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ISLAMIC LEGAL REASONING IN DISPUTE RESOLUTION AND SHARIA FINANCIAL RISK MANAGEMENT OF DSN-MUI FATWAS

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Abstrack

This article examines Islamic legal reasoning in dispute resolution and risk management within contemporary Islamic finance through a corpus analysis of DSN-MUI fatwas on ta'wid, debt restructuring, and debt transfer issued between 2000 and 2024. Moving beyond a transactional understanding of fiqh as a system of contract validation, the study argues that DSN-MUI has developed a governance-oriented pattern of legal reasoning that integrates risk mitigation and conflict resolution into the architecture of Sharia-compliant finance. The analysis identifies three structural dimensions of this reasoning: recognition of risk as an inherent economic reality; reliance on *maqasid al-shari'ah* and *maslahah*-oriented justification; and operationalization of distributive justice through debtor differentiation and evidence-based compensation standards. The article further distinguishes governable risk (*mukhabatarah*) from prohibited uncertainty (*gharar*), demonstrating how the fatwa corpus shifts Islamic jurisprudence from risk avoidance toward structured risk governance. By situating DSN-MUI fatwas within a hybrid legal order in which religious authority and state regulation interact, the study reconceptualizes legal certainty as predictability of adaptive response rather than contractual rigidity. It concludes that contemporary Islamic legal reasoning is evolving into a systemic governance framework capable of addressing financial complexity while maintaining Sharia compliance.

Keywords: Islamic legal reasoning; dispute resolution; risk management; Islamic finance; DSN-MUI fatwas.

Abstrak

Artikel ini menganalisis penalaran hukum Islam dalam resolusi sengketa dan manajemen risiko keuangan syariah melalui studi korpus fatwa DSN-MUI tentang ta'wid, restrukturisasi utang, dan pengalihan utang periode 2000–2024. Berbeda dari pendekatan fikih yang semata berorientasi pada validitas akad, penelitian ini menunjukkan bahwa DSN-MUI mengembangkan pola penalaran yang bersifat tata kelola (governance-oriented), dengan mengintegrasikan mekanisme mitigasi risiko dan penyelesaian sengketa ke dalam desain kontrak keuangan syariah. Analisis mengidentifikasi tiga dimensi utama: pengakuan risiko sebagai realitas inheren dalam aktivitas ekonomi; penggunaan justifikasi berbasis *maqasid al-shari'ah* dan *maslahah*; serta operasionalisasi keadilan distributif melalui diferensiasi debitur dan pembatasan kompensasi pada kerugian riil. Artikel ini juga menegaskan distingsi antara risiko yang dapat dikelola (*mukhabatarah*) dan ketidakpastian terlarang (*gharar*), serta menunjukkan bagaimana fatwa berfungsi dalam tatanan hukum hibrida antara otoritas keagamaan dan regulasi negara. Temuan ini menegaskan bahwa penalaran hukum Islam kontemporer berkembang menuju kerangka tata kelola sistemik yang adaptif namun tetap berlandaskan prinsip syariah.

Kata Kunci : Penalaran hukum Islam; resolusi sengketa; manajemen risiko; keuangan syariah; fatwa DSN-MUI.

INTRODUCTION

The development of contemporary Islamic economics and finance reflects a significant paradigmatic shift from a normative focus on determining the permissibility of transactions toward broader concerns involving dispute resolution, risk management, and contractual governance. In modern financial systems characterized by uncertainty, market complexity, and systemic interconnectedness, issues such as default, moral hazard, debt restructuring, compensation for non-performance, and the transfer of obligations have become unavoidable realities, including within Islamic financial institutions. These developments challenge the traditional perception of Islamic law as merely a system of halal-haram classification and require a reinterpretation of *fiqh al-mu'āmalāt* as a normative framework capable of addressing equitable risk allocation and sustainable dispute resolution. (Hallaq, 2009; Mensah, 2021)

Within this transformation, Islamic legal reasoning becomes a key analytical framework. Islamic legal reasoning refers to the methodological process through which fatwa-issuing authorities derive operational norms from primary sources—the Qur'an, Hadith, and classical jurisprudence—to address contemporary issues. This process integrates considerations of *maqāṣid al-sharī'ah*, socio-economic realities, and governance needs. (Auda, 2008); (Hallaq, 1995) In contrast to classical jurisprudence that often emphasized formal legal structures, contemporary Islamic financial fatwas increasingly adopt purpose-oriented reasoning. Accordingly, the legitimacy of a norm is evaluated not only through textual conformity but also through its implications for justice, systemic stability, and the protection of vulnerable parties.

In Indonesia, the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI) plays a central role in shaping the normative framework of Islamic finance through its fatwas. Since its establishment, DSN-MUI has issued fatwas that not only validate contracts and financial products but also regulate risk allocation and dispute resolution. This is evident in fatwas addressing *ta'wid* (compensation for loss), debt restructuring and rescheduling, novation, subrogation, and the management of non-performing financing. Empirical studies indicate that DSN-MUI fatwas function as authoritative references for regulators, financial institutions, mediators, arbitrators, and religious court judges when constructing legal reasoning in Islamic economic disputes in Indonesia. (Rusli & Djajaputra, 2026); (I. F. Lubis et al., 2024)

Current scholarship on Islamic economic law demonstrates several dominant trends. First, global literature frequently emphasizes legal and contractual standardization through frameworks developed by international institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). This approach prioritizes legal certainty, contractual uniformity, and risk mitigation through standardized contract design aimed at strengthening global market confidence.(El-Halaby et al., 2021);(M. K. Hassan & Rabbani, 2022) Second, a growing body of research examines Islamic economic dispute resolution within institutional frameworks, focusing on litigation in religious courts, arbitration, and alternative dispute resolution mechanisms. These studies highlight procedural effectiveness and institutional legitimacy in resolving financial conflicts.(A. Hassan, 2025);(Herdatama et al., 2026);(Warits et al., 2026) Third, contemporary Islamic legal scholarship increasingly develops maqāṣid-based reasoning to address modern economic complexity, particularly in ensuring contractual justice, protecting vulnerable parties, and balancing legal certainty with normative flexibility.(Auda, 2008);(Mohd Zain et al., 2024)

Despite these advancements, several important gaps remain. Most studies on Islamic financial dispute resolution and risk management focus primarily on post-conflict adjudication, including court rulings, arbitration awards, and mediation outcomes. The role of fatwas as pre-judicial sources of legal reasoning remains relatively underexplored. In practice, however, DSN-MUI fatwas often serve as the initial normative reference shaping contract structures, institutional policies, and even regulatory frameworks within Indonesia's Islamic financial system.(Fakhrudin et al., 2024) Furthermore, previous research typically examines fatwas in a fragmented manner—focusing on individual rulings related to compensation or restructuring—without analyzing them as a coherent corpus reflecting an evolving pattern of institutional legal reasoning.(Nashirudin & Sa'adah, 2019)

Another limitation concerns comparative discussions between national fatwa authorities and global regulatory standards. Existing studies often frame the relationship between DSN-MUI and AAOIFI in terms of compliance or harmonization rather than examining deeper epistemological differences in how Islamic law conceptualizes risk, contractual failure, and dispute resolution.(El-Halaby & Hussainey, 2016) Comparative legal scholarship suggests that different legal regimes may serve distinct governance functions depending on their socio-political and regulatory contexts.(Black, 2002);(Jonathan et al., 2023);(Al Abiad & Masadeh, 2024) In this regard, DSN-MUI fatwas may be better

understood as a form of contextualized legal reasoning aligned with Indonesia's national legal system and socio-economic conditions rather than as deviations from global standards.

Four interrelated research gaps therefore emerge. First, studies addressing DSN-MUI's authority tend to emphasize political legitimacy or industry compliance while rarely examining how this authority operates through systematic legal reasoning in responding to financial risks and disputes. Second, governance-oriented research often treats fatwas as final normative outputs rather than as instruments of risk governance operating both *ex ante* and *ex post*. Third, the literature on Islamic financial risk management remains largely technical-economic, leaving the jurisprudential dimension—particularly regarding breach, restructuring, and the transfer of obligations—insufficiently explored. Fourth, research on Islamic legal reasoning in financial fatwas remains limited, as most studies focus instead on judicial reasoning in court decisions.

In modern financial systems, risk management and dispute resolution are conceptually inseparable. Risk management operates *ex ante* to identify and mitigate potential contractual failure, while dispute resolution functions *ex post* when conflicts arise after preventive mechanisms fail. Both dimensions are interconnected through contractual design and governance structures. Contracts that incorporate Islamic principles of risk allocation can minimize the likelihood of disputes, whereas fair dispute resolution mechanisms reinforce institutional trust. This study argues that DSN-MUI fatwas implicitly integrate these dual functions by regulating not only permissibility but also mechanisms for risk mitigation and justice-oriented conflict resolution.

The novelty of this study lies in reconstructing the pattern of Islamic legal reasoning in dispute resolution and risk management through a corpus analysis of DSN-MUI fatwas concerning *ta'wid*, debt restructuring, and the transfer of obligations. Rather than viewing fatwas as isolated legal statements, this research conceptualizes them as expressions of institutional legal reasoning integrating *fiqh al-mu'āmalāt*, *maqāṣid al-sharī'ah*, contemporary financial realities, and Indonesia's regulatory framework. Fatwas are therefore understood as instruments of risk governance and conflict resolution rather than merely declarations of permissibility.

The central research question is: How does DSN-MUI construct mechanisms of dispute resolution and risk management in Islamic finance through its pattern of Islamic legal reasoning, particularly in relation to compensation, restructuring, and debt transfer? This question is elaborated into three sub-questions: (1) How does DSN-MUI define legal

responsibility in cases of breach and default? (2) Which reasoning instruments—such as *maqāṣid al-sharīʿah*, *qiyās*, *istiḥsān*, or regulatory considerations—dominate these fatwas? (3) How does DSN-MUI’s reasoning position itself in relation to AAOIFI global standards and dispute resolution practices within Indonesia’s national legal system?

By addressing these questions, this study contributes theoretically to the development of Islamic legal reasoning scholarship through the conceptual framework of *Fiqh al-Mukhāṭarah wa al-Nizāʿ* (Fiqh of Risk and Dispute Resolution). Practically, it provides a normative reference for regulators, Islamic financial institutions, mediators, arbitrators, and religious court judges in managing financial disputes and designing Sharia-compliant risk mitigation mechanisms. At the policy level, it supports strengthening fatwas as instruments of *ex ante* governance and preventive compliance within Indonesia’s Islamic financial system.

RESEACRH METHODE

This study employs a normative-doctrinal legal research design, focusing on the analysis of legal norms contained in DSN-MUI fatwas as its primary object of inquiry. Unlike empirical legal research, which examines social behavior and institutional practices, normative-doctrinal research concentrates on legal texts, doctrinal structures, and patterns of legal reasoning embedded within authoritative sources. The study applies four complementary approaches. (Creswell et al., 2018) First, a conceptual approach is utilized to examine key juridical concepts such as *taʿwid* (compensation), *hawalah* (debt transfer), and *maqasid al-shari’ah* (objectives of Islamic law), clarifying their doctrinal meanings and normative functions within Islamic financial law. Second, a comparative approach is adopted to contrast the legal reasoning of DSN-MUI with global standards developed by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), particularly at the ontological, epistemological, and axiological levels. Third, a case approach is employed by positioning each fatwa as a unit of normative reasoning, allowing for in-depth examination of its argumentative structure. Fourth, a historical approach is used to trace the evolution of DSN-MUI fatwas from 2000 to 2024, identifying shifts in reasoning patterns in response to regulatory and market developments.

The data sources consist of primary, secondary, and tertiary legal materials. The primary legal materials comprise twelve selected DSN-MUI fatwas concerning *taʿwid*, debt restructuring, *hawalah*, novation, and subrogation.(Patton, 2015) These fatwas were purposively selected based on their relevance to issues of risk governance and dispute

resolution in Islamic finance. Secondary legal materials include AAOIFI standards, regulations issued by the Financial Services Authority (Otoritas Jasa Keuangan/OJK), decisions of the Religious Courts, and international academic literature on Islamic finance and legal theory. Tertiary materials, such as legal dictionaries and encyclopedias of Islamic law, are used to verify terminological accuracy and conceptual consistency. Data analysis is conducted using a pattern-based legal reasoning analysis. This method identifies recurring argumentative structures within the selected fatwas, including (1) normative premises, (2) reasoning methods—such as *qiyās*, *istiḥsān*, or *maṣlaḥah*-based considerations—and (3) the final justificatory conclusions articulated by DSN-MUI. The recurring patterns are then reconstructed into a theoretical framework termed *Fiqh al-Mukhtarah wa al-Niza'* (Fiqh of Risk and Dispute Resolution), which conceptualizes Islamic legal reasoning as an integrated model of risk governance and conflict management. To ensure validity and reliability, the study applies source triangulation by cross-referencing fatwas with regulatory instruments, judicial decisions, and international standards. Peer debriefing with academic colleagues specializing in Islamic legal theory and financial regulation is also conducted to enhance interpretive rigor. This research is limited to the normative textual analysis of fatwas and does not extend to empirical investigation of their practical implementation within Islamic financial institutions.

FINDING AND DISCUSSION

DSN-MUI Fatwas as a Corpus of Institutional Legal Reasoning

In this study, corpus analysis is defined as a methodological approach that treats the collection of DSN-MUI fatwas not as separate, casuistic documents but as a unified textual body representing an evolving pattern of institutional legal reasoning over time. This approach follows the tradition of legal scholarship that emphasizes the importance of reading normative documents holistically in order to capture recurring argumentative structures and cross-temporal consistency in legal logic. (Hallaq, 2009) Unlike partial fatwa studies that analyze one or two rulings in isolation, the corpus approach enables the identification of patterns in normative evolution and institutional responses to developments within the Islamic financial industry. The corpus examined in this research consists of twelve DSN-MUI fatwas issued between 2000 and 2024 concerning *ta'wid* (compensation), debt restructuring, *hawalah* (debt transfer), novation, and subrogation. These fatwas were purposively selected based on their relevance to issues of financial risk and dispute resolution. By analyzing them as an integrated textual system, the study seeks to uncover the institutional

logic embedded within DSN-MUI's normative production rather than merely describing discrete doctrinal outcomes.

The corpus analysis reveals a consistent—though not always explicit—structure of legal reasoning within DSN-MUI fatwas. Three structural layers can be identified. First, each fatwa contains a normative premise grounded in the primary sources of Islamic law—the Qur'an, Hadith, *ijmā'*, and *qawā'id fiqhiyyah* (legal maxims). However, these references are frequently declarative, without detailed methodological explanation of how scriptural texts are operationalized into concrete regulatory norms. Second, the dominant reasoning method relies on considerations of *maqasid al-shari'ah* and *maṣlaḥah* (public interest), while classical juristic instruments such as *qiyās* are rarely articulated explicitly. This structural pattern aligns with Auda's observation that contemporary Islamic legal reasoning has shifted from a text-centered paradigm toward a purpose-oriented (*maqāṣid*-based) approach. Third, the final justification of the fatwas tends to rest more heavily on arguments of substantive justice and public welfare than on formal doctrinal validation. (Auda, 2008) The emphasis lies on achieving equitable outcomes and preserving systemic stability rather than on demonstrating methodological orthodoxy in a strictly technical sense.

The author's interpretation suggests that DSN-MUI has developed a reasoning model closer to purpose-based reasoning than to form-based reasoning. This tendency is particularly evident in more recent fatwas (2019–2022), which increasingly incorporate regulatory and systemic considerations, including references to Financial Services Authority (OJK) policies and financial industry stability—elements largely absent in earlier rulings. This evolution indicates a shift from a predominantly private-law orientation focused on bilateral contractual relations toward a governance-oriented *fiqh* attentive to systemic implications. Similar transformations have been observed in the broader development of Islamic law in contemporary Muslim jurisdictions. (Hooker, 2008)

The structural findings must be situated within the theoretical framework of institutional legal reasoning. Theoretically, institutional legal reasoning refers to processes of norm formation that aim not merely to regulate individual behavior but also to sustain institutional stability and legitimacy within complex regulatory systems. (Black, 2002) In modern financial ecosystems, legal institutions function to generate predictability, manage systemic risk, and cultivate public trust. Budiwanti & Eidhamar argue that in contemporary regulatory environments, non-state authorities—including Sharia supervisory bodies—play a significant role in shaping governance norms through soft-law instruments such as ethical

standards and religious opinions.(Budiwanti & Eidhamar, 2026) Within this framework, DSN-MUI operates as an institutional normative actor that shapes the legal expectations of contracting parties even before disputes arise. Its authority does not derive from coercive state power but from institutional recognition by regulators, industry actors, and religious courts.(R. A. Lubis & Sativa, 2026);(Rusli & Djajaputra, 2026) Fatwas thus function as anticipatory governance instruments that structure contractual behavior and mitigate potential disputes. From a critical standpoint, however, the effectiveness of this institutional role depends on DSN-MUI's capacity to ensure compliance and consistent implementation. Without adequate monitoring and enforcement mechanisms, institutional authority risks becoming symbolic rather than operational—a concern echoed in Franciosi's analysis of ethical oversight in Islamic finance.(Franciosi, 2025)

The findings demonstrate that risk management implications within the DSN-MUI fatwa corpus operate at two distinct levels. At the micro-contractual level, fatwas concerning *ta'wid* and sanctions for breach function as mechanisms for mitigating moral hazard. The limitation of compensation strictly to actual losses prevents excessive creditor exploitation while signaling that debtor negligence entails tangible economic consequences. This approach is consistently reflected in Fatwa No. 17/DSN-MUI/2000, No. 43/DSN-MUI/2004, and reinforced in Fatwa No. 129/DSN-MUI/2019 and No. 134/DSN-MUI/2020.

At the macro-systemic level, fatwas concerning debt restructuring and distressed financial institutions—particularly Fatwa No. 130/DSN-MUI/2019—explicitly acknowledge systemic risk requiring institutional intervention grounded in *maṣlaḥah 'āmmah* (public interest). This pattern aligns with Mensah's argument that variations in risk management approaches within Islamic finance reflect institutional design differences rather than normative inconsistency within Islamic law.(Mensah, 2021) The author's interpretation leads to the thesis that DSN-MUI's legal reasoning implicitly functions as a risk governance instrument, even though it is not explicitly framed as such. The reliance on *maqāṣid* and *maṣlaḥah*-based reasoning provides interpretive flexibility necessary to address the complexities of modern financial risk, consistent with Auda's *maqāṣid* framework. The moral-legal differentiation in cases of default establishes an equitable mechanism of risk allocation between creditors and debtors. Furthermore, the integration of Sharia norms with state regulatory considerations in recent fatwas reflects implicit recognition that systemic risk

management requires collaboration between religious and public authorities.(Arifin, 2024);(Suaidi et al., 2025)

Integrating the preceding layers of analysis, this study argues that the DSN-MUI fatwa corpus represents a form of governance-oriented fiqh operating as an instrument of risk governance and dispute resolution within Indonesia's Islamic financial system. This development resonates with Hooker's observation regarding the emergence of a "national madhhab" in Indonesian Islamic law, in which fiqh evolves through dialogue with state law and societal needs. Nevertheless, several structural limitations emerge from critical analysis. First, while the dominance of *maṣlahah*-based reasoning provides flexibility, it also carries the potential risk of subjectivity and inconsistency if not supported by transparent and standardized methodological frameworks. El-Gamal similarly cautions that excessive flexibility in Islamic financial engineering may compromise methodological coherence.

Second, the fatwas emphasize substantive justice over procedural architecture. As a result, implementation and enforcement mechanisms depend on external institutions—regulators, courts, and industry actors—whose institutional capacities and commitments may vary. Empirical studies confirm that the effectiveness of Islamic economic dispute resolution is strongly influenced by institutional capacity and procedural efficiency.(Herdatama et al., 2026);(Warits et al., 2026) Third, no fatwa explicitly formulates a structured procedural framework for risk identification, measurement, and mitigation. Existing mechanisms remain largely reactive and resolute rather than preventive and systematically designed. In contrast, global standards such as those developed by AAOIFI have advanced more systematic approaches in this regard, albeit with limited sensitivity to local contexts.(El-Halaby & Hussainey, 2016);(Mohamed et al., 2026)

The theoretical implication of these findings is the need to further develop the concept of institutional legal reasoning within contemporary Islamic legal studies. Such development must extend beyond the analysis of normative outputs to encompass institutional capacity, accountability mechanisms, and implementation effectiveness.(Asmoi & Musadad, 2026);(Khasanah & Salleh, 2025) The potential of fatwas as instruments of risk governance can only be fully realized through strengthened institutional frameworks, enhanced methodological transparency, and closer coordination with regulatory and judicial authorities, as recommended in recent studies on Islamic financial governance in Indonesia.

Moral and Legal Differentiation in Cases of Default

The distinction between moral and legal dimensions in cases of default should not be understood merely as a descriptive categorization but rather as an analytical framework that enables systematic evaluation of DSN-MUI's normative responses. Conceptually, this framework rests on three pillars: (1) differentiation of legal subjects, distinguishing debtors based on capacity and intent; (2) differentiation of normative sanctions, distinguishing legal consequences according to subject classification; and (3) procedural differentiation, distinguishing relevant dispute-resolution mechanisms.

Through this framework, moral–legal differentiation becomes more than a rhetorical narrative; it functions as an analytical instrument for assessing the consistency, fairness, and effectiveness of DSN-MUI's legal reasoning in addressing the complexities of contractual default. It allows for structured evaluation of how normative principles are translated into enforceable legal consequences within Islamic finance. The corpus analysis reveals consistent application of subject differentiation across DSN-MUI fatwas from Fatwa No. 17/DSN-MUI/2000 to Fatwa No. 134/DSN-MUI/2020. The findings demonstrate that DSN-MUI explicitly distinguishes between two categories of debtors:

1. *Al-mu'sir*: a debtor genuinely unable to repay due to objective constraints such as bankruptcy, force majeure, or external economic hardship beyond personal control.
2. *Al-mumthil*: a debtor who is factually capable of repayment but deliberately delays or avoids fulfilling obligations.

This distinction is not merely moral but carries concrete normative consequences. In cases of *al-mu'sir*, the fatwas require leniency measures such as rescheduling, restructuring, or even debt remission (*tabarru'*). In contrast, in cases of *al-mumthil*, the imposition of *ta'wid* (compensation for actual loss) is permitted, and in certain cases, restrictions on future financial transactions may apply. The author's interpretation suggests that the persistence of this differentiation over two decades (2000–2024) demonstrates that DSN-MUI does not operate on a purely casuistic basis but rather operationalizes a distributive justice framework. Legal treatment is calibrated according to debtor capacity and good faith. This approach aligns with the objectives of *maqasid al-shari'ah*, particularly the protection of vulnerable parties (*hifz al-muštad'afin*) and the prevention of injustice (*man' al-zulm*), consistent with the *maqāšid*-based reasoning advanced by Auda and further developed in contemporary scholarship (Ngabas et al., 2025).(Auda, 2008);(Ngabas et al., 2025)

The claim that DSN-MUI employs evidence-based legal reasoning must be operationalized through examination of procedural standards embedded within the fatwas.

Analysis of Fatwa No. 129/DSN-MUI/2019 and No. 134/DSN-MUI/2020 demonstrates explicit limitation of *ta'wid to al-takālif al-fi'liyyah* (actual incurred costs), subject to three cumulative evidentiary criteria:

1. *Real cost* – Compensation must reflect actual expenditures, not opportunity loss, time-based penalties, or projected profits.
2. *Quantifiable* – Losses must be measurable and supported by documentary evidence such as invoices, financial statements, transfer records, or audit reports.
3. *Direct causation* – Losses must result directly from the debtor's default and not from indirect, speculative, or opportunistic claims.

Based on the textual structure of the fatwas, the author reconstructs a tiered evidentiary framework capable of operational application in Islamic financial institutions and dispute-resolution bodies:

Table 1. Evidentiary Standards and Burden of Proof for Ta'wid Claims Based on the DSN-MUI Fatwa Corpus

LEVEL	TYPE OF LOSS	STANDARD OF PROOF	BURDEN OF PROOF
1	Actual administrative costs	Internal documentation (receipts, invoices, transfer records)	Creditor
2	Legal and advocacy costs	Court decisions, service contracts, official receipts	Creditor
3	Actual liquidity loss	Cash-flow reports, forensic audits, independent accounting verification	Creditor + Independent verification
4	Reputational or speculative loss	Not recognized as basis for <i>ta'wid</i>	–

Source: Author's compilation based on analysis of DSN-MUI Fatwas No. 17/2000, No. 43/2004, No. 129/2019, and No. 134/2020.

Through this structure, DSN-MUI does more than articulate a normative principle; it provides operational guidance for calculating and substantiating compensable losses. This approach reflects best practices in modern financial risk management emphasizing verifiability and accountability. (Hasibuan et al., 2025); (Rahmawati et al., 2025) The moral–legal differentiation framework and tiered evidentiary standards constructed by DSN-MUI generate concrete implications for actors within the Islamic financial dispute-resolution ecosystem.

First, mediators and non-litigation institutions, sharia mediators may utilize this framework to classify debtors at the outset of mediation—distinguishing mu‘sir from mumṭil—and tailor facilitation strategies accordingly. The tiered evidentiary standards help

verify creditor claims, preventing mediation from devolving into subjective bargaining. Proportional settlements may be designed, such as rescheduling for mu‘sir or limited compensation for mumtil. These parameters provide mediators with normative legitimacy independent of individual juristic discretion. *Second*, Sharia Arbitrators and Arbitration Institutions. For arbitrators, the DSN-MUI framework offers clear substantive legal grounds in adjudicating default disputes. Arbitral awards may directly reference subject differentiation and evidentiary standards to reject non-compliant compensation claims, distinguish between bankrupt and negligent debtors, and limit compensation strictly to verified actual loss. This enhances decision predictability and reduces inter-arbitrator inconsistency. (A. Hassan, 2025);(Herdatama et al., 2026)

Third, religious court judges, which hold jurisdiction over Islamic economic disputes, may incorporate this framework into judicial reasoning. Empirical findings indicate that ambiguity in normative parameters often weakens proportionality assessments in litigation.(Warits et al., 2026) By adopting DSN-MUI’s evidentiary hierarchy, judges may require stricter proof from creditors, differentiate rulings between mu‘sir and mumtil, and employ fatwas as interpretive guides in resolving ambiguous contractual clauses. This reflects the function of DSN-MUI fatwas as soft law integrated into judicial.(Asmoi & Musadad, 2026); *Fourth*, Islamic financial institutions (internal governance), Islamic financial institutions may use this framework to design standard operating procedures (SOPs) for non-performing financing management. Distinct treatment protocols for mu‘sir and mumtil may be institutionalized, while documentation systems may be aligned with fatwa-based evidentiary requirements. Additionally, client education regarding differentiated consequences of default can foster clearer contractual expectations and reduce dispute probability.(Alfarisi et al., 2025);(Yasardin et al., 2025)

Fifth, Limitations and Strengthening Agenda. Despite its analytical robustness, several structural limitations remain. First, DSN-MUI fatwas do not explicitly establish independent verification mechanisms to prevent collusion or evidentiary manipulation between creditors and debtors. Second, the tiered evidentiary standards require further operationalization through uniform technical guidelines applicable across Islamic financial institutions and dispute-resolution bodies. Third, no formal supervisory mechanism currently monitors the consistent implementation of these standards in practice. From a theoretical perspective, these findings reinforce El-Gamal’s argument that modern Islamic financial law evolves through functional equivalence with conventional legal systems while retaining distinctive

ethical and procedural framing. The *mu'sir–mumt'il* differentiation and the evidentiary standard of *al-takālif al-fi'liyyah* illustrate how DSN-MUI bridges the prohibition of riba and the practical necessity of contract enforcement through restorative and accountable compensation design. Thus, moral–legal differentiation in DSN-MUI fatwas represents not merely doctrinal nuance but a structured governance mechanism aimed at balancing distributive justice, contractual discipline, and systemic stability within Indonesia's Islamic financial architecture.

Debt Restructuring as a Risk Governance Instrument

Another key finding demonstrates that debt restructuring within the DSN-MUI fatwa corpus is not understood as an indicator of contract failure or a violation of legal certainty principles. Instead, restructuring is positioned as an inherent part of a legitimate, Sharia-compliant risk management cycle. Fatwas concerning rescheduling, contract conversion, and refinancing reveal the explicit use of the principles of *raf' al-ḥaraj* (removal of hardship) and *maṣlaḥah* (public interest) to preserve contractual relationship continuity.(Zuhdi et al., 2025);(Wazin et al., 2025) Fatwa No. 47 and No. 48/DSN-MUI/2005, for example, introduce a resolution-based approach grounded in *ṣulḥ* (amicable settlement) and *ta'āwun* (cooperation), framing restructuring as a form of inter-party collaboration to avoid greater loss. In this approach, payment failure is not immediately criminalized or financially penalized but is analyzed as an economic problem requiring adaptive solutions. Practically, this approach allows Sharia financial institutions to adjust financing schemes without resorting to costly, slow, and reputationally risky litigation.(Alfarisi et al., 2025)

Contemporary Islamic finance literature notes that such normative flexibility is an advantage of the Sharia system compared to conventional finance, which tends to be rigid and enforcement-focused. In the conventional system, restructuring is often viewed as a deviation from the original contract, whereas within the DSN-MUI framework, restructuring is understood precisely as the realization of *maqasid al-shari'ah* in preserving business continuity (*hifz al-māl* - protection of wealth).(Yasardin et al., 2025) From a legal theory perspective, this approach reflects a shift from a paradigm of contract sanctity towards contract sustainability. Contracts are no longer treated as absolute promises that must be enforced without considering economic and social context, but rather as dynamic instruments that can be adjusted to achieve substantive justice and systemic stability. This

finding is relevant to the global discourse on bankruptcy and debt restructuring law, which increasingly emphasizes rehabilitative rather than repressive approaches.

Debt Transfer, Novation, and Subrogation as Legal Engineering Techniques

The DSN-MUI fatwas concerning *hawālah* (debt transfer), novation, and subrogation demonstrate that the institution consciously adopts a legal engineering approach to respond to the complexities of modern financing. Within the context of an increasingly integrated and multi-layered financial system, default risk cannot always be resolved through rigid bilateral contract enforcement. (Aziem et al., 2026) Consequently, DSN-MUI utilizes *fiqh* instruments that allow for the substitution of legal subjects and the transfer of rights and obligations without invalidating the entire contractual relationship.

Fatwa No. 31/DSN-MUI/2002 on Debt Transfer (*Hawālah*) serves as the foundational cornerstone of this approach. This fatwa affirms that transferring debt obligations from the original debtor to a third party is permissible as long as it fulfills the principles of mutual consent (*tarāḍī*), clarity of the subject matter, and does not inflict injustice (*ẓulm*) upon any party. In modern financing practice, *hawālah* functions as a credit risk redistribution mechanism, enabling liability restructuring without forcing financial institutions into high-risk litigious positions. (Rahmawati et al., 2025); (Sya'bani, 2024)

Further development is evident in Fatwa No. 103/DSN-MUI/2016 on subjective novation and Fatwa No. 104/DSN-MUI/2016 on subrogation. Both fatwas explicitly accommodate the concept of legal subject substitution—whether on the debtor or creditor side—which is functionally equivalent to the concepts of novation and subrogation in modern civil law. Through subjective novation, the original legal relationship is not simply extinguished but is reconstructed with a new party that is legally and economically more capable of fulfilling the obligations. Meanwhile, subrogation allows the party that settles a debt to assume the rights of the original creditor, thereby maintaining claim continuity without creating risk duplication. (Hapinra, 2025) The significance of this finding lies in the fact that DSN-MUI does not take a defensive stance against modern legal concepts like assignment of rights or subrogation. Instead, these concepts are accepted insofar as they meet the parameters of substantive justice, transparency, and party consent. This approach affirms that Sharia validity is not determined by the formal shape of legal institutions, but by their function and normative purpose. Thus, DSN-MUI applies normative selection based on *maqasid al-shari'ah*, particularly the protection of wealth (*hifz al-māl*), justice (*‘adl*), and the prevention of disproportionate loss.

From a comparative law perspective, the DSN-MUI approach shows functional similarities with common law remedies in cases of default and insolvency, especially regarding the flexibility of resolution and the balanced protection of creditor and debtor interests.(Ezekwesiri & Ayo-Odewale, 2025) However, the difference lies in the ethical framework and ultimate purpose. While common law emphasizes efficiency and certainty of rights, DSN-MUI fatwas frame these legal engineering techniques within the horizon of Sharia ethics and social responsibility. This aligns with the argument by Hassan and Aldabousi et al. that Islamic law possesses an adaptive capacity to operate effectively within the global financial system without losing its normative identity.(Moustafa Aldabousi et al., 2025) Therefore, debt transfer, novation, and subrogation in DSN-MUI fatwas can be understood not merely as technical exceptions, but as integral components of the legal risk architecture in Sharia finance. These techniques illustrate that contemporary Islamic law is moving from a static paradigm towards a functional and governance-oriented paradigm, where the sustainability of economic relationships and systemic justice become primary considerations.

Fatwas as Instruments of Systemic Risk Governance

Systemic risk governance refers to the institutional mechanisms through which risks capable of disrupting the stability of the financial system as a whole are identified, mitigated, and managed—rather than risks confined to individual entities.(Schwartz, 2012) In contrast to micro-level risk management, which focuses on firm-specific exposure, systemic risk governance emphasizes interconnectivity, contagion effects, and negative externalities that may trigger system-wide crises. Within Islamic finance, this framework encompasses not only prudential-economic considerations but also Sharia-based normative constraints to ensure that systemic interventions remain aligned with principles of justice and public welfare (*maṣlaḥah*). (Askari et al., 2012) Accordingly, in this study systemic risk governance is defined as the ensemble of institutions, norms, and mechanisms designed to prevent, manage, and respond to risks that threaten the stability of the Islamic financial system while maintaining Sharia compliance.

Analysis of the DSN-MUI fatwa corpus reveals a significant shift in normative orientation from the micro-contractual level toward the macro-systemic level. Fatwas issued in the earlier period (2000–2010) largely centered on bilateral contractual concerns: the validity of contracts (*akad*), rights and obligations of parties, and mechanisms for resolving

individual disputes. By contrast, fatwas in the more recent period (2019–2024) explicitly enter the domain of systemic governance. A pivotal turning point is Fatwa No. 130/DSN-MUI/2019, which provides guidance for the Indonesian Deposit Insurance Corporation (LPS) in handling Islamic banks facing solvency problems. This fatwa explicitly invokes *maṣlaḥah ‘āmmah* (public interest) to justify institutional intervention in distressed Islamic banks, including rescue measures, resolution actions, and depositor protection.

The author’s interpretation is that the deployment of *maṣlaḥah ‘āmmah* at the systemic level signals DSN-MUI’s implicit recognition of “too big to fail” dynamics and contagion risk as defining characteristics of modern banking systems. The failure of an Islamic bank may not only harm shareholders or creditors but also destabilize the Islamic financial sector and erode public trust. In this setting, the fatwa no longer operates merely as an ethical guide for individual compliance or contract legitimacy; it becomes part of the architecture of the national financial safety net. (Altaf, 2025);(Bin-Armiya & Kambakov, 2026) The author’s interpretation is that the integration between DSN-MUI fatwas and state regulation reflects the development of a hybrid legal order, in which religious norms and state regulation mutually reinforce each other’s legitimacy. Within this configuration, fatwas provide Sharia-based normative justification for technically designed public policy interventions, while state regulatory authority supplies operational force and implementability to Sharia norms articulated in fatwas.(Black, 2002) The relationship is not strictly hierarchical but rather circular and mutually constitutive.

The analysis further indicates that DSN-MUI fatwas operate at two critical moments within the systemic risk governance cycle. First, *Ex Ante Governance: Crisis Prevention*. Fatwas on debt restructuring, rescheduling, and contract conversion (e.g., Fatwa No. 47/2005, No. 48/2005, and No. 153/2022) function as preventive mechanisms by enabling contractual adjustment before payment distress escalates into systemic default. By providing Sharia-legitimate pathways for restructuring, DSN-MUI helps reduce the accumulation of non-performing financing that may generate broader instability. This preventive orientation aligns with the principle of *dar’ al-mafāsid* (preventing harm), which prioritizes averting systemic damage over merely treating harm after it materializes.(Auda, 2008) Second, *Ex Post Resolution: Crisis Management*. Fatwa No. 130/2019 constitutes the clearest illustration of ex post resolution. It provides Sharia legitimacy for LPS interventions, including merger, acquisition, or liquidation of failing Islamic banks. Without such legitimacy, state intervention in Sharia-labeled institutions may be contested as normatively illegitimate or inconsistent

with Sharia principles. In this respect, the fatwa functions as a risk resolution instrument that enables public authorities to act decisively during crises while preserving normative credibility.

These findings broaden how fatwas should be understood in contemporary Islamic legal studies. Fatwas are no longer merely normative responses to individual queries; they have evolved into instruments of public policy operating within complex regulatory ecosystems. This evolution requires reconceptualizing fatwa authority through governance theory rather than jurisprudential theory alone. As argued in contemporary scholarship, modern Islamic law should be analyzed as operating within (and contributing to) the regulatory state rather than as a fully autonomous normative system detached from public institutions. (Awass, 2019); (Mirvaxidovich, 2025) For regulators (OJK and LPS), DSN-MUI fatwas supply Sharia-based normative justification for systemic interventions that might otherwise be controversial. For Islamic financial institutions, fatwas provide legal and normative certainty that restructuring and resolution actions will not later be challenged as Sharia violations. For judges and arbitrators, fatwas operate as interpretive guides in disputes involving systemic distress—beyond individualized breach scenarios—thereby strengthening coherence and predictability in adjudication.

Despite this progress, critical analysis reveals several limitations. First, Fatwa No. 130/2019 remains general and does not provide detailed operational guidance on how *maṣlaḥah ‘āmmah* should be applied across different crisis scenarios (e.g., differentiated treatment for systemically important versus non-systemic institutions). Second, no fatwa explicitly addresses cross-authority coordination in crisis management—for example, structured coordination among LPS, OJK, and Bank Indonesia. Third, the fatwa corpus remains more reactive—responding after systemic stress becomes visible—than proactive in designing structured preventive mechanisms. Accordingly, a forward-looking research and policy agenda involves developing an explicitly Sharia-based macroprudential framework integrated with fatwa reasoning—one that systematically addresses crisis prevention, inter-agency coordination, and operational benchmarks for applying *maṣlaḥah ‘āmmah* in systemic interventions.

Contextualized Reasoning of DSN-MUI and Standardized Reasoning of AAOIFI in Default and Insolvency

A comparison between DSN-MUI fatwas and AAOIFI standards on issues of default (*wanprestasi*), financial distress, and insolvency reveals fundamental epistemological

differences in how contemporary Islamic law is constructed and operationalized. These differences lie not merely in the substance of norms, but in the orientation of legal reasoning, the function of fatwas, and their relationship with modern legal and financial governance systems. AAOIFI develops Sharia standards with the primary aim of creating uniformity and legal certainty across jurisdictions. In default issues, AAOIFI emphasizes general principles such as the prohibition of *riba*, the necessity of compensation based on real loss, and the importance of contractual clarity from the outset. This approach is *ex ante*, focusing on the design of ideal contracts to minimize potential disputes and payment failure. (El-Halaby & Hussainey, 2016) In contrast, DSN-MUI develops a pattern of contextualized reasoning that starts from national institutional and socio-economic realities. DSN-MUI fatwas do not merely formulate ideal norms but also respond to concrete problems arising in the practice of Indonesian Sharia finance, such as the high default risk for MSMEs (Micro, Small, and Medium Enterprises), limited financial literacy, and the need for stability in the domestic Sharia banking system. Thus, DSN-MUI's reasoning is problem-driven and *ex-post* responsive, without abandoning Sharia normative principles. (Hooker, 2008)

On the issue of *ta'wid* (compensation for default), both AAOIFI and DSN-MUI agree that compensation may only be imposed for real and measurable losses, not as a time-based penalty like interest. However, the difference lies in the level of operationalization. AAOIFI tends to set general principles without detailing loss verification mechanisms or their integration with national legal systems. AAOIFI standards assume a relatively homogeneous institutional capacity across countries to translate these principles into practice. (Suparman & Hersi, 2024) DSN-MUI, conversely, explicitly restricts *ta'wid* to actual costs (*al-takālīf al-fi'liyyah*), as seen in Fatwa No. 129/DSN-MUI/2019 and No. 134/DSN-MUI/2020. This restriction is not only of normative value but also functions as a control mechanism against potential abuse by financial institutions. In other words, DSN-MUI integrates Sharia principles with the needs for consumer protection and operational accountability within the national banking system.

The most striking difference between DSN-MUI and AAOIFI emerges in issues of insolvency and financial crisis. AAOIFI is relatively limited in discussing troubled bank resolution or systemic restructuring, as its mandate is more focused on contractual and accounting standards. Consequently, issues of systemic risk and financial safety nets are often left to the national regulators of each country (Muna, 2024). DSN-MUI, on the other hand, explicitly enters the domain of systemic risk governance through fatwas like Fatwa No.

130/DSN-MUI/2019 on handling Islamic banks experiencing solvency problems. In this fatwa, the principle of *maṣlaḥah ‘āmmah* (public interest) is used to justify institutional interventions that may not be entirely contractually neutral but are necessary to maintain overall financial system stability. This approach shows that DSN-MUI views Islamic law not only as an instrument for contract legitimacy but as part of a financial governance framework. This aligns with the view that in the context of the modern state, religious law functions within a complex and interconnected regulatory ecosystem. (Black, 2002)

In terms of debt restructuring and the resolution of non-performing financing, DSN-MUI adopts a more flexible approach compared to AAOIFI. Fatwas on rescheduling, contract conversion, refinancing, and transfer of obligations demonstrate the use of *fiqh* instruments like *ṣulḥ*, *istihsān*, and *taghyīr al-‘aqd* to respond to debtor financial situations. AAOIFI, while acknowledging the importance of restructuring, tends to be cautious in justifying substantial changes to contracts due to concerns about cross-country standard inconsistency. As a result, AAOIFI emphasizes upfront contract clarity more than post-contract flexibility. This difference reflects two legal philosophies: AAOIFI represents a rule-centered approach, while DSN-MUI develops an outcome-centered approach. They are not contradictory but serve different purposes in global Sharia finance governance.

Another distinguishing aspect is the relationship with positive law systems. AAOIFI standards are jurisdiction-neutral and are not explicitly designed for integration with specific judicial systems or regulators. In contrast, DSN-MUI fatwas consistently stipulate compliance with OJK (Financial Services Authority) regulations and the national legal framework. In default and dispute issues, this makes DSN-MUI fatwas more easily operationalized by religious court judges, Sharia arbitrators, and mediators. The fatwas function not only as a normative source but also as an interpretive guide in the practice of resolving Sharia financial disputes in Indonesia. (Mohamed et al., 2026)

This comparison indicates that DSN-MUI and AAOIFI are not in a hierarchical or competitive relationship, but rather a complementary one. AAOIFI provides a global standard framework that maintains the normative coherence of Islam across jurisdictions, while DSN-MUI fills the contextual space by translating these principles into Indonesia’s legal, economic, and institutional realities. In issues of default and insolvency, the strength of DSN-MUI lies in its ability to develop context-sensitive Islamic remedies that are practically relevant and institutionally effective. Meanwhile, AAOIFI maintains its crucial role as the guardian of doctrinal consistency and a global reference. Thus, this research

affirms that the success of global Sharia financial governance does not depend on full standardization, but on a continuous dialogue between global standards and national legal reasoning. Default and insolvency are not merely contractual problems but strategic arenas for the evolution of contemporary Islamic law.

Fiqh al-Mukhtarah wa al-Niza': Toward a Governance-Oriented Epistemology of Islamic Law

The concept of Fiqh al-Mukhtarah wa al-Niza' is not found as a fixed doctrinal category in classical juristic literature. It is a theoretical construct derived from a systematic synthesis of recurring reasoning patterns identified in the DSN-MUI fatwa corpus issued between 2000 and 2024. Rather than merely describing a set of rulings, the framework articulates an epistemological transformation in contemporary Islamic law, in which risk management and dispute resolution are treated as structurally embedded components of contract design and financial governance.

Within this framework, Islamic law is no longer confined to determining the validity or invalidity of contracts. It functions as a governance architecture that anticipates risk, structures adaptive responses, and embeds justice-based mechanisms into the lifecycle of financial transactions. Fiqh al-Mukhtarah wa al-Niza' may therefore be defined as an epistemological framework within Islamic law that systematically integrates risk governance (mukhtarah) and dispute resolution (niza') as inherent elements of Sharia-compliant contract design, grounded in maqasid al-shari'ah—particularly hifz al-māl, justice (ʿadl), and hardship removal (rafʿ al-ḥaraj)—and operationalized through juristic instruments such as ta'wid, restructuring, hawalah, novation, and subrogation.

This framework rests upon an ontological recognition that risk and dispute are not anomalies but inherent features of economic activity. Credit default, liquidity stress, and contractual breakdown are foreseeable realities in complex financial systems. The DSN-MUI corpus consistently acknowledges this structural reality. Risk is not treated as a deviation requiring elimination, but as an exposure requiring governance. In this sense, Islamic law transitions from a paradigm of risk avoidance to one of risk regulation. Epistemologically, norm production in this corpus relies on a plural reasoning structure combining maqasid al-shari'ah, maṣlaḥah, qiyās, and istiḥsān, increasingly integrated with systemic and regulatory considerations. The invocation of maṣlaḥah ʿāmmah to justify institutional intervention in distressed Islamic banks illustrates a shift toward governance-sensitive reasoning. Islamic

legal epistemology thus becomes adaptive and system-aware, engaging with prudential policy and institutional stability rather than remaining confined to bilateral contractual logic.

Axiologically, the framework expands the normative objectives of Islamic law. Protection of wealth (*hifz al-māl*) is no longer limited to safeguarding individual property rights; it extends to systemic financial stability, protection of vulnerable actors, and continuity of financial institutions. Distributive justice becomes operational through the persistent differentiation between *al-mu‘sir* and *al-mumṭil*, while compensation mechanisms are confined to verifiable actual loss (*al-takālīf al-fi‘liyyah*), preventing punitive or speculative drift.

The conceptual distinction between prohibited uncertainty (*gharar*) and governable risk (*mukhatarah*) is central to this reconstruction. Classical *fiqh* classified *gharar* into excessive, minor, and intermediate forms, focusing on internal structural ambiguity that undermines contractual consent. By contrast, *mukhatarah* refers to external economic uncertainty—market volatility, liquidity fluctuation, counterparty behavior—that can be identified, allocated, and governed without invalidating the contract. The DSN-MUI corpus implicitly operationalizes this distinction, continuing to prohibit speculative uncertainty while legitimizing structured risk allocation through adaptive mechanisms. The analytical contrast summarized as follows:

Table 2. Conceptual Distinction Between *Gharar* and *Mukhatarah* in Classical *Fiqh* and Contemporary Operationalization

Aspect	Gharar (prohibited uncertainty)	Mukhatarah (governable risk)
Nature	Internal structural ambiguity	External economic exposure
Epistemic character	Non-quantifiable, speculative	Identifiable and measurable
Legal effect	Invalidates contract	Does not invalidate if governed
Normative response	Avoidance and prohibition	Allocation, mitigation, adaptation
Contemporary operationalization	Continued prohibition in speculative structures	Managed through <i>ta’wid</i> , restructuring, <i>hawalah</i>

Source: Author’s synthesis based on Al-Zuhayli (2003), Al-Suwailem (2013), El-Gamal (2006), and analysis of DSN-MUI fatwas (2000–2024).

Through this differentiation, Islamic law shifts from suppressing uncertainty to structuring adaptive mechanisms for uncertainty management. *Fiqh al-Nizā‘*, within this framework, does not primarily denote classical adjudication forums but refers to the normative architecture guiding modern dispute resolution. The corpus reveals that DSN-

MUI fatwas provide substantive justice parameters that can be operationalized across multiple institutional settings, including arbitration, mediation, administrative intervention, and religious courts. These parameters include proportionality of sanctions, evidentiary standards for compensation, debtor classification, mutual consent requirements, and preference for amicable settlement (*sulh*). The operational implications for contemporary dispute resolution synthesized as follows:

Table 3. Normative Contributions of DSN-MUI Fatwas to the Governance Architecture of Islamic Financial Dispute Resolution

Governance Level	Normative Contribution of Fatwa	Institutional Application
Substantive	Mu‘sir–mumṭil differentiation	Judicial and arbitral calibration of sanctions
Evidentiary	Restriction to actual loss	Objective compensation quantification
Procedural	Preference for ṣulḥ	Compatibility with ADR mechanisms
Systemic	Legitimization of institutional intervention	Hybrid regulatory-religious coordination

Source: Author’s analysis of DSN-MUI Fatwas No. 47/2005, No. 48/2005, No. 129/2019, No. 130/2019, and related literature (Herdatama et al., 2026; Warits et al., 2026).

The framework therefore operates within a hybrid legal order in which religious normativity and state regulatory authority mutually reinforce one another. Fatwas provide normative legitimacy for systemic intervention, while regulatory institutions supply operational enforceability. This circular interaction situates Islamic law within governance theory rather than solely within doctrinal jurisprudence. The reconceptualization of legal certainty constitutes another theoretical advancement. Certainty is no longer equated with contractual rigidity. Instead, it is understood as predictability of adaptive mechanisms. Parties may not predict whether default will occur, but they can predict how the normative system will respond—through debtor classification, structured restructuring pathways, evidentiary standards, and recognized resolution forums. Certainty thus resides in procedural and substantive predictability rather than immutability. At a higher level of abstraction, *Fiqh al-Mukhtarah wa al-Niza’* represents an epistemological shift from transactional fiqh toward systemic governance fiqh. It expands the scope of *maqasid al-shari’ah* from micro-protective to macro-systemic dimensions and reconciles the longstanding tension between legal certainty and substantive justice by institutionalizing structured adaptability. The expansion of *hifz al-māl* summarized as follows:

Table 4. Expansion of the Maqāṣid Objective of Hifz al-Māl from Individual to Systemic Protection

Classical Orientation	Expanded Systemic Orientation
Protection of individual property	Protection of financial system stability
Focus on theft and fraud	Focus on systemic risk and contagion
Individual contractual remedy	Institutional resolution and restructuring
Static property security	Dynamic economic sustainability

Source: Author’s conceptual synthesis based on Auda (2008), Dusuki (2007), and corpus analysis of DSN-MUI fatwas (2000–2024).

Nevertheless, the framework presupposes institutional coherence and effective internalization. Its viability depends on regulatory coordination, methodological transparency in applying maṣlaḥah, and safeguards against Sharia arbitrage. Without such structural supports, governance-oriented fiqh risks remaining symbolic rather than operational. In sum, Fiqh al-Mukhtarah wa al-Niza’ articulates a governance-sensitive epistemology of Islamic law that integrates risk and dispute as inseparable dimensions of financial architecture. It demonstrates that contemporary Islamic jurisprudence is evolving from rule-based classification toward systemic regulatory design, positioning Islamic law as an adaptive governance instrument within complex financial ecosystems.

This study is subject to several limitations. First, the analysis is confined to a normative corpus of DSN-MUI fatwas and does not empirically examine how these rulings are implemented in the operational practices of Islamic financial institutions, regulatory agencies, arbitration bodies, or religious courts. Consequently, the study cannot assess the extent to which the governance-oriented reasoning identified in the corpus is consistently internalized or effectively enforced in practice. Second, the research focuses exclusively on the Indonesian context, limiting the generalizability of its findings to other jurisdictions where Sharia advisory authorities operate under different institutional and regulatory configurations. Third, the reconstruction of Fiqh al-Mukhtarah wa al-Niza’ as a conceptual framework relies on interpretive synthesis of textual patterns, which, while methodologically grounded in corpus analysis, remains theoretically constructed rather than doctrinally codified. Future research incorporating empirical investigation, cross-country comparison, and institutional performance assessment would be necessary to validate and refine the systemic governance claims advanced in this study.

CONCLUSION

This study demonstrates that Islamic legal reasoning in contemporary Islamic finance, as reflected in the DSN-MUI fatwa corpus (2000–2024), has evolved beyond a narrow concern with contractual validity toward a governance-oriented framework integrating risk management and dispute resolution. Through a systematic corpus analysis of fatwas on ta'wid, debt restructuring, and debt transfer, the article identifies a consistent pattern of reasoning that recognizes economic risk as an inherent reality rather than a contractual anomaly. The differentiation between al-mu'ṣir and al-mumṭil, the restriction of compensation to verifiable actual loss, and the preference for restructuring and amicable settlement collectively reveal a distributive justice logic embedded within Sharia financial governance. By distinguishing governable risk (mukhtarah) from prohibited uncertainty (gharar), the fatwa corpus shifts Islamic jurisprudence from a paradigm of risk avoidance to one of structured risk governance. This transformation also redefines legal certainty: predictability no longer derives from contractual rigidity, but from clearly structured mechanisms for adaptive response under defined justice parameters. Furthermore, the interaction between DSN-MUI fatwas and state regulatory institutions reflects the emergence of a hybrid legal order in which religious normativity and public regulatory authority mutually reinforce systemic stability. The concept of Fiqh al-Mukhtarah wa al-Niza' thus provides an epistemological lens for understanding contemporary Islamic law as a systemic governance architecture. It highlights the capacity of Islamic jurisprudence to address financial complexity while maintaining normative coherence, distributive justice, and Sharia compliance within modern regulatory environments.

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