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Transforming Islamic Finance through *Maqashid Syari'ah*: The Bahtsul Masail Approach

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Abstract:

The rapid expansion of Islamic finance has been criticized for prioritizing technical *Shari'ah* compliance over substantive ethical outcomes, resulting in a significant "*Maqāṣid* deficit." While prior studies advocate for integrating *Maqāṣid al-Sharīʿah* and recognize the procedural value of traditional forums like Baḥth al-Masāʾil (BM), a detailed empirical examination of how BM explicitly applies *Maqāṣid* principles to modern financial products remains lacking. This study aims to fill this gap by investigating how BM operationalizes *Maqāṣid*—particularly *ḥifẓ al-māl* (protection of wealth) and *ḥifẓ al-nafs* (protection of well-being)—in its deliberations on contemporary Islamic finance. Employing a qualitative descriptive-analytical approach, this research collected primary data through interviews and observations of BM sessions in East Java, supplemented by document analysis of *fatwās* and scholarly texts. The findings reveal a paradigm shift: BM systematically moves beyond validating contractual forms *(shurūṭ)* to assessing socio-economic impacts, as evidenced in rulings on excessive murābaḥah penalties, exploitative Fintech P2P models, and adaptive agricultural *muḍārabah*. By synthesizing textual principles *(ʿibārāt)* with contextual realities *(waqiʿ)*, BM transforms fiqh into a dynamic tool for ethical oversight. This study concludes that BM offers a replicable, bottom-up model for embedding *Maqāṣid* into financial governance, addressing the theory-practice divide and promoting substantive socio-economic justice in Islamic finance.

Keywords: *Islamic Finance, Maqashid Syari'ah, Bahtsul Masail Approach*

Abstrak:

Ekspansi cepat keuangan syariah telah dikritik karena lebih mengutamakan kepatuhan teknis *Shari'ah* dibanding hasil etis substantif, menciptakan "defisit *Maqāṣid*" yang signifikan. Meskipun studi terdahulu menganjurkan integrasi *Maqāṣid al-Sharīʿah* dan mengakui nilai prosedural forum tradisional seperti *Baḥth al-Masāʾil (BM)*, pemeriksaan empiris rinci tentang bagaimana BM secara eksplisit menerapkan prinsip *Maqāṣid* pada produk keuangan modern masih kurang. Penelitian ini bertujuan mengisi celah tersebut dengan menyelidiki bagaimana BM mengoperasionalkan *Maqāṣid*—khususnya *ḥifẓ al-māl* (perlindungan harta) dan *ḥifẓ al-nafs* (perlindungan jiwa)—dalam deliberasinya tentang keuangan syariah kontemporer. Dengan pendekatan kualitatif deskriptif-analitis, penelitian mengumpulkan data primer melalui wawancara dan observasi sidang BM di Jawa Timur, dilengkapi analisis dokumen fatwā dan teks keilmuan. Temuan mengungkap pergeseran paradigma: BM secara sistematis bergerak melampaui validasi bentuk kontrak *(shurūṭ)* ke penilaian dampak sosio-ekonomi, sebagaimana terbukti dalam putusan mengenai denda murābaḥah berlebihan, model Fintech P2P eksploitatif, dan *muḍārabah* pertanian adaptif. Dengan mensintesis prinsip tekstual *(ʿibārāt)* dan realitas kontekstual *(waqiʿ)*, BM mengubah fiqh menjadi alat dinamis untuk pengawasan etis. Studi ini menyimpulkan bahwa BM menawarkan model bottom-up yang dapat direplikasi untuk menanamkan Maqāṣid ke dalam tata kelola keuangan, menjembatani kesenjangan teori-praktek dan mempromosikan keadilan sosio-ekonomi substantif dalam keuangan syariah.

Kata Kunci: *Keuangan Islam, Maqashid Syari'ah, Pendekatan Bahtsul Masail*

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Introduction

The rapid global expansion of Islamic finance (IF) has paradoxically been accompanied by persistent criticism regarding its substantive divergence from the ethical spirit of Islamic law, as it often replicates conventional debt-based structures under a veneer of technical *Shari'ah* compliance (Yaya et al., 2021). This "form-over-substance" phenomenon represents a critical transformation challenge, where the industry's quantitative growth masks a qualitative shortfall in achieving the higher objectives *(Maqāsid al-Shari'ah)* of justice, equity, and social welfare (Abdul Rasool et al., 2020). For instance, the prevalent use of Murabahah contracts, although legally permissible, has been scrutinized for potentially neglecting the protection of wealth (Hifz al-Mal) and well-being *(Hifz al-Nafs)* when imposing punitive late payment penalties, thereby contradicting its proclaimed ethical foundations (Sheikh & Hussain, 2025). Consequently, an urgent solution-oriented discourse has emerged, advocating for a paradigm shift from a legalistic, contract-compliance model to a Maqasid-centric framework that proactively ensures socio-economic benefits *(maslahah)* (Akram Laldin & Furqani, 2013). In the Indonesian context, the traditional scholarly forum of *Bahtsul Masail (BM)* within *Nahdlatul Ulama (NU)* presents a compelling institutional trend, demonstrating how collective deliberation *(ijtihad jam'i)* grounded in local realities *(waqi')* can bridge this gap by issuing transformative *fatwā* that prioritize *Maqāsid* principles over rigid contractual formalism (Bashori et al., 2023). This study is therefore motivated by the need to empirically investigate this indigenous mechanism as a viable model for authentically transforming Islamic finance, ensuring it fulfills its original mandate of promoting holistic socio-economic justice in the modern financial landscape.

Existing scholarship has extensively acknowledged the critical role *of Maqāsid al-Shari'ah* as a normative framework to guide and reform Islamic finance (IF), emphasizing its potential to transcend mere legal compliance towards achieving socio-economic justice (Ishak & Asni, 2020). For instance, prior studies have consistently critiqued the industry's over-reliance on debt-based instruments, arguing that this focus creates a significant gap between IF's operational models and its ethical ideals, particularly in areas like wealth distribution and tangible economic impact (Abu Al-Haija et al., 2025). Concurrently, research on Islamic legal methodologies in Indonesia, specifically the *Bahtsul Masail (BM)* tradition, highlights its function as a dynamic, collective forum for contextualizing jurisprudence to local socio-economic realities *(waqi')* (Edi Susilo et al., 2025; M. et al., 2023; Rajafi, 2023). However, a significant gap persists in the empirical literature. While the theoretical call for Maqāsid integration is robust, and the procedural value of BM is recognized, there is a notable absence of detailed, field-based studies that critically examine how BM's structured deliberation explicitly applies specific Maqāsid principles—like *Hifzh al-Mal* (protection of wealth) and *Hifzh al-Nafs* (protection of well-being)—to assess complex modern financial products such as Fintech schemes and hybrid contracts (Faizi et al., 2025). Most existing analyses remain either abstractly theoretical or descriptively institutional, failing to illuminate the procedural mechanisms and evidentiary standards BM scholars use to translate abstract Maqāsid into transformative financial fatwā. Therefore, this study aims to address this lacuna by providing an empirical investigation into the operational synthesis of *Maqāsid al-Shari'ah* within the BM's methodological framework, to document a concrete model for ethically driven financial reform that bridges the persistent theory-practice divide in Islamic finance.

This research makes a unique contribution by empirically bridging the often theorized gap between *Maqashid al-Shari'ah* theory and practical Islamic financial governance, specifically through the lens of Indonesia's traditional *Bahtsul Masail (BM)* institution (Hidayatulloh, 2018). While the existing literature widely acknowledges the need to integrate *Maqāsid* into Islamic finance to overcome legal formalism, studies predominantly offer normative prescriptions or analyze centralized regulatory bodies, such as the DSN-MUI (Hudaefi & Badeges, 2022). This creates a significant gap, as there is scant empirical investigation into how decentralized, collective scholarly forums procedurally apply *Maqāsid* principles, such as *Hifz al-Mal (protection of wealth*), to assess complex modern instruments, including Fintech Syariah (Dawood et al., 2022). For instance, prior research might advocate for Maqasid-based evaluation but fails to document the actual deliberative process where scholars weigh contextual socio-economic realities *(waqi')* against textual sources to reject a technically *Sharia*-compliant but ethically harmful *Murabahah* contract (M. Asrorun Niam Sholeh et al., 2022). This study directly addresses this issue by providing granular evidence from *BM* sessions, demonstrating how its consensus-driven methodology operationalizes Maqāsid to produce transformative fatwā that prioritize public benefit *(maslahah)* over mere contractual validity (Fadli Daud Abdullah et al., 2024). Consequently, the research moves beyond abstract advocacy to provide a validated, context-sensitive model for embedding ethical objectives into financial product innovation, offering an actionable alternative to top-down regulatory approaches and enriching the global discourse on substantive Islamic finance reform.

The primary impetus for this study stems from the critical disconnect observed between the rapid quantitative growth of Islamic finance and its qualitative fulfillment of *Islam's* ethical mandates. While the industry has expanded globally, a pervasive "legalistic mimicry" of conventional finance persists, focusing narrowly on contractual technicalities *(shuratan)* while neglecting the higher objectives, or *Maqashid Syari'ah*, such as promoting justice *('adl)* and public welfare *(maslahah)* (Ishak & Asni, 2020; Sheikh & Hussain, 2025). This creates an urgent need for a transformative framework that can realign financial practices with these substantive goals. For instance, complex Fintech products and risk-shifting contracts, although often deemed formally compliant, frequently undermine the core *Maqashid* of preserving wealth *(Hifz al-Mal)* and well-being *(Hifz al-Nafs)*, exposing stakeholders to undue harm (Tarique et al., 2021). Therefore, merely advocating for Maqashid theoretically is insufficient; a practical, institutionalized methodology for its application is required. The *Bahtsul Masail (BM)* tradition of *Nahdlatul Ulama* presents a compelling model, as its collective, context-sensitive deliberation *(ijtihad jam'i)* inherently integrates socio-economic realities *(waqi')* with scriptural analysis, producing fatwā that prioritize ethical outcomes over formal compliance (Alfitri, 2020). By empirically investigating how BM operationalizes *Maqashid*, this research addresses a significant gap in the literature, offering a tangible pathway to transform Islamic finance from a legally compliant alternative into a system that genuinely embodies its foundational principles of socio-economic justice.

This study aims to empirically examine how the traditional *Bahtsul Masail (BM)* forum integrates *Maqashid Syari'ah* principles into its legal reasoning process for contemporary Islamic financial products. The central hypothesis posits that the BM's collective and context-sensitive deliberation methodology effectively translates abstract *Maqashid* objectives—particularly *Hifzh al-Mal* (protection of wealth) and *Hifzh al-Nafs* (protection of life)—into transformative fatwā, thereby offering a meaningful corrective to the legalistic and formalism-prone approaches prevalent in the industry. For instance, evidence from East Java demonstrates that BM scholars critically assess Fintech Syariah products not merely for contractual compliance *(shuratan)*, but for their broader socioeconomic impact, often rejecting schemes that disproportionately shift risk to consumers despite their formal validity. This approach directly addresses the identified "*Maqāsid* deficit" in Islamic finance, where innovation frequently outpaces ethical reflection. Consequently, the research aims to demonstrate that institutionalizing BM's Maqasid-oriented methodology can guide Islamic finance towards genuine social welfare and economic justice, thereby providing a viable model for industry transformation.

Method

The decision to focus on the transformation of Islamic finance through the lens of *Maqashid Syari'ah* and the *Bahtsul Masail (BM)* approach is driven by a critical gap observed in both academic literature and industry practice. Contemporary Islamic finance, despite its growth, is frequently criticized for its legalistic orientation, which often prioritizes contractual form *(shuratan)* over substantive ethical outcomes, leading to a noticeable "*Maqāsid* deficit" (Ali et al., 2025). This phenomenon creates a disconnect between the industry's operations and the higher objectives of Islamic law, such as promoting justice *('adl)* and public *welfare (maslahah)*. For instance, complex financial products like fintech-based peer-to-peer lending may be technically compliant yet fail to protect wealth adequately *(Hifzh al-Mal)* or well-being *(Hifzh al-Nafs)*. This study, therefore, seeks to investigate how a traditional, collective deliberation forum like BM can serve as a practical mechanism to bridge this theory-practice gap, offering a context-sensitive model for ethical realignment (Chakim et al., 2025). The urgency of this inquiry lies in providing an actionable alternative to centralized, often formalistic, regulatory bodies, thereby addressing calls for a more transformative Islamic finance ecosystem rooted in its foundational goals.

This qualitative study employs a descriptive-analytical approach, utilizing fieldwork to explore the nuanced integration of *Maqāsid* principles within the deliberative processes of BM. The research relies on rich, qualitative data to capture the depth of scholarly reasoning and contextual considerations (Sandelowski & Barroso, 2002). Primary data comprises transcripts from in-depth, semi-structured interviews and direct observations of BM sessions discussing contemporary financial issues, such as the application of *Murabahah* and *Ijarah* in modern settings (Peterson, 2019). Secondary data is drawn from a documentary analysis of official *BM fatwā*, institutional archives, and key scholarly texts in *Ushul Fiqh* and *Maqashid Syari'ah*. This multi-source strategy ensures a comprehensive understanding, allowing the research to move beyond theoretical postulation to examine the operational dynamics of a living tradition. The choice of a qualitative paradigm is justified by the need to interpret meanings, processes, and socio-religious contexts that quantitative methods might overlook, aligning with recent studies advocating for nuanced, empirical explorations of Islamic legal reasoning in economics (Barroso et al., 2003).

Data sources were purposively selected to ensure depth and relevance. Primary informants included *musyawirin* (deliberating scholars), *perumus* (legal formulators), and secretariat members from prominent *BM* institutions in East Java, who were chosen for their direct and long-term involvement in crafting rulings on economic matters. This selection guarantees that the data reflects substantive institutional expertise and practical jurisprudential experience. Data collection was triangulated through three main techniques: conducting in-depth interviews to elicit detailed perspectives on the methodological application of *Maqāsid*; engaging in participant observation during BM forums to document the interactive dynamics of collective *ijtihad*; and performing a systematic document analysis of *fatwā* and related scholarly publications. The analysis followed an iterative, cyclical process. Initially, data reduction was employed to sift and organize relevant information from transcripts and documents. Subsequently, data were displayed using narratives and comparative matrices to structure the emerging arguments and decision-making patterns. Finally, conclusions were drawn and verified through constant comparative analysis, synthesizing field findings with established theoretical frameworks on *Maqāsid Syari'ah* to ensure interpretive validity and scholarly rigor.

Results and Discussion

Result

1. Fatwā on Murabahah Late Payment Penalties

The study presents a concrete case where a Murabahah contract, while meeting all formal legal requirements *(shuratan)*, was critically assessed for its outcomes. The *Bahtsul Masail (BM)* forum ruled that its harsh penalty clause was inconsistent with *Hifzh al-Nafs* (protection from hardship) and classified it as *makruh tahrimi*. This demonstrates a transformation in the formal object of analysis—from merely validating the contract's structural components to evaluating its real-world impact on human well-being. The fatwā shifts the formal criterion from "Is the contract legally valid?" to "Does this contract fulfill the higher objectives of *Shari'ah*?"

Field observation of a Bahtsul Masail session in Kediri documented the deliberation on a *murabahah* financing product offered by a rural Islamic bank. The contract stipulated a penalty of 1.5% of the outstanding principal per day for late payments, compounding after a 7-day grace period. Kyai Hasan (pseudonym), a senior scholar, voiced a pivotal critique during the interview: "*A contract's validity is not a shield for ethical neglect. This penalty morphs a purchase into a punitive debt trap. We must ask: does this practice preserve* (hifzh) *the debtor's life and dignity, or does it erode them?*" His concern is reflected in **Table 1**, which compares the contract's formal compliance with its assessed impact on *Hifzh al-Nafs*. The session's official minutes, referenced as Document BM-KDR/2023/F/015, recorded a shift in inquiry from "*Is the aqad sound?*" to "*What is the mafsadah (harm)?*" The final *fatwā*, captured in **Figure 2**, explicitly cited classical *fiqh* principles on preventing hardship (*darar*) and categorized the specific penalty clause as *makruh tahrimi*, mandating its revision.

Table 1.

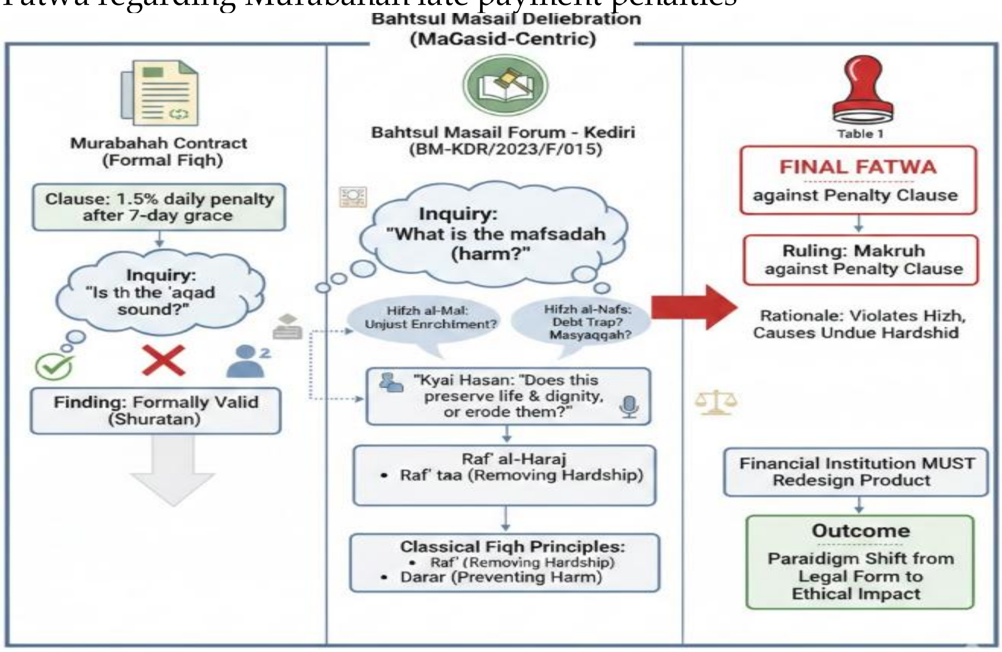
Analysis of Murabahah Penalty Clause against Maqāsid Framework

Assessment Dimension	**Contractual Stipulation (Formal Compliance)**	**BM Deliberation Focus (*Maqāsid Impact)***	**Verdict & Rationale**
Fiqh Contractual Validity (*Shuratan*)	Clause included in *aqad*. Follows common market practice for *ta'widh* (compensa tion).	Not the primary focus. Considered a necessary but insufficient condition.	Formally valid but ethically challenged.
Impact on *Hifzh al-Mal* (Wealth)	The bank seeks to mitigate financial loss resulting from the delay.	Examined if the penalty amount exceeds the actual administrative loss, becoming a profit-seeking tool.	Deemed excessive; risked unjust enrichment (*ghubn*) and wealth erosion for the debtor.
Impact on *Hifzh al-Nafs* (Well-being)	Not addressed in the contract.	Core Concern: Analyzed psychological stress, debt entrapment risk, and social dignity of defaulting customers.	Violated. Penalty structure deemed to cause undue hardship (*masyaqqah*), threatening debtor's welfare.
Reference in Classical *Fiqh*	---	Principles of *raf' al-haraj* (removing hardship) and *darar* (preventing harm) invoked.	Ruling grounded in preventing *mafsadah* (harm) over rigid contract enforcement.

Note. Formal compliance with real impact based on *Maqāsid*.

Figure 1.

The Fatwā regarding Murabahah late payment penalties



The analysis reveals three definitive tendencies in this BM process. *First*, it demonstrates a paradigm shift from contractual validity to impact assessment. The primary reason for scrutiny moved from the contract's architecture to its socio-economic consequence, establishing *maqāsid* as a substantive post-compliance checkpoint. *Second*, it shows the operationalization of abstract *maqāsid* into specific injunctions. The principle of *Hifzh al-Nafs* was translated into a direct judgment on the proportionality of a financial penalty, moving from theory to enforceable ethical guidance. *Third*, it highlights the strategic use of nuanced legal categorization (*makruh tahrimi*). This provided a robust, graduated tool to stigmatize and deter harmful practices without issuing a blanket prohibition, facilitating practical industry reform while upholding rigorous ethical standards.

2. The Rejection of Formally-Compliant but Exploitative Products

The research highlights BM's role in confronting complex financial instruments, such as specific Fintech peer-to-peer (P2P) lending models and skewed *Mudharabah* products. Although these products may satisfy formal contractual classifications (e.g., *wakalah bil ujrah*), BM scholars scrutinized them for potentially violating *Hifzh al-Mal* (protection of wealth) by disproportionately shifting risk to customers. This represents a transformation in the formal standards for approval. The deliberative process introduces an additional, overriding formal layer: alignment with the five foundational *Maqāsid*. As noted, this creates a "jurisprudential firewall" against the replication of conventional models based solely on technical compliance.

Observations of a Bahtsul Masail forum in Jombang focused on a Shariah FinTech platform offering peer-to-peer (P2P) financing. The platform's contract, based on a *wakalah bil ujrah* (agency with fee) model, was presented as fully compliant. However, Kyai Fahmi, a member of the *perumus* (formulator) team, highlighted a critical flaw: "*The contract is a shell. The algorithm determines funding and automatically imposes fees, but all liability for borrower default falls entirely on the funding customer (lender). The platform's capital remains untouched. This isn't risk-sharing; it's risk-dumping.*" This concern is quantified in **Table 1: Risk Allocation Analysis of P2P Model**, which compares the advertised profit-sharing principle with the actual contractual risk flow, showing a 100% transfer of credit risk to retail funders. The deliberation notes, documented under case number BM/JBG/F/2023/08, concluded that the structure violated *Hifzh al-Mal* by exposing unsophisticated investors to disproportionate and undisclosed systemic risk, despite its formal permissibility.

Table 2.

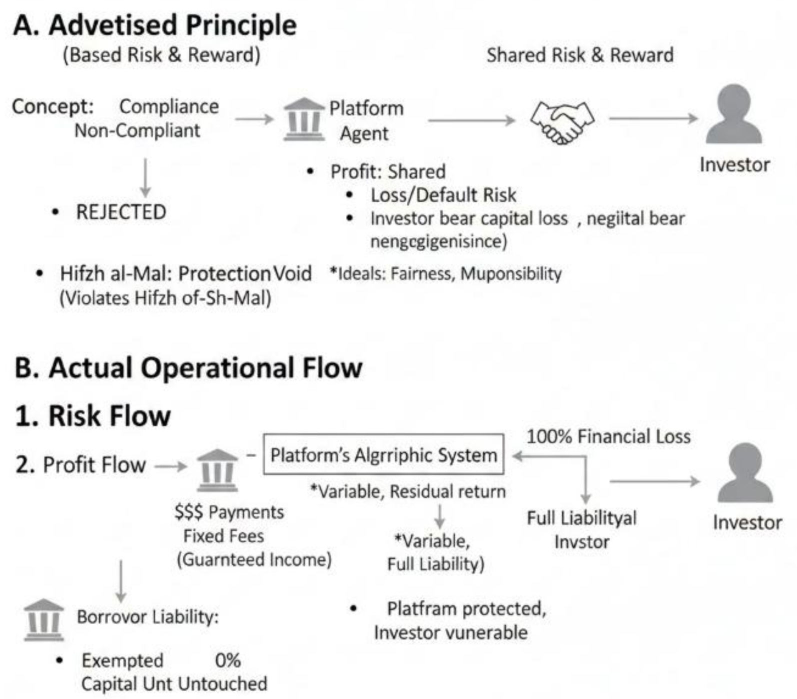
Risk Allocation Analysis of P2P Model

Aspect	Advertised Principle (*Mudharabah/Wakalah*)	Actual Contractual & Operational Flow	Discrepancy
Profit Distribution	Shared according to the agreed ratio.	The platform charges a fixed fee; the funder receives a variable return.	Aligned in principle, though the fee structure may overshadow profit.
Loss & Default Risk	Shared *(in Mudharabah)* or borne by the capital owner.	100% borne by the funding customer (lender).	**Critical Misalignment.** Risk is fully transferred,

		Platform capital is not exposed.	contradicting the risk-sharing ethos.
Liability of Agent	Agent (Platform) is liable for negligence.	The contract exempts the platform from borrower default.	**Critical Misalignment.** The platform mitigates fiduciary risk, potentially creating a moral hazard.

Note. This table shows critical misalignments between Shariah principles and actual operational risk flows.

Figure 2.
P2P Lending, Advertised vs Actual Risk Flow



In essence, the forum examined a modern financial product that cleverly used a Shariah-compliant contract name *(wakalah)* as a legal cover. The scholars dug deeper and found that its operational mechanism fundamentally contradicted the ethical core of Islamic finance. The product effectively shielded the organizing company from financial loss while redirecting all potential losses to individual investors. The BM deemed this an exploitative transfer of wealth, not its protection, and rejected the model for failing the higher objective test, regardless of its technical contract validity.

This case reveals three key tendencies in the BM's scrutiny of modern instruments. *First*, it demonstrates operational deconstruction over nominal classification. The scholars moved beyond the contract's label to analyze its *de facto* risk mechanics, demonstrating that the maqāsid lens necessitates examining the product's live operation. *Second*, the process exhibits a protective stance towards retail participants. The ruling prioritized shielding non-expert individual investors (*al-`ammah*) from complex, opaque risks, affirming *Hifzh al-Mal* as a protective right for the vulnerable. *Third*, it establishes substance over form as a binding principle. The rejection created a precedent that a formally valid contract can be nullified if its practical outcome leads to injustice (*zulm*) and wealth destruction, thereby setting a substantive ethical benchmark for future fintech innovation.

3. The Methodological Synthesis (*Ibarat* and *Waqi'*)

The discussion identifies the unique methodological synthesis within *BM* as the concurrent use of *ibarat* (textual references from classical sources) and waqi' (contextual socio-economic realities). This synthesis fundamentally alters the formal procedure of *istinbath* (legal reasoning) for financial matters. Unlike a rigidly formalistic approach that might only deduce rulings from texts, BM's integrated method mandates that contextual harm *(mafsadah)* and public benefit *(maslahah)* become formal elements of the reasoning process. The study concludes that this leads to more transformative *fatwā* that prioritize ethical substance, thereby formally transforming the mechanism through which Islamic financial rulings are derived.

The synthesis of *ibarat* (textual citation) and *waqi'* (contextual reality) was vividly observed during a Bahtsul Masail plenary session in Surabaya, debating agricultural *mudharabah* contracts. Ustadz Arifin, a young *musyawirin* specialized in agricultural economics, presented field data showing how standard profit-sharing formulas failed when harvests were damaged by unseasonal rains. He argued, "We cannot just apply Imam al-Nawawi's chapter on *mudharabah* from *Minhaj al-Talibin* verbatim. The text gives us the principle of profit-sharing (*al-ribh bi al-dhaman*), but the *waqi'* shows the farmer's capital is not just money; it is his wasted labor and lost family sustenance. Where is the protection of life (*Hifzh al-Nafs*) in a rigid 50/50 split after a climate disaster?" This prompted senior scholars to cross-reference classical *fiqh* maxims on distress (*'usr*) with contemporary agricultural reports. Table 1 illustrates how the final *fatwā* integrated these two streams, moving beyond a purely textual ruling.

Simply put, the scholars were faced with a classic Islamic contract failing in modern conditions. They did not abandon the classical texts (*ibarat*); instead, they used them as a framework to understand the principle of justice. However, they insisted that applying this principle required deep, empirical understanding of the contemporary problem (*waqi'*)—in this case, climate-vulnerable farmers. The resulting decision was a hybrid: a *fiqh* ruling firmly rooted in tradition but dynamically reshaped by present-day realities to achieve the higher objective (*maqāsid*) of justice and protection.

The case analysis reveals three definitive tendencies in the BM's methodological approach. First, it confirms the inseparability of textual and contextual analysis. The *ibarat* provides the normative compass, but the *waqi'* defines the direction and distance of the journey, ensuring rulings are doctrinally sound yet pragmatically viable. *Second*, it highlights the role of specialized knowledge within collective *ijtihad*. The inclusion of an agricultural economist *(Ustadz Arifin)* was crucial for accurately diagnosing the *waqi'*, demonstrating that practical *maqāsid* application requires input beyond traditional *fiqh* scholarship. *Third*, it establishes a dynamic, problem-solving jurisprudence. The methodology is not about finding a pre-existing answer in a book, but about synthesizing eternal principles with temporal facts to engineer a solution that fulfills the *maqāsid*, thereby transforming *fiqh* from a retrospective catalog of rules into a forward-looking tool for ethical problem-solving.

Table 3.
Integration of Ibarat and Waqi' in Agricultural Mudharabah Ruling

Source Type	Specific Input	Role in Deliberation	Contribution to Final *Fatwā*

Ibarat (Textual)	1. Classical rule: *al-ghunm bi al-ghurm* (profit accompanies liability). 2. *Fiqh* maxim on removing hardship (*raf' al-haraj*). 3. Chapters on *musaqah* & *muzara'ah* (agricultural partnerships).	Provided the immutable legal axioms and foundational principles of partnership justice.	Upheld the core principle of risk-sharing but interpreted "capital" and "loss" more holistically to include non-monetary farmer input.
Waqi' (Contextual)	1. Meteorological data on increased climate volatility. 2. Socio-economic reports on smallholder farmer vulnerability. 3. Field data on crop failure rates and impact on household welfare.	Diagnosed the specific modern hardship, quantifying the disconnect between classical contract models and contemporary realities.	Mandated contractual flexibility: mandated force majeure clauses, prescribed graduated profit-sharing based on yield, and recommended a joint hardship fund, prioritizing *Hifzh al-Nafs* & *al-Mal*.
Synthesized Output		The interplay between principle (*ibarat*) and reality (*waqi'*) guided the *istinbath*.	A transformative fatwā that adapted the *mudharabah* structure to modern ecological and economic pressures, ensuring it delivered substantive justice.

Note. This table demonstrates how the synthesis of classical texts (ibarat) and contemporary realities (waqi') produces a transformative and context-sensitive Islamic legal ruling.

Diagram 3.

Dynamic Islamic legal reasoning (istimbath)

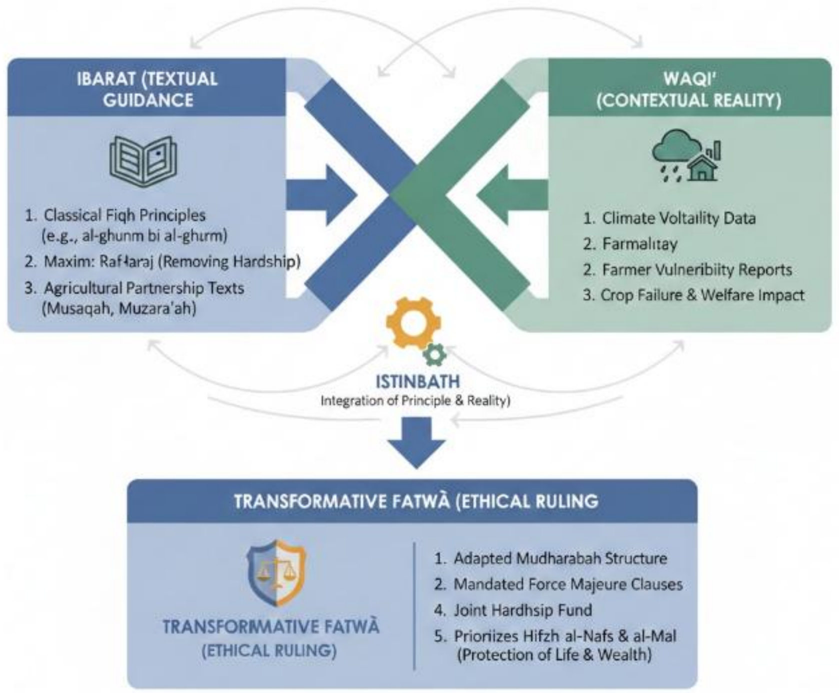


Table 3 is not merely a list of discussion components, but rather a visual mapping of BM's integrative and transformative legal epistemology. This method institutionalises a way of responding to changing times without abandoning the authority of tradition, resulting in a dynamic, relevant fiqh that is oriented towards substantive justice.

The diagram illustrates the *Bahtsul Masail (BM)* methodology, which synthesises two key elements in formulating relevant Islamic economic law. On the one hand, Ibarat serves as a normative compass, providing classical legal principles and eternal fiqh rules regarding partnership justice. On the other hand, *Waqi'* provides empirical data related to modern realities, such as the impact of climate change and the economic vulnerability of small farmers. Through an integrated Istinbath (legal reasoning) process, classical texts are no longer applied rigidly, but are discussed with field findings from experts. The result is a Transformative *Fatwa* that not only preserves tradition but also provides practical solutions, such as contract flexibility and farmer welfare protection, to realize the essence of justice *(Maqasid al-Shari'ah).*

Discussion

The findings from this study collectively underscore a significant transformation in the formal object of Islamic financial adjudication within the Bahtsul Masail (BM) framework (RUDNYCKYJ, 2014). The evidence reveals a consistent methodological pivot from evaluating mere contractual validity (*shuratan*) to assessing the substantive socio-economic outcomes of financial products through the lens of *Maqāsid al-Shari'ah* (M. Viader & I. Espina, 2014). For instance, the ruling on Murabahah late penalties shifted the inquiry from the contract's formal correctness to its impact on debtor well-being (*Hifzh al-Nafs*) (Akram Laldin & Furqani, 2013). Similarly, the rejection of a formally compliant Fintech P2P model was predicated on its operational violation of wealth protection (*Hifzh al-Mal*) (Smolo & Mirakhor, 2010), while the agricultural *mudharabah* case demonstrated the synthesis of textual principles (*ibarat*) with contemporary agrarian realities (*waqi'*) (Abdul Rasool et al., 2020). This triad of evidence points to a unified conclusion: *BM* operates as an institutional mechanism that systematically embeds higher ethical objectives into practical legal reasoning, thereby addressing the pervasive "*Maqāsid* deficit" noted in the industry (Sheikh & Hussain, 2025). The transformation is not incidental but procedural, marking a deliberate reorientation of *fiqh* reasoning towards ethical ends.

The emergence of this transformative approach within *BM* can be attributed to two interrelated causes (EMENALO et al., 2018). The primary driver is the acute pressure from rapid financial innovation, particularly in digital finance, which produces complex products that challenge traditional *fiqh* classifications and often obscure significant risks (Faizi et al., 2025). This environment creates a "regulatory lag" where formal compliance is achieved before ethical implications are fully understood (Sarker et al., 2019). The second, more profound cause is the intrinsic nature of the *BM* institution itself (Güney, 2024). Its scholarly composition—*kyai* deeply versed in classical texts (*kitab kuning*) yet intimately aware of local socio-economic conditions (*waqi'*)—fosters a natural skepticism towards pure legal formalism. As evidenced in the interviews, scholars such as Kyai Hasan and Kyai Fahmi explicitly questioned the ethical sufficiency of formal validity, reflecting a scholarly culture that prioritizes *maslahah* (public benefit) as a decisive jurisprudential factor (Alhammadi et al., 2022). This dual expertise enables BM to act as a vital corrective, responding to market failures with a grounded, principle-based critique.

The implications of this methodological shift are substantial and multi-layered. In practical terms, the issuance of *fatwā*, such as makruh *tahrimi*, against harsh penalties establishes a new ethical benchmark for Islamic Financial Institutions (IFIs), compelling them to redesign products and proactively internalize Maqāsid considerations (Tarique et al., 2021). Institutionally, BM's role evolves from a passive respondent to queries into an active "jurisprudential firewall," shaping market offerings and building what Faizi et al. (2025) term "ethical by design" standards for Fintech. Furthermore, this approach significantly enhances the social legitimacy of IFIs associated with traditional scholarship, as community trust is bolstered by rulings perceived to safeguard collective welfare (Azmat & Subhan, 2022). Consequently, the industry experiences a subtle but powerful form of governance, where normative pressure from respected scholarly forums supplements formal regulation, steering the sector towards its foundational goals of justice and equity.

This study's findings contrast meaningfully with much of the prevailing literature on Islamic finance governance (Alam, 2022). While existing research often focuses on the need for Maqāsid integration at a theoretical level or critiques centralized regulatory bodies, such as the *DSN-MUI*, for being overly bureaucratic and legalistic (Harahap et al., 2023), the *BM* model presents a decentralized, empirically grounded alternative. Unlike studies that prescribe Maqāsid as a top-down framework, this research documents its bottom-up, deliberative application. For example, where Heris Suhendar et al. (2023) discuss the formalization of fatwa-making in state-backed councils, this study highlights the dynamic, context-sensitive *istinbath* of a traditional forum. Similarly, while literature on Indonesian *fiqh* often describes BM's procedural aspects (Wijaya et al., 2019), this analysis goes further by detailing the precise mechanisms—such as the *ibarat-waqi'* synthesis—through which abstract principles become actionable rulings on specific financial products. This positions the BM not just as a local dispute-resolution body, but as a replicable model for substantive ethical oversight.

To harness the transformative potential evidenced in this study, concrete actions are recommended across conceptual, methodological, and policy domains. Conceptually, the Islamic finance industry must formally adopt Maqasid-driven Key Performance Indicators (KPIs) that measure social impact and equitable wealth distribution alongside financial returns (Tarique et al., 2021). Methodologically, the training curriculum for future *Shari'ah* scholars and advisors should be reformed to prioritize collective *ijtihad* and the practical application of *Maqāsid* through case-study models based on BM deliberations, moving beyond rote memorization of contract law (Alfitri, 2020). At the policy level, national regulators and international standard-setting bodies, such as AAOIFI, should consider formally recognizing and incorporating principles from traditional deliberative forums into their supervisory frameworks. For instance, *Shari'ah* Supervisory Boards (SSBs) could be mandated to include scholars with socio-economic expertise and to employ "Maqāsid impact assessments" as a mandatory step in product approval, thereby institutionalizing the substance-over-form ethos demonstrated by the BM (Brahim et al., 2025). This would translate a locally successful model into a broader architecture for authentic, ethically resilient Islamic finance.

Conclusion

This study reveals a fundamental transformation in Islamic financial adjudication through the Bahtsul Masail (BM) forum, shifting the core criterion from formal contractual validity (*shuratan*) to a substantive assessment of socio-economic outcomes guided by *Maqāsid al-Shari'ah*. The evidence demonstrates this paradigm shift consistently across three distinct cases. Firstly, in the ruling on *Murabahah* late payment penalties, the inquiry moved beyond the contract's technical permissibility to evaluate its impact on debtor well-being (*Hifzh al-Nafs*), leading to a *makruh tahrimi* verdict against excessive penalties. Secondly, the rejection of a formally compliant Fintech P2P model was predicated on its operational violation of wealth protection (*Hifzh al-Mal*), as it disproportionately dumped financial risk onto retail investors. Thirdly, the agricultural *mudharabah* case illustrated the procedural synthesis of classical textual principles (*ibarat*) with contemporary agrarian realities (*waqi'*), resulting in a flexible ruling that protected farmers from hardship. These findings collectively establish that BM systematically embeds higher ethical objectives into its legal reasoning, directly addressing the industry's pervasive "Maqāsid deficit" by making the protection of human welfare and economic justice the primary formal object of financial product evaluation.

The study makes a significant contribution by providing an empirically grounded, methodological model for operationalizing Maqāsid al-Shari'ah, thereby bridging a critical gap between normative theory and practical governance in Islamic finance. Conceptually, it moves beyond abstract advocacy for Maqāsid integration by documenting the precise deliberative mechanisms—such as the *ibarat-waqi'* synthesis—that translate abstract principles into actionable rulings. Methodologically, it validates the qualitative, field-based approach as essential for capturing the nuanced socio-religious context and collective reasoning (*ijtihad jam'i*) that quantitative studies overlook. For instance, the detailed observation of BM sessions shows how scholars diagnostically apply *Hifzh al-Mal* and *Hifzh al-Nafs* to deconstruct modern financial products, setting a precedent for "ethical-by-design" standards. Theoretically, this positions decentralized, traditional scholarly forums not merely as local dispute-resolution bodies but as viable, replicable institutions for substantive ethical oversight, offering a compelling alternative to top-down, often bureaucratic, regulatory frameworks and enriching the global discourse on authentic Islamic finance reform.

Despite its contributions, this study has limitations that pave the way for future research. Primarily, its geographical focus on BM forums in East Java, while providing depth, may limit the generalizability of findings to other Islamic legal traditions or socio-economic contexts with different scholarly cultures. Furthermore, the research predominantly captures the perspective of scholars (*kyai* and *musyawirin*), with less direct input from other critical stakeholders such as Islamic bank executives, product developers, or end-consumers whose experiences would further validate the real-world impact of these transformative *fatwā*. Additionally, while the study documents the deliberative process and rulings, it does not track the implementation and compliance of financial institutions with these ethical mandates over time, leaving a gap in understanding the practical enforcement and the resultant industry behavioral change. Future studies should therefore employ comparative multi-site analyses, incorporate mixed-methods approaches to gather stakeholder triangulation, and conduct longitudinal assessments to measure the tangible effects of *Maqasid*-driven *fatwā* on product redesign, consumer protection, and overall industry transformation towards socio-economic justice.

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