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Harmonization of Sharia and Conventional Banking Regulations Based on Maqasid Sharia

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Abstrak

This study aims to evaluate the harmonization of regulations between Islamic banking and conventional banking in Indonesia within the framework of the maqasid sharia and examine its implications for the development of Islamic economic law. In the context of Indonesia's dual banking system, regulatory imbalances are found between the two systems, particularly in terms of basic principles, institutional structure, and oversight and reporting mechanisms. National regulations, which tend to adopt a conventional paradigm, have not been able to fully accommodate the values of maqasid sharia in a substantial manner. This study uses a qualitative approach with descriptive-normative methods and library research techniques that focus on the analysis of primary and secondary legal documents such as laws, OJK regulations, DSN-MUI fatwas, and related scientific literature. The results indicate that regulatory disharmony has resulted in weak protection of maqasid principles, particularly in terms of contractual fairness, consumer protection, and differentiation of Islamic financial products. This study recommends a hybrid regulatory model based on the maqasid sharia, emphasizing collaboration between regulators and fatwa authorities to produce policies that are more inclusive, ethical, and relevant to the national economic context. These findings provide an important contribution to formulating a new direction for Islamic economic law in Indonesia that is adaptive to global dynamics while remaining rooted in sharia values.

Keywords: Regulation Harmonization, Maqasid Sharia, Islamic Banking, Islamic Economic Law, Dual Banking.

1. Introduce

The development of the banking system in Indonesia is marked by the existence of two parallel systems: conventional banking and Islamic banking. The existence of this dual system reflects the increasingly diverse needs of society, especially as awareness of the importance of Islamic principles in economic activities grows. Since the enactment of Law No. 21 of 2008 on Islamic Banking, the scope of Islamic banks as independent financial entities has become increasingly clear. On the other hand, conventional banking continues to operate under Law No. 10 of 1998, which permits interest-based practices. The philosophical and legal differences between the two create challenges in terms of regulatory harmonization, especially when both are expected to synergize within a stable and inclusive national banking ecosystem.

The importance of regulatory harmonization has become increasingly apparent since the establishment of Bank Syariah Indonesia (BSI) as a result of the merger of three state-owned Islamic banks in 2021. Although this is an important milestone in the history of the national Islamic finance industry, it has given rise to various new issues, such as the need for standardization in risk management, accounting practices, and policy formulation that is not only Sharia-compliant but also oriented towards maqashid sharia. On the other hand, the implementation of the spin-off policy for Islamic Business Units (UUS) as outlined in POJK No. 12/POJK.03/2021 has also resulted in complex regulatory consequences. The imbalance between Islamic principles and international standards such as Basel III has become increasingly apparent, especially when Islamic banks must adjust their business models without compromising their Islamic integrity[1].

Another equally important issue is the lack of synchronization between the fatwas of the Indonesian Ulema Council's National Sharia Board (DSN-MUI) and the regulations of the Financial Services Authority (OJK). For example, in the practice of murabahah financing, there is a tendency for the contract structure to resemble conventional credit practices[2]. This has led to criticism of the authenticity of the Islamic financial system and raised questions about the extent to which the

principles of maqashid are truly used as a basis for policy and regulation making. This phenomenon indicates that harmonization is not merely a matter of administratively unifying systems, but also of aligning the normative visions between Islamic law and state law.

This study specifically aims to analyze how Islamic and conventional banking regulations in Indonesia can be harmonized through the maqashid sharia approach. The main focus of the research is on evaluating the policies that have been implemented, as well as the extent to which these policies reflect maqashid principles such as economic justice, protection of property, and public welfare. With the maqashid framework, regulations are no longer measured solely in terms of formal compliance, but also in terms of their ability to create substantive justice and economic law inclusivity.

Previous studies have discussed some aspects of this issue, but have not yet fully integrated maqashid sharia as the main analytical tool in regulatory harmonization. Harahap (2018), for example, highlights the disharmony between the DSN-MUI fatwa and OJK regulations, but does not touch on the maqashid dimension. Yuliani (2019) limited her analysis to the legal aspects of the Sharia Banking Law, while Tanjung (2020) focused more on the dynamics of the UUS spin-off without linking it to maqashid sharia. Unlike the aforementioned study, this article specifically emphasizes the integration of maqashid as a framework for analysis and substantive solutions for regulatory harmonization, and offers new instruments in the form of the Maqashid Compliance Index and a model for cross-authority institutional integration.

This study offers a novel approach in the form of maqashid sharia as a normative and evaluative basis for formulating policies to harmonize banking regulations. Rather than viewing maqashid solely as moral norms or theological doctrines, this study positions it as a substantive legal framework capable of bridging the differences between sharia and conventional systems in a more equitable and contextual manner. In a situation where the national sharia financial system is developing and requires a strong regulatory foundation that is adaptive to global dynamics, this approach is believed to provide significant theoretical and practical contributions.

Overall, this study poses the following key question: how can regulations between Islamic and conventional banking be harmonized from the perspective of maqashid sharia? And what are the implications of the policies that have been implemented on the direction of Islamic economic law development in Indonesia? Through this approach, it is hoped that a strategic idea will emerge regarding a regulatory model that is not only principled but also responsive to the demands of the times and the Islamic values that underpin the Islamic economic system.

2. Method

This study uses a qualitative approach with a descriptive-normative research type. Data was obtained through library research on primary legal documents such as Law No. 21 of 2008, Law No. 10 of 1998, POJK No. 12/POJK.03/2021, and relevant fatwas from the DSN-MUI. In addition, secondary data in the form of OJK and BI reports, academic publications, and Islamic economic law journals were also analyzed[3].

Data analysis was conducted using a content analysis approach and maqashid-oriented legal reasoning, which compares existing regulations with the principles of maqashid sharia. The data was then classified into categories of compliance or non-compliance with maqashid. The theoretical approaches used were the theory of maqashid sharia (Jasser Auda) and the theory of legal pluralism (Sally Falk Moore), which explain the interaction between the sharia legal system and the state legal system.

3. Results

3.1. Regulatory Disparities and Implications for the Maqashid Sharia Principle

Indonesia, as a country with a pluralistic legal system, implements a dual banking system consisting of conventional banking and Islamic banking. The regulation of these two systems is based on their respective regulatory frameworks[4]. Conventional banking is regulated by Law No. 10 of 1998 amending Law No. 7 of 1992 on Banking, while Islamic banking is regulated by Law No. 21 of 2008 on Islamic Banking. On the other hand, the Financial Services Authority (OJK) issues technical regulations such as POJK No. 12/POJK.03/2021 on Islamic Commercial Banks, which provides operational guidelines for Islamic banks[5]. However, this dualism has not yet been fully harmonized in practice, whether in terms of institutional aspects, products, or underlying legal principles.

The following table shows a comparison of Islamic banking and conventional banking regulations in Indonesia.

Table 1. Comparison of Sharia Banking and Conventional Banking Regulations in Indonesia

Regulatory Aspects	Conventional Banking	Islamic Banking	Gap Analysis
Main Legal Basis	Law No. 10 of 1998 on Banking	Law No. 21 of 2008 on Islamic Banking	There is a dualism in the legal system that

			is not yet synchronized in banking operations.
Supervisory Authority	OJK (through POJK) and BI	OJK, BI, and DSN-MUI	Sharia banking is subject to dual authority: state regulators and religious fatwas.
Operational Principles	Interest as the basis for profitability	Profit sharing, murabahah, ijarah, etc. (without interest)	There is no effective formal legal bridge connecting economic principles and sharia principles.
Product Instruments	Credit, Current Accounts, Deposits, Savings	Mudharabah, Musyarakah, Murabahah, Ijarah Financing	Sharia products are often regulated using conventional approaches, thereby losing their originality.
Accounting Standards	General PSAK	Sharia PSAK (based on IFRS + Sharia PSAK)	Inconsistent application of standards and difficulties in consolidating financial statements.
Legal certainty	More stable and clear because the system has been in place for a long time	Still developing, often leading to multiple interpretations	There is a need for regulatory harmonization and clarification of norms in the Islamic economic justice system.
Compliance with Maqashid	Does not yet accommodate maqasid sharia	Still developing, often giving rise to multiple interpretations	Great potential for developing a national sharia economic legal system based on maqashid.

Sharia banking in Indonesia was born out of the Muslim community's need for a financial system free from riba, garar, and maysir. However, in terms of regulation, there are still many discrepancies between the basic principles of sharia and the legal structure that is enforced. The substance of financial regulations, which are predominantly based on conventional systems, often fails to take into account the unique characteristics of Islamic financial institutions. This disparity is evident in a number of regulations, such as POJK No. 12/POJK.03/2021 on Islamic commercial banks, which still refers to the framework also applied to conventional banks.

One of the main issues is the divergence in basic principles and objectives between conventional and Sharia banking systems[6]. Conventional banking is interest-based, prioritizing financial gain alone, while Sharia banking avoids usury and emphasizes the principles of justice, partnership, and mutual assistance (ta'awun). In a normative context, this divergence is reflected in differences in terminology, product structure, and supervisory aspects that have yet to find common ground.

Sharia banking regulations do not yet have the same scope as conventional banking. This is evident from the absence of a comprehensive national sharia accounting system, as well as the limited regulations that integrate DSN-MUI fatwas into the positive legal system. On the other hand, conventional banking tends to have a more established regulatory structure due to its longer history and broader legal basis. As a result, Islamic banks often experience a legal vacuum in their practices, especially when dealing with issues that require practical fiqh interpretation.

In addition, there is regulatory overlap between the Islamic Banking Law and technical regulations from the OJK and Bank Indonesia, for example in the case of spin-offs of Islamic Business Units (UUS). The spin-off obligation as stipulated in Law No. 21 of 2008 becomes problematic when the latest POJK no longer requires a deadline for the implementation of the spin-off, but leaves it to the discretion of the bank. This causes an imbalance between the spirit of the law and its implementation in the field, which actually reduces the commitment to strengthening Islamic banks institutionally.

Furthermore, from a supervisory perspective, there is a lack of integration between Sharia-based supervision (by the Sharia Supervisory Board) and financial-based supervision (by the OJK and BI)[7]. There is no regulatory forum that truly integrates these two approaches into a consistent framework. This makes it difficult to apply the principles of maqasid sharia in practice, as regulations are often issued with only financial stability in mind, without considering the values of social justice and consumer protection in accordance with sharia.

This regulatory imbalance stems from the absence of a grand design for banking regulation based on maqasid sharia. Policies adopted remain sectoral, pragmatic, and short-term oriented. However, this

study positions maqasid sharia as an integral normative analytical framework. As a concrete example, risk management in Islamic banks requires a different approach because it is related to contracts that are not merely debt contracts, such as mudarabah, musyarakah, and ijara[8]. However, existing regulations do not yet provide sufficient technical guidelines tailored to these characteristics. This disharmony has an impact on operational practices that are not fully in accordance with maqasid sharia—particularly in the protection of property (*hifzul al-mal*) and distributive justice (*al-'adl*).

The following table shows the discrepancies between the principles of maqasid sharia and current Islamic banking regulations:

Table 2. The inconsistency between the principles of Maqasid sharia and Sharia Banking Regulations

Maqasid sharia aspects	Related regulations	Discrepancies that occur
H}ifzul Al-Mal (Protection of Assets)	POJK 12/POJK.03/ 2021	There is no specific sharia risk protection mechanism.
Al-'Adl (Justice)	Law No. 21 of 2008	The practice of contracts is drawn towards debt contracts (predominantly murabahah)
H}ifzul Al-Din (Protection of Religion)	Not explicitly regulated	No evaluation of sharia compliance in terms of maqashid

The table above shows that Islamic banking regulations in Indonesia still do not fully reflect the values of maqasid sharia as the foundation of the Islamic financial system. In terms of asset protection (*hifzul al-mal*), for example, regulations are still generic and do not provide a protection framework that is in line with the nature of Islamic risks, such as risks related to the validity of contracts or losses in mudharabah and musyarakah. Additionally, the aspect of justice (al-adl) is often overlooked due to the dominant use of *murabahah* contracts, which resemble conventional interest-bearing loans, leading to the assumption that Islamic banks are merely engaging in "Islamization of names" rather than substance[9].

In terms of religious protection (hifzud din), the absence of an assessment of the extent to which Islamic banking regulations and practices are in line with the principles of maqasid creates a normative vacuum. Regulations do not require maqasid oversight in Islamic financial products, even though this is crucial to ensure that financial institutions truly fulfill their functions in upholding Islamic principles substantively, not merely formally.

Overall, this inconsistency has serious consequences, namely a decline in public trust in Islamic banks and the potential deviation from true Islamic financial principles. In addition, the evaluation of harmonization should not be carried out solely through a comparative legal approach, but should also assess the extent to which policy harmonization actually strengthens maqashid outcomes—namely, the values of justice, consumer protection, and public interest. This is where the novelty of this research lies: the need for a maqashid-oriented policy review-based harmonization evaluation model as a new instrument for assessing the substantive achievements of policies.

3.2. Institutional Fragmentation and the Gap Between Fatwas and Regulations from the Perspective of Maqasid sharia

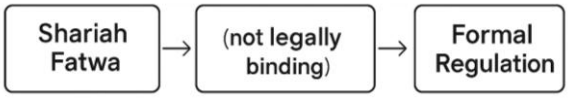
Maqasid sharia as the main normative framework in Islamic law provides a solid foundation for assessing and directing economic regulations, including in the banking sector. The five main principles in maqasid sharia—protection of religion (*hifzul al-din*), life (*hifzul al-nafs*), intellect (*hifzul al-'aql*), lineage (*hifzul al-nasl*), and wealth (*hifzul al-mal*)—serve as indicators to assess whether a policy aligns with Sharia objectives. In the banking context, the primary focus is on protecting wealth, ensuring fairness in transactions, and promoting the welfare of society.

An evaluation of conventional and Sharia banking regulations shows that although both systems aim to promote economic growth, the Sharia system has greater value in creating social balance and justice. The Sharia system rejects the practices of riba, garar, and maysir, which often serve as sources of injustice in financial transactions[10]. Regulations that prioritize financial stability and profitability without considering their impact on wealth distribution will fail to fulfill the objectives of Sharia law.

Harmonization will not be achieved if there is fragmentation between fatwa institutions and regulatory authorities. DSN-MUI acts as a producer of sharia fatwas, while OJK and BI have the authority to make regulations[11]. However, the relationship between the two is not functionally and formally integrated. DSN-MUI fatwas are not legally binding on regulators, so fatwa products are often not accommodated in official regulations. This causes a conflict between Islamic law and state policy.

A concrete example can be seen in the regulations governing murabahah contracts. The DSN-MUI fatwa stipulates that murabahah must be conducted based on the principles of price transparency and prohibition of sale before ownership, but in practice and regulation, these principles are often ignored[8]. As a result, many murabahah products in practice resemble conventional credit systems. This imbalance weakens the maqasid in the realm of Islamic banking.

The following diagram illustrates the relationship and gap between fatwas and regulations:



Picture 1. Chart of Fragmentation of Fatwa and Regulation Relations

This diagram clearly illustrates the absence of formal channels connecting fatwa authorities with regulators. Communication flows tend to be one-way and lack the legal power to ensure that fatwas issued are actually used as a basis for drafting regulations. As a result, fatwas often serve only as moral guidelines rather than binding normative frameworks in positive law.

This situation is exacerbated by the lack of collaborative forums between regulators and scholars, which prevents in-depth dialogue to align sharia principles with the technical aspects of regulations. This leads to inconsistencies, both in the legal text and in technical implementation in the field. Thus, this institutional fragmentation is a major obstacle to building a cohesive Islamic banking regulatory system that is in line with maqasid sharia.

The above points confirm that the application of maqasid sharia in banking regulations is still partial and symbolic. Many policies claim to be based on sharia but only touch on procedural aspects (legal form) without considering the substance and impact on the public interest. For example, regulations on sharia banking products that follow the fatwa of the DSN-MUI are often merely formalistic and lack a robust oversight system to ensure the implementation of their maqasid objectives[12]. This has led to public distrust in the effectiveness of the sharia system.

Furthermore, regulatory harmonization should not only be carried out at the legal-positive level, but should also integrate the values of maqasid sharia as the philosophical basis and ultimate goal of the Islamic economic legal system. In this context, maqasid sharia should not only be a benchmark for policy assessment, but also a reference in designing regulatory structures that promote financial inclusion, consumer protection, and welfare distribution[13].

This fragmentation not only affects the normative level, but also the implementation and innovation of Islamic banking products. Islamic banks often face confusion when DSN-MUI fatwas are not immediately or fully adopted into OJK regulations, resulting in a time gap between the issuance of fatwas and their implementation in the field. This forces Islamic banks to seek their own interpretations, which could lead to disparities in practices among financial institutions.

This situation is exacerbated by the lack of regular dialogue forums that bring together regulators, scholars, and industry players on a periodic basis to discuss current issues and harmonize fatwas and regulations. As a result, the development of Islamic financial product innovations in Indonesia tends to be slow, unresponsive to market needs, and sometimes merely replicates conventional products with limited modifications.

Institutional fragmentation and gaps between fatwas and regulations also contribute to low maqashid compliance in various Islamic banking products and policies. Without a strong connecting framework, maqashid values are often merely symbolic or jargon in documents, without substantial implementation at the operational level.

Therefore, institutional integration between DSN-MUI, OJK, and BI, through the establishment of a regular consultative forum, is very important to ensure that every policy truly meets maqashid standards and is able to overcome the overlapping, conflicts, and legal vacuums that have occurred so far.

It is clear that the maqasid sharia framework can be an excellent normative evaluation tool for identifying imbalances, injustices, and gaps in protection in regulations. This shows that maqashid is not only an ideal normative concept, but can also be operationalized as a concrete principle of public policy and regulation. Therefore, institutional reform is needed to position the DSN-MUI not only as a fatwa institution but also as part of the legislative process for sharia financial regulations. Strengthening the legal standing of the DSN-MUI within the legal system, establishing a permanent consultative forum, and institutional integration are strategic steps toward a harmonious and sustainable Islamic economic legal system.

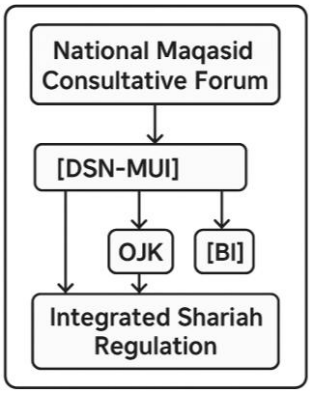
3.3. Policy Implications and Recommendations for the Development of Islamic Economic Law Regulations in Indonesia: Towards a Sharia-Conventional Integration Model Based on Justice

The findings of this study point to an important need in the development of Indonesian economic law, namely the formulation of a banking regulatory model that is not only structurally harmonious, but also substantively fair and based on maqashid. Harmonization between the sharia and conventional systems cannot be achieved through a formal approach (regulatory unification) alone, but must be achieved through a substantive, adaptive, and outcome-based approach.

This model consists of three main pillars: institutional integration, maqashid evaluation, and responsive regulation. First, integration between DSN-MUI, OJK, and BI in a single institutional structure that is interconnected and deliberative. Second, the development of a maqashid compliance index instrument to evaluate every regulation that

will be implemented[14]. Third, regulatory flexibility in responding to national and global economic dynamics while remaining grounded in Sharia principles.

The following is a schematic diagram of the maqasid-based regulatory harmonization model:



Gambar 2. Harmonization Model Based on Maqasid sharia

The chart above explains that the harmonization process needs to begin with the formulation of maqasid as a basic framework of principles, which is then discussed in a national consultative forum consisting of fatwa authorities, regulators, and Islamic law experts. This process produces regulations that are vertically integrated (between fatwas and positive law) and horizontally integrated (between Sharia authorities and state regulators). This is intended to ensure that every financial regulation is not only legally valid under state law but also valid according to maqasid sharia.

The National Maqasid Consultative Forum serves as an intellectual and practical bridge that ensures there is no normative fragmentation between religious values and public policy. With this mechanism, the maqasid compliance index can be developed as a tool to measure the effectiveness of Sharia regulations, so that regulations can be continuously evaluated and adjusted to changing socio-economic dynamics.

This model also encourages an inclusive approach that involves all stakeholders, from religious scholars, economists, regulators, to civil society. With this collaborative approach, Islamic economic law becomes not only an academic or sectoral domain, but a strategic instrument in sustainable and equitable national economic development.

Furthermore, institutional strengthening is also needed to serve as a bridge between Sharia fatwas and positive law. The Sharia Supervisory Board (DPS) must be given broader and executive authority in ensuring the implementation of sharia principles in every bank policy. This will increase public confidence in the sharia banking system and make maqasid sharia the main benchmark in the formation of the national financial system.

The next recommendation is the development of an integration-based banking legal framework. This can begin with the drafting of a maqasid-based regulatory blueprint that outlines indicators of fairness, consumer protection, and economic balance as important elements in every banking product or policy. The government also needs to encourage collaboration between countries in formulating international harmonization standards, learning from countries such as Malaysia and the UAE that have successfully implemented a hybrid regulatory framework.

All of the above recommendations should be understood as a unified regulatory transformation strategy that places maqashid as the main objective, not merely a supplement. The integration of institutions through a regulatory board involving DSN-MUI, OJK, and BI aims to eliminate dualism of authority and accelerate the policy harmonization process. Meanwhile, the development of the Maqashid Compliance Index can serve as a standard measurement tool to assess how effectively policies and products address the needs of justice, consumer protection, and economic welfare.

Strengthening the legal standing of fatwas is equally important, as the status of DSN-MUI fatwas has often been viewed as supplementary rather than an integral part of regulation. Through legislative harmonization, fatwas gain legally binding force, ensuring that financial industry players can no longer disregard them in the implementation of products and services.

The development of an integrated digital platform will facilitate data exchange, discussion, and acceleration of harmonization between fatwas and regulations, making them more responsive to technological developments and market needs. Finally, learning from harmonization practices in other countries such as Malaysia and the UAE can enrich national strategies and avoid similar mistakes, while enhancing Indonesia's position as a pioneer of maqashid-based Islamic economic law at the global level.

Thus, harmonization efforts are not merely a unification of legal texts, but a systemic transformation that combines values, institutions, and innovation based on maqashid as the spirit of the future development of Islamic economic law. Proximity, integration, and collaboration among stakeholders are key to ensuring that the dual banking system in Indonesia truly produces benefits, justice, and sustainability.

4. Conclusion

This study concludes that the harmonization of regulations between Islamic and conventional banking in Indonesia still faces serious challenges due to fundamental differences in the philosophy

and objectives of the two systems. National regulations that lean more toward the conventional paradigm have not been able to fully accommodate the values of maqashid sharia, resulting in imbalances in aspects such as supervision, product development, and protection of Islamic consumers. This lack of harmonization has weakened public trust in the uniqueness and integrity of the Islamic financial system.

As a solution, this study proposes a maqashid sharia approach as an evaluative and normative framework for developing a fair, contextual, and pluralistic regulatory harmonization model. A hybrid regulatory model based on maqashid is expected to bridge the interests of national law and sharia principles without having to standardize both. Therefore, strategic steps are needed from relevant authorities such as the OJK, BI, and DSN-MUI to comprehensively design maqashid-based regulations by involving academics and practitioners. Further research is recommended to examine the technical aspects of harmonization and conduct comparative studies across countries to enrich the development of Islamic economic law in the digital finance era.

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In conclusion, the author acknowledges that this article still has its limitations. Therefore, any constructive suggestions and criticism are greatly appreciated to improve this academic work in the future.

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