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# PEDOMAN TRANSLITRASI

| Arab | Latin | Arab | Latin |
|---|---|---|---|
| ا | a | ض | dh |
| ب | b | ط | th |
| ت | t | ظ | zh |
| ث | ts | ع | ‘ |
| ج | j | غ | gh |
| ح | h | ف | f |
| خ | kh | ق | q |
| د | d | ك | k |
| ذ | dz | ل | l |
| ر | r | م | m |
| ز | z | ن | n |
| س | s | و | w |
| ش | sy | ھ | h |
| ص | sh | ى | y |

# DAFTAR ISI

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# LEGAL FRAMEWORKS FOR PUBLIC-PRIVATE PARTNERSHIP FINANCING IN INFRASTRUCTURE DEVELOPMENT: A Comparative Study of Indonesia and the Philippines

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***Abstract***

*Infrastructure development constitutes a fundamental driver of economic growth in developing countries; however, persistent fiscal constraints have compelled ASEAN states such as Indonesia and the Philippines to adopt Public–Private Partnership (PPP) schemes as alternative financing mechanisms. Despite the long-standing implementation of PPP in both jurisdictions, significant disparities in legal frameworks and institutional arrangements raise critical issues concerning regulatory efficiency, bureaucratic coordination, and legal certainty in infrastructure delivery. This study aims to comparatively examine the legal frameworks governing PPP implementation in Indonesia and the Philippines by applying the analytical standards set out in the World Bank's Public–Private Partnership Legal Framework Reference Guide. Employing normative legal research, this study utilises statutory, conceptual, and comparative approaches to analyse PPP-related legislation, institutional governance structures, contractual arrangements, and dispute resolution mechanisms in both countries. The findings reveal that Indonesia operates under a fragmented and multi-layered regulatory regime involving numerous institutions, offering stronger legal certainty through tiered dispute resolution mechanisms, whereas*

*the Philippines adopts a unified PPP legal code supported by a centralised PPP Center, resulting in greater procedural efficiency and investment facilitation. This article contributes to the optimal implementation of PPP through regulatory simplification and institutional centralisation for countries in the ASEAN region*.

Pembangunan infrastruktur merupakan prasyarat utama pertumbuhan ekonomi di negara berkembang, namun keterbatasan fiskal mendorong Indonesia dan Filipina sebagai negara ASEAN untuk mengandalkan skema Public–Private Partnership (PPP) sebagai alternatif pembiayaan yang berkelanjutan. Meskipun kedua negara telah lama menerapkan PPP, perbedaan kerangka hukum dan kelembagaan menimbulkan persoalan efektivitas, efisiensi birokrasi, serta kepastian hukum yang berdampak langsung pada keberhasilan proyek infrastruktur. Penelitian ini bertujuan membandingkan kerangka hukum PPP di Indonesia dan Filipina dengan menggunakan World Bank Public–Private Partnership Legal Framework Reference Guide untuk menilai efektivitas regulasi, struktur kelembagaan, dan mekanisme penyelesaian sengketa. Metode penelitian menggunakan pendekatan hukum normatif dengan teknik perundang-undangan dan komparatif, menganalisis peraturan PPP, struktur institusi terkait, serta pengaturan kontraktual dan penyelesaian sengketa di kedua negara. Hasil penelitian menunjukkan bahwa Indonesia memiliki kerangka regulasi yang kompleks dengan banyak institusi dan mekanisme penyelesaian sengketa berjenjang yang memberikan kepastian hukum lebih kuat, sedangkan Filipina menerapkan satu undang-undang terpadu dan satu lembaga khusus PPP Center yang menciptakan proses lebih efisien dan ramah investasi. Artikel ini berkontribusi pada bentuk optimalisasi implementasi PPP melalui penyerderhanaan regulasi dan sentralisasi kelembagaan untuk negara di kawasan ASEAN.

***Keyword***: *Public-Private Partnership, Infrastructure Development, Public Finance*

## Introduction

Infrastructure development serves as one of the fundamental pillars of national progress in the globalisation era. Through reliable infrastructure, economic equity can be achieved, ultimately improving the quality of life and

societal well-being.[1] Infrastructure and economic development are closely interconnected, as achieving economic growth through the expansion of goods and services production requires reliable infrastructure. In other words, poor infrastructure will hinder the equitable distribution of goods and services, thereby creating development disparities that slow down a country's economic growth.[2] As a key indicator of economic success, developing countries face issues in infrastructure development, primarily due to the high costs.[3] Data released by the United Nations Conference on Trade and Development (UNCTAD) indicates that by 2030, financing infrastructure projects will require at least $2.6 trillion, particularly in G20 countries, to achieve the Sustainable Development Goals (SDGs), as mandated in Goal 9.[4]

The concept of Public-Private Partnership (PPP) has emerged as an alternative method for a financing mechanism to promote economic equity. Such a partnership scheme has become one of the preferred alternatives amid global issues and financing infrastructure difficulties, particularly in developing countries.[5] The PPP concept was first adopted in the United Kingdom, which introduced private-sector financing for long-term contract-based infrastructure projects during the administration of John Major.[6] By 2021, the financing concept for this partnership scheme had evolved from an alternative to a preferred policy approach for infrastructure development financing, as reflected in the growing international interest in PPP, particularly in the ASEAN region. The Organisation for Economic Cooperation and Development (OECD) released data indicating that ASEAN countries have received support from the OECD to develop new PPP frameworks, with the total potential project investment averaging $3.3 trillion per year to support

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[1] Li Meng, "Political Economy and Cycling Infrastructure Investment," *Transportation Research Interdisciplinary Perspectives* 14 (June 2022): 100618, https://doi.org/10.1016/j.trip.2022.100618.

[2] Kathryn Furlong, "Geographies of Infrastructure 1: Economies," *Progress in Human Geography* 44, no. 3 (June 20, 2020): 572–82, https://doi.org/10.1177/0309132519850913.

[3] Jin Wu et al., "Government Accountability within Infrastructure Public–Private Partnerships," *International Journal of Project Management* 34, no. 8 (November 2016): 1471–78, https://doi.org/10.1016/j.ijproman.2016.08.003.

[4] Eric Christian Bruun, *Sustainable Infrastructure Investment* (New York: Routledge, 2022), https://doi.org/10.4324/9781003245704.

[5] Masyitoh Basabih, "Potrait Of Public Private Partnership Policy Substances In Regional Hospitals In Indonesia," *Journal of Indonesian Health Policy and Administration* 8, no. 1 (February 24, 2023): 28, https://doi.org/10.7454/jhpa.v8i1.6570.

economic growth and provide essential services to communities across the ASEAN region.[7] The PPP concept in ASEAN countries is employed as an alternative solution to address the investment shortfall amid ongoing infrastructure development, with an annual gap of 11% or $350 billion, particularly during global crises.[8]

Indonesia and the Philippines are ASEAN countries that have adopted Public-Private Partnership (PPP) financing. As cited at the Economics Insights 2025 meeting, Indonesia's National Development Planning Agency (Bappenas) reported that infrastructure development faces challenges, including reduced budget allocations from the State Budget (APBN).[9] Therefore, there is an urgent need for private-sector involvement in supporting infrastructure development through the PPP scheme. As of 2024, Indonesia, through the Ministry of Finance, has successfully developed and operated 23 PPP projects valued at IDR 134.78 trillion out of a total of 36 signed PPP projects worth IDR 316.38 trillion. The planning stage includes 91 projects, with the Ministry of Public Works targeting 34 PPP projects valued at IDR 301 trillion across various infrastructure sectors, including water resources, roads and bridges, and housing and settlements, by 2025.[10] However, failures in several infrastructure projects have also been inevitable, particularly those related to transportation, hospitals, and water resources. Indonesia also faces issues in business dispute resolution, which investors often criticise for its slow and inefficient processes. Meanwhile, in the Philippines, the PPP financing scheme for infrastructure development has evolved since the 1990s and continued through 2015, with 305 infrastructure projects completed across various sectors such as transportation, highways, ports, airports, waste management, water, and energy. The data from the PPP Center reported that, as of 2024, forty-seven strategic infrastructure projects have been financed under a PPP scheme, rendering the Philippines one of the countries with the largest projects financed by the Asian Development Bank.

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[7] Erna Nurhayati, Ersa Tri Wahyuni, and Evita Puspitasari, "Risiko Infrastruktur Jalan Tol Dengan Skema Public-Private-Partnership (PPP) Di ASEAN: Suatu Tinjauan Literatur," *Jurnal Manajemen Aset Infrastruktur & Fasilitas* 5, no. 1 (April 8, 2021), https://doi.org/10.12962/j26151847.v5i1.8743.

[8] Pornchai Wisuttisak, Chul Ju Kim, and Mia Mahmudur Rahim, "PPPs and Challenges for Competition Law and Policy in ASEAN," *Economic Analysis and Policy* 71 (September 2021): 291–306, https://doi.org/10.1016/j.eap.2021.05.006.

[9] Abdul Latif, "Penasihat Prabowo Minta Pembangunan Infrastruktur Tak Hanya Andalkan APBN," *Kumparan Bisnis*, 2025.

[10] Direktorat Jenderal Pembiayaan Infrastruktur Pekerjaan Umum, "Daftar Proyek Infrastruktur Skema KPBU," 2025.

Still, like in Indonesia, some projects in the Philippines have also encountered challenges and failures.[11]

The adoption of PPP financing frameworks in Indonesia and the Philippines is closely linked to the political and legal context of development, as reflected in the awareness of ASEAN governments regarding infrastructure gaps due to budgetary constraints, while demand for infrastructure continues to rise. The growing need for infrastructure in developing countries, particularly in ASEAN, has helped drive rapid regional growth, especially in Indonesia and the Philippines, which face significant infrastructure deficits across sectors, including transportation, electricity and energy, and water and sanitation. According to the Asian Development Bank, ASEAN countries are projected to require annual infrastructure investments of $1.7 trillion through 2030, with an infrastructure development agenda aimed at sustaining growth momentum in the region, particularly in Indonesia and the Philippines, to combat poverty and inequality.[12] Indonesia and the Philippines face the same issue: a fiscal deficit, which has led policymakers to increasingly seek private-sector partnerships to help bridge the infrastructure gap through PPP schemes. PPPs have become an effective channel for mobilising private capital and funds to address broader development agendas. To support the success of this scheme in infrastructure development, the Asian Development Bank recommends reviewing and improving regulatory frameworks and governance structures specific to each sector (Asian Development Bank and Development Institute).

The PPP scheme, as an alternative method of global infrastructure financing, does not yet have a universally standardised definition.[13] The World Bank's reference guide defines a PPP as a long-term contract between the private sector and a government entity to provide public service assets, in which the private sector assumes significant risks and management responsibilities.[14] William J. explains that a PPP programme constitutes a contract between the public and private sectors, with several provisions, in

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[11] Asian Development Bank, "Pemantauan Kerjasama Pemerintah Dan Badan Usaha: Filipina," n.d.

[12] Seungsook Moon, "Carving Out Space: Civil Society and the Women's Movement in South Korea," *The Journal of Asian Studies* 61, no. 2 (May 26, 2002): 473–500, https://doi.org/10.2307/2700298.

[13] Robson de Faria Silva et al., "Public-Private Partnerships and Value for Money," *Public Works Management & Policy* 27, no. 4 (October 10, 2022): 347–70, https://doi.org/10.1177/1087724X221108149.

[14] World Bank, "Public-Private Partnership Reference Guide" (Washington DC, 2017), www.worldbank.org.

which the private sector performs government functions for a specified period, assumes the associated risks, and receives compensation, either directly or indirectly.[15] Many countries, particularly developing ones, have adopted the PPP concept as an alternative to traditional infrastructure financing. This programme involves collaboration in infrastructure development. The benefits of utilising the PPP scheme include budgetary efficiency, financial facilitation, technology adaptation, and innovation.[16]

Historically, the PPPs are not a new concept in development. The practice of involving private entities to assist the public sector dates back to the ancient Roman Empire, beginning with the postal service known as 'mancipes,' which provided horses, carriages, and couriers to deliver letters, taxes, goods, and services to government officials. The government would then compensate the *mancipes* for their services, including the upkeep of the horses, as payment for the services rendered by the private entities.[17] In its development, particularly after the Industrial Revolution in the 18th century, private-sector participation in public services expanded into infrastructure, including transportation, toll roads, bridges, and electricity. A further advancement in the modern era was the introduction of the Public-Private Partnership (PPP) concept by UK Prime Minister Tony Blair, featuring an enhanced approach known as Value for Money (VfM), which was considered a groundbreaking idea during his term. At the end of the 20th century, Prime Minister Tony Blair refined the PPP concept through the VfM approach, an improvement on the UK's Private Finance Initiative (PFI), originally launched by John Major.[18] Following its introduction in the UK, the PPP concept rapidly developed and spread worldwide, particularly as an alternative infrastructure financing method in developing countries, including Indonesia and the Philippines.

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[15] Nwokeleme Onyebuchi Ambrose and Abdul Hamidu Abdullahi, "Effect of Public-Private Partnership Policy on Affordability of Housing in Federal Capital Territory," *Zamfara International Journal of Humanities* 2, no. 3 (December 30, 2023): 8–18, https://doi.org/10.36349/zamijoh.2023.v02i03.002.

[16] Anthony E. Boardman, Carsten Greve, and Graeme A. Hodge, "Comparative Analyses of Infrastructure Public-Private Partnerships," *Journal of Comparative Policy Analysis: Research and Practice* 17, no. 5 (October 20, 2015): 441–47, https://doi.org/10.1080/13876988.2015.1052611.

[17] Chandra Emirullah dan Muhammad Azam, "Menelaah Kemitraan Pemerintah Swasta Di Negara-Negara ASEAN: Peran Iklim Investasi," *Ekonomi Teoritis Dan Terapan* XXI, no. 2 (2014).

[18] de Faria Silva et al., "Public-Private Partnerships and Value for Money."

The decision to utilise the PPP scheme in developing countries is driven by the urgent need to accelerate economic development, address poverty and inequality, and create employment opportunities. According to the World Bank, reliable infrastructure yields significant social benefits that positively impact the well-being of communities in developing countries,[19] while inadequate infrastructure has long been a problem impeding economic growth and resulting in a low quality of life for the population. The Global Quality Infrastructure Index (GQII) released infrastructure index data for countries worldwide in 2023, indicating that ASEAN countries, including Indonesia and the Philippines, still rank above 20.[20] According to the Asian Development Bank, which assists with regulatory reforms in many Asian countries, the urgency of PPPs in development is to ensure economic equity in developing countries, notably through effective regulation.

The implementation of the PPP scheme is expected to serve as an alternative solution to infrastructure financing issues, particularly in developing countries. According to the World Bank's PPP Reference Guide, several key success factors for PPPs include the regulatory or legal framework. The World Bank's PPP Reference Guide states that a comprehensive legal framework for PPPs typically includes several components. First, it encompasses policy direction, which defines the rationale for using the PPP scheme, primarily to provide public services, and outlines the principles of its implementation. This first component also involves the legal and regulatory framework for PPP implementation, including public financial management regulations, sector-specific regulations, and dispute-resolution regulations. Second, it involves the institutional framework responsible for identifying, assessing, implementing, managing, and accounting for projects, as well as the business processes within PPPs. Third, it ensures clarity of regulations within PPP contracts to guarantee that business processes comply with PPP principles.[21]

Several studies have been conducted on the PPP scheme for infrastructure advancement. Firstly, according to a working paper published by the Asian Development Bank, PPPs have played a role in increasing infrastructure investment in the Philippines; however, challenges and issues

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[19] World Bank, "Public-Private Partnership Reference Guide."

[20] Wahyu Widayat, Heru Subiyantoro, and Machfud Sidik, "Influence of Logistic Performance on Global Competitiveness," in *Proceedings of the First Multidiscipline International Conference, MIC 2021, October 30 2021, Jakarta, Indonesia* (EAI, 2022), https://doi.org/10.4108/eai.30-10-2021.2315843.

[21] World Bank, "Public-Private Partnership Reference Guide."

continue to be a subject of discourse, particularly regarding the expansion of infrastructure financing and investment through PPPs.[22] Furthermore, a similar study was conducted on PPP systems in the Republic of Korea, the Philippines, and Indonesia, focusing on how the PPP business models are implemented in the respective countries to address infrastructure gaps, as well as the financing approaches utilised in infrastructure projects in the two Southeast Asian countries.[23] Further research on public-private partnerships in Southeast Asia concerning infrastructure development has examined numerous issues, including population density, overpopulation, and equitable distribution. The findings indicate that problems arise in the implementation of PPPs across various Southeast Asian countries, particularly related to political factors and government policies.[24] According to the World Bank, the success of infrastructure development through PPP projects is significantly influenced by the legal framework.[25] According to Lasswell and McDougal, a legal framework is necessary not only for the formulation of laws but also as a guiding instrument, as it underscores the importance of collaboration between theoretical legal scholars and practical legal specialists (those involved in decision-making) in the public policy formulation process, ensuring that it is politically effective and enlightening.[26] Based on the research conducted to date, no study has specifically focused on the legal framework as a significant determining factor of PPP success, particularly in Southeast Asia. Thus far, research on PPPs has concentrated on business models, types of PPPs, and technical evaluations, without emphasising the legal framework as outlined in the World Bank's Public-Private Partnership Reference Guide. Moreover, there appears to be a lack of research on legal comparisons within the ASEAN region that uses a legal framework to implement PPP schemes. Therefore, this study aims to contribute to the discourse through a comparative legal analysis

[22] Stephen Schuster et al., "Scaling Up Infrastructure Investment in the Philippines: Role of Public–Private Partnership and Issues" (Manila, Philippines, July 1, 2017), https://doi.org/10.22617/WPS178887-2.

[23] Kang-Soo Kim et al., "Public Private Partnership Systems in the Republic of Korea, the Philippines, and Indonesia," ADB Economics Working Paper Series (Manila, Philippines: Asian Development Bank, October 2018), https://doi.org/10.22617/WPS189594-2.

[24] K. S. Yap, Moe Thuzar, and Institute of Southeast Asian Studies, eds., "Urbanization in Southeast Asia: Issues & Impacts," *Singapore: Institute of Southeast Asian Studies*, 2012.

[25] Yong-Shik Lee and Andrew Harding, "Law and Development: A Comparative Law Aspect," *Law and Development Review* 17, no. 2 (June 25, 2024): 393–415, https://doi.org/10.1515/ldr-2024-0003.

[26] Oksana V Zakharina dkk., "Model Kemitraan Pemerintah-Swasta Yang Efektif Dan Aplikasinya Dalam Implementasi Kebijakan Publik," *Jurnal Ekonomi Dan Administrasi Bisnis* VIII, no. 1 (2020).

of Indonesia and the Philippines—two ASEAN countries that have implemented PPP financing schemes for infrastructure development, with both fruitful and unsuccessful outcomes, and each with distinct legal systems. This article compares the legal frameworks in Indonesia and the Philippines for implementing PPP financing schemes for infrastructure development, using the legal framework approach outlined in the World Bank's reference guide. Indonesia and the Philippines are two ASEAN countries facing similar infrastructure development issues, particularly due to financing constraints. However, the Philippines has demonstrated an advantage by completing more projects under the PPP scheme. It is therefore of great interest to compare these two countries due to their shared regional context within ASEAN, their application of PPP schemes in infrastructure financing, and the legal systems governing PPP implementation. This study aims to provide a perspective on the legal framework for implementing PPPs in infrastructure development, enabling a comparative analysis to enhance PPP systems in both countries. This research aims to discover how the legal frameworks in Indonesia and the Philippines function in implementing PPP schemes, thereby drawing lessons from the application of legal structures in each country.

**Research Methods**

This study employs normative legal research, also known as doctrinal legal research, using statutory, conceptual, comparative, and grammatical interpretation approaches. Normative legal research is applied to analyse the legal framework governing Public–Private Partnership (PPP) schemes in infrastructure financing. The statutory approach examines the legal and regulatory structures of PPP schemes in Indonesia and the Philippines. The relevant regulations analysed include Law No. 17 of 2003 on State Finance; Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation; Government Regulation No. 28 of 2020 amending Government Regulation No. 27 of 2014 on the Management of State/Regional Property; Presidential Regulation No. 7 of 2005; Presidential Regulation No. 38 of 2015 on Public–Private Partnerships in Infrastructure Provision; Presidential Decree No. 7 of 1998; Minister of Finance Decree No. 248/KMK.04/1995 on Income Tax Treatment for Parties Engaged in Build–Operate–Transfer and Build–Transfer–Operate schemes; Republic Act No. 6957, Republic Act No. 7718, and Republic Act No. 11966 of the Philippines; as well as Executive Order No. 8, as subsequently amended by Executive Order No. 136 of the Philippines. In addition, this study applies a grammatical

interpretation of statutes[27], as articulated by legal scholars, to interpret statutory provisions based on the ordinary meaning of legal terms, phrases, and sentence structures as expressed in the text of legislation. This method is employed to ensure textual clarity and legal certainty in understanding the normative content of PPP-related regulations, particularly where ambiguities arise in the formulation of rights, obligations, and institutional authority. The conceptual approach is employed to clarify key concepts underlying PPP arrangements, including risk allocation, procurement mechanisms, and dispute resolution. Furthermore, a comparative approach is applied to assess the effectiveness of PPP systems in Indonesia and the Philippines by identifying their respective strengths, weaknesses, and best practices. This study relies entirely on secondary data, comprising legislation, policy guidelines, and official documents, which are analysed using the World Bank's PPP Reference Guide as the analytical framework. The findings are presented through descriptive and analytical methods to provide a comprehensive understanding of the regulatory strengths and limitations influencing PPP-based infrastructure financing.

## Discussion

### The Legal Framework of Public-Private Partnerships in Infrastructure Development in Indonesia

Historically, infrastructure financing involving private sector collaboration in Indonesia began in the 1970s, specifically in 1978, when the government developed the Jagorawi toll road, spanning 59 kilometres. The government entrusted its operation to PT Jasa Marga under a concession agreement. Subsequently, from 1987 to 2007, Indonesia built and operated 553 kilometres of toll roads, with 418 kilometres operated by PT Jasa Marga and the remaining 135 kilometres managed by other private business entities.[28] The official introduction of financing through the PPP scheme in Indonesia began in 2005 as an alternative infrastructure financing method under the name PPP, introduced during the Indonesia Infrastructure Summit I, and was institutionally operated by the Committee for Accelerating Infrastructure

[27] Muwahid, "Metode Penemuan Hukum (Rechtsvinding) Oleh Hakim Dalam Upaya Mewujudkan Hukum Yang Responsif," *Al-Hukama The Indonesian Journal of Family Law* 7, no. 1 (2017), https://doi.org/https://doi.org/10.15642/al-hukama.2017.7.1.224-248.

[28] Joubert B. Maramis, "Faktor Faktor Sukses Penerapan Kpbu Sebagai Sumber Pembiayaan Infrastruktur : Suatu Kajian," *JMBI UNSRAT (Jurnal Ilmiah Manajemen Bisnis Dan Inovasi Universitas Sam Ratulangi)*. 5, no. 1 (April 17, 2018), https://doi.org/10.35794/jmbi.v5i1.19149.

Provision Cooperation (KKPPI). Initially, 91 government projects were offered under the PPP scheme; however, not all succeeded due to various obstacles, including land acquisition. The PPP scheme was later renamed *Kerjasama Pemerintah dengan Badan Usaha* (KPBU), with significant developments in planning, implementation, and the number of projects financed through it.

The Indonesian government has chosen PPPs as an alternative financing model outside the state budget (APBN) to promote equitable development and overcome the middle-income trap. In general, the mechanism for private-sector investment in infrastructure provision through the PPP scheme in Indonesia operates on two models: user-pay and government-pay.

The financing scheme for private-sector involvement in infrastructure development in Indonesia is driven by budgetary constraints and the need to adapt infrastructure technologies through private-sector participation. Since its introduction in Indonesia, both institutionally and regulatory-wise, infrastructure development through the PPP financing scheme has successfully administered more than 92 projects. Fifty-seven ongoing infrastructure projects started in 2024, utilising the PPP scheme, comprising 36 connectivity projects, 11 urban facility projects, 10 social infrastructure facility projects, and eight projects still in the planning stage. These infrastructure development projects under the PPP financing scheme are part of the National Strategic Projects, including toll roads, energy, water resources, telecommunications infrastructure, transportation, and hospitals.[29]

Based on the legal framework analysis in the PPP reference guide published by the World Bank, the following is an overview of the legal framework governing the implementation of the PPP financing scheme in Indonesia.

The first is the legal framework or regulations concerning the implementation of PPP, including regulations on infrastructure financing management, public finance, and sector-specific regulations. In Indonesia, which follows a civil law tradition, the primary characteristic of the law is 'legal certainty.' Law is considered binding because it is codified in regulations and systematically structured. This written law is then reflected in human legal actions within social interactions.[30] Influenced by the civil law tradition, the legal framework governing PPPs in infrastructure development is reflected in

[29] Direktorat Jenderal Pembiayaan Infrastruktur Pekerjaan Umum, "Daftar Proyek Infrastruktur Skema KPBU."

[30] Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar* (Yogyakarta: Liberty, 2009).

the formulation of written regulations. According to the World Bank's reference guide on comprehensive PPP regulation, achieving a successful PPP scheme for infrastructure development requires sound regulations, starting with laws that address the country's fiscal policy, including PPP financing. In Indonesia, under a hierarchical system of legislation, this matter is enshrined in the 1945 Constitution of the Republic of Indonesia as the fundamental state norm. This Constitution outlines the concept of economic democracy in Article 33, where the state controls key sectors of production vital to the people's prosperity.

Within the concept of economic democracy, the state actualises the national economy with the aim of societal welfare, which is expressed through the formulation of development regulations, including infrastructure development. Regarding the country's fiscal policy, Law No. 17 of 2003 concerning State Finance, which governs the structure of state finances, allows financing from other legitimate sources, in this case, the private sector.

Concerning sector-specific regulations on financing through PPP schemes, Indonesia does not yet have a law specifically regulating such partnerships. However, financing schemes for infrastructure projects are set out in Article 13 (1) of Law No. 6 of 2023 concerning the Establishment of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation, with the following regulatory details:

(1) Financing for the development and maintenance of infrastructure within Special Economic Zones (SEZs) may originate from:
   a. The central government and/or regional governments;
   b. Private parties;
   c. Cooperation between the central government, regional governments, and private parties; and/or
   d. Other legitimate sources in accordance with the provisions of the laws and regulations.

The provisions of Article 13 of Law No. 6 of 2023 concerning the Ratification of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law indicate that infrastructure development and maintenance projects, particularly within Special Economic Zones (SEZs), may be financed through cooperation between the government and business entities. The legal system in Indonesia adheres to a hierarchical normative system, in which laws, as part of the national legislative system, serve to implement the Constitution. Therefore, specific laws governing financing for development play a crucial role in the success of PPP projects. From a national political and legal perspective, the enactment of the Job

Creation Law aims to accelerate national economic development and absorb labour through infrastructure development projects, which are then integrated into the national strategic project policies. Since the ratification of the Job Creation Law, the government has planned 208 national strategic projects, several of which, such as toll roads and drinking water supply systems (SPAM), are being financed through the PPP scheme. By 2025, ten national strategic programmes utilising the PPP financing scheme will have been completed, leaving some other projects financed through the PPP scheme incomplete. According to data from the Directorate General of Debt and Risk Management, Ministry of Finance of the Republic of Indonesia, the percentage of PPP in infrastructure projects stands at 23.8%, which is lower compared to traditional financing schemes, with an average escalation rate of 52%. The Indonesian PPP Professionals Association has revealed that the low performance of the PPP scheme in infrastructure financing in Indonesia stems from a suboptimal regulatory framework.[31]

As outlined in the World Bank's PPP Reference Guide, sector-specific regulations enhance the comprehensiveness of PPP implementation. In Indonesia, the concept of financing through public-private partnerships, with internationally applied PPP principles, has existed since 1995, particularly through the Decree of the Minister of Finance No. 248/KMK.04/1995 concerning Income Tax Treatment for Parties Engaging in Cooperation under Build-Operate-Transfer (BOT) and Build-Transfer-Operate (BTO) Agreements. The terminology used in this ministerial decree is "Build-Operate-Transfer" (BOT), which is still referenced today in government regulations on the management of state/regional assets, specifically Government Regulation No. 28 of 2020 as an amendment to Government Regulation No. 27 of 2014 concerning the Management of State/Regional Assets. This regulation governs the utilisation of state/regional assets through mechanisms such as leasing, borrowing, utilisation cooperation, Build-Operate-Transfer (BOT) or Build-Transfer-Operate (BTO), or infrastructure provision cooperation. Furthermore, the legal framework specifically regulating financing schemes under the PPP system surfaced with the issuance of Presidential Decree No. 7 of 1998 concerning Government–Private Sector Cooperation in Infrastructure Provision. This Presidential Decree emerged from the recognition of the importance of infrastructure development for equitable economic growth amid limited state finances, through the participation of private sector in infrastructure development across sectors,

[31] Perkumpulan Ahli Profesional KPBU Indonesia, "KEMENTERIAN PUPR

such as electricity, gas transmission and distribution, oil and gas processing, water resources, waste and sewage management, transportation, roads and bridges, airports, and the provision and operation of telecommunications infrastructure. In addition to outlining types of infrastructure, Presidential Decree No. 7 of 1998 also regulates procedural frameworks covering planning, preparation, tendering, contract signing, and agreement execution. The Presidential Decree also marked the opening of infrastructure project financing involving the private sector, which was later explicitly detailed in Presidential Regulation No. 7 of 2005, and subsequently updated by Presidential Regulation No. 38 of 2015 concerning Public-Private Partnership in Infrastructure Provision. Presidential Regulation No. 38/2015 became the technical guideline for implementing the PPP scheme in Indonesia. This regulation was enacted to accelerate infrastructure development and improve Indonesia's investment climate.

One significant update in Presidential Regulation No. 38 of 2015 was the expansion of the types of infrastructure eligible for partnership with business entities or the private sector, now encompassing 19 types of infrastructure: transportation, roads, water resources and irrigation, drinking water, centralised waste management systems, local wastewater management systems, waste management, telecommunications and informatics, electricity, oil, natural gas and renewable energy, energy conservation, urban facilities, educational facilities, sports and arts facilities, regional infrastructure, tourism, health, penitentiary infrastructure, and public housing. In addition to these 19 types of infrastructure, the regulation permits financing through the PPP scheme under conditions stipulated by the Minister of National Development Planning. The infrastructure financing scheme through PPP constitutes solicited and unsolicited proposals.[32]

The second aspect in the World Bank's reference guide on a comprehensive regulatory framework for implementing PPP in infrastructure financing concerns institutional responsibility for managing PPP business processes. In Indonesia, the institutional framework for PPP implementation is set out in Presidential Regulation No. 38 of 2015, Article 1, which delegates to Ministers/Heads of Agencies the authority to represent their respective ministries/agencies. According to Presidential Regulation No. 38/2015, the

[32] Ricca Anggraeni and Indah Mutiara Sari, "MENGUNGKAP MATERI MUATAN PERATURAN PRESIDEN NOMOR 38 TAHUN 2015 TENTANG PERJANJIAN KERJASAMA PEMERINTAH DAN BADAN USAHA DALAM PENYEDIAAN INFRASTRUKTUR," *Masalah-Masalah Hukum* 49, no. 2 (April 30, 2020): 125–35, https://doi.org/10.14710/mmh.49.2.2020.125-135.

Project Cooperation Officer (PJPK) is the Head of the Agency/Regional Head, or a State-Owned Enterprise (BUMN)/Region-Owned Enterprise (BUMD) as the provider or operator of infrastructure, based on applicable laws and regulations.

The ministers or agency heads delegated by law include, among others, the Minister of National Development Planning, the Minister of Finance, the Minister of Home Affairs, and the Head of the Government Goods and Services Procurement Policy Agency (LKPP). The lack of centralisation in institutional governance for PPPs in Indonesia has become an obstacle and remains a key factor hindering the success of PPPs in the country. A module developed by the State Administration Agency (LAN) on PPP implementation in Indonesia reveals that the multi-agency approach to managing PPPs, or the lack of centralisation, is one of the problems hampering the execution of infrastructure projects.

In Indonesia, each PPP scheme is managed by different institutions responsible for different stages, such as planning, contracting, and implementation, leading to inefficiencies. This inefficiency stems from differing regulations at each stage of infrastructure development, as well as from unclear authority delegation in Indonesian legislation, further complicating the implementation process. Table 2 is an overview of the institutionalisation process of PPPs in Indonesia:

**Table.** Overview of the Regulatory Process for Public-Private Partnerships (PPPs) in Indonesia

| **Phase** | **Institutional Authority** | **Role** | **Regulatory Mandate** |
|---|---|---|---|
| Planning | National Development Planning Agency (BAPPENAS) | Screening and selection of projects through proposal identification and preliminary studies | Regulation of the Minister of National Development Planning/Head of the National Development Planning Agency No. 4 of 2015 |
| Project Preparation | National Development Planning Agency (BAPPENAS) | BAPPENAS provides assistance in the preparation of the Outline Business Case (OBC) | Regulation of the Minister of National Development Planning/Head of the National Development Planning Agency No. 2 of 2020 |

| | | | |
|---|---|---|---|
| | BKPM (Indonesian Investment Coordinating Board) | BKPM ensures investor eligibility and oversees the market sounding process | Minister of Investment/Head of the Investment Coordinating Board Decree No. 177 of 2024 |
| | Ministry of Home Affairs (Kemendagri) | The Ministry of Home Affairs (Kemendagri) provides recommendations for regional-level PPP procurement projects. | Law No. 23 of 2014 concerning the Regional Government and the Ministry of Home Affairs Regulation No. 77 of 2020 |
| | Ministry of Finance | Preparation of Project Development Facility (PDF) and Viability Gap Fund (VGF) documents | Regulation of the Minister of Finance Number 265/PMK.08/2015 |
| Transaction | Ministry of Finance | Preparation of documents, Project Development Facility (PDF) and Viability Gap Fund (VGF) | Regulation of the Minister of Finance Number 265/PMK.08/2015 |
| | National Public Procurement Agency (LKPP) | Acts as Transaction Probity | LKPP Regulation No. 1 of 2025 Strengthening Public-Private Partnerships |
| | Indonesia Infrastructure Guarantee Corporation (PT PII) | Conducting the government guarantee process | Presidential Regulation Number 78 of 2010 |

Source: Processed by Researchers from the Indonesian Legal Documentation Network

Regarding the second indicator on the institutional framework of the KPS process for infrastructure development in Indonesia, it is evident that the process is lengthy and involves numerous institutions, resulting in

inefficiency. All the institutions involved are grouped into a forum called the Joint KPS Office of Indonesia, established through a Memorandum of Understanding (MoU), with unclear and poorly documented institutional governance, and each institution performs its role under different regulations. Existing literature highlights the rigidity of institutional arrangements through various arguments. This has indeed become a serious issue within Indonesia's bureaucratic process. According to the Government Effectiveness Index released by the World Bank, Indonesia ranks 58th globally with a score of only 0.58. This indicates that Indonesia's bureaucracy remains suboptimal and inefficient.[33] This is also influenced by excessive, unclear regulations. Gratton et al. argue that the poor quality of bureaucracy may stem from excessive lawmaking, which ultimately leads to overlap and poor regulatory implementation.[34] Williamson states that excessive bureaucracy arises from the presence of numerous institutions addressing the same issues, which in turn creates agency problems and erodes trust.[35] This is highly relevant to the implementation of PPPs in Indonesia, where the processes of project planning, preparation, and transaction tend to be convoluted and involve numerous agencies, resulting in suboptimal PPP project outcomes. This is evident in several unsuccessful PPP projects and in investors' failure to commit to infrastructure investment in Indonesia. It is clear that at each stage of the PPP process, many institutions are involved, each operating under its own legal framework that has yet to be consolidated. As a result, there is frequent overlap and misalignment between different processes. Therefore, the PPP process in Indonesia urgently requires de-bureaucratisation to guarantee the efficacy of infrastructure development through PPPs.

The third point in the World Bank reference guide concerns the legal framework governing contracts or agreements in Public-Private Partnership (PPP) arrangements. In Indonesia, the provisions for such partnerships are regulated under Presidential Regulation No. 38 of 2015, which stipulates that a PPP agreement must at least comprise work, duration, tariffs, rights and obligations, service performance standards, share transfers, sanctions, termination clauses, asset ownership, dispute resolution mechanisms,

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[33] World Bank, "Government Governance Indicators Worldwide" (Washington DC, n.d.).

[34] Mark Turner, Eko Prasojo, and Rudiarto Sumarwono, "The Challenge of Reforming Big Bureaucracy in Indonesia," *Policy Studies* 43, no. 2 (March 4, 2022): 333–51, https://doi.org/10.1080/01442872.2019.1708301.

[35] Timothy Besley et al., "Bureaucracy and Development," *Annual Review of Economics* 14, no. 1 (August 12, 2022): 397–424, https://doi.org/10.1146/annurev-economics-080521-011950.

performance monitoring of the Implementing Business Entity (IBE), force majeure conditions, and contract guarantees in accordance with applicable regulations. With regard to contract schemes and procurement under Presidential Regulation 38/2015, PPPs in Indonesia may be conducted through direct appointment in cases where infrastructure has previously been developed and/or operated by the same developer, the work can only be performed using new technology, and only one developer is capable of providing such technology. Additionally, the developer/bidder/private entity must control a majority, or the entirety, of the land required to implement the PPP project. There is also a public tender process to determine the Implementing Business Entity (IBE). Following the tender process, the PPP agreement for infrastructure development must be signed within six months of the announcement of the winning bidder, and the winner must establish an IBE to carry out the project.

Based on an analysis of the legal framework for implementing PPP financing schemes in Indonesia, the Asian Development Bank (ADB) suggests that Indonesia needs to streamline its bureaucracy by deregulating PPP-related regulations to avoid inconsistencies.[36] Currently, Indonesia has more than 12 discordant regulations governing PPPs, thereby hindering the PPP process. This regulatory inconsistency is further exacerbated by the involvement of numerous institutions in managing PPPs, each with distinct roles and functions at different stages of the process, resulting in inefficiencies despite the urgent need to implement infrastructure development projects. According to the Asian Development Bank (ADB), establishing a dedicated unit to manage PPPs can facilitate their implementation and improve the performance of infrastructure projects. This requires a restructuring of existing regulations in Indonesia to ensure that the national development agenda for equitable distribution and economic growth can be realised through PPP financing schemes, especially amid the country's fiscal constraints.

## The Legal Framework for Public-Private Partnerships in Infrastructure Development in the Philippines

The implementation of PPPs for infrastructure development in the Philippines historically began in 1989 in Navotas, with a project involving the National Power Corporation and Hopewell Energy Management Ltd. In addition, in 1993, the Philippines developed a market in San Jose de

[36] Development Banks and Development Institutions, "Realizing the Potential of Public-Private Partnerships to Advance Infrastructure Development in Asia," n.d.

Buenavista, the capital of Antique Province.[37] These two projects were among the earliest to adopt the PPP scheme without requiring funding from local governments or Local Government Units (LGUs). Following this, PPP implementation in the Philippines grew significantly, beginning in the 1990s, with the development of 305 infrastructure projects. These included highways, airports, railways, ports, energy, water, information technology, agriculture, fisheries, social infrastructure, and waste management. All of these projects were financed through PPP arrangements. Currently, the Philippines is undertaking at least 176 infrastructure development projects with an estimated total value of 1.289 trillion pesos.[38]

According to a World Bank report, the Philippines is one of the leading ASEAN countries in implementing infrastructure financing through PPP schemes, both in terms of regulation and institutional framework. The World Bank recognises the Philippines' experience in PPP financing for infrastructure projects as a best practice model that meets international standards. When analysed using the World Bank's Reference Guide on the Legal Framework for PPPs, the Philippine legal framework for implementing such a partnership in infrastructure projects is considered a benchmark for an effective PPP scheme.

First, the legal framework governing its implementation includes laws on infrastructure financing management, public financial management, and sector-specific regulations. Second, according to the World Bank, the Philippines is regarded as having strong regulatory and institutional frameworks governing institutional arrangements for PPP financing schemes.

The Philippines adopts a mixed legal system combining civil law and common law, with the 1987 Philippine Constitution as the supreme law. Unlike Indonesia, which does not explicitly mention private sector involvement in its Constitution, the Philippine Constitution explicitly includes the role of the private sector, particularly in Article 20, which states, "The State recognises the indispensable role of the private sector, encourages private enterprise, and provides incentives for needed investments."

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[37] Varsolo Sunio et al., "Long-Term Service Contracts for the Mobilization of Private Financing for the Reform of the Informal Public Transport Sector in the Philippines," *Case Studies on Transport Policy* 15 (March 2024): 101166, https://doi.org/10.1016/j.cstp.2024.101166.

[38] Jesus Felipe, Gemma Estrada, and Matteo Lanzafame, "The Turnaround in Philippine Growth: From Disappointment to Promising Success," *Structural Change and Economic Dynamics* 62 (September 2022): 327–42, https://doi.org/10.1016/j.strueco.2022.03.016.

As the highest source of law in the country, the Constitution's inclusion of provisions recognising the role of the private sector and providing investment incentives is one of the legal framework's core strengths.

Technical regulations for PPP development in the Philippines, in alignment with the constitutional mandate recognising the role of the private sector, began with the enactment of Republic Act No. 6957, which authorised the private sector to finance, construct, operate, and maintain infrastructure projects, and for other purposes. This was later amended by Republic Act No. 7718, also known as the Build-Operate-Transfer (BOT) Law, which expanded the types of PPP schemes and introduced provisions for project proposals, negotiations, and special incentives for registered projects.

In 2010, the Philippine government issued Executive Order (EO) No. 8, later amended by EO No. 136, outlining provisions for alternative dispute resolution mechanisms for all PPP contract schemes. In addition, several internal policy circulars were issued throughout the PPP process in the Philippines.

Due to the large number of existing regulations, the Philippine government reformed its PPP regulatory framework by enacting Republic Act No. 11966 in December 2023, known as the Philippine Public-Private Partnership (PPP) Code.

The reform of the PPP regulatory framework, involving the comprehensive consolidation of PPP regulations, was undertaken by the Philippine government with three primary objectives: to address multiple interpretations leading to ambiguity in current laws, to respond to issues in implementing PPP projects that previous regulations could not resolve, and to accelerate economic growth and create a competitive economy through PPP schemes in infrastructure development. Republic Act No. 11966 serves as the consolidating regulation of the legal framework for PPPs to support the investment climate in the Philippines.

The new provisions introduced in RA 11966 pertain to public utilities subject to Filipino citizenship requirements. This regulatory relaxation aims to stimulate medium- and long-term economic growth in the Philippines. To further encourage investment and development through PPP schemes, the Philippine government also amended several laws, including the Public Service Act, the Right-of-Way Act, the Securities Regulation Code, the Long-Term Lease Act for foreign investors, and the Electric Power Industry Act.

Previously, various laws and regulations applied to PPP projects in the Philippines, often confusing investors. Under the newly enacted Philippine PPP Code, RA 11966, all legal frameworks now uniformly apply to PPP

projects at both national and local levels. The PPP Code mandates that no government agency may issue regulations contrary to it, as the PPP Code in the Philippines encompasses all PPP projects between the government and the private sector at both the national and local levels.

The PPP law explicitly regulates alternative financial instruments, green financing, and land valuation strategies to optimise the PPP scheme. The PPP Code also addresses investment recovery schemes, particularly concerning revenue from tolls, fees, leases, availability payments, and asset transfer compensation. Prior to the enactment of the PPP Code, repayment schemes were governed by contract arrangements; however, the PPP Code no longer restricts the types of repayment schemes based on contractual provisions. Instead, the PPP Code allows private partners to employ alternative investment recovery mechanisms to complement existing schemes, provided they adhere to fair valuation and constitutional principles. Furthermore, the PPP Code limits legal actions against the Government Infrastructure Agency (GIA) and the PPP Center during the PPP project process by prohibiting the issuance of temporary restraining orders, preliminary injunctions, mandatory preliminary orders, and other provisional legal actions in any court except the Supreme Court. With the enactment of the PPP Code, all ongoing provisional legal remedies are automatically nullified and have no legal effect. Previously, under the BOT Law, legal restrictions applied only to unsolicited proposals that conflicted with government projects. An important provision of the PPP Code is the more dynamic project approval threshold, which is expected to encourage greater private sector participation in infrastructure project financing in the Philippines. Additionally, the PPP Code mandates dispute resolution through alternative dispute resolution (ADR) mechanisms, which is anticipated to foster a more favourable investment climate for infrastructure development. Overall, the reform of the PPP Code has resulted in a more effective and efficient PPP project process in the Philippines.[39]

The second analysis of the legal framework in the Philippines concerns the institutional responsibility for managing PPPs. Institutional responsibility for managing PPPs lies with the PPP Center, whose roles and duties include policy formulation, project coordination and facilitation, providing technical assistance to government agencies and local government units with PPP projects, and managing the data and information centre. The PPP Center also operates a revolving fund facility for pre-project activities to

[39] Development Banks and Development Institutions, "Realizing the Potential of Public-Private Partnerships to Advance Infrastructure Development in Asia."

ensure project preparation and monitoring of project facilities. The PPP Center operates under the direction of the PPP Governing Board and is institutionally led by the National Economic and Development Authority (NEDA). In terms of the institutional relationship between these two bodies, the PPP Center issues a list of PPP projects along with the identification and management of its database, while NEDA publishes a list of Infrastructure Flagship Projects (IFPs) funded through government allocations based on the General Appropriations Act (GAA), Official Development Assistance (ODA), and/or PPP schemes. As of 2024, the NEDA Board has approved 186 IFPs, with an estimated total infrastructure project cost of ₱9,680.33 billion (approximately $166.02 billion). The regulatory framework governing the Public–Private Partnership (PPP) process in the Philippines, highlighting the roles and mandates of the PPP Center across key project phases. During the planning phase, the PPP Center is responsible for identifying and preparing projects, securing funding, issuing the Consolidated List of Investment Programs (CLIP), and providing technical assistance, while implementing agencies are required to align their proposals with national and sectoral development plans and submit them to NEDA in accordance with the Implementing Rules and Regulations (IRR) of Republic Act No. 11966. In the project preparation phase, the PPP Center issues detailed guidelines, forms, and templates to ensure that all proposed PPP projects are consistent with the Philippine Development Plan and properly reported to NEDA. Finally, in the transaction phase, the PPP Center facilitates project transactions, oversees implementation, and reports progress to the President, with all stages firmly grounded in the IRR of Republic Act No. 11966.

In terms of the institutional regulatory framework, PPPs in the Philippines are generally managed under the PPP Center, which holds institutional responsibility before, during, and after the process and transaction of the project. NEDA acts solely as a reviewer and provides approval of the project list to ensure that the projects align with the Philippines' medium- and long-term development plans. The centralised institutional structure and regulatory reforms of the PPP scheme are measures taken by the Philippine government to ensure infrastructure development that supports the economy. This is particularly important given that in 2015, the Philippines' competitiveness ranking remained low, at 61st place. Consequently, the National Economic and Development Authority (NEDA)

approved 75 flagship infrastructure projects (IFPs) under the PPP scheme to stimulate economic growth.[40]

**Comparison of the Legal Framework for PPP between Indonesia and the Philippines**

Robert Howse views that the role of law in a country's economic development is highly significant. A clear legal framework enables a country's economic development to ensure the transparent and measurable welfare of its citizens. The legal framework provides a structure for economic activities and social justice, and fosters an economic climate by attracting or securing investments for national development.[41] A complex legal system will hinder economic growth, as the intrinsic relationship between law and the economy is highly dynamic; thus, a well-functioning economy must be supported by a sound legal system[42] According to the World Bank, an efficient and straightforward legal system supports a healthy economic landscape, particularly in developing countries facing issues hampering economic development, such as poverty, uneven infrastructure development, and low human development index scores.[43] Limited fiscal capacity for development has been a major challenge for developing countries, hindering economic growth and necessitating investment to address these issues. Indonesia and the Philippines are two developing countries in Southeast Asia with fiscal constraints amid the push for infrastructure development. In response, both countries have adopted policies to utilise the PPP scheme to finance infrastructure projects.

The legal frameworks governing Public–Private Partnerships (PPP) in Indonesia and the Philippines exhibit both structural similarities and significant differences. In Indonesia, PPPs are regulated by a complex set of eight sectoral and technical regulations rooted in Article 33 of the 1945 Constitution, including multiple laws, presidential regulations, ministerial regulations, and agency-level rules that govern different stages of PPP implementation. This multi-layered regulatory structure reflects Indonesia's civil law tradition and hierarchical legal system, which extends to regional

[40] Development Banks and Development Institutions.

[41] R. Howse, "Human Rights, International Economic Law and Constitutional Justice: A Reply," *European Journal of International Law* 19, no. 5 (November 1, 2008): 945–53, https://doi.org/10.1093/ejil/chn060.

[42] Adi Sulistiyono dan Muhammad Rustamaji, *Hukum Ekonomi Sebagai Panglima* (Surakarta: Masmedia Buana Pustak, 2009).

[43] Global Investment World Bank Group, *Competitiveness Report 2019/2020* (World Bank Publications, 2020).

regulations and often results in regulatory overlap and institutional inefficiency. By contrast, the Philippines regulates private sector participation under Article 20 of its Constitution through a single, unified legal instrument, the Implementing Rules and Regulations of Republic Act No. 11966. Although the Philippines also follows a civil law system with certain common law elements, its legal hierarchy is more streamlined, recognising only statutes, jurisprudence, and international agreements below the Constitution. This regulatory simplicity enhances efficiency and coherence in PPP implementation and has led to international recognition, including by the Asian Development Bank, as a best-practice model for PPP governance, particularly due to its clear legal framework and explicit constitutional support for private sector participation in development-related investments.

From an institutional perspective, Indonesia involves numerous governmental bodies in the PPP process, including BAPPENAS, the Ministry of Finance, the Ministry of Home Affairs, BKPM, LKPP, regional governments, and the Indonesia Infrastructure Guarantee Fund (IIGF), each operating under separate legal mandates. This fragmented institutional arrangement often contributes to coordination challenges and procedural inefficiencies. In contrast, the Philippines adopts a centralised institutional model in which the PPP Center serves as the primary authority responsible for PPP planning, preparation, and implementation, while the National Economic and Development Authority (NEDA) functions mainly as an approving body, all within the framework of the IRR of Republic Act No. 11966. With respect to contractual arrangements, Indonesia recognises several PPP contract models, including Operation and Maintenance, Construction Financing, Design–Build–Finance Maintain, Design Build–Finance–Maintain–Operate, and concession-based schemes. Meanwhile, the Philippines adopts a broader range of contract structures, such as Build–Transfer, Build–Lease–Transfer, Build–Operate–Transfer, Build–Own–Operate, Build–Transfer–Operate, Contract–Add–Operate, Develop–Operate–Transfer, Rehabilitate–Operate–Transfer, and Rehabilitate–Own–Operate. Despite this diversity, both jurisdictions incorporate dispute resolution mechanisms within PPP agreements. Indonesia mandates a tiered dispute resolution process beginning with deliberation and mediation and potentially escalating to arbitration or court proceedings whereas the Philippine approach grants contractual discretion to the parties, with a strong emphasis on compensation for non-performance rather than punitive measures. These differences illustrate contrasting legal philosophies in

managing risk, accountability, and enforcement within PPP-based infrastructure development.

A summary can be obtained from the comparison presented in Table 4. First, both Indonesia and the Philippines recognise a hierarchical system of legislation under their respective constitutions. However, in the Philippines, PPP regulations are centralised within a single legal framework that governs the entire process. In contrast, Indonesia has numerous different regulations covering all stages, from planning to dispute resolution. The advantage of the Philippine system lies in its regulatory efficiency, which avoids overlaps throughout the planning and implementation phases. Meanwhile, Indonesia's economic democracy ensures that private-sector involvement in PPP management is not automatic, unlike in the Philippines. The Philippines constitutionally acknowledges the private sector's role in infrastructure development for economic growth.

Second, institutionally, the Philippines centralises PPP authority within a single agency under the approval of the National Economic and Development Authority (NEDA). Conversely, Indonesia has a multi-bureaucratic institutional framework, with various agencies performing distinct roles and functions from planning through PPP transactions. The institutional advantage of the Philippines lies in its centralised and focused structure. In administrative institutional theory, as explained by Herbert Simon, emphasis is placed on decision-making within organisations to maximise efficiency through de-bureaucratisation. Furthermore, the New Institutional Economics, developed by Douglass North and Oliver Williamson, highlights the role of institutions in minimising uncertainty and risk by defining legal rules and regulations. In comparison, the Philippines excels in bureaucracy due to its legal framework and institutions that reduce uncertainty, whereas Indonesia faces a lengthy process involving multiple institutional authorities and regulations, indicating a need to adopt aspects of the Philippine model. However, Indonesia has an advantage in dispute resolution, employing a tiered process that provides legal certainty and protection under the law, allowing disputes to be resolved through deliberation up to court proceedings. In contrast, the Philippine system primarily emphasises penalty payments.

From this comparison, the Philippines demonstrates superior regulatory and institutional efficiency, evidenced by its status as one of the largest clients of the Asian Development Bank (ADB) in 2024 and its recognition as a best-practice model for PPP implementation by the World Bank. Based on this comparative analysis of legal frameworks, necessary

reforms for Indonesia's PPP scheme, drawing lessons from the Philippines, include regulatory and institutional reform.

**Conclusion**

Infrastructure development in developing countries, particularly in the ASEAN region, such as Indonesia and the Philippines, faces financing constraints as the main challenge that slows development. The Public-Private Partnership (PPP) scheme comes as a solution to address such infrastructure financing issues. Although both Indonesia and the Philippines have adopted the PPP scheme for infrastructure development, each country encounters different challenges in its implementation. In Indonesia, extensive regulations and fragmented bureaucracy result in inefficiencies in the execution of PPP projects. The involvement of multiple institutions managing the PPP scheme, each with distinct regulations and authorities, slows down processes and hinders project effectiveness. Therefore, Indonesia needs to de-bureaucratize and simplify regulations for more efficient PPP processes. However, Indonesia benefits from its more structured legal system and detailed regulations, which provide strong legal certainty for investors, particularly in dispute resolution. The multiple stages offered allow for clear and accountable legal protection. Conversely, the Philippines benefits from greater efficiency due to a single, comprehensive legal framework and centralised institutions responsible for managing PPP projects. A simpler institutional structure and more concise regulations enable the Philippines to implement infrastructure projects more efficiently. The Philippines' success in implementing the PPP scheme is recognised as a best practice by the World Bank and the Asian Development Bank (ADB), serving as a model for PPP implementation in the ASEAN region. Overall, to enhance the efficiency and success of PPP projects, Indonesia should learn from the Philippines' experience in regulatory and institutional simplification and improve its tiered dispute resolution system. Adopting a more centralised and coordinated approach, as implemented in the Philippines, would greatly assist Indonesia in achieving more effective and efficient infrastructure development goals. Nonetheless, Indonesia retains strengths in legal protection, which is crucial for attracting long-term investment, as its comprehensive regulations provide investors and other stakeholders with assurance.

Indonesia needs to simplify its regulatory framework and reduce bureaucratic fragmentation in the implementation of Public–Private Partnership (PPP) schemes, as overly complex regulations and the involvement of multiple institutions affect the effectiveness of infrastructure

projects. By adopting the efficiency demonstrated by the Philippines, which benefits from a unified legal framework and centralised institutional oversight, Indonesia can enhance coordination, accelerate project processes, and strengthen its tiered dispute resolution mechanisms. Nevertheless, Indonesia should maintain its advantages in providing strong legal certainty and investor protection, while simultaneously enhancing institutional capacity to ensure more effective PPP implementation and greater attractiveness for long-term investment.

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# HALAL INDUSTRY AND CERTIFICATION IN DISGUISE: Is It Faith Implementation or Economic Ploy in Indonesia's Legal Framework?

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***Abstract***

*The halal industry in Indonesia has experienced rapid growth, but the implementation of halal certification still encounters issues. The main challenges include misuse of the halal logo, limited enforcement of the Law No. 33 of 2014 concerning Halal Product Guarantee and its regulatory mechanisms, and inadequate consumer protection at both the national and international levels. This situation has sparked debate over whether micro-enterprises seek halal certification for religious reasons or primarily in response to market pressures, raising broader concerns about the decline of spiritual values in contemporary halal practices. This study uses a critical qualitative method with an interdisciplinary approach, combining insights from Islamic economics, Islamic studies, and the sociology of religion, while the maqāṣid al-syari'ah framework and Islamic economic law serve*

*as the theoretical basis. Findings indicate that halal certification serves both religious and economic purposes, with the two dimensions reinforcing each other. While Halal certification represents moral responsibility and a value of worship, it is also embedded in a global production and distribution system governed by legal frameworks and market logic. The study concludes that the most significant challenge lies in the trade-off between spiritual orientation and economic interests, which can be addressed through more effective Halal certification management. Furthermore, this study argues that strengthening the enforcement of Law No. 33 of 2014 and adopting the proposed Participatory Halal Governance theory can inform halal governance policy reform, improve consumer protection, provide legal certainty, and strengthen Indonesia's competitiveness in the global halal economy.*

*Industri halal di Indonesia telah mengalami pertumbuhan yang pesat, namun implementasi sertifikasi Halal masih menghadapi berbagai masalah. Tantangan utama meliputi penyalahgunaan logo Halal, penegakan hukum yang terbatas terhadap Undang-Undang No. 33 Tahun 2014 Tentang Jaminan Produk Halal dan mekanisme regulasinya, serta perlindungan konsumen yang tidak memadai baik di tingkat nasional maupun internasional. Situasi ini memicu perdebatan tentang apakah usaha mikro mencari sertifikasi Halal berdasarkan keyakinan agama atau terutama sebagai respons terhadap tekanan pasar, yang menimbulkan kekhawatiran lebih luas tentang penurunan nilai-nilai spiritual dalam praktik halal kontemporer. Studi ini menggunakan metode kualitatif kritis dengan pendekatan interdisipliner, menggabungkan wawasan dari ekonomi Islam, studi Islam, dan sosiologi agama. Kerangka maqāṣid al-syari'ah dan hukum ekonomi Islam menjadi dasar teoretis. Temuan menunjukkan bahwa sertifikasi Halal berfungsi sebagai alat keagamaan dan ekonomi, dengan kedua dimensi saling memperkuat. Sertifikasi Halal mewakili tanggung jawab moral dan unsur ibadah, tapi juga tertanam dalam sistem produksi dan distribusi global yang diatur oleh kerangka hukum dan logika pasar. Studi ini menyimpulkan bahwa tantangan terbesar terletak pada menyeimbangkan orientasi spiritual dan kepentingan ekonomi melalui tata kelola sertifikasi Halal yang lebih efektif. Selain itu, studi ini berargumen bahwa memperkuat penegakan Undang-Undang No. 33 Tahun 2014 dan mengadopsi Teori Tata Kelola Halal Partisipatif yang*

*kelola Sertifikasi Halal, meningkatkan perlindungan konsumen, memberikan kepastian hukum, dan memperkuat daya saing Indonesia dalam ekonomi halal global.*

***Keywords***: *halal certification, Islamic economics, maqaṣid al-shari'ah, participatory halal governance*

## Introduction

The Halal industry is experiencing significant growth, with the global market projected to reach approximately USD 2.4 trillion by 2024.[1] This growth is driven by the rising Muslim population and the increasing demand for Halal products, which represents quality assurance and lifestyle choice.[2] Halal certification is essential to ensure that products comply with Islamic principles. It involves strict checks on hygiene, safety, and quality.[3] Digitalisation of the certification process is also recommended to improve efficiency and compliance.[4]

There are significant variations in Halal standards globally, which can complicate international trade. Different Halal Certification Bodies (HCBs) prioritise national regulations, leading to inconsistencies in standard.[5] This highlights the need for standardisation and consistency to meet the growing demand for Halal products. In Spain, Halal certification is gaining traction, with companies and port centres becoming certified to handle Halal products. This certification helps ensure the comprehensive compliance of logistics

[1]A Amid, "Halal Industry and Issues," in *Solving Halal Industry Issues Through Research in Halal Sciences*, 2024, 1–14, https://doi.org/10.1007/978-981-97-3843-4_1.

[2]Amid.

[3]N A A Rahman and Z Al Balushi, "Halal Logistics Certification: A Middle East Perspective," in *Halal Logistics and Supply Chain Management: Recent Trends and Issues*, 2022, 222–29, https://doi.org/10.4324/9781003223719-22.

[4]L Santoso and A Rachman, "DIGITALISING HALAL CERTIFICATION: The Dynamic of Regulations and Policies Concerning Halal Certification in Indonesia," *Jurisdictie: Jurnal Hukum Dan Syariah* 14, no. 2 (2023): 265–93, https://doi.org/10.18860/j.v14i2.24115.

[5]J Akbar et al., "Global Trends in Halal Food Standards: A Review," *Foods* 12, no. 23 (2023), https://doi.org/10.3390/foods12234200.

processes with Halal standards.[6] In Russia and the Republic of Tatarstan, the Halal market is gradually expanding, with more participants and a wider range of products.[7] However, issues regarding compliance with production technology standards, certification, and recognition of interstate standards remain.

Against this global backdrop, Indonesia holds a strategic position as one of the countries with the largest Muslim population in the world and as a pioneer in implementing mandatory Halal certification. In accordance with Law No. 33 of 2014 concerning Halal Product Guarantee and Government Regulation No. 39 of 2021,[8] all products circulating in its territory must be Halal-certified by October 17, 2024, at the latest.[9] This policy not only fosters peace of mind for Muslim consumers but also strengthens Indonesia's role as a key player in the global Halal economy. Increased Sales and Trust Halal certification has significantly increased sales and consumer confidence for

[6]F Mayor-Vitoria, "Halal Market Opportunities and Logistics in Spain," in *Halal Logistics and Supply Chain Management: Recent Trends and Issues*, 2022, 211–21, https://doi.org/10.4324/9781003223719-21.

[7]L N Safiullin, G K Galiullina, and L B Shabanova, "State of the Market Production Standards 'Halal'in Russia and Tatarstan: Hands-on Review," *Academy of Marketing Studies Journal* 20, no. Special Issue (2016): 88–95, https://www.scopus.com/inward/record.uri?eid=2-s2.0-84995603603&partnerID=40&md5=d13d68afab6e1de73430f58a5a642bfc.

[8]B Effendi et al., "The Importance of Green Halal Industry in Sustainable Sharia Economics Development in Indonesia," *Indonesian Journal of Advocacy and Legal Services* 1, no. 2 (2024): 143–60, https://doi.org/10.57239/PJLSS-2024-22.2.00899; S A P Rahayu et al., "Halal Certification Imperatives for MSMEs: Navigating Sustainability, Consumer Confidence, and Policy Compliance (Case of Kenteng, Bandungan, Indonesia)," *Indonesian Journal of Advocacy and Legal Services* 5, no. 2 (2023): 143–60, https://doi.org/10.15294/ijals.v5i2.72426; B Effendi et al., "PREPARATION FOR THE IMPLEMENTATION OF MANDATORY HALAL REGULATIONS FOR FOOD AND BEVERAGE PRODUCTS IN INDONESIA," *Revista Juridica* 1, no. 77 (2024): 341–65, https://doi.org/10.26668/revistajur.2316-753X.v1i77.6823.

[9]Effendi et al., "The Importance of Green Halal Industry in Sustainable Sharia Economics Development in Indonesia"; Rahayu et al., "Halal Certification Imperatives for MSMEs: Navigating Sustainability, Consumer Confidence, and Policy Compliance (Case of Kenteng, Bandungan, Indonesia)."

businesses like Zulaikha in Medan, North Sumatra.[10] This trend is followed by other regions, where certified products are considered more trustworthy.[11] Micro, Small, and Medium Enterprises (MSMEs) face hurdles such as certification costs, lack of awareness, and complex regulatory requirements.[12] Despite these challenges, halal certification is essential to improve their market competitiveness and consumer confidence.[13] Nevertheless, mandatory Halal certification remains crucial for enhancing market competitiveness, consumer confidence, and Indonesia's global leadership in the Halal industry.

The Indonesian government has initiated the digitisation of halal certification to streamline processes, reduce costs, and improve compliance.[14] This includes using blockchain technology to ensure traceability and transparency in the halal supply chain.[15] Demand for halal-certified products is increasing, driven by Indonesia's major Muslim population and rising consumer awareness.[16] Halal certification influences purchasing decisions, as

[10]A Rafiki, "Impact, Perception and Challenges Due to Halal Certification: The Case of Zulaikha Shop," in *Management for Professionals*, vol. Part F561, 2019, 139–53, https://doi.org/10.1007/978-3-030-10907-3_12.

[11]M S A Alanazi, S R Hidayat, and A O A Alyusufi, "Fatwa, Marketing, and Halal Certification: A Socio-Legal Analysis of The Indonesian Ulama Council Fatwa Number 80 of 2022," *International Journal of Law and Society* 3, no. 2 (2024): 156–72, https://doi.org/10.59683/ijls.v3i2.96.

[12]A Prawiro, "Challenges in the Halal Industry Ecosystem: Analyzing the Halal Certification Process for Micro, Small, and Medium Enterprises in Lombok, West Nusa Tenggara," *Mazahib Jurnal Pemikiran Hukum Islam* 22, no. 2 (2023): 431–84, https://doi.org/10.21093/mj.v22i2.7010.

[13]Alanazi, Hidayat, and Alyusufi, "Fatwa, Marketing, and Halal Certification: A Socio-Legal Analysis of The Indonesian Ulama Council Fatwa Number 80 of 2022."

[14]Santoso and Rachman, "DIGITALISING HALAL CERTIFICATION: The Dynamic of Regulations and Policies Concerning Halal Certification in Indonesia."

[15]M Heikal and A Rachman, "Digitalization of Halal Food Supply Chain Management Based on Blockchain Technology," in *Springer Proceedings in Business and Economics*, 2024, 103–21, https://doi.org/10.1007/978-981-97-5400-7_7.

[16]M Rahmah, N Barizah, and R D Kusumastuti, "Halal Certification of Patented Medicines in Indonesia in Digital Age: A Panacea for the Pain?," *International Journal of Economics and Management* 11, no. 2 Special Issue (2017): 210–17, https://doi.org/10.31838/srp.2020.12.34.

consumers prefer products that comply with their religious beliefs.[17] Indonesia has considerable potential in the global halal market, which is expected to reach USD 3.1 trillion by 2027.[18] However, competition from countries such as Malaysia and the dominance of non-Muslim countries in halal exports pose challenges. [19] Strong government policies and support are essential for the growth of Indonesia's halal industry. The Halal Product Guarantee Agency (BPJPH) plays a vital role in regulating and overseeing the certification process.[20]

The Halal industry faces several issues, including misuse of the Halal logo, enforcement of certification laws, and the need for better consumer protection.[21] Other problems, such as cost, market competitiveness, and legal issues in Halal pharmaceuticals, also need to be addressed.[22] Despite these challenges, the Halal market presents significant opportunities. The global Halal food trade is expected to grow at a rate of 7% per year, driven by increasing awareness and accessibility to information.[23] Halal accreditation should effectively monitor and ensure the quality of Halal products.

Research on halal certification in Indonesia has yielded several significant findings regarding economic, social, and institutional impacts. The implementation of halal certification, which is mandated by Law No. 33 of 2014, has been shown to make a significant economic contribution of around

[17]Alanazi, Hidayat, and Alyusufi, "Fatwa, Marketing, and Halal Certification: A Socio-Legal Analysis of The Indonesian Ulama Council Fatwa Number 80 of 2022."

[18]N Hidayah and U Solihah, "Challenges and Opportunities in the Indonesian Halal Industry," in *Exploring the Halal Industry and Its Business Ecosystem Prospects*, 2025, 75–95, https://doi.org/10.4018/979-8-3693-8618-7.ch004.

[19]Hidayah and Solihah.

[20]B J Sujibto and M Fakhruddin, "Non-Muslim Voices on Halal Certification: From Sectoral-Religious Tendencies to State-Mandated Regulations," *Jurnal Ilmu Sosial Dan Ilmu Politik* 26, no. 3 (2023): 258–70, https://doi.org/10.22146/jsp.67792.

[21]M A A Halim and A A Ahmad, "Enforcement of Consumer Protection Laws on Halal Products: Malaysian Experience," *Asian Social Science* 10, no. 3 (2014): 9–14, https://doi.org/10.5539/ass.v10n3p9.

[22]Amid, "Halal Industry and Issues."

[23]S Kabiraj, R C Walke, and S Yousaf, "The Need for New Service Innovation in Halal Marketing," *Indian Journal of Marketing* 44, no. 2 (2014): 5–14, https://doi.org/10.17010/ijom/2014/v44/i2/80442.

USD 3.8 billion to the national GDP and create far more jobs, while it has also sparked debate regarding freedom of choice, the economic burden on small businesses, and the potential marginalisation of minority groups.[24] From the perspective of Islamic economic law, halal and *ṭayyib* certification helps realise the values of "*maṣlaḥah*" by protecting consumer health, guaranteeing food safety, and supporting environmental sustainability.[25] However, research on MSMEs in Lombok shows that although halal certification positively influences business performance, its adoption rate remains low due to the complexity of requirements and administrative barriers.[26] In addition, the regulatory framework for halal certification in Indonesia is still fragmented and not fully harmonised, creating legal uncertainty and implementation challenges.[27] Empirically, halal certification has been proven to increase food sales among MSMEs, evidenced by the case of Bogor City, underscoring the importance of simplifying processes and strengthening coordination among institutions in the national halal certification system.[28] This study addresses this gap by integrating Islamic economic law, consumer behaviour, and governance perspectives within the framework of *maqāṣid al-syarī'ah*. The uniqueness of this study lies in its proposal of the Participatory Halal Governance Model as a holistic approach that balances spiritual orientation

[24] A Fiteuanto, M Sofi, and A Muzakki, "Inclusive Halal Standards: Societal Effects on Religious Minorities in Indonesia and Malaysia," *Islamic Quarterly* 68, no. 4 (2024): 451–79, https://www.scopus.com/inward/record.uri?eid=2-s2.0-105019565068&partnerID=40&md5=94946b3c5e7ca81e015feab894b84093.

[25] F Nisa, H Fitriansyah, and C Saleh, "The Integration of Maṣlaḥah into Islamic Economic Law through the Policy of Halal and Tayyib Certification in Indonesia," *Jurnal Ilmiah Mizani* 12, no. 1 (2025): 254–68, https://doi.org/10.29300/mzn.v12i1.6968.

[26] S A P Rahayu et al., "Challenges in the Halal Industry Ecosystem: Analyzing the Halal Certification Process for Micro, Small, and Medium Enterprises in Lombok, West Nusa Tenggara," *Mazahib Jurnal Pemikiran Hukum Islam* 22, no. 2 (2023): 143–60, https://doi.org/10.15294/ijals.v5i2.72426.

[27] C Lutfi, "Critical Review of Halal Industry Policy in Indonesia," *Ascarya: Journal of Islamic Science, Culture and Social Studies* 5, no. 1 (2025): 1–12, https://doi.org/10.53754/iscs.v5i1.717.

[28] R Bahara et al., "Sustainable Improvement of Food SMEs Through Halal Certification: A Meta-Analysis," in *AIP Conference Proceedings*, vol. 2957, 2024, https://doi.org/10.1063/5.0183887.

with economic interests, providing relevant theoretical and policy contributions to the discourse on Halal industry development in Indonesia.

Enforcement and monitoring of Halal certification needs to be improved to benefit both consumers and producers.[29] Educating stakeholders on their responsibilities in producing Halal products is also essential. Digital transformation of the Halal certification process, especially for MSMEs, is essential to reduce costs and expedite certification.[30] This transformation can lead to greater compliance and more certified Halal products.

The above research background emphasises the urgency of addressing the following question: How are spiritual values in current halal practices eroded? Do micro-entrepreneurs pursue halal certification on the grounds of faith or market demands? In short, to meet a Halal industry that is poised for substantial growth, these questions must be answered to address issues related to certification, standardisation, and regulatory enforcement to realise the full potential of the industry. Departing from these issues, this study aims to critically analyse the dynamics of Halal certification in Indonesia by scrutinising the intersection between spiritual values and market logic, evaluating the effectiveness of regulatory enforcement based on the Law No. 33 of 2014 concerning Halal Product Guarantee, and proposing a Participatory Halal Governance framework as a relevant policy solution to strengthen Halal governance and support the sustainable development of the Halal industry.

## Research Methods

This study uses a critical qualitative method with an interdisciplinary approach that combines Islamic studies, Islamic economics, and the sociology of religion[31] to analyse whether Halal certification currently reflects the actual

[29]Halim and Ahmad, "Enforcement of Consumer Protection Laws on Halal Products: Malaysian Experience."

[30]Santoso and Rachman, "DIGITALISING HALAL CERTIFICATION: The Dynamic of Regulations and Policies Concerning Halal Certification in Indonesia."

[31] M Amin Abdullah, "Multidisiplin, Interdisiplin, & Transdisiplin: Metode Studi Agama & Studi Islam Di Era Kontemporer," *Yogyakarta: IB Pustaka*, 2020, https://inlislite.uin-suska.ac.id/opac/pencarian-sederhana?action=pencarianSederhana&katakunci=Islam&ruas=Subyek&bahan=Semua+J

manifestation of religious beliefs or merely functions as an "economic bypass". The theoretical framework integrates the *maqāṣid al-syarī'ah* approach and Islamic economic ethics, which emphasise the protection of religion, life, and property, as well as the principles of justice, honesty, and trust in economic practices.[32]

The research steps began with formulating the main problem, namely the shift in the meaning of Halal certification from a spiritual orientation to commercialisation. A literature review was conducted on key theories by Jasser Auda,[33] Umer Chapra,[34] and Monzer Kahf.[35] Data collection relied on secondary sources, including government and non-government policies (BPJPH, MUI), case reports involving producers and consumers, document analysis, and investigative news related to Halal certification between 2020 and 2025. Cases were selected purposively to represent various stakeholders, including government, certification bodies, producers, and consumers, to capture diverse perspectives and recurring issues in Halal governance. Data validity was ensured through triangulation by double-checking findings from official policy documents, academic literature, and credible media coverage.[36] Since no primary field research was conducted, this study is limited and does not comprehensively capture the real experiences of businesses and consumers beyond what is recorded in secondary sources.

Methodologically, this study combines doctrinal legal research and social legal research.[37] The doctrinal component uses normative legal methods, including a statutory approach and court decisions, to analyse the

enis+Bahan&fAuthor=&fPublisher=IB+Pustaka%2C&fPublishLoc=&fPublishYear=2022&fSubject=&fBahasa=ind.

[32] Jasser Auda, *Grounding Islamic Law Through Maqāṣen Al-Syarī'ah* (Bandung: Mizan Pustaka, 2008).

[33] Auda.

[34] Muhammad Umer Chapra, *Towards a Just Monetary System*, *JKAU: Islamic Econ*, vol. 2, 1990, http://ierc.sbu.ac.ir/.

[35] Monzer Kahf, "Innovation and Risk Management in Islamic Finance: Shari'ah Considerations," in *Seventh Harvard International Forum on Islamic Finance*, 2006, 22–23.

[36] Bambang Arianto, "Triangulasi Metoda Penelitian Kualitatif," 2024.

[37] Khadijah Mohamed, "Combining Methods in Legal Research," *The Social Sciences* 11, no. 21 (2016): 5191–98.

legal framework under the Halal Product Guarantee Law and its implementing regulations. The social law dimension applies thematic and critical discourse analysis to uncover the underlying power relations and conflicting interests that affect the Halal certification system.[38]The results of this study are used to formulate a new theory, "Participatory Halal Governance Theory", which emphasises the importance of involving the Muslim community in the halal certification process in a more transparent, fair, and ethical manner.[39] This theory offers principles such as actor inclusiveness, procedural transparency, relational justice, and verification of the ummah. Thus, this theory is expected to be a solution to surmount the dualism between faith and economic calculations in the halal industry, while strengthening spiritual and social integrity in the future certification system.

## Halal Product Guarantee Regulations and *Maqāṣid al-Sharī'ah*: Convergence and Divergence

Halal certification in Indonesia is officially regulated under Law No. 33 of 2014 concerning Halal Product Guarantee and Government Regulation No. 39 of 2021, which stipulates halal guarantee as a mandatory regulatory framework. As a regulatory instrument, halal certification ensures product quality and safety, appealing not only to Muslim consumers but also to non-Muslim markets.[40] The certification process requires strict standards in preparation, storage, and documentation, thereby contributing to consumer protection, transparency, and food safety.[41] This reflects the objectives of

[38] Ernawati Ernawati, *Wawasan Qur'an Tentang Ekonomi (Tinjauan Studi Penafsiran Tematik Al-Quran)* (Esa Unggul University, 2017).

[39] Archon Fung and Erik Olin Wright, "Deepening Democracy: Innovations in Empowered Participatory Governance," *Politics & Society* 29, no. 1 (2001): 5–41.

[40] J V Chavez and M B Vicente, "Halal Compliance Behaviors of Food and Accommodation Businesses in the Zamboanga Peninsula, Philippines," *Multidisciplinary Science Journal* 7, no. 5 (2025), https://doi.org/10.31893/multiscience.2025259.

[41] M A Latif, "Halal International Standards and Certification," in *The Halal Food Handbook*, 2020, 205–26, https://doi.org/10.1002/9781118823026.ch14; R Maulidia, K Rofi'ah, and L Santoso, "HALAL REGULATION AND CERTIFICATION IN THE CATERING BUSINESS: A Critical Review of Consumer Protection," *Jurisdictie: Jurnal Hukum Dan Syariah* 15, no. 1 (2024): 171–206, https://doi.org/10.18860/j.v15i1.26988.

*maqāṣid al-sharī'ah* in protecting *ḥifẓ al-dīn* (religion), *ḥifẓ al-nafs* (life), and *ḥifẓ al-māl* (property), while increasing competitiveness in the Halal industry.[42]

At a practical level, the implementation of Halal practices such as the Halal tourism initiative in West Nusa Tenggara demonstrates the convergence between state regulations and *maqāṣid* principles.[43] The provision of worship facilities, Sharia-compliant accommodation, and Halal-certified businesses shows how law enforcement can achieve *maqāṣid* objectives, particularly the protection of religion and community welfare.[44] Furthermore, the institutionalisation of Halal certification as a legal requirement strengthens consumer confidence and supports business performance, particularly for MSMEs, by increasing market access and compliance with Islamic business ethics.[45] The visibility of the Halal logo itself has become synonymous with trust, signifying compliance with legal norms and ethical standards oriented towards *maqāṣid*.[46]

However, several inconsistencies can also be identified. The commercialisation of Halal certification, reflected in high certification costs and bureaucratic complexity, is another issue for MSMEs, potentially

[42] N A Norman et al., "Exploring The Ethical Dimensions Of Fiqh: The Role Of The Soul In Achieving *Maqāṣid Al-Sharī'Ah*," *Justicia Islamica* 20, no. 1 (2021): 17–36, https://doi.org/10.24035/ijit.20.2021.205; N Nordin, N L M Noor, and Z Samicho, "Applying the Work Systems Method to Investigate the Operational Efficiency of the Halal Certification System," in *Innovation Vision 2020: Sustainable Growth, Entrepreneurship, and Economic Development - Proceedings of the 19th International Business Information Management Association Conference*, vol. 1, 2012, 482–94, https://www.scopus.com/inward/record.uri?eid=2-s2.0-84896385177&partnerID=40&md5=8b3c7a896d3be3e65e8f435d2067c5da.

[43] A Rachman and B Sangare, "Impact Of Implementation Of Halal Tourism In West Nusa Tenggara Province: Maqāṣid Al-Sharīa Perspective," *Justicia Islamica* 20, no. 1 (2023): 17–36, https://doi.org/10.21154/justicia.v20i1.5173.

[44] K Aibak, A Tajrid, and D Faizin, "Konstribusi Muhammad Aṭ-Ṭāhir Ibnu 'Āsyūr Terhadap Maqāṣid Asy-Syarī'ah," *El-Mashlahah* 31, no. 1 (2021): 79–98, https://doi.org/10.21154/justicia.v20i1.5756.

[45] Rahayu et al., "Challenges in the Halal Industry Ecosystem: Analyzing the Halal Certification Process for Micro, Small, and Medium Enterprises in Lombok, West Nusa Tenggara."

[46] Alanazi, Hidayat, and Alyusufi, "Fatwa, Marketing, and Halal Certification: A Socio-Legal Analysis of The Indonesian Ulama Council Fatwa Number 80 of 2022."

undermining the *maqāṣid* principles of justice (*al-ʻadl*) and public welfare. Furthermore, although the law requires comprehensive enforcement, an excessive emphasis on administrative compliance can neglect the community's participatory role in upholding Halal values, thereby risking the creation of a technocratic rather than spiritually based governance model.[47] These differences indicate that although Law No. 33 of 2014 concerning Halal Product Guarantee and Government Regulation No. 39 of 2021 have succeeded in institutionalising *maqāṣid* within the formal regulatory structure, they may fail to ensure inclusivity, accessibility, and justice dimensions that are central to *maqāṣid al-sharīʻah*.

Therefore, Indonesia's Halal Product Guarantee regulations simultaneously represent a convergence with *maqāṣid al-sharīʻah* in promoting religious protection, consumer safety, and economic growth, revealing differences where market logic and regulatory complexity risk obscure justice, inclusivity, and spiritual integrity.[48] Bridging this gap requires rethinking the halal governance model, such as through Participatory Halal Governance, to align the legal framework with the holistic objectives of Islamic law.

Several provisions in Law No. 33 of 2014 and Government Regulation No. 39 of 2021 need to be revised because they deviate from the objectives of *maqāṣid al-sharīʻah*. Article 4 of the Law and Articles 140–142 of the Government Regulation, which require halal certification, create procedural obstacles and high costs for MSMEs, contrary to *ḥifẓ al-māl* and the principle of *al-taysīr*. Articles 5–12 of the Law and Articles 2–6 of the Government Regulation, which place BPJPH as the sole authority, create a layered

[47] M S I Ishak and F Asni, "The Role of Maqasid Al-Shariʿah in Applying Fiqh Muamalat into Modern Islamic Banking in Malaysia," *Journal of Islamic Accounting and Business Research* 11, no. 9 (2020): 2137–54, https://doi.org/10.1108/JIABR-12-2019-0224; A Kasdi et al., "Fiqh Minority for Papuan Muslims in the Perspective of Maqasid Al-Shari`ah," *International Journal of Islamic Thought* 20 (2021): 1–12, https://doi.org/10.24035/ijit.20.2021.205.

[48] A Rafiki et al., "Sustainable Improvement of Food SMEs Through Halal Certification: A Meta-Analysis," in *Management for Professionals*, vol. Part F561, 2019, 139–53, https://doi.org/10.1063/5.0183887; N Noor, "A Closer Look at Halal Brand Image: Systematic Review and Future Directions," *Journal of Islamic Marketing*, 2025, https://doi.org/10.1108/JIMA-06-2024-0259.

bureaucracy with MUI, thereby undermining Sharia legitimacy and potentially disrupting *ḥifẓ al-dīn*. In addition, Articles 56–57 of the Law and Articles 149–151 of the Government Regulation regarding sanctions are too repressive and disproportionate, which is not consistent with the principle of *al-'adl*. Finally, Articles 44–45 of the Law and Articles 138–139 of the Government Regulation on financing do not provide adequate protection for small businesses, so that regulations intended to protect *ḥifẓ al-māl,* on the contrary, add to the economic burden on business actors.

Meanwhile, MUI Fatwa No. 4/2003 on Halal Products provides a normative basis closer to the *maqāṣid al-sharī'ah* than to formal state regulations. This fatwa emphasises the importance of ensuring the purity of ingredients, production processes, distribution, and product storage, with an orientation towards *ḥifẓ al-dīn* and *ḥifẓ al-nafs*. The principles contained therein are substantive, namely, to maintain overall halalness so that Muslims are free from consuming dubious or haram goods. However, when its position is reduced to merely a technical reference within the framework of Law No. 33 of 2014 and Government Regulation No. 39 of 2021, this fatwa loses its binding force and the sharia authority that was initially dominant. As a consequence, this issue has created a gap between state law, which emphasises administrative aspects, and the ulama's fatwa, which emphasises the moral-spiritual dimension. This gap is likely to weaken the authenticity of the halal assurance system in Indonesia.

**Halal Certification: Between Faith, Economics, and Epistemological Critique**

Halal certification is often understood as an administrative process that ensures a product meets Islamic standards. However, behind the formal form, there are complex dynamics involving motivations, values and strategies. This chapter builds a theoretical framework that combines four main approaches: *maqāṣid al-syarī'ah*, Islamic economic ethics, sociology of religion, and Islamic epistemological critique. This approach aims to bridge the two main poles of motivation behind halal certification: an expression of faith and economic strategy.

The first approach, *maqāṣid al-syarī'ah*, emphasises halal certification that does not merely serve as a formal label but instead safeguards the fundamental values of Sharia. Drawing on al-Shatibi's thought and Jasser Auda's

contemporary elaboration, halal is understood as an effort to protect *ḥifẓ al-dīn* (religion), *ḥifẓ al-nafs* (soul), and *ḥifẓ al-māl* (property). This means that halal is not just a matter of technical compliance; it reflects ethical principles that protect the spiritual and social integrity of the people. This framework expands the horizon of the meaning of halal as part of a value system that cannot be reduced to quality standards or industrial policies alone. Jasser Auda's approach to *maqāṣid al-sharī'ah* involves constructive criticism of traditional models and emphasises the need for contextual understanding.[49] His work highlights the importance of adapting Islamic principles to contemporary issues without compromising core values.

The second approach comes from Islamic economic ethics initiated by M. Umer Chapra and Monzer Kahf. In this framework, the economy is not a morally neutral arena, but must be run with justice, honesty and trustworthiness. Halal certification, in this perspective, serves as an instrument of social piety and moral responsibility of business actors, not just a marketing tool. This is a criticism of reducing halal to mere "market access" or a means to gain financial benefits. Thus, halal certification should be understood as part of moral integrity in business, not merely an administrative symbol. Umer Chapra's theory focuses on the ethical dimension of Islamic economics, emphasising justice, compassion and the welfare of society.[50] His work integrates ethical principles with economic practices to ensure consistency between the financial system and Islamic values.

These approaches complement each other, implying that halal certification cannot be understood partially. It contains values of faith, ethics, and economic interests, as well as a broader epistemological framework. Thus, halal certification is not restricted to a matter of procedure or regulation; it is about meaning, authority, and value transformation in contemporary Muslim society. This interdisciplinary understanding is needed to ensure that halal does not lose its substantive meaning amid the pragmatic, technocratic market flow.

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[49]M F Ni'ami, "Maqāṣid Al-Syarī'ah Dalam Tinjauan Pemikiran Ibnu 'Āsyūr Dan Jasser Auda," *Juris: Jurnal Ilmiah Syariah* 20, no. 1 (2021): 91–102, https://doi.org/10.31958/juris.v20i1.3257.

[50]N A Norman and M E Ruhullah, "Exploring The Ethical Dimensions Of Fiqh: The Role Of The Soul In Achieving *Maqāṣid Al-Sharī'Ah*," *Al-Shajarah* 29, no. 1 (2024): 47–77, https://www.scopus.com/inward/record.uri?eid=2-s2.0-85199269891&partnerID=40&md5=f2fb61b953cc6160816d4114baee56a0.

Source: Conceptual Analysis

The implementation of Law No. 33 of 2014 and Government Regulation No. 39 of 2021 is mandatory, but this places a real burden on MSMEs. For example, by mid-2024, among tens of millions of MSMEs in Indonesia, only around 44.4 million had successfully obtained halal certification, while the rest faced difficulties due to procedures, costs, and low halal literacy.[51] The mandatory self-declaration programme in Government Regulation 39 of 2021 offers a simple pathway. However, research in Banten shows that many MSMEs fail to take advantage of it due to a lack of socialisation and technical assistance. In addition, the dominance of BPJPH as the sole authority (Articles 5–12 of Law 33 of 2014) without effective coordination with MUI often causes overlapping authorities and confusion in implementation.[52]

Practical Policy Recommendations that can be given include 1) simplification of procedures and digitalisation, 2) subsidies and expansion of SEHATI, 3) improvement of literacy and technical assistance, and 4) harmonisation of BPJPH & MUI

First, to simplify procedures and digitalise, the development of the SIHALAL application and mobile platform needs to be expanded. The pilot project in Jember, which has successfully reduced the administrative burden on MSMEs, can be taken as an example.[53]

Second, regarding *Subsidies and Expansion of SEHATI,* the Free Halal Certificate (SEHATI) programme should be expanded to implement Articles 44–45 of Law Number 33 of 2014 on halal financing, thereby upholding the principle of *ḥifẓ al-māl*.[54]

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[51] Akmal Raden Rizki, "UMKM Belum Bersertifikat Halal 100%: Alur Yang Sulit? Biaya Yang Mahal? Atau Pengetahuan Yang Minim?," *Kompasiana.Com*, 2024, https://www.kompasiana.com/radenrizkiakmal3533/666815c9ed64154ff17c59c3/umkm-belum-bersertifikat-halal-100-alur-yang-sulit-biaya-yang-mahal-atau-pengetahuan-yang-minim.

[52] Jamaluddin Jamaluddin et al., "The Problems of Implementing Halal Certification through the Self-Declaration Program for MSMEs in Indonesia: A Case Study," *International Journal of Advances in Social and Economics* 4, no. 1 (2022): 30–36, https://doi.org/10.33122/ijase.v4i1.221.

[53] Muhimatul Umami, Shofwatun Nada, and Nur Lulu Anisa, "Implementation Halal Product Certification through Self-Declare Program for MSEs Products in Cirebon Regency," *Journal of Community Service and Empowerment* 4, no. 2 (2023): 300–307, https://doi.org/10.22219/jcse.v4i2.25058.

[54] BPJPH, "Affirming MSEs, MORA_ Tighten the Supervision on Self-Declare Halal Certification _ Badan Penyelenggara Jaminan Produk Halal" (Jakarta, 2023),

Third, improvements in literacy and technical assistance involving collaboration between BPJPH, MUI, local governments, and universities must be prioritised, especially for independent declarations, so that they are not merely procedural.[55]

Fourth, in terms of harmonisation of BPJPH & MUI, halal certification needs to maintain the substantial authority of MUI fatwas (the dimension of *ḥifẓ al-dīn*), while BPJPH focuses on administrative efficiency and transparent supervision, as a state apparatus carrying out its functions in accordance with the laws and regulations applicable in Indonesia.

**Cases of Halal Certification Violations and their Resolution**

Halal certification violations occur when halal-labelled products fail to comply with Islamic dietary laws. These violations can include the use of prohibited ingredients, improper slaughter methods, contamination with non-halal substances, and fraudulent certification practices. The following table shows some notable cases and their resolutions from various countries:

**Table 1.** Halal Certification Violations In Some States

| No | Country | Type of Violation | Resolution/ Response | Additional Notes |
|---|---|---|---|---|
| **1** | **Malaysia** | Non-compliance with halal standards | Revocation of the halal certificate by the authority | Although being a systematic halal management system, the religiosity of producers is not always directly |
| | | Use of unauthorised materials | Regular audits and strict regulations | |

https://bpjph.halal.go.id/en/detail/affirming-ms-es-mora-tighten-the-supervision-on-self-declare-halal-certification?; BPJH, "Halal Certification Obligation for SME Products Postponed, Minister of Religious Affairs: Government's Concern for SMEs," *Bpjph.Halal.Go.Id*, 2024, https://bpjph.halal.go.id/en/detail/halal-certification-obligation-for-sme-products-postponed-minister-of-religious-affairs-form-of-government-s-alignment-concern-for-sm-es.

[55] Jamaluddin et al., "The Problems of Implementing Halal Certification through the Self-Declaration Program for MSMEs in Indonesia: A Case Study."

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|---|---|---|---|---|
| | | | | proportional to compliance.[56] |
| **2** | **United States of America** | Fake halal certificate, Expired halal logo | Calling for the establishment of a unified national halal standard | Declining trust of Muslim consumers in certification bodies[57] |
| **3** | **European Union** | Weak law enforcement, conflicts between certification bodies and accreditation bodies | Demand for tightening regulations and increasing accreditation of certification bodies | Doubt among Muslim consumers about the authenticity of halal products due to weak regulatory authorities[58] |

Source: Data processed from secondary data (international articles)

Table 1 explains the lack of unified global halal standards (Multiplicity of Standards), leading to inconsistency and confusion among consumers. Different countries and regions have varying standards and logos, which complicate the certification process and undermine consumer confidence.[59] Effective halal certification requires a strong regulatory framework, regular audits and consumer awareness initiatives. Countries with well-organised

[56]S A Baharuddin et al., "The Moderating Effect of Religiosity on Halal Certification among Food Manufacturers in Malaysia," *International Journal of Supply Chain Management* 1, no. 3 (2021): 596–601, https://doi.org/10.53955/jhcls.v1i3.16.

[57]O A Al-Mahmood and A M Fraser, "Perceived Challenges in Implementing Halal Standards by Halal Certifying Bodies in the United States," *PLoS ONE* 18, no. 8 August (2023), https://doi.org/10.1371/journal.pone.0290774.

[58]A Abdallah, "Has the Lack of a Unified Halal Standard Led to a Rise in Organised Crime in the Halal Certification Sector?," *Forensic Sciences* 1, no. 3 (2021): 181–93, https://doi.org/10.3390/forensicsci1030016.

[59]O A Al-Mahmood et al., "Halal Certification and International Halal Standards," in *PLoS ONE*, vol. 18, 2020, 227–51, https://doi.org/10.1371/journal.pone.0290774.

systems, such as Malaysia, tend to have fewer problems with non-compliance and fraud.[60]

Thus, the need for a universal halal standard-setting can help reduce the problems associated with varying standards and fraudulent practices. It will ensure that all halal products meet global minimum requirements.[61] This will strengthen global halal certification governance by implementing better regulatory frameworks, conducting regular audits, and enforcing standards rigorously.[62] Implementing the concept will increase consumer awareness of halal certification and the importance of assisting in identifying and reporting non-compliant products, thereby reducing fraud.[63] Essentially, while halal certification violations are a global problem, effective governance, unified standards, and consumer awareness are paramount in solving this challenge and ensuring the integrity of halal products.

Halal certification violations occur not only at the global level but also in Indonesia. International cases in Malaysia, the United States, and the European Union have revealed the use of fake certificates, the presence of non-halal ingredients, and weak supervisory authorities. The pattern is consistent with several findings in Indonesia, such as the discovery of imported products with halal logos that are not recognised by BPJPH or the use of unofficial halal labels in the domestic market. This shows that the issues of "diversity of standards" and weak inter-agency coordination are global problems that are also common domestically. In the Indonesian context, Law No. 33 of 2014 and Government Regulation No. 39 of 2021 regulate halal governance more systematically through certification requirements and the confirmation of BPJPH's authority. However, the implementation still faces obstacles in terms of costs, bureaucracy, and the limited number of halal auditors, rendering the effectiveness of Muslim consumer protection suboptimal.

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[60]M A Latif et al., "The Problems of Halal Certification Regarding Consumer Protection in Malaysia and Indonesia," in *Halal and Kosher Food: Integration of Quality and Safety for Global Market Trends*, vol. 1, 2021, 205–26, https://doi.org/10.53955/jhcls.v1i3.16.

[61]Al-Mahmood and Fraser, "Perceived Challenges in Implementing Halal Standards by Halal Certifying Bodies in the United States."

[62]R Sofiana et al., "Has the Lack of a Unified Halal Standard Led to a Rise in Organised Crime in the Halal Certification Sector?," *Forensic Sciences* 1, no. 3 (2021): 180–93, https://doi.org/10.53955/jhcls.v1i3.16.

[63]O A Osman, "Fraud on Halal Food: Principles, Quality Challenges, and Safety Concerns," in *Halal and Kosher Food: Integration of Quality and Safety for Global Market Trends*, 2023, 131–44, https://doi.org/10.1007/978-3-031-41459-6_11.

The international legal framework can strengthen Indonesia's argument in regulating the halal certification system. The WTO–TBT Agreement requires that technical regulations, including halal labelling, not trigger unnecessary trade barriers, but without overlooking the "public morality" exception that Indonesia can use to defend mandatory halal certification as part of protecting religious values.[64] In addition, international halal standards published by the OIC/SMIIC (e.g., OIC/SMIIC 1–3 and 17–18) provide a framework for uniformity that can be adopted in Indonesian regulations to strengthen international legitimacy.[65] At the regional level, ASEAN is developing a Single ASEAN Halal Standard, which, if integrated with Law No. 33 of 2014 and Government Regulation No. 39 of 2021, will reinforce the competitiveness of Indonesian products in the regional market.[66] The principles in the SPS Agreement and the Codex Alimentarius guidelines also provide a basis for halal food safety regulations, enabling Indonesia to link halal aspects with international food safety standards.[67]

Based on this framework, Indonesia can take several strategic steps. First, Indonesia can integrate SMIIC standards into the SNI and the BPJPH system to ensure that the country's halal products are more readily accepted in the global market. Second, Indonesia can strengthen its diplomacy at the WTO by affirming mandatory halal certification as a legally valid public moral policy under international law. Third, expanding mutual recognition agreements (MRAs) with halal-exporting countries, in accordance with Government Regulation 39 of 2021, can also be considered to facilitate trade flows while maintaining legal certainty. Fourth, increasing domestic supervision by combining the authority of BPJPH and MUI fatwas is also essential to ensuring harmonious administrative and Sharia aspects. With this combination of national and international approaches, Indonesia's halal system can become more credible, efficient, and consistent with *maqāṣid al-*

[64] Legal Affairs Division, World Trade Organization, "Agreement on Technical Barriers to Trade," *WTO Analytical Index*, 2017, https://doi.org/10.1017/cbo9781139177955.008.

[65] The Standards and Metrology Institute for Islamic Countries, "SMIIC - Announcement," 2025, https://www.smiic.org/en/content/573.

[66] Humas BSN, "BSN - Badan Standardisasi Nasional - National Standardization Agency of Indonesia - Setting the Standard in Indonesia ISO SNI WTO," 2023, http://bsn.go.id/main/bsn/isi_bsn/5.

[67] Rüdiger Wolfrum, Peter-Tobias Stoll, and Anja Seibert-Fohr, "Agreement on the Application of Sanitary and Phytosanitary Measures," *WTO - Technical Barriers and SPS Measures*, 2009, https://doi.org/10.1163/ej.9789004145641.i-565.41.

*sharīʿah* in protecting *ḥifẓ al-dīn* (religion), *ḥifẓ al-māl* (property), and consumer safety.

**Problems of Halal Certification in Indonesia (2020-2025): A Critical Study of Cases, Types, and Implications**

Following the enactment of Law No. 33 of 2014 concerning Halal Product Guarantee, every product that enters, circulates, and is traded in Indonesia must be halal-certified, unless it is declared not mandatory. Halal certification is carried out through a process involving business actors, Halal Examining Institutions (LPH), the Indonesian Ulama Council (MUI)[68] , and the Halal Product Guarantee Organising Agency (BPJPH). The BPJPH is tasked with regulating the registration, examination, determination, and supervision of halal products.[69] This law requires the use of raw materials and production processes that comply with halal standards. Business actors who violate are subject to administrative sanctions, up to and including certificate revocation. In addition to guaranteeing the rights of Muslim consumers, this law also strengthens the national halal information disclosure and supervision system and supports Indonesia's strategic position in the global halal industry. Indonesia is entering a new phase in the national halal product assurance system. [70]

A significant milestone occurred on October 17, 2024, marking the comprehensive implementation of the halal certification obligation for food

[68] The fatwas of the Indonesian Ulema Council (MUI) which are the basis for halal certification cover various important aspects related to product halalness. MUI Fatwas No. 1 of 2003 and No. 2 of 2003 establish the basic standards and principles of halal certification, including materials, processes, and responsibilities of business actors. Fatwa No. 4 of 2003 specifically regulates the procedures for slaughtering animals according to Islamic law, while Fatwa No. 12 of 2009 clarifies halal standards for food and beverages, including additives and cleanliness of production equipment. In addition, Fatwa No. 17 of 2003 provides guidance on genetically modified products (GMOs) and their halal status. All of these fatwas serve as normative references in ensuring the integrity of halal products certified in Indonesia.

[69]BPJPH Kementerian Agama RI, *Perkembangan Sertifikasi Halal Dan Peran Fatwa MUI Dalam Proses Penetapan Kehalalan.* (Jakarta: Kementerian Agama RI, 2020).

[70]Saeful Amin, "Perlindungan Hukum Bagi Konsumen Muslim Terhadap Produk Pangan Yang Tidak Bersertifikat Halal Menurut Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal" (Universitas Islam Sultan Agung Semarang, 2022).

and beverage products.[71] This implementation cannot be separated from the various dynamics and problems that have emerged during the 2020-2025 period, including technical, regulatory, and ethical issues. These issues raise profound questions about the credibility and substance of halal certification in a religious and consumptive society.

One of the most prominent cases is the use of controversial product names that still pass halal certification. In 2024, at least 151 products were found with names such as "tuak," "beer," and "wine," even though their content does not contain haram elements. This violates MUI Fatwa No. 44 of 2020, which prohibits the use of names or symbols that could mislead consumers' perception of a product's halal status.[72] Similarly, in 2023, products named "Mie Setan," "Mie Hell," and "Seblak Jahanam" were labelled halal, triggering public criticism for contradicting the religious ethics behind halal labelling.[73]

Another case, allegations of illegal levies (extortion) in the processing of halal certificates, which is no less serious, concerns the integrity of the administrative process. A national culinary business owner in 2025 claimed that certain individuals had asked for billions of rupiah to expedite the halal certification process. This statement elicited a strong public response, triggering a polemic between the Halal Product Guarantee Agency (BPJPH) and the Halal Examining Agency (LPH), with each agency shifting responsibility to the other.[74] This case raises questions about poor internal supervision and transparency in the halal certification bureaucracy.

Concerns were also raised when some halal-labelled products were found to contain elements prohibited by Sharia. In April 2025, the Executive Board of Nahdlatul Ulama (PBNU) expressed concern about the discovery of halal food suspected of containing pork. The Chairman of PBNU, Yahya Cholil Staquf, demanded a thorough evaluation of the certification mechanism to avoid harassment of the meaning of halal itself.[75] Meanwhile, on a technical level, many products fail to obtain halal certification due to the use of uncertified animal-derived ingredients and cross-contamination during production. For example, the case of PT Sari Rasa, which used glycerine from

[71]Alfida Miftah Farhana, "'Kewenangan BPJPH Dan MUI Dalam Sertifikasi Halal Berdasarkan Undang-Undang Nomor 33 Tahun 2014 (UU-JPH)'." (Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2019).

[72]BPJPH-MUI, "Masalah Nama Produk Bersertifikat Halal" (Kemenag.go.id, 2024).

[73]A. Maharani, "Makanan Nama Setan Lolos Sertifikasi Halal" (Hidayatullah.com, 2023).

[74]MUI, "Klaim Pungli Sertifikasi Halal" (mui.or.id, 2025).

[75]PBNU, "Produk Halal Mengandung Babi" (Detik.com, 2025).

cowhide tannery waste, led to a massive withdrawal of its products from the market.[76]

On the other hand, the tension between national and international halal standards has also been highlighted. In 2023, BPJPH withdrew 12 US supplement brands worth IDR 120 billion from circulation for containing carmine (E120), a red dye derived from insects. Although the products had halal certificates issued in their country of origin, BPJPH still rejected them on grounds of non-conformity with Indonesian standards.[77] This incident illustrates the importance of national halal sovereignty and the need for global harmonisation in determining halal standards.

No less important, criticism came from academics, such as Kaswar Syamsul (IPB), who highlighted the weak supervision of the halal assurance system after the Omnibus Law. The elimination of the validity period for halal certificates is expected to relax oversight of the post-certification production process, as external audits will no longer be required periodically. He believes that it increases the risk of circulating halal products that no longer meet Sharia criteria on an ongoing basis.[78]

Indonesia faces issues in its halal certification governance. Although the Omnibus Law 2020 aims to improve the certification process, the constitutionality of the law is suspended, leading to uncertainty in governance.[79] This impacts the effectiveness of halal certification in the country. Despite these problems, businesses like Zulaikha's in North Sumatra have benefited significantly from halal certification, which has increased consumer confidence and sales. However, obtaining and maintaining certification remains challenging for many business owners.[80]

Law No. 33 of 2014 concerning Halal Product Guarantee (JPH Law) stipulates that every product that enters, circulates, and is traded in Indonesia must be halal-certified (Article 4), except those declared not mandatory. This obligation is reinforced by Government Regulation No. 39 of 2021, which confirms the roles of the BPJPH, MUI, and LPH in the certification process. However, since October 17, 2024, full implementation has revealed various

[76]A Sudrajat, "Produk Gagal Sertifikasi Halal" (Kompasiana.com, 2024).

[77]Sudrajat.

[78]K. Syamsu, "Kritik Sistem Sertifikasi Halal" (Detik.com, 2025).

[79]R Sofiana, S Utama, and A Rohim, "The Problems of Halal Certification Regarding Consumer Protection in Malaysia and Indonesia," *Journal of Human Rights, Culture and Legal System* 1, no. 3 (2021): 180–93, https://doi.org/10.53955/jhcls.v1i3.16.

[80]Rafiki, "Impact, Perception and Challenges Due to Halal Certification: The Case of Zulaikha Shop."

structural problems. Products with names such as "beer," "tuak," or "Mie Setan" were granted halal certificates, clearly contradicting MUI Fatwa No. 4/2003 on Halal Product Standards and MUI Fatwa No. 44/2020, which prohibits names and symbols that mislead consumer perception. This indicates the weak implementation of Article 25 of the JPH Law concerning the clarity of ingredients and processes, as product naming is not considered part of halal consumer protection.

Allegations of illegal fees in halal certification in 2025 indicate a deviation from the transparency principle mandated by Article 41 of the JPH Law, which requires information disclosure in public services. The unclear division of authority between BPJPH and LPH in this case also raises questions about the implementation of Articles 5–12 of the JPH Law, which places BPJPH as the sole authority but still heavily relies on MUI fatwas. Similarly, the discovery of halal products containing pork reveals weaknesses in post-certification supervision, especially after the Omnibus Law removed the requirement for halal certificates to have a validity period, thereby contradicting the spirit of *ḥifẓ al-dīn* and *ḥifẓ al-māl* in *maqāṣid al-sharī'ah*.

The tension between international and national halal standards, as seen in the withdrawal of 12 imported supplement brands that use carmine (E120), underscores the firmness of Article 33 of the JPH Law, which designates Indonesian halal standards as the primary reference. However, this step by BPJPH also raises questions about global harmonisation, given that these products have been granted halal certificates from their countries of origin. This situation emphasises the need to strengthen the mutual recognition agreement (MRA) mechanism as stipulated in Article 48 of the JPH Law to ensure that national halal sovereignty is maintained without hindering international trade.

Thus, cases from 2020 to 2025 reveal a gap between the legal norms in the JPH Law and MUI fatwas, and their implementation in practice. The regulations have provided a sufficient basis, but weak consistency, transparency, and oversight mechanisms have prevented the goals of halal certification, as protection for Muslim consumers and strengthening the national halal industry from being fully achieved. Reform is needed, both through revisions to derivative regulations to allow for more explicit regulation of product names, strengthening post-certification audit mechanisms, and supervising the bureaucracy to ensure compliance with the principles of justice and legal certainty.

**Analysis of Halal Certification Cases Based on Maqāṣid al-Sharī'ah and Islamic Economic Ethics**

Cases in the halal certification process in Indonesia and in other countries, such as Malaysia, America, and the European Union, indicate a disorientation between the normative objectives of halalness and its implementation in bureaucratic and market practices. To understand and critique this problem in depth, *maqāṣid al-syarī'ah* and Islamic economic ethics can be used. The *maqāṣid al-syarī'ah* approach, which preserves the spirit of Sharia in certification, classically formulated by al-Shāṭibī and reformulated by Jasser Auda, contextually places halal certification not only as an administrative procedure, but also as an instrument to maintain the basic values of Sharia *ḥifẓ al-dīn* (religion), *ḥifẓ al-nafs* (soul), and *ḥifẓ al-māl* (property).[81] In this context, some cases, such as halal labelling of products with names like "halal tuak" or "hell noodles", have symbolically undermined the value of *ḥifẓ al-dīn*[82] because they create ambiguity about the sanctity of Islamic symbols.[83] If halal becomes merely 'branding' without considering its spiritual value, then the essence of *maqāṣid* becomes eroded. Other cases, such as the discovery of halal products containing haram elements, such as alleged pork in halal-certified food,[84] represent a direct violation of the principles of *ḥifẓ al-nafs*[85] and *ḥifẓ al-dīn*.[86] This is where Jasser Auda's approach is essential; it asserts that *maqāṣid* must be read contextually, not rigidly. Auda proposes

[81]Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law (Bosnian Langauge): A Systems Approach* (International Institute of Islamic Thought (IIIT), 2017).

[82] *ḥifẓ al-dīn* (protecting religion) within the framework of *maqāṣid al-sharī'ah,* according to Jasser Auda, is not only narrowly interpreted as formal ritual obligations such as prayer or fasting, but also as protection of religious freedom, correct understanding of faith, and individual rights to live in accordance with Islamic values as a whole. Thus, the halal certification process and system is not just an administrative or technical mechanism; it is a collective effort to protect Muslims, thereby allowing them to practice their religion appropriately and fully.

[83]BPJPH-MUI, "Masalah Nama Produk Bersertifikat Halal."

[84]PBNU, "Produk Halal Mengandung Babi."

[85] Auda interprets ḥifẓ al-nafs not only as the physical protection of life, but includes broader dimensions, including aspects of human dignity, personal security, mental and physical health, and freedom from oppression or structural violence.

[86]Jasser Auda, *Maqāşid Syarī'ah Sebagai Filsafat Hukum Islam: Pendekatan Sistem, Dalam M.Arfan Mu'ammar Dan Abdul Wahid Hasan, Dkk. Studi Islam Perspektif Orang Dalam/Orang Luar* (Yogyakarta: IRCiSoD, 2012).

that *maqāṣid* is not only a legal goal, but also a living principle of social and moral development. So, if the halal certification system fails to maintain public trust and protect consumers from haram goods, it needs to be evaluated at its epistemological roots.

In Islamic Economic Ethics, halal certification serves as an instrument of social piety. In the framework of Islamic economic ethics initiated by M. Umer Chapra and Monzer Kahf, economics carries considerable values and cannot be separated from Islamic moral principles, such as justice, honesty, and trustworthiness.[87] The case of illegal levies in the process of accelerating halal certification[88] directly contradicts the principles of trust and justice. This practice shows that when the halal mechanism is exercised without ethical commitment, it becomes an instrument of commodification and moral corruption.

Furthermore, the reduction of the meaning of halal to mere "market access" is evident in the number of products that pursue the halal label as a means of market penetration, without reflecting social responsibility. In Chapra's perspective, economic activity should be directed towards realising social welfare and the distribution of justice.[89] Thus, the misuse of the halal label for commercial gain is a form of betrayal of the spirit of the Islamic economic system itself. In this context, halal certification that is processed without ethics carries no value, since it only touches the surface layer of legal-formal compliance, without extending to the depth of spiritual and social responsibility. So, there needs to be integration between the national halal system and the development of business actors' moral values. This is an effort to ensure that the halal label is not merely "legal" but also "ethical".

[87]M. Umer Chapra, "Is It Necessary to Have Islamic Economics?," *Journal of Socio-Economics* 29, no. 1 (2000): 21–37, https://doi.org/10.1016/S1053-5357(00)00051-2.

[88]MUI, "Klaim Pungli Sertifikasi Halal."

[89]Muhammad Umer Chapra, "The Islamic Vision of Development in the Light of Maqāsid Al-Sharī 'Ah," *Islamic Research and Training Institute Islamic Development Bank Jeddah, DOI* 10 (2008).

**Table 2.** Case Analysis Matrix: Linking Violations, *Maqāṣid*, Ethics, and Regulatory Gaps

| No | Case/ Violation | ***Maqāṣid al-Sharī'ah*** **Violated** | **Islamic Economic Ethics Violated** | **Regulatory/ Fatwa Gap** |
|---|---|---|---|---|
| 1 | Misleading product names (*"halal tuak"*, *"bell noodles"*) | *ḥifẓ al-dīn* (protection of faith) | Truthfulness, respect for symbols | Weak enforcement of the MUI fatwa on ethical labelling |
| 2 | Halal-certified products later found with pork/DNA content | *ḥifẓ al-dīn, ḥifẓ al-nafs* (protection of faith and life) | Consumer trust, honesty | Insufficient monitoring and lab testing mechanisms |
| 3 | Illegal levies in the certification process | *ḥifẓ al-māl* (protection of wealth) | Justice, trustworthiness | Weak oversight and accountability in the certification bureaucracy |
| 4 | Commodification of halal solely for market access | *ḥifẓ al-dīn, ḥifẓ al-māl* | Social justice, sincerity | Lack of integration of ethical standards into halal regulations |

Source: Data processed from secondary data (Media and articles)

Table 2 explains that both *maqāṣid al-sharī'ah* and Islamic economic ethics reject halal certification as a mere administrative formality or marketing tool. This matrix shows how violations in practice simultaneously undermine the spiritual objectives of Sharia, weaken moral and economic principles, and create loopholes in national regulations and in fatwa enforcement. Therefore, systemic reform is needed, which includes strengthening monitoring agencies (BPJPH and LPPOM-MUI), integrating ethics education for business actors, and harmonising Indonesian halal regulations with international standards (e.g., OIC/SMIIC guidelines) to maintain integrity and restore public trust.

**Implication of the Duality of Halal Certification Function**

In recent decades, the halal industry has experienced rapid growth, becoming a multi-billion-dollar sector of the global economy. Behind this expansion, crucial questions arise regarding the proper function of halal certification: is it an authentic manifestation of faith or simply an economic ploy wrapped in religious imagery? This duality of function shows the tension between the spiritual idealism promoted by Sharia and the pragmatic reality dictated by the market. Halal certification, which was initially intended as a guarantee of purity and compliance with Islamic law, now faces serious challenges in maintaining its integrity amid the commodification of religion. The fundamental question also arises: Is halal certification still an instrument for protecting Islamic values, or has it shifted to become just a marketing tool? First, implementation of faith (spiritual imperative), based on the *maqāṣid al-syari'ah* approach, halal certification should be a form of implementation of faith to protect *ḥifẓ al-dīn* (religion), *ḥifẓ al-nafs* (soul), and *ḥifẓ al-māl* (property). The halal label is not just a symbol; it is part of the process of spiritualising consumption. The halal status of a product should reflect adherence to ethical principles, not merely administrative legal compliance. If this is seriously implemented, the halal industry will become a place for the realisation of Islamic values in daily practice.

Second, economic instrumentalization**,** the ethical approach of Islamic economics reminds us that without ethical awareness, halal can turn into a manipulative means of achieving commercial gains, disguised as a religious image. Many findings show that halal certification is used as a branding strategy, with a tendency to place halal standards as a marketing tool, not a religious mission. This phenomenon occurs because market logic is not congruent with the ethical and moral awareness of business actors and regulators. So that Halal certification is in "Between Spirituality and Commodification" which shows the reality that the two do not negate each other, but the problem lies in the dominance of economic motives without strengthening spiritual ethics. Halal certification, which should protect Muslim consumers from *shubhat* products, can be misleading when its process overlooks integrity.

**Participatory Halal Governance: Epistemological Basis and Operational Framework for Halal Certification**

Participatory Halal Theory was developed in response to the tendency toward commercialisation in the halal industry, which reduces halal to a mere formal label. Its theoretical basis departs from Islamic epistemology, as

developed by Syed Muhammad Naquib al-Attas and Ismail Raji al-Faruqi, asserting that science and policy in Islam cannot be separated from the goals of *ta'dīb* (moral formation) and *tawḥīd* (unity of values). Therefore, the halalness of a product is not just a legal status, but part of a value system that must reflect the manners, morals, and spiritual integrity of Muslims.[90]

First, contextual maqāṣid al-Sharī'ah as a critical approach. This theoretical dimension is drawn from Jasser Auda's thoughts on *maqāṣid al-syarī'ah,* grounded in systems theory. Auda criticises traditional approaches that are too textual and unresponsive to the changing times. He proposes *maqāṣid* as a dynamic framework that allows for public involvement, openness of process, and *maslahah*-based decision-making. In the context of halal status, this approach positions people as active subjects in the monitoring and verification of halal status, rather than merely as objects of the certification authority.[91]

Second, Islamic economic ethics as the moral dimension of halal. The theory strengthens its moral dimension by drawing on the views of M. Umer Chapra and Monzer Kahf on Islamic economic ethics. Chapra states that Islamic economics cannot be morally neutral; it must promote social welfare, justice and compassion. In the context of halal certification, these values demand honesty, transparency and social responsibility from business actors and authoritative institutions. Halal certification should not be misused as a political commodity or a tool of religious capitalisation.[92]

Third, inspiration from Islamic models of social participation. Some of the inspiration for this theory is also drawn from participatory practices in social waqf management and community-based Islamic auditing. In some countries, such as Malaysia and Turkey, public involvement in the supervision of social funds is an essential model for realising distributional justice in the Islamic financial system. A similar concept can be adapted in the halal system

[90]Syed M. Naquib al-Attas, *Islam and Secularism* (Kuala Lumpur: ISTAC, 1993); Isma'il R Al-Faruqi, *Islamization of Knowledge: General Principles and Work Plan* (International Institute of Islamic Thought, 1987).

[91]Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law (Bosnian Langauge): A Systems Approach*.

[92]Chapra, "The Islamic Vision of Development in the Light of Maqāsid Al-Sharī 'Ah"; Kahf, "Innovation and Risk Management in Islamic Finance: Shari'ah Considerations."

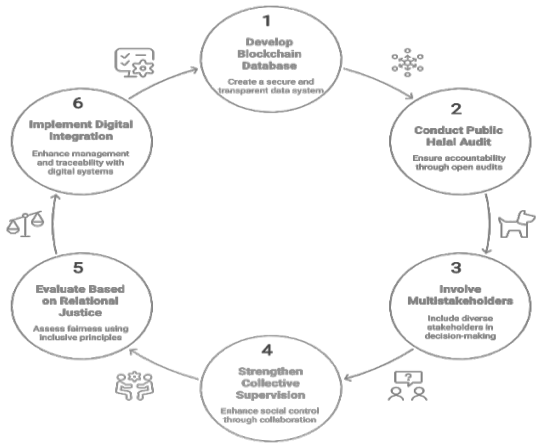
to encourage people's involvement in product supervision and open distribution of halal information.[93]

Fourth, the participatory halal framework is based on the theory of participatory governance in public administration. In this approach, policy processes that concern the lives of the wider community require the active involvement of stakeholders, including civil society, consumers and producers. Fung and Wright refer to this approach as "empowered participatory governance", in which policy legitimacy is achieved through community involvement in decision-making.[94]The Participatory Halal Framework, based on "empowered participatory governance", presupposes that religious authorities and state institutions are entitled to determine halal standards and must allow for deliberation that involves the community. In this context, consumers act as guardians of product moral integrity, producers as technical implementers of halal standards, and civil society as independent supervisors of the transparency and accountability of the certification process. By involving various actors equally, the halal certification process can serve as an administrative procedure, functioning as a public ethics forum that reflects the principles of distributive justice and protection of *ḥifẓ al-nafs*, as highlighted in the framework of contemporary *maqāṣid al-shari'ah*.

[93]Fares Djafri, Mohamad Akram Laldin, and Abdelkader Laallam, "The Global Perspective of Islamic Finance and the Potential for China to Tap into the Islamic Finance Market," *Journal of Islamic Business and Management (JIBM)* 11, no. 01 (2021): 14–28, https://doi.org/10.26501/jibm/2021.1101-002.

[94]Chris Ansell et al., "Deepening Democracy: Innovations in Empowered Participatory

**Figure 1.** Halal Certification Integrity Cycle




Source: Napkin AI data processing

Based on the above fundamentals, the following is the operational framework of the Participatory Halal Theory. First, in terms of openness and transparency, developing a blockchain-based "Halal Open Database" system is essential to recording the entire certification process, from raw materials to distribution. Second, the public halal audit obligation is carried out annually by an independent institution, with the results published and publicly accessible. Third, Multistakeholder engagement consists of 1) the establishment of a "Community Halal Council at the local level, comprising representatives of consumers, businesses, scholars, and experts in *fiqh mu'āmalah*; and 2) regular deliberation forums involving BPJPH, MUI, and consumer associations to discuss ethical issues and conflicts of interest in certification. Fourth, Collective supervision (Ummah-Based Verification) consists of 1) granting "complaint-based verification" rights to the public to report doubts about the halal status of a product; and 2) community education through halal literacy curriculum in schools and *pesantren* (Islamic boarding schools). Fifth, Assessment Based on Relational Justice includes 1) certification audits that cover aspects of fairness in business relations, such as labour wages, environmental sustainability, and anti-monopoly; and 2) Halal Etic Plus scheme as an advanced certification standard for businesses that fulfil the social-spiritual dimension. Sixth, the Digital integration and accountability system involves 1) a digital application with a QR code on each

halal certification report is presented to the public and can be independently audited by a public body.

**Integrating Participatory Halal Governance into Indonesia's Legal Framework**

Incorporating Participatory Halal Governance into Law No. 33 of 2014 concerning Halal Product Guarantee involves strengthening the principles and expanding the scope of public participation. Article 4 of the JPH Law emphasises the principles of legal certainty, accountability, and transparency, without explicitly mentioning public involvement. In this context, the Participatory Halal Governance can be incorporated by expanding the principles to also include openness and public participation. Additionally, Article 60 of the JPH Law actually opens up opportunities for public involvement in the implementation of JPH, but so far, its implementation has been limited to socialisation. With the Participatory Halal Governance approach, this article can be expanded to include collective supervision, public halal audits, and complaint-based verification. Meanwhile, Article 14 concerning the Halal Inspection Agency (LPH) can be enriched by placing the Community Halal Council as a partner of the LPH, thereby ensuring that supervision is not only formal and bureaucratic but also community-based.

At the operational level, Government Regulation No. 39 of 2021 concerning the Implementation of JPH is a strategic instrument for integrating Participatory Halal Governance principles. Articles 3–6, which regulate the functions of BPJPH, can be expanded with the obligation to manage a blockchain-based Halal Open Database so that the public can trace the entire certification process. Furthermore, Articles 59–61 concerning the supervision mechanism can be strengthened by requiring annual public halal audits conducted by independent institutions, with the results published openly. Articles 140–142 concerning certification can also be enhanced with a mechanism for verifying public complaints, so that reports of alleged halal violations can serve as a basis for evaluating or revoking certificates. Thus, Government Regulation No. 39 of 2021 can function as a normative umbrella to operationalise Participatory Halal Governance principles in concrete terms.

Meanwhile, at the technical level, the BPJPH Regulation offers the most flexible opportunity for adopting Participatory Halal Governance in detail. For example, regulations on Halal Certification Procedures can be expanded to require the involvement of civil society representatives in overseeing the certification process. The JPH Information System (SIHALAL) can also be developed into a Halal Open Database, enabling the public to trace raw

materials, production processes, and halal product audit results in real time. In addition, BPJPH can issue a certification scheme called Halal Etic Plus, a halal certification with advanced standards that cover labour justice, environmental sustainability, and anti-monopoly. Strengthening at the technical regulation level can help implement the Participatory Halal Governance principle without waiting for a revision of the law.

Through this approach, Participatory Halal Governance does not require the formulation of new laws; instead, it can be integrated by expanding the principles, strengthening the articles on participation, and clarifying the existing public oversight mechanisms in the JPH Law. The principle of *lex specialis derogat lex generalis* provides space for government regulations and BPJPH Regulations to become a means of operating the values of participation, transparency, and accountability at the core of *maqāṣid al-sharī'ah*. Thus, Participatory Halal Governance can be ensured to be legally feasible and relevant in responding to the problems of commercialisation and bureaucratisation of halal certification in Indonesia.

The Participatory Halal Theory is not merely a matter of technical governance in halal certification, but rather a normative and practical approach to ensure that the certification process truly upholds the principles of *maqāṣid al-sharī'ah*. By placing *ḥifẓ al-dīn* (protection of religion), *ḥifẓ al-nafs* (protection of life/consumer health), and *ḥifẓ al-māl* (protection of property/community economy) as its main foundations, Participatory Halal Governance goes beyond mere legal formalities and bureaucracy.

By integrating Islamic epistemology, contextual *maqāṣid*, Islamic economic ethics, and community participation, Participatory Halal Governance offers a new direction that is more just, accountable, and in line with holistic Islamic principles. Thus, not only does this theory serve as a governance mechanism, but it also guarantees value and substance, ensuring that halal certification is not reduced to merely an administrative or market branding instrument. Such certification must safeguard the welfare of the ummah.

## Conclusion

The interplay between spirituality and economics in halal certification reveals that it cannot merely be viewed as a tension between worship and the market. Rather, halal certification serves as a dual instrument-preserving *ḥifẓ al-dīn* as a manifestation of faith while simultaneously operating within global economic mechanisms. The key challenge lies in maintaining the sanctity of its religious purpose amid growing commercialisation, which risks eroding public trust and undermining the legitimacy of halal authorities. In the Indonesian context, this dynamic underscores the urgency of reforming halal governance to restore credibility and align institutional practices with both market demands and the ethical-spiritual principles of *maqāṣid al-shari'ah*.

To achieve an effective balance between spiritual integrity and economic efficiency, halal governance reform in Indonesia should prioritise participatory legal and institutional mechanisms. The implementation of the Participatory Halal Governance model can begin by revising core provisions of the JPH Law establishing an independent community-based supervisory body (Article 12), broadening the fatwa deliberation process to include multiple stakeholders (Article 32), and ensuring transparency through digital public reporting obligations (Article 48). Furthermore, Government Regulation No. 39 of 2021 should be refined to require annual participatory audits and the use of advanced technologies such as blockchain and QR codes for product traceability. These measures will enhance transparency, accountability, and public trust, enabling Indonesia's halal industry to thrive as both a spiritually grounded and globally competitive sector.

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# CONSUMER PROTECTION IN DIGITAL MARKETS: A Comparative Legal Analysis of E-Commerce Regulation in the United Arab Emirates and Indonesia

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***Abstract***

*This study examines how the United Arab Emirates (UAE) and Indonesia regulate consumer protection within the expanding e-commerce environment, addressing the central question of how each jurisdiction safeguards consumer rights in a digital marketplace characterized by increasing online transactions and rising risks of fraud. Positioned within a comparative legal framework, the research evaluates the extent to which both countries' regulations respond to modern digital-economy challenges. Using a normative and comparative approach, the paper analyses key statutory instruments, including the UAE's Federal Law No. 15 of 2020 and Decree-Law No. 14 of 2023, alongside Indonesia's Consumer Protection Law No. 8 of 1999, the ITE Law (2008), and Trade Law No. 7 of 2014. The analysis focuses on product information transparency, complaint mechanisms, personal data protection, and the regulation of cross-border electronic transactions. The findings show that the UAE provides stronger institutional safeguards, clearer digital-era obligations for suppliers, and a more effective enforcement structure. Indonesia, meanwhile, faces fragmented regulations and*

*weaker supervisory mechanisms. The study concludes that Indonesia may strengthen its framework by adopting elements of the UAE model while adapting them to national principles such as Pancasila, thereby enhancing consumer trust and supporting sustainable digital economic growth.*

*Studi ini mengkaji bagaimana Uni Emirat Arab (UEA) dan Indonesia mengatur perlindungan konsumen dalam lingkungan e-commerce yang terus berkembang, dengan fokus pada pertanyaan utama mengenai bagaimana masing-masing yurisdiksi melindungi hak konsumen di pasar digital yang ditandai oleh peningkatan transaksi online dan risiko penipuan yang semakin tinggi. Dalam kerangka hukum komparatif, penelitian ini mengevaluasi sejauh mana regulasi kedua negara merespons tantangan ekonomi digital modern. Menggunakan pendekatan normatif dan komparatif, makalah ini menganalisis instrumen hukum utama, termasuk Undang-Undang Federal UEA No. 15 Tahun 2020 dan Peraturan Pemerintah No. 14 Tahun 2023, serta Undang-Undang Perlindungan Konsumen Indonesia No. 8 Tahun 1999, Undang-Undang ITE (2008), dan Undang-Undang Perdagangan No. 7 Tahun 2014. Analisis ini berfokus pada transparansi informasi produk, mekanisme pengaduan, perlindungan data pribadi, dan regulasi transaksi elektronik lintas batas. Temuan menunjukkan bahwa UEA menyediakan jaminan institusional yang lebih kuat, kewajiban yang lebih jelas bagi penyedia layanan di era digital, dan struktur penegakan hukum yang lebih efektif. Indonesia, di sisi lain, menghadapi regulasi yang terfragmentasi dan mekanisme pengawasan yang lebih lemah. Studi ini menyimpulkan bahwa Indonesia dapat memperkuat kerangka kerjanya dengan mengadopsi unsur-unsur model UAE sambil menyesuaikannya dengan prinsip-prinsip nasional seperti Pancasila, sehingga meningkatkan kepercayaan konsumen dan mendukung pertumbuhan ekonomi digital yang berkelanjutan.*

***Keywords:*** *E-commerce, Consumer Rights, Consumer Protection, Cybersecurity and Fraud, Data Privacy, Digital Trade Law.*

## Introduction

E-commerce (electronic commerce) is a well-established concept in the context of the Internet, referring to commercial transactions and

marketing activities conducted through electronic networks.[1] This understanding is consistent with the definition provided by *Black's Law Dictionary*, which describes e-commerce as online transactions carried out via the Internet, particularly those involving the buying and selling of goods and services. As digital technologies continue to evolve, e-commerce platforms are no longer confined to traditional online marketplaces. Increasingly, commercial activities are conducted through social networking sites and over-the-top (OTT) platforms, giving rise to what is commonly described as social e-commerce.[2] Platforms such as Twitter, YouTube, Instagram, and Facebook, as well as OTT services including Line and WhatsApp, create digital environments that facilitate social interaction supported by Internet-based technologies. In this digital age, e-commerce platforms therefore function not only as channels for commercial transactions and marketing, but also as tools for socialisation and broader societal influence.[3] Social e-commerce platforms, in particular, operate as digital tools that enable rapid electronic communication and content sharing, including personal information, documents, images, and videos, among users within online communities and virtual networks.

E-commerce platforms are now accessible to a wide range of economic actors, including large corporations, small and medium-sized enterprises, sole proprietors, and non-profit organisations. In Indonesia, platforms such as TikTok have emerged as dominant e-commerce and marketing channels, recently surpassing traditional platforms such as YouTube in popularity. Through features that allow videos to be uploaded, downloaded, shared, commented on, and promoted through trending mechanisms, such platforms provide businesses with powerful tools for digital marketing and consumer engagement.

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[1] Aditya Ahmad Fauzi et al., *Use of Information Technology in Various Sectors During Society 5.0* (PT. Sonpedia Publishing Indonesia, 2023).

[2] Erwin, Erwin, RR Roosita Cindrakasih, Afrina Sari, Hita Hita, Yoseb Boari, Loso Judijanto, dan Andi Caezar To Tadampali, *Pemasaran Digital: Teori dan Implementasi* (PT. Green Pustaka Indonesia, 2024).

[3] Ade Onny Siagian, Rini Martiwi, and Natal Indra, *"Kemajuan Pemasaran Produk Dalam Memanfaatkan Media Sosial di Era Digital," Jurnal Pemasaran Kompetitif* 3, no. 3 (2020): 44, https://doi.org/10.32493/jpkpk.v3i3.4497.

For newly established businesses, WhatsApp, as a messaging and chat-based platform, has become a vital tool for initiating and maintaining commercial interactions with consumers. Facebook, one of the most widely used social media platforms, likewise offers interactive business functionalities through messaging services that facilitate direct communication between sellers and customers. Instagram, which supports visual content enhanced by filters and effects, has emerged as an effective platform for disseminating product information and promoting online shopping. Twitter, characterised by its short-message format, enables rapid communication and efficient advertising of goods and services.[4]

In addition, TikTok has experienced remarkable growth, becoming a major driver of digital commerce and marketing. By 2019, daily usage rates reached significant levels, and by 2020 TikTok ranked among the most widely used social media platforms in Indonesia.[5] The platform allows users to upload and share short-form videos, similar to features offered by Instagram Stories and Snapchat, which are increasingly utilised for product promotion. With its expansion to more than 155 countries and support for over 75 languages, TikTok offers businesses substantial opportunities to engage global audiences.[6] In particular, influencer-generated sponsored content enables businesses to capitalise on users' strong preference for video-based consumption, thereby enhancing product visibility and consumer engagement.

Beyond their commercial function, e-commerce platforms increasingly serve as a source of entertainment and a means of filling leisure time. During the COVID-19 pandemic, when opportunities for direct social interaction

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[4] IBRAHIM, *Analysis of the Legal Position of Asking for Gifts on the TikTok Application from the Legal Perspective of Jurisprudence (Study of Content: Mud Bathing "New Style of Begging")* (Bachelor thesis, Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta, 2023), https://repository.uinjkt.ac.id/dspace/handle/123456789/74258.

[5] Nina Bilqis Maharani, *The Influence of Price, Content Marketing, and Online Consumer Reviews on Purchasing Decisions of Tiktok Shop Users (Case Study of Students at the Faculty of Economics and Business, Islamic University of Malang)* (Bachelor thesis, Islamic University of Malang, 2023), http://repository.unisma.ac.id/handle/123456789/7091.

[6] Anna Nurhasanah, Sarah Claudia Pressasna Day, and Sabri Sabri, *Tiktok Social Media as a Live Digital Sales Media Among Ahmad Dahlan University Students, JSSH (Journal of Social Sciences and Humanities)* 7, no. 2 (26 September 2023): 69, https://doi.org/10.30595/jssh.v7i2.16304.

were significantly reduced, many individuals turned to online shopping and digital platforms to satisfy their need for engagement, exploration, and entertainment. In March 2020, the use of Facebook Messenger rose sharply, while e-commerce–related applications such as WhatsApp and Instagram experienced usage increases of up to 40%. Marketing studies, including those conducted by Klear, indicate a consistent daily rise in Instagram users, with Instagram Stories reaching viewership rates of approximately 15%, and peaking at 21%.[7]

While the significant growth of online shopping described above has contributed positively to both national and global economic development, it has also given rise to a number of challenges and negative consequences. These developments underscore the need for clear and comprehensive legal regulation of e-commerce, particularly in relation to the protection of consumer rights. In response, this study presents a table-based overview of the key legal issues and challenges associated with e-commerce, accompanied by concise explanations of the relevant legal provisions. These issues are subsequently examined in greater depth in the following sections of the paper.

**Table 1.** Regulatory Challenges and Consumer Rights in E-Commerce

| Legal Aspect | Problem | Explanation | REGULATION | |
|---|---|---|---|---|
| | | | UAE | INDONESIA |
| Legal Regulation | When it comes to online purchases, consumer protection | Boundaries based on relevant processes are necessary for the modern | The Federal Law No. 15 of 2020 on Consumer Protection was | Legislation No. 8 of 1999 Relating to Consumer Protection |

[7] Rifki Yorista Firmansyah, *Penggunaan Instagram@ Smgsecondstore Sebagai Media Promosi Thrift Shop Di Kota Semarang* (Bachelor thesis, Universitas Semarang, 2023), https://eskripsi.usm.ac.id/files/skripsi/G31A/2019/G.331.19.0041/G.331.19.0041-15-File-Komplit-20240122075058.pdf.; Tasya Safiranita Ramli, Ahmad M. Ramli, Rika Ratna Permata, Ega Ramadayanti, dan Rizki Fauzi, "Aspek hukum platform e-commerce dalam era transformasi digital," *Jurnal Studi Komunikasi dan Media* 24, no. 2 (2020), https://doi.org/10.31445/jskm.2020.3295.

| Legal Aspect | Problem | Explanation | REGULATION | |
|---|---|---|---|---|
| | | | UAE | INDONESIA |
| | laws are vague at best. | digital system to function, particularly in the e-commerce sector, where customer interests are highly affected by the prevalence of overlapping interests during implementation. | amended by Federal Decree Law No. 5 of 2023. | |
| Product Information | Online retailers have a responsibility to provide customers with accurate and clear product descriptions. | The product details, images and videos, customer reviews, pricing and availability, and the return policy are presented first.[8] | Cabinet Decision No. 66 of 2023 concerning the Executive Regulations of Federal Law No. 15 of 2020 on Consumer Protection ("Executive Regulations"). | Law No. 8 of 1999 concerning Consumer Protection |
| Right to | Refunds or | Money Back | Article 4 20 | The |

[8] Fiziati Ema, *Analysis of Mudharabah Financing and Business Type on Customer Income (Case Study at BSI Bima Kartini Branch Office)* (Bachelor thesis, Universitas Muhammadiyah Mataram, 2022), https://repository.ummat.ac.id/6139/.

| Legal Aspect | Problem | Explanation | REGULATION | |
|---|---|---|---|---|
| | | | UAE | INDONESIA |
| Return or replacement | replacement when defect affect safety/usability | Guarantee, Returns: If a customer is unhappy with their purchase, they may return it for a full refund. This safeguards the rights of consumers.[9] | of Cabinet resolution (executive decree) No. 66/2023 safeguards your consumer rights. Here, the purview of the Department of Consumer Protection is defined. Protection | Consumer Protection Law No. 8 of 1999 specifies the method of compensation in Article 19, paragraph (2). |
| Handling Consumer Complaints | Efficient complaint management is a prerequisite for e-commerce. Customers have the right to file a complaint if they have a problem with a | Product Details and Refund Procedures. Contact the complaint service today! Addressing Dissatisfaction. [10] | The Executive resolution no. 66/ 2023 implementing consumer protection law no. 15/2020) In its article 41 regulates the mechanism for receiving | Articles 19, 20, and 21 of Law Number 8 of 1999 concerning consumer protection. |

[9] Muh Rizwan Azzahidi and Nurmu'izzatin Zaharatul Parhi, *Analysis of Compliance with Sharia Peer to Peer Lending Standard Agreements on DSN MUI Fatwa Number 117 DSN-MUI/II/2018 (Case Study at PT. Qazwa Mitra Hasanah), MANAZHIM,* January 24, 2023, https://ejournal.stitpn.ac.id/index.php/manazhim/article/view/2723.
[10] Kh. Nawawi, *Economic Jurisprudence Theory* (Jakarta: Nusantara Literacy, 2021).

| Legal Aspect | Problem | Explanation | REGULATION | |
|---|---|---|---|---|
| | | | UAE | INDONESIA |
| | service or product. | | and addressing consumers complaints | |
| Protection of Consumer Personal Data and IT | Protecting the privacy of customers' personal information is a top priority for online businesses. Name, address, phone number, and payment details are all part of this. | Concerning the security of personal information during online purchases, there is a dearth of concrete legal guidance. In the form of e-commerce obligations. Storage of data. Having openness. Controlling Oneself.[11] | E-Commerce Law, also known as Federal Decree Law No. 14 of 2023, is a piece of law that regulates the rights of consumers in online purchases. The Dubai International Financial Centre (DIFC) processes personal data by Data Protection Law No. 5 of 2020. | In Indonesia, the law governing electronic information and transactions is formally known as Law Number 11 of 2008. |

**Source:** The Table is Compiled by the Author Based on Relevant UAE Consumer and data Protection Legislation, as Well as Indonesia's Consumer Protection Law and Electronic Information and Transactions Law

[11] Ana Toni Roby Candra Yudha, *Sharia Fintech in the Halal Industrial System: Theory and Practice* (Banda Aceh: Syiah Kuala University Press, 2021).

The author identifies many serious issues with the UAE's and Indonesia's consumer protection rules in this table. Subordinate rules clarify consumer protection, and legal restrictions, particularly in the UAE, are subject to ongoing modification. As an example of the most up-to-date legislation, consider Federal Decree Law No. 5 of 2023, which amends Federal Law No. 15 of 2020 on Consumer Protection. In contrast, Indonesia is still operating under the outdated framework of No. 8 of 1999. Similarly, when it comes to product information for UAE consumers, they have their own set of rules, which are outlined in Cabinet Decision No. 15 of 2020 on Consumer Protection and Executive Regulations No. 66 of 2023 on implementing Consumer Protection law no.15 of 2020. In contrast, Indonesia continues to use the same law for consumer protection. Article 20 of the cabinet resolution (executive resolution) No. 66 of 2023 protects your consumer rights, and the same holds for the right to return or exchange goods in the UAE. It defines the purview of the Department for Consumer Protection. Also, enforcing UAE Federal Law No. 24 of 2006 regulations on consumer complaints is a challenge. This statute lays forth consumer rights and responsibilities. Product safety, information disclosure, and fair trade practices are just a few of the many areas addressed by these laws. In 2023, the UAE implemented new regulations pertaining to information technology (IT), such as Federal Decree Law No. 14 of 2023 on Trading through Modern Technology (E-Commerce Law), which governs consumer rights in e-commerce. On the other hand, Indonesia continues to adhere to IT regulation Number 11 of 2008, which addresses information and electronic transactions.

Therefore, it is essential to implement regulatory measures that may effectively prevent those involved in fraudulent activities related to online buying and selling. The purpose of this research is to ascertain the legal protection available to customers in online transactions and determine the legal recourse available to customers in the event of losses occurring during such transactions. The research methodology employs a normative legal approach, supplemented by a review of secondary legal documents from the literature. These secondary legal documents include academic papers,

journals, articles, and literature related to legal protection in online buying and selling transactions. The research results demonstrate that legal measures protect customers in online buying and selling transactions, particularly by enforcing their rights as outlined in Consumer Protection Law No. 8 of 1999. The active involvement of various stakeholders, including the government, state authorities, and related institutions responsible for consumer protection, facilitates the implementation of consumer protection. The field of social self-help incorporates consumer protection.[12] This article is based on the author's research on the evolution of e-commerce, particularly in the areas of regulation and consumer rights in e-commerce: a comparative analysis between Indonesia and the United Arab Emirates.[13]

Makarim (2016)[14] analyses the legal and policy foundations of electronic commerce in Indonesia, emphasising the crucial role of regulatory coherence and institutional reform in facilitating digital trade. Using a normative legal approach, the study highlights persistent weaknesses in consumer protection under Indonesia's existing legal framework, particularly the outdated nature of the Consumer Protection Law No. 8 of 1999. Makarim argues that the lack of harmonisation with international e-commerce standards undermines legal certainty, weakens consumer confidence, and hampers Indonesia's ability to compete in the global digital economy. However, the study does not engage in a comparative analysis with more advanced regulatory models, nor does it propose concrete benchmarks for aligning Indonesian law with best international practices.

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[12] Muhammad Johansyah Maulana, "Consumer Protection in E-Commerce Regarding Losses," *Journal of Law, Administration, and Social Science* 4, no. 2 (April 5, 2024): 265–75, https://doi.org/10.54957/jolas.v4i2.569.

[13] Rina Puji Rahayu and Aji Damanuri, "Risk Management of Shopee E-Commerce Cash On Delivery Payment Methods," *Journal of Economics, Law, and Humanities* 2, no. 1 (2 May 2023): 35–44, https://doi.org/10.21154/jelhum.v2i1.1519.

[14] Edmon Makarim, "Policy Framework and Legal Reform for the Smoothness of Electronic Commerce (E-Commerce) in Indonesia," *Journal of Law & Development* 44, no. 3 (26 February 2016): 314–37, https://doi.org/10.21143/jhp.vol44.no3.25.

Kameel, Kandeel, and Alkrisheh (2022)[15] examine consumer protection against misleading online advertisements under UAE law, with a particular focus on transparency obligations and information accuracy in digital marketing. Through an analytical study of UAE consumer protection and media regulations, the authors conclude that the UAE has adopted a relatively progressive regulatory framework that imposes strict duties on suppliers and advertisers to prevent deceptive practices. The study underscores the UAE's emphasis on disclosure, clarity of information, and regulatory enforcement in the online environment. Nevertheless, the analysis remains confined to advertising practices and does not extend to broader e-commerce issues such as platform liability, cross-border transactions, or comparative consumer protection standards.

Paryadi (2018)[16] investigates the supervision of e-commerce activities in Indonesia within the framework of the Trade Law No. 7 of 2014 and the Consumer Protection Law No. 8 of 1999. The study identifies significant deficiencies in regulatory oversight, including fragmented supervisory authority and limited enforcement capacity, which hinder effective consumer protection in digital transactions. Paryadi concludes that Indonesia's supervisory mechanisms have not kept pace with technological developments and the rapid growth of online commerce. However, the study does not explore comparative regulatory solutions or examine how other jurisdictions have addressed similar enforcement challenges in the e-commerce sector.

The three studies under Indonesian law, has examined various aspects of consumer protection and regulatory challenges in the digital marketplace, focus on single jurisdictions or address isolated regulatory issues, without offering a systematic comparative analysis of consumer protection

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[15] Tariq Abdel Rahman Kameel, Moustafa Elmetwaly Kandeel, and Mohammad Amin Alkrisheh, "Consumer Protection from Misleading Online Advertisements: An Analytical Study in UAE Law," *Proceedings of the 2022 International Arab Conference on Information Technology (ACIT)*, Abu Dhabi, 22–24 November 2022 (IEEE, 2022): 1–8, https://doi.org/10.1109/ACIT57182.2022.9994108.

[16] Deky Paryadi, "Pengawasan E Commerce dalam Undang-Undang Perdagangan dan Undang-Undang Perlindungan Konsumen," *Jurnal Hukum & Pembangunan* 48, no. 3 (2018): 651–69, https://doi.org/10.21143/jhp.vol48.no3.1750.

frameworks in e-commerce between Indonesia and a more mature regulatory system such as the UAE.

The present research fills this gap by providing a comparative legal analysis of UAE and Indonesian e-commerce regulations, examining consumer rights, transparency obligations, fraud prevention, data protection, and enforcement mechanisms within a unified analytical framework.

Additionally, other studies conducted under UAE law have addressed specific aspects of digital consumer protection without adopting a comparative e-commerce perspective.

In this context, Nadia Yas et al. (2025)[17] examines the civil legal foundations of liability for harm caused by misleading content on social media under UAE legislation**.** Adopting an inductive and analytical legal methodology**.** Their analysis is limited to the UAE legal system and focuses primarily on misinformation, platform liability, and the interaction between criminal sanctions and civil compensation. While the study sheds light on digital harms affecting consumers, it does not examine e-commerce transactions as a regulatory ecosystem**,** nor does it address comparative consumer protection standards, cross-border transactions, or differences in enforcement mechanisms between jurisdictions.

Another studies of Emad Abdel Rahim Dahiyat (2025),[18] explores the capacity of UAE consumer protection law to promote sustainability and environmentally responsible consumption. Using a doctrinal legal research approach. Although the study highlights regulatory gaps related to sustainability disclosures and consumer information, it remains jurisdiction-specific and does not address digital trade, e-commerce fraud, data protection in online transactions, or comparative legal development.

By contrast, the present study fills a clear and significant gap by offering a comparative legal analysis of e-commerce consumer protection

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[17] Nadia Yas, Wided Dafri, Hayssam Hammad, Nagwa Abouhaiba, and Doaa Mahmoud, *Legal basis of the civil liability for harms caused by misleading content on social media under UAE legislation*, *Research Journal in Advanced Humanities*, Vol. 6, No. 4 (November 17, 2025), https://doi.org/10.58256/aj1hn550.

[18] Emad Abdel Rahim Dahiyat, *Sustainability and UAE consumer protection law: renewed questions and expected challenges*, *International Journal of Law and Management*, Vol. 67, No. 6 (August 2025), https://doi.org/10.1108/IJLMA-03-2025-0122.

frameworks in both the UAE and Indonesia. Unlike prior works, it systematically examines online consumer rights, transparency obligations, complaint mechanisms, data protection, and fraud prevention across two jurisdictions at different stages of regulatory maturity. The paper goes beyond isolated thematic analysis by integrating consumer protection, digital trade regulation, and cross-border e-commerce risks within a single comparative framework.

Moreover, this study advances the literature by identifying structural regulatory weaknesses in Indonesia's fragmented framework and demonstrating how elements of the UAE's more developed model may be adapted, without legal transplantation, to Indonesia's national legal philosophy, particularly Pancasila. In doing so, it contributes original normative insights into regulatory harmonisation, institutional design, and consumer trust in digital markets, areas not comprehensively addressed by the existing scholarship

**Research Methods**

The primary objective of this analysis is to identify both commonalities and differences between the two regulatory frameworks. A normative legal approach is employed to examine statutory and regulatory texts governing the application of e-commerce regulations and the protection of consumer rights, including legislation, implementing rules, policies, and other official documents. Through a comparative legal perspective, the study seeks to develop a clearer understanding of how the two jurisdictions regulate e-commerce and safeguard consumer rights, including the protection of personal data and privacy. This approach also enables an assessment of the relative effectiveness of each system in addressing consumer protection challenges in the digital marketplace.[19]

The overarching aim of this study is to compare and analyse how the United Arab Emirates and Indonesia regulate consumer rights within the framework of e-commerce, with particular emphasis on the formulation and implementation of relevant regulatory principles in both jurisdictions. The

[19] Sholahuddin Al-Fatih, *Perkembangan metode penelitian hukum di Indonesia* (Malang: Universitas Muhammadiyah Malang Press, 2023), 3.

analysis addresses compliance with international standards, domestic policies that facilitate or hinder effective regulation and consumer protection, and the applicable security and data protection requirements. In addition, the study examines how both countries respond to regulatory challenges arising from emerging technologies, including e-commerce innovations and artificial intelligence (AI), and evaluates their implications for consumer rights protection.[20]

In this revised study, the regulatory approaches of the United Arab Emirates and Indonesia to the protection of consumer rights in e-commerce are examined with the aim of identifying avenues for improvement.[21] The analysis assesses the existing legal frameworks in both jurisdictions, identifies regulatory gaps, and proposes legal and policy reforms to address these shortcomings. Particular attention is given to the current state of data protection legislation and the effectiveness of enforcement mechanisms in the context of electronic commerce. In addition, the study advances recommendations informed by international standards to enhance regulatory coherence in both countries. This includes evaluating the extent to which domestic regulations align with global e-commerce norms and exploring strategies to strengthen privacy and security protections while supporting continued technological innovation.

This research aims to provide an in-depth examination of the existing legal framework and to establish a foundation for meaningful legal reform. Its primary objective is to enhance consumer protection, optimise the regulatory use of digitalisation in e-commerce, and mitigate associated risks and negative impacts. The findings are intended to offer valuable insights for policymakers, legal practitioners, and e-commerce regulators in designing and implementing secure, ethical, and effective technological frameworks.

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[20] Feky Reken, Erdawati Erdawati, Sri Rahayu, Roky Apriansyah, Hendri Herman, Virna Sulfitri, Hermanto Hermanto, dkk., *Pengantar Ilmu Manajemen Pemasaran* (CV. Gita Lentera, 2024).
[21] Ibid.

## Discussion

### E-Commerce and Consumer Protection Regulations in the United Arab Emirates and Indonesia

1. Consumer Protection in E-Commerce under United Arab Emirates Law
2. From what we can tell from a number of regulations—including the most recent one, Federal Decree-Law No. 14/2023 on Trading by Modern Technological Means—the UAE legal system makes its stance on consumer rights in e-commerce rather plain.[22] According to the UAE Constitution, specifically Federal Decree-Law No. 50/2022 on the Promulgation of the Commercial Transactions Law and Federal Law No. 1/1972 on the Competencies of Ministries and Powers of Ministers and its revisions. Several pre-existing regulations, such as the following, adhere to this regulation:[23]

**Table 2.** Consumer Protection Regulations in the UAE

| No | Regulation | Year | Article Concerning Consumer Protection |
|---|---|---|---|
| 1. | Federal Law No (15) of 2020 concerning Consumer Protection[24] | 2020 | Section 6: Preservation of Trade-Related Consumer Rights by the Use of Contemporary Technological Approaches Section 6 outlines the rights that consumers have:<br>1. Purchase products and services via digital methods that comply with published standards, supported by transparent terms on delivery, value, and cost. |

[22] Bashar Malkawi, *"Chapter 15: Legal Approaches to the Regulation of Digital Trade by Middle Eastern Countries"*, in *Law 2023* (Edward Elgar Publishing, 2023): 233–251, https://doi.org/10.4337/9781800884953.00024.

[23] Silvana Cinari, "The Emergence of International Commercial Courts: The Rationale and Key Features," *South East European Law Journal* 9 (2022): 82.

[24] Kameel, Kandeel, and Alkrisheh, "Consumer Protection from Misleading Online Advertisements."

| No | Regulation | Year | Article Concerning Consumer Protection |
|---|---|---|---|
| | | | 2. Receive accurate descriptions of products, services, and applicable terms.<br>3. Access secure and convenient digital channels for purchasing, payment, and settlement.<br>4. Opt out of marketing and advertising communications across electronic platforms (calls, emails, social media, etc.).<br>5. Use transparent review systems to evaluate online retailers, products, services, payment processors, and logistics providers.<br>6. File formal complaints against any party, including online retailers, regarding digital transactions.<br>7. Access uninterrupted complaint mechanisms, including hotlines with trained staff and systems for monitoring and updating complaint status.<br>8. Obtain clear contact information from online retailers, including phone numbers and communication details.<br>9. Access publicly available information on digital merchants, such as websites, addresses, phone numbers, and licenses verified by authorities.<br>10. Benefit from any other rights guaranteed by local laws and regulations. |
| 2. | Federal Law No (15) of 2020 | 2020 | Under Federal Decree Law No. 5/2023, ministries and competent |

| No | Regulation | Year | Article Concerning Consumer Protection |
|---|---|---|---|
| | concerning Consumer Protection[25] | | authorities are tasked with implementing consumer protection policies through a range of measures. Their responsibilities include raising consumer awareness about risks associated with certain goods and services, particularly those sold online, disseminating educational materials, monitoring price fluctuations, curbing monopolistic practices and deceptive advertising, and engaging with consumer complaints in coordination with authorized officials as regulated by law.<br>The Cabinet is empowered to issue a schedule of administrative penalties and fines applicable to suppliers at the discretion of the Ministry or competent authority. Where public interest requires or in the event of a dispute, these authorities may also request expert or laboratory examinations of goods or services. Should products be found defective, suppliers bear the costs of testing, pursuant to Federal Law No. 28/2001 and its amendments.<br>Consumers retain the right to claim compensation for personal or material damages arising from goods or services, except in cases where harm results from |

[25] Sagee Geetha Sethu, "Legal Protection for Data Security: A Comparative Analysis of the Laws and Regulations of the European Union, US, India and UAE," in *2020 11th International Conference on Computing, Communication and Networking Technologies (ICCCNT)*

| No | Regulation | Year | Article Concerning Consumer Protection |
|---|---|---|---|
| | | | misuse or use contrary to instructions. Additionally, suppliers engaged in e-commerce within the country must provide their name, legal status, address, licensing authority, and clear Arabic-language information about products, services, contracts, payment terms, and guarantees, in line with implementing regulations. The Ministry and competent authorities are not responsible for electronic commerce carried out by unregistered or unauthorized suppliers operating within the state. |
| 3. | Cabinet Resolution Number (12) of 2007 concerning Implementing Regulations of Federal Law Number (24) of 2006 concerning Consumer Protection[26] | 2006 | Federal Law No. 24 of 2006, implemented by Cabinet Resolution No. 12 of 2007, affirms key consumer rights, including protection from harmful goods and services, access to accurate information, freedom of choice, and fair pricing. Consumers are entitled to representation in decision-making processes, adequate basic needs such as food, housing, healthcare, and education, as well as fair remedies against substandard products or unfair practices. The law also emphasizes continuous consumer education and the right to a dignified standard of living. Complaints are handled by the Department, which investigates and issues decisions. Consumers may appeal to the Minister |

[26] Abdulla M. A. AlGhafri, "The Inadequacy of Consumer Protection in the UAE: The Need for Reform" (Thesis, Brunel University, 2013), http://bura.brunel.ac.uk/handle/2438/7691.

| No | Regulation | Year | Article Concerning Consumer Protection |
|---|---|---|---|
| | | | within fifteen days, and unresolve disputes can be escalated to th competent court. |

Source: The Table is Compiled by the Author Base on the Relavant Statutory Provisions of UAE Federal Law No. 24 of 2006 and its Cabinet Resolution No. 12 of 2007

Federal Law No. 24 of 2006, implemented through Cabin Resolution No. 12 of 2007, guarantees consumer rights, including protectio from harmful goods and services, access to accurate information, freedo of choice with fair pricing, and representation in decision-making processe It also secures basic needs such as food, housing, healthcare, and educatio along with the right to compensation in cases of poor products, services, c unfair practices. The law emphasizes continuous consumer education an the right to a dignified standard of living. Complaints are handled by th Department, which investigates and issues decisions, while consumers ma appeal to the Minister within fifteen days, and unresolved disputes may b taken to the competent court.

Businesses and suppliers are now legally obligated to prote customers' personal information, avoid utilizing customers' data fo promotional or marketing objectives, and respect customers' religiou beliefs, practices, and traditions while dealing with them. Online purchasin If an online store is based in the United Arab Emirates (UAE), they a required by Article 25 to give customers and government agencies all th information they need in Arabic, including their full name, legal statu address, licensing authority, and details about the services they provid including specifications, contracts, terms, payment methods, and warrant conditions. Online marketplaces with headquarters outside of the UAE a exempt from this rule. Article 8 states that all consumer information, dat ads, contracts, and bills must be in Arabic. But vendors may choose to spea languages other than Arabic if they so like. The penalties Suppliers will fac are harsher fines under the new Consumer Protection Act. Vendors risk fine of up to AED 2 million and a jail term of up to 2 years for misleadin

product or service promotion. This penalty also applies to suppliers that do not fix damaged items by offering free repairs or replacements. Should the crime recur, the penalty will double. We expect suppliers to comply with the increased levies, and the harsher sanctions will better protect consumers. After the new legislation takes effect, corporations will have one year to adjust to the rules laid forth in Article 33. The Cabinet has the power to prolong its tenure by resolution. On November 15, 2020, as per the minister's recommendation, the government will issue regulations to put this legislation into effect; this will be within six months after the law's formal publication in the State Gazette. Thus, the target date for the implementation of this rule is May 15, 2021.

There has been a major overhaul of the UAE's consumer protection system. Statute No. As a long-awaited executive rule, Cabinet Decree No. 66/2023 supplements the newly updated Law 15 of 2020, popularly known as the CP Law. The "Executive Regulation of Federal Law No. 15/2020 concerning Consumer Protection," officially approved in July 2023, will take effect on October 14, 2023. The United Arab Emirates is reiterating its commitment to strengthening consumer rights and promoting responsible conduct by suppliers with these new law reforms, which replace prior consumer protection measures that were in place since 2006. An evolving body of legislation protecting individual liberties includes the Personal Data Protection Act, and the CP Act and its accompanying regulations (the "laws") are consistent with this framework. We anticipate unveiling the law's implementing rules in the latter half of 2021. The legislation defines the term "supplier" broadly to encompass any companies involved in product manufacturing or sales, as well as any online marketplaces registered in the United Arab Emirates.

Newly passed laws have far-reaching effects, and this article examines them all. At first glance, the Act establishes minimum standards for key transactional documents, addresses unfair practices and the dissemination of false or misleading information, and establishes extensive regulations for compensation and assurances. On the other hand, the regulations include unique provisions that can provide additional challenges for UAE-based markets and dealers. The regulations include provisions that pertain to the

definition of "consumer". Contrary to expectations in consumer protection legislation, the concept of consumers includes legal entities, which is an intriguing development. The authorities should determine the extent to which the legislation aims to regulate business interactions. Most people expect the law to primarily focus on dealings between businesses and clients. Arabic language requirements Consumers are required by law to get the majority of their information in Arabic. Invoices, product descriptions, advertising, and the conditions of the contract and guarantee are all part of this. Suppliers are free to use languages other than Arabic as they see fit.

Online Business Duties When it comes to regulating e-commerce services based outside of the UAE, the legislation makes it clear that it is not responsible. Authorities must know the law, even if they cannot immediately punish these individuals or organizations. We have observed instances where local authorities have blocked access to targeted sites from IP addresses in the UAE. Crucially, online marketplaces will bear responsibility for any defective goods sold by third parties through their services. Businesses selling their wares online have a responsibility to show that their products are legal and display suitable marks or certifications of conformity conspicuously on their sites. Sales and special offers. It is now mandatory for vendors to inform buyers one week before a sale begins of any impending sales on products or services. Customers have 30 days from the purchase date to obtain a refund for pricing differences if they do not meet these standards. These restrictions may severely hinder some business models.

Before promoting or selling their goods, services, or discounts, suppliers must also acquire pre-approval from regulatory authorities. Warranty on the product. Suppliers are required by law to keep their services available to customers for at least as long as the service itself or for as long as the customer and provider agree in writing, whichever is greater. Unless the consumer conditions specify otherwise, we anticipate a minimum warranty duration that is appropriate for the type of service provided. Until the repaired equipment is returned, the provider is obligated to supply a new product at no cost to the customer if repairs done within the warranty term exceed the seven-day timeframe. Customers also have the option of receiving several forms of payment. Consequently, vendors should consider

including a clear statement about this matter in their warranty policies. Recall of Product. In order to retrieve faulty items, the legislation sets up a system that includes notifying authorities, sending out recall notifications, documenting incidents, and providing customers with a free product replacement or repair. Replacement parts and regular upkeep 2. A number of statutes mandate that service providers keep replacement components and perform routine maintenance on their products. The need to have a sufficient supply of replacement parts to fulfill customer demand is an element of this. Suppliers must record and adhere to manufacturer-specified regulations when interacting with customers for the delivery of maintenance services, warranty repairs, and replacement parts. The system has to spell out the rights of the consumer and the duties of the provider in a clear and thorough manner. We should document these procedures in Arabic (and other languages if desired), ensuring that the language is easily comprehensible for consumers. Points of sale and distribution hubs are prime sites to prominently display such documents. The supplier's website should have the material posted so that customers may quickly view it. It is not allowed to have advertisements that include misleading or incorrect assertions that might lead customers astray. Commercials airing in the United Arab Emirates are subject to a number of regulations meant to ensure they uphold ethical and societal norms.[27]

The utilization of monopoly power results in unfair contract terms. The regulation makes it clear that any terms in a contract that unfairly try to shield a provider from legal responsibility or duty will be null and void. For instance, vendors must inform customers and provide compensation before independently interpreting, changing, or terminating contracts. Furthermore, providers cannot attempt to avoid their legal obligation to compensate customers. In addition, suppliers are required to offer customers sufficient notice or legitimate reasons outside their control (where improvements are feasible) before making any changes to product features or terms of service. It is absolutely forbidden to engage in monopolistic practices, such as manipulating prices, exercising control over product supply, or unfairly

[27] "United Arab Emirates," in *Wikipedia*, July 14, 2024, https://en.wikipedia.org/w/index.php?title=United_Arab_Emirates&oldid=1234432810.

treating customers. Additionally, bear in mind that the UAE has additional competition regulations that could potentially counteract these practices. The two types of sanctions are administrative sanctions and sanctions themselves. The authorities may impose various administrative penalties and monetary fines on providers found to be in violation of the law. The rules lay out a gradation of punishments, beginning with a letter of notice and progressing to administrative penalties between AED 50,000 and AED 1 million. It also encompasses potential permit revocation, interim administrative closures (ranging from 24 hours to 90 days), and partial or full suspensions of activity (for the same period). On the other hand, the approaches used in the regulation seem to be at odds with the CP Act's string of severe penalties for breaking various sections. The rules describe a gradual procedure for imposing criminal penalties, but it would be helpful if there were more explicit recommendations.

In summary. The new consumer protection laws in the United Arab Emirates provide a thorough framework to hold businesses accountable for product quality, honest advertising, and language standards compliance. Businesses operating in the United Arab Emirates are now required to strictly adhere to this rule. Ensuring compliance with the law in a constantly evolving regulatory landscape and safeguarding customer trust are integral aspects of this obligation. In addition, companies need to assess their current practices and policies in the areas of contracts, information disclosure, after-sales support, and similar ones.[28]

## E-Commerce Development and Consumer Protection Law in Indonesia

Technology today enables quick and effortless completion of any task. The internet allows us to access anything we want. There are many parts of our lives that rely more and more on the internet, such as online shopping, online meal delivery, and ride-hailing services. Next, the rapid development

[28] CMS Cameron McKenna Nabarro Olswang LLP – Ben Gibson, Kate Corcoran, and Eve Brady, "The UAE's New Consumer Protection Landscape: Implications and Key Provisions," *Lexology*, October 4, 2023, https://www.lexology.com/library/detail.aspx?g=8cdce634-be68-4634-8f51-b373fef5e0aa.

of the internet led to the establishment of virtual trading platforms. E-commerce, also known as electronic business, encompasses all commercial transactions that involve the exchange of goods or services through intermediary platforms on the internet.[29] Stores or marketplaces, buyers and sellers, payment gateways, and delivery services are the bare minimum for an e-commerce system to facilitate online transactions. To start, there is a store or market where people may buy food and other necessities. Having said that, internet retailers and marketplaces are distinct entities. A marketplace is a virtual meeting place for buyers and sellers to do business. There are two main types of users on the marketplace: those looking to buy certain things and those who want to sell their own wares. The primary role of online businesses is to facilitate direct transactions between customers and sellers. Keep in mind that this shop is only a representation of one entity selling things. Among the many Indonesian markets available today are BukaLapak, TokoPedia, Elevenia, and Qoo10 Indonesia. Websites like Matahari Mall, Zalora, Groupon Indonesia, Berry Benka, and Lazada are just a few examples of Indonesian e-commerce platforms.[30] The buyer and seller constitute the second set of participants in the deal. Whoever is responsible for selling goods or services to consumers is known as the seller, and whoever is responsible for buying those goods or services is known as the buyer. This study aims to identify the factors that motivate customers to purchase online and what drives them to prefer other forms of online shopping.

Consumers choose internet shopping for various reasons, including their financial capabilities. Additional promotions are available when purchasing online. Although they may not need it, seeing a relative or friend buy a new product may compel consumers to buy it. The presence of advertising or promotions in mass media makes fans reluctant to shop online. We protect consumer rights and conduct financial transactions. This

[29] Oleh I Gede Hendrayana, Degdo Suprayitno, Loso Judijanto, Ferry Kosadi, Sri Yani Kusumastuti, and Sepriano Sepriano, *E-Money: Complete Guide to the Use and Benefits of E-Money in the Digital Eraal* (PT. Sonpedia Publishing Indonesia, 2024).

[30] Madeline Mamesah, "Electronic Transaction System in Sale and Purchase Agreements via Online Media," *Lex Privatum* 10, no. 1 (17 January 2022): 69–78, https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/38070.

section highlights common fears among individuals regarding fraudulent internet purchases. Unauthorised access to credit cards, merchandise that does not align with consumer preferences, and retailers with limited customer support accessibility after checkout pose significant risks. This is the main factor preventing people from shopping online, making it the biggest barrier. Visibility is compromised. Online shoppers can only guess at the quality and condition of the goods. However, it remains uncertain whether the merchandise delivered will match the items depicted in the photo. Sometimes, the prices quoted are higher compared to buying the goods directly in the store.

Most items offered are during the warranty period or do not have verifiable warranty documentation. I couldn't understand the online shopping process and found it cumbersome. The transaction or delivery process can sometimes drag on. Based on the facts mentioned above, it is clear why many consumers still have concerns about engaging in online shopping. This is due to the limited security issues that exist in Indonesia. Currently, the primary focus is on issues related to fraudulent activity. Examples of fraudulent activity include payment fraud, the use of malicious accounts, and account takeover. Comscore, a media analysis company, has concluded a study. Two-thirds of buyers consider the shipping option to be the most cost-effective. One out of every three people voluntarily chooses to pay higher prices in exchange for expedited delivery of merchandise. If the products they purchased arrived on time, 46% of consumers expressed their willingness to support e-commerce platforms.[31] Purchasing online makes transactions easier for several parties. However, there are still some individuals who have the desire to engage in evil behaviour around us. To combat online fraud, the Indonesian government has implemented laws that

[31] Yunita Kumala Sari and Sri Walyoto, "The Influence of Brand Ambassadorship, Sales Promotion, and Positive Word of Mouth on Consumer Purchasing Decisions in Tokopedia E-Commerce (Study of Tokopedia Users in Surakarta City)" (PhD Thesis, UIN Raden Mas Said, 2023), http://eprints.iain-surakarta.ac.id/6018/1/Full%20Scrip%20Yunita%20KS%20%28195211266%29.pdf.

specifically target individuals involved in fraudulent activities related to online buying and selling.[32]

Article 378 of the Criminal Code and Article 28, paragraph (1) of the ITE Law are the applicable statutes.[33] While the ITE Law addresses the dissemination of false information that leads to monetary losses for customers in electronic transactions (Article 28, paragraph 1), the Criminal Code controls fraudulent conduct (Article 378). A number of laws in Indonesia govern consumer protection when making online purchases. These laws include the Consumer Protection Law (UUPK) of 1999 and the Information and Electronic Purchases Law (UU ITE) of 2008.[34] When it comes to buying and selling goods online, customers have sufficient legal protections provided by laws like the ITE Law (Electronic Information and Transactions Law) and the Law regarding Consumer Protection Law. The government, acting as a regulator, has responded to the difficulties by enacting rules pertaining to online trade. Articles 65 and 66 of Trade Law No. 7 of 2014 lay forth the rules governing online transactions. No company may trade products or services using electronic systems that do not meet the requirements laid forth in paragraph one of Article 65.[35] Documents pertaining to this matter must contain the following details, as elaborated upon in paragraph four of Article 65: the producer or distributor's legal status and identification, product or service specifications, pricing, payment options, and shipment details. Furthermore, to implement restrictions on online commerce, the legislation must provide detailed rules, as stated in Article 65, which stipulates that government regulations are responsible for overseeing additional provisions related to transactions. The Ministry of

[32] Firda Laily Mufid and Tioma Roniuli Hariandja, "Effectiveness of Article 28 Paragraph (1) of the ITE Law Concerning the Spread of Fake News (Hoax)," *Rechtens Journal* 8, no. 2 (31 December 2019): 179–98, https://doi.org/10.36835/rechtens.v8i2.533.

[33] Dudung Mulyadi, "Elements of Fraud in Article 378 of the KUHP Are Linked to the Buy and Buy of Land," *Galuh Justisi Scientific Journal* 5, no. 2 (22 November 2017): 206–23, https://doi.org/10.25157/jigj.v5i2.798.

[34] Agus Santoso and Dyah Pratiwi, "Responsibilities of Electronic Banking System Operators in Electronic Transaction Activities Post Law Number 11 of 2008 Concerning Information and Electronic Transactions," *Indonesian Legislation Journal* 5, no. 4 (2018): 74–88.

Commerce is now engaging in discussions with key stakeholders to finalise government laws pertaining to electronic systems for commercial transactions, as mandated by trade legislation. In order to make proper use of the electronic system, you must adhere to the rules laid forth in Law No. 11 of 2008 on Information and Electronic Transactions (UU ITE). A number of sections of the ITE Law address issues unique to online trade. To the extent that any person's lawful activities, whether inside or outside of Indonesia's jurisdiction, have legal ramifications that harm Indonesia's interests, as stated in Article 2, that person is liable under this law. The provision of accurate and full information on contract terms, manufacturers, and offers is the duty of enterprises selling items via electronic systems, as stated in Article 9.

Under Article 10, an established and trustworthy certifying body must certify any company engaging in electronic transactions. Government regulations, as stated in Paragraph 1, define the rules for establishing a trustworthy certifying organization. Article 18 states that the parties may lawfully execute electronic transactions using electronic contracts. When engaging in an international electronic transaction, the parties are free to choose the applicable laws. If an international electronic transaction does not include a choice of law provision, then private international law will take precedence.

The Ministry of Communication and Information has published Government Regulation No. 82 of 2012 to implement the ITE Law, particularly as it pertains to e-commerce in Indonesia.[36] The use of electronic systems and transactions to support e-commerce is the primary goal of this law. Additionally, as part of its mission to oversee the trade industry, the Ministry of Trade is driving growth in the e-commerce sector via its rules. Startups that depend on e-commerce as their base require this government legislation to safeguard customers. Consumer protection must be the government's first priority when it comes to accommodations. Businesses are obligated to adhere to the rights and regulations outlined in the

[36] Nathania Salsabila Marikar Sahib, Soesi Idayanti, and Kanti Rahayu, "Problematics of Electronic System Operator Regulations (PSE) in Indonesia," *Pancasakti Law Journal (PLJ)* 1, no. 1 (30 July 2023): 61–74, https://doi.org/10.24905/plj.v1i1.8.

Consumer Protection Law. The widespread distrust among Indonesian customers about the trustworthiness of online trading systems highlights the critical need for consumer protection in e-commerce transactions. Corporations involved in online trade are protected by law and offered assurances of success thanks to the government's heavy investment in the industry's growth. The government, in its role as regulator, has responded to the difficulties by enacting laws pertaining to online trade. Internet sales are governed by Articles 65 and 66 of Trade Law No. 7 of 2014.[37]

No company may engage in the sale of products or the provision of services by electronic means if the data supplied is inaccurate, as stated in paragraph one of Article 65. Article 65 paragraph (4) elaborates on this idea by saying that this data includes things like the producer or distributor's legal status, the goods' technical specs, the services' technical requirements or qualifications, the prices, the payment methods, and the delivery methods. Article 65 states that "additional provisions regarding trade transactions carried out via electronic systems are regulated by government regulations or derived from" and that the law must establish special guidelines to enforce restrictions on e-commerce transactions. The Ministry of Commerce is now engaging in discussions with key stakeholders to finalise government laws on electronic systems for commercial transactions, as mandated by trade law. Adherence to the rules laid forth in Law No. 11 of 2008 respecting Information and Electronic Transactions (UU ITE) is essential for the proper functioning of the electronic system. A number of sections of the ITE Law address issues unique to online trade. Article 2 states that regardless of where one is located, acting in accordance with this legislation will have legal repercussions both inside and outside of Indonesia and will harm Indonesia's interests. The provision of accurate and full information on contract terms, manufacturers, and offers is the duty of enterprises selling items via electronic systems, as stated in Article 9. Article 10 states that a dependency certification authority may certify any business actor engaging in electronic transactions.

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[37] Nanin Koeswidi Astuti, "The Urgency of Government Regulations Regarding Electronic Commerce in Relation to the Application of Taxes on E-Commerce Transactions," *to-ra* 1, no. 2 (2015): 119–28, https://doi.org/10.33541/tora.v1i2.1141.

As stated in Paragraph (1), the government will develop laws for the creation of a dependable certifying organization. Article 18 states that the parties may lawfully execute electronic transactions using electronic contracts. When doing business electronically across international borders, the parties involved are free to pick the applicable laws. If there is no choice of law provision in an international electronic transaction, then private international law will govern. The Ministry of Communication and Information has created Government Regulation No. 82 of 2012 in order to implement the ITE Law, particularly as it pertains to e-commerce in Indonesia. There is a rule that governs the use of computers and online transactions. Additionally, as the sector's supervisor, the Ministry of Trade is pushing for the growth of the e-commerce industry via the development of government rules. This government legislation is essential to safeguard both customers and new businesses entering the e-commerce world. Consumer protection must be the government's first priority when it comes to accommodations. The Consumer Protection Law outlines the rights and regulations that businesses must adhere to. The widespread distrust of Indonesian customers towards online trading techniques highlights the critical need for consumer security in e-commerce transactions. The government's substantial attention to the growth of this sector ensures legal assurances and protections for business entities participating in the e-commerce industry.[38]

**The Ideal Model of Consumer Protection in E Commerce Between Indonesia and the UAE**

The author observes that, in the era of Disruption 5.0, it has become both essential and necessary to continuously adapt consumer protection frameworks in the context of e-commerce, particularly as digital markets are driven by rapid technological innovation and ongoing regulatory development. Recent regulatory reforms in the United Arab Emirates provide a pertinent example of this adaptive approach. As stated by the Minister of Economy and Chair of the Supreme Committee for Consumer Protection, Abdullah bin Touq Al Marri, the Executive Regulation

[38] Paryadi, "E Commerce Supervision in Trade Laws and Consumer Protection Laws."

represents a significant advancement in strengthening consumer protection and enhancing legal compliance. The regulatory framework ensures that contractual relationships between consumers and suppliers are fair and balanced, prohibits monopolistic practices, clearly defines suppliers' obligations to prevent the provision of defective or substandard goods and services, and establishes effective mechanisms through which consumers may raise complaints and seek redress.[39]

Federal Law No. 15 of 2020 concerning Consumer Protection cancels Federal Law No. 24 of 2006.[40] One of the rights guaranteed to consumers by Law No. 15 of 2020 is the ability to buy products and services at a set price and with guaranteed quality standards. Protecting consumers' health and safety when they use a service or purchase a product is another goal of this legislation. This regulation not only prevents suppliers from using customer data for marketing purposes, but it also protects consumer data. Most notably, these regulations cover all goods and services provided by vendors, marketers, and business representatives operating inside the United Arab Emirates (UAE) mainland and free zones. The regulations also encompass products sold on online marketplaces based in the UAE. Nevertheless, UAE residents who make online purchases from e-commerce businesses that are not legally recognized as operating within the UAE are exempt from this rule.

The UAE government further clarified through official public communications that Federal Law No. 15 of 2020 on Consumer Protection entered into force on 14 July 2023,[41] with its implementing provisions becoming effective on 14 October 2023. The detailed requirements of the

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[39] Rezky Amalia Rustam, *"Kepentingan Ekonomi Uni Emirat Arab (UEA) Terhadap Pembukaan Hubungan Diplomatik UEA-Israel = Economic Interests of the United Arab Emirates (UAE) in Opening UAE-Israel Diplomatic Relations"* (other, Universitas Hasanuddin, 2022), https://repository.unhas.ac.id/id/eprint/28535/.

[40] Yuniar Amanda Surya, *"Enforcement Of Law And Human Rights Regarding Brand Criminal Acts By The Directorate Of Special Criminal Research Of The Jateng Police Based On Law Number 15 Of 2001 Concerning Marks"* (masters, Undaris, 2023), http://repository.undaris.ac.id/id/eprint/1055/.

[41] "2023 Investment Climate Statements: United Arab Emirates," *United States Department of State* (blog), accessed July 14, 2024, https://www.state.gov/reports/2023-investment-

Consumer Protection Law are further elaborated in Cabinet Decision No. 66 of 2023,[42] which sets out the executive regulations for the implementation of Federal Law No. 15/2020.

The Cabinet Decision specifies several key regulatory aspects, including rules on advertising and billing practices. Article 5 governs the determination and display of prices, requiring suppliers to clearly and legibly display advertised prices and prohibiting excessive surcharges, including unjustified price increases for purchases made by credit card. Article 6 obliges suppliers to issue invoices to consumers as proof of purchase or contractual agreement for goods and services without imposing undue burdens. Such invoices must include essential information, including the supplier's address, date of transaction, product description, quantity and condition of the goods, warranty details, and tax identification number. Consumer protection is further reinforced under Article 7, which prioritises the interests of consumers, particularly those with limited financial means, by regulating the sale of second-hand, refurbished, or defective but non-hazardous goods. Suppliers are required to clearly and prominently disclose the condition of such products on the goods themselves and to inform consumers of the location of their business activities. The final invoice or contractual agreement must expressly indicate the status of the goods, thereby ensuring transparency and informed consumer choice.

With regard to replacement parts and warranty coverage, Article 13 defines the provider's obligations concerning the fulfilment of guarantees, while Article 14 specifies the provider's responsibilities relating to replacement parts. Article 16 governs the procedures for providing maintenance services and replacement components, requiring suppliers to establish clear arrangements for after-sales services and to ensure that warranties are consistent with the manufacturer's representations and reasonably relied upon by consumers. This provision also requires suppliers to disclose their physical address, telephone number, and email address to

[42] Abdulwahid Alulama, Tamer Nagy, Nazly Khedr, and Gabrielle Margerison, "UAE Issues New Competition Law with New Merger Control Regime | White & Case LLP," December 28, 2023, https://www.whitecase.com/insight-alert/uae-issues-new-competition-law-new-merger-control-regime.

consumers. Supplier obligations following the acquisition of goods are further addressed in Article 20, which sets out the duties of vendors in situations involving product shortages. In addition, Articles 21 and 22 regulate the reporting of errors and defects in products and impose an obligation to notify consumers promptly in the event of any identified issues. Finally, Article 30 authorises the issuance of ministerial decrees to regulate the duration, conditions, and pricing of after-sales services for specific goods, thereby ensuring an appropriate balance between consumer protection and market regulation.

Importantly, Article 34 generally prohibits the inclusion of contractual terms that are harmful to consumers. Any conditions that seek to exclude or limit the obligations of business actors, as prescribed by this legislation and related consumer protection rules, produce no legal effect. This prohibition applies to all forms of communication with consumers, including invoices, contracts, and other transactional documents. The objective of these strict consumer protection provisions is to enhance the UAE's reputation as a secure and trustworthy marketplace by promoting ethical and responsible business conduct toward consumers and society at large. In line with international standards, the UAE's consumer protection framework therefore achieves a balanced approach between the respective responsibilities of buyers and sellers, reconciling the principles of *caveat emptor* and *caveat venditor*.[43]

The regulatory approach adopted by the United Arab Emirates (UAE) serves as a source of inspiration for this study. Based on an analysis of recent legal developments in the UAE, the author argues that Indonesia should develop its own ideal legal framework—tailored to its domestic context—to strengthen the protection of consumer rights in the e-commerce sector. The following points merit particular consideration:

1. Indonesia should adopt relevant legal principles from comparative jurisdictions, such as the United Arab Emirates, while adapting them to

[43] Sridevi Sidharthan and Thara Kumar, "Latest Executive Regulations to Federal Law No. (15) of 2020 on UAE Consumer Protection," *Chambers and Partners* (Articles), 2023, https://chambers.com/articles/latest-executive-regulations-to-federal-law-no-15-of-2020-on-uae-consumer-prote.

its own constitutional and philosophical foundations rooted in *Pancasila* and popular sovereignty. In this context, the e-commerce regulatory framework should integrate the core values of *Pancasila*, belief in one God, humanity grounded in honesty and fairness, national unity, deliberative democracy guided by collective wisdom, and social justice for all, alongside principles of transparency, accountability, and public participation. Embedding these values would contribute to a robust and equitable e-commerce legal framework capable of addressing the interests and needs of all stakeholders.[44]

2. The United Arab Emirates has adopted comprehensive e-commerce–related legislation aimed at protecting consumers from online fraud and ensuring transparency and accountability in digital transactions. These rules impose obligations on online traders to provide accurate and clear product information, secure electronic payment systems, and effective refund and return mechanisms, while also promoting fair and efficient dispute resolution. In addition, robust privacy and data protection regulations play a central role in safeguarding consumers' personal information in the e-commerce context. Drawing on this regulatory approach, Indonesia could develop similar rules to strengthen transparency, accountability, and consumer trust among e-commerce actors.
3. Similar measures could be adopted in Indonesia through the establishment of rules that promote transparency and accountability within online marketplaces. International instruments such as the UNCITRAL Model Law on Electronic Commerce, which sets globally recognised standards for electronic transactions, provide a useful framework in this regard.[45] In addition, cooperation with international networks such as the International Consumer Protection and Enforcement Network (ICPEN) can enhance cross-border consumer

[44] Makarim, "Policy Framework and Legal Reform for the Smoothness of Electronic Commerce (E-Commerce) in Indonesia."
[45] Will Kenton, "United Nations Commission On International Trade Law," accessed July 14, 2024, https://uncitral.un.org/.

protection and regulatory enforcement.[46] Adapting these global best practices to Indonesia's domestic legal and institutional context would strengthen consumer safety in online transactions and contribute to a more secure and equitable digital marketplace for all stakeholders.[47]

4. The Indonesian Electronic Information and Transactions (ITE) Law addresses jurisdictional challenges arising from cross-border e-commerce transactions with the aim of ensuring fairness and effective consumer protection. It regulates the flow of digital goods, services, and financial transactions across national boundaries, thereby safeguarding consumers in dealings with foreign business actors. Key elements of this framework include rules on jurisdictional authority, minimum consumer protection standards, and the application of domestic regulatory requirements to cross-border platforms. Effective monitoring mechanisms and strict enforcement are essential to ensure compliance. Given the inherently transnational nature of e-commerce, the ITE Law also underscores the importance of international cooperation in implementing and enforcing cross-border regulatory norms.[48] Recent regulatory developments, such as restrictions on certain financial activities on social media platforms and the introduction of minimum pricing requirements for imported goods, further illustrate Indonesia's efforts to strengthen jurisdictional control and consumer protection in the digital marketplace.[49]

Indonesia should further harmonise its e-commerce regulatory framework with international standards, following an approach similar

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[46] Alan Davidson, *The Law of Electronic Commerce* (Cambridge: Cambridge University Press, 2009).

[47] D. Monalisha Rao, "International Consumer Protection Framework & Policy," *International Journal of Law Management & Humanities* 4, no. 3 (2021): 2439, https://doij.org/10.10000/IJLMH.11597.

[48] Jaslin Dhabitah and Khairul Anwar Mohd Nor, "Analysis of Tiktok Commercial License Revocation: Recommendations for the Indonesian Digital Economy," *Journal of the Master of Sharia Economics* 2, no. 2 (December 2023): 49–64, https://doi.org/10.14421/jmes.2023.022-03.

[49] Vira Putri Yarlina dan Syamsul Huda, "Strategi Perluasan Pasar Produk Pangan Lokal Umkm Dan Industri Rumah Tangga Melalui Media Sosial Dan E-Commerce," *JMM*

to that adopted by the United Arab Emirates. Such harmonisation would enable Indonesian businesses to compete more effectively in global digital markets while ensuring robust protection of domestic consumers. In this regard, aligning national legislation, such as the Electronic Information and Transactions Law, with internationally recognised models and adhering to regional instruments, including the ASEAN Agreement on Electronic Commerce, is essential for fostering legal certainty, cross-border interoperability, and consumer confidence.

ASEAN e-commerce cooperation seeks to strengthen the protection of personal data, align national e-commerce regulations with regional taxation frameworks, and promote the mutual recognition of electronic documents for cross-border commercial activities. It also places emphasis on effective dispute resolution mechanisms and the security of electronic transactions. In this context, Indonesia continues to align its e-commerce legislation with international and regional norms in order to enhance the competitiveness of domestic businesses while ensuring effective protection for consumers engaged in online transactions.[50]

5. The UAE has implemented regulatory measures that effectively protect both consumers' and producers' rights in the e-commerce environment, while Indonesia continues to align its domestic legal framework with international trade agreements and global regulatory standards. Legal harmonisation—particularly through the alignment of national legislation such as the Electronic Information and Transactions Law with internationally recognised models—plays a crucial role in ensuring compatibility with global norms. In addition, strengthening rules on personal data protection and integrating reliable digital authentication and taxation mechanisms are essential to facilitating secure and efficient cross-border e-commerce transactions.
6. Dispute settlement is crucial for improving international commerce legislation. Safe transactions across borders are essential for online purchases. Collaborations with other nations and international

[50] Supply Chain Indonesia, "ASEAN Agreement on Electronic Commerce Within the ASEAN Economic Community Framework (Part 1 of 2 Posts)," September 1, 2020.

organizations can enhance e-commerce systems and increase digital engagement, making Indonesia more competitive and providing customer security.

The results of this study highlight the pressing need for Indonesia to further strengthen its e-commerce regulatory framework, particularly by incorporating effective consumer protection mechanisms inspired by comparative experiences such as that of the United Arab Emirates. Guided by the foundational values of Pancasila, adapted to Indonesia's unique legal and socio-economic context, and aligned with evolving international standards, such reforms would enable the development of a balanced e-commerce framework that safeguards consumers while supporting sustainable digital economic growth. Strengthening transaction security, enhancing regulatory certainty, and promoting the inclusion of micro, small, and medium-sized enterprises in the digital economy are central to this objective. Collectively, these measures would foster a more secure and equitable business environment, increase consumer trust, and enhance Indonesia's competitiveness in the global digital marketplace.

## Conclusion

This study demonstrates that both the United Arab Emirates and Indonesia have established legal frameworks aimed at protecting consumers in the context of e-commerce and promoting fair and transparent commercial practices. The UAE has developed a relatively advanced and comprehensive system that places strong emphasis on preventing online fraud, safeguarding personal and financial data, and ensuring corporate accountability in digital markets. Indonesia, while sharing similar regulatory objectives and foundational principles—particularly those rooted in *Pancasila*—continues to strengthen its legislative framework to better align with international standards. Overall, both jurisdictions seek to foster a secure and competitive e-commerce environment that supports consumer confidence, facilitates market access for MSMEs, and encourages sustainable digital economic growth. The comparative analysis indicates that Indonesia may benefit from selectively adopting elements of the UAE's consumer

protection approach, particularly in relation to regulatory clarity, enforcement mechanisms, and digital transaction security.

Based on these findings, future research could explore the practical impact of implementing enhanced consumer protection measures on the growth of e-commerce and consumer trust in Indonesia. Further empirical studies may assess the effectiveness of online dispute resolution (ODR) mechanisms in resolving cross-border e-commerce disputes and improving access to justice for consumers. Additional research could also examine the role of international legal instruments, such as the UNCITRAL Model Law, in harmonising national e-commerce regulations, as well as the implications of regulatory convergence for MSMEs operating in digital markets. Finally, comparative socio-legal studies focusing on consumer awareness and enforcement practices would provide valuable insights into how legal reforms translate into real-world consumer protection outcomes.

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# STRENGTHENING INDONESIA'S GREEN INVESTMENT LAW: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and *Maslahah*

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***Abstract***

*Indonesia's green investment legal framework continues to exhibit substantive and institutional deficiencies, directly impeding the achievement of Net Zero Emissions targets and the broader national sustainable development agenda. This study employs a normative legal research method, utilising conceptual and statutory approaches, reinforced by doctrinal analysis of Green Constitution principles, the Islamic legal doctrine of maslahah, and Indonesia's green investment and environmental governance policies. The findings reveal that the green investment legal framework has not ensured legal certainty, effective enforcement, or measurable environmental benefits due to regulatory fragmentation, weak integration of Environmental, Social, and Governance principles, and the absence of operationalisation of maslahah as a foundation for public policy; consequently, a reformulation of the legal paradigm is required, emphasising transparency, institutional accountability, and risk-based regulatory approaches to strengthen environmental protection and climate justice, support the achievement of Sustainable Development Goal 13, enhance cross-sectoral green investment instruments, improve inter-institutional coordination, and align*

*national policies with commitments under the Paris Agreement and the global sustainable development agenda in a consistent, measurable, adaptive, and socio-ecologically just manner. This research helps formulate a more climate-responsive and public welfare-oriented green investment legal model as a foundational framework for sustainable environmental policy-making in Indonesia, with implications for global environmental sustainability.*

*Kerangka hukum investasi hijau di Indonesia masih menghadapi berbagai kelemahan substantif dan institusional yang berimplikasi langsung pada terhambatnya pencapaian target Net Zero Emissions dan agenda pembangunan berkelanjutan nasional. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan konseptual dan peraturan perundang-undangan, yang diperkaya melalui analisis doktrinal terhadap prinsip Green Constitution, doktrin maslahah dalam hukum Islam, serta kerangka kebijakan investasi hijau dan tata kelola lingkungan di Indonesia. Hasil penelitian menunjukkan bahwa kerangka hukum investasi hijau yang berlaku belum memberikan kepastian hukum, efektivitas penegakan, maupun manfaat lingkungan yang terukur akibat fragmentasi regulasi, lemahnya integrasi prinsip Environmental, Social, and Governance, serta belum teroperasionalisasinya nilai maslahah sebagai dasar kebijakan publik, sehingga diperlukan reformulasi paradigma hukum yang menekankan transparansi, akuntabilitas kelembagaan, dan pendekatan regulasi berbasis risiko dalam rangka memperkuat perlindungan lingkungan dan keadilan iklim, guna mendukung pencapaian Sustainable Development Goal 13 melalui penguatan instrumen investasi hijau lintas sektor, peningkatan koordinasi antar lembaga, penyelarasan kebijakan nasional dengan komitmen Paris Agreement dan agenda pembangunan berkelanjutan global secara konsisten, terukur, adaptif, dan berkeadilan sosial ekologis nasional berkelanjutan Indonesia. Kontribusi penelitian adalah perumusan model konseptual hukum investasi hijau yang proporsional, responsif terhadap perubahan iklim, berorientasi pada kesejahteraan umum sebagai fondasi kebijakan lingkungan berkelanjutan di Indonesia dan berimplikasi pada keberlanjutan lingkungan global.*

***Keywords :*** *green investment law, green constitution, maslahah, net zero emission.*

## Introduction

The 2015 Paris Agreement[1] is an international agreement on climate change that aims to limit and lower global average temperatures.[2] This agreement, followed by all countries worldwide, marks a paramount milestone in combating global climate change. Indonesia has ratified the Paris Agreement with Law No. 16 of 2016 concerning the Ratification of the Paris Agreement to the United Nations Framework Convention on Climate Change. The Paris Agreement sets a target to achieve Net-Zero Emissions (NZE)[3] globally by 2050. Indonesia sets NZE as one of the five targets of Visi Indonesia Emas (Golden Indonesia Vision) 2045. The NZE is a crucial target for reducing overall carbon emissions. To move towards the NZE, the Green Constitution[4] provides the necessary legal framework.

Green Investment,[5] the most effective step toward NZE, has direct and significant positive implications for reducing carbon emissions.[6] It is a critical element of sustainable development[7] while serving as an instrument to encourage innovation and project development that contributes to the

[1] The agreement was adopted by 196 countries and entered into force on November 4, 2016. The main goal of the Paris Agreement is to keep "the increase in global average temperature well below 2°C above pre-industrial levels" and to limit the temperature increase to 1.5 °C above pre-industrial levels. This is done to limit global warming. Greenhouse gas emissions must peak before 2025 and decline by 43% by 2030.

[2] "Paris Agreement," https://unfccc.int/process-and-meetings/the-paris-agreement, accessed May 4, 2024, https://unfccc.int/process-and-meetings/the-paris-agreement.

[3] The Net Zero Emission concept aims to achieve a balance between greenhouse gas emissions produced and emissions that can be absorbed or removed from the atmosphere. It involves increasing efforts to reduce carbon emissions and compensating for remaining emissions through the development of negative carbon technologies.

[4] The Green Constitution perspective places environmental protection as the main principle in the fundamental law or legal framework of a country. It leads to the adoption of policies, regulations, and practices that support the preservation of the natural environment, sustainability, and environmental justice

[5] Green investment includes the allocation of funds to environmentally friendly projects or initiatives, such as renewable energy, sustainable transportation, and energy efficiency. Green investment supports efforts to achieve Net Zero Emissions by reducing carbon emissions and supporting the transition to a more sustainable economy. Green investment is a *socially responsible investment approach* or a sustainable long-term investment model.

[6] Daffa Syabilla et al., "Pengaruh Investasi Hijau Dan Keragaman Dewan Direksi Terhadap Pengungkapan Emisi Karbon," *Konferensi Riset Nasional Ekonomi Manajemen Dan Akuntansi* 2, no. 1 (2021): 1171.

[7] Yuan Lai and Muhammad Tayyab Sohail, "Revealing the Effects of Corporate Governance on Green Investment and Innovation: Do Law and Policy Matter?," *Frontiers in Psychology* 13 (2022): 961122.

achievement of NZE. Governments across countries have adopted economic support mechanisms to encourage private investment, leading many companies to invest in renewable energy production.[8] Governments in several countries are competing to offer incentives to companies to boost investment in renewable energy projects, which, in turn, helps foster clean energy production and reduce dependence on fossil fuels.

A study conducted in Japan in 2019 showed that adding risk diversification and mitigation factors to growth models makes investing in renewable energy highly competitive.[9] By allocating investments to various renewable energy projects and preparing measures to mitigate risks, investments in renewables seem to attract more investors, as risks can be better managed and sustainable growth opportunities identified and properly exploited. The growth model referred to here concerns strategies designed to accelerate the development and adoption of renewable energy, such as tax incentives, subsidies, and other policies that support the use of clean energy.

Green investment has proven to have a significant impact on reducing carbon emissions, as its implementation can stimulate companies, businesses, and communities to adopt more environmentally friendly products and practices.[10] Green investment has begun in several developed and developing countries. Various discussions and research have been conducted concerning tackling climate change in general, as well as green investment in particular.

A Chinese study examines and analyses trends and factors that determine investment in 35 developed and developing countries, showing that the success of green investment is influenced by policy interventions that encourage the use of green energy.[11] Furthermore, research from London reveals the urgency of policy and synergies from coordinated institutions to support private investment in green innovation. Consistent, integrated policy

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[8] Fernando Dias Simões, "Investment Law and Renewable Energy: Green Expectations in Grey Times," *How International Law Works in Times of Crisis*, 2019, 206–20.

[9] Shahzadah Nayyar Jehan and Mirzosaid Sultonov, "Green Investment Policy Initiatives in Japan," *Proceedings of the 15th International Scientific and Practical Conference of the Russian Society for Ecological Economics Strategies and Tools, Stavropol, Russia*, 2019, 9, https://www.researchgate.net/profile/Shahzadah-Jehan/publication/344591150_Green_Investment_Policy_Initiatives_in_Japan/links/5f8292c892851c14bcbe780f/Green-Investment-Policy-Initiatives-in-Japan.pdf.

[10] Bintang Adi Pratama and Amrie Firmansyah, "Pembiayaan Hijau: Akselerasi Pembangunan Berkelanjutan Demi Mencapai Net Zero Emission," *Journal of Law, Administration, and Social Science* 4, no. 1 (2024): 150.

[11] Luc Eyraud et al., "Green Investment: Trends and Determinants," *Energy Policy* 60 (2013): 852–65.

and investment synergies, and effective communication with relevant parties are crucial to encouraging the transition to NZE.[12]

In the United States, one factor hindering the achievement of NZE is the difficulty of raising sufficient funds to finance the construction and operation of clean technology infrastructure.[13] The U.S. is currently synergising across the federal government, state governments, the private sector, and communities in energy transformation, which requires massive investment as well as policy and business practice transformation.[14] The U.S. itself has set standards for the application of green bonds[15] that must meet a series of aspects, one of which is regulatory.[16]

The green bond policy directly supports environmentally friendly innovation and the development of green spaces. Green bond policy is the main factor driving green innovation and green space[17]. Government-issued green bonds can reduce the risk of green investments[18] compared to private green bonds. The green bond policy in ASEAN is effective in promoting green bond issuance.[19] However, this does not mean that green bond policies are effective in promoting renewable energy and energy efficiency projects in

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[12] Nicholas Stern and Anna Valero, "Innovation, Growth and the Transition to Net-Zero Emissions," *Research Policy* 50, no. 9 (2021): 11.

[13] Jesse D. Jenkins et al., "Mission Net-Zero America: The Nation-Building Path to a Prosperous, Net-Zero Emissions Economy," *Joule* 5, no. 11 (2021): 2727.

[14] Nay Htun, "Holistic and Integrated Systemic Policies and Practices for Decarbonization," *Environmental Progress & Sustainable Energy* 42, no. 4 (2023): 7, https://doi.org/10.1002/ep.14102.

[15] Green bonds are one form or type of green investment. Green bonds are financial instruments issued to support projects that pay attention to the environment and climate. Funds generated from the sale of green bonds are allocated to projects such as renewable power generation, energy efficiency projects, sustainable transportation, waste management, and projects that support adaptation to climate change and reduction of greenhouse gas emissions.

[16] Pauline Deschryver and Frederic De Mariz, "What Future for the Green Bond Market? How Can Policymakers, Companies, and Investors Unlock the Potential of the Green Bond Market?," *Journal of Risk and Financial Management* 13, no. 3 (2020): 61.

[17] Chien-Chiang Lee et al., "Towards Net-Zero Emissions: Can Green Bond Policy Promote Green Innovation and Green Space?," *Energy Economics* 121 (2023): 106675.

[18] Green investments are not protected from market fluctuations, and economic risks such as asset values can rise or fall due to macroeconomic factors, policy changes, or unexpected market turmoil.

[19] Joao Paulo Braga et al., "De-Risking of Green Investments through a Green Bond Market–Empirics and a Dynamic Model," *Journal of Economic Dynamics and Control* 131 (2021): 104201.

the ASEAN context.[20] Combining policies that support the increase in renewable energy and investment in green technologies is an essential step to accelerate the advancement of environmental technologies in the ASEAN-6 region toward NZE.[21] The European Union (EU) has stipulated "environmentally sustainable investment" in its legislation. Moreover, the EU ensures that funds allocated are consistent with the environmental protection principles laid out in the European Green Deal (EGD) [22] to achieve a climate-neutral and sustainable economy.[23]

The studies on green investment in several countries above illustrate the effectiveness of green investment regulations and legal policies. Green investment requires an ideal legal framework to achieve goals, which effectively includes clear, definite regulation. The legal framework for green investment is expected to encourage investment in environmentally friendly projects, provide financial incentives to support sustainability initiatives, and provide legal protection for the environment, communities, and investors. The legal framework concerned comprises statutes and implementing regulations, including provisions that can limit or sanction detrimental practices. An ideal legal framework would foster sustainable economic growth and promote effective environmental protection.

In Indonesia, green investment serves as one of the main pillars of a sustainable economy in 2023.[24] Green investment needs to be a priority on

[20] Dina Azhgaliyeva et al., "Green Bonds for Financing Renewable Energy and Energy Efficiency in South-East Asia: A Review of Policies," *Journal of Sustainable Finance & Investment* 10, no. 2 (2020): 113–40, https://doi.org/10.1080/20430795.2019.1704160.

[21] Arshian Sharif et al., "Demystifying the Links between Green Technology Innovation, Economic Growth, and Environmental Tax in ASEAN-6 Countries: The Dynamic Role of Green Energy and Green Investment," *Gondwana Research* 115 (2023): 98–106.

[22] The European Green Deal (EGD) of 2019 aims to transform the European Union into a climate-neutral economy by reducing carbon emissions by 55% by 2030 towards NZE by 2050. The EGD includes a range of policy measures to tackle climate change, promote sustainable economic growth, improve energy efficiency, and strengthen environmental policies across the European Union.

[23] Alicja Sikora, "European Green Deal – Legal and Financial Challenges of the Climate Change," *ERA Forum* 21, no. 4 (2021): 681–97, https://doi.org/10.1007/s12027-020-00637-3.

[24] Jonson Hasibuan, "Ekonomi Berkelanjutan Di Tahun 2023: Investasi Hijau Dan Transformasi Bisnis," *Circle Archive* 1, no. 2 (2023), http://circle-archive.com/index.php/carc/article/view/41.

the National Legislative Programme (Prolegnas) agenda.[25] The Indonesian government must concretely demonstrate that efforts to attract green investors must be underpinned by an explicit, firm legal basis that guarantees legal certainty and justice, and protects the environment. Indonesia has set an ambitious target to reduce greenhouse gas emissions by 32% from expected emission levels by 2030. The determination of the Enhanced Nationally Determined Contribution (ENDC) [26] is equivalent to 912 million tons of CO2[27]. Like other countries, Indonesia also views green investment as the most effective instrument for realising NZE. The implementation of green investments in Indonesia, through projects and technologies, has proven to reduce greenhouse gas emissions. These include investments in agriculture and mining[28], renewable energy, such as solar, wind, and biomass,[29] sustainable transportation, and energy efficiency, which can significantly reduce carbon emissions.

Green investment regulations are entrusted to the Investment Law and Presidential Regulation on the General Plan of Investment, with Article 33, paragraph (4) of the 1945 Constitution of the Republic of Indonesia as the central legal umbrella. Explicitly, the regulation on green investment has been enacted, although it is yet to be expressly and clearly defined. In addition, its application needs improvements,[30] given that there are no sanctions arrangements and that aspects of government oversight of the implementation of investor obligations are weak. Existing investment

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[25] Bintan Rahayu Anisah, "Eksistensi Investasi Hijau Dalam Poros Pembangungan Ekonomi Sebagai Bentuk Manifestasi Perlindungan Atas Lingkungan Hidup," *Padjadjaran Law Review* 8, no. 1 (2020): 132.

[26] An Enhanced Nationally Determined Contribution (ENDC) is an improved commitment proposed by a country to the United Nations (UN) to curb global contributions to climate change. By setting this target, Indonesia aims to make significant contributions to limiting global average temperature rise while reducing the impact of climate change.

[27] *Perkembangan NDC Dan Strategi Jangka Panjang Indonesia Dalam Pengendalian Perubahan Iklim* (n.d.), https://ppid.menlhk.go.id/berita/siaran-pers/5870/%20perkembangan-ndc-dan-strategi-.

[28] Pandu Adi Cakranegara, "Investasi Hijau: Mengintergrasikan Faktor Enviromental, Social Dan Governance Dalam Keputusan Investasi," *Jurnal Akuntansi, Keuangan, Dan Manajemen* 2, no. 2 (2021): 103.

[29] Tomy Rizky Izzalqurny et al., *Transformasi Ekonomi Hijau Di Indonesia* (Eurika Media Aksara, 2023), 25.

[30] Annisa Dinda Soraya, "Kebijakan Investasi Hijau Dalam Perundang-Undangan Indonesia Sebagai Upaya Penurunan Emisi Grk Nasional Menuju E-NDC 2030," *UNES Law Review* 6, no. 2 (2023): 5322.

regulations remain far from the goal of realising green investment in Indonesia.[31] As the gravity of the threat of climate change becomes more evident, new approaches are needed to design and reconceptualise legal frameworks to guide green investment and effectively address the issues that impede its progressive implementation.

The broader discourse on climate-responsive legal reform in developing countries has increasingly acknowledged the critical role of normative and constitutional legal frameworks in promoting green investment. Harahap et al. emphasise the intersection between Islamic finance and the Sustainable Development Goals (SDGs), identifying a persistent gap in the integration of legal and constitutional norms that underpin sustainable investment governance in Muslim-majority jurisdictions.[32] Similarly, Jalili et al. explore the application of Islamic legal maxims, such as *lā ḍarar wa lā ḍirār* and *maslahah,* to guide green investment models within Islamic economic theory. However, their analysis does not extend to the design of constitutional legal structures necessary to institutionalise these principles within national legal systems.[33] In the Indonesian context, A.P. Supriyadi investigates the compatibility of retail green *sukuk* with *maqāṣid al-sharīʿah*, particularly in advancing *maṣlaḥah* (public benefit) and preventing harm. Nonetheless, this study remains limited to financial instruments and does not sufficiently connect green *sukuk* with the constitutional mandates on environmental protection, as enshrined in Articles 28H(1) and 33(4) of the 1945 Constitution.[34]

Several studies on green investment in some countries above illustrate the effectiveness of green investment regulations and legal policies. However, these studies tend to focus on sectoral financial tools or ethical constructs, without developing a comprehensive normative-constitutional model that structurally supports green investment within both national constitutional

[31] Utji Sri Wulan Wuryandari et al., "Weak Investment Law Enforcement in Land and Forest Fire Cases in Indonesia," *Substantive Justice International Journal of Law* 5, no. 2 (2022): 205–15.

[32] Burhanudin Harahap et al., "Islamic Law, Islamic Finance, and Sustainable Development Goals: A Systematic Literature Review," *Sustainability* 15, no. 8 (2023): 8, https://doi.org/10.3390/su15086626.

[33] Ismail Jalili et al., "Role of Qawā'id Fiqhiyyah in Promoting Green Investment within Islamic Economics: Theoretical and Practical Frameworks," *Journal of Islamic Thought and Civilization* 15, no. 1 (2025): 1, https://doi.org/10.32350/jitc.151.12.

[34] Aditya Prastian Supriyadi et al., *Green Sukuk in Indonesia: Unraveling Legal Frameworks for Sustainable Islamic Bonds | El-Mashlahah*, January 2, 2024, https://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/article/view/7372.

frameworks and Islamic legal principles. This research, therefore, seeks to address that gap by offering a legal reconceptualisation that places green investment within an integrative normative foundation: the Indonesian Green Constitution as the supreme legal source for realising ecological justice, and the principle of *maslahah* in Islamic law as a substantive ethical-normative framework. This integrative approach aims to develop a more coherent, inclusive, and constitutionally grounded legal model for green investment, thereby reinforcing Indonesia's just, sustainable, and adaptive transition toward NZE.

## Research Methods

This study employs a normative legal research method to formulate rules, principles, and doctrines that address legal problems in the reconceptualisation of green investment law through the perspectives of the Green Constitution and *maslahah*. The analysis applies a statutory and conceptual approach, complemented by a comparative approach to place Indonesia's framework within the context of global practices, particularly those of the European Union, Japan, China, and the United States. Such triangulation provides comprehensive reasoning to identify legal gaps and consider international innovations relevant to Indonesia's NZE commitment. The data consist of primary legal materials, including the 1945 Constitution, Law No. 16 of 2016 on the Paris Agreement, Law No. 32 of 2009 concerning Environmental Protection and Management, and related government regulations. Secondary materials include academic books, journal articles, and prior studies on green investment, constitutional environmental law, ESG integration, and *maslahah*. Tertiary materials comprise dictionaries, legal encyclopaedias, and online databases that support conceptual clarity.

The materials were examined using content analysis, which integrates legal and conceptual exploration to help build a systematic and dynamic understanding of Indonesia's green investment law. To ensure analytical rigour, this study adopted the qualitative framework of Miles and Huberman[35], which proceeds through three iterative stages: data reduction, by coding and categorising relevant constitutional provisions, statutory regulations, and scholarly literature while eliminating extraneous information; data display, by arranging the reduced data into matrices and conceptual maps to reveal the relationship between legal norms, institutional practices, and doctrinal interpretations; and concluding and conclusion verification, by interpreting

[35] Miles, Matthew B.; Huberman, A. Michael; Saldana, Johnny. Qualitative Data Analysis: A Methods Sourcebook, 2014

the displayed data to construct normative arguments, followed by iterative cross-checking against the sources, international best practices, and the Islamic legal principle of *maslahah* to ensure validity. This structured approach is intended to establish methodological transparency and provide a coherent foundation for reconceptualising Indonesia's green investment law in line with constitutional mandates and ecological justice.

## Discussion

### Toward Net Zero Emissions: Aligning Legal Reform, ESG Integration, and Green Investment for Climate Justice

The global discourse on green investment reform must be supported by an ideal legal framework to optimise a low-carbon economy that should effectively address climate change.[36] In this context, the realisation of green investment not only serves as an essential pillar of a sustainable economy but also plays a vital role in reducing pollution and greenhouse gas emissions, and in improving energy efficiency, thereby contributing to environmental restoration.[37] For example, the issuance of Green Bonds by the World Bank of nearly USD 290 billion shows the global commitment to financing green projects as a concrete measure to confront the threat of climate change.[38] However, the success of green investment practices depends on straightforward guidelines that allow for implementation with predictability. These guidelines should be accommodated by a sustainable finance legal framework that holistically integrates green investment objectives into legal, investment, and environmental frameworks.[39] EU regulations emphasise Environmental, Social, and Governance (ESG) factors as critical indicators to

[36] Martin Dietrich Brauch, *Reforming International Investment Law for Climate Change Goals*, 2020, https://doi.org/10.7916/d8-300v-7h63.

[37] Chen Liu and Serena Shuo Wu, "Green Finance, Sustainability Disclosure and Economic Implications," *Fulbright Review of Economics and Policy* 3, no. 1 (2023): 1–24, https://doi.org/10.1108/FREP-03-2022-0021.

[38] Giuseppe Cortellini and Ida Claudia Panetta, "Green Bond: A Systematic Literature Review for Future Research Agendas," *Journal of Risk and Financial Management* 14, no. 12 (2021): 12, https://doi.org/10.3390/jrfm14120589.

[39] Lorenzo Cotula, "International Investment Law and Climate Change: Reframing the ISDS Reform Agenda," *The Journal of World Investment & Trade* 24, no. 4–5 (September 25, 2023): 766–791, https://doi.org/10.1163/22119000-12340310.

encourage companies to invest responsibly and sustainably.[40] Globally, realising green investment will accelerate NZE by integrating profit-minded and ecological economic paradigms to address future climate change problems.[41]

The success of mitigating climate change depends mainly on countries worldwide's level of commitment to implementing actions to curtail greenhouse gas emissions.[42] As a strategic step, alleviating climate change through green investment is a profitable option that contributes to improving social welfare. N.H. affirmed that green investment allows for new economic potential that is not only profit-oriented but also plays a role in mitigating climate change to prevent more significant economic and environmental losses in the time to come.[43] Moreover, the green investment of the contemporary era is no longer an economic need, but it is now urgent and protective. The integration of green investment transformation into the legal framework aims to replace the extractive economy paradigm, which relies on fossil energy sources as the primary driver of climate change.[44] In this context, the Intergovernmental Panel on Climate Change (IPCC) urges countries to respond to the increasing impact of global warming by 1.5°C through investment policies through green finance to slow down the acceleration of climate change.[45]

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[40] Dirk A Zetzsche et al., "The EU Sustainable Finance Framework in Light of International Standards," *Journal of International Economic Law* 25, no. 4 (2022): 659–79, https://doi.org/10.1093/jiel/jgac043.

[41] Volker Brühl, "Green Finance in Europe – Strategy, Regulation and Instruments" 2021, no. 6 (2021): 323–330.

[42] Valérie Masson-Delmotte et al., "Climate Change 2021: The Physical Science Basis," *Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* 2, no. 1 (2021): 2391.

[43] Nicholas Herbert Stern and Great Britain Treasury, *The Economics of Climate Change: The Stern Review* (Cambridge University Press, 2007).

[44] Xiaodong Wang, "Legal and Policy Frameworks for Renewable Energy to Mitigate Climate Change," *Sustainable Development Law & Policy* 07 (winter 2007): 17–20.

[45] The IPPC report summary related to the follow-up of global warming as the cause of change recommends various green finance policies consisting of Carbon Pricing and Emissions Trading Systems, Renewable Energy Incentives, Green Finance and Investment Regulations, Energy Efficiency Standards, and Sustainable Land Use and Forestry Practices., see Valérie Masson-Delmotte et al., "An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty," *Intergovernmental Panel on Climate Change*, 2019.

This orientation toward green investment aligns with Sustainable Development Goal (SDG) 13: Climate Action, which calls for urgent action to combat climate change and its impacts through legal, financial, and institutional reforms. Specifically, Target 13.2 emphasises the integration of climate measures into national legal and policy frameworks. This objective is increasingly pressing in the context of rising global emissions and climate-induced economic losses. As highlighted by the United Nations,[46] progress toward SDG 13 remains insufficient, especially in countries lacking coherent legal mechanisms to facilitate green finance and low-emission investment planning. Embedding green investment into national regulatory systems can direct economies away from fossil dependency and toward low-carbon, innovation-driven development. In this regard, Stern and Valero[47] stress that legal support for green investment is essential not only to meet climate targets but also to catalyse innovation and sustainable growth. Similarly, Zhang and Wei[48] demonstrate that the alignment between resource efficiency, cultural-economic sectors, and legal green frameworks significantly enhances the performance of green economic transitions. Furthermore, the need for legal reconceptualisation in investment law to better accommodate climate imperatives is affirmed by Cotula,[49] who critiques the rigidity of existing legal regimes in supporting transformative climate action. These studies collectively reinforce the notion that Indonesia's legal transformation in favour of green investment is not merely a domestic priority but a concrete contribution to the global realisation of SDG 13 and the commitments under the Paris Agreement.

While the global discourse highlights transparency, ESG integration, and legal reform as central pillars for promoting green investment, these instruments remain insufficient without a deeper normative foundation that binds actors to act responsibly. In this regard, the principle of good faith offers an essential framework to complement the existing regulatory approach. The principle of good faith serves as a normative bridge that can address the

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[46] United Nations Department of Economic and Social Affairs, *The Sustainable Development Goals Report 2023: Special Edition*, The Sustainable Development Goals Report (United Nations, 2023), https://doi.org/10.18356/9789210024914.

[47] Nicholas Stern and Anna Valero, "Innovation, Growth and the Transition to Net-Zero Emissions," *Research Policy* 50, no. 9 (2021): 104293, https://doi.org/10.1016/j.respol.2021.104293.

[48] Ming Zhang and Xuejiao Wei, "Resource Efficiency, Cultural Industry, and Green Economic Growth: A Synergistic Approach," *Resources Policy* 90 (March 2024): 104769, https://doi.org/10.1016/j.resourpol.2024.104769.

[49] Cotula, "International Investment Law and Climate Change."

philosophical, juridical, and sociological dimensions of Indonesia's green investment law. Philosophically, good faith reorients investment activities toward an ethic of responsibility that transcends mere profit motives by embedding ecological justice and intergenerational equity into regulatory contracts—reflecting what is often referred to as a 'duty of honest performance' or 'organisational principle' underlying contractual obligations.[50] Juridically, its internalisation ensures that investors, regulators, and state actors uphold transparency, fair dealing, and compliance with ESG standards, thereby mitigating the risks of greenwashing and weak enforcement mechanisms, particularly within the framework of international investment law and arbitration.[51] Sociologically, good faith fosters trust and social legitimacy by aligning investment practices with community welfare and enabling public participation, transforming green investment into a relational, cooperative endeavour rather than a purely transactional one.[52] In this sense, the good faith principle strengthens the constitutional and *maslahah*-based foundations of Indonesia's green investment law, while simultaneously operationalising them into enforceable standards of conduct, offering a holistic solution to the multi-dimensional challenges of achieving NZE.

The principle of good faith is not merely compliant with regulations; it demonstrates a manifestation of commitment to sustainability and ecological justice. In practice, the good faith of entrepreneurs and investors is realised through adherence to Environmental Impact Assessments (AMDAL), which serve as concrete instruments for ensuring ecological justice.[53] Conversely, the absence of good faith results in adverse consequences, in which, socially, it may trigger conflicts with local communities, undermine social legitimacy, and damage corporate reputation both domestically and in global markets. Ecologically, profit-driven investment practices that disregard sustainability

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[50] Bois Francois Du, "Developing Good Faith: Equality, Autonomy and Fidelity to the Bargain," *Constitutional Court Review* 12, no. 1 (2022): 223–259, https://doi.org/10.2989/CCR.2022.0009.

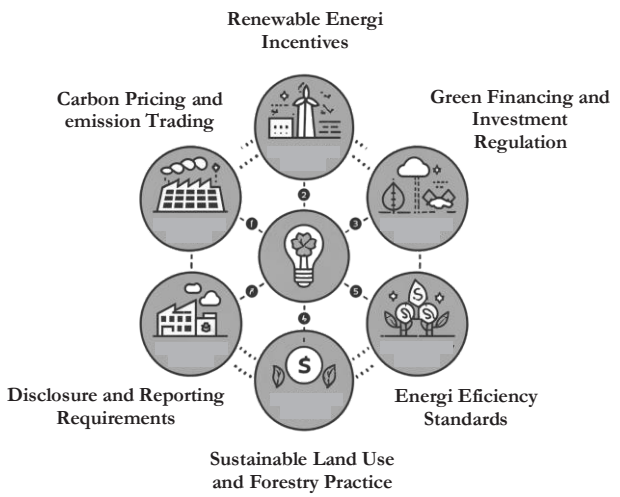
[51] Sanja Djajić, *Good Faith in International Investment Law and Policy* (2020), https://doi.org/10.1007/978-981-13-5744-2_115-1.

[52] *Cooperation as Philosophical Foundation of Good Faith in International Business-Contracting – A View Through the Prism of Transnational Law | Oxford University Comparative Law Forum*, July 27, 2017, https://ouclf.law.ox.ac.uk/cooperation-as-philosophical-foundation-of-good-faith-in-international-business-contracting-a-view-through-the-prism-of-transnational-law/.

[53] Ali Rahmat Kurniawan et al., "A Qualitative Content Analysis of Environmental Impact Assessment in Indonesia: A Case Study of Nickel Smelter Processing," *Impact Assessment and Project Appraisal* 38, no. 3 (2020): 194–204, https://doi.org/10.1080/14615517.2019.1672452.

principles exacerbate environmental degradation, accelerate ecosystem collapse, and threaten future generations. Juridically, business actors and investors face the risk of administrative sanctions, civil liability, and even criminal prosecution for non-compliance with statutory obligations. Economically, neglecting the principle of good faith creates hidden costs associated with environmental restoration, reduces competitiveness, and exposes businesses to market rejection in jurisdictions that strictly enforce sustainability standards, thereby lowering stock value.[54] At the international level, persistent violations may foster perceptions that Indonesia is not serious about honouring its commitments under the Paris Agreement and the SDGs.[55] Finally, from an ethical and human rights perspective, investments and business operations devoid of good faith risk violating communities' fundamental right to a healthy environment. Thus, the neglect of good faith not only entails legal liabilities but also engenders systemic risks that may destabilise national development and undermine Indonesia's integrity in the global arena.

**Figure 1.1.**
Six main policies to respond to global warming in overcoming climate change




Sources: Personal processed data based on IPPC report (2024)

[54] Fan Xia et al., "Does Non-Compliance Pay? Environmental Violations and Share Prices in China," *Corporate Social Responsibility and Environmental Management* 31, no. 3 (2024): 1886–904, https://doi.org/10.1002/csr.2672.

[55] Lavanya Rajamani, "Interpreting the Paris Agreement in Its Normative Environment," *Current Legal Problems* 77, no. 1 (2024): 167–200, https://doi.org/10.1093/clp/cuae011.

In response to the global issue of climate change, Indonesia has taken significant steps by increasing its commitments in accordance with the Paris Agreement. Based on the Enhanced Nationally Determined Contribution (ENDC) report submitted to the United Nations Framework Convention on Climate Change in 2022, Indonesia is committed to increasing its emission reduction target from 29% to 31.89%. To achieve this ambitious goal, Indonesia is adopting a partnership-based green investment networking strategy to accelerate NZE efforts to eradicate climate change.[56] The three main sectors to be optimised to overcome climate change in Indonesia include (1) optimisation of the transition of new and renewable energy to realise decarbonisation due to the use of coal energy,[57] (2) optimisation of green finance to fund NZE projects in the sector, energy transformation, agriculture, forestry, and sustainable land use with an investment target of USD 285 billion,[58] (3) optimisation of the development of the renewable energy sector by utilising solar, water, wind, and other sectors that have an impact on accelerating towards NZE to overcome climate change.[59]

To realise its NZE ambition, Indonesia has taken strategic steps by developing various legal policies. Some of the legal products issued are listed below.

**Table 1.1**
List of Primary Legal Products Relevant to Climate Change Alleviation Programmes in Indonesia

| No. | Types of Legal Products | Information |
|---|---|---|
| 1. | Law No.16 of 2016 | Legal products that legitimise the Paris Agreement to demonstrate Indonesia's |

[56] IISD's SDG Knowledge Hub, *Indonesia's LEDS Identifies Partnerships as Key to Achieve Paris Agreement | News | SDG Knowledge Hub | IISD*, n.d., accessed April 7, 2024, http://sdg.iisd.org/news/indonesias-leds-identifies-partnerships-as-key-to-achieve-paris-agreement/.

[57] "An Energy Sector Roadmap to Net Zero Emissions in Indonesia – Analysis," IEA, September 2, 2022, https://www.iea.org/reports/an-energy-sector-roadmap-to-net-zero-emissions-in-indonesia.

[58] "Climate-Aligned Investments in Indonesia's Financial Sector," CPI, accessed April 7, 2024, https://www.climatepolicyinitiative.org/publication/climate-aligned-investments-in-indonesias-financial-sector/.

[59] Leonardo Garrido et al., *Zeroing In on Zero Emissions: Increasing Climate Ambition for Indonesia*, October 15, 2021, https://www.wri.org/insights/zero-emissions-increasing-climate-ambition-indonesia.

| | | |
|---|---|---|
| | | commitment to tackling climate change internationally |
| 2. | Government Regulation No. 79 of 2014 | A technical legal product containing directions for the development and optimisation of new and renewable energy in Indonesia |
| 3. | Government Regulation No. 57 of 2016 | Technical legal products as the basis for Peatland Ecosystem Protection and Management policies to reduce emissions from peatland degradation |
| 4. | Presidential Regulation No. 61 of 2011 | Legal products as the policy basis of the national action plan to reduce greenhouse gas emissions |
| 5 | Presidential Regulation No. 55 of 2019 | About Battery Electric Vehicle Programme Acceleration for Road Transport |

Source : Author's Processed Data (2024).

The existence of primary legal products and other legal products that support climate change alleviation programmes has been suboptimal in the field. It occurred due to an inconsistency in the original plan, leading to persistent deforestation and the loss of 11% of the primary forest area in 2021.[60] In addition, 70% of forest destruction from coal mining increased greenhouse gas emissions and reduced Indonesia's forest area to around 93.8 million hectares.[61] Another obstacle is the need for optimal renewable energy transformation rules, given that, to date, coal has been the central pillar of Indonesia's energy security.[62] It happens because existing legal products could be improved to serve as green investment performance standards, helping accelerate green, sustainable programmes to mitigate climate change.[63] The Climate Action Tracker assesses Indonesia's climate policy target as "critically

[60] "Kehilangan Hutan Tetap Tinggi Di Tahun 2021 | Global Forest Watch Blog," accessed April 7, 2024, https://www.globalforestwatch.org/blog/id/insights/data-kehilangan-tutupan-pohon-global-2021/.

[61] "Indonesia Kehilangan 270 Ribu Hektar Lahan Hutan Primer pada 2020 | Databoks," accessed April 7, 2024, https://databoks.katadata.co.id/datapublish/2021/11/04/indonesia-kehilangan-270-ribu-hektar-lahan-hutan-primer-pada-2020.

[62] "Kesiapan Regulasi Indonesia untuk Memenuhi Komitmennya dalam COP21," LK2 FHUI, accessed April 7, 2024, https://lk2fhui.law.ui.ac.id/portfolio/kesiapan-regulasi-indonesia-untuk-memenuhi-komitmennya-dalam-cop21/.

[63] Wang, "Legal and Policy Frameworks for Renewable Energy to Mitigate Climate Change."

insufficient" due to the priority given to the planned expansion of coal power plants in 2022, which is not in line with the global temperature limit of 1.5°C as stipulated in the Paris Agreement.[64]

The existing problems in regulating green investment law in Indonesia, which seem to exacerbate the threat of climate change, require a new approach to reconceptualising the law. Indonesia's need to reconceptualise the law is even more urgent if analysed using three simple benchmarks from S. Sebastian's research.[65] The country needs these benchmarks to regulate effective green investment to surmount climate change. The **first** is transparency and disclosure. Mark S. Bergman asserts that transparency in green investment legal arrangements is a crucial element that cannot be separated from sustainable development goals. Laws that promote transparency play a vital role in guiding investors to consistently consider environmental, social, and governance (ESG) factors when making accurate green investment decisions.[66] Overlooking this element will leave room for irrelevant greenwashing conducted by investors to overcome the threat of climate change.[67] Conversely, transparency encourages investors to apply moral discipline independently in economic activities that support environmental sustainability.[68]

The internalisation of the principle of transparency in legal and policy settings in Indonesia is essential to increasing the accountability of green investment. Along with the commitment, the sustainable finance roadmap and green taxonomy aim to increase capacity and coordination within the financial

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[64] "Indonesia," accessed April 7, 2024, https://climateactiontracker.org/countries/indonesia/.

[65] 3 (three) simple benchmarks that countries need to regulate green investment to overcome climate change consisting of : (1) Transparency and Disclosure, (2) Risk Management dan, (3) Integration of ESG Criteria Sebastian Steuer and Tobias H Tröger, "The Role of Disclosure in Green Finance," *Journal of Financial Regulation* 8, no. 1 (2022): 1–50, https://doi.org/10.1093/jfr/fjac001.

[66] Ariel Deckelbaum et al., "ESG Disclosures: Frameworks and Standards Developed by Intergovernmental and Non-Governmental Organizations," *The Harvard Law School Forum on Corporate Governance*, September 21, 2020, https://corpgov.law.harvard.edu/2020/09/21/esg-disclosures-frameworks-and-standards-developed-by-intergovernmental-and-non-governmental-organizations/.

[67] Danny Busch, "EU Sustainable Finance Disclosure Regulation," *Capital Markets Law Journal* 18, no. 3 (2023): 303–28, https://doi.org/10.1093/cmlj/kmad005.

[68] Green Skills Academy, "Green Finance: Investors Need Transparency," *LSE Business Review*, May 28, 2020, https://blogs.lse.ac.uk/businessreview/2020/05/28/green-finance-investors-need-transparency/.

sector towards NZE.[69] To ensure the plan goes as expected, ESG-based regulations with transparency insight are needed as concrete guidelines for green investors in Indonesia.[70] Transparency International underscores that such regulations are essential to ensure open management and financing, budget accountability, and the flow of funds as an effective joint oversight tool to prevent corruption in the green investment sector.[71] According to the World Bank, optimising transparency in regulations is essential for building trust among stakeholders (government investors and the public), which can be used to track the progressivity of green investment contributions.[72] A high level of transparency will attract more investment from the private and international sectors, while accelerating the achievement of the target of reducing greenhouse gas emissions by 29% by 2030.[73]

**The second** is risk management. Internalisation of risk management principles in green investment law in Indonesia is also crucial to accelerating efforts to address climate change-related issues. According to M. Demuzere's research, green investment arrangements with risk-management insights reduce physical risks from extreme weather events and natural disasters. So, policy realisation can affect ecosystem protection and secure assets and investments from damage caused by climate change.[74] Risk management principles are also essential to maintaining green investment resilience to financial risks arising from the transition to a low-carbon economy. Internalising these principles can help manage risk by supporting green technology innovation and ensuring that economies run in line with global

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[69] "ESG 2023 - Indonesia | Global Practice Guides | Chambers and Partners," accessed April 9, 2024, https://practiceguides.chambers.com/practice-guides/esg-2023/indonesia.

[70] "ESG in Indonesia: Access to Finance 2023," *Oxford Business Group*, n.d.

[71] "Climate Crisis - Our Priorities," Transparency.Org, December 11, 2020, https://www.transparency.org/en/our-priorities/climate-crisis.

[72] "World Bank Group Report Proposes Policies, Investments to Enable Indonesia to Achieve Its Development and Climate Goals," Text/HTML, World Bank, accessed April 9, 2024, https://www.worldbank.org/en/news/press-release/2023/05/03/world-bank-group-report-proposes-policies-investments-to-enable-indonesia-to-achieve-its-development-and-climate-goals.

[73] Hanny Chrysolite et al., *Evaluating Indonesia's Progress on Its Climate Commitments*, October 4, 2017, https://www.wri.org/insights/evaluating-indonesias-progress-its-climate-commitments.

[74] M. Demuzere et al., "Mitigating and Adapting to Climate Change: Multi-Functional and Multi-Scale Assessment of Green Urban Infrastructure," *Journal of Environmental Management* 146 (December 15, 2014): 107–115, https://doi.org/10.1016/j.jenvman.2014.07.025.

climate goals.[75] Legal solid guidance in risk management will help increase healthy business competition, where green investors are given equal standing. Additionally, it encourages companies to continuously innovate and develop new ideas to maintain resilient profitability while still adhering to the principles of a competitive green economy.[76] Given the urgency of risk management, the internalisation of these principles into Indonesia's green investment law will guide investors to improve security, mitigate risks, and ensure companies operate transparently in a healthy economic environment to contribute to tackling climate change.

**The third** is integration of ESG criteria. The ESG integration cannot be done unilaterally. Finding the ideal integration criteria requires a collaborative approach, including legislation, regulation, technical policy support, and investment with transparency, accountability, and environmental response to encourage sustainable development.[77] The OECD report explains the urgency of integrating these three criteria to affect the targeted practical implications of climate change action.[78] The ESG integration builds an investment paradigm that embeds Socially Responsible Investing (SRI) obligations to support environmentally sound investments and social impact through transparent and accountable governance.[79] The integration of ESG provides accurate business consideration of environmental insights and contributes to improving optimal performance and addressing climate change.[80]

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[75] European Central Bank, "Implications of the Transition to a Low-Carbon Economy for the Euro Area Financial System," European Central Bank, November 21, 2019, https://www.ecb.europa.eu/press/key/date/2019/html/ecb.sp191121_1~af63c4de7d.en.html.

[76] Andewi Rokhmawati, "The Nexus among Green Investment, Foreign Ownership, Export, Greenhouse Gas Emissions, and Competitiveness," *Energy Strategy Reviews* 37 (September 2021): 100679, https://doi.org/10.1016/j.esr.2021.100679.

[77] Alaa Aldowaish et al., "Environmental, Social, and Governance Integration into the Business Model: Literature Review and Research Agenda," *Sustainability* 14, no. 5 (2022): 5, https://doi.org/10.3390/su14052959.

[78] OECD, *Investment Governance and the Integration of Environmental, Social and Governance Factors*, 2017.

[79] Albert Tsang et al., "Environmental, Social, and Governance (ESG) Disclosure: A Literature Review," *The British Accounting Review* 55, no. 1 (2023): 101149, https://doi.org/10.1016/j.bar.2022.101149.

[80] Anrafel De Souza Barbosa et al., "Integration of Environmental, Social, and Governance (ESG) Criteria: Their Impacts on Corporate Sustainability Performance," *Humanities and Social Sciences Communications* 10, no. 1 (2023): 410, https://doi.org/10.1057/s41599-023-01919-0.

The integration of ESG into green investment law arrangements in Indonesia is essential to create a proportionate legal order that helps address climate change. In 2022, President Joko Widodo launched the Green Taxonomy to encourage investors to support regulatory compliance related to ESG. In addition, during Indonesia's G20 Presidency, the Minister of Finance launched an ESG framework and manual. Despite the taxonomy and framework guidelines, ESG implementation guidelines still need to be developed,[81] because existing policies lack comprehensive mechanisms and strict ESG monitoring and assessment instruments. Meanwhile, these instruments can affect unsubstantial ESG labelling.[82] To enable investors to realise ESG integration, several provisions must be regulated, such as (1) Environmental insight criteria that include waste and pollution mitigation and optimisation of environmentally friendly energy; (2) social criteria that include management of corporate relations with stakeholders that focus on social welfare;[83] (3) governance criteria that include idealistic Good Corporate Governance to ensure linear green investment with climate change alleviation accountability and transparency.[84]

## Reconceptualisation of Green Investment Toward Net-Zero Emissions (NZE): Integrating Constitutional Ecology and *Maslahah* Principles for Sustainable Development

The urgency of a sustainable green investment climate paradigm in the context of life at the national and state levels today is significant. It is not only about the discourse on sustainable spirit for the current generation but also for future generations, with a primary focus on economic activities that

[81] PricewaterhouseCoopers, "Indonesia's Green Taxonomy Prompts Focus on ESG Value Creation," PwC, accessed April 9, 2024, https://www.pwc.com/id/en/pwc-publications/services-publications/legal-publications/indonesia-s-green-taxonomy-prompts-focus-on-esg-value-creation.html.

[82] Lee Kok Leong, "Indonesia Launches ESG Framework for Green, Sustainable Investment," Maritime Fairtrade, November 12, 2022, https://maritimefairtrade.org/indonesia-launches-esg-framework-for-green-sustainable-investment/.

[83] Xiaokai Meng and Ghulam Muhammad Shaikh, "Evaluating Environmental, Social, and Governance Criteria and Green Finance Investment Strategies Using Fuzzy AHP and Fuzzy WASPAS," *Sustainability* 15, no. 8 (2023): 8, https://doi.org/10.3390/su15086786.

[84] Alessio Baratta et al., "The Impact of ESG Practices in Industry with a Focus on Carbon Emissions: Insights and Future Perspectives," *Sustainability* 15, no. 8 (2023): 8, https://doi.org/10.3390/su15086685.

produce products and create job opportunities. Policymakers must undoubtedly be responsive to capturing the momentum of investment and the green economy, while supporting the welfare of the community at large in an equitable way, without overlooking ecological and environmental sustainability, grounded in the principle of significant benefit.

Net-zero-based green investment is oriented toward maintaining a balance between improving people's welfare and supporting the national economy. Therefore, macro and micro development carried out by the government should adopt the principles of investment and a sustainable green economy. Sustainable development principally carries three main pillars: economic, environmental,[85] and social. Economic sustainability emphasises growth without harming the economy's capital base, while environmental sustainability includes a stable climate and biodiversity. Furthermore, social sustainability ensures fair access to basic needs and protects vulnerable groups, thereby ensuring that the shift toward green investment does not produce social inequality. The need to integrate all three dimensions of the principle is inevitable, but in reality, it is emphasised more on reconciliation than on integration.

The concept of green investment-based economic development principles focuses on the following considerations. The green economy must create prosperity for all communities, promote equality across generations, and sustain, restore, and invest in activities based on natural resources that support sustainable levels of consumption and production. All of these must be supported by a strong, integrated, and accountable system. Economic policies and practices should ideally consider sustainable social, political, cultural,[86] and ecological criteria. Economic policies[87] and practices govern how sustainable development pathways shape employment, education, and well-being. Creating a sustainable future for the environment requires the commitment of all elements, both society and all stakeholders, to jointly realise greener production and consumption work, environmentally friendly

[85] Shaozhen Han et al., "Differentiated Environmental Regulations and Corporate Environmental Responsibility: The Moderating Role of Institutional Environment," *Journal of Cleaner Production* 313 (September 2021): 127870, https://doi.org/10.1016/j.jclepro.2021.127870.

[86] Zhang and Wei, "Resource Efficiency, Cultural Industry, and Green Economic Growth."

[87] Wenguang Tang et al., "Green Innovation and Resource Efficiency to Meet Net-Zero Emission," *Resources Policy* 86 (October 2023): 104231, https://doi.org/10.1016/j.resourpol.2023.104231.

technology, renewable energy[88], transportation, agriculture, waste management, wastewater supply, and sanitation that are more ecologically green, within the framework of disease prevention and maintaining the health and sustainability of ecosystems gradually.[89]

Environmental management and investment are basically problematic. Human actions often cause these problems, although it is commonly known that proper treatment helps preserve the environment. Natural resources and energy can make a substantial contribution only to countries that can unite, utilise, protect, and integrate all existing sectors for the benefit of economic growth, the investment climate, social welfare, and a healthy, exotic natural environment.

God created the universe with all its contents, including humans. Theologically, in scripture, the universe is designed in a balanced, mutually beneficial way, with each element connected to its nature, environment, and others.[90] The universe, in the context of law, must also be viewed as having equal rights and given the status of a subject of law, as well as the environment. Between the universe and the environment, humans are seen as equal subjects of law and fundamental rights.[91] Humans are the most perfect component of the environment. Among other components, humans bear the responsibility to maintain the harmony and balance of the entire ecosystem, both natural and artificial.

Humans, as caliphs[92], are granted the authority to always utilise, manage, and care for the earth in ecological nuances, including land, ocean, and air quality. In reality, some of them are destructive, overexploiting nature's potential, while others are constructive, demonstrating collective consensus and good faith in the sustainable use of nature by obeying norms as guidance. In today's contemporary era, technological sophistication and disruption, as well as consensus or collective agreement, are codified as legal norms. H.L.A

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[88] Indah Dwi Qurbani and Ilham Dwi Rafiqi, "Prospective Green Constitution in New and Renewable Energy Regulation," *Legality : Jurnal Ilmiah Hukum* 30, no. 1 (2022): 1, https://doi.org/10.22219/ljih.v30i1.18289.

[89] Srinivasan, *Asia's Economies Face Weakening Growth, Rising Inflation Pressures*, 2022, hlm. 34.

[90] Nasib Ar-Rifa'i, *Ringkasan Tafsir Ibnu Katsir jilid III* (Jakarta:Gema Insani Press, 2000), hlm. 333.

[91] K. Hardjasoemantri, *Hukum Tata Lingkungan*, Yogyakarta: Gadjah Mada University Press, hlm. 65.

[92] Abdul Wahhab Khallaf and Noer Iskander Al-Barsany, *Kaidah Kaidah Hukum Islam* (Rajawali, 1989), 94.

Hart[93] explained the concept of legal norms as laws and regulations formulated by officials authorised to regulate society, and he explained sanctions imposed on violators. In the context of juridical and constitutive norms, the state has regulated through existing legal products, including Law No. 32 of 2009 concerning Environmental Protection and Management.[94]

International awareness of protecting the natural environment encourages and strengthens the development of collective responsibility and awareness at the national level, including in Indonesia, through commitments to protecting and conserving nature. National awareness and responsibility take into account random programmes and the upgrading of environmental legal norms from the level of statutes to the Constitution. This shift is often referred to as the constitutionalisation of Environmental Law, or, popularly, the green constitution. The green constitution is part of the nation's objectives, as stipulated in the Preamble to the 1945 Constitution of the Republic of Indonesia (The 1945 Constitution).

The constitution has accommodated the concept and paradigm of a green constitution, placing ecological sovereignty as an object the state must protect. In Indonesian legal terminology, the green constitution and environmental sovereignty (ecocracy) are reflected in the idea of power and human rights, as well as the idea of economic democracy[95] as stated in the provisions of Article 28 H, paragraph (1) and Article 33, paragraph (4) of the 1945 Constitution.[96] The formulation of these norms is closely related to the concept of sustainable development, which is based on environmentally sound economic development. In principle, the green constitution is to constitutionalise environmental legal norms by elevating environmental protection norms to the constitutional level. Thus, the urgency of the spirit and principles of sustainable development, which are environmentally sound and protect the environment, has a strong foothold in laws and regulations. In other words, the Green Constitution's principle is to protect the

[93] Herbert Lionel Adolphus Hart and Leslie Green, *The Concept of Law* (Oxford University Press, 2012).

[94] Moh Fadli et al., *Hukum dan Kebijakan Lingkungan* (Universitas Brawijaya Press, 2016), 63.

[95] Jimly Asshiddiqie, "Gagasan Kedaulatan Rakyat Dalam Konstitusi Dan Pelaksanaannya Di Indonesia: Pergeseran Keseimbangan Antara Individualisme Dan Kolektivisme Dalam Kebijakan Demokrasi Politik Dan Demokrasi Ekonomi Selama Tiga Masa Demokrasi, 1945-1980-An," *(No Title)*, 1994, 32, https://cir.nii.ac.jp/crid/1130282273364509184.

[96] See Article 33, paragraph (4) of the 1945 Constitution of the Republic of Indonesia, "The national economy is organised based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.

environment. The reality of implementing the green constitution serves as the foundation for Indonesia's sustainable development process.

The principle of good faith in the implementation of green investment policies in Indonesia can be assessed by examining the coherence between investors' normative commitments and verifiable, transparent sustainability practices.[97] The characteristics of good faith are reflected in investors' compliance with environmental standards, fulfilment of social obligations, and disclosure of information on the impacts of investment activities. Within the context of investment law, the objective standard of good faith may be observed in the extent to which business actors interpret regulations not merely as administrative burdens, but rather as both moral and legal instruments to safeguard the ecosystem and promote public welfare.[98] This is consistent with the principle of international due diligence (OECD Guidelines for Multinational Enterprises, 2011), which underscores that compliance can only be regarded as being in good faith if it is accompanied by active, consistent, and legally auditable efforts. Normatively, this principle is also derived from Article 33, paragraph (4) of the 1945 Constitution, which emphasises sustainable development, as well as Article 15 letter (b) of Law No. 25 of 2007 concerning Investment, which obligates investors to conduct social responsibilities and preserve the environment.

The parameters of good faith may further be measured through compliance and accountability mechanisms as articulated in sustainability reports, environmental audits, and community participation in investment decision-making processes. Law No. 32 of 2009 concerning Environmental Protection and Management, as reinforced by Law No. 11 of 2020 concerning Job Creation, stipulates that all investments must conduct an Environmental Impact Assessment (AMDAL) as a prerequisite for business licensing (Articles 22–37 of the Environmental Protection and Management Law in conjunction with Article 37 of the Job Creation Law). This requirement constitutes a concrete indicator of good faith, as only investors acting in genuine good faith would refrain from manipulating AMDAL documents or fulfilling such obligations merely as a formality. Furthermore, the implementation of the principle of good faith in green investment aligns with

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[97] Sheila Noor Baity, "Green Bonds Investors Protection Against The Risk Of Greenwashing Based On Pojk Number 60 Of 2017," *Journal Of Private And Commercial Law*, December 30, 2024, 187–213, Https://Doi.Org/10.20885/Jpcol.Vol1.Iss2.Art3.

[98] Ratu Silfa Addiba Nursahla Et Al., "Legal Aspects Of The Central Bank's Green Finance Instruments In Indonesia: An Overview," *Journal Of Central Banking Law And Institutions* 2, No. 1 (2023): 123–52, Https://Doi.Org/10.21098/Jcli.V2i1.38.

Indonesia's commitments under the Paris Agreement and the Sustainable Development Goals (SDGs), particularly Goal 13 (climate action) and Goal 15 (life on land). Thus, the measurement of good faith extends beyond mere formal compliance with regulations, encompassing the investment contribution to ecological justice and intergenerational ethics in sustainable development.

The principle of sustainable development is to meet the needs of the present without sacrificing the fulfilment of the needs of future generations.[99] The green constitution[100] is a response to public concerns regarding the decline in environmental functions, considering that, in principle, environmental problems have been diverse and complex over time, particularly in the context of unpredictable climate change. Therefore, balance and sustainability are essential and must be maintained by citizens worldwide.

Sustainable development[101] requires the production and distribution of goods and services between people without harming Indonesia's resources and natural environment. The production and distribution process with this mechanism is often recognised as a green economy,[102] which will give rise to a green investment climate and, in a more substantive framework, has encouraged the birth of green contracts. A green economy and green investment climate are oriented towards the following two missions: to improve welfare and social equality and reduce the risk of environmental damage, and to achieve an economy that produces low or zero carbon dioxide emissions for a cleaner environment, protected natural resources, and social justice.[103] In its application, the concept of green investment and green

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[99] Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar 1945*, (Jakarta: Sinar Grafika, 2010), hlm. 7.

[100] Maret Priyanta, "Penerapan Konsep Konstitusi Hijau (Green Constitution) Di Indonesia Sebagai Tanggung Jawab Negara Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Konstitusi* 7, no. 4 (2010): 116, 4, https://doi.org/10.31078/jk746.

[101] Julian Nugroho, "Ulasan Buku: 90 Tahun Prof. Emil Salim Pembangunan Berkelanjutan: Menuju Indonesia Tinggal Landas 2045," *Syntax Literate; Jurnal Ilmiah Indonesia* 6, no. 2 (2021): 853–871.

[102] Seyed Meysam Khoshnava et al., "Aligning the Criteria of Green Economy (GE) and Sustainable Development Goals (SDGs) to Implement Sustainable Development," *Sustainability* 11, no. 17 (2019): 17, https://doi.org/10.3390/su11174615.

[103] The United Nations Environment Programme (UNEP) report entitled *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication – Asynthesis for Policy Makers*, also see Mohamad Nur Yasin, "Perbandingan GreenKonstitusi, GreenEkonomi, Dan Hukum Ekonomi Syariah Di Indonesia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 50, no. 1 (2016): 1, https://doi.org/10.14421/ajish.v50i1.166.

economy is centred on improving the economic sector, with primary emphasis on environmental sustainability in achieving development.

The sustainability of economic and environmental development is necessary to support human life and other living things, and it is an essential element of the concept of sustainable development. The Green constitution emphasises aspects of sustainable development that are environmentally sound within the context of political and policy currents. Empirically, green constitutional recognition remains limited in scope, as evidenced by the provisions stipulated under Article 44 of the Environmental Protection and Management Law of 2009. Economic development, investment climate, and environment are sustainable so long as natural resources are neither underexploited nor overexploited, and economic activity is not reduced for short-term benefits, as this can leave severe problems in the future.

At the implementation level, values, rules, and behaviour patterns should be aligned. There has been an imbalance between economic activities and the environment, where economic development tends to lead to the exploitation of resources, causing environmental damage each year, as widely felt by the community.[104] In Indonesia, there has been poor implementation of green investment and green economy policies. This is evident in the high extraction rate, which has caused damage, especially to forest cover.[105] Between 2001 and 2019, the total forest cover reached 27.7 hectares, primarily due to land-use transitions or conversions to monoculture plantations and mining for primary commodities.[106]

On the one hand, President Joko Widodo expressed his commitment, conveying to the media that Indonesia will build a green industrial area in North Kalimantan. The green industrial park will be the largest in the world and will harness green energy to power the industry. He further said, "We are also transforming to a green economy; these green products have added value

[104] Muhammad Rayhan Ali Ferdiansyah Et Al., "Penerapan Green Economy: Seberapa Hijau Ekonomi Indonesia Ditinjau Dari Pertumbuhan Ekonomi, Populasi, Dan Energi Terbarukan Tahun 1990-2020," *Jurnal Ilmiah Penalaran Dan Penelitian Mahasiswa* 7, No. 1 (May 31, 2023): 135–58.

[105] Ana Lesdiana And Alexandra Hukom, "Penerapan Green Economy Dalam Mengembangkan Pendidikan, Pariwisata Serta Rekreasi Untuk Mewujudkan Pembangunan Yang Berwawasan Lingkungan Di Kota Yogyakarta," *Sibatik Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 2, no. 4 (March 30, 2023): 1219–26, https://doi.org/10.54443/sibatik.v2i4.780.

[106] M. Firmansyah, "Konsep Turunan Green Economy Dan Penerapannya: Sebuah Analisis Literatur," *Ecoplan* 5, no. 2 (2022): 141–49.

because they will be in demand by the global market, and they are environmentally friendly."[107]

The reality of green investment programmes in Indonesia, however, has been, is, and will be ongoing. These programmes are run explicitly by the institution, agency, or other stakeholders. Indonesia's National Development Planning Agency (BAPENNAS), for example, has developed four main programmes related to sustainable green investment, including energy, sustainable landscapes, Special Economic Zones (SEZs), and preparation for Green Climate Fund (GCF).[108] The realisation of the above programme is feasible if visualised in the chart below.

**Figure 1.2**.
Key Sustainable Green Investment Programs


Source: Processed from BAPENNAS RI 2024

The four programmes in the realm of implementation still encounter conditions that allow potential irregularities in the field. In preventing possible irregularities and damage, cross-sectoral ministries should be able to integrate and synchronise every policy design[109] carried out through regulatory products and coordination of functions of both the central and local governments based on community participation and resource utilisation effectively, efficiently, fairly and sustainably, based on development partners oriented to aspects of benefit. It is in line with the principle of Islam as a

[107] https://www.kompas.com/ accessed 15 May 2024.

[108] Penerapan investasi hijau di Indonesia, see "Investasi Hijau Dan Kontribusinya Untuk Ekonomi," ALAMI Sharia, September 27, 2022, https://alamisharia.co.id/blogs/ekonomi-syariah/investasi-hijau/.

[109] Luthfi J. Kurniawan and Mustafa Lutfi, *Hukum Dan Kebijakan Publik: Perihal Negara, Masyarakat Sipil, Dan Kearifan Lokal Dalam Perspektif Politik Kesejahteraan* (Setara Press, 2017), 56.

religion that the majority of Indonesians embrace.[110] This principle highlights an approach to the environment that regulates human relations with the Creator, with other humans as social beings, and with other creatures in a balanced manner, including maintenance, prioritising safety and benefit.[111]

The principle of benefit in Islamic law underscores the maintenance of the purpose of Sharia (shari'a), but it can also refer to an act that carries good value (benefit). *Maslahah* comes from the word *shalaha* with the addition of *alif'* at the beginning, which means "good", the antonym of the word "wrong" or "damaged". It is *masdar* with the meaning of the word *shalaha*, i.e., benefit or detachment from damage.[112] The Arabic definition of *maslahah* is actions that encourage human goodness in the general sense, referring to everything that benefits man, whether by attracting or producing profits and benefits, or by rejecting harm.[113] Meanwhile, the term *maslahah* means bringing all forms of benefit and rejecting all destructive possibilities. So, anything that confers benefit should be called *maslahah*. The implementation of the concepts and principles of *maslahah* in green investment law and the green economy, as well as in economic sector activities, has a broad scope. The principle of *maslahah* is a vital reference and benchmark in the field of economics and investment towards NZE. In other words, as long as the orientation of the green investment law policy remains consistent, while contributing to positive changes in its implementation and aligning with the principle of *maslahah,* it can sustainably protect the environment.

Therefore, the urgency of a *maslahah*-based future reformulation and reconceptualisation design is necessary for sustainable development, as it can provide a useful solution for countries that have not found the right formulation to overcome problems related to NZE zones. The design is presented in the following chart.

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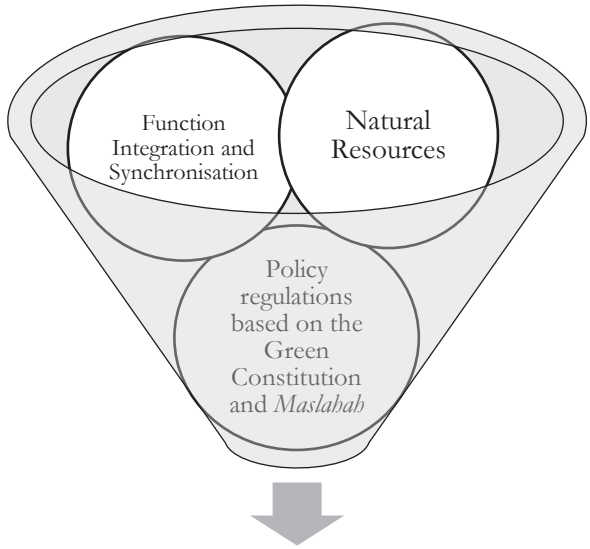
[110] Anip Dwi Saputro, "Membangun Ekonomi Islam Dengan Melestarikan Lingkungan," *Ikonomika : Jurnal Ekonomi Dan Bisnis Islam* 1, No. 1 (April 8, 2017): 14–26, Https://Doi.Org/10.24042/Febi.V1i1.139.

[111] Asy-Syatibi. (1997). Al-muwafaqat fi Usul asy-Syar' iah, Beirut: Daral-Kutub al-Ilmiyyah.

[112] Khairu Umam, at, al; *Ushul Fiqih I,* Cet. I ,Bandung: CV. Pustaka Setia, 1998, hlm. 54.

[113] Amir Syarifudin, *Usul Fikih Jilid 2*, Jakarta: Kencana, 2014, hlm. 77.

**Figure 1.3.**
The Design to Reconceptualises the Legal Policy Paradigm of *Maslahah*-Based Sustainable Green Investment




Source: Author's Creations 2024

In addition, there is a need to provide solutions by developing green investment planning and budgeting strategies within a comprehensive, participatory, and benefit-based framework for sustainable development to reduce inequalities in the community while minimising and mitigating the risk of environmental damage in Indonesia. This mitigation involves conserving natural resources to the greatest extent possible for economic and ecological growth that sustains life and achieves a prosperous, dignified, just, and civilised society.

**Conclusion**

This study has explored the urgency of reformulating Indonesia's green investment law by integrating constitutional environmental mandates (Green Constitution) and Islamic legal ethics (*maslahah*) to strengthen the country's legal readiness to achieve Net-Zero Emissions (NZE). As the analysis has shown, the current legal framework still lacks adequate clarity, enforceability, and normative coherence to promote sustainable green investments

congruous with climate justice and environmental protection. This legal gap directly intersects with Sustainable Development Goal (SDG) 13: Climate Action, which emphasises the need for firm legal and policy measures to combat climate change and its impacts. Nonetheless, the findings of this study are limited by its normative and conceptual approach, which does not empirically measure the performance of Indonesia's green investment instruments in advancing SDG 13 targets, nor does it provide sectoral or institutional impact assessments. The integration of *maslahah* as an ethical-legal basis remains theoretical and has not yet been operationalised through statutory or regulatory mechanisms. Therefore, future research should focus on empirically validating the legal principles proposed herein—especially their alignment with SDG 13 indicators. Interdisciplinary studies combining legal analysis with environmental economics and climate governance are needed to evaluate the actual contribution of green investment law to climate resilience. Further, comparative studies of how other jurisdictions, particularly Muslim-majority countries, integrate constitutional and Islamic legal norms for climate action can offer deeper insights. These directions will be instrumental in formulating a comprehensive and actionable legal framework to support Indonesia's climate commitments under the Paris Agreement and the broader 2030 Agenda for Sustainable Development.

Future research is recommended to undertake an empirical and interdisciplinary examination of the effectiveness of Indonesia's green investment law in advancing Sustainable Development Goal (SDG) 13 on Climate Action, by operationalising the principles of the Green Constitution and maslahah into measurable policy and legal indicators. Such a study should integrate legal analysis with environmental economics and climate governance approaches to assess the extent to which green investment instruments—at the regulatory, institutional, and sectoral levels—make tangible contributions to emissions reduction, climate resilience, and environmental justice. Furthermore, the research should incorporate comparative analyses of Muslim-majority jurisdictions that have successfully integrated constitutional environmental norms and Islamic legal principles into climate policy, with the aim of formulating an applicable, context-sensitive, and enforceable model for reformulating green investment law. This approach would support Indonesia's commitments under the Paris Agreement and the broader 2030 Agenda for Sustainable Development.

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# *SHARIAH* GOVERNANCE OF CRYPTOCURRENCIES: RISKS, PARAMETERS AND REGULATORY SOLUTIONS

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***Abstract***

*The introduction of cryptocurrencies into Islamic finance raises critical Shariah issues that require systematic evaluation through the lens of maqāṣid al-sharīʿah, specifically ḥifẓ al-māl (protection of wealth) and darʾ al-mafāsid (prevention of harm). This study conducts an empirical legal analysis by examining how risks and uncertainties prevent cryptocurrencies from functioning as Shariah-compliant money and analyses the conditions or regulations that could enable Shariah-compliant cryptocurrency transactions and develop Shariah parameters. Focusing on the Malaysian context, the study conducts qualitative interviews with 12 experts, including Shariah scholars, regulators, academics, and fintech practitioners. The methodology provides an in-depth examination of this multifaceted topic and seeks to bridge the gap between Shariah, finance, and new*

*technologies. The findings highlight major concerns such as gharar (uncertainty), maysir (speculation), lack of intrinsic value, and potential involvement in unlawful activities. Additional challenges include decentralisation, lack of transparency, weak public awareness, and contradictory fatwas. To address these issues, the study proposes a multi-level framework including Shariah certification, stablecoin development, asset protection mechanisms, risk mitigation tools, and institutional collaboration between regulators, scholars, and fintech developers. These findings contribute to the discourse on adapting new technologies to Islamic finance while providing practical guidance for policy development in Malaysia's dual financial system.*

*Masuknya mata uang kripto ke dalam sistem keuangan Islam menimbulkan sejumlah persoalan syariah yang krusial dan memerlukan evaluasi sistematis melalui perspektif maqāṣid al-sharīʿah, khususnya ḥifẓ al-māl (perlindungan harta) dan darʾ al-mafāsid (pencegahan kemudaratan). Penelitian ini melakukan analisis hukum empiris dengan mengkaji bagaimana risiko dan ketidakpastian menghambat mata uang kripto untuk berfungsi sebagai alat tukar yang sesuai dengan prinsip syariah, serta menganalisis kondisi atau regulasi yang dapat memungkinkan transaksi mata uang kripto yang patuh syariah sekaligus merumuskan parameter syariah yang relevan. Dengan berfokus pada konteks Malaysia, penelitian ini melaksanakan wawancara kualitatif terhadap 12 orang ahli yang terdiri atas ulama syariah, regulator, akademisi, dan praktisi teknologi finansial (fintech). Metodologi ini memungkinkan kajian yang mendalam terhadap isu yang bersifat multidimensional serta berupaya menjembatani kesenjangan antara prinsip syariah, sistem keuangan, dan perkembangan teknologi baru. Temuan penelitian menyoroti berbagai persoalan utama, seperti gharar (ketidakpastian), maysir (spekulasi), ketiadaan nilai intrinsik, serta potensi keterlibatan dalam aktivitas yang tidak sah menurut hukum. Tantangan tambahan meliputi sifat desentralisasi, kurangnya transparansi, rendahnya tingkat literasi publik, serta adanya fatwa yang saling bertentangan. Untuk mengatasi permasalahan tersebut, penelitian ini mengusulkan suatu kerangka kerja bertingkat yang mencakup sertifikasi syariah, pengembangan stablecoin, mekanisme perlindungan aset, instrumen mitigasi risiko, serta kolaborasi kelembagaan antara regulator, ulama, dan pengembang fintech. Temuan ini*

*berkontribusi pada pengembangan wacana adaptasi teknologi baru dalam keuangan Islam sekaligus memberikan panduan praktis bagi perumusan kebijakan dalam sistem keuangan ganda Malaysia.*

***Keywords**: cryptocurrency, shariah compliance, gharar, Islamic finance.*

## Introduction

The global adoption of cryptocurrencies has accelerated significantly in recent years. By the end of 2024, the number of cryptocurrency holders worldwide is estimated to have reached an approximately 562 million, an increase of 34% from 2023, and the number of cryptocurrency holders is forecast to exceed 659 million in 2025.[1] These developments underline the growing role of digital assets in the global financial ecosystem. The total market capitalisation of cryptocurrencies exceeded USD 2.7 trillion in March 2024, driven by substantial institutional investment and the introduction of regulated exchange-traded funds (ETFs).[2] As major economies such as the United States, the European Union, and several Asian countries introduce comprehensive regulatory frameworks, global oversight of cryptocurrencies is becoming increasingly structured.[3]

Malaysia is experiencing a significant surge in cryptocurrency adoption, marked by increased government backing and a growing number of domestic blockchain start-ups. The crypto asset market in Malaysia has also been expanding, with the volume of the crypto market increasing to RM 13.9 billion in 2024 from RM 5.4 billion in 2023. The number of domestic crypto asset players and the range of services offered have likewise increased. In 2024, the

[1] Michael Ndu-Okeke, "Global Cryptocurrency Ownership Hits 562 Million — 34% Jump from 2023," *Nairametrics*, May 31, 2024, https://nairametrics.com/2024/05/31/global-cryptocurrency-ownership-hits-562-million-34-jump-from-2023.

[2] MarketWatch, "Bitcoin ETFs Rake in $14.8 Billion as Whales Push the Crypto's Price to All-Time Highs," *MarketWatch*, March 25, 2024, https://www.marketwatch.com/story/bitcoin-etfs-rake-in-14-8-billion-as-whales-push-the-cryptos-price-to-all-time-highs-da0992ae.

[3] Barry Elad and Kathleen Kinder, "Cryptocurrency Adoption Statistics 2025: Demographics, Trends, and Industry Impact." *CoinLaw*, 27 June 2025, https://coinlaw.io/cryptocurrency-adoption-statistics

Securities Commission Malaysia (SC) regulated 15 entities that operate and deal with crypto assets and crypto funds, compared to only three entities in 2019.[4]

Despite this progress, cryptocurrencies remain controversial among Islamic scholars, regulators, and financial experts. Key global concerns include volatility, speculative trading, lack of intrinsic value, and risks to monetary policy. From an Islamic finance perspective, these concerns are exacerbated by the prohibition of *riba* (interest), *gharar* (uncertainty), and *maysir* (gambling).[5] These prohibitions call into question the Shariah legitimacy of digital assets that lack tangible backing or involve speculative practices. Furthermore, some Shariah scholars view certain digital assets as potential vehicles for financial inclusion and innovation. Still, the lack of consensus has led to regulatory ambiguity, inconsistent *fatwa*, and insufficient Shariah-based regulatory parameters.[6]

*Shariah* parameters are needed to guide people within the framework of Islamic finance. This financial innovation has attracted the attention of Islamic finance, where ethical principles and legal maxims are derived from the Quran, Sunnah, and classical jurisprudence (*fiqh*), especially *fiqh al-muamalat* (Islamic commercial law). Within this framework, any financial innovation must be assessed based on compliance with the prohibitions of *riba* (interest), *gharar* (uncertainty), *maysir* (gambling) and involvement in unlawful (*haram*) activities[7]. In addition, they must be developed under the parameters of *Shariah*.

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[4] Bank Negara Malaysia, *Annual Report 2024*, Kuala Lumpur, Malaysia, p. 103, 2024.

[5] Muhammad Arief Jailani, and Aishath Muneeza, "Crypto assets: The need for Shariah screening criteria for digital assets in Malaysia," International Journal of Islamic Economics and Finance Research 1 (2023): 27-47.

[6] Abubakar Balarabe, Md Faruk Abdullah, and Abdur Rahman, "Cryptocurrency in Nigeria: A Review from Contemporary Islamic Scholars' perspective," Jurnal Syariah 32, no. 3 (2024): 466-486.

[7] Muhammad Waqas Jamil, Mufti Muhammad Akhlaq, and Hafiz Adil Jahangir, "Cryptocurrency in the Light of Islamic Financial Principles: Challenges and Opportunities for Shariah Compliance," Contemporary Journal of Social Science Review 3, no. 1 (2025): 2250-2258.

One of the most critical issues examined in the literature is the status of the risks of cryptocurrencies within the framework of Islamic law. This inquiry is rooted in Islamic finance, which is guided by the principles of *maqasid Shariah* and classifies money based on its physicality, usability and permissibility[8]. The discussion begins with whether cryptocurrencies can be considered money from an Islamic perspective. Muhammad Arief Jailani and Aishath Muneeza argue that Bitcoin fulfils the criteria of money due to its utility, exchange value and market recognition.[9] This viewpoint aligns with the functionalist school of thought, which prioritises utility over physical form.

However, other scholars dispute this view, pointing to the highly speculative nature of cryptocurrencies and their lack of intrinsic value. They argue that these characteristics position cryptocurrencies closer to gambling or *gharar*-based transactions. Ziyaad Mahomed, for example, claims that cryptocurrencies cannot function as a legitimate means of exchange as tangible assets do not back them and thus violate the principle of wealth preservation, which is essential to Islamic finance.[10] The criticism also extends to cryptocurrencies' inflationary and deflationary mechanisms, suggesting they can contribute to economic injustice.

The issue of *riba* is another critical point in the controversy. Traditional Islamic finance prohibits fixed interest and unearned profits. Since cryptocurrencies are non-interest-bearing assets, they may appear *Shariah*-compliant on the surface. However, their use in interest-based lending platforms and their facilitation of speculative profit-seeking complicates this view. According to Othman Sahalan and Muhammad Adib Samsudin[11], the

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[8] Abubakar Balarabe, Md Faruk Abdullah, and Abdur Rahman. "Cryptocurrency in Nigeria: A Review from Contemporary Islamic Scholars' perspective," Jurnal Syariah 32, no. 3 (2024): 466-486.

[9] Muhammad Arief Jailani, and Aishath Muneeza. "Crypto assets: The need for Shariah screening criteria for digital assets in Malaysia," International Journal of Islamic Economics and Finance Research 1 (2023): 27-47.

[10] Ziyaad Mahomed, "Crypto: a'contagious disease'or the'most useful system of trust ever devised'? Is crypto halal?," (2022).

[11] Othman Sahalan, and Muhammad Adib Samsudin, "Cryptocurrency According to The Principles of Usul Al-Fiqh: A Critical Analysis by Mohd Daud Bakar," Islāmiyyāt: International Journal of Islamic Studies 45, no. 1 (2023).

mere absence of *riba* does not make a transaction *Shariah*-compliant; it must also avoid *maysir* and *gharar*. This holistic view is also reflected in the work of contemporary scholars like Nafis Alam, Lokesh Gupta, and Abdolhossein Zameni[12], who argue for an ethical review process that evaluates financial instruments' form and content. Various fatwa bodies have issued contradictory rulings on cryptocurrencies. Endi Aulia Garadian and Harun Arrasyid[13] mention that the Indonesian Ulema Council declared cryptocurrencies haram due to their speculative nature. At the same time, scholars in the United Arab Emirates and Bahrain offered more favourable interpretations. Sahara Putri Dahlan[14] argues that cryptocurrencies could be permissible if they are used as a medium of exchange and not for speculative trading. He emphasises the importance of intention (*niyyah*) and usage context, which is central to *Shariah* analysis.

Technological and functional dimensions also play a role in scholarly assessments. The use of blockchain for transparent transactions, smart contracts, and tamper-proof records was highlighted as a potential tool for enhancing Islamic financial transactions. These features can address concerns about contract enforceability, fraud, and moral hazard. For example, smart contracts can be programmed to comply with *Shariah* rules and automatically enforce profit-sharing[15].

From a regulatory perspective, Islamic financial institutions and central banks in Muslim-majority countries have taken different positions. The Central Bank of Malaysia, through its *Shariah* Advisory Council, has recognised the need for closer scrutiny of cryptocurrencies and has proposed

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[12] Nafis Alam, Lokesh Gupta, and Abdolhossein Zameni, "Cryptocurrency and Islamic finance," In Fintech and Islamic finance: Digitalization, development and disruption, pp. 99-118. Cham: Springer International Publishing, 2019.

[13] Endi Aulia Garadian, and Harun Arrasyid. "Millennial Muslims and "Haram Fatwas" on Cryptocurrency in Contemporary Indonesia," Understanding the Role of Indonesian Millennials in Shaping the Nation's Future 155 (2024).

[14] Sahara Putri Dahlan, "Addressing Sharia issues in cryptocurrency: Analyzing the case of Bitcoin and Blockchain Technology," Journal of Islamic Economic Insights 1, no. 1 (2025): 47-54.

[15] Mufti Muhammad Abu-Bakar, "Shariah analysis of bitcoin, cryptocurrency, and blockchain." Shariah Analysis in Light of Fatwas and Scholars' Opinions (2018): 14-19.

a cautious but open approach. Similarly, the Dubai Financial Services Authority has examined frameworks for Islamic fintech innovation, signalling its willingness to adapt to modern technological realities[16].

Based on the literature above, which offers insights into the theological and regulatory debates on cryptocurrencies, there remains a lack of empirical legal research incorporating expert opinions from the Malaysian Islamic finance ecosystem. This study fills this gap by analysing qualitative data from academics, Shariah consultants and regulators, providing grounded Shariah parameters that can serve as a basis for developing Malaysia's cryptocurrency regulatory framework.

In Malaysia, which operates with a dual financial system and aspires to be a global leader in Islamic finance, a Shariah-compliant framework for cryptocurrencies is being developed.[17] In 2020, the Securities Commission Malaysia (SCM) introduced guidelines for digital assets under Section 377 of the Capital Markets and Services Act 2007 (CMSA) to provide investor protection and legal clarity.[18] However, these guidelines are largely silent on Shariah-specific parameters and leave significant interpretation gaps. At the same time, Bank Negara Malaysia (BNM) plays a crucial role in maintaining financial stability and promoting innovation in the financial sector.[19] However, the lack of uniform *fatwa*, limited public awareness and lingering ethical concerns regarding cryptocurrency trading exacerbate the gap in Shariah compliance. Clarifying this gap and positioning the present study as an empirical contribution to the literature on Shariah-compliant digital assets enhances its scholarly value.

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[16] Mohammad Hidir Baharudin, Rahmawati Mohd Yusoff, Ros Hasri Ahmad, Muhamad Ismail Pahmi, Siti Masnah Saringat, and Shafiee Md Tarmudi, "Cryptocurrency in Malaysia: Navigating Islamic legal perspectives for economic innovation and resilience," Environment-Behaviour Proceedings Journal 10, no. SI28 (2025): 121-126.

[17] Abubakar Balarabe, Md Faruk Abdullah, Uzairu Muhammad Gwadabe, and Auwal Jibril Muhammad, "History of Islamic Banking in Malaysia: A General Review," International Journal of Islamic Products and Malay Civilization 2, no. 1 (2023): 43-53.

[18] Securities Commission Malaysia, Guidelines on Digital Assets (Kuala Lumpur: SCM, January 2020).

[19] Bank Negara Malaysia, Financial Stability Review (Kuala Lumpur: BNM, 2024).

To address these issues, this study adopts the framework of *maqāṣid al-sharīʿah*, specifically *ḥifẓ al-māl* (protection of wealth) and *dar' al-mafasad* (prevention of harm), to explore how cryptocurrencies can be compliant with Islamic jurisprudence. Introducing this framework at the outset helps to situate the discussion within Islamic legal theory while providing a consistent basis for assessing risks and regulatory measures. This paper makes an empirical contribution by drawing on in-depth interviews with 12 Islamic finance scholars, Shariah advisors and regulatory experts in Malaysia. The qualitative analysis uncovers critical Shariah, technical, and regulatory concerns that need to be considered when formulating practical parameters for Shariah-compliant digital assets.

Accordingly, this study has two objectives: (1) to examine the potential risks or uncertainties that could prevent cryptocurrencies from functioning effectively as Shariah-compliant money; and (2) to analyse the specific conditions or regulations that could be implemented to ensure Shariah-compliant cryptocurrency transactions in Malaysia. The findings are intended to assist policymakers, financial institutions, and fintech innovators in designing regulatory frameworks and products consistent with Shariah principles and global best practices.

## Research Methods

The study adopts a qualitative, socio-legal research design[20] to explore experts' perspectives on the *Shariah* compliance of cryptocurrencies and to develop robust parameters for their regulation in Malaysia.[21] A qualitative approach is appropriate, as it allows for interpreting experts' subjective meanings and specific experiences concerning Islamic finance, *Shariah* and digital innovation. Placing this work within the tradition of empirical legal studies distinguishes it from a purely doctrinal analysis by demonstrating how empirical data can illuminate and complement Shariah legal principles. Such an approach reflects the growing realisation that legal scholarship benefits

[20] Joseph A Maxwell, "Interactive approaches to qualitative research design," The Sage handbook of qualitative research design (2022): 41-54.

[21] Joseph A Maxwell, "The importance of qualitative research for causal explanation in education," *Qualitative inquiry* 18, no. 8 (2012): 655-661.

from linking doctrinal sources with empirical evidence to address contemporary legal challenges.[22]

Data were collected through semi-structured interviews with 12 purposively selected experts, including Shariah scholars, academics in the field of Islamic finance, regulators and fintech practitioners in Malaysia.[23] These individuals were selected based on their active involvement in Islamic finance regulation, product development and cryptocurrency governance. The sample size was determined based on the principle of thematic saturation to ensure that further interviews would not yield significantly new insights.[24] The selection of these participant categories reflects their direct role in shaping both Shariah-compliant financial standards and the practical regulation of digital assets.The interviews were conducted in English and recorded with prior informed consent. The interview questions were designed to address two main objectives: (1) to explore the potential risks or uncertainties that could prevent cryptocurrencies from functioning effectively as *Shariah*-compliant money, and (2) to analyse the specific conditions or regulations required to facilitate *Shariah*-compliant cryptocurrency transactions in Malaysia.

Thematic analysis was conducted following Braun and Clarke's[25] six-phase framework to identify, analyse and report patterns in the data. Using NVivo 14, the researchers systematically coded the transcripts and assigned codes to meaningful text segments based on the research objectives and key Shariah principles. The final themes were developed and organised under each research question and supported by verbatim quotations to ensure authenticity and credibility. To increase trustworthiness, the criteria of credibility, transferability, reliability, and confirmability were applied in the

[22] Plan, Audrey M, "Taking law seriously: The challenges of law as research data in socio-legal scholarship," Law, Technology and Humans 6, no. 3 (2024): 46-59.

[23] Abubakar Balarabe, Md Faruk Abdullah, and Abdur Rahman, "Cryptocurrency in Nigeria: A Review from Contemporary Islamic Scholars' perspective," *Jurnal Syariah* 32, no. 3 (2024): 466-486.

[24] Greg Guest, Arwen Bunce, and Laura Johnson, "How Many Interviews Are Enough? An Experiment with Data Saturation and Variability," *Field Methods* 18, no. 1 (2006): 59–82.

[25] Victoria Clarke, and Virginia Braun, "Thematic analysis," In Encyclopaedia of critical psychology, pp. 1947-1952. Springer, New York, NY, 2014.

study. Member checking was conducted with selected participants, and NVivo's audit trail feature was used to ensure the analysis's transparency. Ethical approval was obtained from the relevant review body. Confidentiality and anonymity were assured, and all data were stored securely. These measures reflect best practice in qualitative legal research, where transparency, reflexivity, and methodological rigour are paramount.[26]Crucially, the results of the interviews were integrated with doctrinal legal sources (Qur'an, Sunnah, fiqh al-muʿāmalāt) and Malaysian legal texts to demonstrate that the analysis is grounded in authoritative Shariah and legal materials and is not limited to socio-economic observations.[27]

## Discussion

### Potential Risks or Uncertainties of Cryptocurrency

This section highlights the risks and uncertainties identified by participants that could prevent cryptocurrencies from being recognised as Shariah-compliant. The findings are significant as they highlight both Shariah-based incompatibilities and practical barriers hindering regulatory acceptance. The analysis aims to develop Shariah parameters that can guide the formulation of a compliant framework for cryptocurrencies in Malaysia.

As shown in Figure 1 (Appendix), participants consistently indicated that gharar (uncertainty), maysir (speculation), lack of intrinsic value and various ethical concerns are the main barriers to Shariah compliance. These elements violate the *maqāṣid al-sharīʿah*, particularly *ḥifẓ al-māl* (protection of wealth) and *darʾ al-mafāsid* (prevention of harm), thereby preventing cryptocurrencies from functioning effectively as Shariah-compliant money. In addition to these substantive concerns, participants also cited structural barriers such as the lack of a regulatory framework, unclear Shariah regulations, technical issues and limited public awareness. In contrast to *gharar*

[26] Kadi, Sanaa, "Research Methods for Islamic Banking and Finance Law: Interdisciplinary Research Method," European Journal of Islamic Finance 9, no. 2 (2022): 1-8.

[27] Al-Qasim, S. Legal education in'Islamic Law'for legal practice in England and Wales: an'Islamic Law'framework for legal professionals, Nottingham Trent University (United Kingdom), 2019.

and *maysir*, these obstacles are not theological but remain crucial to the realisation of a Shariah-compliant ecosystem. The findings will inform the development of standardised Shariah parameters for cryptocurrencies in Malaysia.

Table 1 below provides an overview of the thematic coding that emerged from the interviews. Two overarching themes were identified: (1) Shariah-Incompatibility Due to Financial and Ethical Concerns, and (2) Regulatory and Knowledge-Based Barriers

**Table 1.** Data Analysis for Interview Question 1

| **Interview Question 1** | **What potential risks or uncertainties could prevent cryptocurrency from functioning effectively as Sharia-compliant money?** | |
|---|---|---|
| Focused Coding | Sub-themes/Remarks | Concluding Theme |
| 1 | *Shariah*-Incompatibility Due to Financial and Ethical Concerns | *Gharar*, *maysir*, lack of intrinsic value, ethical concerns |
| 2 | Regulatory and Knowledge-Based Barriers | Absence of regulation, lack of awareness, and technical issues |
| Clear Shariah Parameters are Therefore Essential for Ensuring that Digital Financial Products Align with Islamic Principles. | | |

Source: Data Proceed by Authors

The sub-themes are elaborated below with participant quotations and integrated legal commentary.

**Table 2.** Focused Coding No. 1 for Interview Question 1

| **Sub-themes** | ***Shariah*-Incompatibility Due to Financial and Ethical Concerns** |
|---|---|
| Participant No. | Remarks |

| | |
|---|---|
| Participants 1 and 12 | Cryptocurrencies and digital assets are unlawful, impermissible and haram. The reason for this is the excessive *gharar* and high level of speculation in this trade. *Gharar* (uncertainty) is a potential risk in terms of *Shariah*. |
| Participant 3 | Volatility and speculation are driven by fear of missing out (FOMO) and greed, which leads to market manipulation. The risk is too high; it is simply an online casino. This is in line with the Islamic legal maxim *sadd al-dhari'a* (prevention of harm), where gambling, such as speculation, is against the *maqaṣid* principle *dar' al-mafasid* (prevention of harm). |
| Participant 4 | Several *Shariah* concerns call into question the function of cryptocurrencies as compliant money:<br>1. High volatility (*gharar*)<br>2. Use in haram or unlawful activities: Use of cryptocurrencies for unlawful activities.<br>3. Speculative trading such as *maysir* (gambling).<br>4. Anonymity reduces accountability. |
| Participant 5 | *Shariah* concerns regarding cryptocurrencies include the lack of intrinsic value, the potential for speculative behaviour, and uncertainty regarding the permissibility of certain features. Potential usury issues, ensuring transparency and navigating the evolving cryptocurrency market. |
| Participant 6 | Several *Shariah* issues could prevent cryptocurrencies from being *Shariah* compliant: Volatility and speculation (*gharar* and *maysir*), lack of regulatory oversight, risk of use for illicit activities, and transparency and accountability concerns. |
| Participant 8 | Major concerns include price volatility, speculative trading, lack of intrinsic value and unclear |

| | |
|---|---|
| | regulatory status, all of which raise *Shariah* issues related to *gharar* and *maysir*. Many cryptocurrencies' extreme volatility and speculative nature are among the leading causes of today's concerns. |
| Participant 11 | Incompatibilities with *Shariah* in some cryptocurrencies related to gambling, pig farming, pornography. |

Source: Data Proceed by Authors

As shown in Table 2, this theme highlights Shariah problems such as *gharar* (uncertainty), *maysir* (speculation), and the lack of intrinsic value, making cryptocurrencies incompatible with Islamic transactions' requirements. These characteristics prevent cryptocurrencies from being considered *māl* under classical *fiqh*, which requires stability, lawful use, and accountability. In addition, unethical practices are likened to online gambling and are not in line with *Shariah* principles. Cryptocurrencies are also associated with haram activities and suffer from anonymity and lack of accountability, which contradicts the emphasis on transparency in Islamic finance. Additionally, all these issues are against the *Shariah* parameters and requirements of *Shariah* law.

It is worthwhile to examine cryptocurrencies against the criteria of a property in *Shari'ah, as* the early scholars of *fiqh* mentioned. The classical Muslim jurists (*fuqaha*) deliberated that a property (*māl*) should be desired,[28] lawful, and valuable under the purview of Shariah.[29] Additionally, the property

[28] Muḥammad Amīn Ibn ʻĀbidin, *Radd al-Muhtār ʻala al-Durr al-Mukhtār*, known as *Ḥāshiyat Ibn ʻĀbidīn,* Bayrūt: Dār Iḥyā' al-Turāth al-ʻArabī, 1998, vol. 7, pp. 7 & 171; Zayn al-Dīn Ibn Ibrāhīm Ibn Nujaym. *Al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā`iq*, Bayrūt: Dār al-Kutub al-`Ilmiyyah, 1997, vol. 5, p. 430.

[29] Jalāl al-Dīn al-Suyūtī, *Al-Ashbāh wa al-Naẓā'ir*. Bayrūt: Dār al-Kutub al-`Ilmiyyah, 2001, vol. 2, p. 171; Shams al-Dīn Muḥammad Ibn al-Khātib al-Sharbīnī, *Mughnī al-Muḥtāj ilā Ma`rifat Ma`āni Alfāẓ al-Minhāj*. Cairo: Dār al-Ḥadīth, 2006, vol. 2, p. 424; Muḥammad Ibn

should provide a lawful benefit under ordinary circumstances.[30] Moreover, the property should be owned, possessed, and controlled by individuals to transfer it through a contract of exchange.[31]

People are interested in cryptocurrencies because they offer certain benefits. However, not all benefits derived from cryptocurrencies comply with the rules of *Shari'ah*. Indeed, they are valuable, but the value is relative, as what one person finds valuable may not be valued by others. Moreover, the anonymity of cryptocurrencies undermines the criterion of a property in *Shari'ah, namely* that it be possessed and controlled by individuals in a way that leaves no uncertainty regarding the ownership and transferability of the asset through an exchange contract.

According to the study results, two elements of this issue directly contradict Islamic financial principles and the *maqasid* of *Shariah*. First, *gharar* violates the principle of certainty (*yaqin*) in contracts, as Islamic transactions require complete transparency and completeness regarding the subject matter and outcome. From the perspective of Islamic finance, the volatility of cryptocurrencies and their unclear legal nature are viewed through this lens. Furthermore, *maysir* stands for unjust enrichment through chance and speculation, which is strictly prohibited in Islam as it undermines productive economic activity. *Maysir* is clearly stated in the Quran in Chapter 2:219 and 5:90 as unlawful wealth acquisition. Islamic finance upholds the principle of productive risk-taking (*ghunm bil-ghurm*), but prohibits pure speculation that is not linked to the underlying assets. Cryptocurrencies that mimic gambling-like behaviour violate this balance. These findings are consistent with the positions

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Idrīs al-Shāfi`i, *Mawsu'at al-Imām al-Shāfi`i, al-Kitāb al-'Umm*, Cairo: Dār al-Ḥadīth, 2008, vol. 3, p. 353.

30 Muwaffaq al-Dīn 'Abdullāh Ibn Aḥmad Ibn Qudāmah, *Al-Mughnī* with *al-Sharḥ al-Kabīr*. Cairo: Dār al-Ḥadīth, 2004, vol. 5, p. 224; Mansūr Ibn Yūnus al-Buhūtī, *Kashshāf al-Qinā` `an Matan al-Iqnā`*, Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1997, vol. 3, p. 174; 'Alā al-Dīn al-Mardawī, *Al-Inṣāf fi Ma'rifat al-Rājiḥ min al-Khilāf 'ala Madhhab al-Imām Aḥmad ibn Ḥanbal*. Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1997, vol. 4, p. 258.

31 Abu Isḥāq Ibrahīm Ibn Mūsā al-Shāṭibī, *Al-Muwāfaqāt fī Usūl al-Sharī'ah*, Bayrūt: Mu'assasat al-Kutub al-Thaqāfiyyah, 1999, vol. 1, no. 2, p. 13; Shihāb al-Dīn Aḥmad Ibn Idrīs al-Qarāfī, *Al-Furūq*, Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1998, vol. 3, p. 384.

of Muhammad Arief Jailani, Aishath Muneeza, Mohamad Amerzan Mohamad Sobri, and Muneer Ali Abdul Rab.[32]

**Table 3.** Focused Coding No. 1 for Interview Question 1

| **Sub-themes** | ***Shariah*-Incompatibility Due to Financial and Ethical Concerns** |
|---|---|
| Participant No. | Remarks |
| Participant 2 | Crypto trading encourages laziness and greed, seeking money without effort. Combined with risks such as hacking and monopolisation, this undermines Islamic economics |

Source: Data Proceed by Authors

As illustrated in Table 3 above, participants also expressed concerns that cryptocurrencies could encourage unethical behaviour (greed, effortless gain) while exposing users to technological risks (hacking, monopolisation). Taken together, these concerns contradict the principles of Shariah, which call for justice (*adl*), trust (*amanah*), and a genuine Islamic economic contribution. The main reasons for prohibiting such practices are their volatility and associated speculation; this study is in line with the view of Mufti Muhammad Abu-Bakar.[33]

**Table 4.** Focused Coding No. 1 for Interview Question 1

| **Sub-themes** | ***Shariah*-Incompatibility Due to Financial and Ethical Concerns** |
|---|---|
| Participant No. | Remarks |
| Participant 7 | There could be potential inconsistencies with *Shariah*-based stability, ethical behaviour, and social justice compared to cryptocurrency |

[32] Mohamad Amerzan Mohamad Sobri, and Muneer Ali Abdul Rab, "Regulatory Frameworks for Crypto Assets: Comparative Fiqh Study Between Malaysia and Indonesia," In Salam Digest: Syariah and Law Undergraduate Symposium, vol. 2, no. 1, pp. 66-77. 2024.

[33] Mufti Muhammad Abu-Bakar, "Shariah analysis of bitcoin, cryptocurrency, and blockchain," Shariah Analysis in Light of Fatwas and Scholars' Opinions (2018): 14-19.

| | |
|---|---|
| | markets' inherent nature and current state, in addition to any element of *riba* that contradicts the *maqasid* of *Shariah*. |
| Participant 10 | Crypto lending involves riba, which is directly prohibited in the Qur'an (2:275–281). Anonymity undermines accountability (*muḥasabah*), contradicting Islamic finance, which is founded on transparency and justice (*adl*). |

Source: Data Proceed by Authors

Based on the findings presented by the participant, as illustrated in Table 4, this theme reveals concerns about ethics, social justice, and systemic instability. Features such as anonymity and interest-based lending violate the basic principles of Sharia: Transparency, fairness, and the prohibition of riba. Furthermore, the risk of riba in crypto lending directly contradicts the Quran's prohibitions (2:275–281). These points show why cryptocurrencies, in their current form, cannot fulfil the maqaṣid of promoting justice and avoiding harm. *Shariah*-compliant financial instruments must avoid uncertainty and speculation while promoting transparency and accountability. If these risks are not adequately addressed, cryptocurrencies are likely to remain outside the realm of compliant financial instruments.

Moreover, *riba* directly contradicts the prohibition of predetermined returns in Islamic contracts. Practices such as betting and interest-based crypto loans reflect the prohibited *riba*, as indicated in the teachings of the Quran. Allah states: "*Those who consume interest will stand ˹on Judgment Day like those driven to madness by Satan's touch. That is because they say, 'Trade is no different than interest.' But Allah has permitted trading and forbidden interest*" (Al-Baqarah 2:275). The prohibition of *riba* is reiterated multiple times in the primary sources of the Quran, specifically in chapters and verses 30:39, 4:161, 3:130, and 2:275-281, as well as in the Sunnah. *Riba* refers to unjustified, predetermined interest on loans or transactions, which fundamentally contradicts the Islamic mandate against exploitative gains and the parameters

set by *Shariah*. These findings align with those of Othman Sahalan and Muhammad Adib Samsudin.[34]

**Table 5.** Focused Coding No. 2 for Interview Question 1

| **Sub-themes** | **Regulatory and Knowledge-Based Barriers** |
|---|---|
| Participant No. | Remarks |
| Participants 3, 7, 8, 10, 11 and 12 | The biggest challenge is the public and scholars' lack of awareness and education. Knowledge and experience among scholars and regulators: Scholars should be knowledgeable about Islamic finance technology. They need to collaborate with legal and financial scholars. Then they can create a framework that serves as a reference for regulating these cryptocurrency transactions. Without regulation and clear Shariah guidelines, cryptocurrency becomes risky and vulnerable to abuse. Compliance requires oversight, enforcement, and standardised ethical rules. |

Source: Data Proceed by Authors

Table 5 highlights that challenges not rooted in *Shariah* significantly hinder the realisation of a *Shariah*-compliant cryptocurrency ecosystem, even if the instruments could theoretically align with Islamic regulatory requirements. Participants identified several interrelated barriers, including the absence of a regulatory framework, unclear *Shariah* provisions, and a general lack of awareness. *Shariah*-compliant cryptocurrencies' legitimacy and practical implementation will remain compromised without a clear regulatory and religious framework. A significant obstacle is the limited understanding of *Shariah* among scholars and regulators regarding new financial technologies.

While *Shariah* principles provide a robust ethical foundation, the adoption of *Shariah*-compliant cryptocurrencies is obstructed by systemic

[34] Othman Sahalan, and Muhammad Adib Samsudin, "Cryptocurrency According to The Principles of Usul Al-Fiqh: A Critical Analysis by Mohd Daud Bakar," Islāmiyyāt: International Journal of Islamic Studies 45, no. 1 (2023).

barriers. These barriers are not theological; they stem from practical governance, regulation, and education gaps. Addressing these gaps through *Shariah* guidance, interdisciplinary collaboration, and innovative regulatory approaches is essential for aligning cryptocurrency systems with Islamic ethical and legal norms. Notably, the lack of awareness and *Shariah* knowledge underscores the need for structured educational initiatives to guide younger generations and traders. These results align with M. Kabir Hassan, Aishath Muneeza, and Ismail Mohamed.[35]

## The Conditions or Regulations that could be Implemented to Ensure *Shariah*-Compliant Cryptocurrency Transactions in Malaysia

This section presents the regulatory and Shariah conditions required for cryptocurrency transactions in Malaysia, and situates the participants' findings within the jurisprudential and legal analysis. Shariah certification is a legal requirement under IFSA 2013, requiring both licensing and supervision. Certification ensures compliance with *ḥifẓ al-māl*. Comparative models include Bahrain's centralised Shariah screening and the UAE's regulatory sandbox. Two central themes emerged: (i) Shariah-centric certification and asset-backing, and (ii) institutional-regulatory collaboration. As Figure 2 in the appendix illustrates, participants highlighted the critical need for a coordinated approach involving regulators, *Shariah* scholars, fintech developers, and academic institutions. Consistent calls were made for licensing, transparency, public education, and establishing regulatory and *Shariah* parameters. The integrated governance model suggested by these participants aligns with Malaysia's dual financial system and provides relevant *Shariah* parameters. Table 6 below begins the thematic analysis, highlighting that the regulations should be implemented in cryptocurrency transactions to be *Shariah*-compliant.

[35] M. Kabir Hassan, Aishath Muneeza, and Ismail Mohamed, "Cryptocurrencies from Islamic perspective," Journal of Islamic Accounting and Business Research 16, no. 2 (2025): 390-410.

**Table 6.** Data Analysis for Interview Question 2

| **Interview Question 2** | **What specific conditions or regulations could be implemented to ensure *Shariah*-compliant cryptocurrency transactions in Malaysia?** |
|---|---|
| Focused Coding | Sub-themes/Remarks |
| 1 | *Shariah*-Centric Frameworks for Certification and Asset-Backing |
| 2 | Institutional and Regulatory Collaboration for *Shariah* Governance |
| Concluding Theme | *Shariah* certification, which leads to institutional and regulatory collaboration, can be the solution to regulating cryptocurrency. Subsequently, clear *Shariah* parameters are needed to implement cryptocurrency in Malaysia |

Source: Data Proceed by Authors

Following an extensive thematic analysis of the data, two themes have emerged concerning the conditions and regulations that could facilitate *Shariah*-compliant cryptocurrency transactions in Malaysia. The first theme is "*Shariah*-Centric Frameworks for Certification and Asset-Backing," and the second is "Institutional and Regulatory Collaboration for *Shariah* Governance." These themes reflect the conditions and regulations necessary to ensure compliance in cryptocurrency transaction. Table 7 below begins the thematic analysis, highlighting the lack of cryptocurrency certification based on *Shariah* parameters.

**Table 7.** Focused Coding No. 1 for Interview Question 2

| **Sub-themes** | ***Shariah*-Centric Frameworks for Certification and Asset-Backing** |
|---|---|
| Participant No. | Remarks |
| Participant 1 | Therefore, a licensing system should be introduced for anyone offering cryptocurrencies as an investment. They must qualify through certain financial, governance, transparency and disclosure criteria. |
| Participant 9 | The BNM would need to adapt digital asset policies to reflect these principles and potentially offer halal-certified digital assets under controlled conditions. |
| Participant 6 | Transparent crypto exchanges with registered *Shariah* bodies and development of regulatory sandboxes to test compliant innovations under BNM/SAC oversight. |
| Participants 4 and 5 | Have cryptocurrency projects audited for *Shariah* compliance by qualified bodies. A *Shariah*-compliant framework could include *Shariah* certification of crypto products (e.g., via SAC), integration of risk-mitigating controls, and transparent crypto exchanges with registered *Shariah* bodies. |

Source: Data Proceed by Authors

In Table 7, it was noted that participants consistently spoke out in favour of licensing and Shariah certification under the direction of the BNM and the SC. Legally, this reflects the IFSA 2013 requirements for transparency and risk mitigation, and operationalises *maqaṣid* al-shariah (*ḥifẓ al-māl, dar al-mafasid*). SAC certification ensures compliance with riba, *gharar*, and *maysir prohibitions*. Additionally, ongoing assessments based on *Shariah* parameters are

deemed essential. This study aligns with Muhammad Arief Jailani's and Aishath Muneeza's understanding.[36]

**Table 8.** Focused Coding No. 1 for Interview Question 2

| **Sub-themes** | ***Shariah*-Centric Frameworks for Certification and Asset-Backing** |
|---|---|
| Participant No. | Remarks |
| Participant 9 | One of the main *Shariah* concerns regarding the validity of cryptocurrencies as money is the lack of a physical backing. |
| Participant 5 | Stablecoin frameworks backed by tangible assets. |
| Participant 8 | Use of stablecoins backed by tangible assets (e.g. gold or fiat currencies). |
| Participant 9 | There should be adequate disclosure that removes gharar, uncertainty and speculative elements. |

Source: Data Proceed by Authors

As indicated in Table 8, the participants recognise that the lack of intrinsic value in cryptocurrencies raises legal issues in the context of *qimah maliyya*. Stablecoins backed by gold or fiat are similar to classical forms of valid currencies and thus conform to legal consensus. This mirrors Bahrain's regulatory approach, where asset-backed tokens are explicitly licensed. Classical jurists have traditionally limited currency to items with an inherently recognised tangible value, such as gold or silver, criteria that cryptocurrencies generally do not meet. These shortcomings raise questions about the permissibility of cryptocurrencies. They are often assessed through the framework of the higher objectives of *Shariah* (*Maqāṣid al-sharīʿah*), which include the preservation of wealth (*hifẓ al-mal*) and the prevention of harm (*dar' al-mafasid*). Moreover, the absence of intrinsic value suggests a

[36] Muhammad Arief Jailani, and Aishath Muneeza, "Crypto assets: The need for Shariah screening criteria for digital assets in Malaysia," International Journal of Islamic Economics and Finance Research 1 (2023): 27-47.

disconnection from tangible assets or real economic activities, which is at odds with the Islamic focus on assets and value creation. Cryptocurrencies that lack backing by tangible assets or genuine economic activities raise *Shariah* concerns, as they may involve *gharar* and lack *qimah maliyya* (monetary value).

In contrast, stablecoins backed by gold or fiat currencies and tokens linked to real-world projects are perceived as being more aligned with the classical Islamic concept of money and valid tradable assets. The current study is in line with the research of Ahmad Al Izham Izadin and Rosylin Mohd. Yusof and Ahmad Rizal Mazlan.[37]

**Table 9.** Focused Coding No. 1 for Interview Question 2

| **Sub-themes** | ***Shariah*-Centric Frameworks for Certification and Asset-Backing** |
|---|---|
| Participant No. | Remarks |
| Participant 1 | So, trading in cryptocurrencies is permissible if there is a genuine *sil'ah*. Depending on the category, one must choose from cryptocurrency to cryptocurrency. |
| Participant 3 | The classification of digital assets includes stablecoin tokens and security, interest and governance tokens." |

Source: Data Proceed by Authors

Participants 1 and 3 from Table 9 emphasise differentiated Shariah rulings for the various classes of tokens. This is in line with *fiqh al-muʿāmalāt*, which requires a valuation for each asset. Turkey's regulatory guidelines on utility and security tokens provide a helpful benchmark.[38] The participants

[37] Ahmad Al Izham Izadin, Rosylin Mohd, Yusof, and Ahmad Rizal Mazlan. "The integration of Maqasid Shariah in evaluating stablecoins and traditional cryptocurrencies for Islamic portfolios diversification," *International Journal of Islamic and Middle Eastern Finance and Management 18*, no. 3 (2025): 577-597.

[38] Capital Markets Board of Turkey, Report on Crypto Assets and Financial Markets (Ankara: CMB, 2022).

stressed that each token needs to be evaluated based on its structure and intended use. This aligns with the principle of *fiqh al-muʿāmalāt* (jurisprudence of transactions), which mandates that each contract or asset be assessed individually for compliance. The current study is in line with the research of Ahmad Al Izham Izadin and Rosylin Mohd. Yusof and Ahmad Rizal Mazlan.[39]

**Table 10.** Focused Coding No. 2 for Interview Question 2

| **Sub-themes** | **Institutional and Regulatory Collaboration for *Shariah* Governance** |
|---|---|
| Participant No. | Remarks |
| Participant 3 | We expect the AAOIFI and Malaysian *Shariah* scholars to take the lead in this area. |
| Participant 4 | Develop regulatory sandboxes with the support of Bank Negara Malaysia and Securities Commission Malaysia to test and regulate *Shariah*-compliant crypto innovations. |
| Participant 10 | The framework is in place, and academics are helping to improve it further. This would mean working with existing institutions such as Bank Negara and promoting research-based guidelines. |
| Participant 11 | Collaboration between *Shariah* scholars, Islamic finance scholars and technical experts (ICT, cybersecurity, AI): The government should find a way to bring experts together. |
| Participant 7 | Joint development of ethical guidelines with Bank Negara Malaysia (BNM) and fintech players. |
| Participant 5 | Investor education programs by regulators such as BNM. |

[39] Ahmad Al Izham Izadin, Rosylin Mohd, Yusof, and Ahmad Rizal Mazlan, "The integration of Maqasid Shariah in evaluating stablecoins and traditional cryptocurrencies for Islamic portfolios diversification," International Journal of Islamic and Middle Eastern Finance and Management 18, no. 3 (2025): 577-597.

| | |
|---|---|
| Participant 12 | Conduct workshops with the SAC, Bank Negara, academic institutions such as INCEIF and fintech players to develop an integrated framework. |

Source: Data Proceed by Authors

Table 10 emphasises the critical need for institutional and regulatory collaboration to enhance *Shariah* governance in the realm of cryptocurrency. This collaboration should be spearheaded by organisations like AAOIFI and Malaysian *Shariah* scholars, with active participation from regulators such as Bank Negara Malaysia and the Securities Commission. It is essential to establish clear regulatory parameters. In this collaborative effort, *Shariah* scholars, Islamic finance experts, and technical professionals should collaborate to formulate *Shariah* parameters for cryptocurrency, provide investor education, and create integrated frameworks through workshops and academic research. This mirrors global models such as the UAE's Shariah-compliant sandbox, where regulators and scholars jointly test crypto innovations. Such integration operationalises legal considerations into governance frameworks.[40] This study aligns with Halil Paino and Syed Iskandar Zulkarnain Sayd Idris.[41]

The study qualitatively examined the views of experts and developed the *Shariah* parameters for cryptocurrencies in Malaysia, which align with the *Shariah* objectives and Islamic financial framework. Table 11 below shows the developed *Shariah* parameters in detail.

**Table 11.** *Shariah* Parameters for Cryptocurrency in Malaysia

| | |
|---|---|
| 1. Prohibition of Gharar (Uncertainty) | - Cryptocurrencies must avoid excessive uncertainty (*gharar*) in their structure, trading, and value proposition. |

[40] Dubai Financial Services Authority (DFSA), Crypto Token Regime (Dubai: DFSA, 2022).

[41] Halil Paino, and Syed Iskandar Zulkarnain Sayd Idris, "Modelling the digital/Crypto currencies with the fiat Money of the country: can Crypto overtake fiat money?," (2019): 107.

| | |
|---|---|
| and *Maysir* (Speculation) | - They must not promote speculative behaviour (*maysir*) resembling gambling or unjust enrichment through chance.<br>- Transactions must be transparent, with straightforward subject matter and outcomes to satisfy the *Shariah* principle of certainty (yaqin).<br>- Cryptocurrencies linked solely to speculation and not backed by tangible assets are impermissible. |
| 2. Avoidance of *Haram* Activities and Ensuring Ethical Use | - Cryptocurrencies must not be associated with *haram* (prohibited) activities, such as online gambling, fraud, or activities that lack transparency and accountability.<br>- *Shariah*-compliant cryptocurrencies must avoid anonymity features that undermine accountability.<br>- Ethical behaviour and social justice must be upheld, avoiding instruments that encourage laziness or easy wealth without productive effort. |
| 3. Exclusion of *Riba* (Interest-Based Elements) | - Cryptocurrency activities must avoid involvement in interest-based transactions or crypto-lending with predetermined returns, as this would constitute *riba*.<br>- Any cryptocurrency project must ensure its structure, purpose, and operations do not mirror interest-based financial systems. |
| 4. Asset-Backed and Intrinsic Value Requirement | - Cryptocurrencies must ideally be backed by tangible assets (e.g., gold, fiat currencies) or linked to real economic activities to satisfy the requirement of intrinsic value (*qimah maliyya*).<br>- The absence of intrinsic value or asset-backing raises concerns of gharar and violates the |

| | |
|---|---|
| | *maqāṣid al-sharīʿah* related to wealth preservation (*hifẓ al-mal*). |
| 5. Classification and Screening of Cryptocurrencies | - Not all cryptocurrencies are the same; they must be screened and classified based on their nature (utility tokens, security tokens, governance tokens).<br>- Each cryptocurrency must undergo individual *Shariah* assessment according to its structure and intended use under *fiqh al-muʿāmalāt* (jurisprudence of transactions). |
| 6. Institutional and Regulatory Compliance | - *Shariah* compliance requires certification from recognised bodies, such as Bank Negara Malaysia (BNM) and the Securities Commission Malaysia (SCM), with *Shariah* boards involved in the assessment.<br>- A formal licensing framework for cryptocurrency products and exchanges must be established, integrating *Shariah* parameters.<br>- Ongoing *Shariah* audits and assessments are necessary to ensure continued compliance. |
| 7. Transparency and Accountability | - Cryptocurrency systems must enhance transaction transparency and maintain accountability, aligning with Islamic finance principles.<br>- Anonymity features that enable concealment of transactions are to be avoided. |
| 8. Alignment with *Maqāṣid al-sharīʿah* | - Cryptocurrencies must fulfil higher *Shariah* objectives (*maqāṣid al-sharīʿah*), including:<br>- Preservation of Wealth (*Hifẓ al-Mal*)<br>- Prevention of Harm (*Dar' al-Mafasid*)<br>- They must contribute positively to the economy through legitimate value creation, not undermine stability through volatility or speculation. |

| | |
|---|---|
| 9. Regulatory and Institutional Collaboration | - Regulatory bodies (BNM, SCM) must work with *Shariah* scholars, Islamic finance experts, and technical professionals to establish clear *Shariah*-compliant frameworks.<br>- Active collaboration with bodies like AAOIFI and Malaysian *Shariah* councils is essential.<br>- Educational efforts for the public and regulators are necessary to bridge gaps in understanding new financial technologies within a *Shariah* context |

Source: Data Proceed by Authors

**Conclusion**

This study examined the permissibility of cryptocurrencies in Malaysia by identifying doctrinal and regulatory concerns that undermine Shariah compliance. The findings point to persistent risks such as *gharar* (uncertainty), *maysir* (speculation), *riba* (interest), and the lack of intrinsic value, which contradict core Islamic legal principles and the higher objectives of Shariah (*maqāṣid al-sharīʿah*). These challenges are exacerbated by weak regulation, decentralisation, and low awareness among Shariah scholars, suggesting that without reforms, most cryptocurrencies will remain excluded from the scope of shariah-compliant financial instruments. To address these issues, the study proposes a Shariah framework based on the following key parameters: prohibition of *gharar, maysir,* and *riba*; asset backing; halal screening and institutional cooperation. The study fills a critical gap in Islamic finance scholarship by operationalising these parameters. It advances the discourse on how digital assets can be aligned with Shariah objectives, particularly the protection of wealth (ḥifẓ al-māl) and the prevention of harm (darʾ al-mafāsid).

To develop Shariah-compliant cryptocurrencies in Malaysia, a centralised Shariah verification and certification body should be established to screen digital assets against the key prohibitions of riba, gharar and maysir. BNM, SCM and the Shariah Advisory Council must work together to develop clear classification guidelines, enforce Shariah audits, and require assets to be backed by gold or fiat-linked stablecoins to ensure value and minimise

speculation. Regulatory sandboxes should be expanded for Shariah-supervised fintech innovations, while public education and scholarly training must improve awareness and competence for Islamic fintechs. Continued collaboration between regulators, scholars, technologists, and academic institutions is essential to harmonising fatwa, supporting ongoing research, and providing real-time Shariah guidelines to build a robust and ethical Islamic crypto-finance ecosystem.

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# SOCIAL DELEGITIMATION OF RELIGIOUS OBLIGATION: Zakat, *Infaq*, and Shodaqoh Traditions among Transnational Madurese Migrant Workers of Indonesia-Malaysia

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***Abstract***

*This study examines Islamic Philanthropic practices (Zakat, Infaq, and Sadaqah) within a transnational context that has received limited scholarly attention, particularly among migrant workers. Legal issues arise from regulatory misalignment between Indonesia and Malaysia in Zakat governance, which affects the practice of religious obligations. The objective of this study is to introduce the concept of social delegitimation in relation to transnational religious obligations and to understand the process through which Madurese migrants in Malaysia fulfil Zakat, Infaq, and Sadaqah (ZIS). This research adopts an empirical study using anthropological and comparative approaches and applies Kenneth L. Pike's emic and etic perspectives. The findings indicate that the fulfilment of ZIS takes place through continuous negotiation within conditions of transnational uncertainty. Regulatory misalignment*

*contributes to the social delegitimation of formal zakat institution in Malaysia, leading migrants to prefer channeling their ZIS through networks of kiai (religious scholars) and community groups in their hometowns, which are perceived to guarantee emotional proximity, blessing (barakah), and spiritual accountability. Accordingly, this study demonstrates that religious authority and the legitimacy of Islamic philanthropy in diaspora contexts are shaped more by social relations and transnational resilience strategies than by mere state legal frameworks.*

*Penelitian ini mengkaji praktik filantropi Islam (zakat, infaq, dan sadaqah) dalam konteks transnasional yang jarang dieksplorasi, khususnya di kalangan pekerja migran. Terdapat isu hukum mengenai ketidakselarasan regulasi zakat antara Indonesia dan Malaysia yang memengaruhi praktik kewajiban agama. Tujuan studi ini adalah memperkenalkan konsep delegitimasi sosial terhadap kewajiban agama transnasional dan memahami proses pemenuhan zakat, infaq, dan sadaqah (ZIS) migran Madura di Malaysia. Metode yang digunakan adalah penelitian empiris dengan pendekatan antropologi dan komparatif, serta menerapkan perspektif emik dan etik Kenneth L. Pike. Hasil penelitian menunjukkan bahwa pemenuhan ZIS berlangsung melalui negosiasi berkelanjutan dalam situasi ketidakpastian transnasional. Ketidakselarasan regulasi mendorong delegitimasi sosial terhadap institusi zakat formal di Malaysia, menyebabkan migran lebih memilih menyalurkan ZIS melalui jaringan kiai dan komunitas di kampung halaman karena dinilai menjamin kedekatan emosional, keberkahan, dan akuntabilitas spiritual. Dengan demikian, kontribusi artikel ini memperlihatkan bahwa otoritas keagamaan dan legitimasi filantropi Islam di diaspora lebih ditentukan oleh relasi sosial dan strategi ketahanan transnasional daripada sekadar kerangka hukum negara.*

***Keywords:*** *Islamic philanthropy, migrant workers, religious obligation.*

## Introduction

The phenomenon of Madurese migrant workers in Malaysia has long been part of the socio-economic dynamics across the borders of Indonesia and Malaysia. This wave of migration is driven not only by economic factors but also by kinship ties, cultural proximity, and strong intercommunal solidarity. In their daily lives, Madurese migrant workers embed religious values that shape their identity, including religious obligations such as zakat,

*infaq*, and *sadaqah* (ZIS). However, the transnational context presents highly complex challenges, including limited income, vulnerable employment status, administrative bureaucracy, and the fragmentation of religious authority between Indonesia and Malaysia. These factors collectively affect the process of social delegitimation of ZIS obligations, manifested in shifting meanings, neglect, or even the substitution of religious obligations within the social practices of Madurese migrant workers.

Madurese migrant workers are known for their strong attachment to their places of origin, Islamic boarding school traditions, and traditional religious authorities. Indeed, the Madurese are among the ethnic groups in Indonesia with a high level of mobility.[1] This characteristic generates moral pressure to continue fulfilling ZIS obligations, even though migrant workers often operate in harsh working environments marked by high economic demands, rising living costs, and significant social risks. Under these conditions, the meaning of ZIS obligations undergoes transformation and is frequently replaced by other forms of social responsibility perceived as more urgent, such as sending regular remittances to family members, assisting relatives, or supporting local communities abroad. This process of substituting obligations illustrates that the legitimacy of religious duties is not static but continuously renegotiated in response to migrants' socio-cultural contexts.

From a normative perspective, there are fundamental differences between Indonesia and Malaysia in the governance of zakat. In Indonesia, zakat management is regulated by Law No. 23 of 2011 on Zakat Management, which authorises the National Amil Zakat Agency (BAZNAS) alongside recognised private zakat institutions.[2] This decentralised system allows multiple institutions to manage zakat under specific accountability mechanisms.[3] In contrast, in Malaysia, zakat falls under the authority of

[1] Yakob Arfin Tyas Sasongko and Ekawati S. Wahyuni, "Diaspora Madura: Analisis Modal Sosial Dalam Usaha Sektor Informal Oleh Migran Madura," *Jurnal Sosiologi Pedesaan* 1, no. 1 (2013): 52–63, https://doi.org/10.22500/sodality.v1i1.9390.

[2] Rangga Ardani, Abukosim, and EmyliaYuniartie, "Analisis Kinerja Lembaga Amil Zakat Pada Badan Amil Zakat Nasional (Baznas) Kabupaten Ogan Ilir Dengan Metode Indonesia Magnificence Zakat (IMZ)," *Akuntabilitas* 12, no. 1 (2019): 19–32, https://doi.org/10.29259/ja.v13i1.9526; Nurfiana Nurfiana and Sakinah Sakinah, "Zakat Dan Kajiannya Di Indonesia," *Milkiyah: Jurnal Hukum Ekonomi Syariah* 1, no. 1 (2022): 21–25, https://doi.org/10.46870/milkiyah.v1i1.158.

[3] Muhammad Aziz, "Regulasi Zakat Di Indonesia; Upaya Menuju Pengelolaan Zakat Yang Profesional," *Al-Hikmah: Jurnal Studi Keislaman* 4, no. 1 (2014): 1–17,

individual states, resulting in a highly centralised and strictly administered system supported by binding legal instruments.[4] Zakat in Malaysia is legally mandatory under state legislation, and failure to comply constitutes an offence subject to prosecution. Consequently, zakat management in Malaysia is generally considered more effective than in Indonesia.[5] For Madurese migrant workers who live between these two jurisdictions, the issue becomes complex: should zakat be paid in the country of origin, the host country, or both? This legal ambiguity creates space for delegitimation, which in turn encourages migrant workers to delay, disregard, or redirect their obligations into other forms of philanthropy

Nevertheless, despite this legal delegitimation, Madurese migrant workers continue to internalise and strongly uphold religious values. Under conditions of labour pressure and livelihood insecurity, their spiritual orientation may shift towards more pragmatic considerations. Although ZIS constitutes a theologically mandatory form of worship and represents one of the core pillars of Islam,[6] in practice it is frequently reinterpreted. Some migrants postpone payment with the intention of fulfilling it upon returning home; others redirect it towards spontaneous charitable acts within workplace communities; while some restrict their religious giving to remittances sent to family members, which they perceive as a form of worship. Diaspora does not merely transfer religious practices from one geographical setting to another; rather, it creates a new space for negotiating Islamic identity, religious authority, and adherence to normative obligations. For Madurese migrant workers, the practice of ZIS is not only linked to the fulfilment of Sharia

https://doi.org/10.52431/tafaqquh.v3i1.38; Nadila Roza, "Pengaruh Religiusitas Dan Peran Pemerintah Terhadap Keputusan Muzakki Untuk Membayar Zakat Di Badan Amil Zakat Nasional (Baznas)," *Al-Hisbah Jurnal Ekonomi Syariah* 3, no. 1 (2022): 40–52, https://doi.org/10.57113/his.v3i1.217.

[4] Muhammad Syukri Salleh, "Mengatasi Kemiskinan Melalui Zakat Di Malaysia : Kajian Terhadap Tiga Faktor Yang Mempengaruhinya," *Media Syariah* 16, no. 1 (2014): 389–406, https://doi.org/10.22373/jms.v16i2.1751.

[5] Adrianna Syariefur Rakhmat and Irfan Syauqi Beik, "Pengelolaan Zakat Dan Wakaf Di Malaysia Dan Turki: Studi Komparatif," *IL TIZAM Journal of Shariah Economics Research* 6, no. 1 (2022): 48–58, https://doi.org/10.30631/iltizam.v6i1.1077.

[6] Mumammad Yuchbibun Nury and Moh. Hamzah, "Tafsir Komprehensif Terhadap Ayat-Ayat Zakat: Kajian Terhadap Aspek Sosial Dan Ekonomi Dalam Al-Qur'an," *Manarul Quran: Jurnal Studi Islam* 24, no. 1 (2014): 10–26, https://doi.org/10.32699/mq.v24i1.7747.

obligations but also functions as a means of maintaining social connectedness with family, religious leaders, and religious institutions in their homeland.

Previous studies on ZIS in Indonesia have largely focused on compliance, institutional management, and distribution effectiveness.[7] Meanwhile, migration studies have tended to examine migrant remittances and their contributions to development in regions of origin.[8] However, limited attention has been paid to the practice of ZIS within a transnational context, particularly with regard to the dimensions of social delegitimation occurring simultaneously within socio-cultural, juridical, and spiritual spheres. This study seeks to address this gap by offering a new perspective on how Madurese migrant workers construct, negotiate, and, in certain respects, delegitimise ZIS obligations in their lives in Malaysia. Accordingly, the phenomenon of social delegitimation of ZIS obligations among Madurese migrant workers should be understood not merely as an issue of individual compliance, but as a reflection of the interaction among three interrelated domains: socio-cultural norms, legal frameworks that enable or constrain formal channels, and spirituality as a space for negotiating religious meaning.

Anthropological studies of Islamic philanthropy have demonstrated a dialectical relationship between obligation and social reciprocity. Within transnational spaces, tensions between religious duties and social expectations become increasingly pronounced, particularly when migrant workers face

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[7] J Ahmad, Misbahul Munir, and Meldona, "Tata Kelola Distribusi Zakat, Infak Dan Sedekah (ZIS) Dalam Meningkatkan Kesejahteraan Mustahik: Studi Pada Program Sidogiri Community Development (SCD) Di LAZ Sidogiri Pasuruan Jawa Timur)," *JIEI: Jurnal Ilmiah Ekonomi Islam* 10, no. 2 (2024): 2269–82, https://doi.org/10.29040/jiei.v10i2.12119; Khaeron Sirin and Oos Maylandika, "Pengawasan Penyaluran Zakat BAZNAS Sumbawa Dalam Mengentaskan Kemiskinan," *Mavisha: Law and Society Journal* 1, no. 2 (2025): 1–16, https://doi.org/10.15408/d4211k91.

[8] Hoiril Sabariman et al., "Rasionalitas Dan Adaptasi Sosial (Studi Kasus Penduduk Migran Di Perdesaan Madura)," *Jurnal Analisa Sosiologi* 9, no. 2 (2020): 510–25, https://doi.org/10.20961/jas.v9i2.41313; Muh Syamsuddin, "Orang Madura Perantauan Di Daerah Istimewa Yogyakarta," *Aplikasia: Jurnal Aplikasi Ilmu-Ilmu Agama* 18, no. 1 (2018): 1, https://doi.org/10.14421/aplikasia.v18i1.1378; Sasongko and Wahyuni, "Diaspora Madura: Analisis Modal Sosial Dalam Usaha Sektor Informal Oleh Migran Madura"; Dewi Fatmawati, "Pola Konsumsi Perempuan Migran Madura (Studi Fenomenologi Di Kelurahan Kemayoran Baru DKA, Kecamatan Krembangan, Kota Surabaya)," *Jurnal Analisa Sosiologi* 9, no. 1 (2020): 21–56, https://doi.org/10.20961/jas.v9i0.39818.

multiple economic and social constraints in host societies. These dynamics remain underexplored in contemporary scholarship on Islamic philanthropy. Accordingly, this study addresses three central questions: How do socio-cultural dimensions shape the practices of zakat, *infaq*, and *sadaqah* among Madurese migrant workers in Malaysia? How do differences in zakat regulation and governance between Indonesia and Malaysia influence the fulfilment of ZIS obligations by Madurese migrant workers? And how are the spiritual meanings of zakat, *infaq*, and *sadaqah* understood and enacted within the framework of transnational life?

This study contributes to the discourse on Islamic philanthropy by introducing the concept of the social delegitimation of transnational religious obligations among migrant workers. This concept refers to a process in which the practices of zakat, *infaq*, and *sadaqah* (ZIS) undertaken by migrant workers experience a decline in social acceptance and religious authority, whether within host societies or home communities. Such delegitimation arises from tensions between the institutionalisation of zakat, the dynamics of religious authority within the diaspora, and migrants' vulnerable socio-economic conditions. By foregrounding the lived experiences of Madurese migrant workers in Malaysia, this study deepens scholarly understanding of how religious obligations are negotiated, contested, and, in some cases, delegitimised in the context of international migration.

## Research Method

This study employs an empirical research design using two primary approaches: an anthropological approach and a comparative approach.[9] The anthropological approach is used to examine the socio-cultural dynamics of Madurese migrant workers residing in Malaysia, including the ways in which diaspora networks, kinship relations, and structures of religious authority shape the legitimacy of zakat, *infaq*, and *sadaqah* (ZIS) obligations. The comparative approach is applied to analyse differences in the legal and institutional frameworks governing zakat in Indonesia and Malaysia, as well as their implications for migrant workers' choices and behaviours in fulfilling ZIS obligations.

[9] Sartono Kartodirdjo, *Pendekatan Ilmu Sosial Dalam Metodologi Sejarah* (Yogyakarta: Ombak, 2014), 5; Dudung Abdurrahman, *Metodologi Penelitian Sejarah Islam* (Yogyakarta: Ombak, 2011), 15; Asriana Harahap and Mhd. Latip Kahpi, "Pendekatan Antropologis Dalam Studi Islam," *Tazkir : Jurnal Penelitian Ilmu-Ilmu Sosial Dan Keislaman* 7, no. 1 (2021): 49–60, https://doi.org/10.24952/tazkir.v7i1.3642.

This research draws on two types of data: primary and secondary data.[10] Primary data were collected through in-depth interviews and participant observation in diaspora-based religious activities, including pengajian (religious study gatherings) and community-based ZIS collection initiatives. All data collection procedures adhered to established ethical research standards. Informants provided written or oral informed consent on a voluntary and transparent basis. Informants were selected using purposive sampling based on the following criteria: (1) Madurese Muslim migrant workers; (2) a minimum of one year of work experience in Malaysia; and (3) direct involvement in ZIS practices through either formal or informal channels. A total of seven informants participated in the study, comprising Madurese migrant workers and religious figures with direct experience in zakat implementation in Malaysia. Secondary data were obtained through a review of relevant literature, including academic books, journal articles, research reports, regulations, official documents, and other scholarly sources pertinent to the research topic

Data analysis followed the Miles and Huberman interactive model, which consists of three stages: data reduction, data display, and conclusion drawing/verification.[11] During the data reduction stage, interview and observational data were organised into thematic categories related to religious authority, ZIS practices, and processes of social delegitimation. The data were then presented in the form of analytical descriptive narratives to illustrate the relationships among social and cultural variables. Verification was conducted continuously through repeated validation of findings with informants, source triangulation, and alignment with the theoretical framework and comparative insights into differences in ZIS governance between Indonesia and Malaysia. To enhance the validity of the data, the researcher applied both methodological and source triangulation.[12] Methodological triangulation was achieved by combining interviews, observations, and the analysis of legal documents and zakat policies in Indonesia and Malaysia. Source triangulation involved comparing data obtained from migrant workers in Malaysia, family members and religious leaders in Madura, and representatives of zakat

[10] Andi Ibrahim, *Metodologi Penelitian* (Makassar: Gunadarma Ilmu, 2018), 47; Dedy Mulyana, *Metodologi Penelitian Kualitatif* (Bandung: PT Remaja Rosda Karya, 2004), 32.

[11] Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D* (Bandung: Alfabeta, 2009).

[12] Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010); Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Jakarta: Prenada Media Group, 2018).

institutions in both countries. These measures were essential for examining the consistency of information and strengthening the credibility and trustworthiness of the findings.

## Discussion

### The Social and Cultural Dimensions Shape the Practice of Zakat, *Infaq*, and Shodaqoh Among Madurese Migrant Workers in Malaysia

Zakat is the third pillar of Islam, required in Medina in the second year of the Hijri calendar. Terminologically, zakat means the right that must be taken from wealth (wealth that reaches nishab) to be given to a specific group, those entitled to receive a share.[13] Muslims acknowledge that zakat is one of the supports for the upholding of Islam and must be fulfilled, with its legal position parallel to that of prayer.[14] This legal parity encourages individuals to pay zakat, whether zakat fitrah, zakat mal, or other forms of zakat. As for *infaq* and *sadaqah*, although not explicitly regulated in Islam, these philanthropic practices have significant functions and contributions for the benefit of the ummah and share the same significance as zakat, but with a more general set of recipients.

In addition to zakat, Islamic philanthropy in the form of *infaq* and *sadaqah* is very important for improving welfare and encouraging equitable economic development. [15] The practice of zakat, *infaq*, and *sadaqah* (ZIS) among Madurese migrant workers in Malaysia did not emerge from a normative vacuum; it is rooted in a socio-cultural configuration that has shaped their worldview, priorities, and patterns of action. Norms of religious obligation provide a theological frame of reference, but their concrete expression is negotiated through networks of kinship, religious authority, moral economy, and transnational experience.

The Madurese are known to prioritize the relations of Bhupa', Bhābhu', Ghuru, Rato. As a value horizon, this provides a strong foundation for the

[13] Gusfahmi, *Pajak Syari'ah* (Jakarta: PT. Raja Grafindo Persada, 2007), 103.

[14] Abdul Kholiq Syafa'at and Lely Ana Ferawati Ekaningsih, "Potensi Zakat, Infaq, Shodaqoh Pada Badan Amil Zakat Nasional (Baznas) Di Kabupaten Banyuwangi," *Inferensi: Jurnal Penelitian Sosial Keagamaan* 7, no. 1 (2015): 25, https://doi.org/10.18326/infsl3.v9i1.25-46; Muhammad, *Aspek Hukum Dalam Muamalat* (Depok: Graha Ilmu, 2007), 153.

[15] Moh. Hamzah, "The Role and Legal Aspects of Infaq, Sadaqah, and Waqf in Realizing Economic Equality and People's Welfare," *Al Iqtishadiyah Jurnal Ekonomi Syariah Dan Hukum Ekonomi Syariah* 10, no. 1 (2024): 107, https://doi.org/10.31602/iqt.v10i1.14950.

ethics of obligation.[16] Obedience to parents, respect for teachers (including kyai), and submission to authority become moral frames that translate the obligatory into daily social action. Within this horizon, remittances for family needs, support for one's original Islamic boarding school, and involvement in hometown social programs are often perceived as primary obligations that have religious value equal to, or even more urgent than, fulfilling ZIS through institutional channels that feel distant. Thus, the legitimacy of ZIS is measured not only by the formulas of fiqh but also by moral closeness to people and institutions considered legitimate according to culture.

The compliance of Madurese migrant workers in Malaysia in paying zakat is a sacred behavior they perform; for example, they continue to pay zakat fitrah as prescribed by Islamic law. However, migrant workers often do not distribute their zakat in Malaysia but in their home areas in Madura. As stated by Moh. Salim (45 years old) and Afifah (40 years old), a couple from Pamekasan, Madura Regency, It was stated that the informant had worked in Malaysia for approximately ten years. It was found that both the informant and his wife were employed in the Selangor region of Malaysia. The informant was engaged in the construction sector as a builder, a field in which employment opportunities are continuously available throughout the year due to ongoing development projects undertaken by both government and private sectors. Although the income earned was relatively modest, it was considered sufficient to meet the basic needs of the family. In addition to providing financial support for his wife and one child, financial responsibility was also borne for two in-laws residing in Madura. Furthermore, it was indicated that all family members who met the eligibility requirements were involved in the payment of zakat. Zakat fitrah, as a religious obligation of the family, was distributed to underprivileged individuals in the informant's village of origin. It was explained that the family consisted of four members, namely the informant, his spouse, one child, and one in-law, all of whom were subject to the obligation of zakat fitrah. Financial remittances were sent to Madura, where the zakat was issued by the informant's father-in-law in the form of rice and, on certain occasions, in monetary form. With regard to the amount of zakat distributed, it was reported to be consistent with prevailing community practices, namely the equivalent of three kilograms of rice per eligible individual.

[16] Anis Sulalah, Erie Hariyanto, and Moh. Hamzah, "Organizing Ontalan Tradition in Madurese Customs," *Karsa* 30, no. 2 (2022): 389–410, https://doi.org/10.19105/karsa.v30i2.7119; Eka Susylawati et al., "Socio-Cultural Strength: Optimization of Bhuppa', Bhâbhu', Ghuru, and Rato in Establishing Compliance in Madurese Familial Conduct," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1974–93, https://doi.org/10.22373/sjhk.v8i3.20299.

The social and cultural dimension is one of the important factors shaping the practice of zakat, *infaq*, and *sadaqah* (ZIS) among Madurese migrant workers in Malaysia. The results of an interview with one informant, Salim, who works as a builder in Selangor, show how socio-cultural construction plays a major role in internalizing religious obligations while maintaining attachment to his homeland in Madura. Even though he works overseas with a busy schedule and limited income, he still places zakat as the main responsibility attached to him as the head of the family.

This practice shows a close relationship between religiosity and social solidarity ingrained in Madurese culture. In Salim's statement, the obligation of zakat is understood not only as a sharia demand but also as a social mechanism to ensure that family members, including children and in-laws, obtain religious protection through zakat payments. Interestingly, the practice of disbursing zakat is not carried out directly in Malaysia but is entrusted to parents in Madura to be distributed in the form of rice or money to the local community. As for other than zakat fitrah, the majority of migrant workers rarely pay zakat mal or zakat on property. For example, as conveyed by Moh. Salim and his wife, zakat and charitable assistance were channelled in the form of gifts to underprivileged parents, families, and relatives in their hometown. It was stated that the informant and his wife were currently employed in Malaysia and had not accumulated significant assets or savings. The income earned was primarily allocated to the construction of buildings, houses, and kitchens, as well as to meeting their children's educational expenses up to the tertiary level. Consequently, no mandatory zakat on accumulated wealth was required to be paid. It was further expressed that the sustenance received was considered sufficient to fulfil daily necessities, although it was insufficient to allow for savings, and that an expectation was held that increasing age would be accompanied by improved livelihood through divine provision.[17]

Zakat is one instrument for the distribution of income and wealth, including zakat fitrah, zakat mal, professional zakat, and other forms.[18] However, because the majority of migrant workers have small incomes and are focused on the needs of living abroad and supporting families in their hometowns, very few pay zakat other than zakat fitrah. By contrast, regarding *infaq* and *sadaqah*, they still give according to their ability, especially for the

[17] Salim, interview.

[18] Andi Hidayat and Mukhlisin Mukhlisin, "Analysis of Zakat Growth on the Dompet Dhuafa Online Zakat Application," *Jurnal Ilmiah Ekonomi Islam* 6, no. 3 (2020): 675–84, https://doi.org/10.29040/jiei.v6i3.1435.

construction of public facilities such as mosques, madrasas, and Islamic boarding school activities.

A similar view was expressed by Kurdi (47 years old), a migrant worker from Karang Penang District, Sampang Regency, Madura, who has been employed in Malaysia for more than ten years. It was stated that adherence to Islamic teachings, including the obligation to pay zakat, had been consistently maintained. It was explained that the informant and his wife resided in Malaysia, while their three children remained in Madura to pursue secondary and tertiary education. Accordingly, zakat fitrah was issued annually on behalf of the informant, his wife, and the three children as dependents. It was further indicated that, in certain instances, zakat was remitted to the eldest son to purchase rice, while on other occasions it was distributed in monetary form through a local ustadz (religious teacher) in the village.[19]

During the interview, additional information was provided by Muflihah (40 years old), Kurdi's wife, who was also employed in Malaysia. It was stated that zakat was consistently paid on gold assets stored in their hometown in Madura. This practice was interpreted as reflecting sincerity and a high level of compliance with Islamic obligations concerning the payment of zakat on savings. It was explained that the family possessed savings in the form of gold, including gold bars and, predominantly, gold jewellery, all of which were subject to zakat on an annual basis. The zakat was disbursed in monetary form and distributed to relatives who were in financial need. Furthermore, it was indicated that zakat on property (*zakat al-māl*) was commonly paid during the fasting month, although not necessarily at its conclusion.[20]

Apart from meeting basic needs, some migrant workers have greater income, so in addition to meeting living needs for themselves and their families, they can also save and invest in gold. Based on the above interviews, it appears that Madurese people working in Malaysia do not forget their zakat. Whether they pay zakat mal, zakat on property, or zakat fitrah, they do so according to Islamic teachings and their ability. The types of assets on which zakat is paid are diverse, and the channels of distribution likewise vary, including giving to ustaz, Qur'anic teachers, and kyai in Madura. As further conveyed by Muflihah, it was stated that infaq and shodaqoh were also regularly issued on a voluntary basis. These charitable contributions were typically channelled to mosques or madrasahs that were in need. It was

[19] Kurdi, an immigrant from Karang Penang, Sampang, interview, August 13, 2023.
[20] Muflihah, Immigrant from Karang Penang, interview, August 13, 2023.

explained that, in Sampang, a mosque routinely requested donations for renovation and operational expenses, to which the informant's family was registered as a regular contributor. Similarly, during imtihan (examination or graduation) events held by local madrasahs, requests for donations were commonly made, and financial contributions were provided whenever funds were available. [21]

In the context of cultural anthropology, this phenomenon can be understood as a form of reciprocity that is deeply rooted in Madurese culture. By giving *infaq* or alms to mosques, madrasas, or ustaz, migrant workers maintain social relations with religious institutions that are the center of community life in the village. Mosques are not only places of worship but also symbols of communal identity that unite citizens, while madrasas function as agents for reproducing religious and cultural values. In addition, several reasons were identified as to why migrant workers preferred to channel zakat, particularly zakat fitrah, through kyai or local religious leaders. It was indicated that greater feelings of comfort, guidance, and the perception of more tangible benefits motivated this choice. As reflected in the interview, it was explained that zakat fitrah was commonly performed on the thirtieth day of Ramadan or on the eve of Eid al-Fitr by visiting the kyai in the local area, a practice that was widely observed within the community. This preference was attributed to the fact that some individuals were unable to memorise the intention (niyyah) for paying zakat independently, and therefore relied on guidance provided by the kyai.[22]

Based on the information presented above, it was evident that the obligation to pay zakat was fulfilled on an annual basis. Zakat fitrah was customarily distributed to the *kyai* or religious teachers, a practice that has long been maintained as a local tradition. The act of channelling zakat through the *kyai* was perceived as providing a greater sense of satisfaction and assurance that the religious obligation had been properly fulfilled. This perception was grounded in the belief that the guidance and authority of the *kyai* ensured the correctness of the practice. A similar explanation was provided by Mr. Bakar, who stated that zakat fitrah was issued for all family members who were classified as dependents, as zakat fitrah is regarded as a mandatory and individual obligation that must be fulfilled for each person. It was explained that zakat fitrah is legally obligatory for every Muslim who is

[21] Muflihah.

[22] Moh. Bakar, Ustadz and Former Immigrants from Sanah Laok Pasean, Interview, September 1, 2023.

financially capable; therefore, the payment of zakat was made annually not only on behalf of the informant but also for his wife and children, all of which was channelled through the *kyai*. With regard to *infaq*, it was indicated that contributions were directly submitted to BAZNAS in Pamekasan Regency, based on the belief that the institution possessed greater capacity to manage funds and identify eligible beneficiaries. Meanwhile, *shodaqoh* was generally distributed directly to neighbours, orphans, and economically disadvantaged individuals, and this practice was reportedly carried out on a regular basis, particularly on Friday evenings, in remembrance of deceased family members.[23]

In contrast to zakat, *infaq* is usually submitted directly to the National Amil Zakat Agency in the Pamekasan Regency area. This is due to the perception that legal entities are more optimal in managing *infaq* funds from the community. As explained above, Madurese people, both migrants and those working in Madura, regularly provide *infaq* and *sadaqah* according to their abilities. *Infaq* and *sadaqah* are given to those who normatively have the right to receive them. In practice, they are given to the poor around the place of residence or handed over to amil zakat, who usually collect in several places, such as mosques or other zakat collection institutions.

Furthermore, information was provided by Abd. Rahim (47 years old), a migrant worker originating from Waru, Pamekasan Regency, who explained that the payment of zakat, *infaq*, and *sadaqah* while residing in Malaysia was generally carried out at his workplace and, on several occasions, also in his hometown, in a manner similar to that practised by other migrant workers. It was stated that, during his stay in Malaysia, *infaq* and *sadaqah* were distributed to orphanages, nursing homes, and other zakat-related institutions as a form of mutual assistance, rather than as a consequence of possessing surplus wealth, but rather as an expression of solidarity with individuals in urgent need. It was further indicated that, in Malaysia, a community-based institution managed by fellow Indonesian migrants functioned as a collection centre for *infaq* and *sadaqah*. This institution, known as the Madura Family Association (*Ikatan Keluarga Madura* / IKMA), was regularly utilised by migrant workers to channel charitable contributions, which were subsequently distributed by the administrators to eligible beneficiaries. The distribution of

[23] Mr Bakar Inerview.

these funds was reportedly carried out by the institution, including remittances directed to recipients in Madura.[24]

Thus, the interview with Abd. Rahim shows that the practice of ZIS among Madurese migrant workers has three main dimensions: first, cultural adaptation in the destination region through the distribution of *infaq* and alms to local social institutions; second, strengthening the diaspora network through community institutions such as IKMA, which function as transnational mediators; and third, the internalization of religio-cultural values of sharing that is not based solely on economic advantage but on a collective consciousness to maintain solidarity. All of these practices support the understanding that social and cultural dimensions greatly determine how Madurese migrant workers fulfill their ZIS amid the dynamics of transnational life.

## Comparison of Zakat Regulations and Policies in Indonesia and Malaysia

Zakat is the third pillar of Islam and part of worship in the lives of Muslims.[25] Zakat is one of the cornerstones of a Muslim's faith and can serve as an indicator of Islamic commitment, reflecting solidarity among Muslims.[26] With this understanding, zakat is not only the fulfillment of obligations and responsibilities as a Muslim, but also a form of self-practice embodying a symbiotic value of mutualism that emphasizes mutual benefit.

Therefore, zakat has great potential to address problems in Indonesia, such as poverty alleviation and access to education and health for zakat recipients, but its implementation faces several challenges. Sudewo explains common problems in maximizing zakat collection, namely: regulations and political will that are less supportive; distrust of *muzakkī* toward existing zakat management institutions, both private and especially governmental; and internal problems within zakat management organizations, such as lack of

[24] Abd. Rahim, Immigrant from Waru Pamekasan, live interview, September 01, 2023.

[25] Mohd Yahya Mohd Hussin, Fidlizan Muhammad, and Mohamad Ali Roshidi Ahmad, "Compliance of Zakah Payment : Analysis of Zakat Fitrah Collection and Leakage in Selangor," *Shariah Journal* 21, no. 2 (2013): 191–206, https://ejournal.um.edu.my/index.php/JS/article/view/22467.

[26] Ali Ridlo, "Zakat Dalam Perspektif Ekonomi Islam," *Jurnal Al-'Adl* 7, no. 1 (2014): 119–37; Majlis Pengawasan, Syariah Suruhanjaya, and Saham Tertinggi, "Zakat Compliance Among Public Listed," *JMIFR: The Journal of Muamalat and Islamic Finance Research* 12, no. 2 (2014): 69–85.

accountability, transparency, and managerial capacity.[27] This underscores zakat's position as Islamic philanthropy capable of reducing unmet social needs and advancing values of justice and equality between the wealthy and those who have not yet improved their quality of life.

In the Qur'an, the word zakat is mentioned 32 times, 28 of which appear alongside the word prayer. This shows that zakat is obligatory, and the command to pay zakat is almost parallel to the command to pray.[28] It can be concluded that the level of faith and obedience of a Muslim can be measured by how obedient a person is in paying zakat, whether zakat fitrah, zakat on property, trade, or other forms. This shows the centrality of zakat in providing human benefit and goodness, and how its position correlates with both horizontal human relations (ḥablum minannās) and vertical relations with Allah (ḥablum minaAllāh).

The potential for zakat in Indonesia reaches Rp 217 trillion, but actual collection is far lower, only about 4% of the estimated potential, so it is necessary to improve the competence of zakat managers and public awareness regarding the importance of zakat. Factors causing low collection in Indonesia include incomplete public trust in amil zakat institutions, low awareness among Muslims about the obligation of zakat, and a collection base concentrated on a few types such as zakat fitrah. According to another view, differences arise from gaps between classical fiqh opinions and contemporary realities in calculating potential zakat collection.[29]

Accordingly, the overall level of zakat collection in Indonesia remains relatively low, not merely due to limited potential resources. Although the realization of some zakat sources has improved, collection still needs to be increased given the enormous potential.[30] BAZNAS (National Amil Zakat

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[27] Ahmad Alam, "Permasalahan Dan Solusi Pengelolaan Zakat Di Indonesia," *Jurnal Manajemen* 9, no. 2 (2018): 128, https://doi.org/10.32832/jm-uika.v9i2.1533.

[28] Clarashinta Canggih, Khusnul Fikriyah, and Ach Yasin, "Inklusi Pembayaran Zakat Di Indonesia," *Jurnal Ekonomi Dan Bisnis Islam* 3, no. 1 (2017): 1–11, https://doi.org/10.20473/jebis.v3i1.3164.

[29] Indria Fitri Afiyana et al., "Tantangan Pengelolaan Dana Zakat Di Indonesia Dan Literasi Zakat," *Akuntabel* 16, no. 2 (2019): 222–29, https://doi.org/10.29264/jakt.v16i2.6013.

[30] Rifqah Mursidah, Sirajuddin Sirajuddin, and Akramunnas Akramunnas, "Pengaruh Religiusitas Dan Pendapatan Terhadap Kepatuhan Membayar Zakat Hasil Tambak," *Al Maal: Journal of Islamic Economics and Banking* 4, no. 1 (2022): 106, https://doi.org/10.31000/almaal.v4i1.5918.

Agency) is a non-structural government institution tasked with managing zakat nationally. Meanwhile, LAZ (Amil Zakat Institutions) are community-formed bodies that help BAZNAS collect, distribute, and utilize zakat. To assist with collection, BAZNAS can form UPZ (Zakat Collection Units).[31] The enactment of Law Number 23 of 2011 concerning Zakat Management became an important milestone in the history of zakat management in Indonesia, revising the previous law. This law marks a revival after decades of marginalization and a crucial turning point for national zakat. The utilization of *infaq*, *sadaqah*, grants, wills, inheritances, and kafarat is prioritized for productive enterprises to improve public welfare.[32]

The law places BAZNAS as a non-structural government institution authorized to coordinate zakat management nationally, including planning, collection, distribution, utilization, and public accountability. In addition to BAZNAS, private LAZ also play significant roles in collection and utilization, with their regulations governed by implementing provisions. This legal framework demonstrates the state's effort to develop a formal, coordinated institutional system for zakat while leaving space for the private sector to participate in the zakat management ecosystem.

Apart from Indonesia's institutionalized zakat system, Malaysia is a country with regulations and laws specifically governing Muslim life. In the context of zakat management, implementation is carried out by official bodies known as the Islamic Religious Councils and Malay Customs. The laws and regulations regarding zakat in each state are formed by the respective State Legislative Councils, so each state has its own legal apparatus for zakat management.[33] These provisions are generally contained in state-level Islamic laws and regulations. The full authority possessed by each state in formulating zakat regulations results in differences across states, both in management and legal implementation mechanisms. Malaysia does not have a national zakat law that standardizes the system; therefore, implementation depends heavily on the policies of federal territories and respective state governments.

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[31] Wasilatur Rohmaniyah, "Optimalisasi Zakat Digital Melalui Penguatan Ekosistem Zakat Di Indonesia," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 3, no. 2 (2022): 232–46, https://doi.org/10.19105/alhuquq.v3i2.5743.

[32] Ahdiyat Agus Susila, "Pengelolaan Zakat Di Indonesia," *Iqtishodiyah : Jurnal Ekonomi Dan Bisnis Islam* 4, no. 2 (2018): 293–305, https://doi.org/10.36835/iqtishodiyah.v4i2.81.

[33] Ahmad Wira, "Studi Pengelolaan Zakat Di Malaysia," *Maqdis : Jurnal Kajian Ekonomi Islam* 4, no. 1 (2019): 91, https://doi.org/10.15548/maqdis.v4i1.214.

Over time, zakat institutions in Malaysia have undergone improvements, including privatization steps. According to Azura and Ram, as stated in the PPZ-MAIWP Zakat Report 2014, there are three categories of zakat institutions in Malaysia: (1) full privatization, (2) partial privatization, and (3) no privatization.[34] This development shows that zakat management in the country has experienced significant institutional transformation. One important innovation is privatization in governance, reflecting modernization efforts and increased effectiveness. Privatization here does not mean abdicating state responsibility, but rather an institutional strategy to enhance professionalism, transparency, and accountability in collection and distribution.

In practice, there is an implementation gap in Indonesia. Although Law Number 23 of 2011 establishes the position of BAZNAS and other official institutions, national collection achievements remain far from the theoretical potential. Zakat management still faces challenges, including coordination between BAZNAS and LAZ, inconsistent accountability standards across regions, and public perceptions that prioritize family remittances over paying zakat through official channels. In addition, digitalization and efforts to increase zakat literacy show positive developments but have not sufficiently overcome structural barriers related to reach and trust.

By contrast, the zakat management system in Malaysia is rooted in a constitutional and federal structure that gives authority over religious affairs, including zakat, to each state. Management is delegated to the State Islamic Religious Councils (SIRCs) and state zakat institutions that handle collection and distribution, while the Department of Islamic Development Malaysia (JAKIM) at the federal level plays a coordinating role, issuing national guidelines and synchronizing fatwa policies and programs. This model results in administration at the state level, so policies, mechanisms, and distribution practices can differ between federations. The existence of state institutions with strong authority over Islamic affairs also allows for more structured collection mechanisms and, in some states, integration with fiscal instruments such as tax rebates for Muslims who pay zakat to recognized bodies.

[34] Siti Nabihah Esrati, Shifa Mohd Nor, and Mariani Abdul Majid, "Fintech (Blockchain) Dan Pengurusan Zakat Di Malaysia/ Financial Technology and Zakah Management in Malaysia," *Prosiding Persidangan Kebangsaan Ekonomi Malaysia Ke 13* 13, no. September (2018): 61–84.

In terms of implementation, Malaysian practices tend to show a higher level of administrative formality at the state level. State zakat authorities have regulations, *mustahiq* verification systems, official payment channels, and empowerment programs developed according to local needs. In addition, fiscal policies that accommodate zakat, such as tax exemptions or credits that can reduce the income tax burden for *muzakkī*, create practical incentives not always present in the Indonesian system. However, Malaysia also faces issues such as disparities in capacity between states, debates about the scope of *niṣāb* or recognized types of zakat, and challenges of cross-border coordination when *muzakkī* or recipients move transnationally.

These technical and structural differences have direct implications for the experiences and choices of Madurese migrant workers. Migrants in Malaysia face a destination country system that has organized yet heterogeneous local zakat authorities, so decisions to pay zakat through state agencies, send it back home, or distribute it through diaspora networks are informed by legal requirements, administrative convenience, and levels of trust. Meanwhile, perceptions of the effectiveness, transparency, and relevance of zakat programs in their home areas (Indonesia) affect the tendency to choose formal (BAZNAS/LAZ) or informal channels (kyai, Islamic boarding schools, family). Inconsistencies between the mechanisms of the two countries, such as differences in recognition of cross-border zakat payments or administrative requirements, create friction that can lead to social delegitimization: when official channels are perceived as complicated, non-transparent, or irrelevant, the legitimacy of fulfilling religious obligations through them can be socially weakened.

## The Spiritual Meaning of Zakat, *Infaq*, and Shodaqoh in Transnational Life of Madura Migrant Workers

The majority of Madurese people are Muslims, and they are often considered Islamic from birth; in general, they have an agrarian background.[35] This affects the social and cultural life of Madurese migrant workers in Malaysia, especially as they are rooted in traditions of collectivity, kinship ties, and Islamic boarding school networks. This tradition forms a pattern of moral responsibility that emphasizes the importance of sharing sustenance, not only with the nuclear family but also with the wider community. However, in the context of zakat, *infaq*, and *sadaqah*, Madurese migrants face inconsistencies in zakat regulations between Indonesia and Malaysia, which present

[35] Syamsuddin, "Orang Madura Perantauan Di Daerah Istimewa Yogyakarta."

administrative and juridical dilemmas. In the tension between socio-cultural and legal norms, the spiritual meaning of ZIS becomes the main arena of negotiation that keeps religious obligations alive, even as their forms and channels transform.

The Islamic identity of the Madurese community holds a profoundly significant position within their socio-cultural construction. Islam is not merely embraced as a religion; rather, it functions as a primordial identity that accompanies an individual from birth. When Madurese people migrate to Malaysia for employment, this religious identity does not diminish. On the contrary, it is strengthened as a marker of self-existence within a new social environment. In this context, the practices of ZIS serve as essential instruments for maintaining a spiritual relationship with Allah while reinforcing horizontal bonds with others, particularly family and the community of origin.

Philanthropy is morally motivated and oriented toward love for humanity, while in Islam its philosophical basis is the obligation to Allah SWT to realize social justice on earth.[36] Anthropologically, an understanding of the religious practices of Madurese migrant workers must be approached through two analytical lenses introduced by Kenneth L. Pike: the emic and the etic perspectives.[37] The emic perspective emphasizes the meaning of religiosity based on the insider's cultural viewpoint. In contrast, the etic perspective examines the phenomenon from the researcher's external standpoint, aiming to understand the structural and regulatory dimensions that shape religious practices.

From an emic perspective, Madurese migrant workers perceive wealth as a trust (amanah) from Allah that must be preserved in purity through zakat. Working diligently abroad is not solely an economic endeavor but also a moral and spiritual struggle. They believe that zakat is fundamental for ensuring that the wealth they earn becomes blessed. Zakat is not merely a sharia obligation but also a symbol of protection from misfortune and an affirmation of one's

[36] Junia Farma and Khairil Umuri, "Filantropi Islam Dalam Pemberayaan Eknomi Umat," *JEIPS: Jurnal Ekonomi Islam Dan Perbankan Syariah* 1, no. 1 (2021): 13--26, https://doi.org/10.1080/07352689.2018.1441103%0A.

[37] Masrufah, Abdul Jalil, and Muhammad Najid Akhtiar, "Etic and Emic Perspectives on the Notopē Lolos Post-Marriage Tradition in Madura," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 7, no. 1 (2025): 70–88, https://doi.org/10.19105/al-manhaj.v7i1.19749 Etic.

identity as an obedient Muslim. The belief in barakah becomes the central orientation in performing ZIS, surpassing legalistic or administrative considerations. Zakat fitrah, for example, is still prioritized because it is considered the most fundamental and is an obligation that must be fulfilled annually. Distribution is carried out both in Malaysia through state zakat institutions and in the hometown through local family or kyai. The decision to choose a channel is not only a matter of convenience but also related to spiritual beliefs; some migrants feel more at peace if their zakat is distributed in the village, believing that prayers and blessings from family and Islamic boarding schools will accompany it.

At this point, the spiritual meaning of zakat is tied to space and relations, so social authority and emotional closeness are more decisive than formal institutional rules.[38] This means that Islamic philanthropy serves to help and nurture toward a better and more prosperous life.[39] However, unlike zakat, *infaq* and *sadaqah* have a more flexible spiritual dimension. In this context, migrant workers often distribute alms spontaneously to fellow migrants who are sick or experiencing difficulties, or to help relatives in their hometowns. This action is understood as a direct manifestation of the value of *ta'āwun* (mutual help), which at the same time brings reward and social solidarity. *Infaq* and *sadaqah* are also carried out through collective participation in mosque construction, routine recitations, or donations for religious activities in the hometown. For migrants, alms are not only rewarded in the hereafter, but also strengthen social networks that can be a support when they themselves face difficulties. Here, the spirituality of ZIS is closely intertwined with social survival strategies.

Philanthropy in Islam, as reflected in various verses of the Qur'an and Hadith, represents a holistic and profound concept. ZIS is not just an act of material generosity but also includes spiritual and emotional aspects.[40] In practice, migrant workers cannot be separated from the role of spiritual

[38] Akmal Bashori, Arif Sugitanata, and Suud Sarim Karimullah, "Dekonstruksi Pemaknaan Mualaf Sebagai Penerima Zakat Di Indonesia," *Diktum: Jurnal Syariah Dan Hukum* 22, no. 1 (2024): 11–23, https://doi.org/10.35905/diktum.v22i1.5027.

[39] Qurratul Uyun, "Zakat, Infaq, Shadaqah, Dan Wakaf Sebagai Konfigurasi Filantropi Islam," *Islamuna: Jurnal Studi Islam* 2, no. 2 (2015): 218–34, https://doi.org/10.19105/islamuna.v2i2.663.

[40] Arip Budiman, Busro Busro, and Ari Farizal Rasyid, "Analisis Spirit Filantropi Islam Perspektif Aksiologi Max Scheler Dalam Konteks Badan Amil Zakat Nasional," *Jurnal Bimas Islam* 16, no. 2 (2023): 453–86, https://doi.org/10.37302/jbi.v16i2.881.

mediators. Kyai, ustaz, and Islamic boarding school administrators remain trusted authority figures. They not only distribute zakat or alms but also provide spiritual legitimacy that the obligation has been fulfilled correctly. The belief that the kyai's prayer accompanies charity makes migrants feel more confident and at peace. However, a new dynamic has also emerged in the influence of digital da'wah through social media platforms that offer alternative zakat channels. Migrants now occupy a space where traditional authority and digital authority coexist and sometimes compete. This shows that the spirituality of ZIS among migrants is not static but the result of ongoing negotiations of authority according to context.

Transnational conditions also bring migrants to a dilemma between the ideal of sincerity and the demands of accountability. In the Islamic tradition, alms should be kept secret to avoid *riyā'*. However, in modern practice, migrant workers often feel the need to show proof of transfer to recipients, family or institutions, to ensure that the mandate is delivered. The gender dimension also colors the spiritual meaning of ZIS. Many male migrant workers hand over remittances to their wives in the village, who then arrange the distribution of zakat and alms. The wife plays the role of family financial manager, and her decisions determine channels and recipient priorities.

From an etic perspective, the ZIS practices of Madurese migrants do not always align with the formal zakat system in Malaysia. Malaysia has structured official zakat institutions administered at the state level. However, many Madurese migrant workers have precarious or irregular employment status. Consequently, they often do not channel their zakat through Malaysia's formal institutions. The misalignment between state administrative obligations and the religious convictions of the community creates a dilemma for migrant workers, who must adjust the forms of zakat fulfillment to the legal and economic constraints they encounter.

Through dialogue between emic and etic perspectives, it can be concluded that the ZIS practices of Madurese migrant workers constitute a spiritual phenomenon rich in cultural meaning. ZIS represents not only obedience to Allah but also a social strategy for sustaining solidarity, identity, and community continuity in the context of global migration. Their ZIS practices emerge from ongoing negotiation between local traditions and the legal structures of the country in which they reside. Ultimately, ZIS for Madurese migrant workers symbolizes the convergence of individual piety, social piety, and transnational challenges. Their religiosity demonstrates that migration not only transforms economic conditions but also influences how

religious teachings are interpreted and enacted within an ever-changing lived reality. The practices of zakat, *infaq*, and *sadaqah* provide concrete evidence of how religious values remain deeply rooted despite movement across national borders.

Based on the above-mentioned facts, it can be understood that the spiritual meaning of zakat, *infaq*, and *sadaqah* for Madurese migrant workers is multi-dimensional. ZIS is understood as a source of barakah, a means of protection from disasters, a form of social solidarity, and a medium to maintain religious identity in transnational space. When formal channels feel less relevant or difficult to access, migrants do not abandon obligations but redirect them into forms that better suit their spiritual and social logic. Therefore, efforts to strengthen the legitimacy of ZIS among migrant workers must be made through a normative–legal approach that integrates the spiritual and social dimensions lived in migrants' experiences.

## Conclusion

This study demonstrates that the zakat, *infaq*, and *sadaqah* (ZIS) practices of Madurese migrant workers in Malaysia represent an expression of transnational religiosity understood not only as a juridical–religious obligation, but also as a social strategy and a continuously negotiated cultural identity within a cross-border context. Differences in legal systems and zakat governance between Indonesia and Malaysia have resulted in the social delegitimation of formal zakat institutions in the host country, as migrant workers tend to entrust their ZIS to traditional religious authorities such as kyai and community networks in their homeland, who are perceived as more capable of ensuring barakah, emotional proximity, and spiritual accountability. This practice affirms that the legitimacy of Islamic philanthropy in the diaspora is not determined solely by state regulatory frameworks, but also by social relations, values of reciprocity, and the necessity to maintain bonds with the community of origin..

These findings make a significant contribution to Islamic legal studies, Islamic philanthropy, and migration scholarship by strengthening understanding of the dynamics of religious authority and the meaning of worship in transnational settings. In terms of implications, zakat governance should integrate cultural perspectives and diaspora networks in designing institutional synergy between Indonesia and Malaysia, including the harmonization of cross-border zakat payment and distribution mechanisms. Nevertheless, this study is limited by the number of informants, restricted

geographical scope, and the limited involvement of zakat policy stakeholders in Malaysia. Further research is necessary to expand the analysis of transformations in migrant workers' ZIS practices in line with future developments in the economy and digital *da'wah*.

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The author declares that there is no conflict of interest regarding the publication of this article. The research was conducted independently, without any financial, personal, or institutional relationships that could be construed as a potential conflict of interest.

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# INTEGRATED MANAGEMENT OF ZAKAT AND TAXATION FOR REVITALIZING BAYT AL-MĀL: A Comparative Study of 'One-Gate System' Models in Indonesia and Malaysia

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***Abstract***

*Indonesia and Malaysia administer two distinct forms of philanthropy: zakat and taxes. Indonesia mandates this separation to the National Zakat Board and the Directorate General of Taxes. In contrast, Malaysia mandates it to the Inland Revenue Board of Malaysia and zakat-collecting institutions. However, this separation of management disregards modern organisational principles that emphasise performance effectiveness. This research constitutes a normative legal study that employs comparative and historical approaches to examine the implementation of zakat and tax regulations in Indonesia and Malaysia, based on the institution of Bayt al-Māl and the administrators of zakat and taxes as state revenue, as implemented during the time of the Prophet Muhammad and subsequent caliphs. The research findings indicate that, based on systems theory and maqāṣid al-shari`ah, the management of zakat and taxes should be conducted within a unified*

*system of management by integrating various subsystems, comprising zakat, taxes, and customs, as well as the state budget, within a single organisation of the Ministry of Finance. Zakat and taxes must be interpreted in accordance with contemporary interpretations of the Qur'an. This research contributes to the unification and development of zakat and tax subjects and objects to establish an effective and efficient management system that aligns with socio-economic developments and contemporary needs.*

*Negara Indonesia dan Malaysia mengelola dua jenis phlantrophy; zakat dan pajak secara terpisah. Indonesia mengamanatkan kepada Badan Amil Zakat Nasional dan Direktorat Jenderal Pajak, sementara Malaysian mengamanatkan kepada Lembaga Hasil Dalam Negeri dan Institusi pengumpul zakat pada masing-masing negeri. Pemisahan pengelolaan ini mengabaikan prinsip-prinsip organisasi modern yang menekankan kepada kinerja yang efektif dan efisien. Penelitian ini merupakan studi hukum normatif dengan menggunakan pendekatan komparatif dan historis yang mengkaji implementasi regulasi zakat dan pajak di Indonesia dan Malaysia, dengan mengkaji institusi Bayt al-Māl, pengelola zakat dan pajak sebagai anggaran negara yang diterapkan pada masa Nabi Muhammad dan para khalifah sesudahnya. Hasil penelitian ini menunjukkan bahwa berdasarkan teori sistem dan maqāṣid al-sharī`ah pengelolaan zakat dan pajak perlu dilakukan dalam satu sistem manajemen dengan mengintegrasikan berbagai subsistem; zakat, pajak, dan cukai dalam satu organisasi kementerian keuangan yang mengelola anggaran negara. Zakat dan "pajak" sebagai pemasukan negara perlu diperluas maknanya dengan memahami teks al-Qur'an dalam konteks kekinian, begitu juga makna subyek dan obyek keduanya. Penelitian ini berkontribusi kepada upaya penyatuan dan pengembangan subyek dan obyek zakat dan pajak menuju sistem manajemen yang efektif dan efisien sesuai dengan perkembangan sosial-ekonomi, dan kebutuhan kontemporer .*

***Keywords**: mu`āmalah māliyyah, zakat, taxes, maqāṣid al-sharī`ah, bayt al-māl.*

## Introduction

Zakat constitutes a metaphysical act of worship with significant social implications. As a form of both charitable giving[1] and philanthropic

[1] Kunhibava et al., "Sadaqah, Zakat and Qard Hassan"; Laylo, "The Impact of AI and Information Technologies on Islamic Charity (Zakat)"; Mahmudi et al., "The Charity Values within Islamic Law of Inheritance in Malang."

endeavour,[2] zakat fosters equitable wealth distribution within the tenets of Islam by assisting Muslims who encounter economic hardship and those living below established welfare thresholds. Similarly, taxation constitutes a national duty that citizens must fulfil. Taxes support the state's existence and enhance citizens' welfare across sectors such as education, economics, social well-being, and security. In the context of distribution, taxation and zakat share a relatively analogous function in amplifying societal prosperity.

Within the context of zakat management, Indonesia has entrusted the National Zakat Board (BAZNAS) at the central, provincial, and regency/city levels, with the support of Zakat Collection Agencies (LAZ). To compare, Malaysia delegates it to its every state.[3] Regarding tax management, Indonesia has delegated responsibilities to the Directorate General of Taxes (DJP), the Directorate General of Customs and Excise (DJBC), and regional governments at both the provincial and regency/municipal levels.[4] In contrast, Malaysia entrusted the Inland Revenue Board of Malaysia (LHDN),[5] the Royal Malaysian Customs Department (JKDM), and local authorities (PBT).

The disparate administration of zakat and tax in both countries can engender inequity within the community, affecting both subjects and recipients. Indonesian Muslims, as zakat payers, face the dual obligation of fulfilling both tax and zakat obligations. This regulatory framework is unjust, as zakat payments merely reduce the taxable asset base.[6] Conversely, Malaysia has instituted a more equitable system for its Muslim citizens, wherein zakat payments are tax-deductible, thereby mitigating the overall tax burden.[7] The compartmentalisation of zakat and tax administration, observed in both Indonesia and Malaysia, also facilitates duplicative accounting practices that contravene Islamic principles of equitable wealth distribution (*kay lā yakūna dūlatan bayn al-aghniyā'*).

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[2] Adzkiya' et al., "Islamic Philanthropy."
[3] Paizin, "Decentralization in Malaysia's Zakat Management Organizations."
[4] Khalimi and Prawira, *Hukum pajak dan kepabeanan di Indonesia.*
[5] Administration, *Inland Revenue Board of Malaysia: Organization Chart*.
[6] Mukhlishin et al., "Zakat Maal Management and Regulation Practices," 583.
[7] bin Lahuri et al., "Shifting Paradigm of Zakat and Tax for Economic Justice in Muslim Society."

Numerous previous studies have been conducted to justify the disparate administration of zakat and taxes in Indonesia and Malaysia[8]. They studied zakat and tax management separately in their administrative aspects, utilising new information technology and applying the *maqāṣid al-shari'ah* approach to enhance efficacy.[9] Many studies have highlighted the distribution of zakat in areas that overlap with tax allocation. Abd Khafidz et al. stated that zakat, as a modality of both charitable giving and philanthropic endeavour, has been the subject of extensive scholarly inquiry. Its capacity to alleviate poverty and support vulnerable populations, including those affected by the COVID-19 pandemic,[10] has been documented, particularly in enabling productive activities conducive to sustained economic viability. The disbursement of zakat for the purpose of bolstering community economic well-being, primarily directed toward the eight *aṣnāf* categories of recipients, is generally met with consensus among zakat scholars.

Many studies have also demonstrated that the interplay between zakat and taxation addresses whether zakat should be treated as a tax deduction or a deduction from taxable income, as well as the potential integration of zakat and taxes as a source of government revenue. Lahuri and Mukhlisin et al. highlighted that Malaysia, a state grounded in Islamic principles, permits zakat payments to be deducted from tax amounts under Section 6A(3) of the

[8] Suprayitno et al., "Zakat Sebagai Pengurang Pajak Dan Pengaruhnya Terhadap Penerimaan Pajak Di Semenanjung Malaysia."

[9] Mustari et al., "Multipartner Governance and the Urgency of Poverty Alleviation Policy"; Adila et al., "The Role of Zakat in Maintaining Economic Stability Under the Threat of Global Economic Recession"; Aisyah and Hasniaty Hasniaty, "Zakat Management Strategy at the National Zakat Agency in Makassar City"; Hafzi et al., "The Role of the State in the Management of Zakat in Indonesia"; Saadoun, "Sustainable Development Management in Islamic Jurisprudence Zakat as a Model"; Fatwa and Hashri, "Islamic Social Financing of The National Zakat Amil Agency Program for Support Ensures the Availability and Sustainable Management of Water and Sanitation for All (Case Study of Islamic Boarding Schools Riyadul Awamil Indonesia)."

[10] Abd Khafidz et al., "Systematic Literature Review"; Bahri et al., "Covid-19 and Efficiency in Zakat Institutions"; Junoh et al., "Analisis Strategi Pengurusan Zakat Dalam Mendepani Covid-19"; Mursal et al., "Retracted Article"; Rahman and Ma'adi, "An Analysis Of The Utilization Of Zakah In Controlling The Covid-19 Pandemic Perspective Of Maqashid Sharia At Amil Zakat Institution In Pamekasan Regency."

Income Tax Act (ITA) 1967.[11] Conversely, in Indonesia, the world's largest Muslim population, zakat payments solely reduce the taxable assets.[12] In Brunei Darussalam, a staunchly Islamic nation, according to Abdullah Al-Mamun, zakat and tax obligations are treated as entirely independent.[13]

Both zakat and taxes aim to enhance societal welfare and mitigate economic disparities among citizens. Individuals obliged to pay zakat and taxes are those who possess better economic well-being than the recipients of zakat and taxes. Affluent individuals bear a responsibility to alleviate the suffering of those living in poverty. Religious scripture underscores the inherent right of economically disadvantaged individuals to a portion of existing wealth, as evidenced by the Quranic verse, "*wafī amwālihim ḥaqqun li al-sāili wa al-maḥrūm"* [QS. Al-Dzāriyāt: 19]. Furthermore, the essence of economic equity within society is emphasised in the al-Quran, "*Kay lā yakūna dūlatan bayna al-aghniyā"* (QS.al-Ḥashr: 7). Zakat and taxes, despite their legislative distinctions, share a similar purpose of enhancing societal welfare. Zakat places greater emphasis on individual well-being, directly benefiting individuals who fall within the categories of *aṣnāf al-thamāniyyah*. In contrast, the beneficiaries of taxes extend beyond individuals to encompass improvements in educational, economic, social, cultural, and security infrastructure, ultimately aimed at achieving collective welfare.[14]

Given that zakat and tax management are conducted separately in Indonesia and Malaysia, despite their shared substance and objectives, this article analyses the need to unify zakat and tax management within a single institution under the Ministry of Finance in both countries. This analysis employs a systems theory and *maqāṣid al-sharī`ah* approach, as proposed by

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[11] bin Lahuri et al., "Shifting Paradigm of Zakat and Tax for Economic Justice in Muslim Society."

[12] Mukhlishin et al., "Zakat Maal Management and Regulation Practices," 583.

[13] Al-Mamun et al., "Measuring Perceptions of Muslim Consumers toward Income Tax Rebate over Zakat on Income in Malaysia"; Fikri et al., "A Study of Muslims' Perceptions of Zakat as a Tax Reduction in Malaysia and Indonesia"; Fikri and Pd, "Zakat as Tax Reduction"; Islamy and Aninnas, "Zakat and Tax Relations in Muslim Southeast Asian Countries (Comparative Study of Zakat and Tax Arrangements in Indonesia, Malaysia and Brunei Darussalam)."

[14] Direktorat Kajian dan Pengembangan Badan Amil Zakat Nasional, *Outlook Zakat Indonesia 2024*.

Jasser Auda[15] and Imām al-Shāṭibī in his work, *al-Muwāfaqāt*. The study is intended to revitalise a unified system for the Bayt al-Māl institution to manage zakat and tax as a state treasury, as in the time of the Prophet Muhammad (peace be upon him) and in subsequent Caliphates.

**Research Methods**

This normative and comparative legal research examines the implementation of regulations promulgated by the governments of Indonesia and Malaysia governing zakat in both countries. Furthermore, the present research employs a historical approach by examining the Bayt al-Māl institution in the implementation of zakat and taxation as state budgets during the era of the Prophet Muhammad and the subsequent caliphs.

The primary legal sources for data collection are derived from the legislation governing zakat management and taxation in both states. For Indonesia, the statutory laws studied include Law No. 23 of 2011 concerning Zakat Management, Law No. 7 of 2021 concerning Harmonisation of Tax Regulations, and Law No. 6 of 1983 concerning General Provisions and Tax Procedures. For Malaysia, the source studies include the Income Tax Act 1967 (Act 53), the Sales Tax Act 2018 (Act 656), and the Service Tax Act 2018 (Act 655) concerning taxes. Some other regulations in Malaysia were also studied, including regulations concerning zakat issued by each state, such as the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), Selangor Islamic Religious Administration Enactment 2003 (Enacment No. 9 of 2003), Johor Administration of the Religion of Islam Enacment 2003 (Enacment No. 9 of 2003), among others.

This framework supports the researcher's assessment that zakat and taxation are pivotal sources of state revenue, instrumental in supporting governmental functions aimed at societal welfare. The theoretical analysis is reinforced through the application of systems theory and maqāṣid al-sharī`ah, as illustrated by Jasser Auda in his work, *Maqāsid al-Shari`ah as A Philosophy of Islamic Law: A System Approach*, and Imām al-Shāṭibī in his treatise, *al-Muwāfaqāt*. This involves collecting al-Qur'an texts governing zakat and

taxation, which are then grouped into two categories: *al-āyāt al-kulliyah*, as verses containing universal principles, and *al-āyāt al-juz'iyyah*, as verses containing partial provisions relevant to the practices at that time. The first group of verses serves as a basis for consideration and a parameter for understanding the second group. The synthesis of these two groups of verses positions the *al-āyāt al-kulliyah* related to the regulation of zakat and taxation as moral ideals that need to be contextualised in Indonesia and Malaysia to harmonise and unify zakat and tax management within one institution, as was the Bayt al-Māl, which was in place during the early Islamic governments to increase and avoid overlap in the collection and distribution of zakat and taxes to the community.

## Discussion

### Tax and Zakat in Indonesia and Malaysia

Indonesia and Malaysia represent the largest Muslim-majority nations in Southeast Asia, with Indonesia holding the distinction of being the world's most populous Muslim country. Despite this shared religious demographic, the two nations exhibit notable divergences, as shown in the following Table.

**Table 1.** Legal System Differences between Indonesia and Malaysia

| INDONESIA | MALAYSIA |
|---|---|
| Islam as an intrinsic value within the State | Islam as the foundational basis of the State |
| A law-based republic | Monarchy |
| The President as the Head of State | The King as the Head of State |
| Unitary State | Federal State |
| Civil Law System | Common Law System |

Source: Synthesised Data

Disparities in state systems influence the administration of zakat and taxation, encompassing both collection and disbursement. In Indonesia, Islam, as a valued guiding principle, cannot formally dictate governmental mandates. The Indonesian government adheres to a republican system, vesting power in the citizenry, who delegate their authority and desires to the

House of Representatives (DPR), the legislative branch responsible for setting regulations on zakat and taxation. Unlike Indonesia, Malaysia designates Islam as the state religion and the King as the head of state. Consequently, zakat regulations in Malaysia are aligned with Islamic precepts. Therefore, zakat management in Malaysia, encompassing both collection and distribution, is more structured than in Indonesia, and it qualifies as a tax deduction. Conversely, in Indonesia, zakat payments only serve to reduce taxable gross income.

The unitary structure of the Indonesian state, coupled with its adherence to the Civil Law System, presents considerable challenges in formulating cohesive regulations that adequately address the diverse traditions, cultures, and economic strata of the Indonesian populace. Identifying shared principles and values amongst Indonesia's multiethnic society represents a complex undertaking for legislative bodies tasked with drafting zakat regulations. Conversely, Malaysia's federal system and its adoption of the Common Law System facilitate the establishment of zakat regulations, as the Malaysian state mandates regulatory authority over zakat to each state, which exhibits comparatively less societal heterogeneity.

Nevertheless, in the context of zakat administration, Indonesia and Malaysia exhibit parallels in their segregated management structures; their regulatory frameworks governing zakat management remain distinct in both nations. Within the Indonesian system, the National Amil Zakat Agency (BAZNAS) assumes responsibility for zakat administration at the central, provincial, and district/city levels, alongside the Amil Zakat Institution (LAZ), a community-based zakat administrator. Furthermore, BAZNAS establishes Zakat Management Units (UPZ). The statistical data released by BAZNAS in 2024 reveals the total zakat collection throughout Indonesia.

**Table 2.** Zakat Collection in Indonesia (In Indonesian Rupiah)

| No | Administrator | Number of Zakat Organisation | Collection Amount | |
|---|---|---|---|---|
| | | | 2022 | 2023 |
| 1 | BAZNAS | 1 | 633.868.137.321 | 517.433.666.019 |
| 2 | BAZNAS Province | 34 | 721.158.129.685 | 427.783.823.358 |
| 3 | BAZNAS Regency/City | 514 | 1.761.464.987.373 | 1.134.008.954.959 |
| 4 | National LAZ | 36 | 3.344.534.055.159 | 3.100.969.158.888 |
| 5 | Provincial LAZ | 33 | 277.605.406.294 | 272.064.015.261 |
| 6 | LAZ at the Regency/City Level | 60 | 144.587.951.632 | 106.638.758.815 |
| 7 | ZIS-DSKL Off-Balance Sheet | | 15.592.436.811.208 | 9.145.345.435.830 |
| Total | | 678 | 22.475.655.478.672 | 14.704.243.813.130 |

Source: Book on "Outlook Zakat Indonesia 2004"[16]

Zakat collection in Indonesia has been declining. In 2022, the amount of zakat funds successfully collected totalled 22.5 trillion rupiah, while in 2023, this figure was down to 14.7 trillion-rupiah, accounting for a 7.8 trillion rupiah decrease (34.6%). BAZNAS, in collaboration with LAZ, consistently strives to raise awareness of zakat payments through zakat campaigns and by collaborating with digital platforms to provide greater convenience for the public in paying zakat.[17]

In Malaysia, zakat management exhibits heterogeneity across states, as its administration is devolved to individual state authorities. Zakat administrators in Malaysia are broadly classified into privatized and non-privatized entities, consisting of a) Federal Territory Zakat Collection Centre (MAIWP), b) Selangor Zakat Board (MAIS), c) Penang Zakat Management

[16] Direktorat Kajian dan Pengembangan Badan Amil Zakat Nasional, *Outlook Zakat Indonesia 2024*, 55.
[17] Direktorat Kajian dan Pengembangan Badan Amil Zakat Nasional, *Outlook Zakat Indonesia 2024*, 57.

Centre (MAIPP), d) Pahang Zakat Collection Centre (MAIP), e) Melaka Zakat Centre (MAIM), and f) Negeri Sembilan Zakat Centre (MAINS).[18]

Zakat management entities that remain under public administration include: (a) the Kedah Darul Aman State Zakat Department, (b) the Sarawak Islamic Religious Council, (c) the Trengganu Islamic Religious and Malay Customs Council, (d) the Perlis Malay Religious and Customs Council, (e) the Sabah Islamic Religious Council, (f) the Kelantan Islamic Religious and Malay Customs Council, (g) the Perak Islamic Religious and Malay Customs Council, and (h) the Johor State Islamic Religious Council. Complementing these zakat management bodies, the Bayt al-Māl institution in Malaysia administers ownerless assets, such as intestate inheritances, abandoned property, and property with unknown ownership.[19]

Statistical data regarding zakat collection indicate that citizens exhibit a high degree of compliance in zakat payment, as demonstrated by the following statistical figures:

**Table 3.** Zakat Collection Across Malaysia (Nominal values in Ringgit Malaysia)

| States \| Years | 2024 | 2023 | 2022 | 2021 | 2020 |
|---|---|---|---|---|---|
| JOHOR | 412,290,736.96 | 388,014,751.37 | 367,656,000.00 | 323,033,096.38 | 300,855,626.51 |
| KEDAH | 304,561,100.75 | 277,692,918.99 | 252,250,187.78 | 232,793,958.19 | 217,913,020.82 |
| KELANTAN | 296,676,556.00 | 257,091,433.00 | 228,219,483.00 | 209,988,475.00 | 202,654,987.00 |
| MELAKA | 141,344,354.64 | 128,375,682.00 | 116,858,052.42 | 106,077,328.00 | 100,720,991.88 |
| NEGERI SEMBILAN | 160,729,411.92 | 110,425,753.01 | 151,067,453.41 | 147,553,304.91 | 144,088,231.79 |
| PAHANG | 217,132,346.84 | 223,815,609.33 | 214,386,878.96 | 186,733,529.07 | 165,260,316.30 |
| PULAU PINANG | 172,733,359.28 | 159,670,463.95 | 150,144,855.61 | 147,265,438.00 | 130,875,632.57 |
| PERAK | 244,106,846.00 | 227,800,519.27 | 225,057,511.00 | 183,643,097.00 | 191,633,580.59 |
| PERLIS | – | – | – | – | – |
| SELANGOR | 1,218,086,883.00 | 1,118,913,991.00 | 1,067,855,832.00 | 992,911,959.00 | 912,956,543.00 |

[18] Suprayitno et al., "Zakat Sebagai Pengurang Pajak Dan Pengaruhnya Terhadap Penerimaan Pajak Di Semenanjung Malaysia."
[19] Mutalib, *Zakat Amwal Fadhilah, Amalan Di Malaysia*.

| | | | | | |
|---|---|---|---|---|---|
| TERENGGANU | 275,645,953.47 | 255,274,985.43 | 228,036,120.32 | 205,291,443.60 | 185,104,612.29 |

Source: Statistical Data on Zakat Collection in Each State of Malaysia [20]

Statistical data on zakat collection in Malaysia and its constituent states indicate an upward trend in zakat accruals across the states. This trend suggests heightened awareness among the Malaysian populace of their zakat obligations, facilitated by the availability of digital payment platforms and regulatory frameworks that treat zakat payments as tax-deductible expenditures.

**Table 4.** Characteristic Differences Between Indonesia and Malaysia Influencing Public Compliance in Paying Zakat

| FEATURE | INDONESIA | MALAYSIA |
|---|---|---|
| Type of Obligation | Religious obligations | Religious and state obligations |
| The Force of Rule | Zakat payment is non-binding. | Zakat payment is legally binding |
| Zakat Administration | Zakat is managed nationally by the National Zakat Board (BAZNAS), Zakat Collection Units (UPZ), and Zakat Institutions (LAZ) | Zakat is managed by State Islamic Religious Councils, each operating under distinct state-level regulations |
| Zakat and Taxable Income | Zakat payments reduce the amount of property subject to taxation[21] | Zakat payments reduce the total taxable properties[22]. |
| Tax liability | Taxation is a civic duty for all citizens | Taxation is a civic duty for all citizens |
| Zakat/Tax Payment Integration | Tax is paid in full after the amount of Zakat reduces the taxable property paid. | The nominal value of Zakat paid can be directly |

[20] Administratur, *Statistik Kutipan Zakat Seluruh Malaysia*.
[21] Laws of Malaysia, Income Tax Act 1967.
[22] Undang-Undang Nomor 7 Tahun 2021 Tentang Harmonisasi Peraturan Perpajakan.

| | | |
|---|---|---|
| | | deducted from the nominal amount of tax owed |
| Tax Authority | The Directorate General of Taxes, under the auspices of the Minister of Finance, oversees taxation. | The Inland Revenue Board of Malaysia (LHDN) manages taxation |

Source: Synthesised Data

Regarding tax administration, Indonesia mandates the Directorate General of Taxes (DJP), under the Ministry of Finance, the Directorate General of Customs and Excise (DJBC), and the Regional Governments (Provinces and Regencies/Cities). The DJP and DJBC, both subordinate to the Ministry of Finance, carry distinct responsibilities. The DJP executes four primary functions: a) the collection of national tax revenues, including Income Tax, Value Added Tax, Sales Tax on Luxury Goods, Land and Building Tax, and other related taxes; b) the dissemination of tax-related socialisation and education to the public; c) the provision of services to taxpayers; and d) the enforcement of laws within the domain of taxation.[23]

The Directorate General of Customs and Excise (DJBC), also under the auspices of the Ministry of Finance,[24] is tasked with managing levies in the context of the flow of goods entering and exiting Indonesia, such as import duties as taxes on imported goods, export duties as taxes on exported goods, and excise taxes on goods categorised as hazardous.[25] Regional governments, on the other hand, are responsible for collecting regional taxes and levies, such as motor vehicle taxes, restaurant taxes, hotel taxes, land and building taxes, and others. In practice, regional governments delegate this responsibility to the Regional Revenue Service.[26]

[23] Undang-Undang Nomor 6 Tahun 1983 Tentang Ketentuan Umum Dan Tata Cara Perpajakan; Undang-Undang Nomor 7 Tahun 2021 Tentang Harmonisasi Peraturan Perpajakan.
[24] Peraturan Menteri Keuangan (PMK) Nomor 234/PMK.01/2015 Tentang Organisasi Dan Tata Kerja Kementerian Keuangan.
[25] Undang-Undang Nomor 39 Tahun 2007 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 1995 Tentang Cukai.
[26] Undang-Undang Nomor 1 Tahun 2022 Tentang Hubungan Keuangan Antara Pemerintah Pusat Dan Daerah.

Meanwhile, Malaysia mandates tax administration to the Inland Revenue Board of Malaysia (IRB) (Lembaga Hasil Dalam Negeri Malaysia (LHDNM))[27], the Royal Malaysian Customs Department (RMCD) (Jabatan Kastam Diraja Malaysia (JKDM)), and the State Revenue Authority (Pihak Berkuasa Hasil Negeri). The LHDNM/IRB, a federal government agency, manages and administers direct taxes in Malaysia, including individual income tax, corporate tax, petroleum tax, real property gains tax, gift tax, excise duties, withholding tax, and other taxes.[28]

The Royal Malaysian Customs Department (RMCD)/JKDM is tasked with managing and collecting indirect taxes and overseeing international trade. The taxes and duties administered by this institution include the goods and services tax, the sales and service tax, excise duties on goods such as motor vehicles, import and export duties, and entertainment duties.[29] State Revenue Authorities serve as tax administrators present in each state of Malaysia, responsible for collecting taxes such as land levies, weights and measures fees, entertainment levies derived from business licenses, and other sources.

**The Bayt al-Māl's Role in Historical Development**

To integrate zakat and tax management into a unified system, it is essential to examine the best practices implemented during the time of the Prophet Muhammad and the subsequent Caliphs in the Bayt al-Māl management system. According to `Abd al-Qādim Zallūm, the Bayt al-Māl represents an institution or entity responsible for managing all assets belonging to Muslims, encompassing both revenues and expenditures.[30] The Prophet Muhammad established the informal structure for state revenue, known as the Bayt al-Māl, within the nascent Islamic economic framework. The primary administrative centre of the Bayt al-māl was situated within the Prophet's Mosque, adjacent to his home.[31] During this period, Hanzalah ibn Sayfī served as an aide to the Prophet, responsible for documenting and allocating war spoils (*ghanīmah*) acquired from the Battle of Badr in a manner

[27] Redaktur, *Profil Lembaga Hasil Dalam Negeri Malaysia (LHDNM)*.
[28] Lembaga Hasil Dalam Negeri Malaysia (LHDNM), *Laporan Tahunan 2023*.
[29] Jabatan Kastam Diraja Malaysia, *Pelan Strategik JKDM 2020-2024*, 5.
[30] Zallum, *Al-Amwāl Fī Daula al-Khilāfah*.
[31] Euis Amalia, *Sejarah Pemikiran Ekonomi Islam Dari Masa Klasik Hingga Kontemporer*.

deemed most beneficial for the Muslim community.[32] Furthermore, th Prophet appointed multiple secretaries, each with distinct responsibilitie Mu'ayqeeb ibn Abū Fāṭimah was responsible for recording the war spoi (*ghanīmah*), Zubayr ibn 'Awwām oversaw the documentation of ṣadaqal Ḥuẓayfah ibn al-Yemen managed the enumeration of agricultural output fror the Ḥijāz region, and `Abdullāh ibn Ruwāḥah was charged with gathering dat on agricultural production at the Khaybar territory. Additionally, al-Mughīra ibn Shu'bah functioned as the secretary responsible for documenting saving loans, and related transactions, while `Abd 'llāh ibn Arqām served as th recorder of tribal affiliations and their respective water sources. Consequently, the Prophet Muhammad is recognised as the pioneering figu who introduced a novel economic concept within the state during the sevent century.[34] The Bayt al-Māl management framework during the Prophet's er was predicated on a binary system of revenue and expenditure.

The second year of the Hijri calendar marked the inception of incom generation with the imposition of zakat fitrah on Muslims. Following th Battle of Badr, also in the second year of the Hijri calendar, the Bayt al-M experienced an increased revenue stream, primarily from war spoils (*ghanīmah* which constituted one-fifth (*khumus*) of the total.[35] Furthermore, ransor payments charged from prisoners of war captured at Badr served as a additional source of fiscal input in the nascent Islamic state. Following th Muslims' decisive victory against the Meccan infidels, a considerable numbe of prisoners were taken. The Prophet Muhammad set a ransom price of 4,00 dirhams for prisoners with the financial capacity to remit it. Alternatively, fo indigent prisoners unable to meet the monetary requirement, the Prophe instituted a substitutionary obligation, requiring them to educate ten Muslir children in the art of reading.[36]

[32] Zalloom, *Funds in The Khilafah State*, 15.
[33] Zalloom, *Funds in The Khilafah State*, 16.
[34] Karim, *Sejarah Pemikiran Ekonomi Islam*, 51.
[35] Huda et al., *Baitul Mal Wa Tamwil Sebuah Tinjauan Teoritis*.
[36] Karim, *Sejarah Pemikiran Ekonomi Islam*, 41.

Additionally, the Bayt al-Māl institution derives its revenue from *jizyah* and *kharaj.*[37] *Jizyah* constitutes a per capita tax imposed on non-Muslim residents within Islamic polities, serving as remuneration for the protection of life and property afforded by the Muslim community. *Kharaj* represents a tax levied on land conquered by Islamic rulers but permitted to remain under the management of non-Muslim proprietors. Additionally, the institution managed *waqf* (endowment) and *fay'*, denoting spoils acquired from adversaries without direct combat, which also functioned as a revenue stream during the Prophetic era.[38] Furthermore, the *Bayt al-māl* managed *waqf* (endowments) as the Prophet Muhammad (peace be upon him) received *waqf* land from Mukhairik, a rabbi of Banu Nadhir who embraced Islam.[39] Likewise, the Bayt al-Māl institution managed zakat on wealth (*ẓakat māl*), encompassing holdings such as gold and silver, commercial goods, agricultural produce, *rikāz* (treasure troves), mineral resources, and livestock, which represents a similarly significant source of income during this period.

Regarding state expenditures during the Prophet's era, all state revenues were initially collected and subsequently disbursed according to state needs, leaving no residual funds.[40] Specifically, income derived from zakat was allocated to the eight *aṣnāf* (categories) of recipients delineated in the Qur'an, including the *fuqarā'* (poor), *masākīn* (needy), *`āmil* of zakāt (zakat administrators), *mu`allaf* (new converts to Islam), *riqāb* (enslaved persons seeking manumission), *gharīm* (debtors), *fi sabīl li`llāh* (those striving in the cause of God), and *ibn sabīl* (travellers in need). Furthermore, expenditures were also disbursed for military campaigns, along with the necessary equipment and provisions for troops. Additional allocations were directed toward infrastructure development, such as the construction of roads and mosques, among other projects.[41]

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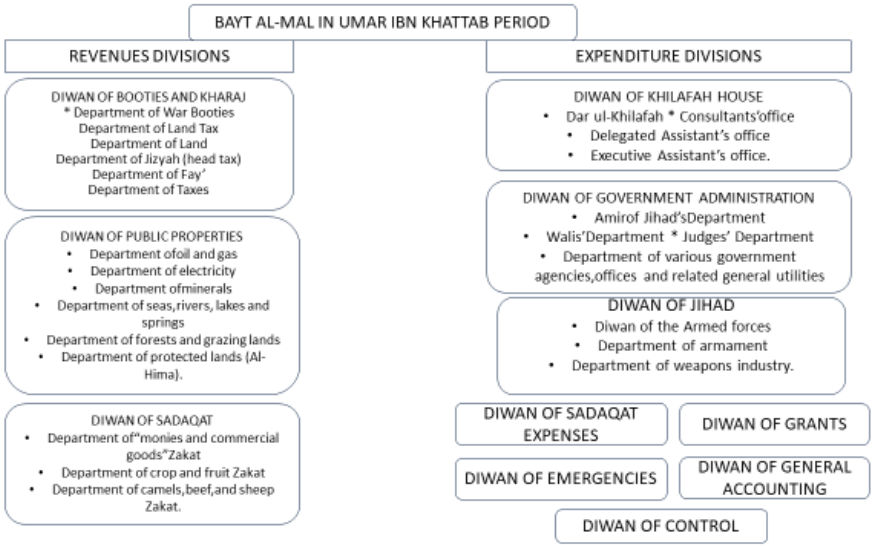
[37] An-Nabhani, *Membangun Sistem Ekonomi Alternatif Perspektif Islam*.
[38] Nur Chamid, *Jejak Langkah Sejarah Pemikiran Ekonomi Islam*.
[39] Nur Chamid, *Jejak Langkah Sejarah Pemikiran Ekonomi Islam*, 49.
[40] Nur Chamid, *Jejak Langkah Sejarah Pemikiran Ekonomi Islam*.
[41] An-Nabhani, *Membangun Sistem Ekonomi Alternatif Perspektif Islam*, 264.

The Prophetic era marked the nascent stage of the Bayt al-Māl institution in its functional implementation, though it had yet to formalise into an official institution. Bayt al-Māl primarily focused on individuals managing Muslim assets, particularly regarding revenue and expenditures. During the caliphate of Abū Bakr, the structure of Bayt al-Māl remained consistent with the Prophetic model, lacking an established institution or designated location for storing state assets. The policies instituted during the Prophet's time effectively established a precedent for managing Muslim wealth in the state's benefit.[42] However, while the function of Bayt al-Māl was extant, Abū Bakr delegated its operational oversight to Abū Ubaydah ibn al-Jarraḥ, using his personal residence for the safekeeping of state treasures, unlike the Prophet's time, when state assets were conventionally held within the mosque.[43]

The transformation of the Bayt al-Māl institution became prominent during the caliphate of 'Umar ibn al-Khaṭṭāb, a period characterised by significant increases in war booty (*ghanīmah*), *fay'*, and *jizyah* revenue, coinciding with the territorial expansion of the Medinan state. Caliph Umar instituted divisions (*dīwān*) within the Bayt al-Māl, separating state revenues from expenditures. The revenue section, responsible for overseeing the accumulation of state funds, encompassed various departments, including the Divan of Booties and *Kharāj*, the Divan of Public Properties, and the Divan of *Ṣadaqāt*, which administered zakat collection. Conversely, the expenditure section, responsible for the state's financial management, oversaw divisions such as the Divan of *Khilāfah* House, the Divan of Government Administration, the Divan of *Jihād*, the Divan of *Ṣadaqāt* Expenses, the Divan of Grants, the Divan of Emergencies, the Divan of General Accounting, and the Divan of Control.[44]

[42] Maarif, "Baitul Mal Pada Masa Rasulullah Saw Dan Khulafaur Al-Rashidin."
[43] Hsb and Pane, "Bayt Mal and The Real Sector in The View of Islamic."
[44] Zalloom, *Funds in The Khilafah State*, 20–25.

**Figure.** The Bayt al-Māl Institution During the Caliphate of Umar Ibn al-Khaṭṭab




Source: Zalloom's Book "Fund in The Khilafah State"[45].

Historical studies pertaining to the administration of zakat and taxes within a unified system, specifically the Bayt al-Māl institution, demonstrate that Prophet Muhammad (peace be upon him) and his companions recognised that the governance of a state or caliphate necessitated revenue derived from Muslim and non-Muslim residents of that state in the form of zakat, *ghanīmah*, *fay'*, *`ushr*, *kharaj*, and other sources managed by a centralised state treasury system known as the Bayt al-Māl. In its collection and distribution processes, the Bayt al-Māl avoided overlapping taxation, a consequence of the single management system implemented by the Prophet, his companions, and the *salaf al-ṣāliḥ* (righteous predecessors).

[45] Zalloom, *Funds in The Khilafah State*.

***Maqāṣid al-Sharī`ah* of *Mu`āmalah Māliyyah* (Business Relation of Properties)**

In establishing legal provisions for humanity, Allah establishes the fundamental objectives (*maqāṣid al-shari'ah*) that underpin each ruling. These objectives are not always immediately apparent within the literal text of a given verse. Consequently, Islamic scholars are tasked with discerning these objectives through the collation and analysis of related verses regarding the subject under investigation, by understanding the timeless, universally applicable, and immutable *maqāṣid al-shari'ah*.

Jasser Auda conceived of three tiers of *maqāṣid al-sharī`ah*: general, specific, and partial. General *maqāṣid* constitute the overarching objectives of Sharia, derived from the al-Qur'an and hadith, encompassing justice, welfare, and facilitation principles, as well as the five primary needs (*ḍarūriyyat al-khamsah*). Subordinate to this level are specific *maqāsid*, which represent the legislative objectives for major divisions of jurisprudence (*fiqh*), such as *`ibādah*, *siyāsah*, *mu`āmalah*, *al-akhwāl al-shakhṣiyyah*. Finally, partial *maqāṣid* denote the legislative objectives for narrower, more specific sections of fiqh. This categorisation of *maqāṣid* is hierarchical, implying that partial *maqāṣid* must not contradict specific and general *maqāṣid*.

Within Jasser Auda's *maqāṣid al-sharī`ah* approach, zakat and tax regulations are provisions for which the objectives of their legislation must be ascertained as components of partial *maqāṣid*. In determining these objectives, it is necessary to identify the legislative aims of *mu`āmalah māliyyah* as part of specific *maqāṣid* to ensure that the objectives of tax and zakat legislation do not contradict the intended goals of *mu`āmalah māliyyah*. Furthermore, they must not conflict with the general *maqāṣid* of *maqāṣid al-sharī`ah*: justice and facilitation.

To examine and ascertain the objectives of *mu`āmalah māliyyah* legislation, the author employs the theory of *maqāṣid al-sharī`ah* as propounded by Imām al-Shāṭibī. He proposes a methodology for discerning the *maqāṣid al-sharī`ah* by examining *al-āyāt al-kulliyāt* (universal verses) to identify universal values that serve as the foundation for zakat and tax provisions. The objectives of sharia (specific *maqāṣid*) concerning business relations with

properties (*maqāṣid al-sharī`ah fī mu`āmalah māliyyah*) based on *al-āyāt al-kulliyah,* the universal principles, are given in the following.

First, ultimate ownership of the properties resides with Allah. Numerous verses pertain to the principle affirming that everything on Earth belongs to Allah. "To God belongs all that is in the heavens and all that is on earth. Whether you reveal what is within yourselves or conceal it, God will bring you to account for it. He forgives whom He wills and punishes whom He wills, and God is powerful over all things" (al-Baqarah: 284). The other verses justify this provision, including Āli 'Imrān: 109; Ālī Imrān: 129; al-Nisā: 126; al-Nisā': 13; al-Nisā': 132; al-Nisā': 170; Jonah: 55; al-Nūr: 64; Luqmān: 26, and al-Najm: three that assert the divine ownership of all terrestrial and celestial entities.

Second, Wealth, furthermore, serves as a trial for humanity, as articulated in the verses: "Know that your wealth and your children are but a trial, and that with God is a great reward." (al-Anfāl: 28)" Verily, your wealth and your children are but a trial, and Allah—with Him is a great reward." (al-Taghabūn: 15). These verses underscore the charity notion that an individual's wealth functions as an assessment of their ability to uphold the trust bestowed upon them[46] and their capacity to equitably distribute resources in accordance with the divine precepts ordained by Allah.

Third, Individuals with limited financial resources and those experiencing poverty possess certain entitlements to the collective wealth, as articulated in the following scriptural passage "And in their wealth is a recognised right for the needy and the deprived." (al-Dzāriyāt: 19). This verse and others (al-Anfāl: 41; and al-Ḥashr: 7) elucidate that indigent and impoverished individuals have a legitimate claim to societal resources. Failure to fulfil these obligations constitutes an injustice, representing an unwarranted and unethical appropriation of their duty.

Fourth, The expurgation of accumulated wealth is a requisite, as substantiated in the Qur'anic verse: "Accept alms from their possessions, so that you might cleanse and purify them thereby, and supplicate for them; indeed, your supplications are a source of reassurance for them. And Allah is

[46] Mahmudi et al., "The Charity Values within Islamic Law of Inheritance in Malang."

All-Hearing, All-Knowing." (al-Tawbah: 103). This passage emphasises the importance of wealth purification by distributing a portion to those experiencing financial hardship. Such purgation not only legitimises one's assets but also sanctions their utilisation in accordance with individual volition.

Fifth, Philanthropic conveyance of resources to individuals facing impoverishment constitutes a virtuous act, corroborated by scriptural precedent: "Righteousness is not that you turn your faces toward the east or the west, but [true] righteousness is [in] one who believes in Allah, the Last Day, the angels, the Book, and the prophets and gives of wealth, in spite of love for it, to relatives, orphans, the needy, the traveler, those who ask, and for freeing slaves; [and who] establishes prayer and gives zakah; [and they are] those who fulfill their promise when they promise and are patient in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous." (al-Baqarah: 177), "You will never attain righteousness until you donate from what you cherish. And whatever you donate, Allah is All-Knowing of it." (Āli 'Imrān: 92). These verses explain that genuine goodness is when we give our possessions to relatives, orphans, people living in poverty, wanderers, beggars, and enslaved people. Even this deed is better than one facing East and West.

Sixth, Economic equity, as elucidated in the verse: "What Allah has assigned to His Messenger from the people of the towns - it is for Allah and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveller - so that it will not be a perpetual distribution among the rich from among you. And whatever the Messenger has given you - take; and what he has forbidden you - refrain from. And fear Allah; indeed, Allah is severe in penalty." (al-Ḥashr: 7)

The verse underscores the principle that equitable wealth distribution constitutes a fundamental tenet of the Islamic economic framework. Consequently, economic endeavours that facilitate the concentration of wealth among select individuals or factions are deemed undesirable within the Islamic paradigm. Instead, the emphasis is placed on achieving economic parity throughout the societal structure.

Based on al-Shāṭibī's perspective, the overarching principle governing property, as delineated in the *al-āyāt al-kulliyah*, should serve as the foundational framework for interpreting *al-āyāt al-juz'iyyah* pertaining to the regulation of zakat and taxation. The governance of zakat, taxes, and related philanthropic endeavours must remain consistent with these universal principles. Additionally, Jasser Auda posits that zakat and tax provisions possess inherent objectives, identified as specific *maqāṣid*. Therefore, the regulation of zakat and taxation should be guided by, and attentive to, the general *maqāṣid* encompassing the principles of justice, compassion, welfare, and wisdom.

The principle of *maqāṣid* emphasises that property holders should allocate a portion of their holdings, which are considered not entirely their own, through mechanisms such as *ṣadaqah, hibbah*, zakat, *waqf*, or taxation. This allocation aims to promote the well-being of individuals living in poverty and maintain economic equity within the broader societal structure. Specific and partial *maqāṣid* governing the implementation of zakat and taxes must remain consistent with the principles articulated in the general *maqāṣid*. Therefore, the administration of zakat should avoid imposing a dual burden on Muslims, as such a provision would contravene the general *maqāṣid* containing the principles of justice, compassion, welfare, and prudence. Similarly, the structuring of zakat and taxes should preclude the conferral of benefits to a single individual through multiple ways, as this could generate inequity or the concentration of wealth within a select group (*kay lā yakūna dūlatan bayna al-aghniyā'*).

**A Systems Theory Approach in the Management of Zakat and Tax**

In contemporary management systems, an organisation cannot eschew antiquated, closed systems; rather, it must adopt open systems in its management practices. Historically, systems theory emerged in the 1960s, drawing inspiration from the physical sciences,[47] wherein the relationships between various subsystems are distinctly described and certain. Subsequently, this systems theory was adapted to the rather more abstract

[47] Robbins et al., *Fundamentals of Management*, 25.

realm of organisational theory, thus rendering its application within organisations more pertinent at the macro-structural level.[48] This systems theory in organisations evolved from sociological theory, specifically structural functionalism,[49] which examines the function of social structures in enhancing societal well-being.

This systems theory originates from the concept of equilibrium among various factors that affect an organisation.[50] Management scholars develop and employ systems theory to enhance organisational performance by analysing the diverse elements that impact the organisation.[51] An organisation or institution comprises various interconnected subsystems,[52] requiring an organisational leader to attend to the diverse, integral elements of these subsystems to achieve the established objectives of the system.[53]

In its evolution, systems theory has branched into the fields of complexity theory and chaos theory. This theory is employed to analyse highly complex and nonlinear research objects that exhibit a high degree of probability within the dynamics of social systems, such as economic problems.[54] This is further developed and used to design modern organisations. Consequently, modern organisations must incorporate various subsystems as integral and mutually reinforcing components[55] to ensure the system operates normally and effectively in executing its management system and achieving its desired goals.

In systems theory, the institutions of zakat and taxation are two interrelated subsystems, connected through both the subject and the object, wherein both generate budgetary revenue that should be allocated to the interests and welfare of society, particularly for those in vulnerable economic strata. Within the framework of systems theory, the study of zakat necessitates a detailed, comprehensive, and holistic approach. Similarly, the institution of

[48] Luhmann and Baecker, *Introduction to Systems Theory*, 7.
[49] Luhmann and Baecker, *Introduction to Systems Theory*, 2.
[50] Luhmann and Baecker, *Introduction to Systems Theory*, 26.
[51] Scott, *Organizations*, 92.
[52] Masuch, *Organization, Management and Expert Systems*, 131.
[53] Robbins et al., *Fundamentals of Management*, 25.
[54] Scott, *Organizations*, 93.
[55] Cruise, *Handbook of Organization Theory and Management*, 760.

taxation warrants in-depth analysis, akin to that accorded to zakat.[56] However, since zakat and taxation are subsystems that generate incoming funds to enhance societal welfare, both institutions should be managed within a unified system under the oversight of the Ministry of Finance.

### *Bayt al-Māl*: One-Gate System Management of Zakat and Tax

Drawing from the universal principles articulated in *al-āyāt al-kulliyāt* pertaining to business relations of properties (*mu`āmalah māliyyah*) and the specific provisions explained in *al-āyāt al-juz'iyyāt* regarding the administration of zakat, *ṣadaqāt*, *ghanīmah*, and *fay'*, several guiding principles grounded in *maqāṣid al-shari'ah* can be concluded. These principles mandate that the management of zakat and taxes must prioritise justice, compassion, welfare, and wisdom. In adherence to these tenets, wealthy individuals are obligated to contribute to the well-being of those in need through zakat and taxation.

Zakat and taxes represent financial assets collected from individuals as charitable contributions and for poverty alleviation. Consequently, the administration of zakat and taxes should be streamlined, encompassing both the collection and disbursement processes. A unified, single-gate system is essential for the effective management of zakat and taxes, fostering efficiency and effective governance. This integration of management is predicated on the recognition that these state funds exhibit fundamental similarities when contextualised within the evolving dynamics of the community. Therefore, to strengthen the unification of zakat and tax management into a single system, several management aspects require a modern interpretation of the regulations, subjects, and objects of zakat to align them with the context of taxation, as detailed below.

*First,* in terms of regulation, the zakat and taxation regulations exhibit a degree of parallelism, insofar as both mandate allocating a portion of one's assets for the betterment of the broader community. However, a fundamental difference exists in the underlying impetus: zakat stems from a devotional act of worship to Allah, whereas taxation demonstrates compliance with governmental decrees. Zakat constitutes a designated proportion of wealth

[56] Tompkins, *Organization Theory and Public Management*, 185.

dispensed by an individual or entity (*muzakki*) possessing assets that have met a requisite minimum threshold (*niṣāb*) and have been held for a complete lunar year (*ḥawl*). This disbursement is intended to benefit society, specifically the designated recipients known as *asnāf al-zakāt*. These beneficiaries are explicitly enumerated in the Quran: "Indeed, Zakat expenditures are only for the poor and for the needy, and for those employed to collect zakat, and for bringing hearts together for Islam, and for freeing captives [or slaves], and for those in debt, and for the cause of Allah, and for the stranded traveler - an obligation imposed by Allah. And Allah is Knowing and Wise" (At-Taubah: 60).

The formal codification of zakat (*ṣadaqāt*) following the establishment of the Medina state reinforces its function in bolstering and solidifying the state's position. Zakat derived from war spoils (*ghanīmah*) and *fay'* constitutes state revenue mandated for distribution to benefit the community. It plays a pivotal role in promoting equitable resource distribution within the economic sphere, as economic disparities within the community can undermine the stability of the state. Zakat, referred to as *ṣadaqāt* in the Qur'an, can be classified into four distinct categories: a) Individuals struggling to meet their basic daily needs, encompassing the *faqīr*, *miskīn*, *ghārimīn*, and those in acute financial distress, b) Individuals contributing services to society or the state, including *`āmilīna `alayha*, *sabīlillāh*, and *ibn sabīl*, c) Individuals with cognitive vulnerabilities, including *mu'allafat qulūbuhum*, and d) Individuals subjected to structural marginalisation and oppression: *al-riqāb*. These four categories of zakat recipients need economic assistance due to their vulnerabilities. These populations are virtually certain to be present in any nation or society.

The concept of economic equality, as established in the zakat verse, is further substantiated by additional verses: "And in their wealth there is a recognised right, for the needy who asks, and the one who is deprived" (Al-Dhariyat: 19). Furthermore, the al-Quran states, "Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them increase and invoke [Allah's blessings] upon them. Indeed, your invocations are a reassurance for them. And Allah is Hearing and Knowing" (At-Taubah: 103). These verses elucidate that an individual's wealth is not wholly their own until a certain portion is allocated to assist those who solicit aid and those who are in need (*li al-sā'il wa al-maḥrūm*). The act of donating wealth to the

impoverished is intended to purify one's assets. The distribution of wealth to those in need, for the purpose of cleansing the property from the entitlements of others, also promotes economic equity, a principle of paramount importance in Islamic teachings, as articulated by Allah: "So that it will not be a perpetual distribution among the rich from among you." (Al-Ḥasyr: 7).

Based on the principle of *maqāṣid al-sharī`ah* derived from universal verses (*al-āyāt al-kulliyah*), it can be inferred that: a) inherent within all property is the right of others; b) property necessitates purification through the allocation of a certain portion for the benefit of others; and c) the accumulation of wealth is discouraged in favour of economic equity. Every Muslim property owner is obligated to uphold this universal principle of wealth management by designating a portion of their assets for contribution to the state, which subsequently distributes these resources for the betterment of the state and society.

The permissibility of asset allocation extends to all property owners. The appropriation of assets encompasses all forms of obligatory and voluntary giving, encompassing not only the fulfilment of zakat and taxes but also *waqf*, *infāq*, and *ṣadaqah*, as all such contributions are intended to benefit the community and the state, promote economic equity, and mitigate financial disparities. Based on the foregoing explanation, it can be inferred that zakat and taxes share analogous *maqāṣid al-shari'ah* (objectives of Sharia) perspectives. Consequently, regulations governing these domains should be synchronised and unified within a single legal framework. A unified regulation addressing both zakat and taxes concurrently would serve to prevent redundancies in their collection, distribution, subjects, objects, and designated recipients.

The consolidation of zakat and tax regulations into a unified framework represents an operationalisation of the divine dictum, "*kay lā yakūna dūlatan bayn al-aghniyā'*," thereby mitigating redundancy, accumulation, and duplicity in diverse facets of life, encompassing the governance of both zakat and taxes. This regulatory unification serves to obviate undue burdens on zakat and tax subjects, preventing potential inequities. Furthermore, it necessitates eliminating distributional overlap, ensuring the equitable allocation of

resources to recipients of zakat and tax revenue. A single individual should not receive assistance from both modalities concurrently.

*Second,* the subject of zakat, based on *maqāṣid al-sharī`ah,* should be expanded from merely the owners of zakat objects formulated by orthodox fiqh scholars, such as money, mining goods, found property (*rikāz*), trade, fruits and plants, livestock, camels, cows, and goats, which constitute the assets that exist when the fiqh scholars formulate them. In determining the assets, Islamic law scholars base their approach on the principle of *maqāṣid al-sharī`ah*, which states that each property must be issued zakat when it has reached one *niṣāb*. However, because the types of assets circulating in the community are relatively limited, zakat is imposed only on the owners of these specific assets.

Within the contemporary landscape, characterised by the swift and multifaceted evolution of property and its diverse modalities, zakat is extended to encompass all forms of wealth and rights that possess inherent material value. Therefore, the heterogeneity of asset ownership, comprising individual persons, corporate entities, partnerships, cooperative structures, and related organisational frameworks, necessitates concomitant evolution in the delineation of zakat subjecthood. The subject of zakat should reflect the dynamic shifts in property ownership and the associated rights that embody monetary value.

*Third,* the object of zakat, based on the *maqāṣid al-sharī`ah*, necessitates a careful examination of the scriptural verses on property ownership. All forms of property held by an individual must be purified by allocating a portion of certain property for the benefit of those in need (*li al-sā'il wa al-maḥrūm*), encompassing those belonging to the eight *aṣnāf* of zakāt recipients. The definition of property extends to both tangible and intangible assets. Furthermore, property may encompass material-value rights, such as intellectual property rights, patents, copyrights, and social media presences on platforms like YouTube, Instagram, and TikTok. In accordance with the provisions of *maqāṣid al-sharī`ah*, these assets, across various categories, must be considered as potential sources for alleviating the economic hardships experienced by individuals within the designated *aṣnāf* of zakāt.

Drawing from the principle of *maqāṣid al-sharī'ah,* the object of zakat follows all assets, whether tangible or intangible, and material-value rights. They should, in essence, provide an allowance to be distributed to those in need. Consequently, the object of zakāt must undergo continuous development, adapting to the evolving landscape of the economy, technology, and globalisation. The purview of zakat necessitates expansion, adapting to the evolving landscape of property types derived from diverse income streams and burgeoning businesses prevalent in globalisation era. Consequently, the traditional limitations of zakat obligations to gold, silver, and livestock in the formulation of fiqh should be extended to encompass all assets and rights.

*Fourth,* the recipients of zakat, as delineated by Islamic legal scholars, are derived from Surah al-Taubah: 60, often termed *aṣnāf al-thamāniyyah*: [57] "Indeed, zakāt is only for the indigent, the impoverished, the *ʿāmil* of zakāt, those whose hearts are to be reconciled (converts), to free the enslaved, to relieve those in debt, for the cause of Allah, and for the traveller (in need of assistance), a duty prescribed by Allah. And Allah is All-Knowing, All-Wise" (At-Taubah [9]:60). Based on this verse, the designated recipients of zakāt encompass the indigent (*fuqarāʾ*), the impoverished (*masākīn*), zakāt administrators (*ʿāmilīn ʿalayhā*), recent converts to Islam (*muʾallaf qulūbuhum*), enslaved individuals (*riqāb*), debtors (*ghārimīn*), those striving in the path of Allah (*fī sabīlillāh*), and travellers in need (*ibn sabīl*). These recipients, designated in the verse as beneficiaries of *ṣadaqāt*, can be highlighted as: a) individuals lacking sufficient assets, b) contributors to the welfare of the state and society, c) those subjected to oppression or systemic marginalisation, and d) individuals with cognitive vulnerabilities (*muʾallaf qulūbuhum*).

In the contemporary context, the categorisation of zakat recipients into four categories can be adapted to current circumstances. According to Masdar Farid Mas`udi, the eight *aṣnāf* outlined in Surah al-Tawbah: 60 can be consolidated into three sectors: a) the weak community empowerment sector, b) the routine expenditure sector, and c) the public service sector.[58] Therefore,

[57] al-Zuḥailiy, *Al-Fiqh al-Islamiy Wa Adillatuh*, 3:950.
[58] Mas'udi, *Pajak Itu Zakat*, 112.

zakat expenditure must also be allocated to cover routine state expenses, including *'āmilīn* and dedicated to public services, such as those in the path of Allah (*sabīlillāh*). Additionally, its expenditure can be disbursed for empowerment of the vulnerable community and those experiencing economic hurdles, including *fuqarā'*, *masākīn*, *ghārimīn*, and *ibn sabīl*, as well as those facing psychological fragility, such as *mu'allaf qulūbuhum*.

Considering that the legislation of zakat was revealed following the establishment of the Medina state, it can be inferred that the expenditure of zakat supported the State's needs required by the newly formed State of Medina to the betterment of its ummah at that time. The ummah in need consists of eight groups (*al-aṣnāf al-thamāniyyah*), which can be categorised and developed based on four classes in the contemporary context: 1) individuals who lack property (this category includes not only the needy, the poor, and those in debt (*ghārimīn*), but also other persons such as beggars, homeless individuals, the unemployed, and similar groups), 2) individuals who have rendered meritorious services to the community or the state (this group encompasses not only zakat administrators (*`āmilīn*), those who fight in the cause of Allah (*fī sabīlillāh*), and travellers who disseminate Islamic knowledge (*ibn sabīl*), but also state civil servants, military personnel, police officers, village officials, sub-districts, districts, provinces, ministries, members of the House of Representatives at central, provincial, and regional levels, non-governmental organisations, and others who, through their daily work, contribute to the welfare of the state and society), 3) individuals who are oppressed or structurally marginalized (this category of zakat recipients includes not only slaves (*riqāb*) but also rehabilitation and welfare services for residents of nursing homes, orphanages, social safety nets, crisis centers, prisons, and related institutions), and 4) individuals with physical and mental disabilities (this group is not limited to recent converts to Islam (*mu'allaf qulūbuhum*); it includes rehabilitation for persons with disabilities, victims of physical and sexual violence, victims of trafficking, drug abuse, ideological extremism, mental illness, and others).

The development of zakat recipients' groups must be undertaken by Muslim countries, such as Indonesia and Malaysia. The categories of zakat recipients, limited to the traditional eight groups (*al-aṣnāf al-thamāniyyah*) as

formulated by Islamic jurists, were established within the specific contexts and temporal circumstances in which these jurists lived, as articulated in the fiqh maxim "*taghayyur al-fatwā bi taghayyur al-azminah wa al-amkinah wa al-aḥwāl wa al-A`rāf*".[59] This maxim provides a guiding framework for fiqh scholars, asserting that legal rulings cannot transcend the era in which they were formulated and must be viewed as responses to the prevailing social, cultural, and economic conditions of that time. Consequently, the fiqh formulation regarding zakat recipients must be understood in its context and the period in which it originated. When determining zakat recipients in the present context, particularly in Indonesia and Malaysia, the formulation must be adapted to reflect the social, cultural, and economic realities of these two societies. This legal maxim offers a foundational paradigm for Islamic legal scholars, stipulating that the temporal context of their articulation inherently binds juridical pronouncements and must be recognised as responses to the existing social, cultural, and economic milieu.

*Fifth,* the management of zakat should be unified with that of tax, as zakat functioned as Medina's state revenue, coexisting with *fay'*, *khums*, *'ushr*, and *kharāj*. Throughout the tenures of the Prophet Muhammad and his contemporaries, these revenue streams were overseen by the Bayt al-Māl institution.[60] This integrated management of zakat and taxes eliminated administrative redundancies and mitigated the dual burden of paying zakat and tax on individuals. Duplication in distribution was averted, thereby preventing a single recipient from receiving funds from both zakat and taxes simultaneously.

Within the contemporary framework, the Malaysian government has stipulated that zakat contributions remitted by the Muslim populace are creditable against tax obligations.[61] This policy fosters equity among Muslim citizens by precluding the concurrent imposition of both zakat and taxation. Conversely, the Indonesian government mandates a dual fiscal burden on the Muslim citizenry, requiring the simultaneous fulfillment of both tax and zakat

[59] Sadlān, *Wujūb Taṭbīq Al-Sharī`ah al-Islāmiyyah Fī Kulli al-`Aṣr*, 137.
[60] Ahmad and al-Rifa'i, "The Policy of Working on the Balance of the Budget of the Treasury in The Arab Islamic State."
[61] Laws of Malaysia, Income Tax Act 1967.

liabilities, since zakat payments merely reduce the taxable property base.[62] Nevertheless, the practical effect of this reduction is negligible, thereby causing considerable difficulties. Consequently, the public frequently demonstrates reluctance to claim deductions for zakat contributions against taxable property.

The presence of discrete, autonomous zakat and tax management agencies in Indonesia and Malaysia exemplifies the inefficiency inherent in managing these dual sources of state revenue. The administrative segregation of zakat and taxation creates a lack of coordination between these institutions, potentially leading to operational redundancy or overlap across both the collection of taxes and zakat and their corresponding distribution procedures.

To harmonise zakat and tax administration, Indonesia and Malaysia ought to consider following the method of the Bayt al-Māl institution that prevailed during the Prophet's time and under the subsequent caliphates. The Bayt al-Māl served as the State Treasury, meticulously documenting all government revenues, encompassing zakat (*ṣadaqāt*), *fay'*, *khumūs*, *jizyah*, *kharāj*, and *'ushr*. Furthermore, this institution not only collected state revenue but also disbursed funds to individuals eligible for state-provided financial aid through the Bayt al-Māl.[63] Indonesia and Malaysia are encouraged to adopt the Bayt al-Māl model as implemented by Caliph Umar ibn al-Khaṭṭāb.[64]

The integration and unification of the tax and zakat management institutions aimed to prevent overlap and double accounting, ensuring that "there shall be no state among the wealthy" (*kay lā yakūna dūlatan bayn al-aghniyā'*) in both collection and distribution. It would constitute tyranny if the state imposed dual burdens on the Muslim community to pay both taxes and zakat simultaneously. Furthermore, it is unjust to allocate zakat and tax revenues to specific individuals while excluding others who are entitled to assistance. The management of state revenue budgets should be consolidated into a single gateway system under the ministries of finance in Indonesia and Malaysia, with two divisions: the tax division and the zakat division. This institutional unification would effectively prevent duplication in the collection

[62] Undang-Undang Nomor 7 Tahun 2021 Tentang Harmonisasi Peraturan Perpajakan.
[63] Zalloom, *Funds in The Khilafah State*.
[64] Zalloom, *Funds in The Khilafah State*, 20–25.

and distribution processes, particularly given the advanced internet technology available in the contemporary era.

**Conclusion**

Zakat and taxes are forms of philanthropy disbursed by communities and citizens to foster empathy for less fortunate individuals. The subjects of zakat and taxes, as well as their recipients, share similar characteristics and even sameness. A Muslim individual or a Muslim-owned business entity possessing wealth is obligated to pay taxes; likewise, they are obligated to pay zakat once their wealth reaches the *niṣāb* and *ḥawl* thresholds. Impoverished and needy individuals within a nation are entitled to receive assistance aimed at improving their welfare, encompassing both primary needs and advancements in education, economics, social well-being, and security, funded by government allocations derived from zakat and tax revenues collected from the populace.

Given the overlap and similarities between zakat and taxes in terms of their subjects, objects, recipients, and the objective of enhancing societal welfare, systems theory suggests that their management should be unified. This is due to their strong interconnectedness in promoting the effectiveness of collection and distribution, as well as preventing overlapping in the collection and distribution of taxes and zakat, which results from inadequate coordination under separate management. Such unification aligns with the systems approach offered by Jasser Auda in his book, *maqāsid al-sharī`ah as a Philosophy of Islamic Law: A System Approach*. The management of zakat and taxes, as state revenues, should be unified within a one-gate management system under the Ministry of Finance to manage and allocate state funds obtained from the public, to enhance the performance of modern organisations that emphasise efficacy in the management of zakat and tax, as exemplified by the Prophet Muhammad, his companions, and the *salaf al-ṣāliḥ*.

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# THE PRACTICE OF *JUAL SEADANYA* IN THE BANJAR COMMUNITY: Between Islamic Legal Culture and Consumer Protection in Modern Transactions

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***Abstract***

*Modern buying and selling transactions demand extreme caution from both sellers and buyers, as many problems stem from a lack of caution. This caution has long been practiced by the Banjar community in the form of the expression "jual seadanya", however previous studies have interpreted "jual seadanya" as a way for sellers to abdicate responsibility, requiring buyers to exercise caution. Therefore, this study aims to correct this misunderstanding by demonstrating that "jual seadanya" in Banjar community embodies noble Islamic values and can serve as a model for consumer protection in modern transactions. This research is an empirical legal study with a legal anthropology approach, in which several informants were interviewed in depth. The analysis utilizes muamalah jurisprudence, maqashid sharia, and consumer protection theory. The findings reveal that in Banjar community, "jual seadanya" signifies mutual caution between sellers and buyers, consistent with the development of the doctrine from caveat emptor to caveat venditor. This practice reflects Islamic legal culture, particularly the application of fiqh muamalah which emphasizes honest and fair*

*transactions, as well as the application of the concept of khiyar which is in line with maqasid al-shariah. This research contributes to providing an interpretation of prudence based on fiqh muamalah and maqasid al-shariah, as the saying "jual seadanya." The explicit inclusion of the principle of prudence in Article 2 of Law No. 8 of 1999 concerning Consumer Protection is very relevant and useful, especially in the era of modern transactions.*

*Transaksi jual beli modern sangat menuntut kehati-hatian penjual dan pembeli, karena banyak permasalahan disebabkan kurangnya kehati-hatian. Kehati-hatian ini sudah lama dipraktikkan masyarakat Banjar dalam bentuk ucapan "jual seadanya", namun studi sebelumnya telah menafsirkan "jual seadanya" sebagai cara penjual untuk melepaskan tanggung jawab, sehingga pembeli harus berhati-hati. Penelitian ini bertujuan meluruskan kesalahpahaman tersebut dengan menunjukkan "jual seadanya" dalam masyarakat Banjar merupakan perwujudan nilai-nilai luhur Islam dan dapat menjadi model perlindungan konsumen dalam transaksi modern. Penelitian ini merupakan studi hukum empiris dengan pendekatan antropologi hukum, data diperoleh melalui wawancara secara mendalam beberapa informan. Analisis menggunakan fikih muamalah, maqashid syariah dan teori perlindungan konsumen. Temuan mengungkapkan bahwa dalam masyarakat Banjar, "jual seadanya" menandakan adanya kehati-hatian bersama antara penjual dan pembeli yang sesuai dengan perkembangan doktrin dari caveat emptor menjadi caveat venditor. Praktik ini mencerminkan budaya hukum Islam, khususnya penerapan fiqh muamalah yang menekankan transaksi jujur dan adil, serta penerapan konsep khiyar yang selaras dengan maqasid al-shariah. Penelitian ini berkontribusi memberikan interpretasi kehati-hatian berdasarkan fiqh muamalah dan maqasid al-shariah, sebagaimana ucapan "jual seadanya." Pencantuman prinsip kehati-hatian secara eksplisit dalam pasal 2 Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen sangat relevan dan bermanfaat, terutama di era transaksi modern.*

***Keywords:*** *jual seadanya, Banjar community, caveat emptor, caveat venditor, principle of prudence*

## Introduction

Buying and selling transactions have experienced rapid development, transitioning from traditional market transaction models to modern market transaction models, and from offline to online transactions. In traditional markets, transactions occur directly between the seller and buyer, involving

bargaining. In contrast, in modern markets such as malls, buyers tend to be more independent, selecting the displayed items themselves, and there is no bargaining process since the prices are already fixed. Furthermore, online transactions have grown significantly, where sellers only display photos and descriptions of the goods they are selling, while buyers are unable to physically inspect the items they wish to purchase. In online transactions, many buyers fall victim to false information or misleading advertisements, defective products, counterfeit goods, unsafe products, payment issues, security and privacy concerns, one-sided contracts, and other issues.[1] The development of these transactions demands a high level of caution from both sellers and, especially, buyers, as many problems arise from a lack of vigilance. This modern transaction landscape makes caution a crucial element; however, Law No. 8 of 1999 on Consumer Protection does not explicitly include the principle of caution in Article 2. Article 2 of Law No. 8 of 1999 on Consumer Protection states that: "Consumer protection is based on the principles of benefit, fairness, balance, safety, and legal certainty."

The practice of caution in buying and selling transactions has long been observed in the Banjar community in the form of the phrase *jual seadanya* (sold as is). When conducting a sale and purchase agreement, especially in traditional markets, the Banjar people recite the ijab and qabul (offer and acceptance) using the words "juallah" or "jual seadanya" by the seller, and "tukarlah" (exchange) by the buyer. This practice is rooted in the fact that the majority of the Banjar people are Muslims following the Shafi'i school of thought[2], and their trading customs are strongly adhered to the teachings of the Shafi'i fiqh.[3] They consider a sale and purchase transaction invalid if the agreement is not conducted properly[4] and demand clear

[1] Aishwarya Pandey, "'Consumer Protection in the Era of E-Commerce: Issues and Challenges," *International Journal of Legal Science and Innovation* 4, no. 1 (2022): 632, https://www.ijlsi.com/wp-content/uploads/Consumer-Protection-in-the-Era-of-E-Commerce.pdf.

[2] Gt Muhammad Irhamna Husin, "Equality And Gender Justice In Religious Rituals In Banjar Communities," *INTEGRASI: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 1, no. 01 (2023): 1.

[3] Indriana Ertanti and Mahfud Fahrazi, "Praktik Ijab-Kabul (Akad) Dalam Transaksi Jual Beli Oleh Masyarakat Banjar Ditinjau Dari Prespektif Hukum Ekonomi Islam," *Diversi: Jurnal Hukum* 8, no. 2 (2022): 361.

[4] Ahmadi Hasan, "Prospek Pengembangan Ekonomi Syariah Di Masyarakat Banjar Kalimantan Selatan," *AHKAM: Jurnal Ilmu Syariah* 14, no. 2 (2014): 229, https://www.academia.edu/download/106346115/1147.pdf.

consent between the parties involved in the transaction.[5] The practice of *jual seadanya*, which signifies caution, is part of Islamic legal culture, specifically the application of *fiqh muamalah* (Islamic commercial law) concerning buying and selling, and aligns with the *maqasid al-shariah* (objectives of Islamic law). However, in some studies, *jual seadanya* is seen as a form of seller's disclaimer of responsibility, similar to the doctrine of caveat emptor, which places the burden of caution on the buyer before completing the purchase.[6] In fact, *jual seadanya* in the Banjar community calls for caution from both the seller and the buyer, aligning with the evolution of the doctrine from caveat emptor to caveat venditor, as adopted by Law No. 8 of 1999 on Consumer Protection.

The existing body of research on *jual seadanya* can be broadly categorized into three strands: anthropological studies, those connecting the practice to Islamic teachings, and those analyzing it through the doctrine of *caveat emptor*. The first group, represented by scholars like Nasrullah, interprets *jual seadanya* as a verbal contract that binds both parties to mutual acceptance, serving not only to fulfill religious requirements but also to reinforce social cohesion[7]. It is described as an expressive act of joy, signaling the completion of a transaction[8], and as a cultural manifestation of faith in Allah[9]. The second group includes studies such as Arsyadi's, which highlight the legal-religious dimensions of the practice by affirming that the utterance of ṣighat is indispensable for the validity of sales contracts in Banjar tradition[10]. The third group analyzes *jual seadanya* within the framework of caveat emptor, or "let the buyer beware,"[11] a legal doctrine that absolves sellers from the obligation to disclose defects and protects

[5] Badruddin Ibad, "Buying and Selling System at the Honesty Canteen in Banjarmasin City from the Syafi'i Madzhab Perspective," *Sharia Oikonomia Law Journal* 2, no. 1 (2024): 37.

[6] Terry L. Fox, "Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances," *Practical Lawyer*, 2021, 47, https://cdn.nwe.io/files/x/a8/e8/c9c4d920253054f112cd31e2228c.pdf.

[7] Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 2016.

[8] Radiansyah Jumadi, "Tindak Tutur Dalam Transaksi Jual-Beli Di Pasar Terapung Lok Baintan Martapura (Speech Acts on Trading Transaction At Floating Market of Lok Baintan Martapura)," *Jurnal Bahasa, Sastra Dan Pembelajarannya* 3, no. 1 (n.d.): 141–50.

[9] Yusuf Al Arief, "Culture of Banjarese Represented in Their Language," *International Journal of Southeast Asian Studies (IJSAS)* 2, no. 1 (2022): 23–29.

[10] Muhammad Arsyadi, "Tinjauan Antropologi Hukum Islam Terhadap Praktik Ijab-Kabul Dalam Transaksi Jual Beli Di Pasar Terapung Banjarmasin," *Diversi: Jurnal Hukum* 4, no. 1 (2018): 1–27.

[11] Atishay Agarwal, "Caveat Emptor and Its Exceptions," *Jurisperitus: The Law Journal* 5, no. 02 (2022): 82.

them from subsequent claims[12]. When applied rigidly, this doctrine risks leaving buyers without protection in cases involving hidden defects[13]. Thus, existing studies have largely examined *jual seadanya* from anthropological, religious, or buyer-beware perspectives. However, no prior research has comprehensively integrated both the *caveat emptor* and *caveat venditor* doctrines in a balanced manner-an integration that is crucial for understanding the practice's relevance in contemporary commercial transactions.

Unlike earlier studies, this research aims to clarify the concept of *jual seadanya* in Banjar society, situating it within the framework of Islamic legal culture and demonstrating its relevance to consumer protection in modern commerce. By providing a comprehensive account, this study shows that *jual seadanya* is not an outdated remnant but a form of local wisdom that remains highly pertinent to the dynamics of contemporary transactions. This approach offers new insights into how cultural traditions can function as models that contribute to consumer protection.

The study is grounded in the argument that superficial or misguided interpretations of *jual seadanya* may erode the profound values embedded in this cultural practice. Rooted in Islamic legal traditions, these values reflect prudence in trade, ensuring compliance with Islamic law. Moreover, the Qur'an and Hadith emphasize honesty and fairness in transactions, thereby safeguarding against fraud and injustice.[14] Islamic law also prohibits concealing product defects or failing to disclose their extent[15]. When a transaction is conducted under the seller's declaration of *jual seadanya* and the goods are later found to be defective, the buyer may invoke the *hak khiyar*, the right to choose whether to affirm or rescind the contract[16]. This right provides legal protection for buyers who lack adequate knowledge of the goods they acquire[17]. Misinterpreting *jual seadanya* solely as an absolute waiver of the seller's responsibility, without regard to its cultural context and

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[12] Terry L. Fox, "Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances," 47.

[13] Terry L. Fox, "Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances," 45.

[14] Manuel Enrique Lopez-Brenes and Roberto Marin-Guzman, "Commercial Regulations of Islam with Special Reference to the Prophetic Traditions," *Islamic Studies* 58, no. 1 (2019): 88.

[15] Ibnu Taimiyah, *Al Ikhtiyarat al Fiqhiyah*, Cet. 3 (Dar Atha'at al Ilmi, 2019), 455.

[16] Dafiqah Hasanah et al., "Konsep Khiyar Pada Jual Beli Pre Order Online Shop Dalam Perspektif Hukum Islam," *Iqtishoduna: Jurnal Ekonomi Islam* 8, no. 2 (2019): 250.

[17] Parviz Bagheri and Kamal Halili Hassan, "The Application of the Khiyar Al-'Aib (Option of Defect) Principle in on-Line Contracts and Consumer Rights," *Eur J Law Econ*, 2012, 567.

meaning, risks eroding the profound values embedded in this tradition. This study therefore contends that the prudential aspect of *jual seadanya* should be recognized as a legal principle consistent with Indonesia's Law No. 8 of 1999 on Consumer Protection. Incorporating such a principle of prudence is especially relevant in the context of modern commerce, where it can serve to strengthen and complement the existing legal framework.

**Research Methods**

This research employs an empirical legal methodology[18], utilizing primary data obtained directly from informants[19]. It adopts a legal anthropology approach, which examines legal phenomena within the cultural context of society and treats law as an integral part of cultural systems[20]. Legal anthropology is a specialization within cultural anthropology, which originally consisted of three main branches: linguistic anthropology (ethnolinguistics), prehistory, and ethnology-the comparative study of ethnic groups and their cultures. Since the 1930s, cultural anthropology has expanded into various subfields, including economic anthropology, development anthropology, educational anthropology, medical anthropology, demographic anthropology, political anthropology, and notably, legal anthropology[21].

The study focuses on the Banjar community, selected for its customary use of the phrase *jual seadanya* in sales transactions. Informants were chosen based on the criterion that they routinely use this expression in commercial exchanges. The study involved five informants: a fish vendor, a grocery seller, a vendor of fruits and kitchen spices, a fruit vendor, and a bakery cashier. Data were collected through in-depth interviews, guided by a flexible interview protocol that allowed for dynamic question development during each session. The data were analyzed using the interactive model proposed by Miles and Huberman (1994), which consists of three core components: data reduction, data display, and conclusion drawing with

[18] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (PT RajaGrafindo Persada, 2006), 14.

[19] Mukti Fajar Nur Dewata and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris*, Cet. 1 (Pustaka Pelajar, 2010), 192.

[20] Zulfadli Barus, "Analisis Antropologi Hukum Tentang Pengaruh Nilai-Nilai Budaya Terhadap Budaya Hukum Masyarakat Batak-Toba Terkait Dengan Batas Usia Kawin Menurut Undang-Undang Nomor 1 Tahun 1974," *Yustisia* 3, no. 2 (2014): 137, https://jurnal.uns.ac.id/yustisia/article/view/11110.

[21] Hilman Hadikusuma, *Pengantar Antropologi Hukum*, Cet. 2 (PT. Citra Aditya Bakti, 2004), 1–2.

verification. Data reduction refers to the process of distilling relevant information from the raw data; data display involves structuring the information coherently; and conclusion drawing is the interpretative stage in which meaning is derived from the organized data.[22] The analysis of data in this study draws upon fiqh muamalah, specifically the principles of trade and maqashid sharia—alongside consumer protection theories such as caveat emptor, caveat venditor, and Indonesia's consumer protection law.

## Discussion

### The Practice of *Jual Seadanya* in the Banjar Community

In Banjar community, a variety of expressions are used to formalize sales contracts[23]. Some sellers consistently articulate the phrase *jual seadanya* during transactions is a vendor of fruits and kitchens spices, while others use it only occasionally is a fish vendor, a grocery seller, a fruit vendor, and a bakery cashier. In some cases, the phrase appears in printed form on sales receipts, sometimes accompanied by a spoken statement is a bakery cashier. This evolution from oral declaration to written documentation, illustrates a shift in how the practice is implemented. According to Nasrullah, this development reflects a practical innovation by Banjar merchants, particularly in circumstances where transactions occur at a distance (outside a shared physical setting) or when buyers engage solely with a cashier managing multiple customers. In such instances, the inclusion of *jual seadanya* on the receipt serves to ensure that the contractual agreement remains valid in accordance with Islamic principles[24].

Some informants reported that they occasionally say *jual seadanya* depending on the situation[25]. When customer traffic is high, they often do not have time to say the full phrase and instead use the shorter "juallah". However, during quieter periods, they include the full expression. One informant explained that they use *jual seadanya* when selling an entire basket of fruit with mixed quality, without counting the individual items, even though a basket typically contains 100 oranges by customary standards[26].

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[22] Dila Erlianti et al., *Metodologi Penelitian : Teori dan Perkembangannya* (PT. Sonpedia Publishing Indonesia, 2024), 61.

[23] Erla Sharfina Permata Noor et al., "Akad Dan Tradisi Jual Beli Masyarakat Banjar Persfektif Hukum Ekonomi Syariah," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 2 (2024): 948.

[24] Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 10–11.

[25] Fish Vendor, "interview transcript," Desember 2022.

[26] Fruit Vendor, "interview transcript", Desember 2022.

Other informants indicated that they use the phrase sporadically and without a consistent pattern is a grocery seller and a bakery cashier.[27]

Informant a vendor of fruits and kitchen spices indicated that the use of the phrase *jual seadanya* during sales transactions is a tradition that has been passed down for generations[28]. Similarly, a fruit vendor affirmed that the practice is deeply rooted in local custom[29]. A grocery seller explained that their parents taught them to say *jual seadanya* when selling goods[30], while a fish vendor stated that they adopted the phrase based on the teachings of a religious leader (tuan guru) [31]. Informant a bakery cashier, on the other hand, reported using the phrase because it was mandated by the store owner[32]. Taken together, these responses indicate that the practice of saying *jual seadanya* has become a longstanding tradition, transmitted either through parental guidance or religious instruction.

Informant a fish vendor, explained that he uses the phrase *jual seadanya* during transactions because the items he sells are sold by weight, which makes precise measurements nearly impossible, unlike pre-packaged goods. He believes it is appropriate to use the phrase, a practice he adopted after consulting with tuan guru[33]. Informant a grocery seller whose products are mostly pre-packaged, stated that he uses *jual seadanya* to ensure the transaction is considered religiously valid, particularly in cases where a product might have defects or if there are unintentional errors in the product description[34]. Informant a vendor of fruits and kitchen spices, consistently uses the phrase out of concern that the items may be overpriced[35]. Informant a fruit vendor, only uses *jual seadanya* when selling baskets of mixed-quality fruit, with larger fruits placed on top and smaller ones at the bottom. Although each basket is customarily assumed to contain 100 pieces, the quantity is not counted but estimated[36]. Informant a bakery cashier and store employee, explained that they use the phrase because it is part of Banjar tradition and because they were instructed by the store owner

[27] Grocery Seller, "interview transcript", Desember 2022; A bakery cashier "interview transcript," November 12, 2022.
[28] A vendor of fruits and kitchen spices, "interview transcript," Desember 2022.
[29] Fruit Vendor, "interview transcript," Desember 2022.
[30] Grocery Seller, "interview transcript," Desember 2022.
[31] Fish Vendor, "interview transcript," Desember 2022.
[32] Kasir Toko Roti, "interview transcript" November 12, 2022.
[33] Fish Vendor, "interview transcript," Desember 2022.
[34] Grocery Seller, "interview transcript," Desember 2022.
[35] A vendor of fruits and kitchen spices, "interview transcript," Desember 2022.
[36] Fruit Vendor, "interview transcript," Desember 2022.

to do so. The store owner also includes the phrase *jual seadanya* on printed receipts[37].

The findings demonstrate that sellers employ the phrase *jual seadanya* in sales transactions for various precautionary reasons. All five informants use it to address potential issues such as imprecise measurements, product defects, miscommunication, or inflated pricing. However, one informant a fruit vendor uses the phrase specifically when the quality and quantity of the product are uncertain. The quality is unclear due to the assortment of fruit sizes in a basket larger fruits are placed on top and smaller ones at the bottom. The quantity is ambiguous because the fruits are not counted, despite the customary assumption that a full basket contains 100 pieces. In such instances, the phrase *jual seadanya* serves to request the buyer's consent in the event of a shortfall and, conversely, to signal the seller's willingness to forgo any excess if the quantity exceeds 100.

This phenomenon suggests that the underlying motive for using the phrase *jual seadanya* among all informants is rooted in a sense of prudence. This finding is consistent with Nasrullah's research, which interprets *jual seadanya* as representing the essential substance of a contract-mutual consent[38]. In Banjar trading practices, arriving at a contractual agreement is a considered and deliberate process. According to Nasrullah, the contract itself serves as the bridge to establishing consensus in a sales transaction[39]. The term "seadanya" thus functions to bind both parties in a relationship of mutual willingness, which is the core principle of the contract[40]. In his anthropological analysis, Nasrullah further explains that the transactional behavior preceding the formal sales agreement not only fulfills religious duties for the Banjar people but also carries significant social implications[41]. Jumadi adds that *jual seadanya* can be seen as an expressive speech act that conveys joy upon the sale of goods[42].

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[37] A bakery cashier, "interview transcript," November 12, 2022.

[38] Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 18.

[39] Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 17.

[40] Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 18.

[41] Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 1.

[42] Jumadi, "Tindak Tutur Dalam Transaksi Jual-Beli Di Pasar Terapung Lok Baintan Martapura (Speech Acts on Trading Transaction At Floating Market of Lok Baintan Martapura)," 148.

### *Jual Seadanya* as Islamic Legal Culture in the Banjar Community

Islam is deeply embedded in the identity of Banjar community, with the majority of the population adhering to the Islamic faith. Historically, this relationship stems from the establishment of an Islamic kingdom, the enactment of the Sultan Adam Code marking the formalization of Islamic law and the influential figure of Sheikh Muhammad Arsyad al-Banjari, who transformed the Banjar region into a major center of Islamic scholarship. These developments have solidified the local expression, "Banjar is Islam."[43] Mary Hawkins similarly notes that in South Kalimantan, identifying as Banjar is not based on language or occupation, but rather on religious affiliation[44]. Islam plays a central role in Banjar life and is regarded as a powerful unifying force that connects South Kalimantan's people both with one another and with the broader Indonesian nation and global Muslim community[45]. In the modern era, amid rising concerns over moral decline, there has been a renewed embrace of this Islamic identity within Banjar community[46]. This has given rise to movements aimed at formalizing Islamic law as a reaffirmation of local identity, particularly during the era of regional autonomy. As a result, Sharia-inspired local regulations have emerged as expressions of this effort to reinforce Islamic values within the community[47].

Nevertheless, Islam is not the only belief system present within Banjar community. The community's belief structures can be categorized into three types: first, beliefs rooted in Islamic teachings; second, those possibly linked to the social organization of historical Banjar community; and third, beliefs shaped by interpretations of the surrounding natural environment.[48] This diversity of influences means that not all Banjar cultural traditions originate from Islam. However, Islamic teachings continue to shape and inform the cultural fabric of Banjar community. As Kuntowijoyo observed, Islamic culture has had such a strong influence in Indonesia that

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[43] Irfan Noor, "Islam Dan Representasi Identitas Banjar Pasca Orde Baru DI Kalimantan Selatan," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 11, no. 2 (2012): 152.

[44] Mary Hawkins, "Becoming Banjar: Identity and Ethnicity in South Kalimantan, Indonesia," *The Asia Pacific Journal of Anthropology* 1, no. 1 (2000): 29.

[45] Hawkins, "Becoming Banjar," 32.

[46] Noor, "Islam Dan Representasi Identitas Banjar Pasca Orde Baru DI Kalimantan Selatan," 155.

[47] Noor, "Islam Dan Representasi Identitas Banjar Pasca Orde Baru DI Kalimantan Selatan," 140.

[48] Alfani Daud, *Islam Dan Masyarakat Banjar: Deskripsi Dan Analisa Kebudayaan Banjar*, 1st ed., Cet. 1 (PT. RajaGrafindo Persada, 1997), 5–9.

Indonesian popular culture may well be characterized as Islamic in nature[49]. Cultural expressions that stem from religious teachings are referred to as religious culture—forms of behavior and motivation guided by religious doctrine[50]. In a similar vein, Faisal Ismail defines religious culture as the cultural framework produced by a religious community, rooted in its teachings and values[51].

Islamic religious culture has profoundly shaped numerous aspects of Banjar community, including traditional architecture. Mentayani notes that Banjar houses are strongly influenced by Islamic teachings, although they also incorporate elements from Hinduism and other belief systems[52]. Likewise, Bani Noor Muchamad explains that the Banjar architectural tradition reflects a synthesis of Islamic law, historical beliefs from the Banjar sultanate, and mythologies related to the supernatural[53]. As a result, every Banjar home features elements tied to religious philosophy, ranging from the spatial layout to decorative motifs such as carvings symbolizing brotherhood, unity, and fertility, along with Arabic calligraphy inscribed with the shahada, names of caliphs, *salawat* (blessings upon the Prophet), and selected verses from the Qur'an[54]. According to Kamrani, this Islamic-based cultural expression is not only visible in physical forms but also manifests in spiritual practices. These include life-cycle rituals such as the seven-month pregnancy blessing (tujuh bulan), *batampung tawar* (prayers offered during birth and naming), *batumbang* (the celebration of a child's first steps), and baayun anak (a ceremonial cradle-rocking ritual). In agriculture, Banjar farmers perform a ritual known as *merabun*, in which seeds are passed over incense smoke accompanied by prayers. When placing seeds in water to germinate, they begin by reciting Surah al-Fatihah once, followed by three invocations of blessings for the Prophet Muhammad. The final act of

[49] Kuntowijoyo, *Paradigma Islam: Interpretasi Untuk Aksi*, Cet. 8 (Mizan, 1998), 230–37.

[50] Amelia Rahmaniah, *Budaya Agama Dalam Transaksi Jual Beli Intan Melalui Pengempit Di Martapura Kalimantan Selatan*, Cet. 1 (Mirra Buana Media, 2021), 31–32.

[51] Faisal Ismail, *Paradigma Kebudayaan Islam: Studi Kritis Analisis Historis* (Ombak, 2016), 11.

[52] Ira Mentayani, "Analisis Asal Mula Arsitektur Banjar Studi Kasus: Arsitektur Tradisional Rumah Bubungan Tinggi," *Jurnal Teknik Sipil Dan Perencanaan* 10, no. 1 (2008): 12.

[53] Bani Noor Muchamad and Arya Ronald, *Arsitektur Melayu Banjar: Ajaran Islam Dalam Budaya Melayu Banjar Berkaitan Dengan Konsep Arsitekturnya*, 2010, 116.

[54] Wafirul Aqli, "Anatomi Bubungan Tinggi Sebagai Rumah Tradisional Utama Dalam Kelompok Rumah Banjar," *NALARs* 10, no. 1 (2011): 75–76.

planting the sprouts into the soil is accompanied by various supplications for divine favor[55].

Islamic teachings have also exerted a significant influence on the economic life of the Banjar people. Historically engaged in international trade, the Banjar have developed a cosmopolitan economic character marked by openness, high mobility, adaptability, and flexibility—through their interactions with diverse cultures. Alongside this, ethical principles and values rooted in Islam have helped drive economic modernization and development within Banjar community. These values, shaped by the Islamic worldview embraced by the Banjar, have been reinforced by the teachings of Sufi scholars or religious leaders (tuan guru), who have contributed to the dynamism of local economic life. One of the core teachings is *zuhud*, or asceticism, which affirms the legitimacy of wealth accumulation while encouraging entrepreneurial freedom. This, in turn, cultivates a work ethic centered on diligence, perseverance, and endurance[56]. Banjar commercial practices are heavily influenced by Islamic teachings, particularly those of the Shafi'i school, and their understanding of sharia economics aligns closely with long-standing local trading customs[57].

According to Arief, Banjar community tends to incorporate Islamic terms and expressions into everyday life, reflecting the deep assimilation of Islamic and Banjar cultures. This is evident in buying and selling practices, where transactions are formalized through explicit contracts (akad). In such exchanges, the seller says *jual* (I sell this item) or *jual seadanya* (I sell this item as is), while the buyer responds with *tukar* (I buy this item). Arief interprets *jual seadanya* as a cultural expression that embodies the Banjar people's faith in Allah SWT. [58]

Uncertainty regarding both the quality and quantity of goods-as found in the case of informant a fruit vendoris classified in Islamic jurisprudence as *gharar*. Linguistically*, gharar* denotes risk or hazard, while *taghrir* means exposing oneself to uncertainty[59]. According to al-Shirazi of the

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55 Kamrani Buseri, "Spiritual Culture of Banjar Sultanate (Historical, Hermeneutic and Educational Approach)," *Jurnal Ilmiah Peuradeun* 5, no. 3 (2017): 304-307.

56 Alfisyah Alfisyah, "Etika Dagang 'Urang Banjar,'" *Jurnal Kebudayaan Kandil-Melintas Tradisi* 16 (2012): 23.

57 Ahmadi Hasan, "Adat Dagang Orang Banjar dan Prospek Ekonomi Syariah," *Kandil* 15 (November 2007): 32.

58 Al Arief, "Culture of Banjarese Represented in Their Language," 25–26.

59 Johar Johar and Maghfirah Maghfirah, "Re-Interpretation of Islamic Transaction Principles in Economic Activities," *MADANIA: Jurnal Kajian Keislaman* 27, no. 1 (2023): 27, 1, https://doi.org/10.29300/madania.v27i1.3385.

Shafi'i school, *gharar* refers to anything unknown or concealed from one of the parties[60]. The Prophet Muhammad (peace be upon him) stated: "The Messenger of Allah forbade the sale of *hashat*-a method where a buyer throws a stone to determine how much land to purchase-and transactions involving *gharar*" (narrated by Muslim). The prohibition refers specifically to significant *gharar* that is distinguishable from minor or unavoidable uncertainty. Transactions involving minor or inherent ambiguity such as buying a house without viewing its foundation or purchasing a cheese-filled bread where the cheese isn't visible are permissible[61]. Islamic law promotes transparency in commerce, encouraging clear descriptions of a product's type, measure, and quality[62]. According to the companions of Imam Nawawi, it is sufficient that the type, size, and characteristics of an item are known; full knowledge from every angle is not required[63]. Therefore, the observed instances involve only minor *gharar* and are legally valid.

Furthermore, the study found that sellers who use the phrase *jual seadanya* do not include any additional statements during the transaction, making it difficult to ascertain their intent from the contract itself[64]. Imam al-Shafi'i ruled that contracts are evaluated based on their outward expression and remain valid regardless of any undisclosed intentions, provided the explicit terms are sound[65]. Even if a hidden motive exists that could compromise the transaction, it has no bearing unless it is openly expressed. Legal assessment is based solely on what is apparent. Thus, motives only factor into the legal validity of a contract when explicitly stated. If unspoken, they are not considered[66]. Consequently, even if *jual seadanya* carries potentially negative implications, the contract remains valid as long as such meanings are not articulated in the formal agreement.

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[60] Tuti Anggraini and Ade Khadijatul Z. Hrp, "Terms and Conditions Applicability Muamalat," *International Journal of Economics (IJEC)* 2, no. 1 (2023): 166.

[61] Abu Zakaria Muhyiddin bin Syaraf an Nawawi, *Kitab al Majmu': Syarah al Muhazhaf Li Asy Syairazi*, Juz 9 (Maktabah al Irsyad, t.th), 311.

[62] Abd Hafid et al., "The Application of Khiyar Principles to E-Commerce Transaction: The Islamic Economy Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 407, 1, https://doi.org/10.22373/sjhk.v8i1.20890.

[63] an Nawawi, *Kitab al Majmu': Syarah al Muhazhaf Li Asy Syairazi*, Juz 9, 346.

[64] Muhammad bin Idris asy Syafi'i, *Al Umm*, Jilid 4, Cet. 1 (Dar al Wafa, 2021), 152.

[65] Muhammad bin Idris asy Syafi'i, *Ar Risalah*, Cet. 1 (Musthofa al Babi al Halabi wa Auladuhu, 1938), 481–82.

[66] Neni Hardiati et al., "Kedudukan Akad Dalam Perspektif Ekonomi Islam," *Madani: Jurnal Ilmiah Multidisiplin* 2, no. 3 (2024): 230, https://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/view/1977.

Imam an-Nawawi asserted that a valid sale must be accompanied by a verbal expression of *ijab qabul* (offer and acceptance). Accordingly, he ruled that *mu'athah* a transaction conducted without any spoken declaration is invalid, regardless of whether it involves a small or large amount. The exception is the opinion of Ibn Suraij, a scholar of the Shafi'i school, who permitted *mu'athah*[67]. Imam an-Nawawi identified two perspectives on *ijab qabul*: one places emphasis on the actual verbal expression, while the other prioritizes the underlying intent. If articulating the exact phrase proves difficult, then the intended meaning behind *ijab qabul* may be accepted[68]. This suggests an evolution within the Shafi'i tradition, where some jurists began to consider intent as a relevant factor in contractual agreements.

Islamic economic teachings, more broadly, prohibit a wide range of unethical practices including *maisir* (gambling), *gharar* (excessive uncertainty), *riba* (usury), *ihtikar* (hoarding), *najasy* (deceptive bidding), *tadlīs* (concealing defects), *taghrīr* (misrepresentation), *bai' al-ma'dūm* (selling nonexistent goods), fraudulent weighing, environmental exploitation, wastefulness, and greed[69]. The Qur'an and Hadith emphasize honesty and fairness in commercial dealings, and explicitly prohibit deceit and injustice[70]. It is also impermissible to conceal defects or fail to adequately disclose them[71]. In cases where a seller uses the phrase *jual seadanya* and the product later proves to be defective, Islamic law grants the buyer the right of *khiyār* the option to either affirm or annul the sale[72]. This right is a legal safeguard for buyers who may not fully understand the quality of what they are purchasing[73]. *Khiyār* serves two key purposes: to cancel the contract if defects are found, or to proceed if the item is in satisfactory condition[74]. Hence, even though *jual seadanya* may imply limited liability, the transaction remains valid;

[67] an Nawawi, *Kitab al Majmu': Syarah al Muhazhaf Li Asy Syairazi*, Juz 9, 190.
[68] an Nawawi, *Kitab al Majmu': Syarah al Muhazhaf Li Asy Syairazi*, Juz 9, 203.
[69] Irena Dwi Fetraningtyas and Yunanto Yunanto, "Application of The Properties of Naqli And Aqli in Positive Law with Respect to Islamic Contract Law," *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 1 (2021): 60, https://doi.org/10.18592/sjhp.v21i1.4140.
[70] Lopez-Brenes and Marin-Guzman, "Commercial Regulations of Islam with Special Reference to the Prophetic Traditions," 88.
[71] Taimiyah, *Al Ikhtiyarat al Fiqhiyah*, 455.
[72] Hasanah et al., "Konsep Khiyar Pada Jual Beli Pre Order Online Shop Dalam Perspektif Hukum Islam," 250.
[73] Bagheri and Hassan, "The Application of the Khiyar Al-'Aib (Option of Defect) Principle in on-Line Contracts and Consumer Rights," 567.
[74] Pauzi Muhammad et al., "Actualizing Islamic Economic Law in the Digital Era: A Study of the Application of Khiyar al-Majlis in Electronic Contracts," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (2024): 206, https://doi.org/10.31958/juris.v23i2.11573.

however, the buyer retains the right to cancel the purchase upon discovery of any previously unknown defects. This is consistent with Wahbah's view that ambiguity concerning an item's type, variety, or quantity may render a sale invalid[75].

In the modern era, offer and acceptance (*ijab* and *kabul*) are not always delivered verbally; they may also be conveyed through conduct-for example, selecting goods and paying at the cashier. This method is widely practiced in modern marketplaces such as supermarkets and mini markets. Many scholars allow such transactions if they are based on prevailing customs and mutual agreement[76]. Critical aspects of a valid *ijab* and *kabul* include clarity, mutual correspondence between offer and acceptance, voluntary consent, and occurrence within an acknowledged encounter, even if not face-to-face[77]. Hasanah observes that among the Banjar community, it has long been customary to explicitly pronounce *ijab* and *kabul* in sales transactions. They consider a transaction invalid unless both parties clearly state the contract (*ṣariḥ*). The sales contract is viewed as a fundamental component, expressed through a mutually acknowledged verbal formula (*ṣighāt al-ʿaqd*). This practice has become a unique cultural trait of the Banjar people[78]. It represents a practical embodiment of Islamic law within their daily lives-particularly in the realm of trade and stands as a preserved form of local wisdom[79]. Failure to articulate this formula renders the transaction invalid, as it is grounded in the Banjar community's commitment to honesty, transparency, and mutual respect[80]. Scholars who insist on a specific verbal declaration typically adhere to the Shāfiʿī school and its qauly methodology. Others who allow for more flexible expressions follow the manhajy approach, while non-Shāfiʿī scholars generally do not require any verbal

[75] Wahbah az Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid 5, Cet. 1 (Gema Insani, 2011), 55.

[76] Ridha Mulyani et al., "Phenomenology of Buying and Selling Practices in Islamic Societies: How Is It Implemented," *Samara: Journal of Islamic Law and Family Studies* 1, no. 1 (2023): 30.

[77] Ihsan Helmi Lubis, "The Pillars and Conditions of A Contract in Muamalat Transactions," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2023): 22.

[78] Ikhwatun Hasanah and Dewi Safitri, "Researching Local Wisdom 'Ba'i Sighat Al Aqd' Aqd Murabahah in City of Thousand River's: Menelisik Kearifan Lokal 'Ba'i Sighat Al Aqd' Akad Murabahah Di Kota Seribu Sungai," *Tawazuna* 1, no. 1 (2021): 27.

[79] Hasanah and Safitri, "Researching Local Wisdom 'Ba'i Sighat Al Aqd' Aqd Murabahah in City of Thousand River's," 33.

[80] Arsyadi, "Tinjauan Antropologi Hukum Islam Terhadap Praktik Ijab-Kabul Dalam Transaksi Jual Beli Di Pasar Terapung Banjarmasin," 1.

formula[81]. Thus, the commonly used phrase *jual seadanya* in Banjar community has evolved into a deeply embedded tradition, qualifying as *ʿurf*. In Islamic jurisprudence, *ʿurf ṣaḥīḥ*-valid and wise customary practice-is a recognized source of law, alongside the Qur'an, Sunnah, *ijmāʿ*, *qiyās*, *istiḥsān*, and *maṣlaḥah mursalah*[82]. Linguistically, *ʿurf* denotes what is good, familiar, and established. It refers to practices that are widely accepted across the community-both in speech and behavior-not merely individual acts[83]. The Shāfiʿī school recognizes *ʿurf* as authoritative provided it does not conflict with the Qur'an or Hadith and is not overridden by clear textual rulings[84]. Accordingly, the practice of stating *jual seadanya* in Banjar commercial transactions constitutes a religiously grounded cultural tradition rooted in Islamic principles.

**Analyzing Jual Seadanya in Modern Commercial Transactions: A Consumer Protection and Maqashid Sharia Perspective**

Modern commercial transactions have undergone significant transformations, particularly in the methods of exchange. Payment systems have shifted from cash to digital platforms, and traditional in-store shopping is increasingly being replaced by online transactions. Within the Banjar community, the expression of *jual seadanya* has also evolved from a spoken declaration at the point of sale to being printed on receipts. These shifts in modern commerce carry both benefits and challenges for sellers and buyers alike.

In commercial interactions, buyers frequently occupy a position of relative disadvantage. Their limited bargaining power necessitates additional protections to ensure fair treatment. According to the theory of unequal

[81] Hj Rusdiyah et al., "Sighat Ijab Kabul Transaksi Jual Beli: Perspektif Ulama Kalimantan Selatan (Analisis Praktik Bermazhab Di Kalimantan Selatan)," *AL-BANJARI* 14, no. 2 (2015): 209.

[82] Reza Octavia Kusumaningtyas et al., "Reduction of Digitalization Policy in Indonesian MSMEs and Implications for Sharia Economic Development," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (2022): 160.

[83] Siti Nur Azizah and Muhfiatun Muhfiatun, "Pengembangan Ekonomi Kreatif Berbasis Kearifan Lokal Pandanus Handicraft Dalam Menghadapi Pasar Modern Perspektif Ekonomi Syariah (Study Case Di Pandanus Nusa Sambisari Yogyakarta)," *Aplikasia: Jurnal Aplikasi Ilmu-Ilmu Agama* 17, no. 2 (2017): 68, 2, https://doi.org/10.14421/aplikasia.v17i2.1273.

[84] Sulfan Wandi Sulfan Wandi, "Eksistensi'Urf Dan Adat Kebiasaan Sebagai Dalil Fiqh," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018): 189.

bargaining power, buyers are economically weaker than sellers[85]. They often lack comprehensive information about the products they intend to purchase. In online transactions, buyers are particularly vulnerable to deceptive advertisements, counterfeit goods, hidden defects, unsafe products, issues with payment and data security, unilateral contract terms, and more[86]. Consequently, consumer protection has become a vital issue in the era of e-commerce[87].

A strict interpretation of the caveat emptor doctrine (let the buyer beware) can leave buyers unprotected when goods are found to have latent defects[88]. In digital transactions, where direct inspection of goods and personal interaction with sellers are absent, this doctrine places the onus entirely on buyers. They are expected to mitigate risks by reading product descriptions carefully, communicating with sellers when needed, and documenting deliveries through photographs or videos upon receipt[89].

The doctrine of caveat emptor bears notable resemblance to the traditional practice of *jual seadanya* in Banjar community. Originating from the Latin expression meaning "Let the buyer beware,"[90] the *caveat emptor* principle was first established in 16th-century England. It was adopted in judicial contexts to resolve disputes between buyers and sellers and served as a strategy to reduce the frequency of consumer lawsuits. By the 19th century, the doctrine had spread to the United States, where it remained prevalent until the mid-20th century[91]. Eventually, caveat emptor began to give way to the *caveat venditor* doctrine, which enhanced consumer protection by placing greater obligations on sellers. This doctrinal shift introduced a more equitable framework, wherein sellers are required to disclose accurate product information and buyers are expected to conduct reasonable inspections[92]. *Caveat venditor* is now a key component of product liability law,

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85 Neelam Chawla and Basanta Kumar, "E-Commerce and Consumer Protection in India: The Emerging Trend," *Journal of Business Ethics* 180, no. 2 (2022): 586, https://doi.org/10.1007/s10551-021-04884-3.

86 Pandey, "'Consumer Protection in the Era of E-Commerce," 632.

87 Chawla and Kumar, "E-Commerce and Consumer Protection in India," 581.

88 Terry L. Fox, "Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances," 45.

89 Farhanin Abdullah Asuhaimi et al., "Sale by the Description in Today's Online Contracts: Issues and Challenges," *Malaysian Journal of Consumer and Family Economics* 27 (2021): 188.

90 Agarwal, "Caveat Emptor and Its Exceptions," 82.

91 Muhammad Hafiz Mohd Shukri et al., "The Application of Caveat Emptor and Caveat Venditor Doctrines from Civil and Islamic Perspectives," *Jurnal Undang-Undang Dan Masyarakat* 28 (2021): 93.

92 Agarwal, "Caveat Emptor and Its Exceptions," 93.

which emphasizes ethical conduct among sellers and producers, protects vulnerable consumers, and promotes quality over low-cost, high-risk goods[93].

Terry explains that within the framework of *caveat emptor*, "as is" clauses compel buyers to exercise due diligence before finalizing a purchase. These clauses relieve the seller from the duty of disclosing defects and protect them from potential claims. Such clauses are commonly used in both standard transactions and those involving misrepresentation or concealed facts[94]. This perspective aligns with Agarwal's observation that the phrase "sold as is" places the responsibility on buyers to accept the risk of defects[95]. Buyers are thus encouraged to verify not only the condition of the product but also its ownership before completing a transaction[96].

In contrast to the caveat emptor doctrine, *jual seadanya* as expressed by Banjar sellers represents a fair-trade principle grounded in the seller's responsibility and caution regarding potential shortcomings in the transaction. It does not serve as a means for sellers to escape liability, unlike the core idea of caveat emptor, which implies selling without warranty and shifting all risk to the buyer. Under caveat emptor, buyers are held fully accountable for evaluating the quality and appropriateness of the product before purchase[97]. In the practice of *jual seadanya*, however, both parties buyer and seller are expected to be vigilant, reflecting a more balanced approach akin to the *caveat venditor* doctrine[98]. This perspective is aligned with Indonesia's Law No. 8 of 1999 on Consumer Protection, which mandates that business actors conduct their activities responsibly, ensuring they do not harm consumers either physically or financially. Article 2 of this law affirms that consumer protection is grounded in principles of benefit, fairness, balance, security, and legal certainty. Notably, Article 2 of Indonesia's Law No. 8 of 1999 on Consumer Protection stating that "Consumer protection is

[93] Shukri et al., "The Application of Caveat Emptor and Caveat Venditor Doctrines from Civil and Islamic Perspectives," 97.

[94] Terry L. Fox, "Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances," 47.

[95] Agarwal, "Caveat Emptor and Its Exceptions," 82.

[96] Ohenewaa Boateng Newman and Bobby Banson, "The Conundrum of Balance Under Ghana's Legal System: The Protection of a Buyer in Good Faith and the Principle of Caveat Emptor," *African Journal of International and Comparative Law* 30, no. 2 (2022): 197, https://doi.org/10.3366/ajicl.2022.0404.

[97] Agarwal, "Caveat Emptor and Its Exceptions," 84.

[98] Rifkiyati Bachri and Permata Cinta Gudam Fadhevi, "Penerapan Asas Caveat Venditor Terhadap Pemberian Pembuktian Barang Rusak Dalam Berbelanja Online," *Jurnal Legal Reasoning* 7, no. 1 (2024): 55.

grounded in the principles of benefit, justice, balance, consumer security and safety, and legal certainty" does not explicitly recognize prudence as a guiding principle.

Bachri, referencing Adrian Sutedi (2008), explains that *caveat venditor* calls on business actors to act with due care-specifically, to operate their businesses in ways that do not inflict harm on consumers[99]. Further, he notes that Article 23 of the Consumer Protection Law, "Entrepreneurs who refuse and/or do not respond and/or do not provide compensation to the consumers' claim as intended by Article 19 Section 1, Section 2 Section 3, and Section 4 above, can be sued through the Consumer Disputes Settlement Agency or brought to court at the domicile of the consumers," adopts an absolute liability framework[100]. This framework is based on two foundations: first, Article 19 "(1) Entrepreneurs are obligated to give compensation for the damage, taint and/or losses the consumers suffer as a result of using or consuming the goods and/or services produced or traded by the entrepreneurs. (2) Compensation as untended by Section 1 above can be in the form of refund or goods and/or services of the same type or has equal value, or in the form of health care and/or insurance coverage in accord with the prevailing law. (3) Compensation shall be given within the period of 7 (seven) days after the date of transaction. (4) Compensation as intended by Section 1 and Section 2 above shall not exclude the possibility of a criminal charge based on further evidence of the existence of a fault. (5) The provisions as intended by Section 1 and Section 2 above shall not be valid if the entrepreneurs can prove that the consumer is at fault," assumes fault unless proven otherwise[101], and second, Article 28 "The giving of evidence of faults in the compensation claims as referred to by Articles 19, 22 and 23 shell be the burden and responsibility of the entrepreneurs,"[102] requires that liability be assessed based on the best available evidence[103].

[99] Bachri and Fadhevi, "Penerapan Asas Caveat Venditor Terhadap Pemberian Pembuktian Barang Rusak Dalam Berbelanja Online," 61.

[100] Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen* (PT RajaGrafindo Persada, 2008), 155.

[101] Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen*, 125.

[102] Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen*, 167.

[103] Bachri and Fadhevi, "Penerapan Asas Caveat Venditor Terhadap Pemberian Pembuktian Barang Rusak Dalam Berbelanja Online," 58–59.

Consumers are thus afforded both judicial and non-judicial avenues to safeguard their rights under the law.[104]

Law No. 8 of 1999 on Consumer Protection aims to guarantee legal certainty and prevent arbitrary actions against both consumers and business actors[105]. As outlined in Article 1(1), "Consumer protection encompasses all efforts to ensure legal certainty in providing safeguards for consumers." The law establishes a balanced framework of rights and obligations for both parties, outlines prohibited practices, and defines business liability. According to Deviana, this legal structure reflects the principle of *caveat venditor*[106]. Nevertheless, she observes that business compliance remains low in Indonesia, as evidenced by persistent issues such as the falsification of halal certifications and the frequent use of standard agreements that violate consumer protection regulations[107].

Beyond its legal consistency, *jual seadanya* embodies a religiously grounded business ethic[108]. It implies that the seller discloses the true condition of the goods and refrains from fraudulent practices or deception (ghisy). The items are offered free of hidden defects or misrepresentation in quality or specification. This expression conveys the ethical commitment embedded in Banjar commercial culture and represents a local application of Islamic legal principles-specifically the obligation to pronounce a clear contract (ijab kabul) as taught by Sheikh Muhammad Arsyad al-Banjari[109] in his seminal work *Sabilal Muhtadin*[110].

Within Banjar society, *jual seadanya* is not merely a moral injunction but a tangible expression of *maqashid sharia*. This principle ensures that

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104 Sigit Licardi et al., "Pertanggungjawaban Hukum Terhadap Produk Cacat Yang Merugikan Konsumen Ditinjau Dari Undang-Undang No. 8 Tahun 1999," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2255.

105 Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen*, 1.

106 Deviana Yuanitasari, "Implikasi Prinsip Caveat Venditor Terhadap Perkembangan Hukum Perlindungan Konsumen Di Indonesia," *Arena Hukum* 10, no. 3 (2017): 438.

107 Yuanitasari, "Implikasi Prinsip Caveat Venditor Terhadap Perkembangan Hukum Perlindungan Konsumen Di Indonesia," 438.

108 Noor et al., "Akad Dan Tradisi Jual Beli Masyarakat Banjar Persfektif Hukum Ekonomi Syariah," 949–50.

109 Nama lengkap dari Syekh Muhammad Arsyad al-Banjari adalah Syekh Muhammad Arsyad bin Abdullah bin Abdur Rahman al-Banjari, lahir di Martapura pada 17 Maret 1710 dan meninggal di Martapura pada 3 Oktober 1812 dalam usia 102 tahun Ahmad Suriadi, "Syekh Muhammad Arsyad Al-Banjari Dalam Dinamika Politik Kerajaan Banjar Abad XIX.," *Pusat Penelitian Dan Penerbitan LP2M IAIN Antasari*, 2014, 28.

110 Ertanti and Fahrazi, "Praktik Ijab-Kabul (Akad) Dalam Transaksi Jual Beli Oleh Masyarakat Banjar Ditinjau Dari Prespektif Hukum Ekonomi Islam," 359.

contracts are not only formally valid but also genuinely advance human welfare and safeguard all facets of life in line with the objectives of Islamic law[111]. Imam al-Shatibi classified *maqashid sharia* into three hierarchical categories: *dharuriyyat* (essentials), *hajiyyat* (complementary needs), and *tahsiniyyat* (refinements). *Dharuriyyat* constitutes the most fundamental objectives, indispensable for human existence; their neglect would lead to social and moral collapse. These encompass five core aims: preservation of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-'aql), lineage (hifz al-nasl), and property (hifz al-mal). *Hajiyyat* aims to facilitate life and relieve hardship; its neglect generates difficulty and suffering. *Tahsiniyyat* aspires to cultivate refinement, moral excellence, and social decorum; while its absence may not cause hardship, its presence enriches human life with dignity and civility.[112]

In Banjar society, *jual seadanya* reflects the principle of prudence and is firmly aligned with the objectives of *maqashid sharia*. First, it preserves religion (hifz al-din), as cautious conduct in trade embodies obedience to divine injunctions that command justice, honesty, and the avoidance of fraud and injustice. Second, it protects life (hifz al-nafs), since fair and transparent transactions foster trust and a sense of security, thereby preventing disputes that could generate psychological strain and disrupt social harmony. Third, it safeguards intellect (hifz al-'aql), by promoting rational decision-making based on accurate information and rejecting speculative practices such as *maisir* and *gharar*. Fourth, it secures lineage (hifz al-nasl), as prudence in transactions cultivates a culture of justice and integrity that influences future generations and is transmitted as a social legacy. Fifth, it protects property (hifz al-mal), directly shielding the wealth of both buyers and sellers from loss or damage. For sellers, prudence entails honesty and transparency in disclosing product conditions; for buyers, it encourages attentiveness and restraint in making purchasing decisions, thereby avoiding financial harm. Taken together, these dimensions demonstrate that the substance of *jual seadanya* in Banjar society is in full harmony with the objectives of *maqashid sharia*.

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[111] Zaydan Muhammad et al., "The Explanation Of Maqashid Sharia On Drive Thru Service In Islamic Business Ethics," *International Conference on Law, Technology, Spirituality and Society (ICOLESS)* 3 (2023): 476, https://conferences.uin-malang.ac.id/index.php/ICOLESS/article/view/2663.

[112] Ahmad Jalili, "Teori Maqashid Syariah Dalam Hukum Islam," *Teraju* 3, no. 02 (2021): 74–76.

The long-standing practice of *jual seadanya* in Banjar community embodies a balanced implementation of both caveat emptor and *caveat venditor*, making it a highly relevant principle in modern commercial transactions. It ensures protection for both parties-seller and buyer. The Islamic legal concept of *khiyar*, as applied within the Banjar community, demonstrates that even when *jual seadanya* is expressed, buyers are still granted the opportunity to either rescind or proceed with the transaction if discrepancies arise. For instance, a common reassurance given by sellers is: "mun kada sadang hurupakan ja/bulikakan ja" (if the size is unsuitable, feel free to exchange or return it) [113]. This indicates a clear intersection between caveat emptor and the Islamic *khiyar* doctrine[114].

Despite these similarities, important differences remain. While caveat emptor permits buyers to examine goods before purchasing, it does not impose an obligation on sellers to disclose all defects unless specifically asked, although concealment is still prohibited. In contrast, the *khiyar* principle requires sellers to proactively disclose any known defects, even if not inquired about, and to provide a form of guarantee[115]. The *caveat venditor* doctrine also finds strong resonance in Islamic principles, particularly regarding justice in commercial dealings. These include the duty to provide accurate and honest information[116]even if it conflicts with the seller's interests[117]. This ethical obligation is consistent with the hadith reported by Tirmidhi: "The honest and trustworthy merchant will be with the prophets, the truthful, and the martyrs."[118]

The continued relevance of the *jual seadanya* tradition in Banjar community within modern transactions aligns closely with the shift from caveat emptor to caveat venditor—emphasizing that both consumers and sellers must act with due diligence. The rise of consumer protection in the 21st century, marked by legislation and the formation of consumer advocacy

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[113] Noor et al., "Akad Dan Tradisi Jual Beli Masyarakat Banjar Persfektif Hukum Ekonomi Syariah," 952.

[114] Shukri et al., "The Application of Caveat Emptor and Caveat Venditor Doctrines from Civil and Islamic Perspectives," 94.

[115] Ziad Esa Yazid et al., "E-Commerce via Mobile Banking: Contemporary Shariah Issues and Ways to Address Them," *International Journal of Professional Business Review: Int. J. Prof. Bus. Rev.* 8, no. 1 (2023): 8.

[116] Shukri et al., "The Application of Caveat Emptor and Caveat Venditor Doctrines from Civil and Islamic Perspectives," 99.

[117] Williams C. Iheme, "Rethinking the Effectiveness of Consumer Protection Policies and Measures in the Financial Marketplace," *Juridicas* 19, no. 2 (2022): 165.

[118] az Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid 5, 27.

institutions, illustrates a more balanced relationship of rights and responsibilities between buyers and sellers. Instilling a shared sense of accountability encouraging each party to claim their rights while fulfilling their duties is a central objective of consumer protection law[119]. However, the current legal framework requires reform to remain aligned with evolving social and technological conditions, particularly to address the growing complexity of online transactions[120].

Numerous studies affirm that online consumers must receive protections comparable to those granted offline. The most pressing concerns for online shoppers include the anonymity of sellers, lack of access to product inspection and labeling, and inadequate dispute resolution mechanisms[121]. Further challenges include the safeguarding of personal data, financial assets, and overall consumer privacy. While Law No. 8 of 1999 on Consumer Protection provides a legal basis for consumer rights, it remains inadequate in overseeing and enforcing protections in digital commerce[122]. This situation underscores the need for explicit and enforceable regulations specific to online transactions including clear complaint procedures, effective dispute resolution channels[123], and the standardization of practices across digital marketplaces in Indonesia[124]. The existence of such comprehensive and consistent regulations would significantly enhance consumer safety. When observed properly, legal frameworks can foster trust and provide security across all aspects of business operations[125].

The Banjar practice of *jual seadanya*, embodying a balanced prudence shared by both sellers and buyers, offers a valuable model for integration into Indonesia's national consumer protection law. Beyond the explicit

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119 Shyamali Mukherjee Bhattacharya, "Consumer Protection Law: A Paradigm Shift from Caveat Emptor to Caveat Venditor," *Supremo Amicus* 33 (2023): 6.

120 Pandey, "'Consumer Protection in the Era of E-Commerce," 632.

121 H. Matnuh, "Rectifying Consumer Protection Law and Establishing of a Consumer Court in Indonesia," *Journal of Consumer Policy* 44, no. 3 (2021): 485, https://doi.org/10.1007/s10603-021-09487-z.

122 Tasya Safiranita Ramli et al., "Inovasi Standardisasi Marketplace Dalam Merespon E-Commerce Sebagai Upaya Menuju Caveat Venditor (Standardization Marketplace Innovation In Responding To E-Commerce Effort Towards Caveat Venditor Condition)," *Jurnal Legislasi Indonesia* 18, no. 2 (2021): 275.

123 Matnuh, "Rectifying Consumer Protection Law and Establishing of a Consumer Court in Indonesia," 484.

124 Ramli et al., "Inovasi Standardisasi Marketplace Dalam Merespon E-Commerce Sebagai Upaya Menuju Caveat Venditor (Standardization Marketplace Innovation In Responding To E-Commerce Effort Towards Caveat Venditor Condition)," 276.

125 Chawla and Kumar, "E-Commerce and Consumer Protection in India," 588.

recognition of prudence as a legal principle in Law No. 8 of 1999 on Consumer Protection, prudence should be understood as conducting trade in accordance with the norms of *fiqh muamalah*-emphasizing honesty, fairness, and the application of *khiyar*-there by ensuring conformity with the objectives of *maqashid sharia*. This conception of prudence aligns with the broader doctrinal shift from *caveat emptor* to *caveat venditor* in modern consumer protection. In this way, consumer protection law may progress beyond the mere imposition of sanctions toward the cultivation of an ethical and sustainable business ecosystem, where both consumers and businesses are encouraged to transact with responsibility and integrity.

**Conclusion**

This study reveals that the long-standing practice of *jual seadanya* in Banjar society embodies the principle of prudence. Rooted in Islamic legal culture, it represents the application of *fiqh muamalah* in harmony with the objectives of *maqashid sharia*. Although superficially similar to the doctrine of *caveat emptor*, which places the burden of caution on the buyer, *jual seadanya* entails a balanced allocation of responsibility between buyer and seller, thereby anticipating the contemporary doctrine of *caveat venditor*. In modern commerce, such mutual prudence is indispensable. Explicitly incorporating prudence into Article 2 of Indonesia's Law No. 8 of 1999 on Consumer Protection is therefore both timely and beneficial. Moreover, prudence should be interpreted in the sense embodied by *jual seadanya*: conducting trade in accordance with the principles of *fiqh muamalah*-honesty, fairness, and the application of *khiyar*, so as to remain consistent with *maqashid sharia*. This conception of prudence aligns with the doctrinal shift from *caveat emptor* to *caveat venditor* in contemporary consumer protection. Accordingly, the explicit affirmation of the prudence principle in consumer protection law makes it no longer just a general principle, but a vital legal foundation for dealing with the complexities of the modern market. This study was limited to involving only sellers as informants; research involving buyers as informants would allow for new findings.

A recommendation for future research is to conduct an in-depth analysis of the application of the precautionary principle within the digital era to ensure the protection of both sellers and buyers. This is paramount given the prevalence of digital transactions. The ultimate objective of this research is to furnish recommendations for improving Indonesian consumer protection laws (or consumer protection legislation in Indonesia) to ensure their alignment with contemporary developments.

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# INSOLVENCY WITHOUT BANKRUPTCY: Rethinking The Dissolution of Viable State-Owned Banks

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***Abstract***

*This article examines the normative inconsistency between the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK–PKPU) and the Company Law (UU PT), which creates a risk of premature dissolution of state-owned banks that are still economically viable. The study aims to conduct an epistemological and normative analysis of the bankruptcy regime applicable to state-owned banks in Indonesia by examining insolvency tests through a comparative law perspective and elaborating the concept of epistemic failure within the framework of Lon Fuller's legal philosophy. This research employs a normative juridical method, using statutory, conceptual, and comparative approaches. Legal norms and principles are analysed through hermeneutic interpretation to assess their coherence and practical implications. The findings reveal that Indonesia's current bankruptcy framework fails to distinguish clearly, both conceptually and operationally, between balance-sheet insolvency and cash-flow insolvency. As a result, banks experiencing temporary liquidity problems may be treated as insolvent, leading to premature liquidation despite their underlying economic soundness. This condition highlights a significant normative inconsistency between the UUK–PKPU and the Company Law. Furthermore, Indonesian bankruptcy law remains predominantly liquidation-oriented and relies heavily on procedural formalism. This approach contrasts with the legal frameworks of the European Union and common law jurisdictions, which prioritise rescue and rehabilitation mechanisms as primary responses to financial distress. Accordingly, this article strengthens the argument for regulatory harmonisation and advocates the adoption of a dual insolvency test, as well as the institutionalisation of rescue and rehabilitation mechanisms as mandatory priorities before liquidation in Indonesia's bankruptcy law.*

*Artikel ini menganalisis adannya inkonsistensi normatif antara Undang-Undang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (UUK-PKPU) dan Undang-Undang Perseroan Terbatas (UU PT) yang berpotensi menimbulkan pembubaran prematur bank yang secara ekonomi masih layak. Tujuan penelitian adalah melakukan pendekatan epistemologis dan normatif terhadap regulasi kepailitan Bank BUMN di Indonesia, melalui analisis uji insolvabilitas dengan pendekatan hukum perbandingan, serta memperdalam konsep epistemic failure menggunakan kerangka filosofi hukum Lon Fuller. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif, di mana norma dan prinsip hukum dianalisis melalui metode interpretasi hermeneutik. Hasil penelitian menunjukkan bahwa kerangka regulasi kepailitan di Indonesia saat ini gagal membedakan secara konseptual dan operasional antara insolvabilitas neraca dan insolvabilitas arus kas. Kegagalan tersebut mengakibatkan pembubaran prematur terhadap bank-bank BUMN yang sejatinya masih sehat secara ekonomi, serta mempertegas inkonsistensi normatif antara UUK-PKPU dan UU PT. Hukum kepailitan Indonesia masih berorientasi pada likuidasi berbasis formalitas procedural, berbeda dengan pendekatan Uni Eropa dan negara-negara common law yang menempatkan mekanisme penyelamatan dan rehabilitasi sebagai respons utama terhadap kesulitan likuiditas. Artikel ini berkontribusi pada penguatan argumentasi perlunya harmonisasi regulasi dan adopsi dual insolvency test untuk membedakan kesulitan likuiditas dari insolvabilitas struktural, serta guna melembagakan mekanisme penyelamatan dan jalur rehabilitasi sebagai prioritas sebelum likuidasi dalam hukum kepailitan Indonesia.*

***Keywords***: *epistemology, persero, state-owned bank, insolvency.*

## Introduction

Indonesia's regulatory approach to the insolvency of state-owned banks (SOEs) in the form of Persero is marked by a unique epistemological and normative inconsistency. State-owned banks in Indonesia serve as essential instruments in advancing national development, especially by channelling state capital to strategic sectors such as infrastructure, mining, and telecommunications. These institutions, often established as *Persero* type State-Owned Enterprises (SOEs), embody dual functions: pursuing profit and upholding public interest. However, this hybrid nature presents a regulatory dilemma when such banks encounter financial distress. SOEs are referred to as *Public Enterprises* which contain elements of Government

(*Public*) and business elements (*enterprise).*[1] BUMN has been clearly regulated in Article 1 Number 1 of Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law) which states that business entities whose capital ownership is wholly or mostly owned by the State which is directly equalized through separated State assets.[2] The BUMN Law also regulates the form of a *Persero* to be subject to all the provisions and principles governing Limited Liability Companies (PT) which have been regulated in Law Number 40 of 2007 concerning Limited Liability Companies, but the difference lies in the shareholder, namely the Government.[3]

Under Indonesia's Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (*UUK-PKPU*), SOEs that operate in the public interest and are wholly owned by the state (*PERUM*) are protected from arbitrary bankruptcy filings, as only the Minister of Finance may initiate such proceedings (Article 2 paragraph 5). In contrast, *PERSERO* SOEs which are formally limited liability companies with majority but not total state ownership are subject to ordinary bankruptcy rules, rendering them vulnerable to legal dissolution initiated by private creditors. This legal inconsistency generates significant uncertainty for public institutions operating as corporations. More critically, Indonesia's insolvency regime lacks conceptual clarity in distinguishing between *cash flow insolvency* temporary liquidity shortfalls and *balance sheet insolvency* a state where liabilities exceed assets. The failure to apply insolvency tests in bankruptcy procedures allows solvent yet illiquid companies to be declared bankrupt. Consequently, viable SOE banks may face premature dissolution, not because of economic unviability, but due to procedural rigidity and legal misinterpretation. Once declared bankrupt, these institutions are subject to automatic dissolution and liquidation under Article 142 of the Company Law (*UU PT*), even though their balance sheets remain fundamentally sound.

The absence of integrated legal safeguards such as restructuring frameworks, rehabilitation mechanisms, and going concern models further exacerbates the risk. Although *UUK-PKPU* provides for restructuring through *PKPU* proceedings, such mechanisms often fail due to formalistic requirements and the absence of credible creditor protections. Moreover,

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[1] Panji Anoraga, *State-Owned Enterprises, Private Enterprises and Cooperatives: Three Economic Actors*, (Jakarta: Dunia Pustaka Jaya ,1995), 1.

[2] Article 1 Number 1 of Law Number 19 Year 2003 concerning State-Owned Enterprises, State Gazette of the Republic of Indonesia Year 2003 Number 70.

[3] Panji Anoraga, *State-Owned Enterprises, Private Enterprises and Cooperatives: Three Economic Actors*, 2.

corporate rescue is rarely pursued, as neither the Bankruptcy Law nor the Company Law accommodates a full-fledged rehabilitation scheme for state-owned financial entities. This legal vacuum reflects a deeper epistemic issue: the laws governing bankruptcy and corporate dissolution rest on outdated assumptions that do not reflect contemporary economic realities or institutional complexities.

Empirical evidence underscores the vulnerability of this framework. Bank Dagang Bali (BDB) was a small private bank whose license was revoked by Bank Indonesia/OJK in mid-2004 after evidence of fraud. By June 2003 BDB's Capital Adequacy Ratio (CAR) had fallen below the 6% minimum and was negative. Its massive nonperforming loans (mostly to fictitious firms) caused this collapse. The Finance Ministry later liquidated BDB (and other banks) for "gagal bayar" (insolvency). This case illustrates a bank closed under regulation for financial irregularities (CAR breach)[4] rather than any question of viability; it had virtually no capital cushion by the time of shutdown. Bank Pembiayaan Rakyat Syariah (BPRS) Gebu Prima (Medan) was a small Islamic rural bank. OJK placed it under special supervision in May 2024 for failing capital/health requirements and by March 2025 it escalated to *Bank Dalam Resolusi*. On 17 April 2025 OJK revoked Gebu Prima's license (Dewan Komisioner KEP-23/D.03/2025) and LPS moved to liquidate it. OJK had noted shareholders' remediation plan (BDP status) failed, so no viable turnaround was found. (No exact CAR/NPL data are published, but its quick move from "sehat" to "tidak sehat" and resolution status suggests serious shortfalls.) Gebu Prima's closure shows even a bank whose shareholders tried recapitalization can be shut down once it breaches regulatory thresholds.[5]

PT BPR Disky Surya Jaya (North Sumatra) faced a similar fate. OJK put it into "Bank Dalam Penyehatan" status in Aug 2024 because its CAR had dropped below 12% and overall health was "tidak sehat". In July–Aug 2025, after owners failed to cure the deficits, OJK revoked its license (KEP-58/D.03/2025 on 19 Aug 2025) and LPS began liquidation. Key metric: CAR under regulatory minimum (no value stated but cited as "under 12%". Disky's case likewise shows a bank shut down for failing capital adequacy and liquidity rules; again, this was done via regulatory process despite any remaining book equity. PT BPR Dwicahaya Nusaperkasa (East Java) was

[4] https://news.detik.com/berita/d-418171/sidang-korupsi-rp-1-3-t-bank-dagang-bali-digelar, accessed 23 October 2025.

[5]https://beritaperbankan.id/ojk-tutup-tiga-bank-sepanjang-2025-lps-siapkan-proses-likuidasi-dan-bayar-simpanan-nasabah, accessed 23 October 2025.

declared troubled in late 2024. OJK noted its CAR had fallen below 12% and its cash ratio averaged only ~5% over three months (well under regulatory requirements). It was formally classified as Under Rehabilitation in Nov 2024. Despite management's recapitalization efforts, by July 2025 OJK concluded the bank could not be saved: its license was revoked (OJK KEP-47/D.03/2025) and LPS took over liquidation. Key financials: CAR under regulatory floor and critically low liquidity (~5% cash ratio). This case was closed on "bank cannot be recovered" grounds essentially a cash-flow/capital problem even though on paper the bank still held assets; it was deemed unviable to operate under the law.[6]

A contrasting example is Bank Papua (BPD Papua), a provincial government-owned bank. In 2017 it had the highest NPL ratio of any Indonesian bank (around Rp359 billion in bad loans from two defaulters). However, the OJK publicly declared its liquidity position was sound and urged depositors *not* to withdraw funds. Intensive oversight and new management were put in place, and no bankruptcy proceedings were initiated. (OJK spokesman Misran Pasaribu said "liquidity is safe" despite the NPLs) In other words, a state-linked bank with very poor asset quality was rescued through support rather than liquidated. This highlights the contrast: viable operations (good liquidity) saved BPD Papua, whereas smaller banks with rule-book breaches were shut[7]. Notably, the financial resilience of major state-owned banks suggests that some entities facing short-term liquidity issues are far from insolvent in economic terms. Reports from the Financial Services Authority (OJK) and Bank Indonesia (BI) indicate that Capital Adequacy Ratios consistently exceed 20% and Non-Performing Loan ratios remain below 3%, well above prudential requirements. Yet, under the current UUK-PKPU regime, such banks could be legally dissolved if unable to meet procedural debt maturity requirements, regardless of underlying solvency.

From the perspective of legal epistemology, the misalignment between *UUK-PKPU* and the Company Law (*UU PT*) reflects a deeper epistemic failure in Indonesia's legal system. The regulation of bankruptcy assumes a purely positivist framework relying on formal definitions, statutory thresholds, and procedural triggers without sufficient engagement with the substantive financial condition of the debtor, such as distinctions between

[6] https://beritaperbankan.id/ojk-tutup-tiga-bank-sepanjang-2025-lps-siapkan-proses-likuidasi-dan-bayar-simpanan-nasabah, accessed 23 October 2025.
[7] https://www.medcom.id/ekonomi/mikro/nN9V2W5b-likuiditas-aman-ojk-imbau-nasabah-tidak-tarik-dana-bpd-papua, accessed 24 October 2025.

*cash flow insolvency* and *balance sheet insolvency*. This reflects a *detachment between legal form and economic reality*; an issue long debated in the philosophy of law. Based on Gustav Radbruch's postulate, the law must reconcile three key values: justice, certainty, and utility (*Rechtssicherheit, Gerechtigkeit, Zweckmäßigkeit*). The Indonesian bankruptcy regime currently overemphasizes legal certainty through rigid proceduralism at the expense of justice and economic utility. A company may be declared bankrupt and dissolved not because it lacks economic viability, but because it fails to meet procedural thresholds under Article 2(1) UUK-PKPU. This results in a *formal justice* approach that undermines *substantive justice* where viable companies, including SOE's banks serving the public, are liquidated despite still being capable of recovery. Furthermore, from a Dworkinian interpretive lens, law must be treated not merely as a system of rules but as a manifestation of principles including fairness, proportionality, and protection of legitimate expectations. The automatic dissolution of viable state-owned banks due to technical insolvency fails to reflect the principle of fairness, especially when the state's interest and broader economic impact are disregarded.

Additionally, Fuller's inner morality of law, which includes the principles of clarity, coherence, and congruence between law and its application, is also relevant. The disjunction between *UUK-PKPU* and *UU PT* particularly the failure to integrate a rehabilitation path for SOEs violates these inner moral standards by creating incoherent and conflicting obligations for public corporate debtors. Considering these philosophical considerations, the issue at hand is not merely regulatory but epistemological. The bankruptcy regime, in its current form, constructs a legal "truth" that equates procedural compliance with insolvency, thereby justifying dissolution. This epistemic construct fails to accommodate the ontological condition of modern public corporations that are viable, socially necessary, and economically strategic. This article undertakes an epistemological and normative inquiry into Indonesia's bankruptcy regulation of SOE banks in the form of *Persero*. A comparative law analysis of how insolvency tests (cash flow vs balance sheet) are applied in the EU, specifically regarding state-owned or public banks. A deeper elaboration of the concept of "*epistemic failure*" using Lon Fuller's legal philosophy especially his framework of the inner morality of law to highlight its difference from ordinary normative flaws.

Previous studies on bankruptcy and insolvency of state-owned enterprises (SOEs) in Indonesia have predominantly adopted a doctrinal and

normative perspective, focusing on statutory interpretation and sectoral regulation. Much of the literature examines the tension between Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) and Law No. 40 of 2007 on Limited Liability Companies (UU PT), particularly concerning the vulnerability of Persero-type SOEs to bankruptcy petitions initiated by private creditors. These articles generally conclude that the current legal framework insufficiently protects SOEs performing public functions and recommend regulatory harmonization or special procedural safeguards for state-owned entities. Several scholars have explored bankruptcy within SOE holding structures, emphasizing corporate group liability, state ownership, and the ambiguity of public versus private legal status. This line of research highlights structural weaknesses in Indonesian corporate law but tends to treat insolvency as a legally given condition rather than a contested economic concept. As a result, insolvency is often assumed to justify liquidation once procedural requirements under Article 2(1) UUK-PKPU are met, without interrogating whether such legal conclusions correspond to the debtor's actual financial condition.

Comparative studies in the Indonesian context have largely relied on civil law jurisdictions, particularly European Union frameworks, to argue for stronger restructuring mechanisms and preventive restructuring models. While these works contribute valuable institutional insights, they remain focused on regulatory design and compliance, leaving unexamined the deeper conceptual assumptions that inform how insolvency is legally constructed and operationalized. The distinction between cash-flow insolvency and balance-sheet insolvency is frequently mentioned yet rarely developed as a foundational epistemological problem within bankruptcy adjudication. In contrast, extensive literature from common law jurisdictions especially the United Kingdom and the United States demonstrates a more nuanced understanding of insolvency as a spectrum of financial distress rather than an automatic indicator of economic failure. Studies on UK insolvency law emphasize the functional separation between cash-flow insolvency and balance-sheet insolvency, alongside the prioritization of corporate rescue through administration and restructuring mechanisms. Similarly, U.S. scholarship on Chapter 11 bankruptcy underscores the primacy of the going concern principle and rejects the equation of default with corporate death. However, these insights have not been systematically integrated into Indonesian bankruptcy scholarship, particularly in relation to state-owned banks.

Notably, existing research has not approached the dissolution of viable SOE banks through the lens of legal epistemology. The way insolvency is "known," defined, and validated within Indonesian law namely through procedural triggers detached from economic substance has largely escaped critical examination. Consequently, the normative conflict between UUK-PKPU and UU PT is often treated as a technical legislative flaw, rather than as an epistemic failure that shapes judicial reasoning, institutional behaviours, and systemic outcomes. This article seeks to move beyond doctrinal reconciliation by interrogating the epistemological foundations of bankruptcy regulation for Persero-type state-owned banks. By integrating legal philosophy with comparative analysis across civil law and common law systems, this study positions itself distinctly from prior research and addresses a conceptual gap that has thus far remained unexplored.

This article departs from prevailing doctrinal analyses by framing the dissolution of viable state-owned banks not merely as a regulatory inconsistency, but as an *epistemic failure* in insolvency law where legal cognition conflates procedural default with economic collapse. By integrating Lon Fuller's inner morality of law with a comparative insolvency analysis across civil law and common law systems, this study offers a novel reconstruction of bankruptcy epistemology that challenges the liquidation-centric paradigm embedded in Indonesian insolvency regulation.

## Research Methods

This research used a normative juridical approach, focusing on the analysis of legal norms and principles derived from statutory regulations and doctrinal legal theories. As a doctrinal legal study, the research aims to identify inconsistencies, normative gaps, and epistemological misalignments in the regulation of bankruptcy for state-owned banks, particularly those established as *Persero* entities.[8] Two primary legal approaches are utilized: (1) Statute Approach: This method involves the systematic examination of relevant legal instruments, including Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (*UUK-PKPU*), Law No. 40 of 2007 on Limited Liability Companies (*UU PT*), and Law No. 19 of 2003 on State-Owned Enterprises (*UU BUMN*). The analysis focuses on the interaction and conflicts among these statutes, particularly in their

[8] Peter Mahmud Marzuki, *Legal Research* (Jakarta: Prenada Media Group, 2007), for a comprehensive explanation of doctrinal research as a normative method in legal.

application to corporate insolvency and dissolution procedures.[9] (2) Conceptual and Philosophical Approach: In cases where statutory interpretation alone is insufficient to resolve legal ambiguities, the research applies legal doctrines and theories derived from jurisprudential thought, including epistemology, legal hermeneutics, and the philosophy of justice.[10]

The analytical technique employed is hermeneutic interpretation, which seeks to uncover the underlying meanings, assumptions, and normative constructions within legal texts. This method allows the researcher to interpret statutory provisions not only in their literal form but within their broader economic, institutional, and philosophical contexts.[11] Primary legal materials include statutes, judicial decisions, and official government documents, while secondary materials consist of academic journals, books, and commentaries by legal scholars. These sources are critically examined to formulate a coherent argument for legal reform and to propose a more just and effective framework for the insolvency of state-owned banks.

## Discussion

### Epistemology of Bankruptcy Arrangements for State-Owned Bank Group Companies.

Epistemology in the context of SOE bankruptcy arrangements is not directly related to epistemology, which is a branch of philosophy that studies knowledge. However, in the context of law and regulation, we can discuss aspects related to legal knowledge and SOE bankruptcy arrangements. SOE bankruptcy arrangements are governed by Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations. This law stipulates that SOEs that are engaged in the public interest and wholly owned by the state can only be bankrupted by the Minister of Finance. The authority to file for bankruptcy of SOEs is very limited. Only the Minister of Finance is authorized to file a bankruptcy petition against an SOE whose entire capital is owned by the state. If the shares of the SOE are not wholly owned by the state, then this authority is different and must be regulated under the Bankruptcy Law.

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[9] *Statute analysis is a fundamental tool in legal research, particularly in systems with codified laws such as Indonesia*

[10] Conceptual legal approaches are crucial when laws are ambiguous, incomplete, or contradictory; see Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali, 1985).

[11] Hermeneutic analysis is common in interpretive legal research to reveal implicit assumptions within legal texts

The current bankruptcy legal framework in Indonesia, as stipulated in Law No. 37 of 2004 (*UUK-PKPU*), creates a regulatory vacuum for *Persero*-type State-Owned Enterprises (SOEs). Article 2(5) of the UUK-PKPU restricts bankruptcy petitions for certain public-interest SOEs to the Minister of Finance[12]. However, this provision applies only to *PERUM*, SOEs whose capital is entirely owned by the state. Meanwhile, *Persero* entities, although majority-owned by the government, are treated under the same regime as private corporations and may be subject to bankruptcy by any qualified creditor[13] This legal asymmetry is problematic, especially for state-owned banks that despite their formal classification function in practice to serve national economic interests. The lack of explicit protections exposes viable yet temporarily illiquid SOE banks to arbitrary bankruptcy and liquidation, disregarding their economic and public utility[14].

Discussing restructuring as a *premium remidium* aims to provide a reasonable grace period and ratelessness activities for debtors who are still *viable* and only experiencing *cash flow insolvency*, where through the provision of grace periods and continuing the business, it is hoped that the debtor will be able to meet the payment of overdue debts and can be collected to the maximum as a result of the *income* he gets, rather than having his assets liquidated through a bankruptcy mechanism.[15] Through restructuring, the company is expected not to be declared bankrupt and not to have its assets liquidated, because it is not feasible to bankrupt corporate debtors who are

[12] Article 2(5) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UUK–PKPU), *State Gazette of the Republic of Indonesia No. 131 of 2004, Supplement No. 4443*, which provides that a bankruptcy petition against State-Owned Enterprises operating in the public interest may only be filed by the Minister of Finance. In practice, this provision has been interpreted as applying exclusively to Public Enterprises (PERUM), whose capital is wholly owned by the state.

[13] Article 1(2) and Article 11 of Law No. 19 of 2003 on State-Owned Enterprises, *State Gazette of the Republic of Indonesia No. 70 of 2003, Supplement No. 4297*, in conjunction with Law No. 40 of 2007 on Limited Liability Companies, which stipulates that Persero-type SOEs are subject to the general corporate law regime. Consequently, Persero entities may be subjected to bankruptcy proceedings initiated by any qualified creditor under the general provisions of the UUK–PKPU.

[14] See also OECD, *State-Owned Enterprises and the Principle of Public Interest* (OECD Publishing, 2015), emphasizing that insolvency regimes for state-owned enterprises should account for public service obligations and systemic importance, particularly in the financial sector, to avoid value-destructive liquidation of economically viable but temporarily illiquid entities.

[15] M. Hadi Subhan, *Hukum kepailitan: prinsip, norma, dan praktik di peradilan* (Jakarta: Kencana 2009), 134.

still *viable* and only experience *cash flow insolvency*.[16] This is because the economic activities of the debtor are still efficient, but are poorly managed by its management, resulting in a deficit of cash outflows with cash inflows, which causes the debtor to be unable to pay its matured debts. For such debtors, restructuring should be accommodated so that the debtor is able to regain income and stay alive.[17]

In recent years several Indonesian state-owned banks (Persero-type) faced temporary cash-flow squeezes while remaining fundamentally solvent. For example, in September 2025 the government placed Rp200 trillion in special deposits across the five "HIMBARA" state banks to bolster liquidity[18]. Under that program Bank Mandiri, BRI and BNI each received Rp55 trillion, BTN Rp25 trillion and the state Islamic bank BSI Rp10 trillion[19]. Bank executives emphasized these were prudential liquidity measures, not signs of insolvency. The funds "will strengthen BRI's liquidity" and enable more lending to priority sectors. BNI's Corporate Secretary Okki Rushartomo likewise noted that with the Rp55 trillion injection, BNI's "financing capacity will become larger" for productive sectors[20]. In each case the banks' capital positions remained strong (e.g. regulatory capital ratios well above minimums) and their assets still exceeded liabilities; they simply needed more cash to honour incoming credit demands. In short, these state banks had *liquidity shortages* but no balance-sheet insolvency – the government support and active OJK supervision helped them avoid bankruptcy. Other smaller examples exist. For instance, in 2024 OJK placed dozens of troubled rural banks under "rehabilitation" status for failing capital or liquidity metrics, then oversaw mergers or liquidations before insolvency worsened.[21] In each case OJK's action hinged

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[16] This is similar to the legal considerations of the Judges of Judicial Review in Decision No. 024PK/N/1999, which is described as follows:
"*The potential and prospects of the debtor's business must also be considered properly. If the debtor still has potential and prospects, so that it is a bud that can still develop, it should still be given the opportunity to live and develop. Therefore, the imposition of bankruptcy is the ultimum remidium."*

[17] Subhan, *Hukum kepailitan: prinsip, norma, dan praktik di peradilan,* 203.

[18]https://www.ayobatang.com/umum/3715939892/likuiditas-bri-makin-kuat-pemerintah-percayakan-dana-rp55-triliun, accessed 24 October 2025.

[19]https://keuangan.kontan.co.id/news/btn-optimistis-penempatan-dana-pemerintah-rp-25-triliun-bisa-terserap-optimal, accessed 23 October 2025.

[20]https://mediaindonesia.com/ekonomi/811083/dapat-rp55-triliun-dari-pemerintah-bni-salurkan-ke-umkm-dan-sektor-produktif, accessed 23 October 2025.

[21] https://finance.detik.com/moneter/d-8104913/ojk-cabut-izin-usaha-bpr-syariah-gayo-ini-alasannya, accessed 24 October 2025.

on risk indicators (see below), and any capital shortfalls were ultimately covered (e.g. by shareholders or LPS), preserving positive net worth.

Restructuring can be done either without involving the court, or vice versa, namely with the participation of the court, which is usually called the Debt Payment Obligation Delay Application (PKPU).[22] One form of restructuring without court intervention is credit restructuring, which in practice is often used in the banking sector, which only involves the customer as a debtor with the bank, and utilizes agreements and agreements between the parties.[23] However, in relation to internal legal protection, it is more appropriate if the restructuring is interpreted as a restructuring carried out without the participation of the court, which is similar in nature and example to credit restructuring in banking practice.

Restructuring through PKPU although the existence of a peace proposal as the core of PKPU reflects the principle of freedom of contract and is in the form of an agreement that must be agreed upon by the debtor and creditors, but in order for the agreed peace proposal to bind the parties and cause legal consequences for the parties, it must go through the homologation procedure by the Commercial Court.[24] Because it must be homologated by the Commercial Court, there is a possibility that if the debtor and creditor have agreed on a peace proposal, but it turns out that the Commercial Court did not homologate the peace proposal,[25] so it can be understood that the creation of legal protection for the parties is through the

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[22] Hasdi Hariyadi, Debt Restructuring as an Effort to Prevent Bankruptcy in Limited Liability Companies. *Journal of Law*, 1(2), 119-135. https://jurnal.penerbitsign.com/index.php/sjh/article/view/v1n2-119-135.

[23] Sutan Remy Sjahdeini, *Hukum Kepailitan : Memahami Undang-Undang No.37 Tahun 2004 Tentang Kepailitan*, (Jakarta: Pustaka Utama Grafiti, 2009), 173.

[24] Susanti Adi Nugroho, *Hukum Kepailitan Di Indonesia: Dalam Teori dan Praktik Serta Penerapan Hukumnya* (Prenadamedia Grup, 2018), 298.

[25] Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. State Gazette of the Republic of Indonesia Year 2004 Number 131. Supplement to State Gazette Number 4443. Article 285 paragraph (2) of Law No. 37 of 2004 concerning Bankruptcy and PKPU, reads as follows:

*"a. The debtor's assets, including property for which the right to withhold property is exercised, are substantially greater than the amount agreed in the settlement;*

*b. the implementation of the peace is not sufficiently secured;*

*c. the settlement was reached through fraud or collusion with one or more Creditors or through the use of other dishonest means and regardless of whether the debtor or other parties co-operated to achieve this; and/or*

*d. compensation for services and expenses incurred by experts and administrators have not been paid or no guarantee has been given for their payment."*

homologation of the Commercial Court[26] and not the agreement of the parties, which is not in accordance with the elements of internal legal protection, which bases the creation of legal protection through the agreement of the parties.

Restructuring in addition to preventing debtors who experience *cash flow insolvency* and are still *viable* from being declared bankrupt, will indirectly prevent the company from being dissolved, liquidated, and terminated its legal entity existence, because without bankruptcy for the company, insolvency will not occur (keep in mind, the determination of insolvency is carried out after the debtor company is declared bankrupt), meaning that the provisions of Article 142 paragraph (1) letter e of the PT Law as an opening way for the process of terminating the company's existence will not accommodate the elements of circumstances that result in the dissolution of the company. Companies that experience *cash flow insolvency* and are still *viable* can continue their business activities and continue to contribute to the development of the national economy.

However, it is important to note that restructuring is based on an agreement that must be agreed upon by the parties (debtor and creditor). Sometimes a debtor who is experiencing *cash flow insolvency* and is still *viable* has made a good faith offer to restructure his debts to his creditors, but the offer is not agreed upon by his creditors, especially if those who do not agree are creditors whose portion of receivables is minimal compared to the portion of receivables of other creditors, where in addition to harming the interests of the debtor, it also harms the interests of other creditors, especially those with a larger portion of their receivables.[27] Such creditors also have an interest in the company's debtors continuing to operate and not being liquidated, because the fulfilment of their debts will be more optimal than if the company is liquidated.

Against the potential of creditors with a minimal portion of receivables who deliberately do not agree to the proposed payment offer because their goal is to bankrupt their debtor, external legal protection is needed here, in the form of regulations made by the government. Specifically, the government can formulate a minimum amount of debt that

[26] This is what distinguishes peace in bankruptcy from peace in HIR/RBg, because peace in bankruptcy has the intervention of the Commercial Court and can be assessed by the Commercial Court.

[27] The disadvantage is in the case of creditors with a minimal portion of receivables, if they do not agree to the payment offer proposed by their debtors, then these creditors can file a bankruptcy petition against their debtors, because UUK-PKPU does not require a minimum amount of debt as a basis for filing a bankruptcy petition.

can be used as a basis for filing a bankruptcy petition. In fact, this issue has been addressed in the preparation of an academic paper related to the amendment of UUK-PKPU.[28] If there is a regulation regarding the minimum amount of debt that can be used as a basis for filing a bankruptcy petition, then this will be able to better protect the interests of debtors and creditors, so that restructuring efforts made by debtors can prevent debtors from bankruptcy and creditors with a minimal portion of receivables will indirectly be directed to resolve their debts through restructuring, in the form of *rescheduling* or *reconditioning*.

There is also the potential for creditors to deliberately reject restructuring offers from debtors, due to business competition between the two, so that creditors have an interest in making the debtor bankrupt.[29] It can be seen here that restructuring efforts, which are expected to be a legal protection for debtors who are still *viable* and experiencing *cash flow insolvency*, are not as expected, because creditors often take advantage of their higher *bargaining power* than debtors, so that restructuring is not achieved or implementation fails in the middle of the road, which ultimately results in the debtor being declared bankrupt.

To overcome the above problems, external legal protection is needed, in the form of making changes to Article 8 paragraph (4) of the UUK-PKPU[30] , these changes are in the form of not imperatively requiring Commercial Court judges to grant the submitted bankruptcy declaration, even though Article 2 paragraph (1) of the UUK-PKPU has been proven simply, because Article 8 paragraph (4) of the UUK-PKPU limits the judge's authority to make considerations in deciding the debtor's bankruptcy.[31] By

[28] There is a proposal to set the minimum application value to Rp 500,000,000 (five hundred million rupiah) per application

[29] Hasdi Hariyadi, Debt Restructuring as an Effort to Prevent Bankruptcy in Limited Liability Companies. *Journal of Law*, 1(2), 119-135. https://jurnal.penerbitsign.com/index.php/sjh/article/view/v1n2-119-135.

[30] Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. State Gazette of the Republic of Indonesia Year 2004 Number 131. Supplement to State Gazette Number 4443. Article 8 paragraph (4) of Law No. 37 of 2004 concerning Bankruptcy and PKPU, reads as follows:
*'(4) An application for a declaration of bankruptcy must be granted if there are facts or circumstances that are proven simply that the requirements for a declaration of bankruptcy as referred to in Article 2 paragraph (1) have been fulfilled'*.

[31] Pirena Putri, Revita and Endang Prasetyawati., The Urgency of Setting the Minimum Debt Principle as a Condition of Bankruptcy for Debtors. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3(1), 507-517. https://bureaucracy.gapenas-publisher.org/index.php/home/article/view/197.

making changes, this aims to provide more space for judges to be able to consider the debtor's financial condition or ratio, so that in the event that there are creditors who are in bad faith, by taking advantage of bankruptcy institutions to deliberately bankrupt debtors who experience *cash flow insolvency* and are still *viable* as a result of business competition, such potential can be minimized. Not only that, but the judge can also order restructuring efforts to settle debts and receivables between the two parties.

In addition, restructuring may not occur or not reach an agreement, due to errors or omissions from debtors who experience *cash flow insolvency* and are still *viable*. Restructuring does not occur because the debtor does not respond in good faith when the creditor has taken the initiative to hold a meeting to negotiate payment plans that benefit both parties (usually this meeting plan is included in the summons sent by the creditor to the debtor), even though the implementation of restructuring is very important for debtors who experience *cash flow insolvency* and are still *viable*. Meanwhile, restructuring does not meet an agreement, either because during the negotiation process, the debtor proposes a payment offer that does not protect creditors, or there is negligence from debtors who experience *cash flow insolvency* and are still *viable* to provide assurance of the fulfilment of the proposed payment offer.

Through the obstacles encountered in the restructuring implementation effort, it resulted in debtors, especially debtors who experienced *cash flow insolvency* and were still *viable*, not being able to take maximum advantage of the restructuring as legal protection, which in the end, the debtor was bankrupted and was in a state of insolvency because it fulfilled Article 178 paragraph (1) of UUK-PKPU, which means that at the same time the company has been in the status of a company "in liquidation" so that there are no provisions or circumstances that can stop the process of dissolution, liquidation, leading to the revocation of the existence of the company's legal entity. This also further proves that there are several weaknesses in the UUK-PKPU arrangement and also as a reinforcement if the bankrupt and insolvent company is not necessarily the company that factually experiences *balance sheet insolvency* and is not prospective, so it is not feasible if the bankrupt and insolvent company is automatically faced with a state of dissolution, liquidation, and termination of the existence of a legal entity.

BUMN Bank in the form of Persero as a *recht persoon* can be clearly interpreted through the process of establishment and termination of its existence as a legal entity that cannot be separated from the provisions of

Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law). Through the definition of a limited liability company which is expressly stated in Article 1 number 1 of the PT Law[32], it can be seen that the establishment of a limited liability company must fulfil the provisions stipulated in the PT Law and its implementing regulations, not only that, so that a limited liability company can hold the status of a legal subject besides humans (*natuurlijke persoon*), the company's deed of establishment must be ratified by the state, which in this case is represented by the Minister of Law and Human Rights and the limited liability company holds the status of a legal entity since the issuance of the Decree of the Minister of Law and Human Rights concerning the Ratification of the Company's Legal Entity.[33] This shows that the birth or establishment process of a limited liability company must go through a predetermined legal step or process.

Not much different from the birth process (in this case the establishment) of a limited liability company, the cessation of the existence of a limited liability company must also go through a legal step or process that has been expressly regulated through Chapter X of the Company Law on Dissolution, Liquidation, and Termination of the Status of a Company Legal Entity.[34] When described, the death of a limited liability company as a legal entity must go through 3 (three) processes that are interconnected with each other to form an integrated whole, namely dissolution, liquidation, and termination of the status of a limited liability company. Without one of the three processes, there will be no termination of the status of a limited

[32] Law of the Republic of Indonesia Number 40 Year 2007 on Limited Liability Companies. State Gazette of the Republic of Indonesia Year 2007 Number 106. Supplement to State Gazette Number 4756. Article 1 number 1 of Law No. 40 of 2007 on Limited Liability Companies reads as follows:

*'A Limited Liability Company, hereinafter referred to as a Company, is a legal entity constituting an alliance of capital, established by agreement, conducting business activities with authorised capital which is entirely divided into shares and fulfils the requirements set out in this Law and its implementing regulations.'*

[33] Law of the Republic of Indonesia Number 40 Year 2007 on Limited Liability Companies. State Gazette of the Republic of Indonesia Year 2007 Number 106. Supplement to State Gazette Number 4756. Article 7 paragraph (4) of Law No. 40 of 2007 on Limited Liability Companies reads as follows:

*'The Company obtained the status of a legal entity on the date of issuance of the Decree of the Minister of Law regarding the legalisation of the Company's legal entity'*

[34] Priscila Patricia Yosephin, Juridical Analysis of the Dissolution of a Non-Operating Limited Liability Company (PT). *Recital Review*, 3(2), 2021, 314-330. https://online-journal.unja.ac.id/RR/article/view/15290/12520. .

liability company, which means that each of these processes, apart from being related to each other, also stands on its own, the liquidation phase cannot be equated with the dissolution phase, as well as the dissolution phase cannot be equated with the termination of the status of the company's legal entity.[35]

The Company Law does not regulate the definition of dissolution, liquidation, and termination of legal entity status, resulting in many mistakes in understanding the process of death of a limited liability company.[36] One example is through the definition and process of liquidation which is equated with the dissolution of the company, whereas liquidation is not always a result of dissolution, but can also be a result of bankruptcy. Then the liquidation process is only accommodated after being preceded by the dissolution of a limited liability company, this proves that the dissolution and liquidation processes are 2 (two) different processes.[37] Even Article 1 point 14 of PP No. 45 of 2005 concerning the Establishment, Management, Supervision, and Dissolution of BUMN, basically equates the term dissolution with the termination of a PERSERO.[38] Whereas when examined from the provisions of the PT Law, especially Article 143 paragraph (1) of the PT Law, it is clear that dissolution does not touch the status of a limited liability company legal entity, so dissolution cannot be equated with termination.

Dissolution is more appropriate when defined as a process that aims to stop the business activities of the company and as a basis for conducting liquidation actions that lead to the disappearance of the company's legal entity status.[39] There are 2 (two) things behind the dissolution of the company, namely due to the voluntary process and due to external circumstances. The voluntary process here refers to the dissolution of a limited liability company due to the decision of the GMS or the expiration of

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[35] Andhika Prayoga, *Solusi Hukum Ketika Bisnis Terancam Pailit Bangkrut* (Jakarta: Pustaka Yustisia, 2014), 3.

[36] Rudhi Prasetya*, Limited Liability Company Theory and Practice,* (Jakarta: Sinar Grafika, 2021), 161.

[37] Article 142 paragraph (2) letter a of Law No. 40 of 2007 concerning Limited Liability Companies.

[38] Government Regulation of the Republic of Indonesia Number 45 of 2005 concerning Establishment, Management, Supervision, and Dissolution of State-Owned Enterprises. State Gazette of the Republic of Indonesia Year 2005, Number 117. Supplement to State Gazette Number 4556. Article 1 number 14 reads: *'Dissolution is the termination of Persero or Perum which is determined by government regulation'*

[39] Prayoga, *Solusi Hukum Ketika Bisnis Terancam Pailit,* 12.

its term, while the external circumstances refer to a court decision or stipulation.[40] The circumstances that result in the dissolution of a limited liability company have been expressly and imitatively regulated in Article 142 paragraph (1) of the Company Law.

One of the circumstances that causes the company to be dissolved is that the company has become bankrupt and insolvent in accordance with the provisions stipulated in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as UUK-PKPU).[41] There is no provision of the PT Law that defines or regulates the insolvency situation that causes the company to be dissolved, so the regulation (insolvency regulation) refers to the provisions of Article 178 paragraph (1) of UUK-PKPU. Meanwhile, the party who conducts liquidation in the state of PT bankruptcy and insolvency is not the liquidator but the curator who has been appointed in the bankruptcy declaration decision. The curator will be supervised by the Supervisory Judge.[42] Dissolution because the company has been in a state of insolvency must refer to 2 (two) provisions, namely UUK-PKPU (insofar as it concerns the process of administration or liquidation, as a result of the company's previous state of insolvency) and the PT Law (insofar as it relates to the course of administration and announcement of the dissolution of the company along with the process of terminating the existence of the company's legal entity, because UUK-PKPU does not regulate the process of terminating the existence of a bankrupt company).[43]

If Article 142 paragraph (1) letter e of UU PT is elaborated, there are 2 (two) elements of circumstances that must first be fulfilled, before the company is in a state of dissolution, namely corporate bankruptcy (henceforth referring to limited liability companies) and insolvency. Discussing corporate bankruptcy, UUK-PKPU does not distinguish bankruptcy procedures or provisions for individual debtors and corporate debtors, this results in corporations being easier to declare bankruptcy,[44]

[40] Andhika Prayoga and Muhammad Sya'roni Rofii, Dissolution of Limited Liability Companies by the Attorney as an Effort to Strengthen National Resilience. *Scientific Journal of Law Enforcement*, 7(1), 78-87. https://mail.ojs.uma.ac.id/index.php/gakkum/article/view/3432 .

[41] Article 142 paragraph (1) letter e of Law No. 40 of 2007 concerning Limited Liability Companies.

[42] Article 152 paragraph (2) of Law No. 40 of 2007 on Limited Liability Companies.

[43] Prayoga, *Solusi Hukum Ketika Bisnis Terancam Pailit Bangkrut* , 101.

[44] Creditors can easily bankrupt a company and under the UUK-PKPU, even a small creditor can bankrupt a large company. In addition, if the debtor (company) has just 1

because the provisions of bankruptcy arrangements for corporations are basically different from individual bankruptcy.[45] One of the differences lies in the authority of the limited liability company organ that does not disappear even though the company has been bankrupted as stated in the explanation of Article 24 paragraph (1) UUK-PKPU, the limited liability company organ is still functioning, except in the implementation of these functions related to or related to the limited liability company's assets, then in carrying out these functions, it must obtain approval from the curator.[46]

Article 2 paragraph (1) of the UUK-PKPU, which regulates the requirements for filing a bankruptcy petition, only focuses on the quantity of creditors and not the quality of creditors, because without a minimum requirement for the amount of debt to be used as the basis for a bankruptcy petition, minority creditors who have a lower amount of debt than other creditors (majority creditors),[47] on the basis that their debts have matured and have not been paid in full by the debtor, making their minimal debt can be used as a basis for filing a bankruptcy petition.[48] UUK-PKPU does not require the debtor to be in a state of insolvency in order to be declared bankrupt, so it is possible for a debtor to be declared bankrupt because it fulfils Article 2 paragraph (1) of UUK-PKPU, but factually the company's assets are still greater when compared to its liabilities.[49] It is understandable if the provisions of Article 2 paragraph (1) UUK-PKPU do not provide protection to debtors who only experience *cash flow insolvency* or are still *solvable* and *viable* from the bankruptcy of the debtor.

The company being declared bankrupt does not result in the company being in a state of dissolution, because the company must first fulfil the state of insolvency which will result in the dissolution of the company. It has been previously stated that the state of insolvency refers to Article 178 paragraph (1) of UUK-PKPU. In short, UUK-PKPU places insolvency after the debtor

(one) day to pay the debt to the creditor, the creditor can file for bankruptcy. This is very risky and dangerous for the business continuity of the company. 2 (two) creditors whose debts have been paid by the debtor can be their condition for bankrupting the company.

[45] Asra, *Key Concept Kepailitan Korporasi* (Jakarta: Prenadamedia Grup, 2024), 7.

[46] Elyta Ras Ginting, *Hukum Kepailitan : Teori Kepailitan*, (Jakarta: Sinar Grafika, 2018), 253. 253.

[47] Majority creditors are those creditors holding the majority of receivables.

[48] Sjahdeini, *Hukum Kepailitan : Memahami Undang-Undang No.37 Tahun 2004 Tentang Kepailitan*, 106.

[49] Retnaningsih, Sonyendah, Legal Protection of Individual Bankrupt Debtors in the Resolution of Bankruptcy Cases in Indonesia. *Journal of Civil Procedure Law*, 3(1), https://www.jhaper.org/index.php/JHAPER/article/view/41/48, 5.

is declared bankrupt, then the determination of the state of insolvency is not based on financial statements or a comparison of the ratio of debts and assets of the debtor, but only based on the existence of a peace proposal proposed by the debtor (which if not submitted until the end of the receivables matching meeting, The UUK-PKPU does not recognize *cash flow insolvency* and *balance sheet insolvency*, even though each type of debt payment difficulty has a different solution.

Therefore, it can be understood, if a debtor (in this case referring to a limited liability company debtor) is in a state of insolvency, it does not necessarily give an assessment if the debtor has been in a state of being unable to pay debts to its creditors and the ratio of debts is greater than its assets, on the contrary, it is very likely that the debtor factually still has prospects and the ratio of its assets is still greater than its debts, but because it meets the requirements of Article 2 paragraph (1) and Article 178 paragraph (1) of the UUK-PKPU, the debtor is in bankruptcy and insolvency by law.[50] The provisions regarding insolvency in UUK-PKPU have the same weaknesses as the provisions of Article 2 paragraph (1) of UUK-PKPU, these weaknesses include the absence of protection for debtors who still have prospects (*viable*) and only experience *cash flow insolvency* or are still *solvable* from the insolvency of the debtor. Article 2 paragraph (1) of UUK-PKPU and the determination of insolvency are both far from the approach of economics and business practice. This will result in the abuse of the bankruptcy institution by creditors who are not in good faith.

A company that is declared bankrupt and insolvent does not indicate that the company has experienced *balance sheet insolvency* and it is even possible that the company (referring to the company declared bankrupt and insolvent), factually only experiences *cash flow insolvency*. With UUK-PKPU which does not always indicate that bankrupt and insolvent debtors have experienced *balance sheet insolvency*, the PT Law is faced with a state of dissolution as stipulated in Article 142 paragraph (1) letter e of the PT Law, where the state of dissolution aims to stop the business activities of the company and become the basis for conducting liquidation, as if the company that has been bankrupt and insolvent has been in a state of *balance sheet insolvency* so that it deserves dissolution.[51] Whereas UUK-PKPU does not

[50] Ginting, *Hukum Kepailitan: Teori Kepailitan*, 262.

[51] The provisions regarding *insolvency* in UUK-PKPU do not describe the debtor as being in a state of *balance sheet insolvency* because it is only based on the circumstances regulated in Article 178 paragraph (1) of UUK-PKPU, allowing debtors who are still *solvable* and *viable*

distinguish whether the company will experience *balance sheet insolvency* or *cash flow insolvency* to determine bankrupt and insolvent companies, so this will be very detrimental to corporate debtors who experience *cash flow insolvency* and are still *viable* because the corporate debtors must stop their business activities due to entering a state of dissolution, even though the business activities of the company still have prospects. [52]

Debtor companies that experience *balance sheet insolvency* or debts greater than their assets, in order to protect the interests of creditors and keep the assets of debtor companies from getting minimal, then the debtor companies (which experience *balance sheet insolvency*) are carried out to stop business activities.[53] This construction is brought by Article 142 paragraph (1) letter e of UU PT. This construction does not see the determination of bankruptcy and insolvency from UUK-PKPU which is far from the approach of economics and business practices, even UUK-PKPU does not recognize *balance sheet insolvency* and *cash flow insolvency*. If the determination of bankruptcy and insolvency in UUK-PKPU has explicitly determined that bankrupt and insolvent corporate debtors are debtors who are experiencing *balance sheet insolvency*, then the state of dissolution for the corporate debtor is a feasible situation and the last option or *ultimum remidium*, even the best option that can be applied to the condition of the corporate debtor. But if on the contrary, namely a bankrupt and insolvent corporate debtor there is still the possibility of experiencing *cash flow insolvency* but because it fulfils the legal provisions resulting in the debtor being in a state of bankruptcy and insolvency, by being faced with a condition of dissolution, it is not feasible, because dissolution or termination of business activities should be the *ultimum remidium* or the last option.

Article 142 paragraph (1) letter e of the Company Law is the result of a revision of the previous provision, namely Article 117 paragraph (1) letter c of Law No. 1 of 1995 concerning Limited Liability Companies. The

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to be declared insolvent. Where this is not in accordance with the direction of the regulation of the dissolution of a PT for reasons of *insolvency* in Article 142 paragraph (1) letter e of the PT Law, because the *insolvency* referred to in the PT Law tends to accommodate the principle of *balance sheet insolvency* because once the company is bankrupt and insolvent, the PT Law regulates that the debtor is automatically in a state of dissolution. Or it can be interpreted that the PT Law considers that debtors who are bankrupt and insolvent are debtors who experience *balance sheet insolvency* so that the PT Law provides an automatic state of dissolution since they are in a state of insolvency.

[52] Prayoga, *Hukum Kepailitan : Teori Kepailitan*, 98.

[53] Elyta Ras Ginting, *Hukum Kepailitan: Rapat-Rapat Kreditor,* (Jakarta: Sinar Grafika, 2018), 180.

difference lies in when the company is in a state of dissolution due to bankruptcy and insolvency. When referring to Article 142 paragraph (1) letter e of UU PT, the company will be in a state of dissolution, since the limited liability company that has been declared bankrupt by law fulfils one of the conditions as stipulated in Article 178 paragraph (1) of UUK-PKPU. Whereas in Article 117 paragraph (1) letter c of Law No. 1 of 1995 concerning Limited Liability Companies, the company will be in a state of dissolution, in addition to having to fulfil the conditions of bankruptcy and insolvency, it is also required that there is a request for dissolution of the company from one of its creditors to the District Court. It can be concluded that the regulation of dissolution in the Company Law is automatically applicable since bankruptcy and insolvency, while in Article 117 paragraph (1) letter c of Law No. 1 of 1995 an application is required first.

Being in a state of dissolution automatically since *insolvency*, this makes bankrupt and insolvent company debtors who only experience *cash flow insolvency*[54] and are still *viable* have no other choice but to enter a state of dissolution, even though when examined more deeply it is not feasible for the company debtor to be dissolved. If the company has fulfilled the conditions of dissolution as stipulated in Article 142 paragraph (1) of the Company Law, then there are no provisions or circumstances that can stop the process of terminating the existence of the company's legal entity until the revocation of the company's legal entity status by the Minister of Law and Human Rights.[55] Which means that the status of the company "in liquidation" cannot be revoked.[56]

The provisions of the two articles are imperative, because there is the word 'wajib' in the formulation and the provisions regarding the consequences of dissolution here are general, in the sense that whatever the circumstances behind the dissolution (as stipulated in Article 142 paragraph (1) of the PT Law) are faced with the same consequences, namely that the company must be liquidated and the company cannot perform legal acts unless the legal acts are carried out in order to support the liquidation process. In the event of dissolution, the company's obligations to third parties do not necessarily disappear, the company is still obliged to fulfil its

[54] Because this possibility is very large, because as previously explained, if UUK-PKPU does not determine whether the debtor is experiencing *balance sheet insolvency* or *cash flow insolvency*, because the determination of insolvency is by law, namely referring to Article 178 paragraph (1) UUK-PKPU.

[55] Prayoga, *Hukum Kepailitan: Teori Kepailitan*, 137.

[56] Subhan, *Hukum kepailitan: prinsip, norma, dan praktik di peradilan*, 200.

obligations to third parties, therefore in order to fulfil obligations to third parties, a process called liquidation is accommodated, because the liquidation process here is defined as the process of disbursing the company's assets into cash or *liquid* assets either by means of public sales (auction) or sales under the hand, where the proceeds of the disbursement are distributed to fulfil obligations to its creditors. [57]

Companies that are dissolved because they are in a state of bankruptcy and insolvency, in the liquidation process refer to the provisions of UUK-PKPU, because the Company Law only regulates liquidation procedures for PTs that are dissolved due to circumstances outside bankruptcy.[58] UUK-PKPU does not recognize the term liquidation, but the definition of liquidation that has been described previously has the same meaning as the definition of dissolution as stipulated in the explanation of Article 16 paragraph (1) of UUK-PKPU.[59] Before the curator conducts liquidation, the curator must first fulfil the administration of the dissolution of the company, namely within a period of 30 (thirty) days from the occurrence of the state of dissolution, the curator must announce the dissolution of the limited liability company along with the reasons and other matters that must be contained in the announcement of the dissolution to be announced in a national newspaper and the State Gazette of the Republic of Indonesia (BNRI). Evidence of the announcement is then submitted to the Minister of Law and Human Rights. Failure of the curator to perform these administrative obligations will result in the dissolution not being valid for third parties.[60] It is understandable if in addition to the curator acting to conduct the administration, the curator also acts to terminate the existence of a limited liability company.[61]

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[57] Paula, Responsibility of Limited Liability Company in Liquidation. *Journal of Kenotariatan Law Science, Faculty of Law, Padjadjaran* University. 4(2), pp. 332-349. https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/595, 335.

[58] Ginting, *Hukum Kepailitan: Teori Kepailitan*, 230.

[59] What is meant by "pemberesan" in this provision is the disposal of assets to pay or settle debts.

[60] Paula, Responsibility of Limited Liability Company in Liquidation. *Journal of Kenotariatan Law Science, Faculty of Law, Padjadjaran* University. 4(2), pp. 332-349. https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/595.

[61] The announcement of the dissolution of the company, which must be made by the curator, means that the liquidation process is not only for bankruptcy purposes, but also relates to the process of terminating the existence of a limited liability company, which begins with the dissolution, liquidation, and termination of the existence of a limited liability company.

Between Article 142 paragraph (2) letter a and Article 142 paragraph (2) letter b are connected by the word 'and', which indicates a cumulative nature, which means that the provisions of both cannot be separated from one another, in the sense that if there is liquidation, it will also result in the company only being able to carry out legal acts in the context of liquidation.[62] To find out the legal actions that can be carried out by the company, as referred to by Article 142 paragraph (2) letter b of the PT Law, must be connected to the provisions of Article 149 paragraph (1) of the PT Law.[63] But what needs to be noted, Article 149 paragraph (1) of the PT Law, only applies if the dissolution of the company occurs due to circumstances outside of bankruptcy and insolvency. The liquidation process stipulated in Article 149 paragraph (1) of the PT Law is different from the liquidation process known in bankruptcy. The liquidation process in UU PT, in fact, also includes recording and collecting the company's assets, whereas in the bankruptcy process, recording and collecting the company's assets are included in the management process. This is because in the bankruptcy process, liquidation only covers the sale of assets and their distribution to creditors. It can be understood here, although when viewed from the angle of the bankruptcy process, it turns out that there are still elements of management in the liquidation process according to Article 149 paragraph (1) of the PT Law, but the management is only limited in nature, namely the collection and recording of the company's assets.

Whereas in the case of a company dissolved due to bankruptcy and insolvency, the task of the curator is facilitated and summarized, because in a situation outside of bankruptcy and insolvency, the liquidator still has to collect and record assets, while for the curator, the task of collecting and recording has been carried out since the company was in a state of

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[62] Maria Farida Indrati, *Ilmu Perundang-undangan 1: Jenis, Fungsi, dan Materi Muatan*, (Yogyakarta: Kanisius, 2020), 220.

[63] Law of the Republic of Indonesia Number 40 Year 2007 on Limited Liability Companies. State Gazette of the Republic of Indonesia Year 2007 Number 106. Supplement to State Gazette Number 4756. Article 149 paragraph (1) of the Limited Liability Company Law reads as follows:

*'(1) The liquidator's obligations in administering the assets of the Company in the liquidation process shall include implementation:*

*a. recording and collecting the Company's assets and debts.*

*b. the announcement in the Newspaper and the State Gazette of the Republic of Indonesia of the plan to distribute the liquidation proceeds.*

*c. payments to creditors.*

*d. payment of the remaining assets of the liquidation proceeds to shareholders; and*

*e. other actions that need to be taken in the implementation of the administration of assets.'*

bankruptcy as a form of action for the management of bankruptcy assets, So that when the company is insolvent, at the same time the company is in a state of dissolution, which results in the company being unable to carry out business activities for any reason, the curator has been able to sell the company's assets that have been collected and recorded and distribute the proceeds to its creditors, because the provisions of Article 184 paragraph (1) UUK-PKPU have indirectly been fulfilled.[64]

It can be understood, if the dissolution is motivated by bankruptcy and insolvency, then Article 142 paragraph (2) letter b of the PT Law which regulates, the excluded legal actions that can be carried out by a dissolved limited liability company is to carry out actions in the context of the arrangement, then the curator in this case only remains to sell or dispose of assets that have been managed since the company was declared bankrupt and distribute the results of the arrangement. Therefore, there is an argument, if bankruptcy accelerates the process of terminating the existence of a limited liability company, because the curator has first carried out management, since the company was declared bankrupt, so that when the company is in a state of dissolution, the curator only performs the act of arrangement or liquidation, which refers to the sale or disposal and distribution of assets, in accordance with the provisions of Article 142 paragraph (2) letter b of the PT Law.

This result, when connected to the problem of bankrupt and insolvent companies, does not necessarily mean that companies that have experienced *balance sheet insolvency* will result in losses for bankrupt and insolvent company debtors who only experience *cash flow insolvency* and are still *viable*, because in addition to the company having to stop its business activities (dissolved), the company is also obliged to liquidate its assets and can only carry out legal actions in the context of liquidation. This result not only proves the series of losses (starting from being bankrupted, declared insolvent, dissolved, and liquidated) experienced by bankrupt and insolvent corporate debtors who only experience *cash flow insolvency* and are still *viable, but* also further indicates

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[64] Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. State Gazette of the Republic of Indonesia Year 2004 Number 131. Supplement to State Gazette Number 4443. Article 184 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU, reads as follows:
*'(1) Subject to the provisions of Article 15 Paragraph (1), the curator shall commence the administration and sell all bankruptcy assets without the need to obtain the debtor's consent or assistance if:*
*a. the proposal to manage the debtor company was not submitted within the period as stipulated in this Law, or the proposal was submitted but rejected; or*
*b. the management of the debtor company is terminated.'*

that the provisions of Article 142 paragraph (1) letter e Jo. Article 142 paragraph (2) of the PT Law generalizes that a bankrupt and insolvent company is a company that has obviously experienced *balance sheet insolvency*.

The Financial Services Authority (OJK) is mandated by law to supervise banks and pre-empt failures. Under the OJK Law (UU No.21/2011, as amended) and the Banking Law (UU No.10/1998, as amended), OJK has broad authority to assign banks' health ratings and compel corrective action. Bank regulations (e.g. POJK 15/2017 for commercial banks and POJK 28/2023 for rural banks) explicitly allow OJK to designate a troubled bank as "under rehabilitation" or "Special Surveillances," and require turnaround plans. OJK circulators (e.g. SEOJK No.11/2022) set the rating criteria (capital adequacy, asset quality, liquidity, etc.) that trigger supervisory status changes.

In practice, OJK continuously monitors banks' metrics and issues "warning letters" or status changes when risks emerge. A recent case illustrates this closely: PT BPR Dwicahaya Nusaperkasa (a small regional bank) was put under intensive supervision after its capital adequacy (KPMM) fell below 12% and its cash ratio averaged under 5%. OJK formally designated it as "under rehabilitation" on Nov 8, 2024, and gave management time to recapitalize. When the bank failed to fix its capital and liquidity, OJK escalated the status to "under resolution" on July 9, 2025. Ultimately, after LPS intervention, OJK revoked the bank's license on July 24, 2025[65]. Throughout this sequence OJK cited its regulations: it pointed to the sub-12% capital and sub-5% cash ratios as grounds for intervention. Similarly, in late 2024 OJK revoked the license of BPR Syariah Gayo PERSERODA based on persistently low capital and cash ratios[66]. These examples show OJK exercising its legal powers: assigning "unhealthy" status, issuing demands, and if necessary, facilitating resolution or liquidation, before a full-blown insolvency arises. The cited laws (Banking Act and UU OJK) require banks to maintain sound operations and authorize OJK to enforce early warnings. For instance, POJK 15/2017 (Bank Umum) and POJK 28/2023 (BPR) empower OJK to order recapitalizations, changes in management, or mergers for undercapitalized banks. When those steps fail, OJK can elevate the bank to "resolution" and involve the Deposit Insurance Corporation (LPS).

[65] https://keuangan.kontan.co.id/news/ojk-cabut-izin-usaha-bpr-dwicahaya-nusaperkasa, accessed 23 October 2025.

[66] https://finance.detik.com/moneter/d-8104913/ojk-cabut-izin-usaha-bpr-syariah-gayo-ini-alasannya, accessed 23 October 2025.

**Reconceptualizing Bankruptcy and Insolvency of State-Owned Banks: Bridging the Normative Gap between the UUK–PKPU and the Company Law Regime**

The UUK-PKPU does not regulate the content of the peace proposal, which means that in relation to the peace proposal, it is left to the agreement between creditors and debtors to bargain with each other on how to pay obligations that benefit both parties.[67] Often the rejection or non-homologation of peace proposals is due to formal technical factors. In addition, there is a factor of legal vacuum regarding the assessment of the requirements if the peace proposal is sufficiently secured or not, resulting in different views from the concurrent creditors.[68]

It is understandable that reaching an agreement in a peace proposal is a mission that is not easy to do, therefore accommodating an *on-going concern* action as a last resort that can be done to continue the business of a debtor that still has prospects with the main objective being to increase the value of the bankruptcy estate or benefit its creditors.[69] Through this goal, creditors often prefer to take an *on-going concern* action rather than accept a peace proposal, because it could be that the payment term proposed in the peace proposal is too long when compared to the fulfilment of obligations when the debtor's business is continued through an on-going *concern* action. Then, both the *on-going concern* action and the peace proposal have in common that is to continue the debtor's business that is still prospective, the difference is in the status of the debtor, if the *on-going concern* action, the debtor is still in bankruptcy status and business activities are continued under the control of the curator.

Another effort that can be made by debtors who experience *cash flow insolvency* and are still *viable* is to take advantage of *going concern* actions as regulated in Articles 104, 179 paragraph (1), and 181 paragraph (1) of UUK-PKPU.[70] In short, *ongoing concern* action, also known as continuing business, is an action to save debtors whose business still has prospects, so that their business continues, which aims to obtain better *asset recovery*, where the *asset recovery* will be used to pay the receivables of concurrent creditors who are not secured by any property rights. The purpose of the *on-going concern* action

[67] Ginting, *Hukum Kepailitan: Rapat-Rapat Kreditor,* 150.
[68] Liony Gracia Chrstiani Purba, Criteria for a Sufficiently Guaranteed PKPU Peace Proposal in the Case of KSP Indosurya Cipta. *Trisakti Law Reform.* 4(3), pp. 607-616. https://e-journal.trisakti.ac.id/index.php/refor/article/view/13846.
[69] Ginting, *Hukum Kepailitan: Rapat-Rapat Kreditor,* 190.
[70] Subhan, *Hukum kepailitan: prinsip, norma, dan praktik di peradilan*, 202.

is to increase the value of liquidity, so this is a very important option for concurrent creditors to obtain maximum fulfilment of their obligations from the bankruptcy estate. An *on-going concern* action can be proposed after the debtor has been declared bankrupt (Article 104 UUK-PKPU), after the debtor has become insolvent (Article 179 paragraph (1) UUK-PKPU), or after the debtor has become insolvent as a result of the Supreme Court at the Cassation level not upholding the validation of the peace proposal that has been approved by the Commercial Court at first instance (Article 181 paragraph (1) UUK-PKPU). [71]

The closure of the possibility for corporate debtors who only experience *cash flow insolvency* and are still factually *viable*, but are declared to be in a state of insolvency by law after fulfilling Article 178 paragraph (1) UUK-PKPU, from efforts to act *on going concern*, seems to make corporate debtors forced to be dissolved and end with the elimination of the status of a limited liability company, even though it is not feasible for the corporate debtor to be dissolved. Even though in fact the bankrupt company debtor only experiences *cash flow insolvency* and is still *viable*, the debtor must still stop its business activities (dissolution) and liquidate its assets,[72] which ends with the revocation of the company's legal entity status, this further explains if there is no protection for bankrupt company debtors who only experience *cash flow insolvency* and are still *viable* from the threat of company dissolution. [73]

It is understandable if Article 142 paragraph (1) letter e Jo. Article 142 paragraph (2) of UU PT applies the concept of liquidation,[74] because once the bankrupt company is in a state of insolvency (Article 178 paragraph (1) UUK-PKPU) there is no other way or other efforts accommodated by UU PT other than liquidating the assets of the bankrupt and insolvent company.[75] The concept of liquidation should be used as the *ultimum remidium*, especially by looking at UUK-PKPU which does not determine

[71] Ginting, *Hukum Kepailitan: Rapat-Rapat Kreditor,* 202-203.

[72] This is as a result of there being no provision that can stop the state of dissolution until the PT is abolished by the Minister of Law and Human Rights, which means that, since insolvency, there is no provision that can stop the dissolution, liquidation, and termination of the existence of a limited liability company.

[73] Prayoga, *Hukum Kepailitan: Teori Kepailitan*, 137.

[74] The concept of liquidation is more directed towards maximally fulfilling obligations to creditors as the main goal, without considering efforts to maintain the existence of the company. This is in line with the PT Law that there is no way for a PT that is in the status of a company "in liquidation" other than ending with the revocation of the legal entity status of the PT.

[75] Asra, *Key Concept Kepailitan Korporasi*, 83.

bankruptcy and insolvency from an economic science approach or business practices of the debtor. If the concept of liquidation is only used as the only option without accommodating the concept of *corporate rescue*[76] through *on-going concern* actions as an *exit strategy* in this case is a *premium remidium*, then this will harm the interests of bankrupt company debtors who only experience temporary liquidity difficulties and are still *viable*, because such debtors should be accommodated with *on-going concern* actions that lead to an increase in liquidity value for full payment to concurrent creditors.[77] Companies that are still *viable* if given the opportunity to continue their business, will have an impact on the potential for fulfilling obligations to their creditors in full, inversely if the company is liquidated, it is likely to experience losses as a result of its assets not being sold.[78]

If the dissolution and liquidation process has been carried out, the next phase is the termination of the existence of the company's legal entity, which is marked by the revocation of the company's legal entity status. In brief, the process of terminating the company's legal entity status, because the company is in a state of bankruptcy and insolvency, is carried out by the curator, where the curator first announces the end of bankruptcy[79] in a national newspaper and Berita Negara Republik Indonesia (BNRI). After that, within a period of 30 (thirty) days after the end of bankruptcy is announced, the curator is obliged to conduct accountability to the supervisory judge. The provisions of Article 202 UUK-PKPU are related to the provisions of Article 152 paragraph (2) of the Company Law, both of which regulate the curator's responsibility after the end of the bankruptcy to make an accountability report to the supervisory judge regarding the management and management actions he has taken. [80]

Since the curator's accountability report is accepted by the supervisory judge, the provisions of Article 143 paragraph (1) of the Company Law are

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[76] The concept of *corporate rescue* is intended as a concept to prevent the company from being liquidated, but rather aims to maintain the existence of the company by continuing its business which still has prospects, because in this way, it can protect the interests of creditors, especially so that creditors can obtain full payment through *asset recovery* from the company that continues its business activities.

[77] Asra, *Key Concept Kepailitan Korporasi,* 59.

[78] Serlika Aprita, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (Perspektif Teori)*, (Makassar: Pena Indis, 2016), 275.

[79] The end of bankruptcy here is due to the payment of the full amount of their receivables (creditors) or as soon as the closing distribution list becomes binding. (Article 202 UUK-PKPU).

[80] M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta: Sinar Grafika, 2016), 579-580.

fulfilled.[81] Until this process, the termination of the existence of the company's legal entity is only binding on the internal parties of the company, namely the curator and the supervisory judge. In order for the termination of the existence of the company's legal entity to bind third parties, the curator is obliged to notify the final results of the liquidation process to the Minister of Law and Human Rights and announce the final results of the liquidation process in a national newspaper.[82] Based on the notification, the Minister of Law and Human Rights will record the end of the company's legal entity status, delete the company in the company register, and announce it in the State Gazette of the Republic of Indonesia. Since then, the existence of the company has been erased. [83]

This shows that if the company is bankrupt and insolvent, the end of the company is certain, namely the company will end with the revocation of the company's legal entity status and deletion in the company register. This view, when faced with the condition of a bankrupt and insolvent company debtor, which is most likely factually only experiencing temporary liquidity difficulties and is still *viable*, shows that there is no protection for company debtors who only experience *cash flow insolvency* and are still *viable*, because companies with such conditions should be accommodated by the rehabilitation institution known in UUK-PKPU, to restore the company's condition in the realm of property law so that it can be capable of carrying out legal acts again, through a rehabilitation application to the Commercial Court, so that the *viable* company can resume its business activities.[84]

It is understandable that if a state-owned bank is in the status of a company "in liquidation", apart from there being no effort to act *on going concern*, there is also no effort to rehabilitate. Whereas a company with the status of a company "in liquidation" does not necessarily mean that the company is in a state of *balance sheet insolvency* so that it is suitable for dissolution, liquidation, and termination of the company's legal entity status. By being in a state of dissolution from the time the company fulfils the conditions as stipulated in Article 178 paragraph (1) UUK-PKPU, the interests of the company's debtors who only experience *cash flow insolvency* and are still *viable* are very disadvantaged. On the other hand, if the bankrupt

[81] The dissolution of the Company does not result in the Company losing its legal entity status until the completion of the liquidation and the liquidator's accountability is accepted by the GMS or the court.

[82] Article 152 paragraph (3) of Law No. 40 of 2007 on Limited Liability Companies.

[83] Harahap, *Hukum Perseroan Terbatas*, 581.

[84] Sjahdeini, *Hukum Kepailitan: Memahami Undang-Undang No.37 Tahun 2004 Tentang Kepailitan*, 498.

and insolvent company is not automatically in a state of dissolution, then the company is still open to the possibility of taking *on-going concern* actions which can later increase the value of liquidity and lead to the maximum fulfilment of receivables from concurrent creditors, where the debtor company will be very possible to rehabilitate and operate normally. This construction should be brought by the PT Law in the face of bankruptcy and insolvency provisions of the UUK-PKPU, which do not signify if the bankrupt and insolvent company is a company that experiences *balance sheet insolvency*.

Indonesia's insolvency framework under UUK-PKPU does not differentiate between *cash-flow insolvency* and *balance-sheet insolvency*. As a result, even solvent yet illiquid SOEs risk dissolution once declared bankrupt. This contrasts sharply with modern jurisdictions where regulators distinguish between liquidity distress and economic insolvency, and where *bank-resolution mechanisms* prevent premature liquidation.

**Table.** Comparative Perspectives on Bank Insolvency Stimuli and Resolution Tools between Indonesia and the EU.

| **Category** | Indonesia (Bankruptcy Law & Company Law) | European Union (Bank Recovery and Resolution Directive 2014/59/EU) |
|---|---|---|
| **Insolvency Trigger** | Procedural "inability to pay" test (Article 2(1) of Bankruptcy Law) | Economic viability test and "failing or likely to fail" assessment |
| **Institutional Competence** | Commercial Court with reactive authority after default | Single Resolution Board / European Central Bank with preventive intervention authority |
| **Resolution Tool** | Liquidation under Company Law, Article 142 (e) | Recovery, resolution, or trudge-bank tools applied prior to liquidation |
| **Supervisory Approach** | OJK conducts oversight without a statutory rescue mandate | EU-level crisis management with early-intervention powers |

Sources: Processed by the Author, 2025.

The United Kingdom clearly separates the two insolvency tests under the *Insolvency Act 1986*, s. 123. The *cash-flow test* concerns the inability to pay debts

when due, whereas the *balance-sheet test* examines whether liabilities exceed assets. In *BNY Corporate Trustee Services Ltd. v. Euro sail-UK 2007-3BL PLC* [2013] UKSC 28, the Supreme Court held that balance-sheet insolvency does not imply inevitable collapse, emphasizing that temporary liquidity deficits do not justify dissolution[85]. These comparative models show that Indonesia's insolvency regime requires recalibration: adopting a dual-test system like the UK, embedding preventive-resolution mechanisms like the EU, and introducing streamlined restructuring procedures would ensure that state-owned banks facing temporary distress remain *going concerns* rather than victims of legal formalism.

Unlike Indonesia's UUK-PKPU, which relies solely on formal triggers, the UK Insolvency Act 1986 s.123 distinguishes between cash-flow insolvency and balance-sheet insolvency, as clarified in the Euro sail decision. The EU's Directive (EU) 2019/1023 further strengthens the rescue-first paradigm through preventive restructuring frameworks. Together, these approaches prevent premature liquidation of companies that remain economically viable. For banks, international standards emphasize resolution regimes, not ordinary corporate dissolution. The FSB Key Attributes and BRRD require authorities to apply tools such as bail-in, bridge banks, and P&A under the principle of "no creditor worse off." Indonesia's P2SK Law 2023, by expanding LPS powers, signals a domestic shift toward going concern resolution, aligning national law with global best practice.

The incompatibility between UUK-PKPU and the Company Law should therefore be understood not merely as a legislative inconsistency, but as a manifestation of epistemic failure within Indonesia's insolvency regime. The law constructs insolvency as a binary legal event rather than a continuum of financial distress, thereby erasing the analytical space necessary for rehabilitation, proportionality, and institutional preservation. This failure violates Fuller's principles of coherence and congruence, as the legal consequences of insolvency no longer align with its economic meaning.

## Conclusion

The regulatory epistemology of *Persero*-type state-owned banks disclosures how Indonesia's insolvency regime conflates procedural default with economic failure. Both internal and external protections such as restructuring, *PKPU*, and *going concern* mechanisms remain ineffective due to legal and procedural inconsistencies between UUK-PKPU and UU PT. The

article's novelty deceits not merely in identifying regulatory inconsistencies but in introducing an epistemological framework rarely used in Indonesian bankruptcy studies. It reveals how legal "knowledge" about insolvency has been constructed on positivist assumptions that neglect economic substance an epistemic failure undermining the coherence, fairness, and sustainability of bankruptcy law. This article concludes that the dissolution of viable state-owned banks in Indonesia is not an inevitable legal consequence, but the product of an epistemologically flawed insolvency framework. By equating procedural default with economic failure, Indonesian bankruptcy law institutionalizes premature liquidation and undermines both public interest and creditor value. Comparative analysis with common law jurisdictions demonstrates that insolvency law can and should function as a rehabilitative instrument grounded in economic reality. Accordingly, this article advocates for the adoption of a dual insolvency test, judicial discretion to mandate restructuring, and a fundamental reorientation of insolvency law from liquidation toward institutional preservation.

Future research should pivot from normative analysis to empirical impact studies to quantitatively measure the effectiveness of the proposed reforms, specifically: investigating the real economic effects of adopting a dual insolvency test (distinguishing between balance-sheet insolvency and cash-flow insolvency) on the survival rates and capital market performance of temporarily illiquid State-Owned Enterprise (SOE) banks, and further comparing these findings with corporate rescue mechanisms applied in other jurisdictions (e.g., U.S. Chapter 11 or the European Union resolution regimes).

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   c. level ketiga: menggunakan huruf kapital di awal kalimat, cetak tebal dan ditulis rata di sebelah kiri.
8. Penomoran dalam kalimat atau dalam pembahasan ditulis langsung dalam paragraf dengan menggunakan angka di dalam kurung, contoh: (1), (2), (3) dan seterusnya, atau huruf alphabet kecil di dalam kurung, contoh: (a), (b), (c) dan seterusnya.
9. Semua tulisan menggunakan referensi model *footnote*. Berikut aturannya:

   [1] Khaled Abou El Fadl, *Speaking in God's Name Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2003), h. 24.

   [2] El Fadl, *Speaking...*, h. 54

   [3]Yvonne Yazbeck Haddad & Barbara Freyer Stowasser (eds), *Islamic Law and the Challenges of Modernity* (Oxford: Altamira Press, 2004), h. 47.

   [4]Yvonne Yazbeck Haddad & Barbara Freyer Stowasser (eds), *Islamic Law*, h. 50

   [5]El Fadl, *Speaking in God's Name*, h. 79

10. Sumber pustaka dianjurkan merupakan terbitan 10 tahun terakhir.
11. Daftar pustaka disusun mengikuti contoh berikut:

    **a. Buku**

    El Fadl, Khaled Abou. *Speaking in God's Name Islamic Law, Authority and Women*. Oxford: Oneworld Publications, 2003.

    **b. Buku terjemahan**

    Ahmad, Saiyad Fareed & Ahmad, Saiyad Salahuddin. *5 Tantangan Abadi Terhadap Agama dan Jawaban Islam Terhadapnya*. Terjemahan oleh Rudy Hariansyah Alam. 2008. Bandung: Mizan, 2004.

    **c. Buku kumpulan artikel**

    Haddad, Yvonne Yazbeck & Stowasser, Barbara Freyer (eds). *Islamic Law and the Challenges of Modernity*. Oxford: Altamira Press, 2004.

    **d. Artikel dalam buku kumpulan artikel**

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