

Rethinking Profit and Loss Sharing: Regulatory Paradoxes in Mudharabah Savings and the Operationalization of Maqasid al-Shariah

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Abstract

This article examines the regulatory paradox in the governance of mudharabah savings in Indonesian Islamic banking, where the principle of profit-and-loss sharing (PLS), which is doctrinally based on risk sharing, operates within a regulatory architecture oriented towards risk control and depositor protection. The interaction between risk sharing based contractual rationality and risk containment based prudential regimes raises structural questions about whether PLS still functions as a substantive governance paradigm, or primarily as a formal legal category in a stability oriented financial regime. This study aims to identify the mudharabah regulatory framework and analyze it through the principle of *hifz mal* in maqasid sharia as a systemic evaluation instrument for consistency between the normative objectives of Islamic finance and its supervisory mechanisms. The study uses a normative-empirical legal design. The primary data consists of the Law on Islamic Banking, Financial Services Authority (OJK) regulations, and fatwas from the National Sharia Council Indonesian Ulema Council (MUI) regarding mudharabah contracts. The secondary data includes academic literature on PLS and maqasid al-sharia. Data were collected through documentation studies and analyzed using content analysis techniques. The findings show that the integration of PLS into the modern prudential regime produces three interrelated paradoxes moderation of risk transmission through risk control mechanisms, structural limitation of depositor exposure to losses through deposit insurance, and stabilization of returns due to competitive

benchmarking pressures. Furthermore, this article shows that in its interaction with the modern regulatory regime, the principle of *hifz mal* in *maqasid sharia* has undergone a transformation from a normative doctrine to an analytical instrument for reassessing PLS governance. This process leads to the repositioning of PLS from mere regulatory compliance to a *maqasid* oriented governance framework that allows for critical evaluation of stability orientation, risk distribution fairness, and systemic integrity. The main contribution of this research lies in the operationalization of *maqasid sharia* as a methodological framework for re-reading PLS governance, while offering a conceptual reconstruction of the relationship between the principles of risk sharing and modern financial stability.

Kata Kunci: Profit-and-Loss Sharing, Regulatory Paradoxes, *Mudharabah* Savings, *Maqasid al-Sharia*.

Introduction

Profit and loss sharing (PLS) is normatively positioned as the ethical foundation of Islamic banking. However, in global practice, the dominance of profit-sharing-based financing is relatively limited compared to sale-purchase-based instruments or fixed-return financing. As an illustration of the trend in contract composition in the Malaysian Islamic banking industry, Bank Muamalat Malaysia Berhad's *Annual Report 2023* shows that *tawarruq*-based financing accounts for around 85% of the total financing portfolio, while profit-sharing-based contracts such as *musyarakah mutanaqisah* only account for around 0.1%-0.2% of total financing.¹ A study by Rawthar also reveals that profit-sharing contracts such as *Mudarabah* and *Musyarakah* are rarely used in Islamic personal financing (IPF).² A similar pattern is also seen in the Gulf region, where financial stability reports released by the Islamic Financial Services Board (IFSB) consistently highlight the tendency of Islamic banks to reduce direct risk exposure to depositors in order to maintain stability and competitiveness.³ This phenomenon raises a fundamental question in the global discourse on Islamic economics: is PLS still a substantive paradigm, or has it been transformed into a

¹ Bank Muamalat Malaysia, "Bank Muamalat Annual Report 2023," Bank Muamalat, 2024, <https://www.muamalat.com.my/downloads/corporate-overview/annual/2023/e-book/files/basic-html/page15>.

² Ainun Shaila Rawthar and Norhazlina Ibrahim, "A Composition of Islamic Personal Financing in Islamic Banks and Conventional Banks and the Products Offered," *I-iECONS E-Proceedings* 11 (September 2025): 237–44, <https://epiiecons.usim.edu.my/index.php/e proceeding/article/view/167>.

³ Islamic Financial Services Board, "Islamic Financial Services Industry Stability Report 2025: Need for Coordinated Action to Deepen Markets and Sustain Growth Momentum," *IFSB*, 2025, <https://www.ifsb.org/press-releases/islamic-financial-services-industry-stability-report-2025-need-for-coordinated-action-to-deepen-markets-and-sustain-growth-momentum/>.

normative symbol in a system that structurally approximates the risk-transfer model?

Indonesia presents a significant context in this debate. The legal framework for Islamic banking is stipulated in Law No. 21 of 2008. Article 1 point 25 defines mudharabah contract as a partnership between the fund owner and fund manager with profit sharing according to an agreed ratio, while losses are borne by the fund owner as long as there is no negligence on the part of the manager.⁴ Furthermore, Article 19 paragraph (1) letter c emphasizes that one of the business activities of Islamic banks is to collect funds in the form of investments based on mudharabah contracts.⁵ This provision places mudharabah savings as a partnership-based investment instrument, not a debt deposit with a guaranteed return.⁶

However, the modern regulatory architecture reveals a more complex dimension. Islamic banks are subject to prudential supervision by the Financial Services Authority, including the obligation to comply with capital adequacy ratios (CAR), risk management, and financial reporting transparency.⁷ On the other hand, customer deposits are also included in a guarantee scheme managed by the Deposit Insurance Corporation (LPS) based on the LPS Law, which guarantees deposits up to a certain nominal limit as long as they meet the eligibility criteria.⁸ Institutionally, this scheme aims to maintain financial system stability and protect public confidence.⁹ However, in the context of mudharabah, the existence of deposit insurance implies a shift in risk distribution, as the potential losses of depositors are structurally minimized by the state protection mechanism.

Industry data also shows relevant dynamics. The Sharia Banking Statistics Report published by the Financial Services Authority (OJK) in 2022 shows the development of the sharia financial industry with sharia banking assets growing

⁴ Basyarudin et al., “Legal Thoughts on Murabahah and Mudharabah Financing Contracts in Islamic Financial Institutions,” *International Journal of Contemporary Sciences (IJCS)* 3, no. 12 (2025): 773–86, <https://doi.org/10.55927/nbpd781>.

⁵ Budi Supriatono Purnomo et al., “Mudharabah and Musyarakah Financing in Indonesian Islamic Banking Practices: Is It Equity or Debt Financing?,” *Jurnal Kajian Peradaban Islam* 7, no. 1 (2024): 14–22, <https://doi.org/10.47076/jkpi.v7i1.232>.

⁶ Istianah Zainal Asyiqin, “Legal Relationship Between Fund Depositors and Managing Banks in Mudharabah Deposit at Islamic Banks,” *PETTITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 1 (2025): 112–26, <https://doi.org/10.22373/petita.v10i1.485>.

⁷ Chandra Satria et al., “Strategy for the Development of Sharia Financial Institutions in the Authority Perspective of Indonesia Financial Services,” *Journal of Islamic Business and Economic Review* 4, no. 2 (2021): 48–56.

⁸ Bayu Arie Fianto et al., “The Role of Deposit Insurance in Supporting Islamic Microfinance Institutions: Insights from Indonesia,” *Journal of Islamic Monetary Economics and Finance* 11, no. 1 (2025): 7–34, <https://doi.org/10.21098/jimf.v11i1.2476>.

⁹ Deni Hendra Sitorus et al., “The Evolving Role of the Deposit Insurance Corporation in Indonesia’s Insurance Sector,” *Andalas Law Journal* 9, no. 1 (2024), <https://doi.org/10.25077/alj.v9i1.77>.

by 15.63%, sharia financing growing by 20.44%, and third-party funds (DPK) increasing by 12.93%.¹⁰ This data shows that the growth of mudharabah-based DPK is very significant, accompanied by a relatively stable rate of return compared to the volatility of the real sector. This stability cannot be separated from the practice of income smoothing, which is recognized in Islamic banking literature as a strategy to maintain competitiveness against conventional banks. Economically, this strategy is rational and even necessary to maintain depositor loyalty.¹¹ However, normatively, yield stabilization has the potential to obscure the risk character in mudharabah contracts, especially when depositors have yield expectations that are close to fixed returns.¹²

The combination of prudential supervision, deposit protection, and market competition pressure forms an institutional configuration that de facto reduces depositor risk exposure. In such a situation, the legal relationship between banks and customers has the potential to shift from an investment partnership pattern to a structure that functionally resembles a creditor-debtor relationship, even though it formally continues to use mudharabah contracts. This tension between legal form and economic substance can be understood as a regulatory paradox in the practice of PLS in Indonesia.

This paradox is not merely a technical regulatory issue, but an epistemic issue in the development of Islamic economic law. If risk is practically reduced for the sake of stability and consumer protection, does the PLS principle still function as an ethical paradigm, or has it become a symbolic instrument in the modern banking system? Conversely, if risks are fully borne by depositors, how can system stability be maintained within the contemporary regulatory framework? This tension calls for a rethinking of the PLS concept, not in the sense of canceling mudharabah contracts, but in terms of reassessing the alignment between legal form, regulatory structure, and ethical objectives.

Studies on PLS in Islamic banking have developed in three main streams. First, normative-doctrinal literature that affirms the superiority of mudharabah and musyarakah as the heart of the Islamic financial system because they are based

¹⁰ Otoritas Jasa Keuangan, “Laporan Perkembangan Keuangan Syariah Indonesia Tahun 2022,” Otoritas Jasa Keuangan, 2023, <https://ojk.go.id/id/berita-dan-kegiatan/infor-terkini/Documents/>.

¹¹ Refky Fielnanda et al., “The Role of Sharia Governance in Fostering Customer Loyalty and Trust in Indonesian Islamic Banks: A Systematic Literature Review (2017-2024),” *Review of Islamic Economics and Finance* 7, no. 2 (2024): 15–32, <https://doi.org/10.17509/rief.v7i2.73651>.

¹² Nuraeni Novira et al., “Mudarabah Contract in The Property Investment: Critical Legal Review,” *Indonesian Journal of Islamic Economic Law* 2, no. 2 (2025): 124–39, <https://doi.org/10.23917/ijael.v2i2.9958>.

on risk-sharing and distributive justice. Studies conducted by Arief,¹³ Abbas,¹⁴ and Salman¹⁵ have successfully articulated the idealism of PLS, but tend to stop at the conceptual level without examining how modern regulatory designs have reshaped the nature of these contracts. Second, empirical-quantitative studies show the dominance of sale-based contracts in Islamic banking portfolios and explain the marginalization of PLS through risk factors, information asymmetry, and prudential pressure. These studies were conducted by Istiowati,¹⁶ Hidayah,¹⁷ and Kurniawan.¹⁸ Although rich in data, this approach generally treats regulation as a neutral external variable, rather than as a normative architecture that has the potential to create internal tensions with the principles of PLS themselves. Third, studies based on maqasid al-shariah that develop various indices and parameters for evaluating the performance of Islamic banks, conducted by Zainuri,¹⁹ Aini,²⁰ and Mursyid.²¹ However, in many cases, maqasid functions as an instrument of normative legitimation or social output measurement, rather than as a tool for structural criticism of regulatory design and contract governance. From this mapping, there appears to be an analytical gap in that there has not been much research linking the regulatory paradox in mudharabah savings with the issue of

¹³ Arief rahman Arief et al., “Application of Islamic Accounting Profit-Sharing System in Mudharabah Savings Program Based on Fairness,” *International Journal of Trends in Accounting Research* 5, no. 2 (2024): 135–42, <https://doi.org/10.54951/ijtar.v5i2.790>.

¹⁴ Ahmad Abbas and Ainun Arizah, “Marketability, Profitability, and Profit-Loss Sharing: Evidence from Sharia Banking in Indonesia,” *Asian Journal of Accounting Research* 4, no. 2 (2019): 315–26, <https://doi.org/10.1108/AJAR-08-2019-0065>.

¹⁵ Kautsar Riza Salman, “The Determinants of Profit-Loss Sharing Financing of Islamic Banks in Indonesia,” *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 13, no. 2 (2022): 95–111, <https://doi.org/10.18326/muqtasid.v13i2.95-111>.

¹⁶ Sri Indah Istiowati and Muslichah Muslichah, “Pembiayaan Mudharabah, Musyarakah, Murabahah, Dan Tingkat Profitabilitas Bank Syariah Di Indonesia,” *AFRE (Accounting and Financial Review)* 4, no. 1 (2021): 29–37, <https://doi.org/10.26905/afr.v4i1.5476>.

¹⁷ Nur Hidayah and Nur Akhlaqul Karimah, “Are Sharia Financing Schemes Profitable? The Case of Islamic Rural Banks in Indonesia,” *EL DINAR: Jurnal Keuangan Dan Perbankan Syariah* 11, no. 1 (2023): 59–77, <https://doi.org/10.18860/ed.v11i1.19561>.

¹⁸ Fahmi Ali Kurniawan and Ashari Lintang Yudhanti, “Determinants Of Murabahah Finance At Islamic Commercial Banks In Indonesia,” *JPS (Jurnal Perbankan Syariah)* 4, no. 2 (2023): 132–46, <https://doi.org/10.46367/jps.v4i2.1107>.

¹⁹ Zainuri et al., “The Influence of Maqasid Shariah Index and Shariah Business Good Governance on the Profit Growth of Islamic Commercial Banks in Indonesia,” *Jurnal Ekonomi Syariah Teori Dan Terapan* 10, no. 4 (2023): 415–26, <https://doi.org/10.20473/vol10iss2023pp415-426>.

²⁰ Ihdi Aini and Nia Handayani, “Performance of Islamic Banks in Indonesia Based on Maqashid Shariah Index (MSI),” *Innovative: Journal Of Social Science Research* 5, no. 4 (2025): 258–78, <https://doi.org/10.31004/innovative.v5i4.18976>.

²¹ Mursyid et al., “Performance Analysis of Islamic Banks in Indonesia: The Maqashid Shariah Approach,” *Journal of Asian Finance Economics and Business* 8, no. 3 (2021), <https://doi.org/10.13106/jafeb.2021.vol8.no3.0307>.

PLS operationalization and evaluating this structure through the maqasid framework as a systemic evaluation tool. This article fills that gap.

Based on this context, this study poses two key questions: first, how does the regulatory architecture of mudharabah savings in Indonesia shape the practice of profit-and-loss sharing in Islamic banking; and second, at what point does the regulatory design produce a paradox that systemically shifts the principle of risk-sharing, thereby becoming problematic from the perspective of maqasid al-shariah. In line with this, the objective of this study is to identify the normative and institutional configurations that regulate mudharabah savings and analyze them through the maqāṣid framework as an instrument for systemic evaluation of the consistency between the normative objectives of Islamic finance and its supervisory mechanisms. The main contribution of this article lies in a shift in perspective: maqasid is not positioned as a symbolic justification for existing practices, but rather as an analytical benchmark for assessing the integrity of regulatory design. Therefore, this article offers a new reading of the “regulatory paradox” in PLS governance that is relevant not only to the Indonesian context but also to the global discourse on the tension between prudential stability and normative authenticity in Islamic finance.

This research is document-based empirical legal research with a regulatory governance approach. The research focuses on the normative architecture that shapes mudharabah savings practices in Indonesia and its structural implications for the operationalization of profit and loss sharing (PLS). The primary data in this study are regulatory texts that directly regulate Islamic banking, including the Law on Islamic Banking, Financial Services Authority (OJK) regulations related to fund collection and prudential principles, deposit guarantee provisions by the Deposit Insurance Corporation (LPS), and fatwas from the Indonesian Ulema Council (MUI) regarding mudharabah contracts. Secondary data includes Islamic Banking Statistics reports and Islamic bank annual reports, financial system stability reports, and relevant academic literature on PLS and maqasid al-shariah. Data collection techniques were carried out through documentation studies and systematic searches of officially published industry regulations and reports, with an emphasis on temporal consistency and normative relevance to the research object.

Data analysis was conducted using content analysis techniques comprising three stages. First, interpretive analysis of regulatory texts using a statutory interpretation approach to identify the structure of norms, regulatory objectives, and their legal implications for risk sharing mechanisms in mudharabah savings. Second, a regulatory coherence analysis was conducted to assess the internal harmony or tension between regulatory instruments, particularly between the principles of risk sharing and the prudential regime and deposit insurance. Third, the findings are evaluated using the maqasid al-shariah framework as an analytical benchmark, not as a normative justification, but as an instrument of systemic

criticism of the consistency between the ethical objectives of Islamic finance and its supervisory design. In this context, maqasid is positioned as an evaluative framework that allows for the identification of “regulatory paradoxes,” which are situations where regulatory instruments intended to promote stability have the potential to shift the fundamental character of PLS.

Discussion

The Regulatory Architecture of Mudharabah Savings in Indonesia

Normatively, mudharabah savings in the Indonesian Islamic banking system are rooted in the construction of the mudharabah contract as a profit-sharing cooperation contract between the fund owner (*shahib al-mal*) and the manager (*mudharib*). The legal framework can be traced in Law No. 21 of 2008 concerning Islamic Banking, which recognizes the collection of funds based on the principle of profit sharing, as well as in the fatwa of the National Sharia Council Indonesian Ulema Council (DSN-MUI) concerning mudharabah savings and deposits, which emphasizes that profits are shared based on an agreed ratio, while losses are borne by the fund owner as long as there is no negligence or error on the part of the manager.²² In this construction, Islamic banks are positioned as mudharib who manage public funds and do not promise a fixed return, so that doctrinally the legal relationship is based on risk-sharing, not risk transfer.²³

However, unlike the classic mudharabah relationship, which is bilateral and based on personal trust, mudharabah savings in modern banking are institutionalized in the form of standard contracts integrated into the financial intermediation system. The status of banks as intermediary institutions that collect public funds on a large scale means that mudharabah contracts no longer exist as purely private relationships, but rather as part of an institutional structure subject to public regulation.²⁴ Thus, from the outset there has been a conceptual transformation: an agreement that theoretically places business risk on the fund owner now operates within an institutional framework that demands stability and protection for depositors. It is this transformation that forms the foundation of the mudharabah savings regulatory architecture, while also opening up space for

²² Mega Mustika and Ridwan Malik, “Analysis of Mudarabah Contract in Islamic Finance Practice: A Case Study on Sharia-Based Banks in Indonesia,” paper presented at 4th International Conference on Actual Islamic Studies (ICAIS) 2025, Makassar, *Proceeding International Conference on Actual Islamic Studies*, 2023, <https://prosiding.icaismuh.org/index.php/4th/article/view/113>.

²³ Mursalin Maggangka et al., “Syari’ah Appraisal On Mudharabah (Profit and Risk Sharing) Product In Islamic Banking And Financial Institutions In Indonesia,” *Prosiding Keislaman Dan Sains* 1, no. 1 (2025): 228–45.

²⁴ Aulia Fitria Yustiardi et al., “Issues and Challenges of the Application of Mudarabah and Musharakah in Islamic Bank Financing Products,” *Journal of Islamic Finance* 9, no. 2 (2020): 26–41, <https://doi.org/10.31436/jif.v9i2.482>.

tension between the ideal of risk sharing and the reality of modern banking governance.²⁵

Although mudharabah savings are doctrinally built on the principle of risk sharing, their operationalization in the national banking system is subject to a strict prudential regime. Law No. 21 of 2008 on Islamic Banking emphasizes the obligation of banks to apply the principle of prudence in all their business activities.²⁶ Meanwhile, Financial Services Authority (OJK) regulations on risk management and the health of Islamic banks require the measured and sustainable management of liquidity risk, financing risk, and capital adequacy.²⁷ Within this framework, the collection of funds through mudharabah savings is not only understood as a contractual relationship based on nisbah, but also as an institutional liability that affects the overall stability of the bank.

Consequently, banks as mudhārib do not merely act as fund managers who share profits based on business performance, but also as entities that must maintain the continuity of profit payments so as not to cause liquidity pressure and reputational risk. The prudential supervisory regime implicitly encourages conservative risk management practices, including the formation of reserves, the regulation of financing exposure, and the adjustment of ratio policies to remain competitive with conventional banking interest rates.²⁸ Thus, mudharabah savings operate within a regulatory framework that prioritizes system stability, so that the theoretically volatile risk sharing relationship is framed by the logic of stabilization and return predictability. At this point, it is clear that the regulatory architecture does not merely supervise the contract, but also shapes the dynamics of the risks inherent in it.

Beyond the contractual foundation and prudential regime, mudharabah savings are also covered by the national deposit insurance system. Law No. 24 of 2004 concerning Deposit Insurance Institutions, as last amended by Law No. 4 of 2023 concerning Development and Strengthening of the Financial Sector, stipulates that bank customer deposits are guaranteed up to a certain limit as long

²⁵ Hafiza Putra and Murah Syahril, "Business Dynamics of Islamic Bank Mudharabah Contracts: An Islamic Economics Perspective," *INVEST: Jurnal Inovasi Bisnis Dan Akuntansi* 5, no. 2 (2024): 446–54, <https://doi.org/10.55583/invest.v5i2.1155>.

²⁶ Mohamad Handi Khalifah et al., "Challenges in the Implementation of Mudharabah Financing in the Islamic Banking Industry," *Ekinoks Ekonomi İşletme ve Siyasal Çalışmalar Dergisi* 11, no. 1 (2024): 1–23.

²⁷ Imam Kamaluddin, "Optimization Strategy for Mudharabah Financing in Indonesian Islamic Banking," *Share: Jurnal Ekonomi Dan Keuangan Islam* 12, no. 1 (2023): 103–23.

²⁸ Zufriani et al., "Harmonization of Mudharabah Contracts: Study of DSN-MUI Fatwa, Compilation of Sharia Economic Law (KHES), Legislation and Its Application in Indonesian Sharia Banking," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 21, no. 1 (2023): 15–31, <https://doi.org/10.32694/qst.v21i1.2513>.

as they meet the specified requirements, including the criteria for a reasonable rate of return. This scheme also applies to Islamic banks, so that funds that are contractually categorized as profit sharing investments are also covered by the public protection regime designed to maintain depositor confidence and prevent the risk of a bank run.²⁹

Systemically, the existence of deposit insurance shifts the risk configuration in mudharabah savings. In the classical construct, business losses are borne by the fund owner as long as there is no negligence on the part of the manager. However, in the modern institutional framework, the risk of principal loss is de facto limited by the state guarantee mechanism. At the same time, the guaranteed rate of return requirement creates implicit pressure on banks to maintain returns within a certain range in order to continue to meet the guarantee criteria.³⁰ Thus, the risk sharing relationship, which in theory is open to fluctuations in business returns, now operates within a structure that limits the possibility of depositor losses and encourages return stabilization. In the context of a layered regulatory architecture, mudharabah savings are no longer merely an instrument of risk participation, but have become part of a financial system stability governance scheme.³¹ It is at this point that the regulatory configuration begins to show the potential for reconfiguring the meaning of risk in modern PLS practice.

To clarify this layered regulatory configuration and its implications for the risk structure in mudharabah savings, the following normative architecture mapping is presented in the form of an analytical table.

²⁹ Ridwansyah et al., "The Impact of The Supervisory Structure on the Financial Performance of Sharia Rural Banks in Indonesia," *International Journal of Economics and Finance Studies* 13, no. 1 (2021), <https://doi.org/10.34109/ijefs.202112223>.

³⁰ Ahmad Fauzul Hakima et al., "The Effect of the Sharia Supervisory Board and the Board of Commissioners on The Financial Performance of Sharia Commercial Banks in Indonesia," *At-Tijarah Jurnal Penelitian Keuangan Dan Perbankan Syariah* 3, no. 1 (2021), <https://doi.org/10.52490/at-tijarah.v3i1.1273>.

³¹ Mehmet Asutay et al., "The Effects of Regulation and Supervision on the Risk-Taking Behaviour of Islamic Banks," *Journal of Islamic Accounting and Business Research* 11, no. 10 (2020): 1953–67, <https://doi.org/10.1108/JIABR-12-2019-0222>.

Table 1: Mudharabah Regulatory Configuration in Indonesia

Regulatory Layer	Core Legal Basis	Governance Objective	Implication for Risk Structure
Contractual Framework	UU No. 21/2008; Fatwa DSN-MUI on Mudharabah	Recognition of profit-sharing principle	Establishes doctrinal risk-sharing between shahib al-mal and mudharib
Prudential Supervision	UU No. 21/2008; POJK on Risk Management and Bank Soundness	Financial stability and risk containment	Encourages return stabilization and conservative asset allocation
Deposit Insurance Regime	UU No. 24/2004; UU No. 4/2023 (P2SK)	Protection of depositors and systemic confidence	Limits depositor exposure to loss; indirectly moderates volatility of returns

As shown in the table, mudharabah savings operate within a multi-layered regulatory framework in which contract doctrine, prudential supervision, and deposit protection interact with each other. Although each layer pursues legitimate governance objectives, the combined effect of the three changes the operational meaning of risk sharing. The question then is no longer whether each regime is normatively legitimate, but rather whether the interaction between regimes forms a coherent configuration or instead results in fragmentation of meaning in practice?

At the conceptual level, the contractual doctrine of mudharabah affirms the sharing of risk between the fund owner and the manager as a fundamental principle. However, the prudential regime constructs mudharabah funds as part of a liability structure that must be managed conservatively in order to maintain the health of the bank. Meanwhile, the deposit insurance regime limits depositors' exposure to losses through public protection mechanisms. These three layers do not stand alone, but operate simultaneously in the institutional practice of Islamic banks. This interaction forms a risk management system that is not entirely identical to the classic risk-sharing construct, but also does not fully resemble the risk-transfer mechanism in the conventional system. In other words, mudharabah

savings exist in a space between where contractual norms, systemic stability logic, and depositor protection are intertwined in a single regulatory configuration.

Regulatory Paradoxes in Mudharabah Savings Governance

In Islamic finance literature, PLS is conceptually positioned as the main difference between the Islamic banking system and interest-based banking.³² However, in the context of mudharabah savings, when the PLS principle operates within a modern regulatory regime underpinned by the principles of prudence, systemic stability, and consumer protection, this contractual logic no longer exists in a sterile normative space, but rather within an architecture that simultaneously demands risk control, volatility mitigation, and limitation of depositor exposure to losses.³³ It is in this configuration that what is known as the regulatory paradox arises. It is not a normative inconsistency, a violation of positive law, or merely a tension between Sharia idealism and market reality, but rather a structural consequence of the encounter between two different rationalities of governance, namely the contractual rationality based on risk sharing rationality oriented towards risk distribution as a mechanism for economic justice and efficiency, and risk containment based prudential rationality oriented towards risk limitation and absorption in order to maintain the stability of the financial system as a whole.³⁴

When these two rationalities are simultaneously institutionalized in one regime, what emerges is not the elimination of one of them, but a hybrid configuration. Mudharabah is formally maintained as a profit sharing contract, but institutionally it is surrounded by regulatory instruments that limit the realization of losses at the depositor level. The paradox lies not in the text of the contract, but in the regulatory ecosystem surrounding it. This shift moves the focus from normative questions such as whether mudharabah is appropriate or deviant? To a structural analysis of how governance shapes the nature of risk in sharia intermediary practices?. The regulatory paradox is therefore understood as an inherent feature of PLS integration into a financial system that places depositor stability and protection as key public values, manifested in tensions between risk sharing and risk containment, between profit sharing based investment and

³² Mohammad Ghozali and Andy Kurniawan, "Profit and Loss Sharing (PLS) as Basis Characteristic of Islamic Banking: An Analysis of Mudharabah Contract," *AL-IKTISAB: Journal of Islamic Economic Law* 1, no. 1 (2017): 55–68, <https://doi.org/10.21111/al-iktisab.v1i1.2383>.

³³ Yani Dahliani et al., "The Paradox of Risk and Sharia Compliance Analyzing Islamic Bank Strategies in Navigating Global Economic Uncertainty," *International Journal for Science Review* 2, no. 5 (2025): 320–29, <https://doi.org/10.71364/ijfsr.v2i5.28>.

³⁴ Zuljihah Jaelani et al., "Shariah Paradox of 'Nonhalal' Revenue Management on Shariah-Based Cooperative," *Proceeding International Conference on Economics, Business and Information Technology* 1 (November 2017), <https://doi.org/10.31967/prmandala.v1i0.171>.

principal guarantee, and between market discipline and competitive benchmarking pressures.

First, the tension between risk sharing in contracts vs. Risk containment in regulation. Doctrinally, *mudharabah* places depositors as capital owners who bear the risk of business losses proportionally, so that fluctuations in returns are an inherent consequence of the bank's actual financing performance. In this framework, risk is not positioned as a deviation that must be eliminated, but as a constitutive element that legitimizes profit sharing.³⁵ However, when the contract is operationalized in a stability oriented banking system, the risk that should normatively be distributed becomes the object of intensive management through a framework of risk management, capital requirements, liquidity supervision, and the creation of various buffer reserves. Regulation does not eliminate risk-sharing, but systematically limits the amplitude of its realization.³⁶

The consequence is a hybrid configuration in which *mudharabah* is maintained as a profit-sharing contract at the formal level, but is treated as a product whose stability must be maintained at the institutional level. Efforts to reduce return volatility with the aim of maintaining public confidence and preventing systemic risk have led to a tendency for banks to absorb risk before it is fully passed on to customers. Thus, risk-sharing is normatively recognized, but operationally moderated by risk-containment mechanisms. This is where the first paradox operates, not in the form of a violation of the PLS principle, but in the transformation of the nature of risk due to the internalization of stability as a public imperative. It is this tension that paves the way for a more structural paradox, when the logic of profit-sharing-based investment comes into direct conflict with the deposit guarantee scheme.

Second, the tension between profit-sharing-based investment and deposit principal guarantees. If the first paradox operates at the level of risk moderation through prudential instruments, the second paradox touches on a more fundamental dimension, the redefinition of loss exposure at the depositor level. Conceptually, *mudharabah* is an investment contract in which the capital owner bears the risk of financial loss as long as there is no negligence on the part of the manager. Thus, the possibility of a reduction in capital is not a deviation,

³⁵ Kelvin Ridho Alfarasi et al., "Implementation of Financing Risk Management in *Mudharabah* Financing at Bank Mega Syariah Surabaya," *Majapahit Journal of Islamic Finance and Management* 2, no. 1 (2022): 78–95, <https://doi.org/10.31538/mjifm.v2i1.24>.

³⁶ Heri Sudarsono et al., "Financial Risk Determinants in Islamic Rural Banks: Static and Dynamic Models," *Jurnal Ekonomi Pembangunan* 22, no. 01 (2024): 54–72, <https://doi.org/10.22219/jep.v22i01.33404>.

but a logical consequence of the risk sharing structure.³⁷ However, when mudharabah savings are in a banking system that institutionalizes deposit insurance as a mechanism for depositor protection and public stability, there are restrictions on the realization of this risk. Deposit insurance implicitly changes the position of customers from investors who bear risks to owners of funds who are de facto protected from extreme losses.³⁸

This is where the second paradox finds its most explicit form. At the normative level, mudharabah maintains its character as a profit sharing based investment; but at the institutional level, exposure to principal risk is limited by a public protection scheme that does not recognize substantial contractual differentiation. As a result, there is a dissonance between the fiqh construction of risk responsibility and policy design that prioritizes systemic confidence guarantees.³⁹ This paradox does not merely moderate yield fluctuations as in the first paradox, but touches on the core of the relationship between ownership and risk responsibility in PLS. When the main risk of loss is no longer fully realized at the customer level, the nature of mudharabah investment undergoes a structural transformation, not by eliminating the principle of profit sharing, but by redefining the maximum limit of loss that can be practically borne. It is this transformation that makes deposit insurance not merely an instrument of protection, but a reconfiguring factor in the governance of modern PLS.

Third, the tension between market discipline and competitive benchmarking. If the second paradox shows how institutional protection reconstructs the maximum loss limit for depositors, the third paradox moves to a more subtle but equally significant dimension: the formation of return expectations through market mechanisms. Theoretically, the PLS scheme has the potential for market discipline because depositors, as capital owners, have an incentive to pay attention to the bank's performance in managing financing. Variations in returns should reflect real performance and serve as an economic signal that distinguishes one institution from another. In this framework, return differentiation is a natural consequence of differentiation in strategy and risk management quality. However, in the competitive banking industry, mudharabah

³⁷ Fauzia P. Bakti et al., "Analysis of the Characteristics of Financial Risk in Contract with the Principle of Profit-Sharing in Sharia Banking," *Awang Long Law Review* 5, no. 1 (2022): 19–28, <https://doi.org/10.56301/awl.v5i1.530>.

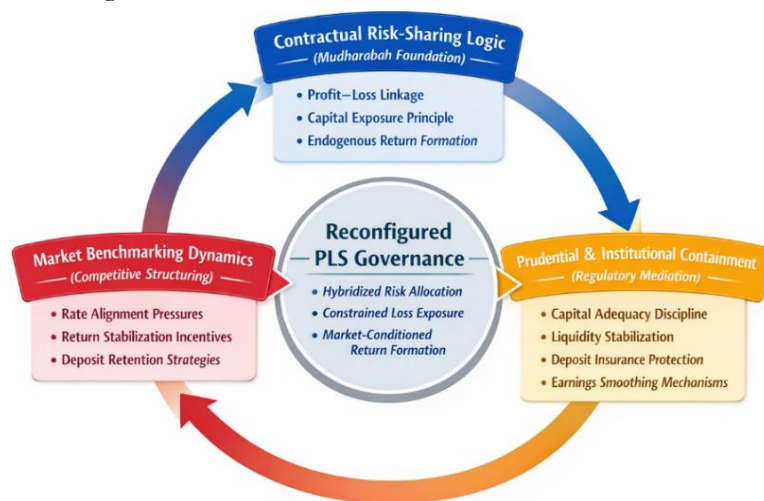
³⁸ Sugeng Haryanto et al., "Bank Size, Risk and Market Discipline with A Deposit Insurance: Evidence of Banking in Indonesia," *AFRE (Accounting and Financial Review)* 2, no. 2 (2019): 81–90, <https://doi.org/10.26905/afr.v2i2.3717>.

³⁹ Farida Arianti et al., "Ambiguity in the Profit-Sharing System of Mudharabah Cooperation from the Perspective of Fiqh Muamalah," *UUM Journal of Legal Studies* 17, no. 1 (2026): 20–35, <https://doi.org/10.32890/uumljls2026.17.1.2>.

savings do not operate in isolation, but alongside conventional deposit instruments that offer fixed interest rates as a market reference.⁴⁰

This competitive pressure encourages a tendency toward benchmarking, in which mudharabah rates of return are implicitly aligned with market interest rates in order to maintain the attractiveness and stability of third party funds. As a result, the mechanism of market discipline based on real performance has the potential to be reduced by the need to maintain relative parity with conventional instruments.⁴¹ This is where the third paradox operates: PLS is normatively designed to generate returns that are endogenous to business performance, but structurally driven to maintain returns that are exogenous to market interest rate dynamics. This tension does not eliminate the principle of profit sharing, but shifts the bank's strategic orientation from optimizing real performance to stabilizing competitive perceptions. Thus, in addition to being moderated by prudential risk containment and reconstructed through deposit guarantees, the risk and return characteristics of mudharabah are also shaped by the logic of market benchmarking.

In order for the description of these three paradoxes to be understood in a structured and systematic manner, the following is presented in the form of a visual relational diagram.



Gambar 1 Relational Schematic Diagram of PLS Mudharabah Regulation Paradox

⁴⁰ Amine Ben Amar and AbdelKader O. El Alaoui, "Profit- and Loss-Sharing Partnership: The Case of the Two-Tier Mudharaba in Islamic Banking," *International Journal of Islamic and Middle Eastern Finance and Management* 16, no. 1 (2022): 81–102, <https://doi.org/10.1108/IMEFM-12-2020-0630>.

⁴¹ Mohammad Hatta Fahamsyah et al., "Profit-Loss Sharing in Islamic Banking: Global Insights from a Systematic Review," *Economica: Jurnal Ekonomi Islam* 14, no. 2 (2023): 175–203, <https://doi.org/10.21580/economica.2023.14.2.26021>.

By mapping these three paradoxes in layers, it appears that the transformation of PLS in mudharabah savings does not occur through the denial of the profit sharing principle, but rather through a gradual and institutional structural reconfiguration process. Risk moderation by the prudential regime limits the transmission of losses, deposit guarantees reconstruct the limits of principal exposure, and market benchmarking pressures shift the orientation of yield formation from real performance to competitive perception stability. These three elements do not stand as separate anomalies, but rather form a governance configuration that simultaneously maintains the rhetoric of risk sharing while adapting it to the imperatives of systemic stability and industrial competition.

Operationalizing Maqasid al-Shariah: A Systemic Reassessment of PLS Governance

Instead of placing maqasid al-syariah as a declarative ethical justification, this study repositions it as an evaluative governance framework that serves to test the coherence between regulatory design, risk distribution, and the normative objectives of Islamic finance. The foundation of this approach rests on *hifz al-mal* in the classical construction of maqasid as formulated by Abu Hamid al-Ghazali. Within this framework, the protection of wealth does not merely mean recognition of individual ownership, but also the prevention of economic destruction, unfair distribution, and practices that erode the integrity of transactions.⁴² Thus, *hifz al-mal* provides a normative basis for assessing whether an economic arrangement truly preserves the substance of value and the sustainability of wealth.

This reframing does not reconstruct maqasid, but rather transforms its function from a normative doctrine into a systemic metric. In the context of modern governance, the protection of wealth requires an evaluation of the institutional structures that govern the allocation and redistribution of risk, not merely formal contractual compliance. Therefore, *hifz al-mal* is treated as an analytical lens to assess the alignment between ethical objectives and regulatory configurations, with the principles of justice (*al-'adl*) and avoidance of excessive hardship (*raf' al-haraj*) as supporting tools in its operationalization. At this point, maqasid functions as an evaluative instrument that enables a systemic assessment of PLS governance, while also opening up space for reassessment of the consistency between institutional stability and fairness in risk distribution.

⁴² Muhammad Nooraiman Zailani et al., "A Review of Indicators for the Preservation of Wealth (*Hifz al-Mal*) Based on Maqasid al-Shariah," *Journal of Islamic Philanthropy & Social Finance (JIPSF)* 4, no. 1 (2022): 23–29.

By placing *hifz al-mal* as an evaluative lens, the three regulatory paradoxes in PLS governance are no longer understood solely as technical problems, but rather as issues of value alignment. The first paradox related to the tension between the rhetoric of risk-sharing and risk mitigation practices that tend to shift the burden of loss, must be tested against the principle of distributive justice (*al-'adl*) as a prerequisite for the realization of *hifz al-mal*. If contractual or regulatory structures systematically transfer risk to parties with weaker bargaining positions, then the protection of assets is no longer symmetrical. In this context, institutional stability cannot be used as a normative justification if it is achieved through a distortion of risk distribution that undermines the balance of responsibility.

The second paradox, namely the use of protective instruments that in fact bring PLS closer to debt-based financing logic, presents a more fundamental tension. On the one hand, this mechanism is claimed to be an effort to maintain stability and prevent moral hazard; on the other hand, it has the potential to erode the risk-sharing character that forms the ethical basis of PLS. When the protection of investment value is carried out by unilaterally minimizing risk exposure, *hifz al-mal* undergoes a shift in function: from protecting value through fair risk participation to protecting value through disproportionate risk elimination. The question is no longer whether the system is stable, but whether that stability is achieved without sacrificing the principle of risk distribution that is the spirit of the contract.

The third paradox related to market conduct integrity, reveals another dimension of *hifz al-mal*, namely the protection of transparency and accountability. Information asymmetry, hidden profit management practices, or profit-sharing engineering may formally comply with regulations, but substantively erode economic value integrity. In this case, *hifz al-mal* demands more than just procedural compliance, it demands the protection of public trust as an inherent component of asset sustainability. When governance fails to prevent practices that undermine market integrity, the protection of collective assets becomes illusory.

Through this mapping, it becomes apparent that these three paradoxes cannot be resolved through a technocratic approach alone. They require testing the alignment between regulatory configurations and the normative orientation of *maqasid*. This analysis does not aim to judge the legitimacy of the system, but rather to identify points where institutional stability has the potential to be in tension with distributive justice and market integrity. It is at this point that *hifz al-mal* functions as a critical metric for assessing whether PLS governance truly

realizes substantive value protection, or merely maintains stability through pragmatic structural adjustments.⁴³

Mapping the three regulatory paradoxes above shows that the relationship between PLS governance and maqāṣid is not always linear. In a number of aspects, the regulatory configuration appears to support the objectives of value protection and institutional stability. However, at the same time, there are indications that the normative orientation of hifz al-mal undergoes a process of functional calibration when applied within a modern regulatory framework. The supervisory regime that emphasizes risk mitigation, capital adequacy, and investor protection tends to interpret the protection of property as the stabilization of risk exposure, rather than as the proportional sharing of risk management. At this point, there is a shift in emphasis from risk sharing justice to stability centered protection.

This shift does not necessarily indicate a deviation from maqasid, but reveals a tension between two ways of interpreting asset protection. In its classical formulation, hifz al-mal is oriented towards preserving value through fair and exploitation free transaction structures.⁴⁴ Meanwhile, in modern regulatory architecture, protection is often interpreted as preventing systemic failure and protecting market confidence. Both claim legitimacy in the name of property protection, but operate with different rationales the former is based on fair risk distribution, while the latter is based on systemic stability.⁴⁵

This interaction raises the possibility of normative recalibration at the institutional level. Without changing the doctrinal structure of maqasid, regulatory practices can produce new emphases in how hifz al-mal is realized. Value protection, which was originally rooted in equal risk participation, can shift to value protection through tighter and more centralized risk control. Consequently, the ethical character of PLS as a partnership based mechanism has the potential to be pushed towards a more defensive and stability centric model. This is where the main theoretical question arises is this transformation a form of legitimate

⁴³ Nahar Surur, "The Urgency of Hifz Al-Mal in Mitigating the Risks of Buying and Selling Building Materials in the Deposit System: A Review of Maqasid Sharia," *Afaquna: Jurnal Cakrawala Islam* 1, no. 1 (2026): 65–74.

⁴⁴ Misbachul Munir, "Maqashid Al-Shariah as the Foundational Framework for Strengthening Islamic Economic Regulation in Indonesia," *VRISPRAAK: International Journal of Law* 9, no. 2 (2025): 117–30, <https://doi.org/10.59689/vy6acp19>.

⁴⁵ Djumadi et al., "Critical Review of Murābahah Financing in Contemporary Islamic Banking: A Maqāṣid al-Sharī'ah Perspective," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1152–88, <https://doi.org/10.32332/milrev.v4i2.11087>.

contextual adaptation, or does it reflect a normative displacement that substantially changes the orientation of economic justice?

Thus, the systemic reassessment conducted in this study does not stop at verifying formal conformity, but examines the normative dynamics that occur when maqasid interacts with modern regulatory logic. This analysis opens up the possibility that PLS governance lies on a spectrum between alignment, tension, and recalibration. The theoretical finding is not a claim that maqasid has changed, but rather an identification of how the orientation of property protection can be reemphasized when translated into contemporary institutional architecture. This is where the methodological contribution of this article lies, namely in showing that operationalizing maqasid not only produces evaluation tools, but also reveals the dynamics of normative transformation that occur in governance practices.

Reframing Profit and Loss Sharing: From Regulatory Compliance to Maqasid Oriented Governance

The dominance of the compliance approach in Islamic financial governance has created an implicit assumption that compliance with contractual structures and regulatory standards is synonymous with the realization of Islamic values.⁴⁶ In this paradigm, legal validity and procedural conformity are often treated as the main indicators of institutional success. However, reducing maqasid to the dimension of formal verification risks shifting its normative orientation to merely a mechanism of legitimacy. Compliance with legal form does not always guarantee the achievement of the substantive goals of value protection and economic justice, which are at the core of *hifz al-mal* in the classical tradition.⁴⁷

Epistemologically, the compliance centered approach tends to position maqasid as an abstract horizon that lies outside the institutional evaluation structure. It functions as a post facto justification, rather than as a parameter for critiquing the regulatory design itself. As a result, the space for questioning whether a governance configuration substantively realizes a fair distribution of risk or merely secures procedural stability becomes limited. Under such conditions, maqasid has the potential to be reduced to a normative symbol accompanying the regulatory architecture, rather than a framework for testing it.

⁴⁶ Abdelhafid Benamraoui et al., "Islamic Banks' Sharia Compliance Disclosure: An International Evidence," *Accounting Research Journal* 36, nos. 4–5 (2023): 327–48, <https://doi.org/10.1108/ARJ-07-2022-0157>.

⁴⁷ Eko Rial Nugroho, "Implementation Of Sharia-Compliance In Islamic Bank Product Innovations," *Prophetic Law Review* 3, no. 2 (2021): 173–97, <https://doi.org/10.20885/PLR.vol3.iss2.art4>.

This limitation points to the need for a shift in orientation from compliance as the end point to maqasid as the starting point for evaluation. This shift is not intended to negate the importance of regulations or compliance standards, but rather to place them within a broader normative hierarchy. Procedural compliance remains necessary, but it must be understood as an instrument that is assessed based on its capacity to realize the substantive goals of protection and economic justice. Thus, criticism of compliance centered governance opens up space for the rearticulation of PLS not merely as a legally valid contract, but as an institutional practice that must be continuously tested for its alignment with maqasid in a more profound way.

If the compliance-centered approach limits maqāṣid to a legitimative function, then the next step is to reposition it as an epistemic framework that works from within the institutional analysis structure. In this context, maqasid, especially hifz al-mal in Abu Hamid al-Ghazali's classical construction, is not understood as an abstract goal that exists outside of governance, but rather as a normative parameter that makes it possible to test the rationality of the regulation itself. This repositioning does not change the substance of maqasid, but shifts its point of operation from an ethical horizon to an instrument of institutional critique. Methodologically, this approach places hifz al mal as an evaluative criterion for three fundamental dimensions of governance risk distribution, economic value integrity, and systemic sustainability. Thus, the question asked does not stop at is this regulation valid according to sharia?, but moves towards what rationality is being prioritized by the design of the regulation, and how does that priority affect the realization of substantive value protection?. This is where maqasid functions as an analytical architecture that opens up the possibility of criticism of institutional configurations without having to reconstruct its classical doctrine.⁴⁸

The epistemological contribution of this repositioning lies in the transformation of maqasid into a system reading device. It enables the identification of tensions between technocratic stability and normative distributive justice, while providing a conceptual language to assess whether the two are complementary or hierarchical in relation to each other. By making maqasid an institutional critique framework, this study shows that operationalizing maqasid is not merely the application of values to practice, but rather the development of an evaluative methodology capable of examining the

⁴⁸ Aam S. Rusydiana and Irman Firmansyah, "Efficiency versus Maqashid Sharia Index: An Application on Indonesian Islamic Bank," *Shirkah: Journal of Economics and Business* 2, no. 2 (2017), <https://doi.org/10.22515/shirkah.v2i2.154>.

dynamics of regulatory power, risk management rationality, and distributive implications in modern PLS governance.⁴⁹

If repositioning maqasid as an epistemic framework has opened up space for criticism of regulatory rationality, then the next consolidative step is to formulate an analytical orientation towards maqasid-oriented governance. At this point, maqasid is not treated as a list of normative objectives that must be applied, but as an orientation framework that guides how financial institutions define success, manage risk, and produce legitimacy. Kembali ke konstruksi sistematis maqasid dalam tradisi usul al-fiqh, terutama sebagaimana dijelaskan oleh Abu Ishaq al-Shatibi, perlindungan harta (hifz al-mal) tidak hanya dipahami sebagai perlindungan terhadap kerugian, tetapi juga sebagai penjagaan keberlanjutan, keadilan distribusi, dan integritas fungsi sosial harta. In the context of modern PLS governance, this orientation shifts the focus from minimal stability to coherence between stability, justice, and sustainability as a single systemic goal.

As an analytical orientation, maqasid-oriented governance works at the meta regulatory level it does not replace positive rules, but provides an evaluative matrix for assessing whether regulatory configurations truly facilitate the realization of substantive sharia objectives. Here, governance is no longer understood as mere procedural compliance, but as a process of balancing risk management, distribution of loss burdens, and protection of the interests of parties within the framework of interdependent justice. This orientation allows for a re-reading of the institutional design of PLS as an arena of negotiation between prudential rationality and normative commitment, while also showing that maqasid can function as an integrative principle that unites the two without reducing either of them.

Thus, this article contributes not to the formulation of new norms, but to the development of an analytical perspective that reconstructs the way of reading contemporary PLS governance. Maqasid-oriented governance is positioned as an epistemic horizon that allows for critical and constructive evaluation of institutional practices, so that the study of maqasid moves from legitimative discourse to systemic analysis methodology. It is at this point that the entire argument of the article is consolidated profit and loss sharing must not only be complied with in a regulatory manner, but also understood and evaluated through a maqasid orientation that is capable of coherently bridging legal rationality, institutional dynamics, and the ethical goals of Islamic economics.

⁴⁹ Kazi Md Tarique et al., "Developing and Validating the Components of Maqasid Al-Shari'ah-Based Performance Measurement Model for Islamic Banks," *International Journal of Islamic and Middle Eastern Finance and Management* 14, no. 2 (2021): 366–90, <https://doi.org/10.1108/IMEFM-12-2018-0432>.

Conclusion

This article departs from criticism of the reduction of PLS into a regulatory compliance framework that tends to position maqasid as merely a normative legitimation device, and shows that the fundamental problem does not lie in the absence of sharia principles, but rather in the limitation of its epistemic horizon. Through a re-reading of hifz al-mal in the maqasid tradition which was systematically formulated by Abu Hamid al-Ghazali and further elaborated by Abu Ishaq al-Shatibi, this article repositions maqasid not as teleological goals that stand outside institutional structures, but as an epistemic framework for testing the rationality of regulations, risk distribution, and power configurations in modern PLS governance. Its theoretical contribution lies in the shift from a procedural compliance paradigm to maqasid oriented governance as an analytical orientation that enables a systemic evaluation of the coherence between prudential stability, distributive justice, and institutional sustainability, without reducing any of them to a technocratic hierarchy.

Thus, this study does not offer new norms, but rather proposes a reconstruction of how to read Islamic financial institutions from a fiqh-based compliance approach to governance-based evaluation that places maqasid as a tool for both criticism and integration. Although this analysis focuses on the normative-structural dimension and has not yet tested its operationalization empirically in a specific institutional context, this is precisely where the agenda for further research opens up, namely the development of methodological indicators capable of translating maqāṣid -oriented governance into practical evaluation instruments. So that contemporary maqāṣid studies can move from legitimative discourse to a more reflective and transformative system analysis methodology.

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