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DISHARMONY IN THE REGULATION OF *BAI' AL-WAFA'* WITHIN THE KHES AND THE REGULATORY VACUUM OF DSN-MUI FATWAS: A NORMATIVE STUDY OF SHARIA ECONOMIC LAW

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ABSTRACT

Bai' al-wafa' is a controversial contract construction in muamalah fiqh, located in a gray area between buying and selling and pawning. This study aims to analyze the disharmony of norms related to the regulation of *Bai' al-wafa'* in the Islamic economic legal system in Indonesia. The main problem lies in the dualism of regulations: the Compilation of Islamic Economic Law (KHES) explicitly legalizes this practice through Articles 112-115, while the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) is in a position of authoritative vacuum. Using a juridical-normative method, this study examines the implications of the tension between formal legality and sharia compliance. The results show that the legality of *Bai' al-wafa'* in KHES is a form of legal pragmatism to accommodate market needs, while the vacuum of DSN-MUI fatwas is interpreted as the application of the principle of prudence (*ihtiyath*) to prevent the practice of hidden usury (*hilah*). This study concludes that the legality of *Bai' al-wafa'* in the KHES is a form of legal pragmatism that risks violating the purity of sharia principles, therefore, the supremacy of the DSN-MUI fatwa must be prioritized as the standard of compliance.

Keywords: *Bai' al-wafa'*; KHES; DSN-MUI; *Sadd al-Dzari'ah*; Legal Disharmony

ABSTRAK

Bai' al-wafa' merupakan konstruksi akad yang kontroversial dalam fikih muamalah, berada di wilayah abu-abu antara jual beli dan gadai. Penelitian ini bertujuan untuk menganalisis disharmoni norma terkait pengaturan *Bai' al-wafa'* dalam tata hukum ekonomi syariah di Indonesia. Masalah utama terletak pada dualisme regulasi: Kompilasi Hukum Ekonomi Syariah (KHES) secara eksplisit melegalisasi praktik ini melalui Pasal 112-115, sementara Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI) berada dalam posisi kekosongan otoritatif. Dengan menggunakan metode yuridis-normatif, penelitian ini mengkaji implikasi ketegangan antara legalitas formal dan kepatuhan syariah (*sharia compliance*). Hasil penelitian menunjukkan bahwa legalitas *Bai' al-wafa'* dalam KHES merupakan bentuk pragmatisme hukum untuk mengakomodasi kebutuhan pasar, sedangkan kekosongan fatwa DSN-MUI diinterpretasikan sebagai penerapan prinsip kehati-hatian (*ihtiyath*) guna mencegah praktik riba terselubung (*hilah*). Penelitian ini menyimpulkan bahwa legalitas *Bai' al-wafa'* dalam KHES merupakan bentuk pragmatisme hukum yang berisiko mencederai kemurnian prinsip syariah, sehingga Harmonisasi fatwa DSN-MUI harus didahulukan sebagai standar kepatuhan.

Kata Kunci: *Bai' al-wafa'*; KHES; DSN-MUI; *Sadd al-Dzari'ah*; Disharmoni Hukum.

INTRODUCTION

The dynamics of the Islamic financial industry necessitate product innovations that frequently outpace existing regulatory frameworks. The phenomenon of *Bai' al-wafa'* has emerged as a classical liquidity instrument whose legality in Indonesia remains a subject of contention between formal legal texts and the legal consciousness of society (Mutaqin & Suryadi, 2025). A sociology of law analysis reveals a discrepancy between the codification within the Compilation of Islamic Economic Law (KHES) and the overall effectiveness of Sharia economic law enforcement (Anam & Anggraini, 2020). In a global context, legal authorities in the Middle East tend to adopt a restrictive stance toward this contract, yet they continue to consider its potential implementation within the Southeast Asian region (Chakim et al., 2025).

Previous research on *Bai' al-wafa'* has generally focused on two primary discourses. First, studies that position the phenomenon merely as a legal loophole that has not been fully accommodated within the national legal constellation. Second, fiqh studies that tend to be isolated within madhhab comparisons, as evidenced by Hidayat's research, which dissects *Bai' al-wafa'* through the perspectives of Majallah al-Ahkam al-Adliyah and the Compilation of Islamic Economic Law (KHES) (Hidayat, 2022). Furthermore, Mubarrok conducted a comparative analysis between *Bai' al-wafa'* and the sale-and-leaseback contract in retail sukuk instruments (Mubarrok, 2019). However, to the best of the author's knowledge, there is a lack of comprehensive research dissecting the impact of normative disharmony between the permissive nature of the KHES and the National Sharia Board of the Indonesian Ulama Council (DSN-MUI), which remains in a position of authoritative vacuum.

This article seeks to fill this gap by deconstructing the passive stance of the DSN-MUI. Contrasting with the common assumption that interprets this condition as administrative negligence, this article argues that the existence of this specific fatwa vacuum functions as a filtering instrument against potential legal stratagems (*biya'*) that risk facilitating backdoor usury (*riba*). Consequently, this study offers a novel perspective that transcends conventional legal descriptions, namely an analysis of the protection of the integrity of the Islamic economic system amidst the pressures of regulatory pragmatism (Setyawan, 2025).

In Indonesia, the legal status of *Bai' al-wafa'* exhibits a significant anomaly. As a nation adhering to the principles of Sharia compliance, Indonesia possesses two pillars of legal authority: the Compilation of Islamic Economic Law (KHES) as a guideline for litigation within Religious Courts, and the DSN-MUI Fatwas as the operational standards for Islamic

Financial Institutions. A critical issue arises as the KHES progressively—or perhaps pragmatically—adopted the Hanafi school’s perspective, which permits this contract under Articles 112 to 115 (Indonesia, 2008). Conversely, the National Sharia Board of the Indonesian Ulama Council (DSN-MUI) has remained unmoved, having yet to issue a single specific fatwa regarding the aforementioned contract.

This fatwa vacuum raises a fundamental question: is this a form of regulatory negligence, or a deliberate theological stance? Departing from previous research that tends to view this phenomenon merely as an unfilled regulatory gap, this article offers a scholarly novelty by reconceptualizing the DSN-MUI’s silence as a form of “silent resistance.” Through the analytical lens of *sadd al-dhari’ah* (blocking the means to evil), this study demonstrates that the absence of such a fatwa is a preventive measure intended to protect the purity of muamalah from legal stratagems (*hiyal*) that risk legitimizing backdoor usury. The theoretical framework regarding this juridical disharmony is visually summarized in Figure below:

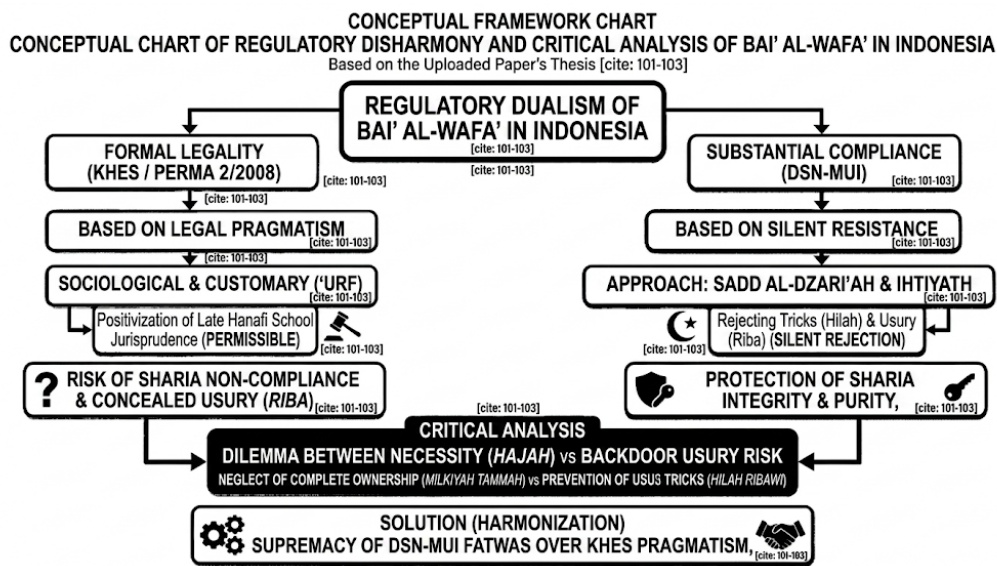


Figure 1. Conceptual Framework of Regulatory Disharmony and Critical Analysis of *Bai' al-wafa'* in Indonesia

Furthermore, this article provides a unique contribution by critiquing the legal pragmatism within the KHES, which tends to prioritize sociological aspects over the purity of the contract. By synthesizing the disparity between litigation requirements and operational compliance standards, this research aims to assert that within the Islamic economic ecosystem, the harmonization of scholarly fatwas must take precedence to safeguard the integrity of the system from economic moral degradation.

To address this problem, the present study is directed toward three interrelated analytical concerns. *First*, it examines the juridical construction of *Bai' al-wafa'* as formulated in Articles 112–115 of the KHES, particularly by scrutinizing how the contract is legally positioned as a sale transaction accompanied by a repurchase condition. This inquiry is essential because the KHES formulation potentially creates tension with the classical principle of *milkiyah tammah*, namely the requirement that ownership in a valid sale must be transferred absolutely, permanently, and free from conditions that restrict the buyer's proprietary authority. Within this framework, the study does not merely question whether *Bai' al-wafa'* is textually recognized in positive Islamic economic law, but also investigates whether such recognition is normatively consistent with the foundational principles of Islamic contract law.

Second, this article analyzes the implications of the DSN-MUI's absence of a specific fatwa on *Bai' al-wafa'* for the Sharia compliance architecture of Islamic financial institutions in Indonesia. The absence of an authoritative fatwa produces a dual regulatory situation: on the one hand, the KHES provides a juridical basis for recognizing *Bai' al-wafa'* in the context of dispute settlement before Religious Courts; on the other hand, Islamic financial institutions lack an operational fatwa that can serve as a binding Sharia standard for product development, supervision, and compliance assessment. This condition creates normative uncertainty, because the existence of a contract in the KHES does not automatically translate into its permissibility as an Islamic financial product. Therefore, the study argues that the fatwa vacuum must be read not only as an institutional gap, but also as an important indicator of unresolved normative contestation surrounding the contract's proximity to *rahn*, conditional sale, legal stratagem, and potential *riba*.

Third, this study seeks to formulate a harmonization framework between the KHES and DSN-MUI fatwas in order to resolve the juridical disharmony surrounding *Bai' al-wafa'*. Such harmonization is not understood as a mere technical synchronization of legal documents, but as a substantive effort to align litigation norms, Sharia supervisory standards, and the higher objectives of Islamic economic law. In this regard, the study proposes that any future regulatory accommodation of *Bai' al-wafa'* must be subjected to stricter normative parameters, including clarity of ownership transfer, prohibition of disguised debt-based benefits, prevention of *hiyal ribawiyyah*, and conformity with the principles of justice, transparency, and risk-sharing in Islamic transactions.

Based on these concerns, this article employs a normative juridical approach by examining statutory regulations, KHES provisions, DSN-MUI fatwa authority, and relevant classical and contemporary Islamic legal doctrines. The analysis is framed through the theory of legal harmonization and the principle of *sadd al-dhari'ah*, particularly to evaluate whether the regulation of *Bai' al-wafa'* strengthens or undermines the integrity of Sharia economic law. By doing so, this study contributes to the development of Islamic economic legal scholarship in Indonesia in two ways. Theoretically, it offers a critical reading of regulatory silence as a possible form of normative caution rather than mere institutional omission. Practically, it provides a basis for policymakers, judges, Sharia supervisory boards, and Islamic financial institutions to reconsider the position of *Bai' al-wafa'* within a more coherent and integrity-based regulatory framework. Thus, the central argument of this article is that the disharmony between the KHES and the DSN-MUI fatwa system should not be resolved through pragmatic legalization alone, but through a careful normative reconstruction that safeguards Sharia compliance from contractual manipulation and preserves the moral substance of Islamic economic law.

RESEARCH METHOD

This study employs normative legal research, also referred to as doctrinal legal research, with a qualitative analytical orientation (Marzuki, 2017). Normative legal research is considered appropriate because the central issue examined in this article concerns the disharmony of legal norms governing *Bai' al-wafa'* within Indonesia's Sharia economic law framework. The study does not investigate the empirical application of the contract in Islamic financial institutions, but rather focuses on the juridical construction, normative consistency, and regulatory implications of *Bai' al-wafa'* as codified in the Compilation of Islamic Economic Law (KHES) and as positioned within the fatwa authority of the National Sharia Board of the Indonesian Ulama Council (DSN-MUI).

The object of this research is the normative tension between two legal authorities in the Indonesian Islamic economic system. On the one hand, KHES, as a legal guideline for Religious Courts, explicitly accommodates *Bai' al-wafa'* in Articles 112 to 115. On the other hand, DSN-MUI, as the authoritative institution responsible for issuing Sharia compliance standards for Islamic financial institutions, has not issued a specific fatwa regulating this contract. This condition creates a juridical problem because the existence of a contract within the litigation framework does not automatically guarantee its acceptability as an operational

standard in the Islamic financial industry. Therefore, this study seeks to examine whether the permissive formulation of *Bai' al-wafa'* in KHES is normatively compatible with the principles of Islamic contract law, particularly the principle of absolute ownership (*milkiyah tammah*) and the prevention of legal stratagems (*hiyal*) leading to disguised usury (*riba*).

To answer these issues, this study applies three main approaches. *First*, the statutory approach (Mahmud Marzuki, 2005) is used to examine the legal formulation of *Bai' al-wafa'* in Articles 112 to 115 of Supreme Court Regulation No. 02 of 2008 concerning the Compilation of Islamic Economic Law. This approach is intended to identify the legal structure, normative assumptions, and juridical consequences arising from the recognition of *Bai' al-wafa'* as a valid contract under KHES. The statutory approach also enables the study to assess the relationship between KHES and other sources of Sharia economic law, particularly DSN-MUI fatwas as operational references for Islamic financial institutions.

Second, the comparative approach (Mahmud Marzuki, 2005) is employed to analyze the legal dualism surrounding *Bai' al-wafa'* through several comparative dimensions. At the level of Islamic legal schools, this study compares the permissive view of the later Hanafi jurists (*muta'akhhirin al-Hanafiyah*), which provides the doctrinal basis for the recognition of *Bai' al-wafa'*, with the more restrictive views of the Shafi'i school and the majority of classical jurists. At the institutional level, this study compares the positivization of *Bai' al-wafa'* in KHES with the absence of a specific DSN-MUI fatwa, as well as relevant positions adopted by international Islamic legal institutions, including contemporary fiqh academies. At the regulatory-system level, this study compares Indonesia's pragmatic accommodation of *Bai' al-wafa'* with the more restrictive tendency found in several Middle Eastern Sharia legal authorities, particularly in relation to contracts suspected of containing legal stratagems (*hiyal*) and potential usurious elements.

Third, the conceptual approach (Mahmud Marzuki, 2005) is used to construct the theoretical argument of this study. This approach is applied to examine key concepts in Islamic economic law, including *Bai' al-wafa'*, *milkiyah tammah*, *rahn*, *riba*, *hiyal*, Sharia compliance, and *sadd al-dhari'ah*. Through this approach, the study does not merely describe the existence of regulatory disharmony, but also evaluates its normative significance. The conceptual approach is particularly important for explaining why the absence of a DSN-MUI fatwa may be interpreted not only as a regulatory vacuum, but also as a form of normative caution aimed at protecting the integrity of Sharia economic transactions.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. The primary legal materials include Supreme Court Regulation No. 02 of 2008 concerning the Compilation of Islamic Economic Law, especially Articles 112 to 115, and the collection of DSN-MUI fatwas related to Islamic financial contracts, Sharia compliance, sale-based contracts, collateral, and financing arrangements. These materials are used to identify the formal legal position of *Bai' al-wafa'* and to examine the extent to which DSN-MUI has provided, limited, or avoided operational recognition of similar contractual structures.

The secondary legal materials consist of classical Islamic legal literature, particularly Hanafi and Shafi'i fiqh texts, contemporary books on Islamic economic law, academic journal articles, legal commentaries, and previous studies discussing *Bai' al-wafa'*, Islamic financial contracts, Sharia compliance, and the regulation of Islamic economic law in Indonesia. These materials are used to deepen the doctrinal analysis and to position this study within existing scholarly debates. Meanwhile, tertiary legal materials include legal dictionaries, Arabic fiqh dictionaries, encyclopedias of Islamic law, and other supporting references used to clarify technical terms in muamalah and Islamic legal theory.

The legal materials were collected through library research by tracing statutory documents, fatwa compilations, classical fiqh texts, contemporary legal literature, and relevant academic publications (Muhammad, 2004). The collected materials were then classified based on their relevance to three analytical categories: first, the juridical construction of *Bai' al-wafa'* within KHES; second, the absence of DSN-MUI fatwa and its implications for Sharia compliance; and third, the possibility of regulatory harmonization between KHES and DSN-MUI fatwas. This classification was conducted to ensure that each legal material was analyzed according to its normative function and relevance to the research questions.

The analysis in this study is conducted using descriptive-analytical and prescriptive methods. The descriptive-analytical method is used to describe the legal position of *Bai' al-wafa'* in KHES, the doctrinal debate among Islamic jurists, and the regulatory position of DSN-MUI. The prescriptive method is then used to formulate legal arguments and normative recommendations concerning the harmonization of KHES and DSN-MUI fatwas. The reasoning process follows deductive legal logic, beginning from general principles of Islamic contract law and Sharia compliance, then moving toward the specific legal problem of *Bai' al-wafa'* in Indonesia.

The main analytical instrument used in this study is the principle of *sadd al-dhari'ah*, namely the prevention of permissible means that may lead to prohibited outcomes. This principle is used to assess whether the formal legality of *Bai' al-wafa'* in KHES can be normatively justified if the contract has the potential to become a legal device for disguised debt transactions, collateralized sale arrangements, or backdoor usury. In this context, *sadd al-dhari'ah* functions as a critical framework for evaluating not only the textual validity of a contract, but also its legal consequences, economic substance, and moral implications within the Islamic financial system.

To strengthen the validity of the legal argument, this study also applies coherence-based legal reasoning. The validity of the analysis is tested by examining the consistency between statutory norms, fiqh doctrines, fatwa authority, and the objectives of Sharia economic law. Thus, a contract is not considered sufficient merely because it has been codified in positive law; it must also be consistent with the substantive principles of Islamic law, including justice, transparency, lawful ownership transfer, prevention of exploitation, and protection from *riba*. Through this methodological framework, the study is expected to produce a normative evaluation that is not only doctrinally grounded, but also relevant to the development of a more coherent Sharia economic regulatory system in Indonesia.

FINDINGS AND DISCUSSION

Legalization of *Bai' al-wafa'* within the KHES

The Compilation of Islamic Economic Law (KHES) explicitly provides a legal framework for the practice of *Bai' al-wafa'* through Articles 112 to 115 (Indonesia, 2008). This regulation defines the contract as “sale and purchase with the right of repurchase”. It is adopted as a positive legal instrument to accommodate public liquidity needs while attempting to avoid overt usurious practices.

The National Sharia Board of the Indonesian Ulama Council (DSN-MUI) has yet to issue a specific fatwa regulating this contract. This authoritative vacuum reflects the methodological policy of the fatwa institution in applying the principle of precaution (*iḥtiyāt*). This stance is taken toward a contract whose Sharia validity remains substantially debated among scholars.

This regulatory dualism creates tension between the positive legal certainty offered by the KHES and the Sharia compliance standards that serve as operational guidelines for the Islamic financial industry. Such a condition triggers standard uncertainty for both

practitioners in financial institutions and law enforcement officers within the judicial environment (Hidayat, 2022).

The Transformation of “Gadai Sawah” into Formal Contracts

Based on field research conducted in West Java, findings indicate that the practice of *Bai’ al-wafa’* serves as a sociological evolution of the traditional “*gadai sawah*” (paddy field pawning) custom (Mutaqin & Suryadi, 2025). In practice, the fund provider frequently cultivates the land and claims the harvest as profit derived from the debt, which constitutes an absolute criterion of *riba*.

The application of the *Sadd al-Dharai* principle (blocking the means to harm) remains the most effective methodological instrument for preserving the originality of the Islamic economic system from the threat of *ribawi* stratagems (*biyah*) (Faiyah et al., 2024). Preventing the lack of synchronization between Supreme Court regulations and DSN-MUI compliance standards is crucial to avoid the disintegration of material law within Religious Courts (Al-Helaiby, 2024). This aligns with findings that the public tends to place greater trust in the moral legitimacy of scholarly fatwas than in pragmatic articles within the codification of positive law (Musaiyana et al., 2025).

Field findings demonstrate that the sociological practice of *Bai’ al-wafa’* is an evolution of the long-standing “*gadai sawah*” tradition in rural communities. In these transactions, landowners (sellers) frequently surrender their land to fund providers (buyers) to obtain cash, with the agreement that the land may be redeemed in the future (Siregar et al., 2018). During this “redemption waiting period,” the fund holder is entitled to cultivate the land and retain the entirety of the yield as profit on the loaned funds. This reality indicates that although the KHES attempts to frame the transaction under the terminology of “sale and purchase with the right of repurchase,” the essence of the transaction is a loan that generates a benefit—an absolute criterion of usurious (*riba*) practices.

Case Study: Sharia Microfinance Institutions (SMFIs)

This research finds that several Sharia-based microfinance institutions (such as *Baitul Maal wat Tamwil*—BMT or Sharia Cooperatives) at the local level have occasionally adopted this mechanism to assist with the liquidity needs of small-scale farmers or traders. The primary characteristics identified in the field are as follows: *First*, Parties’ Motivations: The seller (debtor) is typically driven by urgent needs, such as educational expenses or business

capital, whereas the buyer (SMFI/creditor) is motivated by the desire to acquire productive collateral.

Second, Asset Status Uncertainty: There is frequently a lack of clarity regarding which party bears the risk of asset damage (such as crop failure) during the contract period. This ambiguity contradicts the Sharia economic principle of *al-ghunmu bi al-ghurmi* (profit must be proportionate to the risk).

Third, Redemption Barriers: In several instances, sellers encounter difficulties in repurchasing their assets because the predetermined repurchase price is set higher than the initial price, or due to burdensome additional administrative fees. Consequently, this often results in the permanent transfer of asset ownership.

DISCUSSION

Juridical Implications of *Bai' al-wafa'* on the Principle of Absolute Ownership

An in-depth analysis of the construction of *Bai' al-wafa'* within the Compilation of Islamic Economic Law (KHES) reveals a fundamental shift from the nature of a sale-and-purchase agreement (*bai'*) toward a debt-collateral instrument (*rahn*). Doctrinally, the essence of a sale in muamalah jurisprudence must imply a complete, immediate, and permanent transfer of ownership. However, the restrictions stipulated in Article 114 of the KHES—which prohibit the buyer from transferring or selling the transaction object to another party during the agreement period—inherently undermine the logical consequences of the contract (*muqtada al-aqd*) (Al-Zuhaili, 1984).

This prohibition creates an anomaly within the concept of absolute ownership (*milkiyah tammah*), wherein an owner should possess the absolute right to perform *tasarruf* (legal acts) over their assets. Under the KHES construction, the buyer's right to the goods is merely pseudo-ownership because their possession is shackled by the seller's right of redemption; thus, the buyer is more accurately positioned as a physical collateral holder rather than a true owner. This condition leads to an ambiguity in asset status, where the legal form is ownership (sale and purchase), yet the functional substance is collateral (loan) (Saputra, 2020).

Furthermore, these juridical implications trigger a dilemma regarding the responsibility for asset risk (*damān*). If one refers to the principles of a pure sale, all risks of asset damage should transfer entirely to the buyer once the handover is executed (*al-kharāj bi al-damān*) (Mustofa, 2024). However, because the goods in *Bai' al-wafa'* are projected to return

to the seller, the boundaries concerning who bears the risk of damage due to force majeure or negligence become blurred within a regulatory gray area. This lack of clarity potentially opens a space for backdoor usury, wherein the fund provider extracts economic benefits from the asset while the provided funds remain intact and must be fully repaid by the seller.

Comparative Fiqh Analysis: The Dialectics of Maslahat and Contractual Purity

The disparity of perspectives within the muamalah jurisprudence tradition reflects differing methodologies in assessing the essence of this contract. The Hanafi school, particularly the *Muta'akbbirin* (later scholars), tends to adopt a permissive stance based on the foundation of *istihsan bi al-urf* (Kadenun, 2018). They view this practice as a sociological solution to the public's need for liquidity without falling into explicit usury. Conversely, the Shafi'i school and the majority of scholars strictly prohibit it, viewing it as a *hilah* (legal stratagem) that compromises contractual justice and violates the principle of absolute ownership (Az-Zuhayli, 2010).

This restrictive view is further reinforced by international consensus through the International Islamic Fiqh Academy (OIC) Resolution No. 66/3/7 of 1992, which declares *Bai' al-wafa'* as a void (*batal*) contract (Academy, 2021). The Academy asserts that the profit extracted by the buyer from the utilization of the asset during the redemption waiting period constitutes a benefit-driven loan, which is essentially identical to *riba*. Consequently, the absence of a DSN-MUI fatwa in Indonesia aligns with the global principle of precaution (*ihhtiyat*) in preserving the authenticity of the Islamic economic system.

Litigation Risk Analysis in Religious Courts

Data from field research indicates that disputes related to this contract frequently culminate in litigation with diverse judicial outcomes. Judges in Religious Courts tend to utilize Articles 112–115 of the KHES as a procedural shortcut to provide legal certainty, often without conducting an in-depth examination of its Sharia compliance aspects. This strengthens the author's argument that the pragmatic legality of the KHES creates a legal trap for marginalized communities who do not fully comprehend the risks of backdoor usury underlying the contract. The disharmony between the KHES and the DSN-MUI is not merely a theoretical debate but a source of potential legal uncertainty in the practice of Religious Courts. This ambiguity generates several crucial risks (Prihasmoro, 2023):

Legal Traps for Marginalized Communities: Field findings in West Java demonstrate that rural communities are often ensnared in the practice of “gadai sawah” (paddy field pawning), which is subsequently formalized into *Bai’ al-wafa’* without an understanding of its Sharia risks. The pragmatic legality of the KHES serves as a basis for fund providers to exploit such assets legally.

Dualism in Judicial Decisions: Religious Court judges frequently take a “shortcut” by applying Articles 112–115 of the KHES in pursuit of formal legal certainty. However, these decisions remain vulnerable to challenges from Sharia law experts, as they are perceived to legitimize practices substantially prohibited by the majority of global scholars.

Asset Status Uncertainty: Disputes often arise regarding the liability for asset damage risks (such as crop failure) during the contract period. This occurs because *Bai’ al-wafa’* in the KHES blurs the distinction between a sale (where risk transfers to the buyer) and a pledge (where the item is merely collateral).

Redemption Barriers: Sociologically, cases have been identified where the seller (debtor) faces difficulties in redeeming their assets due to additional administrative fees or unilateral price increases imposed by the buyer (creditor). This transforms a contract originally intended to provide liquidity into an instrument for permanent asset transfer.

Table 1: Comparison of the Legal Standing of *Bai’ al-wafa’* between the KHES and the DSN-MUI

REGULATORY ASPECT	COMPILATION OF ISLAMIC ECONOMIC LAW (KHES)	NATIONAL SHARIA BOARD (DSN-MUI)
LEGAL STATUS	Explicitly legalized through Articles 112–115.	No specific fatwa issued (<i>silence of law</i>).
REGULATORY APPROACH	Legal Pragmatism: Accommodating market needs (<i>hajah & ‘urf</i>).	Precautionary (<i>Ihtiyath</i>) and preventive (<i>sadd al-dzari’ah</i>).
OPERATIONAL DEFINITION	Sale and purchase with the right of repurchase.	Regarded as a <i>bilah</i> (legal stratagem) leading to <i>riba</i> .
NATURE OF OWNERSHIP	Restricted ownership: The buyer is prohibited from selling to third parties (Article 114).	Requires <i>milkiyah tammah</i> (absolute ownership) in every sale transaction.
POTENTIAL RISK	Risks compromising the purity of Sharia principles through <i>bilah</i> .	Prevents backdoor usury and preserves Sharia compliance.

An in-depth analysis of the KHES reveals that the regulators performed a positivization of the Muta’akhhirin Hanafiyah (later Hanafi scholars) perspective. The

primary rationale behind this was sociological: to shield the public from explicit usurious practices through an instrument formally recognized as a sale. However, this construction inherently harbors several internal contradictions. **Ownership Anomaly:** Article 114 of the KHES prohibits the buyer from selling the goods to another party. This restriction automatically negates the essence of a sale in muamalah jurisprudence, which necessitates the transfer of absolute ownership (*milkiyah tammah*); **The Guise of Collateral:** Due to the limitations on the right of *tasharruf* (legal disposition), the goods do not function as an object of sale but rather as collateral (*rahn*) for the cash received by the seller; **Ribawi Benefits:** The utilization of the asset by the buyer (e.g., harvesting a paddy field) during the contract period represents a profit extracted from a debt-based transaction. This is exactly what Ibn Qayyim critiqued as a stratagem to legitimize *riba* simply by altering the nomenclature of the contract.

In the Islamic legal tradition, the silence of the DSN-MUI does not represent a void of meaning; rather, it constitutes a form of “silent resistance”. There is a concern that if the DSN-MUI were to legalize *Bai’ al-wafa’*, it would trigger a massive shift from productive contracts—such as *musyarakah* or *mudharabah*—toward manipulative, low-risk contracts for financial institutions.

This decision is consistent with international collective fatwas, such as those from the OIC Islamic Fiqh Academy, which strictly prohibit this practice. By exercising restraint, the DSN-MUI compels the Sharia financial industry in Indonesia to remain within the strict corridors of Sharia compliance while simultaneously protecting customers from “Sharia-styled usury” that might otherwise be legitimized by positive law.

Efforts Toward Regulatory Harmonization Between the KHES and DSN-MUI Fatwas

The study of this disharmony necessitates a redefinition of the relationship between positive law and fatwa authority. The claim regarding the harmonization of fatwas over the KHES requires reconsideration because, within Indonesia’s positive legal system, both occupy distinct yet complementary realms of authority (Tamam, 2021). The KHES functions as the material guideline for litigation within Religious Courts, whereas fatwas serve as the reference for operational compliance within the banking industry (Musaiyana et al., 2025).

Consequently, the most appropriate terminology is the “harmonization between the KHES and DSN-MUI fatwas” to achieve complete regulatory synchronization. Discussions

regarding the risks of backdoor usury require a composed academic tone to mitigate transactional risks without triggering market volatility. The absence of regulation from the fatwa authority is understood as a preventive measure to protect the purity of muamalah from dubious legal stratagems. Future synergistic harmonization must be capable of clarifying the boundary between the permanent transfer of ownership and the use of assets as a medium (*wasilah*) for extracting benefits from debt-based transactions. This ensures that the codification of national law remains aligned with the universal values of Sharia justice.

Regulatory Harmonization: Toward the Supremacy of Fatwa Over Legal Pragmatism

To resolve this regulatory deadlock, synchronization measures are required to establish Sharia sanctity as the highest standard within positive law, specifically through: *First*, Judicial Review of the KHES: The Supreme Court is advised to review the inclusion of Articles 112–115 within the KHES. The codification of Islamic law in Indonesia must avoid disproportionate *tafiiq* (the synthesis of legal opinions) solely for market interests and should instead align with international Sharia standards that reject the validity of *Bai' al-wafa'*.

Second, Strengthening the Role of the Sharia Supervisory Board (DPS): The DPS within every Sharia Financial Institution (LKS) should be granted greater authority to reject products that, while formally recognized by the KHES, are questioned by fatwa authorities. This is essential to mitigate Sharia Non-Compliance Risks that could jeopardize the industry's reputation.

Third, Optimization of Alternative Contracts: Rather than utilizing *Bai' al-wafa'*, which is fraught with *shubhat* (uncertainty), LKS are encouraged to optimize *Rahn* (pledge) contracts for emergency bailout needs or *Ijarah Muntahiyah Bittamlik* (IMBT) for asset acquisition. These contracts offer far more transparent boundaries regarding rights and obligations and avoid the risk of usurious stratagems.

Fourth, Integration of Fatwa into Material Law: Serious efforts must be made to continuously integrate DSN-MUI fatwas into state regulations, such as Supreme Court Regulations (PERMA). Consequently, this will eliminate the discrepancy between operational standards in Sharia banks and litigation standards in the courts.

CONCLUSION

This study concludes that the regulation of *Bai' al-wafa'* in Indonesia reflects a clear juridical disharmony between the Compilation of Islamic Economic Law (KHES) and the

fatwa authority of DSN-MUI. The KHES, through Articles 112–115, recognizes *Bai' al-wafa'* as a sale contract with a repurchase right, thereby providing formal legal certainty for Religious Courts. However, this construction creates normative tension because the buyer's ownership remains restricted, particularly due to the prohibition against transferring the object to a third party. Such restriction weakens the principle of *milkiyah tammah*, which requires full, absolute, and unrestricted ownership in a valid sale contract.

The absence of a specific DSN-MUI fatwa on *Bai' al-wafa'* has significant implications for Sharia compliance in the Islamic financial industry. This study interprets the DSN-MUI's silence not as institutional negligence, but as a form of normative caution grounded in the principles of *ihtiyat* and *sadd al-dhari'ah*. This position functions as a preventive mechanism against the possibility of *hiyal ribawiyyah*, particularly when *Bai' al-wafa'* is used as a disguised debt transaction that allows fund providers to obtain benefits from the pledged asset during the redemption period. Therefore, although the KHES offers procedural legal certainty, it does not automatically guarantee substantive Sharia compliance.

Accordingly, regulatory harmonization between KHES and DSN-MUI fatwas is urgently required. The Supreme Court is recommended to review Articles 112–115 of the KHES by considering the views of the majority of classical jurists, contemporary Sharia standards, and the principle of preventing disguised usury. DSN-MUI fatwas should also be systematically integrated into state legal instruments so that litigation standards in Religious Courts and operational compliance standards in Islamic financial institutions do not move in different directions. For practitioners, Islamic financial institutions should avoid contracts that contain *shubhat* and instead optimize more transparent contracts such as *rahn* or *ijarah muntabiyah bi al-tamlik*.

The main contribution of this study lies in its reinterpretation of the DSN-MUI fatwa vacuum as “silent resistance” against legal pragmatism that may endanger the moral integrity of Islamic economic law. Nevertheless, this study is limited to juridical-normative analysis and does not provide comprehensive empirical data on the implementation of *Bai' al-wafa'* across Islamic financial institutions. Future research should therefore employ a sociology-of-law or empirical legal approach to examine how this contract is practiced, contested, and resolved in real financial and judicial settings.

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