

Differences in Legal Views on Bay al-Inah: A Comparative Study between the Fatwa of the Indonesian DSN-MUI and the Resolution of the Malaysian SAC-BNM.

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Abstract: The jurisprudential divergence between Indonesia and Malaysia regarding the validity of the *Bay' al-'Inah* contract has precipitated market fragmentation. It presents a significant harmonization challenge within the global Islamic finance industry. While Malaysia adopts a pragmatic approach to accelerate asset growth, Indonesia strictly prohibits the practice in adherence to prudential principles. This study aims to evaluate the legal policies of both jurisdictions through the lens of *Maqasid al-Shari'ah*, assessing the trade-off between economic pragmatism and legal idealism. Utilizing a normative-qualitative comparative design, this research analyzes the fatwas of DSN-MUI (Indonesia) and the resolutions of SAC-BNM (Malaysia) via a juridical-textual approach and teleological evaluation. The findings elucidate a fundamental dichotomy in epistemological

Abstrak: Divergensi yurisprudensi antara Indonesia dan Malaysia mengenai validitas akad *Bay' al-'Inah* telah memicu fragmentasi pasar dan menjadi tantangan harmonisasi dalam industri keuangan Islam global. Malaysia mengadopsi pendekatan pragmatis untuk akselerasi aset, sementara Indonesia melarangnya secara ketat demi prinsip kehati-hatian. Penelitian ini bertujuan untuk mengevaluasi kebijakan hukum di kedua negara menggunakan lensa *Maqashid Syariah* guna menilai *trade-off* antara pragmatisme ekonomi dan idealisme hukum. Studi komparatif normatif-kualitatif ini menganalisis Fatwa DSN-MUI (Indonesia) dan resolusi SAC-BNM (Malaysia) melalui pendekatan yuridis-tekstual dan evaluasi teleologis. Hasil penelitian menunjukkan

paradigms: SAC-BNM espouses a pragmatic formalism oriented toward *Hifz al-Mal* (preservation of wealth) to bolster liquidity, albeit at the expense of potential reputational risks. Conversely, DSN-MUI applies a substantive-preventive approach (*Sadd al-Dhari'ah*) grounded in *Hifz al-Din* (preservation of religion) to safeguard Sharia purity, which inadvertently constrains innovation efficiency. The novelty of this study lies in conceptualizing the *'Inah* fatwa as an instrument of Islamic public policy evaluation that transcends the binary halal-haram dichotomy. To achieve adaptive harmonization, this study recommends that Malaysia transition toward the *Tawarruq* arrangement, while Indonesia is urged to catalyze cost-competitive product innovations.

Keywords: Bay al-*'Inah*; Maqāsid Syariah; Fatwa Divergence; DSN-MUI; SAC-BNM.

perbedaan paradigma epistemologis yang mendasar: SAC-BNM menganut formalisme pragmatis berorientasi *Hifdz al-Mal* untuk meningkatkan likuiditas yang beriringan dengan risiko reputasi, sedangkan DSN-MUI menerapkan pendekatan substantif-preventif (*Sadd al-Žarī'ah*) berbasis *Hifdz al-Din* yang menjaga kemurnian syariah namun berdampak pada inefisiensi inovasi. Kebaruan studi ini terletak pada pemosisian fatwa *'Inah* sebagai instrumen evaluasi kebijakan publik Islam yang melampaui dikotomi halal-haram. Sebagai solusi harmonisasi adaptif, Malaysia disarankan bertransisi menuju akad *Tawarruq*, sementara Indonesia perlu memacu inovasi produk yang kompetitif secara biaya.

Kata Kunci: Bay al-*'Inah*; Maqāsid Syariah; Divergensi Fatwa; DSN-MUI; SAC-BNM.

A. Introduction

The global Islamic finance industry continues to demonstrate resilience, with total assets projected to reach USD 4.5 trillion by 2024 (ICD-Refinitiv, 2023). However, this expansion is overshadowed by persistent challenges regarding legal standardization and unresolved Sharia harmonization (Islam, 2024; Saputra, 2021). A prominent manifestation of this issue is the jurisprudential divergence between Indonesia and Malaysia; despite both demographics being predominantly adherents of the Shafi'i school of thought (mazhab), they exhibit stark contrasts in their adoption of controversial contracts (Hosen & Nahrawi, 2012; Zuhayli et al., 2003). This tension precipitates market fragmentation, thereby stimulating ongoing debates concerning the purity of Islamic economic practices (Asni, 2021).

At the epicenter of this jurisprudential discourse is the *Bay' al-'Inah* contract, a liquidity instrument (Omar et al., 1996) that serves as the focal point of the conflict between market efficiency and strict adherence to the prohibition of *riba* (El-Gamal, 2006; Saputra, 2021; Shahrudin, 2012; Smolo & Musa, 2020). Malaysia, through the Shariah Advisory Council of Bank Negara Malaysia (SAC-BNM), has adopted a pragmatic approach by permitting the use of *'Inah* to accelerate asset growth (Asni, 2020; Murlisa et al., 2022). Conversely, the National Sharia Board of the Indonesian Ulema Council (DSN-MUI) strictly prohibits its application in order to safeguard Sharia purity (Abdillah & Rabi, 2020). The impact of these divergent strategies is distinctly reflected in statistical data: Malaysia's Islamic banking market share consistently exceeds 30%, whereas Indonesia's remains stagnant at approximately 7% (Gazani et al., 2024).

The urgency of this discourse is heightened by the emergence of novel industrial risks, as evidenced by recent data trends. The excessive use of controversial instruments, whether *Bay' al-'Inah* or its alternatives, such as *Tawarruq* poses potential threats, including severe reputational risks and Shariah Non Compliance Risk (Sheikh et al., 2023). This phenomenon fosters an anti-innovation culture, wherein the industry becomes entrapped in the convenience of debt-based products at the expense of developing genuine risk-sharing mechanisms (Ishak et al., 2025). Furthermore, the absence of consensus leads to fatwa shopping, in which industry players seek the most lenient scholarly opinions for commercial gain, thereby eroding consumer confidence in the integrity of Islamic finance (Oseni, 2017). Conversely, Indonesia's stringent approach prohibiting *Bay' al-'Inah* on precautionary grounds is frequently perceived as a constraint on product innovation, notwithstanding its assessment as theoretically safer at effectively closing loopholes for *riba* (Chabachib et al., 2019).

The fundamental problem underpinning this research lies in the epistemological dichotomy between formal validity and substantial justice (El-Gamal, 2006). Legal policies in the two nations are predicated on opposed paradigms. Malaysia prioritizes

macro level *maslahah* (public interest), manifested as industrial growth by tolerating *hilah* as a provisional solution or *makhraj* (legal exit) (Hasan, 2012), whereas Indonesia places precedence on contractual purity to avert usurious *mafsadah* (harm) and reputational risks (Ismal, 2011). This discord transcends mere interpretative differences regarding classical Shafi'i texts; rather, it reflects how fatwa authorities construe *Maqāṣid Shariah* in responding to complex modern economic realities (Shahrul et al., 2021). Crucially, *Maqāṣid Shariah* serves as a harmonization tool between scriptural theory and empirical reality, rather than a mere justification to legitimize deviant practices (Auda, 2008).

Extensive normative research has addressed the controversy surrounding the validity of *Bay' al-'Inah*. (Sanusi & Rosly, 2015) assert that Shariah parameters in investment must extend beyond mere formality, critiquing *'Inah* practices that substantively replicate interest-based systems. (Shaharuddin, 2012) highlights that the controversy in Malaysia is rooted in a form over substance approach, while valid according to the Shafi'i madhab, this stance remains susceptible to international criticism. Similarly, (Jusoh & Zain, 2018) emphasize the juridical dichotomy in which international bodies such as the OIC and AAOIFI prohibit *Bay' al-'Inah*. In contrast, Malaysian authorities adhere to classical texts without critically analyzing contemporary applications that contradict the spirit (*ruh*) of Shariah.

Regarding technical implementation and legal engineering issues, numerous empirical studies have been conducted. (Smolo & Musa, 2020) underscore the misuse of *hilah* (legal stratagems) and *makhraj* (exits) in Islamic finance, noting that many purported Shariah-compliant products, including those based on *'Inah*, satisfy procedural compliance yet fail to fulfill Shariah objectives. (Angkita & Afif, 2018) underscore the misuse of *hilah* (legal stratagems) and *makhraj* (exits) in Islamic finance, noting that many purported Shariah-compliant products, including those based on *'Inah*, satisfy procedural compliance yet fail to fulfill Shariah objectives. Conversely, (Hehsan & Salamon, 2017) examining the technological aspect, found that banking software in

Malaysia utilized for *Inah* contracts contains flaws in transaction flow validation, potentially rendering the contracts void (null and void) under Shariah law.

Research has also proliferated within the perspectives of fatwa governance and product comparison. (Hosen & Nahrawi, 2012) conducted a comparative analysis of banking products, finding that Indonesia applies more stringent screening for innovative products than Malaysia does. (Asni, 2021b) proposes a novel methodological approach that uses *Mura'ah al-Khilaf* (consideration of dissent) as a framework to standardize divergent fatwas across financial institutions. Furthermore, (Ishak et al., 2025) employ the principle of *Ma'alat* (consequences) to evaluate the implications of using controversial instruments such as *Tawarruq*, warning that the industry could become overly reliant on debt-based products and face long-term risks.

Previous studies on *Bay' al-'Inah* have predominantly focused on debates surrounding its normative jurisprudential (*fiqh*) validity and the weaknesses in its technical implementation. Therefore, this study addresses this lacuna in the literature by evaluating the *Bay' al-'Inah* policies in Indonesia and Malaysia through the lens of *Maqasid al-Shari'ah* (bin Lahuri, 2019), aiming to assess the trade-off between economic pragmatism and legal idealism. The novelty of this research lies in its conceptualization of the fatwa as an instrument of Islamic public policy evaluation, thereby transcending the simplistic binary of the halal-haram dichotomy. Specifically, this research conducts a teleological comparative analysis, juxtaposing the idealistic *Sadd al-Dhari'ah* approach, which prioritizes contract purity in Indonesia, against the pragmatic *Maslahah* approach, which is oriented toward market liquidity in Malaysia, to achieve an equilibrium between *Hifz al-Mal* (preservation of wealth) and *'Adl* (justice). Predicated on this background, the study formulates the following research questions: 1) How do the legal paradigms and epistemological constructions of the fatwas underpin the divergent *Bay' al-'Inah* policies between Malaysia's SAC-BNM and Indonesia's DSN-MUI?; and 2) How does a *Maqasid al-Shari'ah* evaluation assess the trade-off between economic pragmatism and legal idealism within the *Bay' al-'Inah*

policies of both jurisdictions? The theoretical contribution of this study is the integration of the concepts of *hilah* (legal artifice) and *makhraj* (legal exit) into the fatwa evaluation framework. Practically, the findings are intended to provide strategic recommendations for DSN-MUI and BNM in formulating policy harmonization that mitigates reputational risks while ensuring the long-term sustainability of the Islamic finance industry in Southeast Asia.

B. Research Method

This research is designed as a normative legal study that adopts a qualitative approach utilizing a comparative design (Fatoni, 2020). This approach was selected to evaluate the substance of the legal reasoning and the philosophical implications inherent in the fatwa policies (Creswell & Creswell, 2017). The study employs a multidisciplinary framework that integrates juridical-textual analysis to dissect the construction of positive law, alongside a contemporary teleological approach of Maqasid al-Shari'ah as the primary analytical tool to uncover the underlying values and objectives of the law (Auda, 2008).

Primary data were collected purposively, predicated on criteria encompassing national-level regulations that govern or implicate the *'Inah* mechanism. The primary data sources comprise the DSN-MUI Fatwa No. 31/DSN-MUI/2002 concerning debt transfer (bin Lahuri, 2019; Fatwa DSN-MUI, 2002), as well as the SAC-BNM resolutions of 1998 and 2001 pertaining to *Bay' al-'Inah* (BNM, 2010). Concurrently, secondary data were gathered through a comprehensive literature review encompassing reputable academic journals (Zed, 2008).

The methodological validity of selecting these data sources is justified by the institutional standing of both bodies as the supreme fatwa authorities within their respective jurisdictions. The selection of the SAC-BNM resolutions is justified as they constitute the legal-formal foundation for the existence of the *'Inah* market in Malaysia. Conversely, the selection of DSN-MUI Fatwa No. 31/2002 is justified because it

represents the jurisprudential prudence of Indonesia, which circumvents the *'Inah* scheme for liquidity and takeover purposes, opting instead for alternative mechanisms such as *Qardh* and *Ijarah*.

The data analysis process was executed through three systematic operational stages: 1) An in-depth analysis of the diction, structural pillars (*arkan*), validity conditions, and jurisprudential (*fiqh*) arguments embedded within the texts of the DSN-MUI fatwa and the SAC-BNM resolutions. 2) Mapping the points of convergence and divergence between the legal deduction methodologies (*istinbat al-ahkam*) of both institutions, specifically contrasting BNM's application of the Maslahah principle against DSN-MUI's utilization of *Sadd al-Dhari'ah*. 3) Employing the systems approach framework of *Maqasid al-Shari'ah* to evaluate the macroeconomic impacts of the respective policies. At this juncture, the study assesses the policy trade-offs by juxtaposing the fulfillment of *Hifz al-Mal* (asset growth and liquidity) against *Hifz al-Din* and *'Adl* (preservation of contract purity and the avoidance of usurious financial engineering).

C. Result and Discussion

Etymologically, the term *al-'Inah* derives from the Arabic root *'ayyana*, which signifies the contraction of a loan or debt. In a jurisprudential context, *al-'Inah* denotes a transaction wherein a seller disposes of an asset on a deferred payment basis and subsequently repurchases the identical asset on a spot basis at a lower price (Abadi, 2005). Within Islamic jurisprudential (*fiqh*) discourse and the operational practices of financial institutions, this sale-and-buy-back mechanism is frequently utilized as an instrument to facilitate cash financing (Angkita & Afif, 2018). wherein the underlying asset merely serves as a formal intermediary. Although the structural pillars (*arkan*) of a valid sale are nominally fulfilled from an administrative standpoint, this practice is frequently subjected to critical scrutiny as a legal artifice (*hilah*) designed to camouflage interest-bearing loans (Ayub, 2002).

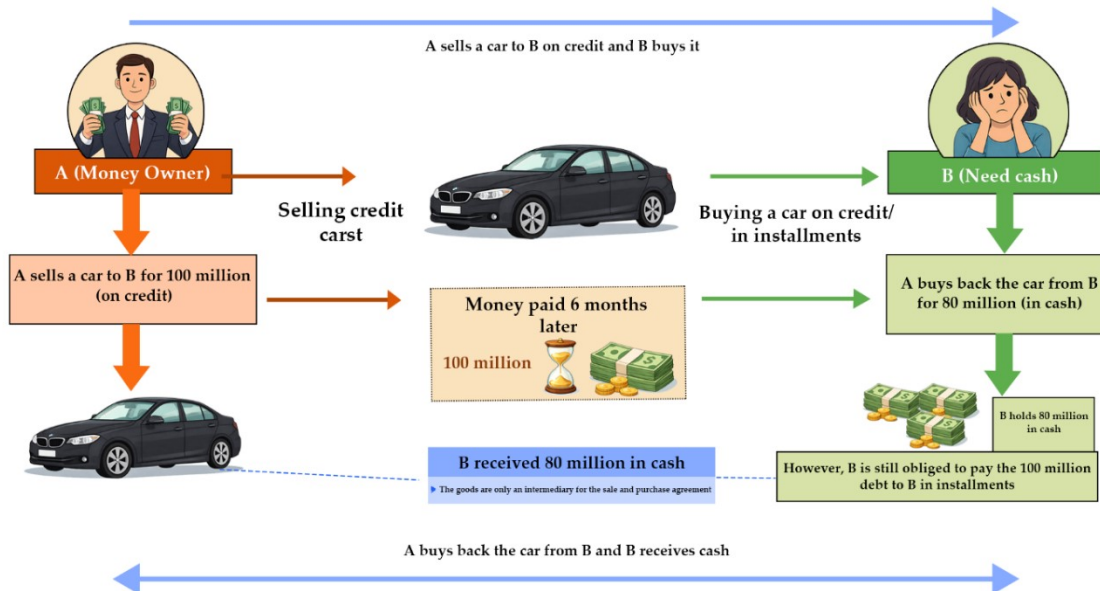


Figure 1. The Example of Transaction Flow of Bay' al-'Inah
(Source: Writers Design compile from Shawi, 2023).

One of the most prominent configurations of *Bay' al-'Inah* recognized in jurisprudential literature involves a vendor selling a commodity on a deferred payment basis, and subsequently repurchasing the same item at a lower price on a cash basis. To illustrate, consider a scenario where Party A sells a vehicle to Party B for IDR 100 million on credit terms; this implies that the vehicle is transferred to B upon contract execution, with payment due six months later. Concurrently, Party A repurchases the vehicle from Party B for IDR 80 million in cash, thereby causing the vehicle's ownership to revert to Party A. Through this transaction, Party B secures immediate liquidity of IDR 80 million while retaining a liability to pay IDR 100 million to Party A upon the six-month maturity (Angkita & Afif, 2018). This specific trading practice is identified by jurists as *Bay' al-'Inah*, which is fundamentally a transaction designed to facilitate a loan, notwithstanding its formal execution through a sale-and-purchase mechanism (Shawi, 2023).

An analysis of Sharia Resolutions in Islamic Finance, 2nd Edition, published by the Central Bank of Malaysia (BNM), indicates that the Shariah Advisory Council (SAC) has consistently validated the *Bay' al-'Inah* scheme subject to stringent parameters. Through its 69th and 72nd resolutions, the SAC-BNM explicitly permits the utilization of this contract for the issuance of Negotiable Islamic Debt Certificates (NIDC) and interbank money market instruments. This legality is predicated on the Shafi'i madhab's view, which assesses contractual validity based on the fulfillment of the formal pillars (rukun) and conditions, irrespective of the parties' internal intentions. However, to preclude *hilah* (legal stratagems) that could nullify the contract, the SAC, in its 72nd resolution, established strict validity conditions (*shurut al-shihhah*). These stipulations require that the transaction comprises two distinct and separate contracts (sale and purchase); the initial contract must not contain any written clause mandating a repurchase; the two contracts must be executed at different times in the correct sequence specifically, the initial purchase must be concluded prior to the repurchase; and there must be a valid transfer of ownership and asset possession according to customary practice (*'urfi*).

In contrast, an analysis of the fatwa compilation of the National Sharia Board-Indonesian Ulema Council (DSN-MUI), specifically Fatwa No. 31/DSN-MUI/VI/2002 concerning debt transfer, reveals a highly precautionary approach that effectively forecloses the adoption of pure *Bay' al-'Inah* practices. This stance is manifest in the DSN-MUI's preference for facilitating liquidity requirements, such as takeovers or refinancings, in which the Board eschews direct sale-and-buyback schemes. Instead, it advocates alternative structures that use *Qardh* contracts combined with asset sales or *Ijarah Muntahiyah bi al-Tamlik* (IMBT). Furthermore, the precautionary principle is consistently applied by declining to validate instruments perceived as *hilah ribawi* (usurious legal stratagems) by the majority of scholars (Jumhur). This position is substantiated by the absence of any specific fatwa explicitly legalizing *Bay' al-'Inah* as

a cash financing product, standing in marked contrast to the SAC-BNM, which has promulgated specific resolutions to that effect.

Table 1. Comparative Comparison of Malaysia and Indonesia

Paramater	Malaysia	Indonesia
Legal Sources	<i>Sharia Resolutions in Islamic Finance 2nd Edition</i> BNM-SAC	fatwa DSN MUI No. 31/ DSN-MUI/VI/2002
Legal Status	Allowed under strict conditions	Avoided/Prohibited
Basic Fiqh	Shafi'i School of Thought and Maslahah (Market Needs)	The majority of scholars and the Sadd al-Zarī'ah
Market Share (2021)	30%	7%
Validity Focus	Formal validity (valid/invalid in harmony)	Substantial justice (intention and effect)
Product Application	Credit cards, personal financing, money markets, sukuk	Replaced with the Qardh or Tawarruq contract
Market impact	High liquidity, varied products, but global reputation issues.	Product innovation is limited, but sharia compliance is considered purer.

(Source: Writer's Analysis)

The SAC-BNM's decision to validate *Bay' al-'Inah* can be interpreted as a strategic prioritization of *Hifdz al-Mal* (preservation of wealth) within a macroeconomic framework. Viewed through the lens of Jasser Auda's contemporary Maqashid perspective, the preservation of wealth extends beyond mere physical protection to encompass economic *rawaj* (circulation) and *tanmiyah* (development). This rationale is evident in the fulfillment of market exigencies, wherein Malaysia perceives the requirement for liquidity instruments and debt management as an urgent necessity; without instruments such as *'Inah*, Islamic banking would face significant impediments in competing with conventional counterparts regarding operational efficiency and transaction velocity. Furthermore, regarding formal validity, the SAC-BNM has adopted a pragmatic trajectory, adhering to the Shafi'i madhab, which distinguishes between internal intent and the *zahir* (external) contract. This approach is grounded in the argument that regulators cannot adjudicate intent; provided that the contractual pillars (rukun) are satisfied, namely the existence of the subject matter, price, and two distinct

contracts, the transaction is deemed valid. This approach has yielded tangible results, successfully accelerating Malaysia's Islamic banking market share to exceed 30%, significantly surpassing Indonesia's (Gazani et al., 2024). This empirical evidence demonstrates a positive correlation between regulatory flexibility and asset growth.

Conversely, the DSN-MUI in Indonesia prioritizes *Hifdz al-Din* (preservation of religion) and the principle of '*Adl* (justice) over market efficiency, wherein the rejection of '*Inah* is predicated on the substance of the transaction rather than its mere formal structure. The DSN-MUI endeavors to preclude *riba* by employing the method of *Sadd al-Zarī'ah* (blocking the means to evil); it argues that although the technical pillars of a sale may be satisfied, if the primary motive is the exchange of money for money with a surplus, the substance remains usurious (*riba*). Consequently, legalizing '*Inah* is perceived as undermining the Shariah objective of eliminating exploitation (Smolo & Musa, 2020). The implication of this purist approach is a deceleration in the innovation of cash financing products. The Indonesian Islamic banking industry is frequently compelled to navigate more convoluted pathways, such as *Ijarah* combining *Qardh* and contracts, which are operationally less efficient compared to the '*Inah* scheme utilized in Malaysia (Hosen & Nahrawi, 2012). This inefficiency contributes to the stagnation of Indonesia's Shariah market share at approximately 7% (Gazani et al., 2024).

The aforementioned regulatory divergence regarding *Bay' al-'Inah* substantiates a collision in the interpretation of contemporary *Maqasid al-Shari'ah* when addressing economic realities. The decision by SAC-BNM to legitimize '*Inah* constitutes a manifestation of legal pragmatism that prioritizes *Hifz al-Mal* (preservation of wealth). From the perspective of Jasser Auda, asset protection encompasses macroeconomic rawaj (circulation) and tanmiyah (growth). By justifying '*Inah* as a *makhraj* (legal exit) for liquidity efficiency, this state-driven, market-friendly approach has proven successful in accelerating Malaysia's Islamic banking market share, surpassing the 30% threshold.

Conversely, the approach adopted by DSN-MUI in Indonesia elevates *Hifz al-Din* (preservation of religion) and the principle of *'Adl* (justice) above market efficiency. Utilizing the instrument of *Sadd al-Dhari'ah* (blocking the means to evil), the MUI representing a society-driven approach postulates that tolerating *'Inah* possesses the potential to undermine the Sharia objective of eradicating exploitation, notwithstanding the textual fulfillment of its formal pillars. The logical consequence of this stringent preservation of principled purity is the impediment of cash financing product innovation, which has subsequently caused Indonesia's Islamic banking market share to stagnate at approximately 7% due to the convoluted operational costs associated with instrument design.

This analysis delineates a tangible policy trade-off. Malaysia incurs the cost of elevated liquidity and asset growth through global reputational risks (Sharia Non-Compliance Risk), notably encountering resistance from Middle Eastern investors who question the substantive justice of its products. In contrast, Indonesia compensates for its jurisprudential purity through competitive inefficiency and a substantially decelerated trajectory of organic growth.

In addressing this trade-off, policy harmonization is of paramount urgency. It is recommended that Malaysian authorities initiate a disciplined transition toward the application of the *Tawarruq* (Commodity *Murabahah*) contract to mitigate international Sharia non-compliance risks. Conversely, Indonesian regulators must expedite research and the financial engineering of Sharia products that are not only devoid of *riba* (usury), *gharar* (uncertainty), and *maysir* (gambling) elements but are also structurally cost-efficient to ensure commercial competitiveness.

Nevertheless, this normative study is inherently limited by its focus on a top-down, regulatory-level doctrinal analysis. To comprehensively supplement this evaluation, subsequent empirical research is imperative, specifically to examine the correlation between the Sharia literacy levels of grassroots customers and their

investment decision preferences in response to instruments that provoke *hilah* (legal artifice) controversies.

D. Conclusion

This study concludes that the jurisprudential divergence concerning *Bay' al-'Inah* between Malaysia and Indonesia stems not merely from differential textual interpretations, but rather from a collision of epistemological paradigms in the application of *Maqasid al-Shari'ah*. Employing a comparative-teleological approach, this study identifies a tangible policy trade-off. Malaysia's SAC-BNM adopts a pragmatic formalism that prioritizes *Hifz al-Mal* (preservation of wealth) to achieve market efficiency, successfully propelling its market share beyond the 30% threshold; however, this approach is overshadowed by global reputational risks stemming from its tolerance of *hilah* (legal artifice). Conversely, Indonesia's DSN-MUI implements a preventive prudence (*Sadd al-Dhari'ah*) in pursuit of *Hifz al-Din* (preservation of religion) to safeguard Sharia purity. While this mechanism secures the industry against usurious financial engineering, it inadvertently results in product inefficiency and the stagnation of its market share at approximately 7%.

Theoretically, the principal contribution of this study is the proposition of an evaluation framework asserting that controversial fatwas, such as those pertaining to *'Inah*, should not be reductively confined to a binary halal-haram dichotomy. Instead, they must be positioned as instruments of Islamic public policy that necessitate a dynamic equilibrium between legal idealism and the realities of economic exigencies. Practically, this study advocates for the concept of adaptive harmonization. It is recommended that Malaysian regulators accelerate their transition toward contract structures that garner wider global acceptance, such as *Tawarruq*, to mitigate Sharia non-compliance risks. Meanwhile, Indonesian authorities must respond to market stagnation by catalyzing innovations in contract structures that remain strictly Sharia-compliant while simultaneously demonstrating competitive cost efficiency.

Furthermore, subsequent empirical research is recommended to quantitatively measure the impact of these regulatory divergences on the industry's cost of funds within both jurisdictions.

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