

Reconciling Shariah Compliance and Institutional Risk: A *Maqāṣid*-Based Analysis of *Ḥawālah* and *Kafālah* in Indonesian Islamic Banking

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Abstract: The implementation of *ḥawālah* (transfer of debt liability) and *kafālah* (guarantee) in Indonesia's Islamic banking reveals an increasing tension between formal Shariah compliance and institutional risk management imperatives. Although classically categorised as *tabarru'*-based and non-profit contracts, contemporary practices reposition them as fee-generating instruments and risk transfer mechanisms, raising concerns about substantive alignment with Islamic legal and ethical principles. This study critically examines the extent to which modern applications of *ḥawālah* and *kafālah* reflect their classical *fiqh* foundations and *maqāṣid al-shari'ah* objectives, and analyses how regulatory frameworks and institutional risk management influence their reinterpretation. Using a normative, legal and comparative approach, the research analyses classical *fiqh al-mu'āmalāt* doctrines, AAOIFI Shariah standards, DSN–MUI fatwas, and Indonesia's positive law governing Islamic banking, supplemented by semi-structured expert interviews. This analysis is based on two expert interviews with members of Shariah Supervisory Boards and DSN–MUI-affiliated practitioners involved in Islamic banking governance. The results reveal a significant conceptual and functional shift, where formal Shariah compliance often masks substantive transformation into institutional risk management tools, evidenced by fee-based structures, hybrid contractual arrangements, and standardised product designs that prioritise institutional risk governance over the original altruistic rationale of *tabarru'*. Empirical signals from the interviews indicate recurring fee structures exceeding administrative cost recovery thresholds, implicit use of *ḥawālah* in transfer products without explicit contractual labelling, and *kafālah* arrangements structured similarly to risk-priced service contracts. The study highlights the need for clearer governance standards and substantive regulatory guidance to mitigate Shariah dilution while accommodating legitimate risk management needs. From a policy perspective, regulators should establish clearer criteria for permissible fee structures and hybridisation boundaries to ensure alignment with *maqāṣid al-shari'ah* while maintaining financial stability. By reconceptualising *ḥawālah* and *kafālah* as hybrid institutional contracts, this research advances a *maqāṣid al-shari'ah*-oriented evaluative framework that transcends procedural conformity toward ethical and institutional coherence.

Keywords :

Abstrak: Implementasi akad *ḥawālah* (pengalihan kewajiban utang) dan *kafālah* (penjaminan) dalam perbankan syariah di Indonesia menunjukkan meningkatnya ketegangan antara kepatuhan syariah secara formal dan imperatif manajemen risiko institusional. Meskipun secara klasik diklasifikasikan sebagai akad berbasis *tabarru'* dan bersifat non-komersial, praktik kontemporer cenderung mereposisi kedua akad tersebut sebagai instrumen penghasil imbalan dan mekanisme pengalihan risiko, sehingga menimbulkan kekhawatiran mengenai kesesuaian substansialnya dengan prinsip-prinsip hukum dan etika Islam. Penelitian ini secara kritis mengkaji sejauh mana penerapan modern *ḥawālah* dan *kafālah* mencerminkan landasan *fiqh* klasik serta tujuan *maqāṣid al-shari'ah*, sekaligus menganalisis pengaruh kerangka regulasi dan manajemen risiko institusional terhadap reinterpretasi akad-akad tersebut. Dengan menggunakan pendekatan normatif-yuridis dan komparatif, penelitian ini menganalisis doktrin *fiqh al-mu'āmalāt* klasik, standar syariah AAOIFI, fatwa DSN–MUI, serta hukum positif Indonesia yang mengatur perbankan syariah, yang dilengkapi dengan wawancara semi-terstruktur. Analisis ini didasarkan pada dua wawancara ahli yang dilakukan di Indonesia dengan anggota Dewan Pengawas Syariah (DPS) dan praktisi yang terafiliasi dengan DSN–MUI dalam bidang tata kelola perbankan syariah. Hasil penelitian menunjukkan adanya pergeseran konseptual dan fungsional yang signifikan, di mana kepatuhan syariah secara formal kerap menutupi transformasi substansial akad menjadi instrumen manajemen risiko institusional, yang tercermin dalam struktur berbasis imbalan, pengaturan akad hibrida, serta desain produk terstandarisasi yang lebih mengutamakan tata kelola risiko dibandingkan rasionalitas altruistik *tabarru'*. Indikasi empiris dari konteks Indonesia menunjukkan adanya pola biaya *kafālah* yang melebihi batas penggantian biaya administratif, penggunaan *ḥawālah* secara implisit dalam layanan transfer dana tanpa penamaan akad yang eksplisit, serta struktur *kafālah* yang menyerupai jasa berbasis risiko. Penelitian ini menegaskan perlunya standar tata kelola yang lebih jelas dan pedoman regulasi yang bersifat substantif guna mencegah terjadinya pengaburan nilai syariah, sekaligus tetap mengakomodasi kebutuhan manajemen risiko yang sah. Dari sisi kebijakan, regulator perlu menetapkan kriteria yang lebih tegas terkait struktur biaya yang diperbolehkan serta batasan hibridisasi akad guna memastikan keselarasan dengan *maqāṣid al-shari'ah* tanpa mengabaikan stabilitas sistem keuangan. Dengan merekonstruksikan *ḥawālah* dan *kafālah* sebagai akad institusional hibrida, penelitian ini mengembangkan kerangka evaluatif berbasis *maqāṣid al-shari'ah* yang melampaui kepatuhan prosedural menuju koherensi etis dan institusional.

Kata Kunci : *ḥawālah*, *kafālah*, *tabarru'*, *fiqh al-mu'āmalāt*, standar syariah AAOIFI

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Introduction

Over the past two decades, Indonesia's Islamic finance industry has experienced substantial growth, driven by increasing public demand for *Shariah*-compliant financial services. Sustained institutional support has further facilitated the development of Islamic economic activities in the country.¹ As the country with the world's largest Muslim population, Indonesia occupies a strategically significant position within the global Islamic finance ecosystem.²

Islamic banks are expected to operationalise core *Shariah* values such as justice (*ʿadālah*) and mutual assistance (*taʿāwun*).³ Transparency and legal certainty are also central ethical expectations that distinguish Islamic banking from conventional institutions.⁴ These values underpin its legitimacy within the broader Islamic economic system.⁵

Contracts in Islamic banking act as the primary mechanism for translating *Shariah* principles into operational practice. *Tabarruʿ*-based contracts occupy a distinctive position, as they are classically non-commercial

arrangements grounded in altruism and social solidarity. Contemporary literature emphasizes the importance of *tabarruʿ* contracts in preserving *Shariah* integrity.⁶

However, the institutionalization of Islamic banking in competitive and regulated markets has gradually repositioned *tabarruʿ* contracts to emphasize operational efficiency. Risk management requirements increasingly shape their design.⁷ Fee-based structures are often introduced, raising concerns regarding the ethical character of *tabarruʿ* contracts.⁸

Two *tabarruʿ*-based contracts that exemplify this transformation are *hawālah* and *kafālah*.⁹ In classical *fiqh*, *hawālah* refers to the transfer of debt liability.¹⁰ *Kafālah* denotes a guarantee in which one party assumes responsibility for another's obligation.¹¹ Historically, both contracts were rooted in mutual assistance rather than commercial exchange.¹² Their classical formulations did not envisage inherent profit generation.¹³ In

¹ Azharsyah Ibrahim, et al. *Pengantar Ekonomi Islam*. Jakarta: Prenadamedia Group, 2021.

² Alfred Kammer, Mohamed Norat, Marco Piñón, Ananthkrishnan Prasad, Christopher Towe, Zeine Zeidane, *Islamic Finance: Opportunities, Challenges, and Policy Options (IMF Staff Discussion Note)*, International Monetary Fund, 2015.

³ Mohammad Qutaiba and Mohd Owais, "Exploring the Importance and Presence of Maqāsid Al-Shari'ah in Islamic Banking Products and Services." *Talaa: Journal of Islamic Finance*, 4 no. 2 (2024): 114–30. <https://doi.org/10.54045/talaa.v4i2.767>.

⁴ Rahmat Ilyas, "Peran Dewan Pengawas Syariah Dalam Perbankan Syariah." *JPS (Jurnal Perbankan Syariah)*, 2, no. 1 (2021): 42–53. <https://doi.org/10.46367/jps.v2i1.295>

⁵ Yenik Candra Kiranawati, Shifa Miarti Aziza, Arim Nasim, and Caria Ningsih, "Islamic Banking Governance in Maqashid Sharia Perspectives: A Systematic Literature Review." *Share: Jurnal Ekonomi dan Keuangan Islam*, 12, no. 1 (2023): 59–74. <https://doi.org/10.22373/share.v12i1.15446>.

⁶ Muhammad Ayub, "Understanding Islamic Finance." West Sussex: John Wiley & Sons, 2007.

⁷ Muhammad Urfi Amrillah, "Urgensi Pembentukan Undang-Undang Digital Banking Bagi Perbankan Syariah di Indonesia." *Jurnal Lex Renaissance*, 5, no. 4 (2020): 928–945. <https://doi.org/10.20885/JLR.vol5.iss4.art12>.

⁸ Mohd Dusuki Bakar and Syed A. Rosly, "Shariah Governance and Risk Management in Islamic Banks." *Journal of Islamic Accounting and Business Research*, 11 no. 2 (2020): 275–294. <https://doi.org/10.1108/JIABR-02-2018-0024>.

⁹ Wahhab Al-Zuhayli, *Al-fiqh al-Islāmi wa Adillatuh*, Vol. 5. Dār al-Fikr, 2001

¹⁰ Sayyid Sabiq Muhammad al-Tihamiy, "Fiqh al-Sunnah". PT Al-Ma'arif, 2014.

¹¹ Al-Jaziri, A. *Kitab al-Fiqh 'ala al-Madhab al-Arba'ah*, Juz IV. Beirut: Dar al-Kutub al-Ilmiyyah, 1987.

¹² Abdulqadir Ibrahim Abikan, "Contract of Kafālah (Guarantee) in Islamic Finance: Extending the Frontiers of Islamic Law." *Journal of Shariah Law Research*, 2, no. 2 (2017): 157–178. <http://doi.org/10.22452/JSLR.vol2no2.6>.

¹³ Faulina, Faulina, Galih Mareta Nur Ka'bah, Milna Sari, and Zaitun Qamariah, "The Analysis of Sharia Conformity to Kafalah Contract and Hasanah Card

contemporary practice, *hawālah* underpins fund transfers, remittances, and receivables assignment. *Kafālah* forms the legal basis for bank guarantees, letters of credit, and project guarantees. The embedding of these contracts within institutional finance reflects functional adaptation to operational realities.¹⁴

A notable phenomenon in Indonesia is the rapid proliferation of *Shariah*-compliant products that utilise *hawālah* and *kafālah* in a commercialized manner.¹⁵ Several Islamic banks now apply fees for guarantees and receivables transfers, which were traditionally non-remunerative *tabarru'* contracts.¹⁶ Emerging digital banking services increasingly rely on automated contract structures, heightening both operational and ethical complexity.¹⁷ This trend is supported by industry reports from the Financial Services Authority (OJK) and the Islamic Financial Services Board (IFSB), which indicate continuous expansion of fee-based Islamic banking products in Indonesia's Islamic finance sector. These phenomena illustrate the tension between classical *Shariah* principles and contemporary banking practice, highlighting the urgency of a systematic analysis of *hawālah* and *kafālah* from a *maqāṣid* perspective.¹⁸

Products in Islamic Banking.” *Ekonomi Keuangan Syariah Dan Akuntansi Pajak*, 1, no. 3 (2024): 14–21. <https://doi.org/10.61132/eksap.v1i3.172>.

¹⁴ Abdul Aziem, M. Dawud Arif Khan, and Hidayat Hidayat. “The Transformation of the *Kafālah* and *Hawālah* Contracts into the *Mu'āwadhah* Contract *Maṣlahah* Perspective: An Analytical Study of DSN-MUI Fatwa.” *Al-Kharaj: Journal of Islamic Economic and Business*, 8, no. 1 (2026): 325–334. <https://doi.org/10.24256/kharaj.v8i1.8933>

¹⁵ Faulina, Faulina, Galih Mareta Nur Ka'bah, Milna Sari, and Zaitun Qamariah, *op.cit.*

¹⁶ Abdulqadir Ibrahim Abikan, *op.cit.*

¹⁷ Muhammad Urfi Amrillah, *op.cit.*

¹⁸ Refki Saputra and A. Hilabi Abdurrahman, “Aktualisasi *Maqashid* *Shariah* dalam Konstruksi Perspektif Fikih

Despite extensive literature, a significant research gap remains, a few studies integrate *Shariah* compliance, contractual theory, and institutional risk management to examine how operational pressures reshape the ethical substance of *tabarru'*-based contracts. Partial adoption of international standards, particularly AAOIFI, increases regulatory inconsistency.¹⁹ The growing monetization of *hawālah* and *kafālah*, combined with institutional risk pressures, poses threats to the substantive realization of *maqāṣid al-sharī'ah*. Erosion of fairness, social welfare, and wealth protection may undermine the moral legitimacy of Islamic finance.²⁰ Existing studies predominantly analyse *Shariah* compliance from a doctrinal or regulatory perspective without integrating institutional risk management frameworks, thereby overlooking how risk imperatives reshape the substance of contracts.²¹ A study on transformation of specific *tabarru'*-based contracts, particularly *hawālah* and *kafālah*, into fee-based and hybrid instruments in modern banking practices.²² Prior studies have

terhadap Aktivitas dan Produk Perbankan Syariah.” *Al Maal: Journal of Islamic Economics and Banking*, 4 no. 1 (2022): 31–49. <http://dx.doi.org/10.31000/almaal.v4i1.6025>

¹⁹ Bambang Iswanto, “Peran Bank Indonesia, Dewan Syariah Nasional, Badan Wakaf Indonesia Dan Baznas Dalam Pengembangan Produk Hukum Ekonomi Islam Di Indonesia.” *IQTISHADIA Jurnal Kajian Ekonomi dan Bisnis Islam*, 9, no. 2 (2016): 421. <http://dx.doi.org/10.21043/iqtishadia.v9i2.1738>.

²⁰ Ibrahim Warde, *Islamic Finance in the Global Economy*, 2nd ed. Edinburgh University Press, 2010.

²¹ M. Kabir Hasan, Ashraf Bin Mohd Thas Thaker, and Mustafa Raza Rabbani. “Islamic Banking: Theory, Practice, and Challenges.” *Pacific-Basin Finance Journal*, 71 (2022): 101678. <https://doi.org/10.1016/j.pacfin.2021.101678>

²² Mohammad Akram Laldin and Hafas Furqani. “Developing Islamic Finance in the Framework of *Maqasid al-Shari'ah*.” *Journal of Islamic Accounting and Business Research*, 12, no. 6 (2021): 887–905. <https://doi.org/10.1108/JIABR-10-2019-0198>

not sufficiently addressed inconsistencies between international standards such as AAOIFI and their partial implementation in national regulatory systems like Indonesia, resulting in fragmented governance and potential Shariah dilution.²³ Empirical studies in Islamic banking literature further show a consistent pattern of fee-based restructuring in Islamic guarantees and receivables management products across emerging markets, including Indonesia, Malaysia, and the Gulf region.

To address these challenges and bridge the identified research gap. The objectives of this study are to critically analyse the institutional, operational, and doctrinal dynamics of ḥawālah and kafālah; to identify gaps and inconsistencies in contractual practice; and to propose actionable recommendations for harmonising contract structures with maqāṣid-oriented ethical and regulatory principles. This study is among the first to systematically integrate classical fiqh analysis, contemporary regulatory frameworks, and institutional risk management perspectives in examining the transformation of ḥawālah and kafālah within Indonesia's Islamic banking context. By adopting a comprehensive maqāṣid-oriented legal perspective, this research aims to offer a coherent framework that supports sustainable, ethically consistent, and Shariah-compliant Islamic banking in Indonesia.

Method

This study adopts a normative legal research design employing a qualitative

approach to critically assess the alignment between the conceptual foundations and the institutional implementation of ḥawālah and kafālah within Indonesia's Islamic banking system, as normative legal research is specifically designed to analyse legal norms, principles, and doctrines rather than empirical behaviour.²⁴ The qualitative approach is utilised to facilitate an in-depth interpretative analysis of legal texts and institutional practices, enabling a systematic examination of meanings, values, and normative coherence within Islamic financial law.²⁵ This study is primarily normative, with interviews serving as contextual validation.

The normative approach is utilised to examine Islamic commercial jurisprudence (*fiqh al-mu'āmalāt*), international Shariah governance standards, particularly those issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)²⁶, and Indonesia's positive legal framework, including Law No. 21 of 2008²⁷ on Islamic Banking and relevant fatwas promulgated by the National Shariah Council of the Indonesian Council of Ulama (DSN-MUI).²⁸

This design enables the analysis of ḥawālah and kafālah not merely as doctrinal constructs but as legal institutions embedded within the interaction of normative texts,

²³ Aishath Muneeza and Zulkifli Hasan Mustapha. "Shari'ah Governance and Regulatory Issues in Islamic Finance." *ISRA International Journal of Islamic Finance*, 13, no. 2 (2021): 201–218. <https://doi.org/10.1108/IJIF-07-2020-0152>

²⁴ Soerjono Soekanto, and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: RajaGrafindo Persada, 2015.

²⁵ Creswell, John W., and Cheryl N. Poth, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*. 4th ed. Thousand Oaks, CA: Sage Publications, 2018.

²⁶ AAOIFI. *Shari'ah Standards*. Manama: Accounting and Auditing Organization for Islamic Financial Institutions, 2021.

²⁷ Republic of Indonesia. *Law No. 21 of 2008 on Islamic Banking*. Jakarta: State Secretariat, 2008.

²⁸ DSN-MUI, *Himpunan Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia*. Jakarta: DSN-MUI, 2017.

regulatory regimes, and contemporary banking practices. This comparative reading is further extended through the works of Sayyid Sabiq²⁹ and al-Jaziri³⁰ to identify convergences and divergences in doctrinal construction. The analysis then juxtaposes these classical formulations with contemporary Shariah governance standards, particularly those issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI, 2017).³¹ The study examines risk management frameworks applied in Islamic banking through a literature-based analysis, highlighting both the complexity of risk profiles and the critical role of effective risk management in Islamic financial institutions.³²

The study considers how these normative sources are operationalized within the regulatory and institutional practices of Indonesian Islamic banking. In selected analytical segments, a limited socio-legal perspective is incorporated to contextualise normative findings by engaging with practitioner understandings and publicly documented institutional perspectives reflected in regulatory reports, banking documentation, and prior academic studies, without reorienting the study toward a fully empirical design.

Data collection is conducted primarily through systematic library-based research, drawing on primary sources including the Qur'an, Prophetic traditions (ḥadīth), classical and contemporary fiqh al-mu'āmalāt

literature, AAOIFI Shariah standards, and DSN-MUI fatwas, alongside secondary sources such as peer-reviewed journal articles, scholarly monographs, prior empirical and normative studies, regulations issued by the Financial Services Authority (OJK), and official Islamic banking product documentation.

To complement documentary analysis, two semi-structured expert interviews are conducted with members of Shariah Supervisory Boards and officers responsible for compliance or risk management, with the purpose of eliciting contextual insights into institutional interpretations of *hawālah* and *kafālah*, the rationale underpinning fee-based contractual structures, and the influence of regulatory and risk management considerations on contract design, these insights are treated as contextual and corroborative rather than as primary empirical evidence. The selection criteria include: (1) direct involvement in Shariah governance or regulatory formulation, (2) professional experience in Islamic banking compliance or risk management, and (3) demonstrated expertise in fiqh al-mu'āmalāt or Islamic financial regulation.

The sampling method employed for interview participants is purposive sampling, selecting informants based on their institutional authority and substantive expertise in Islamic banking governance. The key informants from this research can be seen in the following table:

Table 1. Key Informants Profile

No.	Name	Position and Involment
1	Z.A	Member of Shariah Supervisory Board. Plays a crucial role in ensuring that all financial practices and decisions within the institution adhere strictly to Sharia principles. He focuses on providing fatwas, guiding the organization in compliance with Islamic law, and overseeing that the financial products and services offered align with Sharia standards.

²⁹ Sayyid Sabiq Muhammad al-Tihamiy, *op.cit.*

³⁰ Al-Jaziri, *op.cit.*

³¹ AAOIFI, *Shari'ah Standards (Revised ed.)*. Accounting and Auditing Organization for Islamic Financial Institutions, 2017.

³² Akbar C. Eril, Muhammad Wahyuddin Abdullah, and Murtiadi Awaluddin, *Manajemen Risiko di Perbankan Syariah*. *Milkiyah: Jurnal Hukum Ekonomi Syariah*, 1 no. 2 (2022): 51–56. <https://doi.org/10.46870/milkiyah.v1i2.230>

D.B. Member of DSN MUI and DPS. involved in shaping and formulating the regulatory framework and policies for Islamic finance, ensuring that the industry's direction is in line with Islamic values. In DPS, D.B.'s role extends to overseeing the implementation of these policies and ensuring that the operations remain compliant with both Sharia law and the regulatory standards set by DSN MUI

Data analysis proceeds qualitatively through thematic identification of legally relevant issues, systematic categorisation of materials according to juristic principles, regulatory norms, and operational practices, and critical textual and contextual interpretation aimed at identifying normative assumptions, interpretive shifts, and patterns of institutional adaptation. The analytical approach employed is thematic analysis, applied to identify recurring patterns across doctrinal texts, regulatory frameworks, and institutional practices, followed by interpretive legal reasoning to assess their alignment with *maqāṣid al-shari'ah*.

The analytical framework is grounded in *maqāṣid al-shari'ah*, which functions as an evaluative lens to assess whether contemporary implementations of *hawālah* and *kafālah* substantively advance core Shariah objectives, including the protection of wealth (*hifz al-māl*), transactional justice, legal certainty, and broader socio-economic welfare, thereby enabling an assessment that extends beyond procedural compliance. The study relies exclusively on publicly accessible legal and regulatory materials and adheres to established principles of academic integrity through accurate citation, faithful representation of juristic views, and transparent interpretation of legal texts. Validity is reinforced through systematic triangulation of classical fiqh sources, international Shariah standards, national regulatory instruments, and contemporary

academic literature, while reliability is ensured through consistent application of interpretive methods and comprehensive documentation of sources, thereby supporting methodological coherence despite the context-specific nature of the findings.

Result and Discussions

This section presents the findings of the *maqāṣid*-oriented normative legal analysis concerning the institutional application of *hawālah* and *kafālah* within Indonesian Islamic banking. The results are organised to reflect the analytical framework outlined in the methodology, moving from classical juristic constructions to contemporary regulatory and institutional practices. Rather than reporting statistical outcomes, the findings elucidate patterns of doctrinal interpretation, regulatory accommodation, and institutional adaptation that shape the current operationalisation of these contracts.

By structuring the findings around legally relevant themes rather than institutional performance metrics, this section foregrounds the normative tensions and interpretive shifts that emerge at the intersection of classical jurisprudence, modern banking regulation, and institutional practice. These results provide the empirical-normative basis for the subsequent discussion, which critically evaluates their broader theoretical and regulatory implications for Islamic banking governance in Indonesia and comparable jurisdictions.

Doctrinal Transformation of *Hawālah* and *Kafālah* in Indonesian Islamic Banking

The implementation of *hawālah* and *kafālah* within Indonesia's Islamic banking sector exhibits complex institutional, operational, and doctrinal dynamics. Both

contracts are historically recognized by classical jurists and international standard-setting bodies, most notably AAOIFI, as fundamental instruments in Islamic finance. In Indonesia, *ḥawālah* has been implicitly embedded in banking practices, particularly following the merger of state-owned Islamic banks into Bank Syariah Indonesia (BSI), where outstanding customer liabilities were transferred, reflecting functional debt-assignment mechanisms. Beyond consolidation functions, *ḥawālah* is operationalized in infrastructure financing, whereby banks assume contractors' obligations to project owners in a manner analogous to *cessie* under Indonesian positive law.³³ In addition, *ḥawālah* is widely applied in regional remittance and fund transfer systems as part of contemporary banking infrastructure.³⁴

Despite its broad functional acceptance, persistent challenges remain in terms of doctrinal understanding, regulatory clarity, and operational execution. Deposit insurance mechanisms administered by the Indonesian Deposit Insurance Corporation (LPS) further illustrate third-party guarantee logic in practice, although such arrangements are commonly implemented without explicit reference to classical fiqh terminology.

Empirical observations reveal frequent divergence between classical fiqh principles and contemporary practice. Many *kafālah* arrangements involve fees exceeding administrative cost recovery, blurring the

distinction between permissible cost coverage and profit-oriented practice. Similarly, *ḥawālah* is embedded in remittance services without explicit contractual articulation, sometimes conflated with *wakālah* or *qardh*. The absence of detailed national regulatory instruments compels banks to rely on partially adapted conventional legal frameworks, further intensifying legal and Shariah ambiguity.

Table 2. A comparative overview of *ḥawālah* and *kafālah* across doctrinal, operational, and regulatory dimensions

Aspect	<i>Ḥawālah</i>	<i>Kafālah</i>
Classical Definition	Fiqh Transfer of debt liability from one party (<i>muḥil</i>) to another (<i>muḥal 'alayh</i>); obligation fully shifts after transfer	Commitment of a third party (<i>kāfil</i>) to the fulfillment of another's obligations (<i>makfūl 'anhu</i>) without extinguishing the original liability
Implementation in Indonesian Islamic Banking	Applied in debt transfers, receivables assignment, financing, and remittance. Often implicit rather than formally stated as <i>ḥawālah</i>	Applied in bank guarantees and project guarantees, with fees for service provision
AAOIFI Standards	Permitted if debt is real and liability is clear; speculative elements prohibited (<i>Shariah</i> Standard No. 176)	Administrative cost recovery permitted; profit prohibited unless structured through a separate contract such as <i>ju'alah</i> (<i>Shariah</i> Standard No. 5)
DSN-MUI & OJK Regulation	Governed generally under Fatwa DSN-MUI No. 12/DSN-MUI/IV/2000; POJK guidelines focus on functional approach in interbank transfers	Governed by Fatwa DSN-MUI No. 11/DSN-MUI/IV/2000 and OJK circulars; fees allowed if based on actual cost; underpins bank guarantee products

The comparative analysis demonstrates that although both *ḥawālah* and *kafālah* are *tabarru'* based contracts, they serve distinct legal functions. *Ḥawālah* primarily discharges debt obligations, while *kafālah* provides

³³ Galih Putri Sudarsono, "Problematika Pengalihan Hak Tagih Piutang (Cessie) Terhadap Kredit Macet Perbankan". *YUDHISTIRA : Jurnal Yurisprudensi, Hukum Dan Peradilan*, 2 no. 2 (2024):14-21. <https://doi.org/10.59966/yudhistira.v2i2.1115>.

³⁴ Natalie Schoon, "Modern Islamic Banking: Products and Processes in Practice". Wiley, 2016

additional security without removing the original liability. However, in practice, both contracts are often operationalized implicitly within service frameworks, highlighting a disconnect between doctrinal theory and institutional application. Multi-contract arrangements further complicate compliance, raising potential *gharar* risks and challenging *Shariah* alignment.

This analysis underscores the urgent need for regulatory harmonization, transparent cost allocation, and explicit contractual articulation. Aligning operational practice with *fiqh* principles, AAOIFI standards, and national regulation is critical for ensuring *Shariah* integrity, minimizing legal ambiguity, and reinforcing public trust in Indonesia's Islamic banking system. Comprehensive education for practitioners and customers is equally essential to enhance awareness of the distinct functional and ethical roles of *ḥawālah* and *kafālah* in contemporary Islamic finance.

Doctrinal Misalignment and Regulatory Challenges of Ḥawālah and Kafālah in Indonesian Islamic Banking

The implementation of *ḥawālah* and *kafālah* within Indonesia's Islamic banking sector reveals a set of institutional, doctrinal, and operational dynamics that are both complex and highly significant. From a theoretical standpoint, both contracts have long been recognized by classical jurists and international *Shariah* standard-setting bodies, notably AAOIFI, as integral components of Islamic financial transactions. In practice, *ḥawālah* has been embedded implicitly in several banking operations, particularly following the merger of state, owned Islamic banks into Bank Syariah Indonesia (BSI), whereby outstanding customer liabilities were effectively transferred to the merged entity,

reflecting a functional application of debt transfer mechanisms.³⁵

Beyond institutional consolidation, *ḥawālah* is operationalized in infrastructure financing, with banks providing liquidity support to contractors lacking sufficient capital. In such cases, the bank assumes the contractor's financial obligation toward the project owner, a practice closely resembling debt assignment (*cessie*) under Indonesian positive law. Similarly, *ḥawālah* principles underpin letter of credit (L/C) facilities in international trade and are widely utilized in remittance and fund transfer services across regions, particularly within the Middle East and North Africa (MENA).³⁶

Despite conceptual legitimacy, practical implementation often diverges from classical *fiqh* structures. Empirical evidence shows that many Indonesian Islamic banks adapt *ḥawālah* and *kafālah* from conventional banking models and re-label them as *Shariah*-compliant with minimal structural modification. *Kafālah* arrangements, for instance, frequently involve fee-based guarantees where banks charge for services without clarifying whether these fees merely cover administrative costs or constitute profit-oriented remuneration.³⁷ AAOIFI *Shariah* Standard No. 5 permits only administrative cost recovery, explicitly prohibiting profit generation unless structured through a separate *Shariah*-compliant contract such as *ju'alah*. Yet, Indonesian contractual documentation often fails to clarify this distinction, generating *Shariah* compliance ambiguity from academic, regulatory, and operational perspectives.³⁸

³⁵ Galih Putri Sudarsono, *op.cit.*

³⁶ Natalie Schoon, *op.cit.*

³⁷ Yūsuf ibn 'Abd Allāh al-Qaradāwī, *Fiqh al-zakāh*. Vol. 1. Muassasat al-Risalah, 1999.

³⁸ Oni Sahroni, *Fikih Muamalah Kontemporer: Jilid 3*.

Multi-contract (*multi-‘aqd*) arrangements further complicate the regulatory and doctrinal landscape. Products such as Islamic bank guarantees commonly integrate *kafālah*, *wakālah*, and *ujrah* within a single contractual framework, potentially violating the prohibition of *ta‘alluq* and introducing *gharar* if not properly structured. The absence of explicit national legal instruments governing the structure and operational mechanics of *hawālah* and *kafālah* compels banks to rely on conventional legal terminology, creating a legal vacuum that weakens contractual certainty. Although DSN-MUI fatwas provide general Shariah guidance, they do not possess the binding force of statutory law or OJK regulations, exacerbating institutional uncertainty.

Public understanding also remains limited. Many customers and business actors conflate *hawālah* with *wakālah* or *qardh*, and *kafālah* with conventional guarantees. Empirical findings highlight inconsistencies between contractual labels and substantive practices, where products nominally classified as *kafālah* may resemble *ijārah* or even insurance (*ta‘mīn*) models. Comparative analysis confirms that while both *hawālah* and *kafālah* are *tabarru‘*-based contracts, they perform fundamentally different functions: *hawālah* discharges debt obligations,³⁹ whereas *kafālah* provides additional security without extinguishing the underlying liability.

The results indicate that these doctrinal and operational inconsistencies extend beyond fiqh compliance to legal, reputational,

and systemic dimensions. Fee-based *kafālah* practices and hybrid multi-contract structures introduce uncertainty, potentially producing *fasād al-mu‘āmalah* and undermining *maqāṣid al-sharī‘ah* objectives of wealth protection (*hifz al-māl*) and contractual justice (*taḥqīq al-‘adālah*). Collectively, the findings underscore the urgent need for harmonized contract design, clear regulatory guidance, and enhanced public and institutional understanding to ensure that *hawālah* and *kafālah* fulfill their intended ethical, financial, and social functions.

The study demonstrates that *hawālah* and *kafālah*, though normatively valid, are operationalized in ways that often diverge from classical fiqh. Fee structures in *kafālah* exceed administrative recovery, while *hawālah* is frequently embedded implicitly in transfer and financing services. Multi-contract arrangements create ambiguity and *gharar*, compounded by weak regulatory oversight. Misalignment between contractual form and substance introduces legal and reputational risks and threatens the achievement of *maqāṣid al-sharī‘ah*. Finally, public and institutional misunderstanding necessitates comprehensive education and regulatory harmonization to restore doctrinal, operational, and ethical alignment.

To support this, we have already made an interview with a member of Shariah Supervisory Board reveals the following:

“The Shariah Supervisory Board plays a crucial role in ensuring that *hawalah* and *kafalah* contracts in Islamic banking are designed and implemented in accordance with Shariah principles, guided by the fatwa from the Indonesian National Shariah Board (DSN-MUI). These contracts serve dual purposes: they function as *tabarru‘* (mutual assistance) agreements while also acting as risk mitigation

Republika, 2020.

³⁹ Sharifah Faigah Syed Alwi, Ibrahim, Uzaimah and Sawari, Mohd Fuad “A Few Methods in Charging Fees for Kafālah Bank Guarantee-I Among Islamic Banks in Malaysia.” *ISRA International Journal of Islamic Finance*, 6 no. 1 (2014): 51–66. <https://doi.org/10.12816/0019251>.

tools to ensure transaction certainty. The Shariah Supervisory Board acknowledges the shift from the simpler, personal relationships in classical fiqh to the more formalized structures in modern banking, emphasizing that such adaptations are necessary but must align with Shariah law. Shariah compliance, as emphasized by the Shariah Supervisory Board, goes beyond mere formal adherence to contractual requirements and includes achieving the substantive goals of *maqāṣid al-sharī'ah*, such as justice and social welfare. The Shariah Supervisory Board also highlights the collaborative decision-making process with legal and risk management units to maintain both regulatory and Shariah compliance, ensuring that future developments in Islamic banking remain rooted in the principles of *maqāṣid al-sharī'ah*.⁴⁰

An interview with a member of DSN MUI and DPS highlights the following:

“The critical role of DPS in ensuring Shariah compliance in economic decision-making, where they provide fatwas and oversee adherence to Islamic principles. Despite challenges in balancing innovation and risk management, DPS remains committed to upholding Shariah law while fostering financial and social impact. The DSN MUI plays an essential role in shaping the regulatory framework, ensuring that policies align with Islamic values. DPS not only focuses on financial outcomes but also emphasizes the importance of social welfare, contributing to the broader community. The future of DPS aims to strengthen its role in Islamic economic development, ensuring transparency, innovation, and positive social impact.”⁴¹

⁴⁰ Interview with Mr. Z.A, a member of Shariah Supervisory Board, 2025

⁴¹ Interview with Ms. D.B, a member of member of DSN MUI and DPS, 2025

Substantive and Regulatory Discrepancies in the Application of *Hawālah* and *Kafālah*

A significant gap in public and industry-level understanding regarding the conceptual and legal distinctions between *hawālah*, *wakālah*, and *qardh* in fund transfer and receivables assignment services. Many customers and business actors perceive these contracts as functionally interchangeable, despite their fundamentally different juristic foundations and legal consequences. A similar misconception is observed in guarantee-based transactions, where *kafālah* is frequently equated with conventional guarantees, without adequate awareness of its distinct Shariah values and *tabarru'* based character. This condition underscores an urgent need for systematic and practical dissemination of *fiqh al-mu'āmalāt* concepts to enhance Shariah literacy among stakeholders.⁴²

The study identifies a recurring inconsistency between the contractual terminology employed in Islamic banking documentation and the substantive structure of the contracts as prescribed by classical fiqh and international Shariah standards. Empirical observations indicate that *kafālah* is often explicitly cited in Islamic bank guarantee instruments, while the underlying fee structure and risk allocation closely resemble *ijārah* or even *ta'min*-like arrangements. This misalignment raises serious Shariah compliance concerns and highlights the necessity for comprehensive product evaluation to ensure conformity with AAOIFI standards and the objectives of *maqāṣid al-sharī'ah*, particularly justice, transparency, and stakeholder protection.

A comparative assessment of *hawālah* and *kafālah* across juristic, regulatory, and

⁴² Oni Sahroni, *op.cit.*

institutional dimensions further clarifies the nature of this discrepancy. Although both contracts are classified as *tabarru'*-based, they perform fundamentally different legal functions. *Ḥawālah* operates as a debt-discharge mechanism (*naqḍ al-dhimmah*), transferring liability entirely from the original debtor to a third party, whereas *kafālah* serves as an additional layer of security without extinguishing the original obligation.⁴³

From a regulatory perspective, the absence of explicit statutory provisions governing the operational structure of *ḥawālah* and *kafālah* exacerbates this inconsistency. While DSN–MUI fatwas provide normative Shariah guidance, their non-binding legal status compels Islamic banks to rely heavily on conventional legal constructs recognised by positive law and OJK regulations. As a result, compliance tends to be formal rather than substantive, increasing the risk of doctrinal dilution and regulatory ambiguity.

The findings indicate that the institutional implementation of *ḥawālah* and *kafālah* in Indonesian Islamic banking reflects an ongoing negotiation between classical juristic norms, international Shariah standards, and domestic regulatory imperatives. Although formal doctrinal and legal compliance is generally preserved, the analysis identifies interpretive adjustments shaped by risk management and institutional efficiency concerns, which in certain instances affect the substantive ethical orientation of these contracts. These dynamics warrant closer normative examination through a *maqāṣid al-sharī'ah* lens. Accordingly, the following Discussion critically assesses whether current

practices substantively advance Shariah objectives or remain confined to procedural conformity, and considers the implications for Shariah governance and regulatory coherence.

This study identifies a persistent structural gap between the doctrinal foundations of *ḥawālah* and *kafālah* in classical fiqh and their contemporary operationalisation within Indonesia's Islamic banking sector. Although both contracts are formally recognised as *tabarru'*-based and Shariah-compliant, their practical implementation frequently prioritises institutional risk governance and administrative convenience over substantive juristic requirements. The findings demonstrate that *ḥawālah* is often applied implicitly through fund transfer and receivables assignment mechanisms without satisfying essential fiqh conditions of debt certainty and explicit contractual designation, while *kafālah* is routinely transformed into fee-based guarantee products with cost structures resembling *ijārah* or risk commodification, contrary to AAOIFI Shariah standards. This doctrinal–institutional misalignment is further exacerbated by limited Shariah literacy among stakeholders and the absence of explicit statutory regulation harmonising DSN–MUI fatwas, OJK frameworks, and international standards. Collectively, these conditions indicate that Shariah compliance in the application of *ḥawālah* and *kafālah* remains predominantly formalistic rather than substantive, underscoring the urgent need for regulatory clarification, product restructuring, and a *maqāṣid al-sharī'ah*-oriented evaluative approach to ensure legal certainty, ethical coherence, and sustained public trust.

This study contributes to the literature on Islamic banking by examining the

⁴³ Sharifah Faigah Syed Alwi, Ibrahim, Uzaimah and Sawari, Mohd Fuad, op.cit.

operationalisation of *hawālah* and *kafālah* within Indonesia's Islamic financial system, particularly at the intersection of Shariah compliance and institutional risk management.⁴⁴ Previous research has highlighted a persistent disjunction between formal *Shariah* compliance and financial performance in Indonesian Islamic banks.⁴⁵ Financial stability alone does not guarantee that the higher objectives of *Shariah*, including social welfare and justice, are achieved in practice.⁴⁶

Conceptual frameworks increasingly emphasize the importance of *maqāṣid*-based evaluation to assess substantive performance in Islamic banking institutions.⁴⁷ Implementation challenges persist due to methodological and operational constraints that limit the integration of *maqāṣid* indicators within institutional practice.⁴⁸ Recent studies incorporate sustainability and ESG principles into Islamic finance evaluation, suggesting a

holistic approach that reconciles *Shariah* compliance with social impact.⁴⁹ ESG-focused frameworks further highlight the role of long-term value creation in Islamic banking.⁵⁰

The findings reveal that *hawālah* and *kafālah* are often implemented implicitly, prioritizing risk management over substantive *fiqh* requirements.⁵¹ *Tabarru'*-based contracts are rooted in social solidarity rather than profit generation, an ethical principle reinforced by contemporary scholarship.⁵² Classical jurisprudence similarly affirms that neither *hawālah* nor *kafālah* is designed as a revenue-generating instrument.⁵³

Fee structures in *kafālah* often exceed the threshold of administrative cost recovery, raising *Shariah* compliance concerns. Risk management practices influence the operationalisation of these contracts, embedding them into conventional legal constructs.⁵⁴ From a *maqāṣid* perspective, opaque fees, contractual ambiguity, and regulatory fragmentation undermine justice and wealth protection.⁵⁵ Normative contributions of *maqāṣid*-oriented analysis emphasize the importance of aligning

⁴⁴ Mohd. Asmar Dimasqi Abandi, Yuli Andriansyah, and Mowafg Masuwd, "Performance Measurement Analysis of Sharia Commercial Banks in Indonesia With Maqashid Index and Sharia Conformity and Profitability (SCnP)". *Journal of Islamic Economics Lariba*, 9 no. 2 (2023):541-66. <https://doi.org/10.20885/jielariba.vol9.iss2.art13>.

⁴⁵ Kristianingsih, Kristianingsih, R. Abidzar Al Fahri, and Fiqi Fahri Al Malik, "Penerapan Maqashid Syariah Index Pada Perbankan Syariah Di Indonesia". *Journal of Applied Islamic Economics and Finance*, 1 no. 3 (2021):586-95. <https://doi.org/10.35313/jaief.v1i3.2598>

⁴⁶ Mutia, Pamikatsih, Nisrina Anggi Syahputri, Hatta Setiabudhi, and Kholifatul Sa'diyah, "Financial Performance of Islamic Banking in Indonesia With The Maqashid Syariah Index Approach". *Ijtima' Iyya Journal of Muslim Society Research*, 9 no. 1 (2024):65-76. <https://doi.org/10.24090/ijtima'iyya.v9i1.10252>.

⁴⁷ Syahdatul Maulida and Mohammad Mahbubi Ali, "Maqasid Shariah Index: A Literature Review". *Maqasid Al-Shariah Review*, 2 no.1 (2023). <https://doi.org/10.58968/msr.v2i1.309>.

⁴⁸ Aam Slamet Rusydiana and Ali. Mohammad Mahbubi, "The Application of Maqasid Shariah on Banking Industry". *Maqasid Al-Shariah Review*, 1 no. 1 (2022): 1-15. <https://doi.org/10.58968/msr.v1i1.261>.

⁴⁹ Sri Dewi Yusuf, Muhamad Mokoagow, Muhammad Nur, and Spandi Rauf, "Islamic Financial Characteristics and the Sustainability of Islamic Banking in Indonesia: Challenges and Opportunities". *Jurnal Ilmiah Manajemen Kesatuan*, 11 no. 2 (2023):363-69. <https://doi.org/10.37641/jimkes.v11i2.2036>.

⁵⁰ Delta Khairunnisa, Suhel, and Imam Asngari, "Integrating ESG and Maqashid Syariah for Sustainable Islamic Finance in Indonesia". *Jurnal Ilmiah Manajemen Kesatuan*, 13 no.6 (2025):4525-38. <https://doi.org/10.37641/jimkes.v13i6.4025>.

⁵¹ Wahhab Al-Zuhayli, *Op.cit*.

⁵² Yūsuf ibn 'Abd Allāh al-Qarāḍāwī, *op.cit*.

⁵³ Sayyid Sabiq Muhammad al-Tihamiy, *op.cit*.

⁵⁴ Naseem Al Rahahleh, M. Ishaq Bhatti, and Faridah Najuna Mismam, "Developments in Risk Management in Islamic Finance: A Review." *Journal of Risk and Financial Management*, 12 no.1 (2019): 37. <https://doi.org/10.3390/jrfm12010037>

⁵⁵ Refki Saputra and A. Hilabi Abdurrahman, *op.cit*

contractual practice with ethical objectives.⁵⁶ Institutional analysis demonstrates the need for contract-specific evaluation to bridge Islamic economic law with contemporary banking operations.⁵⁷

Recent scholarship on *murābahah* contracts provides a comparative framework, illustrating how *Shariah*-compliant contracts can balance operational efficiency with substantive ethical objectives.⁵⁸ This evidence supports the argument that *hawālah* and *kafālah* require careful integration of classical *fiqh*, international standards, and domestic regulatory frameworks.

These findings indicate that operational practices in Indonesian Islamic banking often diverge from doctrinal norms. A contract-specific, *maqāṣid*-oriented evaluation provides a holistic framework for ethical coherence, legal certainty, and sustainable implementation of *Shariah* objectives. The findings of the present study indicate that the operationalisation of *hawālah* and *kafālah* in Indonesian Islamic banking frequently prioritises institutional risk management over adherence to classical *fiqh* principles.⁵⁹ Regulatory analyses reveal that the harmonisation of DSN–MUI fatwas with Bank Indonesia directives remains uneven, creating

significant variations in how banks implement these *tabarru'*-based contract.⁶⁰ The absence of explicit digital banking legislation exacerbates this inconsistency, particularly in fee-based guarantee products that deviate from the altruistic character traditionally ascribed to *kafālah*.⁶¹ Despite the active role of regulatory institutions such as Bank Indonesia, Baznas, and the *Shariah* Supervisory Board, gaps in doctrinal fidelity and operational implementation persist.⁶² Competitive pressures from the ASEAN Economic Community (MEA) have encouraged banks to innovate operationally, but these adaptations can inadvertently compromise the classical *fiqh* requirements of non-remunerative *tabarru'* contracts.⁶³

The contemporary monetisation of *kafālah* and the commercialisation of *hawālah* in Indonesian Islamic banking highlight the tension between operational efficiency and doctrinal fidelity, raising questions about the extent to which fee-based adaptations align with the higher objectives of *Shariah*.⁶⁴ Digital financial platforms and automated contract structures have accelerated the deployment of such practices, yet regulatory oversight remains fragmented, creating potential risks for both contractual clarity and ethical

⁵⁶ Alwi, Muhammad, Muslimin Kara, M. Wahyuddin Kara, and Muhammad Fachrurrazy, "Konsep *Maqasid as-Syariah* dalam Perbankan Syariah." *Al-Amwal: Journal of Islamic Economic Law* 7, no. 2 (2022): 56–80. <https://doi.org/10.24256/alw.v7i2.3549>

⁵⁷ Syihabudin, Syihabudin, Dery Wanto, Zakaria Syafe'i, Amalia Muazzah Adawiah, and Sahraman D. Hadji Latif, "A Bibliometric Study of *Shariah* Compliance in Islamic Banking." *Al-Adalah* 22, no. 1 (2025): 293–322. <https://doi.org/10.24042/adalah.v22i1.26525>

⁵⁸ Arzal Syah Djumadi, Hamida Mujahidin, and Kamiruddin, "Critical Review of *Murābahah* Financing in Contemporary Islamic Banking: A *Maqāṣid Al-Sharī'ah* Perspective." *MILRev: Metro Islamic Law Review*, 4 no. 2 (2025): 1152–88. <https://doi.org/10.32332/milrev.v4i2.11087>.

⁵⁹ Abdulqadir Ibrahim Abikan, *op.cit*

⁶⁰ Khotibul Umam, "Legislasi Fikih Ekonomi Perbankan: Sinkronisasi Peran DSN-MUI dan Komite Perbankan Syariah." *Mimbar Hukum*, 24 no. 2(2012): 357–75. <https://doi.org/10.22146/jmh.16139>.

⁶¹ Muhammad Urfi Amrillah, *op.cit*

⁶² Bambang Iswanto, *op.cit*

⁶³ Cakti Indra Gunawan, Ahmad Mukoffi, and Adrian Junaidar Handayanto. *Strategi Model Perbankan Syariah Menghadapi Persaingan di Era Masyarakat Ekonomi ASEAN (MEA)*. CV IRDH (International Research and Development for Human Beings), 2017.

⁶⁴ Sahed Busari, Hassan Suleiman, and Belal Salhab, "Guarantee Contracts in Islamic Financial Transaction: Analysis of BNM Resolution and AAIOfI Standards." *Journal of Fatwa Management and Research*, 29, no. 3 (2024) : 46-62 <https://doi.org/10.33102/jfatwa.vol.29no3.585>

compliance.⁶⁵ The absence of comprehensive digital banking legislation allows banks to normalise practices that may diverge from classical fiqh principles without explicit statutory sanction.⁶⁶ Comparative literature indicates that international standards such as AAOIFI provide critical benchmarks for Shariah compliance, yet domestic adaptations often prioritise operational expediency over doctrinal rigor, reinforcing structural gaps in ethical governance.⁶⁷

Empirical evidence demonstrates that *kafālah*-based products, including Hasanah card offerings, often incorporate fee structures that exceed mere cost recovery, highlighting a departure from the *tabarru'* ethic.⁶⁸ The integration of such monetised practices has implications for *maqāṣid al-shari'ah*, particularly in terms of justice (*'adālah*) and the protection of wealth (*ḥifẓ al-māl*).⁶⁹ Detailed contract-level analyses show that *kafālah bil ujah* and commercialised *ḥawālah* enhance operational efficiency but introduce doctrinal tensions that risk

undermining Shariah integrity.⁷⁰ Classical fiqh scholarship consistently conceptualises *kafālah* and *ḥawālah* as altruistic instruments rooted in social solidarity, rather than as vehicles for profit generation.⁷¹

Comparative evaluations suggest that embedding *maqāṣid* principles into product design strengthens the ethical alignment of contractual practices with broader Shariah objectives.⁷² Transformations of *tabarru'* contracts into *mu'āwaḍah*-like arrangements demonstrate the mediating role of DSN–MUI fatwas in balancing doctrinal norms with operational realities.⁷³ Governance-focused studies emphasise that effective Shariah supervisory mechanisms can mitigate compliance risks if complemented by structured ethical evaluation frameworks.⁷⁴ Furthermore, *qardh*-based practices in Indonesian Islamic banks illustrate that a systems-oriented *maqāṣid* approach can enhance the substantive fulfilment of social, ethical, and legal objectives.⁷⁵

International evidence reinforces the importance of integrating *maqāṣid* indicators

⁶⁵Jantarda Mauli Hutagalung, M. Zaky As-Suminar, Zara Pebrianto, M. Ijlal Shidqi Al-Kindi, Murnee Masae. "Digital Lending Platforms and Islamic Financial Technology in Indonesia: Reconciling Regulatory Paradigms Through Maqāṣid al-Shari'ah and Consumer Protection Philosophies." *Jurnal Indo Islamika* 15, no. 1: 173–185. 2025. <https://doi.org/10.15408/jii.v15i1.47045>.

⁶⁶Nur Melinda Lestari, Muhammad In'amullah, Kamall Aly, Muhammad Faizurrahman, "Legal Certainty and Sharia Digital Financing in Indonesia: From Legal Practice to Regulatory Reconstruction." *Jurnal Indo-Islamika*, 15 no. 2 (2025): 400–417. <https://doi.org/10.15408/jii.v15i2.48753>

⁶⁷M. Kabir Hassan, Sirajo Aliyu, and Andrea Paltrinieri, "A Review of Islamic Banking and Finance Literature: Evidence from Scopus." *International Review of Economics & Finance*, 60 (2019) : 1–23. <https://doi.org/10.1016/j.iref.2018.11.012>.

⁶⁸Faulina, Faulina, Galih Mareta Nur Ka'bah, Milna Sari, and Zaitun Qamariah, *op.cit*

⁶⁹Rahmat Hidayat, "Realisasi Konsep Maqosid Shariah Index Perbankan Syariah di Indonesia." *Ecobankers: Journal of Economy and Banking* 1, no. 1 (2020):79-50 <https://doi.org/10.47453/ecobankers.v1i1.74>

⁷⁰Junaidi, Ahmad Khusnan, "Akad Kafālah, Kafālah bil Ujah dan Ḥawālah Perspektif Fiqih, KHES dan Fatwa DSN–MUI." *Maliki Interdisciplinary Journal*, 2 no. 5 (2024): 327–34. <https://urj.uin-malang.ac.id/index.php/mij/article/view/4713>

⁷¹Ummi Sa'adah and Muhamad Zen, "Konsep Kafālah dalam Fiqh Klasik dan Aplikasinya pada Sistem Jaminan Syariah Kontemporer." *Inisiatif: Jurnal Ekonomi, Akuntansi dan Manajemen*, 4 no. 4 (2024): 52–48. <https://doi.org/10.30640/inisiatif.v4i4.5248>.

⁷²Mohammad Qutaiba and Mohd Owais, *op.cit*.

⁷³Abdul Aziem, M. Dawud Arif Khan, and Hidayat Hidayat, *op.cit*

⁷⁴Yenik Candra Kiranawati, Shifa Miarti Aziza, Arim Nasim, and Caria Ningsih, *op.cit*

⁷⁵Mohammad Ghozali, Khusniati Rofiah, Khurun'in Zahro, and Mualimin Mochammad Sahid, "Reforming Qardh Practices in Islamic Banking: A Critical Analysis Based on Jasser Auda's Maqāṣid al-Shari'ah Systems Approach in Indonesia." *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, 22, no. 2 (2025). <https://doi.org/10.21154/justicia.v22i2.11165>

into performance assessment frameworks, demonstrating that participation banks can achieve both financial stability and social impact when ethical and operational objectives are aligned.⁷⁶ Analyses of *murābahah* contracts indicate that balancing operational efficiency with *maqāṣid*-aligned outcomes is feasible, providing a benchmark for evaluating the ethical substance of *ḥawālah* and *kafālah* in contemporary banking practice.⁷⁷ Embedding *maqāṣid*-oriented evaluation frameworks into contractual design can mitigate tensions between operational expediency and ethical compliance, ensuring that financial innovation does not compromise social objectives. Digital and conventional banking products that integrate Shariah supervisory guidance with systemic *maqāṣid* indicators demonstrate improved alignment between institutional risk management and social welfare outcomes.⁷⁸ Legal certainty and doctrinal clarity are enhanced when contracts explicitly codify liability designations, fee structures, and compliance thresholds, reducing the likelihood of procedural ambiguities that may undermine substantive Shariah objectives.⁷⁹ Evidence from comparative reviews suggests that such integrative approaches, combining operational efficiency with *maqāṣid*-aligned governance, can reinforce both the ethical legitimacy and financial sustainability of

tabarru'-based contracts.⁸⁰

The present study further highlights that fee structures in *kafālah* often surpass acceptable thresholds, raising unresolved concerns regarding procedural compliance and the substantive fulfilment of *maqāṣid* objectives. These findings resonate with prior critiques that contractual misalignment, rather than overt legal violations, is a primary source of Shariah non-compliance in operational practice.⁸¹ Operationalisation without doctrinal recalibration leads to practices that are institutionally rational yet ethically compromised, illustrating the need for a *maqāṣid*-oriented evaluation that extends beyond procedural compliance to encompass justice, social welfare, and wealth protection. This comprehensive approach enables the identification of specific contractual features, such as ambiguous designation of liability in *ḥawālah* and monetised guarantees in *kafālah*, that undermine substantive Shariah objectives. Collectively, these insights provide a policy-relevant framework for aligning operational practice, regulatory oversight, and ethical governance in Indonesian Islamic banking, highlighting pathways to reconcile institutional efficiency with *maqāṣid*-oriented contractual integrity.

The present study further highlights that fee structures applied in *kafālah* frequently exceed acceptable cost-recovery thresholds, generating unresolved concerns regarding both procedural compliance and the substantive realisation of *maqāṣid al-sharī'ah* objectives. This pattern reinforces earlier

⁷⁶ H. Şaduman Okumuş, "Participation Banks, Financial Stability, and Social Impact: Evidence from *Maqāṣid*-Oriented Performance Indicators." *Borsa Istanbul Review*, 24 no. 4 (2024): 806–817. <https://doi.org/10.1016/j.bir.2024.04.011>

⁷⁷ Arzal Syah Djumadi, Hamida Mujahidin, and Kamiruddin, *op.cit.*

⁷⁸ Jantarda Mauli Hutagalung, M. Zaky As-Suminar, Zara Pebrianto, M. Ijlal Shidqi Al-Kindi, Murnee Masae, *op.cit.*

⁷⁹ Nur Melinda Lestari, Muhammad In'amullah, Kamall Aly, Muhammad Faizurrahman, *op.cit.*

⁸⁰ Hassan, M. Kabir, Sirajo Aliyu, and Andrea Paltrinieri, "A Review of Islamic Banking and Finance Literature: Evidence from Scopus." *International Review of Economics & Finance*, 60 (2019) : 1–23. <https://doi.org/10.1016/j.iref.2018.11.012>.

⁸¹ Mohd Dusuki Bakar and Syed A. Rosly, *Op.cit.*

observations that Shariah non-compliance in Islamic banking practice more often arises from contractual misalignment than from explicit legal violations. Operationalisation without doctrinal recalibration produces arrangements that may be institutionally efficient yet ethically compromised, thereby necessitating a *maqāṣid*-oriented evaluative framework that transcends formal legality and foregrounds justice, social welfare, and wealth protection. Such an approach enables the identification of critical contractual weaknesses, including ambiguous liability designation in *hawālah* and the monetisation of guarantees in *kafālah*, which undermine the substantive objectives of Shariah.

In the Indonesian context, these structural tensions are compounded by the evolving legal framework of Islamic banking, where regulatory development has not always been accompanied by corresponding doctrinal refinement at the product level, resulting in Shariah-compliant formalism that lacks normative depth.⁸²

The findings demonstrate that the operationalisation of *hawālah* and *kafālah* reflects a shift from their classical *tabarru'* foundations toward institutional risk management instruments. From a *maqāṣid al-sharī'ah* perspective, this transformation raises concerns regarding the protection of wealth (*hifẓ al-māl*), justice (*'adālah*), and transparency.

Fee structures in *kafālah* that exceed cost recovery indicate a move toward commodification, potentially undermining the

altruistic basis of *tabarru'*. Similarly, the implicit application of *hawālah* weakens contractual clarity and legal certainty, which are essential for achieving *maqāṣid* objectives. Multi-contract arrangements further introduce ambiguity (*gharar*), affecting fairness and accountability.

These patterns suggest that Shariah compliance remains largely formal rather than substantive. Institutional adaptation driven by efficiency and competition has not been fully accompanied by doctrinal recalibration. As a result, practices may be legally acceptable yet ethically misaligned with *maqāṣid* objectives.

From a governance perspective, the lack of harmonisation between DSN–MUI fatwas, OJK regulations, and AAOIFI standards contributes to fragmentation and inconsistency. This regulatory gap allows operational practices that prioritise institutional needs over ethical coherence.

Maqāṣid Evaluation

From a *maqāṣid al-sharī'ah* perspective, the transformation of *hawālah* and *kafālah* raises concerns regarding the protection of wealth (*hifẓ al-māl*), justice (*'adālah*), and contractual transparency. Fee structures in *kafālah* that exceed cost recovery indicate a move toward commodification, potentially undermining the altruistic basis of *tabarru'*. Similarly, the implicit application of *hawālah* weakens contractual clarity and legal certainty, which are essential for achieving *maqāṣid* objectives. Multi-contract arrangements further introduce ambiguity (*gharar*), affecting fairness and accountability.

These patterns suggest that *Shariah* compliance remains largely formal rather than substantive. Institutional adaptation driven by efficiency and competition has not been fully accompanied by doctrinal recalibration. As a

⁸² Mulazid, Ade Sofyan “Juridical Study of the Development of Islamic Banking Law and Its Implications for Islamic Bank Products.” *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan*, 9 no. 2 (2024) : 253–273.
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result, practices may be legally acceptable yet ethically misaligned with *maqāṣid* objectives. From a governance perspective, the lack of harmonisation between DSN–MUI fatwas, OJK regulations, and AAOIFI standards contributes to fragmentation and inconsistency. This regulatory gap allows operational practices that prioritise institutional needs over ethical coherence.

A *maqāṣid*-oriented evaluation highlights the need for explicit contractual articulation, transparent fee structures, and contract-specific regulatory guidance. Integrating *maqāṣid* principles into product design and supervision can align operational efficiency with ethical objectives. Comparative evidence from other Islamic finance contracts demonstrates that such alignment is achievable.

Ultimately, strengthening Shariah governance requires moving beyond procedural compliance toward substantive evaluation. Embedding *maqāṣid al-sharī'ah* within regulatory frameworks, contract structures, and institutional practices is essential to ensure justice, legal certainty, and social welfare in Islamic banking.

Conclusion

This study critically examines the operationalization of *ḥawālah* and *kafālah* in Indonesian Islamic banking, highlighting a persistent divergence between their normative *tabarru'* foundations and contemporary institutional practice. While *ḥawālah* functions as a debt-transfer mechanism and *kafālah* as a guarantee, current practices frequently involve monetization, ambiguous fee structures, and multi-contract integration, often exceeding cost recovery and resembling quasi-commercial arrangements.

The misalignment is exacerbated by the absence of explicit national regulation, leading banks to rely on adapted conventional frameworks, which risks substantive *Shariah* non-compliance, contractual uncertainty, and erosion of public trust. From a *maqāṣid* perspective, these gaps undermine wealth protection and contractual justice, emphasizing the need for harmonized guidance across classical jurisprudence, international standards, and national law.

The limitation of this study includes the study's normative-legal focus, limited empirical scope, and concentration on the Indonesian context, which may not fully capture operational diversity or generalize to other jurisdictions. Future research should adopt empirical, quantitative, and cross-country approaches to assess how *ḥawālah* and *kafālah* are operationalized, evaluate their impact on bank performance, customer trust, and financial inclusion, and develop measurable indicators of *maqāṣid* compliance. Interdisciplinary studies integrating jurisprudence, risk management, and behavioral insights would further enhance understanding of contractual legitimacy and sustainability.

Practically, the findings underscore the need for transparent cost-allocation, robust *Shariah* supervision, explicit regulatory guidance, and professional capacity building. Concrete recommendations are proposed for regulators (OJK) to issue detailed operational standards for *ḥawālah* and *kafālah* structures, for Shariah Supervisory Boards (DPS) to strengthen ex-ante and ex-post contract screening based on *maqāṣid* indicators, and for Islamic banks to standardize fee transparency, simplify multi-contract structures, and ensure clear separation between *tabarru'* and commercial elements.

Ultimately, *hawālah* and *kafālah* remain pivotal for ethical fund transfers and guarantees, but their legitimacy now depends on alignment between doctrinal intent, operational practice, and regulatory coherence, ensuring *Shariah* integrity, contractual justice, and public trust in Islamic finance.

CRedit authorship contribution statement

Holis Holis: Conceptualization, Methodology, Writing – original draft, Supervision. Nasrulloh Nasrulloh: Theoretical framework, Formal analysis, Writing – review & editing. Sugeng Widodo: Doctrinal analysis, Legal interpretation, Writing – review & editing. Dzikrulloh Dzikrulloh: Data analysis, Case examination, Validation. Ach. Mus'if: Regulatory analysis, Institutional context analysis, Policy interpretation. Tri Pujiati: Investigation, Data curation, Discussion refinement. Abu Yasid: *Shariah* compliance assessment, Normative evaluation, Conceptual clarification. Ahmad Musadad: Literature review, Methodological consistency, Editing. All authors have read and approved the final manuscript.

Declaration of competing interest

The authors declare that they have no known competing financial, institutional, or personal interests that could have appeared to influence the work reported in this paper.

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