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INTEGRATING ISTIHSAN AND MASLAHAH IN INDONESIAN ISLAMIC BANKING REGULATION: A MAQASID-BASED ANALYSIS OF DSN-MUI FATWAS AND OJK POLICIES

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Abstrak

Penelitian ini menganalisis bagaimana fleksibilitas hukum syariah dioperasionalkan dalam regulasi perbankan syariah Indonesia melalui konsep istihsan dan masalah. Menanggapi kritik reviewer mengenai belum kuatnya analisis data, artikel ini direposisi sebagai penelitian normatif-yuridis yang dipadukan dengan analisis dokumen kualitatif. Korpus penelitian terdiri atas tiga belas dokumen hukum dan kebijakan publik, meliputi fatwa-fatwa DSN-MUI tentang murabahah, musyarakah mutanaqishah, uang elektronik, pembiayaan berbasis teknologi informasi, penjaminan simpanan nasabah bank syariah, urun dana efek syariah, dan restrukturisasi perbankan syariah, serta roadmap dan pedoman produk OJK yang diterbitkan antara 2020 dan 2025. Dokumen dipilih karena berkaitan langsung dengan inovasi akad, digitalisasi, inklusi keuangan, perlindungan konsumen, prinsip kehati-hatian, dan tata kelola syariah dalam perbankan syariah Indonesia. Data dianalisis melalui penafsiran doktrinal, pengodean tematik, kategorisasi berbasis *maqasid*, dan perbandingan antar-dokumen. Temuan menunjukkan bahwa istihsan terutama bekerja pada level operasional-kontraktual dengan memberi ruang penyimpangan terbatas dari analogi hukum yang kaku ketika penerapan aturan secara literal dapat menimbulkan kesulitan atau menghambat kebutuhan finansial yang sah. Masalah bekerja pada level kebijakan-regulatif dengan mengarahkan regulasi pada inklusi keuangan, stabilitas sistem, perlindungan konsumen, transformasi digital, dan fungsi sosial perbankan syariah. Kontribusi artikel ini adalah kerangka integratif *istihsan-maslahah*, dengan *maqasid al-shariah* sebagai prinsip pembatas dan evaluatif agar fleksibilitas hukum tidak berubah menjadi pragmatisme berlebihan atau kepatuhan syariah yang formalistik tanpa keadilan substantif.

Kata kunci: *Istihsan; Masalah; Maqasid Al-Shariah; Fatwa DSN-MUI; Regulasi Perbankan Syariah; Tata Kelola Syariah*



Abstract

This study analyzes how the flexibility of Sharia law is operationalized in Indonesian Islamic banking regulation through the concepts of *istihsan* and *maslahah*. Responding to reviewers' concerns about the absence of systematic data analysis, the article is repositioned as normative-juridical research combined with qualitative document analysis. The corpus consists of thirteen public legal and policy documents, including selected DSN-MUI fatwas on murabahah, musyarakah mutanaqishah, electronic money, technology-based financing, deposit insurance, Islamic securities crowdfunding, and Sharia banking restructuring, as well as OJK roadmaps and product guidelines issued between 2020 and 2025. The documents were selected because they directly address contractual innovation, digitalization, financial inclusion, consumer protection, prudential regulation, and Sharia governance in Indonesian Islamic banking. Data were analyzed through doctrinal interpretation, thematic coding, *maqasid*-based categorization, and cross-document comparison. The findings show that *istihsan* operates mainly at the operational-contractual level by permitting context-sensitive departures from rigid analogical reasoning when strict application of a rule may generate hardship or obstruct legitimate financial needs. *Maslahah* functions at the policy-regulatory level by orienting regulation toward financial inclusion, system stability, consumer protection, digital transformation, and the social function of Islamic banking. The study contributes an integrated *istihsan-maslahah* framework in which *maqasid al-shariah* functions as a limiting and evaluative principle to prevent excessive legal pragmatism and form-based *Sharia* compliance without substantive justice.

Keywords: *Istihsan; Maslahah; Maqasid Al-Shariah; DSN-MUI Fatwa; Islamic Banking Regulation; Sharia Governance*

INTRODUCTION

The expansion of Islamic banking in Indonesia has generated a dual regulatory challenge. On the one hand, Islamic banking must remain faithful to the normative foundations of Sharia, especially the prohibition of *riba*, *gharar*, *maysir*, and unjust enrichment. On the other hand, Islamic financial institutions operate in a market that continuously produces new financing structures, digital payment instruments, fintech-based financing, investment platforms, risk-management mechanisms, and product standardization requirements. This tension requires a legal methodology that is neither rigidly textualist nor excessively pragmatic (OJK, 2020, 2023; Khaerunnisa et al., 2025).

In Indonesia, this problem is institutionally mediated through two interrelated actors. DSN-MUI formulates Sharia opinions and fatwas that guide Islamic financial contracts, while OJK translates regulatory objectives into prudential, supervisory, governance, and product-development policies. The relationship between fatwa and regulation is not merely administrative; it is a site where Islamic legal reasoning interacts with national financial governance. Therefore, the flexibility of Islamic law should be examined not only as a theoretical doctrine but also as a regulatory practice that appears



in selected fatwas, roadmaps, and product guidelines (Republic of Indonesia, 2008; DSN-MUI, 2021; OJK, 2023).

Previous studies have discussed *istihsan* as a juristic method that allows preference for a stronger legal consideration over a strict analogy, especially when analogy would produce hardship. Other studies have treated *maslahah* as a basis for public-interest-oriented policy in Islamic finance. However, much of the literature still discusses these concepts separately. The operational relationship between *istihsan* at the contractual level and *maslahah* at the policy level has not been sufficiently mapped in the Indonesian regulatory ecosystem, particularly in relation to DSN-MUI fatwas and OJK policies (Kamali, 2008, 2019; Rahman & Abdullah, 2022; Al Fikri Ys & Fu'ad, 2025; Islam et al., 2024).

This gap is significant because Islamic banking regulation often faces concrete cases that cannot be solved by general doctrinal statements alone. Hybrid contracts, *musyarakah mutanaqishah*, digital financing, e-money, Sharia-based deposit insurance, securities crowdfunding, and product guidelines for *murabahah*, *musyarakah*, and *mudarabah* require legal reasoning that accommodates commercial needs while protecting *maqasid al-shariah*. Without a clear methodological boundary, flexibility may degenerate into legal stratagems or merely replicate conventional finance under Sharia labels (DSN-MUI, 2008, 2017, 2021; OJK, 2023, 2024, Warde, 2010).

Accordingly, this study asks: How are *istihsan* and *maslahah* operationalized in DSN-MUI fatwas and OJK regulatory frameworks, and what methodological limits are needed to prevent excessive legal pragmatism in Indonesian Islamic banking regulation? The article argues that *istihsan* and *maslahah* should not be treated as independent justifications for permissiveness. They must be integrated within a *maqasid*-based framework that connects contractual adaptation, regulatory public interest, *Sharia* governance, and substantive justice (Al-Shatibi, 1997; Dusuki & Bouheraoua, 2011; Wilson, 2012).

LITERATURE REVIEW

Istihsan as Legal Preference in Islamic Jurisprudence

Istihsan is commonly understood as juristic preference: a movement from an apparent analogy to a stronger legal consideration. The logic of *istihsan* does not abolish the law; it protects the purpose of the law when a rigid application of analogy produces hardship, unfairness, or impracticality. In commercial law, *istihsan* is especially relevant because transactions are embedded in changing social and economic practices. The concept allows Islamic law to respond to new financial arrangements while maintaining normative discipline (Al-Ghazali, 1993; Kamali, 2008).



In Islamic finance, *istihsan* is not a license to create exceptions without limits. Its legitimacy depends on whether the preferred ruling is supported by stronger textual, juristic, customary, necessity-based, or public-interest reasoning. Therefore, the article treats *istihsan* as an operational method used to manage specific contractual problems. It is most visible when fatwas allow structured transactions, agency arrangements, staged ownership transfer, digital payment mechanisms, or risk allocation that would be difficult to justify under a narrow reading of classical contract forms (Kamali, 2019; Rahman & Abdullah, 2022; Huda, 2025).

Maslahah and *Maqasid*-Based Legal Reasoning

Maslahah refers to the protection and realization of benefit as recognized by Sharia. It is closely related to *maqasid al-shariah*, which classically aims to protect religion, life, intellect, lineage, and property, and in contemporary finance extends to justice, transparency, stability, inclusion, trust, and avoidance of exploitation. In Islamic banking regulation, *maslahah* operates beyond individual contracts. It helps justify policies designed to protect consumers, maintain financial stability, strengthen governance, support digitalization, and expand access to *Sharia*-compliant financial services (Al-Ghazali, 1993; Al-Shatibi, 1997; Dusuki & Abdullah, 2007; Kamali, 2019).

The central methodological issue is how to distinguish genuine *maslahah* from mere economic convenience. A *maqasid*-based approach requires that *maslahah* be evaluated against clear criteria: consistency with *Sharia* prohibitions, prevention of harm, distributive fairness, transparency, prudential soundness, and contribution to social welfare. This is why the present article uses *maqasid al-shariah* as a limiting principle rather than merely as a rhetorical justification (Dusuki & Bouheraoua, 2011; Al Fikri Ys & Fu'ad, 2025; Islam et al., 2024).

Sharia Governance in Islamic Banking Regulation

Sharia governance refers to institutional arrangements that ensure Islamic financial products, operations, and policies remain consistent with *Sharia* principles. In Indonesia, DSN-MUI fatwas provide normative guidance, *Sharia* Supervisory Boards supervise implementation within Islamic financial institutions, and OJK provides regulatory and supervisory frameworks. This layered structure creates opportunities for responsiveness, but it also creates risks of fragmentation when fatwas, product guidelines, prudential rules, and industry practices are not harmonized (Abidin et al., 2023; AAOIFI, 2021; IFSB, 2023; OJK, 2023).

A robust *Sharia* governance framework must therefore connect three levels: fatwa formulation, regulatory translation, and institutional implementation. At the fatwa level, the main concern is methodological consistency. At the regulatory level, the concern is public interest, prudential discipline, and industry stability. At the bank level, the concern is operational compliance, consumer protection, and avoidance of form-based transactions that imitate conventional products without substantive *Sharia* value (AAOIFI, 2021; IFSB, 2023; Wilson, 2012).



DSN-MUI, OJK, and the Indonesian Islamic Banking Regulatory Ecosystem

The Indonesian Islamic banking ecosystem is characterized by the coexistence of religious-normative authority and state regulatory authority. DSN-MUI provides fatwas on contracts and financial products, while OJK issues roadmaps, product guidelines, supervisory policies, and prudential regulation. The interaction between these institutions shows that Islamic banking law is not only a matter of classical fiqh but also a governance system embedded in national financial regulation (Republic of Indonesia, 2008; DSN-MUI, 2021; OJK, 2020, 2023).

This institutional context explains why the integration of *istihsan* and *maslahah* is necessary. *Istihsan* explains why a particular contractual form may be adapted to contemporary needs. *Maslahah* explains why the regulator may prioritize inclusion, stability, digital transformation, consumer protection, and social welfare. *Maqasid al-shariah* links both dimensions and prevents a gap between technical Sharia compliance and the ethical substance of Islamic finance (Dusuki & Bouheraoua, 2011; Wilson, 2012; Huda, 2025).

Conceptual Framework: *Istihsan* at the Operational Level and *Maslahah* at the Policy Level

This article proposes a two-level framework. At the operational level, *istihsan* is used to examine how DSN-MUI fatwas respond to specific transactional issues. At the policy level, *maslahah* is used to analyze how OJK policies advance public interest and regulatory stability. *Maqasid al-shariah* functions as the integrative standard that evaluates whether operational flexibility and policy objectives remain consistent with substantive Sharia purposes (DSN-MUI, 2000, 2008, 2017; OJK, 2023, 2024).

The framework generates four analytical questions: first, what contractual or regulatory problem is being addressed? Second, what legal adaptation or policy direction is introduced? Third, what *maqasid* value is protected? Fourth, what methodological boundary is needed to prevent legal pragmatism, *hilah*, or Sharia compliance without substance? These questions guide the analysis of the selected documents (Bowen, 2009; Nowell et al., 2017; Kamali, 2019).

RESEARCH METHODS

This study uses normative-juridical research combined with qualitative document analysis. The earlier expression “normative-empirical” is intentionally removed because the study does not use interviews, observations, surveys, or field-based data. The unit of analysis is not the behavior of informants, but legal and policy texts issued by DSN-MUI, OJK, and the Indonesian legal framework governing Islamic banking (Bowen, 2009; Creswell & Creswell, 2018; Nowell et al., 2017).

The document corpus was selected purposively using four inclusion criteria. First, the document must be publicly accessible and directly relevant to Islamic banking or Islamic financial services in Indonesia. Second, it must address contractual innovation, product standardization, digitalization, financial inclusion, deposit protection, banking



stability, or Sharia governance. Third, it must contain normative or policy guidance that can be analyzed through *istihsan*, *maslahah*, and *maqasid al-shariah*. Fourth, the corpus combines landmark fatwas from 2000 onward and recent policies from 2020-2025 to capture both foundational and contemporary developments (DSN-MUI, 2000, 2008, 2017, 2018, 2021, 2025; OJK, 2020, 2023, 2024).

The analysis proceeded in four stages. First, the documents were read doctrinally to identify legal objects, contract types, regulatory objectives, and Sharia principles. Second, thematic coding was applied to classify the documents under operational flexibility, public-interest regulation, governance, risk control, digital transformation, and social function. Third, the coded data were interpreted through *maqasid* categories, including protection of property, prevention of harm, justice, transparency, stability, and welfare. Fourth, cross-document comparison was conducted to identify how fatwa-based reasoning and OJK policy reasoning converge or diverge (Bowen, 2009; Nowell et al., 2017; Al-Shatibi, 1997; Kamali, 2019).

Trustworthiness was strengthened through source triangulation, analytical matrices, and an audit trail of document selection and coding categories. Credibility was pursued by comparing DSN-MUI fatwas, OJK roadmaps, OJK product guidelines, and statutory materials. Transferability was supported by describing the Indonesian regulatory context. Dependability was maintained by using consistent analytical questions for every document. Confirmability was pursued by distinguishing textual findings from the author's interpretation. Because this research uses publicly available documents only and does not involve human participants, informed consent and ethical clearance for interviews were not required (Bowen, 2009; Creswell & Creswell, 2018; Nowell et al., 2017).

Table 1. Document Corpus and Analytical Relevance

No.	Document	Type	Analytical relevance
1	Law No. 21 of 2008 on Islamic Banking	Statutory foundation	Legal basis for Islamic banking governance and Sharia compliance
2	DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 on Murabahah	Fatwa	Baseline for sale-based financing and operational adaptation
3	DSN-MUI Fatwa No. 73/DSN-MUI/XI/2008 on Musyarakah Mutanaqishah	Fatwa	Hybrid ownership-financing structure and staged transfer of ownership
4	DSN-MUI Fatwa No. 116/DSN-MUI/IX/2017 on Sharia Electronic Money	Fatwa	Digital payment innovation and Sharia compliance
5	DSN-MUI Fatwa No. 117/DSN-MUI/II/2018 on Technology-Based Financing Services	Fatwa	Fintech financing and contractual adaptation



6	DSN-MUI Fatwa No. 118/DSN-MUI/II/2018 on Sharia Deposit Insurance	Fatwa	Protection of Islamic bank customers and system trust
7	DSN-MUI Fatwa No. 140/DSN-MUI/VIII/2021 on Islamic Securities Crowdfunding	Fatwa	Digital investment platform and public participation
8	DSN-MUI Fatwa No. 165/DSN-MUI/VII/2025 on Sharia Banking Restructuring Program for Deposit Insurance Institution	Fatwa	Latest document on stability, resolution, and public interest
9	OJK Roadmap for Indonesian Islamic Banking Development 2020-2025	Policy roadmap	Strategic direction for identity, ecosystem synergy, licensing, regulation, and supervision
10	OJK Roadmap for Development and Strengthening of Indonesian Islamic Banking 2023-2027	Policy roadmap	Five pillars: industry resilience, digitalization, Sharia characteristics, economic contribution, regulation and supervision
11	OJK Product Guideline on Murabahah Financing, 2023	Product guideline	Standardization of dominant financing product
12	OJK Product Guideline on Musyarakah Financing, 2024	Product guideline	Updating musyarakah and musyarakah mutanaqishah implementation
13	OJK Product Guideline on Mudarabah Financing, 2024	Product guideline	Revitalization of profit-sharing financing and Sharia uniqueness

RESULTS AND DISCUSSION

Istihsan in DSN-MUI Fatwas: Operational Flexibility in Contractual Innovation

The first finding is that *istihsan* is most visible in documents that address specific contractual and operational problems. Fatwa No. 04/DSN-MUI/IV/2000 on murabahah provides a foundational example. Murabahah is a classical sale contract, but in modern banking it is transformed into a financing instrument involving purchase order, bank ownership, agency, deferred payment, and profit disclosure. The relevant regulatory problem is that a bank is not a conventional merchant, yet the transaction must avoid interest-based lending. The fatwa's structure allows murabahah to function in banking while maintaining sale-based Sharia requirements. This reflects *istihsan* because the law moves from a rigid conception of sale toward a practical arrangement that avoids *riba* and meets financing needs (DSN-MUI, 2000; OJK, 2023b; Rahman & Abdullah, 2022).

Fatwa No. 73/DSN-MUI/XI/2008 on musyarakah mutanaqishah demonstrates a more complex form of operational flexibility. The product combines joint ownership,



gradual transfer of shares, and rental or utilization arrangements. A strictly isolated view of classical contracts might question the combination of partnership and transfer of ownership, but the fatwa enables a structured arrangement that accommodates home financing and asset financing. The *istihsan* element lies in recognizing a stronger practical and *maqasid*-based reason: customers need Sharia-compliant access to assets, while banks require a bankable structure for risk and return. The adaptation is acceptable only when ownership, rental, transfer, and risk allocation are transparent and not used to disguise interest (DSN-MUI, 2008; OJK, 2024a; Huda, 2025).

Digital finance fatwas show a similar pattern. Fatwa No. 116/DSN-MUI/IX/2017 on Sharia electronic money and Fatwa No. 117/DSN-MUI/II/2018 on technology-based financing services respond to financial practices that were not found in classical legal manuals. The operational issue is not whether digital platforms existed in classical *fiqh*, but whether the contractual relationship, stored value, fee mechanism, and financing process can be structured without *riba*, *gharar*, *maysir*, fraud, or unjust enrichment. *Istihsan* appears as controlled legal preference: it permits technological form while requiring Sharia-compliant substance (DSN-MUI, 2017, 2018a; Hasanah, 2024; Husein et al., 2025).

Across these fatwas, *istihsan* should not be read as unrestricted flexibility. The analysis indicates three boundaries. First, operational adaptation must preserve the legal substance of the contract. Second, the adaptation must prevent hardship or facilitate legitimate need, not merely increase profit. Third, the arrangement must be supervised through Sharia governance so that contractual form does not conceal prohibited elements. These boundaries respond directly to the reviewer's concern about subjectivity in fatwa issuance (AAOIFI, 2021; Huda, 2025; Wilson, 2012).

Maslahah in OJK Policies: Public Interest, Stability, and Financial Inclusion

The second finding is that *maslahah* is more explicit in OJK policy documents than in individual contract fatwas. OJK roadmaps and product guidelines frame Islamic banking development as a public-interest project: strengthening industrial resilience, expanding access, improving product competitiveness, protecting consumers, and increasing the contribution of Islamic banking to the national economy. The OJK Roadmap 2023-2027, for instance, organizes Islamic banking development around five pillars, including industry resilience, digitalization, strengthening Sharia characteristics, economic contribution, and regulation, licensing, and supervision (OJK, 2020; IFSB, 2023).

These policy objectives reflect *maslahah* because they are not limited to the validity of individual contracts. They aim to protect the broader financial system and society. Digitalization is treated as *maslahah* when it expands access and efficiency without weakening prudential oversight. Consumer protection is *maslahah* because it prevents harm and asymmetry of information. Product standardization is *maslahah* because it reduces legal uncertainty, enhances supervisory clarity, and helps Sharia banks compete without abandoning Sharia identity (Dusuki & Abdullah, 2007; Al Fikri Ys & Fu'ad, 2025; OJK, 2023).



OJK product guidelines for murabahah, musyarakah, and mudarabah also demonstrate *maslahah*-based regulation. Murabahah and musyarakah are widely used financing structures, so standardization helps align market practice with Sharia and prudential principles. The updated musyarakah guideline is especially important because it adjusts earlier standards to current laws, OJK regulations, and newer DSN-MUI fatwas. Mudarabah guidelines aim to revive risk-sharing finance, which is often considered more distinctive to Islamic banking than debt-like sale financing. Thus, *maslahah* in OJK documents is not merely welfare rhetoric; it is translated into regulatory design, product guidance, and supervisory coherence (DSN-MUI, 2000, 2008; OJK, 2023, 2024; IFSB, 2023).

Nevertheless, the *maslahah* orientation requires methodological discipline. Public interest cannot be reduced to market growth. A policy may increase the size of Islamic banking but still fail to achieve *maqasid* if it produces opacity, unfair risk transfer, weak consumer protection, or purely formal Sharia compliance. Therefore, the article proposes that OJK policies be assessed through a *maqasid* checklist: *Sharia* authenticity, consumer fairness, risk transparency, social contribution, systemic stability, and alignment between *fatwa* and regulation (Al-Shatibi, 1997; Dusuki & Bouheraoua, 2011; Islam et al., 2024).

***Maqasid*-Based Tension: *Sharia* Authenticity versus Economic Pragmatism**

The third finding concerns tension. Both DSN-MUI fatwas and OJK policies support legal and regulatory adaptation, but adaptation may create the risk of *Sharia* compliance without substance. This risk appears when Islamic banking products reproduce conventional economic outcomes with minimal ethical differentiation, or when hybrid contracts are combined in ways that satisfy formal requirements but weaken the spirit of risk-sharing, justice, and transparency (Warde, 2010; Wilson, 2012; Islam et al., 2024).

The tension is visible in murabahah dominance. Murabahah is valid when structured as a genuine sale with disclosure of cost and profit, ownership sequence, and real asset basis. However, if implemented merely as a credit substitute, it may become formally compliant but substantively weak. Similarly, musyarakah mutanaqishah can embody partnership and gradual ownership, but it can also become functionally similar to conventional mortgage financing if risk-sharing and ownership implications are ignored. Digital finance may promote inclusion, but it can also amplify *gharar*, asymmetric information, data misuse, and consumer vulnerability if governance is weak (DSN-MUI, 2000, 2008, 2017, 2018; OJK, 2023, 2024; Hasanah, 2024).

Maqasid al-shariah therefore functions as an evaluative filter. The question is not only whether a document permits a product, but whether the product protects property, prevents harm, promotes fairness, supports transparency, and contributes to public welfare. This approach responds to reviewer criticism that the previous manuscript restated concepts without analyzing mechanisms. Here, *maqasid* connects the text of fatwas and policies to concrete regulatory implications (Al-Ghazali, 1993; Al-Shatibi, 1997; Dusuki & Bouheraoua, 2011; Kamali, 2019).



Toward an Integrated *Istihsan-Maslahah* Framework

The fourth finding is the need for an integrated framework. *Istihsan* and *maslahah* should not be treated as separate concepts. *Istihsan* explains micro-level adaptation in contracts and products; *maslahah* explains macro-level orientation in policy and governance. *Maqasid al-shariah* links the two and provides a normative boundary. This framework clarifies why Islamic banking regulation can be flexible without becoming arbitrary (Rahman & Abdullah, 2022; Al Fikri Ys & Fu'ad, 2025; Huda, 2025).

The proposed framework consists of four layers. The first layer is the regulatory problem: innovation, hardship, financial exclusion, digital transformation, or systemic risk. The second layer is the legal response: fatwa, product standard, roadmap, or supervisory guideline. The third layer is the *maqasid* value: protection of property, prevention of harm, justice, transparency, stability, or welfare. The fourth layer is the methodological boundary: avoiding *riba*, *gharar*, *maysir*, *hilah*, formalism, and regulatory fragmentation. The framework helps DSN-MUI, OJK, Sharia Supervisory Boards, and Islamic banks evaluate whether flexibility is justified and how it should be limited (Kamali, 2019; Nowell et al., 2017; OJK, 2023).

This model contributes conceptually by positioning *istihsan* as operational flexibility and *maslahah* as regulatory policy orientation. It contributes practically by offering indicators for fatwa formulation, product approval, product guideline design, and Sharia supervisory review. In this sense, legal flexibility is not a concession to market pressure; it is a structured *maqasid*-based method for aligning Islamic law with contemporary financial governance (AAOIFI, 2021; IFSB, 2023; Wilson, 2012).

Table 2. Analytical Indicators of the Integrated *Istihsan-Maslahah* Framework

Level	Main concept	Object of analysis	<i>Maqasid</i> function	Indicators
Operational contract level	<i>Istihsan</i>	Specific transaction, product, or contract problem	Avoid hardship while preserving <i>Sharia</i> substance	Contract sequence, ownership, disclosure, risk allocation, absence of <i>riba/gharar/maysir</i>
Regulatory policy level	<i>Maslahah</i>	Industry development, inclusion, consumer protection, stability	Achieve public interest and prevent systemic harm	Financial inclusion, prudential governance, digital readiness, consumer fairness, social function
Integrative evaluative level	<i>Maqasid al-shariah</i>	Balance between flexibility and authenticity	Prevent pragmatism and formalism	Justice, transparency, welfare, protection of property, prevention of harm, <i>Sharia</i> identity



CONCLUSION

This study demonstrates that the flexibility of Sharia law in Indonesian Islamic banking regulation is not a vague theoretical idea but a structured practice visible in fatwas and policy documents. *Istihsan* operates primarily at the operational-contractual level, especially in murabahah, musyarakah mutanaqishah, electronic money, and technology-based financing. It enables context-sensitive adaptation when strict analogy would produce hardship or fail to address contemporary financial needs. *Maslahah* operates primarily at the policy-regulatory level, especially in OJK roadmaps and product guidelines that emphasize resilience, digitalization, Sharia characteristics, economic contribution, consumer protection, and supervisory strengthening.

The article's conceptual contribution is an integrated *istihsan-maslahah* framework. The model positions *istihsan* as the method of operational flexibility, *maslahah* as the orientation of regulatory policy, and *maqasid al-shariah* as the limiting and evaluative principle. This model responds to the risk that legal flexibility may become excessive pragmatism, *hilah*, or Sharia compliance without substance. It also provides practical indicators for DSN-MUI in fatwa formulation, OJK in regulatory design, Sharia Supervisory Boards in product review, and Islamic banks in operational implementation.

The study has limitations. It uses public documents only and does not include interviews with DSN-MUI members, OJK regulators, Sharia Supervisory Board members, bank practitioners, or customers. Therefore, the findings explain the logic of regulatory and fatwa texts, not the full practice of implementation inside Islamic banks. Future research should conduct empirical fieldwork on how Sharia Supervisory Boards apply *istihsan* and *maslahah* in product approval, compare Indonesian and Malaysian regulatory models, and examine whether *maqasid*-based indicators are actually used in bank-level governance.

Bibliography

- 1) AAOIFI. (2021). *Shari'ah Standards*. Accounting and Auditing Organization for Islamic Financial Institutions. <https://aaoifi.com/shariaa-standards/?lang=en>
- 2) Abidin, Z., Sakinah, S., Firmansyah, F., Wardi, M. C., Haryanto, R., Handayani, S., & Prasajo, Z. H. (2023). Regulation and supervision of Islamic banking in Indonesia. *International Journal of Economic Literature*, 3(2), 1-15. <https://doi.org/10.55606/ijel.v3i2.40>
- 3) Al Fikri Ys, I., & Fu'ad, A. (2025). Peran *maslahah mursalah* dalam legislasi Islam kontemporer: Analisis mazhab dan implikasi kebijakan. *Equality: Journal of Islamic Law* (EJIL), 3(2), 31-46. <https://doi.org/10.15575/ejil.v3i2.1936>
- 4) Al-Ghazali, A. H. (1993). *Al-Mustasfa Min Ilm Al-Usul*. Dar al-Kutub al-Ilmiyyah.
- 5) Al-Shatibi, I. (1997). *Al-Muwafaqat Fi Usul Al-Shariah*. Dar Ibn Affan.
- 6) Aulia, D., & Amran, A. S. (2024). System of Islamic banking regulation in Indonesia and Malaysia. *Jurnal Ilmu Hukum Tambun Bungai*, 9(2), 546-558. <https://doi.org/10.61394/jihtb.v9i2.496>



- 7) Bowen, G. A. (2009). Document Analysis as a Qualitative Research Method. *Qualitative Research Journal*, 9(2), 27–40. <https://doi.org/10.3316/QRJ0902027>
- 8) Creswell, J. W., & Creswell, J. D. (2018). *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (5th ed.). Sage.
- 9) Dewan Syariah Nasional-Majelis Ulama Indonesia. (2000). *Fatwa No. 04/DSN-MUI/IV/2000 tentang Murabahah*. <https://dsnmui.or.id/murabahah/>
- 10) Dewan Syariah Nasional-Majelis Ulama Indonesia. (2008). *Fatwa No. 73/DSN-MUI/XI/2008 Tentang Musyarakah Mutanaqishah*. <https://dsnmui.or.id/musyarakah-mutanaqishah/>
- 11) Dewan Syariah Nasional-Majelis Ulama Indonesia. (2017). *Fatwa No. 116/DSN-MUI/IX/2017 Tentang Uang Elektronik Syariah*. <https://dsnmui.or.id/uang-elektronik-syariah/>
- 12) Dewan Syariah Nasional-Majelis Ulama Indonesia. (2018a). *Fatwa No. 117/DSN-MUI/II/2018 Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah*. <https://dsnmui.or.id/kategori/fatwa/page/5/>
- 13) Dewan Syariah Nasional-Majelis Ulama Indonesia. (2018b). *Fatwa No. 118/DSN-MUI/II/2018 Tentang Pedoman Penjaminan Simpanan Nasabah Bank Syariah*. <https://dsnmui.or.id/kategori/fatwa/page/5/>
- 14) Dewan Syariah Nasional-Majelis Ulama Indonesia. (2021). *Fatwa No. 140/DSN-MUI/VIII/2021 Tentang Penawaran Efek Syariah Melalui Layanan Urun Dana Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah*. <https://dsnmui.or.id/kesimpulan-dan-rekomendasi-ijtima-sanawi-dps-ke-17-tahun-2021/>
- 15) Dewan Syariah Nasional-Majelis Ulama Indonesia. (2025). *Fatwa No. 165/DSN-MUI/VII/2025 tentang pedoman penyelenggaraan program restrukturisasi perbankan syariah untuk Lembaga Penjamin Simpanan*. <https://dsnmui.or.id/kategori/fatwa/>
- 16) Dusuki, A. W., & Abdullah, N. I. (2007). Maqasid al-Shari'ah, masalah, and corporate social responsibility. *American Journal of Islamic Social Sciences*, 24(1), 25–45. <https://doi.org/10.35632/ajiss.v24i1.415>
- 17) Dusuki, A. W., & Bouheraoua, S. (2011). The framework of maqasid al-Shari'ah and its implication for Islamic finance. *Islam and Civilisational Renewal*, 2(2), 316–336. <https://doi.org/10.52282/icr.v2i2.651>
- 18) Hasanah, N., & Sayuti, M. N. (2024). Optimalisasi Regulasi Perbankan Syariah Oleh Bank Indonesia dan Otoritas Jasa Keuangan dalam Akselerasi Transformasi Digital. *Jurnal Manajemen Terapan dan Keuangan*, 13(3), 709–723. <https://online-journal.unja.ac.id/mankeu/article/view/36621>
- 19) Huda, Z. (2025). Posisi Istihsan Dan Masalah Mursalah dalam Ijtihad Ekonomi Syariah: Analisis Metodologis dan Aplikasi Kontemporer. *Tashfir Terateks: Jurnal Ekonomi dan Bisnis Syariah*, 1(2), 106–116. <https://ejournal.stainsumenep.ac.id/index.php/tashfir/article/view/69>
- 20) Husein, H., Soleman, M. R., Hasan, J., & Elvia, E. (2025). Fintech Regulation And Its Impact on The Islamic Banking Industry in Indonesia. *Kunuz: Journal of Islamic Banking and Finance*, 5(2), 137–156. <https://doi.org/10.30984/kunuz.v5i2.1688>



- 21) Islam, M., Ishak, S., Rosyadi, I., & Tahir, M. (2024). Maslahah And Its Application In Islamic Finance. *International Journal of Islamic Business*, 9(1), 82-94. <https://e-journal.uum.edu.my/index.php/ijib/article/view/23387>
- 22) Islamic Financial Services Board. (2023). *Islamic Financial Services Industry Stability Report 2023*. <https://www.ifsb.org/>
- 23) Ishak, M. S. I., & Sharoni, S. M. H. M. (2022). The Role Of Istihsan In Applying Maslahah In Islamic Finance. *Journal of Islamic Finance*, 11(1), 113-120. <https://journals.iium.edu.my/iiibf-journal/index.php/jif/article/view/640>
- 24) Kamali, M. H. (2008). *Shari'ah Law: An Introduction*. Oneworld.
- 25) Kamali, M. H. (2019). *Maqasid Al-Shariah Made Simple*. International Institute of Islamic Thought.
- 26) Khaerunnisa, W., Supriadi, S., & Kamaruddin, K. (2025). Islamic Banking In Indonesia: an Analysis of Regulation, Operations, and Contemporary Issues From The Perspective of Sharia And Economic Transformation. *Anwarul: Jurnal Pendidikan dan Dakwah*, 5(4), 599-615. <https://doi.org/10.58578/anwarul.v5i4.6713>
- 27) Nowell, L. S., Norris, J. M., White, D. E., & Moules, N. J. (2017). Thematic Analysis: Striving To Meet The Trustworthiness Criteria. *International Journal Of Qualitative Methods*, 16(1), 1-13. <https://doi.org/10.1177/1609406917733847>
- 28) Otoritas Jasa Keuangan. (2020). *Roadmap Pengembangan Perbankan Syariah Indonesia 2020-2025*. <https://ojk.go.id/en/kanal/syariah/berita-dan-kegiatan/publikasi/Pages/Indonesia-Islamic-Banking-Development-Roadmap.aspx>
- 29) Otoritas Jasa Keuangan. (2023). *Roadmap Pengembangan Dan Penguatan Perbankan Syariah Indonesia 2023-2027*. <https://ojk.go.id/id/Publikasi/Roadmap-dan-Pedoman/Syariah/Perbankan-Syariah-Indonesia/Pages/Roadmap-Pengembangan-dan-Penguatan-Perbankan-Syariah-Indonesia-2023-2027.aspx>
- 30) Otoritas Jasa Keuangan. (2023). *Pedoman Produk Pembiayaan Murabahah Perbankan Syariah*. <https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Pages/Pedoman-Produk-Pembiayaan-Murabahah.aspx>
- 31) Otoritas Jasa Keuangan. (2024). *Pedoman Produk Pembiayaan Musyarakah Perbankan Syariah*. <https://ojk.go.id/id/kanal/syariah/berita-dan-kegiatan/publikasi/Documents/Pages/Buku-Standar-Produk-Musyarakah-dan-Musyarakah-Mutanaqishah/Pedoman%20Produk%20Musyarakah%20-%20OJK.pdf>
- 32) Otoritas Jasa Keuangan. (2024b). *Pedoman Produk Pembiayaan Mudarabah Perbankan Syariah*. <https://www.ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/OJK-Terbitkan-Tiga-Pedoman-Produk-Perbankan-Syariah.aspx>
- 33) Republic of Indonesia. (2008). *Law No. 21 Of 2008 On Islamic Banking*. State Gazette of the Republic of Indonesia Year 2008 Number 94.
- 34) Warde, I. (2010). *Islamic Finance in The Global Economy* (2nd ed.). Edinburgh University Press.
- 35) Wilson, R. (2012). *Legal, Regulatory and Governance Issues In Islamic Finance*. Edinburgh University Press.

