānah*).[3] Consequently, the *ʿaqd* transcends its minimalist legal-functional identity, assuming instead the character of a morally infused covenant that is both spiritually accountable and socially responsive, in alignment with the ethico-theological imperatives of the Sharīʿah.

In juxtaposition, the *madaniyyah* dimension denotes the embedded institutional infrastructure that mediates the practical enactment of transactional norms. It comprises the juridical scaffolding, procedural mechanisms, and regulatory instruments that collectively ensure the structural resilience, operational fidelity, and normative legitimacy of Islamic financial systems. Within contemporary Islamic banking ecosystems, the proliferation of heterogeneous stakeholders and the variegation of economic interests exacerbate systemic complexity, often precipitating asymmetrical information flows and relational imbalances that threaten the equilibrium of contractual justice.[4]

Accordingly, the formulation of a comprehensive, responsive, and jurisprudentially sound regulatory architecture becomes an epistemic and practical necessity. Such a regime must function dually as a normative guarantor preserving the proportional distribution of rights and obligations and as a preventive apparatus, mitigating the risk of *mafsadah* in its multifaceted manifestations, whether juridical, moral, or socio-economic. This regulatory vigilance is indispensable for sustaining the ethical legitimacy and distributive justice (*ʿadālah*) that form the moral telos and structural integrity of a Sharīʿah-compliant financial order.[5]

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1 Fitri Anisa dkk., "Perwujudan maqashid syariah dalam ekonomi Islam, lembaga keuangan syariah, dan Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah," *Eksisbank (Ekonomi Syariah Dan Bisnis Perbankan)* 8, no. 1 (2024): 122–32.

2 Moh Mufid, *Kaidah Fikih Ekonomi Dan Keuangan Kontemporer: Pendekatan Tematis dan Praktis* (Prenada Media, 2019),

3 Qanitah An Nabila A'yun dkk., "Implementasi Etika Bisnis Islam Dalam Transaksi Jual Beli Online Pada E-Commerce Popular Di Indonesia," *JPSDa: Jurnal Perbankan Syariah Darussalam* 1, no. 2 (2021): 166–81.

4 Nurmahadi Nurmahadi dan Christina Tri Setyorini, "Maqasid Syariah Dalam Pengukuran Kinerja Lembaga Keuangan Syariah di Indonesia," *JAS (Jurnal Akuntansi Syariah)* 2, no. 1 (2018): 29–55.

5 Anisa dkk., "Perwujudan maqashid syariah dalam ekonomi Islam, lembaga keuangan syariah, dan Undang-Undang Nomor 21 Tahun

Islamic law allows considerable scope for innovation within *muʿāmalah*, grounded in the foundational fiqh principle: *al-aṣl fī al-muʿāmalāt al-ibāḥah illā an yadulla al-dalīl ʿalā al-taḥrīm*, which asserts that all forms of interaction are inherently permissible unless explicitly prohibited by sharīʿah. This maxim provides an epistemic basis for the flexibility of Islamic jurisprudence, enabling it to adapt to evolving socio-economic conditions, while concurrently legitimizing the expansion and diversification of financial contracts within the Islamic financial system. These innovations are designed to serve both the public interest (*maṣlaḥah*) and contextual relevance in contemporary society.

In practical terms, modern Islamic banking has instituted a range of core contractual structures, which function as operational tools in fund mobilization and distribution. At least eleven distinct contract forms have been legally codified, such as wadiʿah (trust deposit), *muḍārabah* (profit-sharing partnership), musyārakah (capital partnership), *murābaḥah* (cost-plus sale), salām (advance payment sale), istiṣnāʿ (custom order sale), qarḍ (loan without return), ijārah (lease), ijārah muntahīyah bi al-tamlīk (lease-to-own), and ḥawālah (debt transfer). These contractual forms reflect the adaptability of Islamic economics to meet contemporary demands, while remaining firmly anchored in sharīʿah principles, which prioritize justice, transparency, and public welfare.

The construction of contracts within the Islamic banking system can be systematically classified according to the economic roles they fulfill, broadly encompassing three core areas: fundraising (funding), resource allocation (financing), and financial services. In practice, Islamic financial institutions deploy a range of transactional frameworks that encapsulate the distinct legal characteristics and functional objectives of each contract. These include, among others: trust-based contracts such as wadiʿah yad amānah (trust deposit) and wadiʿah yad ḍamānah (guaranteed deposit), profit-sharing partnerships like muḍārabah and musyārakah, sale contracts with various modalities such as murābaḥah (cost-plus sale), salām (advance payment sale), and istiṣnāʿ (customized order sale), in addition to ijārah (lease) contracts and interest-free loans (qarḍ). Furthermore, supplementary contracts serve as mechanisms to reinforce and guarantee transactions, including wakālah (agency) and kafālah (guarantee). This categorization illustrates the inherent complexity and adaptability of Islamic contract structures, enabling them to address modern economic needs while consistently upholding the fundamental values of justice, transparency, and sustainability, as prescribed by Sharīʿah law.

Confronted with the complexity of contract structures in the Islamic financial system, there emerges an epistemological imperative to devise a set of specific and contextual fiqh principles (*qawāʿid fiqhiyyah*) that can serve as a normative basis for assessing the legal ramifications of various transactional matters. This study, therefore, concentrates on the formulation and construction of qawāʿid maṣrafiyyah jurisprudential rules that are not only practically applicable but also functionally essential in navigating the regulatory intricacies associated with contracts in contemporary Islamic banking practices. This approach introduces a methodological advancement that remains relatively underexamined in a systematic manner within the field of modern muʿāmalah fiqh, despite its high potential to establish a more structured, effective, and adaptive legal analysis framework designed to address institutional needs and the ongoing development of Islamic economic law.

Islamic banking, as a crucial component of the national financial architecture, has secured solid legal legitimacy through a series of regulatory frameworks, including Law No. 7 of 1992 on Banking,

2008 tentang Perbankan Syariah."

subsequently revised by Law No. 10 of 1998, and reinforced by Law No. 21 of 2008 on Islamic Banking. However, the proper distinction of Islamic banking extends beyond its formal regulatory foundations, rooted deeply in its normative underpinnings derived from the maqāṣid asy-sharīʿah. Central to these principles is jalb al-maṣāliḥ wa darʾ al-mafāsid, which emphasizes the pursuit of societal benefits while mitigating harm. This normative framework underscores a steadfast commitment to excluding practices such as ribā (usury), gharar (excessive uncertainty), and other transactional elements that undermine the principles of justice and transparency intrinsic to Islamic law. Consequently, Islamic banking is not merely conceived as a technical alternative but as a representation of an ethical financial system, focused on ensuring distributive justice and the harmonious balance of values.

Conversely, the fatwā issued by the National Shariah Council of the Indonesian Ulema Council (DSN-MUI) plays a pivotal role as a normative source of legitimacy for the validity of Islamic banking products and practices in Indonesia. While technical supervisory authority resides with Bank Indonesia and the Financial Services Authority (OJK), the DSN-MUI acts as the jurisprudential authority, establishing a legal framework grounded in Shariah principles. Significantly, the preambles of each DSN-MUI fatwā explicitly incorporate qawāʿid fiqhiyyah as the foundational argument in the "Considering" section, referencing sources such as the Qur'an, hadith, methods of istinbāṭ al-ḥukm, and fiqh maxims as methodological instruments (MUI, 2011). The prominent role of qawāʿid fiqhiyyah in DSN-MUI fatwā illustrates that qawāʿid maṣrafiyyah not only serve as a conceptual foundation but also as a practical epistemological framework for Islamic law in the advancement of the contemporary Islamic economic sector. Consequently, this methodology presents substantial potential to evolve into a core analytical framework in the study and application of fiqh-based Islamic banking.

Despite variations in case characteristics, fiqh maxims exhibit conceptual adaptability, enabling their application as a normative framework for crafting practical legal solutions that address the evolving challenges of contemporary issues (Aziz, 2020). Within Islamic finance, particularly Islamic banking, the evolution of qawāʿid maṣrafiyyah as a derivative of classical fiqh maxims has substantially contributed to the formation of regulatory frameworks for contracts that are consistent with maqāṣid asy-sharīʿah. This approach not only guarantees adherence to Shariah principles but also encourages legal innovation in the modern Islamic financial system. Accordingly, this research highlights the conceptual and methodological divergence from prior studies, presenting a novel interpretation of the application of fiqh maxims in a more contextualized and pragmatic regulatory framework for the Islamic banking sector. Qawāʿid maṣrafiyyah can be further developed as an analytical tool to address the ongoing legal challenges within Islamic finance, especially those not explicitly addressed in primary sources. The ultimate aim of developing qawāʿid maṣrafiyyah is to provide both academics and practitioners with a rational and methodological legal framework, aligned with maqāṣid al-sharīʿah, to respond to contemporary challenges effectively.

This research provides a significant academic contribution, not only from a theoretical perspective but also in terms of its high practical applicability within the realm of contemporary Islamic economic law. The study successfully identifies a distinctive scientific innovation while addressing a previously unexplored research gap in the field of fiqh muʿāmalah. Traditional research in this domain primarily focuses on textual-normative analysis or the legal validation of contemporary transactional practices on a case-by-case basis. In contrast, this study progresses by developing a systematic framework for constructing fiqh maxims that structurally regulate Islamic

banking practices, offering a more comprehensive approach.

This methodological advancement is evident in the development of qawāʿid maṣrafiyyah, which refers to fiqh maxims specifically tailored to address the regulatory requirements of contracts within the context of Islamic banking. This approach not only bridges an epistemic gap within the traditional framework of classical fiqh law, but it also transforms fiqh maxims from being abstract, universal principles to becoming actionable instruments capable of directing the formulation of Shariah-compliant contracts and financial products in a prescriptive manner. In this sense, qawāʿid maṣrafiyyah provide a conceptual framework that reconciles the ideals of Islamic law with the dynamic realities of the rapidly evolving Islamic banking sector. The significance of developing qawāʿid maṣrafiyyah is profound, as it contributes to the formation of Islamic economic law that is better equipped to address the modern demands of the Islamic financial industry. Given the rise in product innovations, including hybrid contracts, multi-contracts, and digital banking, a normative framework is needed that is not only grounded in usul al-fiqh but is also sufficiently flexible and responsive to contemporary changes. This approach highlights the necessity for a proactive and strategic fiqh reconstruction, one that transcends reactive measures and formalism, while actively contributing to the development of visionary and pragmatic banking regulations in the Islamic legal system.

This study positions itself as a pioneering and substantial effort in advancing the development of an applied fiqh branch that is acutely attuned to contemporary challenges, while remaining in harmony with the practical demands of the financial sector, all without relinquishing the epistemological integrity of fiqh as a normatively authoritative discipline. It underscores the notion that the evolution of Islamic law is not inherently at odds with modern institutional structures, but instead holds immense potential to establish a robust ethical-normative foundation for the creation of a financial system that consistently upholds the core principles of justice, sustainability, and profound spiritual values. This research makes a vital theoretical contribution by advocating for the integration of Islamic jurisprudence into contemporary financial practices, challenging the prevailing notion that Islamic law and modern economic frameworks are mutually exclusive. It repositions fiqh as a dynamic and adaptive discipline, one that can evolve in response to the operational needs of modern financial institutions, while steadfastly preserving its core principles. The study further emphasizes the critical role of ethical and normative frameworks in ensuring that financial systems not only align with Shariah principles but also advance broader societal goals, such as justice, sustainability, and spirituality. This approach not only accelerates the growth of Islamic finance but also reinforces its capacity to shape a socially responsible and ethically grounded financial sector.

2. Literature Review

This study critically engages with and juxtaposes prior scholarship to articulate novel contributions to Islamic finance theory and practice. Husni Kamal's work operationalizes *maqāṣid al-sharīʿah* within Islamic banking product development, framing it as an experimental integration of normative, ethical, and spiritual imperatives into market offerings, with *maṣlaḥah* as a dual objective for temporal and eschatological welfare. Nur Faizin's content analysis of 116 DSN–MUI fatwā (2000–2017) exposes methodological deficiencies, including partial application of *al-qawāʿid al-asāsiyyah*, absence of hierarchical integration, inadequate *uṣūl* application, and limited fiqh principle utilization while advocating for systematic incorporation of *al-qawāʿid al-asāsiyyah*, *al-qawāʿid al-farʿiyyah*, and *al-*

qawāʿid al-kulliyyah into Islamic economics curricula and banking regulation.

Hasim Asari underscores the regulatory significance of ushul fiqh maxims such as *al-aṣlu fil-ashyā' al-ibāḥah* (permissibility as default) and *al-ghurm bil-ghunm* (risk–profit proportionality) in shaping adaptive Shariah-compliant laws for banking, takaful, and *waqf*, calling for legal harmonization, public literacy enhancement, and structured scholarly–policy collaboration. Devid Frastiawan traces the historical evolution of *al-qawāʿid al-fiqhīyah* through inception, expansion, and refinement, demonstrating its doctrinal role in structuring jurisprudential reasoning and its practical efficacy in resolving contemporary legal disputes.

The study's novelty lies in proposing *qawāʿid maṣrafiyyah,* a pioneering experimental theoretical framework that transforms fiqh maxims into functional regulatory instruments for Islamic banking, transcending conventional textual-normative validation. This approach bridges the idealism of Islamic law with operational banking realities, reconceptualizing fiqh as a proactive, adaptive legal architecture capable of sustaining a socially responsible and ethically anchored Islamic finance ecosystem.

3. Method

This study adopts a qualitative methodology, positioning the researcher as the central instrument in the exploration of meaning, aiming to construct conceptual generalizations grounded in interpretative analysis. This approach is chosen due to its congruence with the study's normative and reconstructive objectives. In terms of data collection, the research is classified as library research, with primary data sourced from normative documents, specifically legislative texts concerning Islamic banking and fatwā issued by the National Shariah Council of the Indonesian Ulema Council (DSN MUI).

The primary data sources for this investigation consist of two core elements: (1) formal legal regulations that govern Islamic banking in Indonesia, and (2) DSN MUI fatwā, which act as normative frameworks for Islamic banking practices. Secondary data includes scholarly works, encompassing books and journal articles that explore the theory and application of fiqh maxims, especially within the scope of Islamic finance. The data collection process employs two primary techniques: documentary analysis and content analysis of both regulatory texts and fatwā.

The data processing involves three key phases: (1) the descriptive phase, where all data are categorized and organized, (2) the reduction phase, which involves filtering data to ensure relevance to the thematic focus of the study, and (3) the selection phase, where key elements are highlighted and conceptualized. The content analysis method begins with the identification of keywords in the primary sources, followed by the formulation of relevant fiqh maxims. It concludes with the development of qawāʿid fiqhiyyah, which serve as a normative regulatory framework for the Islamic banking contract system.

4. Result and Discussion

a. The Academic Discourse on Islamic Banking in Indonesia

The evolution of Sharia banking in Indonesia constitutes a distinctive case of institutional maturation, characterized by rapid expansion since the establishment of Bank Muamalat Indonesia in the early 1990s. This momentum was solidified through the enactment of Law No.

21 of 2008 on Sharia Banking, which institutionalized a comprehensive regulatory framework, providing juridical certainty and marking a paradigmatic shift from a dualistic banking system toward an integrated financial architecture embedding Sharīʿah principles within the national economic framework.[6]

Miranda Gultom identifies five principal drivers underpinning the sector's advancement: (1) the authoritative fatwā of the Indonesian Ulema Council (MUI) declaring conventional interest (*ribā*) impermissible, thereby legitimizing Sharia-compliant alternatives; (2) heightened religious consciousness, particularly among the urban middle and upper classes, fueling demand for ethical finance; (3) the demonstrated resilience of Islamic banks exemplified by Bank Muamalat Indonesia's stability during the 1998 Asian financial crisis without government bailouts bolstering institutional credibility; (4) the enactment of the Sharia Banking Law, providing a coherent legal foundation for sustained growth; and (5) the growing imperative for integration across Sharia-based financial instruments, including *takaful*, Sharia mutual funds, and the Islamic capital market, fostering systemic synergy within the Islamic economy.[7]

Within Indonesia's financial architecture, Islamic banking functions as a strategic pillar of national development, complementing conventional banking in advancing distributive justice, macroeconomic stability, and societal welfare. Legislative reforms from Law No. 14 of 1967 to Law No. 10 of 1998, culminating in the Sharia Banking Law, reflect a progressive embedding of normative and structural elements of Islamic finance.[8] As an ethical financial model, Islamic banking prohibits *ribā*, *gharar*, and *maysir*, operationalizing Sharīʿah compliance through institutional design and governance in intermediating surplus and deficit economic agents.[9]

Historically, Sharīʿah-based economic practices predate formal banking, embedded in the socio-economic fabric of Indonesian Muslim society. Contemporary institutionalization, manifested in branch proliferation and the conversion of conventional units into Sharia subsidiaries, demonstrates both *de jure* recognition and *de facto* expansion.[10] This trajectory is anchored in successive legislative developments, from Law No. 7 of 1992 and amendments to the Bank Indonesia Act, to the extension of religious court jurisdiction over Islamic economic matters. Ultimately, the evolution of Islamic banking law illustrates Indonesia's adaptive legal pluralism transitioning from a centralized, uniform legal framework toward a multi-normative paradigm that elevates Islamic law from a peripheral to a constitutive element of the national legal system.

b. The Principle of Qawāʿid Maṣrafiyyah in Contractual Practices of Sharia Banking

Within Islamic legal theory, *al-qawāʿid al-kulliyyah al-fiqhiyyah* (fiqh maxims) possess ontological and epistemological foundations distinct from those of *uṣūl al-fiqh*. While *uṣūl al-fiqh* serves as a meta-legal discipline regulating the hierarchy of legal sources, hermeneutical methodologies

[6] Abdul Rachman Abdul dkk., "Tantangan Perkembangan Perbankan Syariah Di Indonesia," *Jurnal Tabarru': Islamic Banking and Finance* 5, no. 2 (2022): 352–65.

[7] Nirwan Umasugi, "Peran Perbankan Syariah Dalam Stabilitas Sistem Keuangan Nasional," *Al-Mizan: Jurnal Kajian Hukum dan Ekonomi*, 2021, 67–89.

[8] Nikmah Dalimunthe dan Nanda Kurniawan Lubis, "Peran lembaga perbankan terhadap pembangunan ekonomi: Fungsi dan tujuannya dalam menyokong ketenagakerjaan," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi Dan Perbankan Syariah* 8, no. 4 (2023), https://journal.um-surabaya.ac.id/Mas/article/view/20997.

[9] Nur Chanifah, "Formulasi etika bisnis halal thayyib dalam perspektif maqashid syariah kontemporer jasser auda," *Arena Hukum* 14, no. 3 (2021): 604–25.

[10] Indah Handayani dkk., "Perbandingan Fungsi dan Peran Bank Syariah dan Lembaga Keuangan Dalam Perekonominan Indonesia," *Jurnal Ilmiah Pendidikan Scholastic* 9, no. 1 (2025): 1–9.

(*istinbāṭ*), and exegetical engagement with divine injunctions, fiqh maxims emerge inductively from judicial precedents and cumulative jurisprudential practice, rather than direct textual derivation (*naṣṣ*). Functioning as meta-principles, they synthesize recurring normative patterns across diverse legal domains *ʿibādāt*, *muʿāmalāt*, contractual obligations, and adjudication into concise, universally applicable legal propositions aligned with *maqāṣid al-sharīʿah*.[11]

Unlike the primarily theoretical orientation of *uṣūl al-fiqh*, fiqh maxims operate in an applied, heuristic capacity, distilling juridical complexity into accessible frameworks for secondary legal deduction. Their compact formulation and semantic density allow them to serve as epistemic nuclei that structure and harmonize dispersed legal determinations.[12] Classical jurists across the *madhāhib* systematized these maxims into advanced jurisprudential tools, producing two main typologies: (1) maxims directly anchored in recurrent Qur'ānic and Prophetic principles (e.g., *al-mashaqqah tajlib al-taysīr* and *innamā al-aʿmāl bi al-niyyāt*), and (2) inductively derived maxims from aggregated *fatāwā* and adjudicative rulings, some enjoying cross-school consensus while others reflect methodological divergence.[13]

Epistemically, the derivation of *qawāʿid fiqhiyyah* proceeds through a structured sequence: identifying scriptural *dalīl*, applying *uṣūl al-fiqh* for legal inference, formulating *aḥkām fiqhiyyah*, inductively generalizing from analogous cases, and validating alignment with *maqāṣid al-sharīʿah*. They are not independent sources of law, but operational heuristics streamlining legal reasoning, exemplified historically in the Ottoman *Majallah al-Aḥkām al-ʿAdliyyah* (1869–1876) and contemporarily in the fatwā methodology of the Indonesian Ulema Council (MUI).[14]

As Ibn Qayyim al-Jawziyyah emphasizes, *fatāwā* are context-sensitive, adapting to temporal, spatial, intentional, and customary variables. This flexibility, reinforced by Ibn Rushd's validation of *ʿurf* and Abū Yūsuf's fiscal jurisprudence in *Kitāb al-Kharāj*, underlines the socio-legal adaptability of fiqh maxims. Many derive directly from *ṣaḥīḥ* ḥadīth e.g., *al-umūr bi maqāṣidihā* from *innamā al-aʿmāl bi al-niyyāt*, applicable in ritual, transactional, and criminal law, and *al-ḍarar yuzāl* from *lā ḍarar wa lā ḍirār*, foundational to harm-prevention ethics.[15] In contemporary discourse, these maxims are increasingly framed through Yasser Auda's reformist *maqāṣid* paradigm, shifting their function from static legal preservation toward proactive socio-legal transformation advancing human dignity, empowerment, and rights as integral expressions of Sharīʿah's teleological objectives.[16]

c. Implementing Qawāʿid Maṣrafiyyah in Sharia-Compliant Banking Contracts

1) Fiqh Maxims on Halal and Haram in Sharia Banking Products

In the current regulatory and economic landscape, the expansion of halal certification reflects growing demand for comprehensive halal assurance, particularly in Islamic

[11] Firdha Nabela dkk., "Hirarki Hukum dan Dasar Hukum Perbankan Syariah di Indonesia," *Jurnal Ekonomi Utama* 2, no. 2 (2023): 106–16.

[12] Nur Faizin dkk., "Pembelajaran Ekonomi Syariah Melalui Klasifikasi Kaidah-Kaidah Fikih Dalam Fatwa Dsn-Mui," *MIYAH: Jurnal Studi Islam* 17, no. 01 (2021): 65–78.

[13] Prawitra Thalib, "Pengaplikasian Qowaid Fiqhiyyah Dalam Hukum Islam Kontemporer," *Jurnal-Yuridika* 31, no. 1 (2016), https://www.academia.edu/download/56373939/ipi466705.pdf.

[14] Anis Wahyu Andini dan Muhamad Subhi Aprianto, "Kaidah-Kaidah Fikih dalam Fatwa Dewan Syariah Nasional MUI (Studi Analisis Terhadap Fatwa DSN MUI Tahun 2000-2021)" (PhD Thesis, Universitas Muhammadiyah Surakarta, 2022), https://eprints.ums.ac.id/id/eprint/105962.

[15] Mufid, *Kaidah Fikih Ekonomi Dan Keuangan Kontemporer*.

[16] Ansori Ansori, "Rekonstruksi Metodologi Fikih Kontemporer," *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 2 (2018): 329–40.

finance.[17] This highlights the need for a coherent legal framework governing muʿāmalāt in line with Sharīʿah. Classical Islamic legal theory remains central, exemplified by the qāʿidah fiqhiyyah: "الأصل في المنافع الحل، والمضار الحرمة بأدلة شرعيّة" ("The default presumption regarding beneficial acts is permissibility, while harmful acts are prohibited, contingent upon Sharīʿah-based evidence").[18]

This maxim assumes beneficial transactions are permissible unless harm or explicit prohibitions exist. In Islamic finance, the prohibition of ribā (usury) is fundamental, defined by the maxim: كل قرض جر منفعة فهو ربا ("Any loan yielding additional benefit to the lender constitutes ribā"). Any ancillary advantage from a loan falls under prohibited ribā. The development of Sharīʿah-compliant financial instruments must adhere to these principles, particularly avoiding ribā.[19] Generalized judgments equating all Islamic banking with ribā are legally unsound without rigorous contract analysis. A framework based on maqāṣid al-sharīʿah, legal precision, and contextual justice is essential to preserve the integrity and ethical objectives of Islamic economic governance.[20]

2) **Legal Maxims on the Resolution of Disputes Between Customers and Islamic Banking Institutions**

In modern muʿāmalāt, disputes are inevitable, and Islamic law addresses them through the Qur'an and Sunnah, which uphold human dignity and mutual respect. Q.S. al-Ḥujurāt [49]:11 prohibits ridicule and humiliation, setting ethical standards applicable to financial and contractual relations. Islamic financial transactions rest on Sharīʿah principles like tarāḍī (mutual consent) and ʿadālah (justice), with disputes guided by qawāʿid fiqhiyyah (juridical maxims). A key maxim states: "الأصل في الصفات العارضة العدم" ("The presumption regarding supervening attributes is their nonexistence").[21]

This principle, based on *istishāb* (legal continuity), asserts that an established legal status remains until proven otherwise, shifting the burden of proof to the claimant. In finance, the validity of contested contracts is presumed unless disproven, and claims of defects require verifiable evidence.[22] This ensures fairness, objectivity, and Sharīʿah-compliant justice. Thus, *al-aṣl fī al-ṣifāt al-ʿāriḍah al-ʿadam* acts as both an ethical guide and an epistemological safeguard in Islamic economic law, ensuring justice and protecting the disadvantaged in dispute resolution, in line with maqāṣid al-sharīʿah.[23]

3) **The Legal Maxim on the Establishment of Sharīʿah Banking Contracts**

In Islamic *muʿāmalah*, mutual consent (*riḍā'*) is a foundational legal-ethical requirement for the validity of any contract (*ʿaqd*). Sharīʿah-compliant banking transactions cannot

[17] Chanifah, "Formulasi etika bisnis halal thayyib dalam perspektif maqashid syariah kontemporer jasser auda."

[18] Wisnu Indradi, "Kaidah Fikih Dalam Halal Dan Haram Menurut Syaikh Yusuf Al-Qardhawi," *Khuluqiyya: Jurnal Kajian Hukum dan Studi Islam*, 2023, 213–30.

[19] Muhammad Maksum dan Nur Hidayah, "The Mechanism of Avoiding Riba in Islamic Financial Institutions: Experiences of Indonesia and Malaysia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (2023): 235.

[20] Hanimon Abdullah dan Mehmet Asutay, "Constituting Islamic corporate governance theory through Islamic moral economy," dalam *Monetary policy, Islamic finance, and Islamic corporate governance: An international overview* (Emerald Publishing Limited, 2021), https://www.emerald.com/insight/content/doi/10.1108/978-1-80043-786-920211002/full/html.

[21] Yusriana Yusriana, "Analisis Hukum Dalam Penyelesaian Sengketa Secara Mediasi Terhadap Konflik Antara Nasabah Dengan Pihak Bank," *Juripol (Jurnal Institusi Politeknik Ganesha Medan)* 4, no. 1 (2021): 217–26.

[22] Zahrul Mubarrak dan Muhammad Yanis, "Landasan Penetapan Istishab Sebagai Sumber Hukum Mazhab Syafi'i," *Jurnal Al-Nadhair* 3, no. 01 (2024): 48–63.

[23] Asmawi Asmawi, "Epistemologi Hukum Islam: Perspektif Historis, Sosiologis dalam Pengembangan Dalil," *Tribakti: Jurnal Pemikiran Keislaman* 32, no. 1 (2021): 57–76.

be reduced to formal agreement alone; they must substantively reflect the voluntary and reciprocal assent of both parties. This principle is enshrined in the maxim: الأصل في العقد رضى المتعاقدين ونتيجته ما التزماه بالتعاقد ("Mutual consent is indispensable in all contracts, whether commercial (*muʿāwaḍah*) or charitable (*tabarruʿ*)."[24]

Grounded in Q.S. al-Nisāʾ [4]:29, *riḍāʾ* is a legal precondition, the absence of which—due to coercion, deception, or undue pressure—renders a contract voidable. The maxim الأصل في العقد رضى المتعاقدين ونتيجته ما التزماه بالتعاقد affirms that contractual effects derive from the parties' voluntary commitments, while الرِّضَى بِالشَّيْءِ رِضَى بِمَا يَتَوَلَّدُ مِنْهُ extends consent to encompass all resulting obligations. Thus, any breach of genuine *riḍāʾ*, primarily through *gharar* (fraud) or *ikrāh* (coercion), constitutes legitimate grounds for annulment. For this reason, Islamic financial institutions must implement mechanisms ensuring informed consent, transparency, and deliberation throughout the contractual lifecycle, safeguarding not only procedural validity but also the moral integrity of Islamic commercial ethics.[25]

4) **The Fiqh Maxim on the Consideration of Need in Islamic Banking Contracts**

Within the *maqāṣid al-sharīʿah* framework, al-Shāṭibī delineates a tripartite hierarchy of human needs *ḍarūriyyāt* (essentials), *ḥājiyyāt* (complementary needs), and *taḥsīniyyāt* (embellishments), each reflecting a distinct level of urgency in consumption. In Islamic economics, fulfilling these needs must follow this normative order to preserve the balance between existential necessity and ethical restraint. Al-Ghazālī emphasizes that economic motivation in Islam extends beyond self-interest to encompass personal welfare, familial security, and collective empowerment, making necessity (*ḥājah*) rather than greed a guiding principle in consumption. This approach aligns with the *fiqh* maxim: الحاجة تنزل منزلة الضرورة عامة كانت أو خاصة (A need may assume the legal status of necessity, whether general or specific).[26]

This maxim affirms that permissibility is contingent on the gradation of necessity from *ḍarūrah* (urgent need) to *ḥājah* (significant need), and further to *manfaʿah* (utility) and *zinah* (adornment) while *fuḍūl* (excess) is censured as wasteful consumption. Accordingly, Islamic banking operations must remain adaptable to evolving human needs through a *maqāṣid*-oriented framework, ensuring that financial products and services are ethically aligned with this hierarchy.[27]

5) **The Fiqh Maxim on Purpose and Significance in Islamic Banking Contracts**

In Islamic transactional jurisprudence, the substance and objectives of a contract (ʻaqd) take precedence over its verbal expression, as encapsulated in the fiqh maxim: "العبرة في العقود بالمقاصد والمعاني لا بالألفاظ والمباني" ("The essence of contracts lies in their objectives and meanings, not merely in their words and forms"). The Ḥanafī and Mālikī schools emphasize mutual understanding of the contract's purpose over verbal precision, while the Shāfiʿī and Ḥanbalī schools place greater focus on clear verbal articulation.[28] However,

[24] Muhammad Iqbal Sanjaya, "Kerelaan Dalam Transaksi Jual Beli Menurut Teks Ayat Dan Hadis Ahkam Jual Beli (Telaah Yuridis Dan Sosiologis)," *SENTRI: Jurnal Riset Ilmiah* 1, no. 2 (2022): 587–95.

[25] Chanifah, "Formulasi etika bisnis halal thayyib dalam perspektif maqashid syariah kontemporer jasser auda."

[26] Al-Maʿmūrī, & Muḥammad Kāmil Shihāb. "Qāʿidat al-Ḥājah Tunazzalu Manzilat al-Ḍarūrah: al-Ḍawābiṭ wa al-Taṭbīqāt." Majallat Kulliyat al-ʿUlūm al-Islāmiyyah, no. 69 (2022), https://www.jcois.uobaghdad.edu.iq/index.php/2075_8626/article/view/1579.

[27] Abdul dkk., "Tantangan Perkembangan Perbankan Syariah Di Indonesia."

[28] Jefik Zulfikar Hafizd dkk., "Penerapan Kaidah Al-Ibratu Fi Al-â€ Uqudi Lilmaqashidi Wal Maâ€™ ani La Lil Al-Fazhi Wal Mabani

some jurists within these latter traditions support a substance-over-form approach, particularly in informal transactions. An example is bay ‘al-mu‘āṭāh, where mutual consent is expressed through actions or gestures rather than formal words, and is considered valid if it aligns with custom (al-Dasūqī, 2020). This reinforces the centrality of riḍā (consent) in contract validity, contingent upon conscious volition and absence of coercion, as reflected in the maxim: “الإكراه يسقط الرضا” (“coercion extinguishes consent”).”[29]

6) **The Fiqh Maxim on the Provisions of Compensation and Delivery of Outcomes in Islamic Banking Contracts**

In all human endeavors, including da’wah and contractual commitments, risk is inherently tied to the pursuit of benefit, as captured in the fiqh maxim: “الْغُرْمُ بِالْغُنْمِ” (“Liability is proportionate to the benefit acquired”). This principle underscores that profit-seeking involves a readiness to bear potential loss. The da’wah of Prophet Muhammad exemplifies this, where monumental successes were achieved through calculated sacrifices and navigating high-risk challenges.[30]

In Islamic banking, risk management is rooted in sharī‘ah principles of prudence (ḥiṭṭah) and justice, involving the identification, quantification, and disclosure of risks while maintaining operational integrity and moral accountability. Five core risk management strategies, acceptance, avoidance, neutralization, mitigation, and equitable distribution, are implemented in accordance with ethical guidelines. Proactive risk management includes resource allocation, diversification, and expert consultation, while avoiding gharar (uncertainty) and maysir (gambling). Continuous evaluation ensures long-term stability and compliance with sharī‘ah.

7) **The Fiqh Maxim on Ownership in Sharia-Compliant Banking Contracts**

In Islamic jurisprudence, ownership is a shar‘ī right allowing the holder to manage, use, and benefit from an object within legal limits. The fiqh maxim “الأمر بالتصرف في ملك الغير باطل” (“Any directive to dispose of another’s property is null and void”) establishes that transactions involving another’s property without lawful authorization are legally ineffective. This principle applies to both commercial (fiqh al-mu‘āmalāt) and governance (fiqh al-siyāsah) jurisprudence, including Islamic banking.[31]

In murābaḥah financing, legal ownership of the commodity must first rest with the bank before its sale to the client, as failure to transfer ownership renders the contract invalid, in line with relevant legal and regulatory frameworks (Bank Indonesia, 2008; DSN-MUI, 2000). Ownership may also be collective, such as in public endowments or charitable contributions, where misappropriating funds without the custodian’s consent violates the fiqh maxim: “لا يجوز لأحد أن يتصرف في ملك الغير بلا إذن” (“No person may lawfully act upon the property of another without permission”).[32] This emphasizes the need for governance

Pada Bisnis Syariah,” *Mahkamah: Jurnal Kajian Hukum Islam* 8, no. 2 (2023): 211–23.

[29] Ningsih Randiyah Nasution, “Jual Beli Terpaksa dalam Perspektif Hukum Islam,” *I’tiqadiah: Jurnal Hukum dan Ilmu-ilmu Kesyariahan* 1, no. 1 (2024): 21–38.

[30] Amrul Muzan dkk., “Resiko Investasi dan Pasar Modal Syariah dalam Analisis Kaidah Fikih,” *Al-Faruq: Jurnal Hukum Ekonomi Syariah dan Hukum Islam* 3, no. 1 (2024): 71–87.

[31] Nur Efendi dkk., “Etika dalam kepemilikan dan pengelolaan harta serta dampaknya terhadap ekonomi Islam,” *Fair Value: Jurnal Ilmiah Akuntansi Dan Keuangan* 5, no. 1 (2022): 310–16.

[32] Muhammad Hasan Mun’im dkk., “Tinjauan konseptual kepemilikan dalam ekonomi Islam,” *Amal: Jurnal Ekonomi Syariah* 6, no. 1 (2024): 69–78.

mechanisms ensuring accountability and safeguarding charitable funds.

8) **The Fiqh Maxim on Agency (*Wakālah*) in Sharia-Compliant Banking Contracts**

In Islamic jurisprudence, *wakālah* allows a principal (muwakkil) to delegate contractual tasks to an agent (wakīl), provided the act is one the principal could lawfully perform. The fiqh maxim "الإجازة اللاحقة كالوكالة السابقة" ("Subsequent ratification is tantamount to prior authorization") affirms that a wakālah's legitimacy can stem from either prior approval or subsequent ratification, as long as it aligns with shar'ī norms. For validity, the contract's subject must be lawfully delegable, the principal must have authority over it, and both parties must have legal capacity. Acts of personal devotion, except ḥajj and zakāt, cannot be delegated.[33] Wakālah is revocable, except when compensatory (mu'āwaḍah), as per DSN-MUI Fatwā No. 10/DSN-MUI/IV/2000. The wakīl operates within the bounds of delegated authority and is not liable for risks unless negligent or in breach of duty.[34] The agent is prohibited from self-dealing or acting without explicit authorization. In Islamic banking, wakālah serves as a key tool for clients who cannot physically execute transactions, formalized through notarized powers of attorney, aligning with the sharī'ah principle of taysīr (facilitation) and fostering innovation within financial institutions.[35]

9) **The Fiqh Maxim on Debt Remission in Islamic Banking Contracts**

In Islam, debt disputes are resolved through the ṣulḥ contract, a sharī'ah-compliant settlement acknowledging a financial claim. The two primary forms are: (1) Ṣulḥ ibrā', where part of the debt is voluntarily remitted, and (2) Ṣulḥ mu'āwaḍah, an exchange of the right to claim for another asset under sale rules. If a creditor relinquishes part of the claim as a gift, it is valid, but if treated as a sale of an unowned asset, it is invalid. In murābaḥah, debt settlement is unaffected by asset resale profit or loss, and the debtor must settle the debt as per the original contract.[36] Intentional delays in payment may be resolved through the Sharia Arbitration Board.

Two *fiqh* maxims reinforce these principles: *"If the root obligation falls, the subsidiary obligation also falls"* (إذا سقط الأصل سقط الفرع), and *"What may be tolerated in continuation may not be tolerated at inception"* (يغتفر في البقاء ما لا يغتفر في الإبتداء), both of which clarify that the discharge of an obligation may occur when the creditor voluntarily remits the debt.

10) **The Legal Maxim on the Fulfillment of Conditions in Islamic Banking Contracts**

In Islamic banking, fulfilling stipulated conditions is essential for the validity and enforceability of a contract ('aqd), as emphasized by the fiqh maxim: "يلزم مراعاة الشرط بقدر الإمكان" ("It is obligatory to observe the stipulated condition to the fullest extent possible"). This highlights the binding nature of contractual conditions, which ensure transaction validity and mitigate disputes.[37]

[33] Neri Aslina dkk., "Implementasi Kontrak Wakalah dalam Perspektif Fikih Muamalah: Kajian Kepustakaan terhadap Prinsip, Syarat, dan Validitas Akad," *Addayyan* 19, no. 2 (2024): 11–28.

[34] Hilmiatus Sahla dkk., "Implementasi Akad Wakalah di Lembaga Keuangan Syariah," *Jurnal Ekonomi Syariah Pelita Bangsa* 8, no. 02 (2023): 232–38.

[35] Syafa'atun Nur Inayah, *Implementasi Akad Wakalah dalam Bank Syariah*, OSF, t.t., diakses 21 Agustus 2025, https://osf.io/preprints/fu2ys/.

[36] Dewi Riza Lisvi Vahlevi, "Konsep Sulh Dan Tahkim Sebagai Alternatif Dalam Upaya Penyelesaian Sengketa Ekonomi Syariah Di Era Modern," *Jurnal Ekonomi Syariah Darussalam* 2, no. 2 (2021): 81–91.

[37] Kosmas Dohu Amajihono, "Kekuatan Hukum Kontrak Elektronik," *Jurnal Panah Keadilan* 1, no. 2 (2022): 128–39.

Legal maxims like "المعروف بين تجار كالمشروط بينهم" ("What is commonly known among merchants is as if it were expressly stipulated between them"), extends this by recognizing commercial customs ('urf) as binding conditions in Islamic banking, even if not explicitly stated. Wahbah al-Zuḥaylī defines a condition (sharṭ) as an external factor whose absence nullifies the legal effect, though its presence doesn't guarantee it. Thus, adherence to administrative, technical, and substantive conditions is crucial to maintain contract integrity and avoid gharar (uncertainty).[38]

d. **The analysis of the application of *qawaid masrofiyyah* in Islamic banking contracts.**

In Islamic banking, contracts are essential to ensure transactions align with Shariah principles, guided by qawā'id fiqhiyyah (jurisprudential principles). These principles bridge Islamic legal theory with economic realities. However, integrating qawā'id fiqhiyyah with local customs (adak) presents challenges, particularly in societies where these customs are deeply ingrained. A key principle here is *al-'adah muhakkamah* (custom is law), which allows customs not conflicting with Shariah to be recognized in legal rulings. This integration can align Islamic banking practices, such as profit-sharing models like *mudharabah* and *musyārakah*, with local values, fostering mutual respect between Shariah and culture.

However, conflicts arise when local customs contradict Shariah, particularly in practices like *ribā* (interest). In such cases, the principle of *la darar wa la dirar* (no harm) is crucial for assessing the social impact and ensuring that practices align with Shariah, promoting welfare without causing harm. The Shariah Supervisory Board (DPS) plays a critical role by ensuring compliance with Shariah guidelines, issuing fatwā that balance universal Shariah law with local cultural values. These fatwā guide Islamic banking products to ensure they respect both Shariah and societal norms. Ultimately, integrating qawā'id fiqhiyyah with adak requires a contextual approach, where Islamic banking not only seeks profit but also acts as a social agent that respects cultural values while adhering to Shariah principles. This approach ensures sustainable Islamic banking without compromising legal or cultural integrity.

5. Conclusion

This study analyzes qawā'id masrafiyyah (banking legal maxims) in Islamic banking, demonstrating that these fiqh principles are not only normative tools but also reflections of transcendental values derived from sharī'ah. These maxims blend Islamic law's idealism with contemporary economic realities, rooted in the principle of *jalb al-maṣāliḥ wa dar' al-mafāsid* (securing benefits and preventing harm). They embody values such as justice, public welfare, productivity, and prophetic ethics, aligning with maqāṣid al-sharī'ah within Islamic economics.

Methodologically, *qawā'id masrafiyyah* emerge through an inductive approach: identifying relevant Qur'anic and Prophetic texts, applying uṣūl al-fiqh, and formulating practical legal maxims, ensuring a context-sensitive ijtihād that adapts to modern finance while preserving normative integrity. These maxims guide the regulation and assessment of contemporary Islamic banking contracts, offering principles and operational guidelines for managing complex mu'āmalah

[38] Maulia Nurfadillah, "Hukum Kontrak di Era Digital: Adaptasi Teknik Pembuatan Kontrak dalam Transaksi Online," *Jurnal Ilmiah Nusantara* 2, no. 1 (2025): 185–93.

transactions from legal and ethical perspectives.

In practice, *qawā'id masrafiyyah* integrate sharī'ah sources with modern economic needs, directing Islamic banking toward lawful, ethical, and welfare-oriented practices. The study recommends strengthening public literacy in Islamic banking innovations and formulating maṣlaḥah-oriented policies to reinforce Islamic banking as a pillar of an inclusive and sustainable national financial system.

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