

Risk Justice in Non-Profit Sharing Contracts in Indonesian Islamic Banking from the Perspective of *Maqashid Shariah*

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KEYWORDS	ABSTRACT
Keywords: Risk Justice; Maqashid Shariah; Non-Profit Sharing Contracts; Islamic Banking; Murabahah Contract. Conflict of Interest Statement: - Copyright © 2025 Vifada Assumption Journal of Law. All rights reserved.	Purpose: This research analyzes risk justice in non-profit sharing contracts in Indonesian Islamic banking from the perspective of <i>maqashid shariah</i>, particularly in relation to <i>murabahah</i>, <i>ijarah</i>, and <i>istishna</i> contracts. Research Design and Methodology: This research uses a normative legal method with statute and conceptual approaches. The analysis examines Islamic banking regulations, DSN-MUI <i>fatwa</i>, Islamic legal principles, and scholarly literature to assess whether the structure of non-profit sharing contracts reflects proportional, transparent, and substantive risk distribution. Findings and Discussion: The study finds that the dominance of non-profit sharing contracts in Indonesian Islamic banking has created a risk distribution problem, especially when contractual clauses and financing practices tend to shift economic burdens to customers while banks retain predetermined margins. This condition weakens the substance of sharia contracts and may contradict the principles of <i>al-ghunm bil ghurm</i> and <i>al-kharaj bil dhaman</i>. From the <i>maqashid shariah</i> perspective, particularly <i>hifzh al-mal</i>, risk justice must be reconstructed through distributive, procedural, and substantive justice. The proposed normative reconstruction requires clearer contract clauses, stronger regulatory standards, consistent DSN-MUI <i>fatwa</i> implementation, effective OJK supervision, and an active role of the Sharia Supervisory Board. Implications: This research contributes a normative reconstruction model for strengthening risk justice in Indonesian Islamic banking so that sharia contracts are not only formally valid but also materially fair and aligned with <i>maqashid shariah</i>.

Introduction

The development of Islamic banking in Indonesia has experienced significant growth over the past few decades, marked by an increasing number of Islamic financial institutions and the products offered to the public.¹ However, behind this growth, there are fundamental issues that have not yet been resolved academically or regulatively, namely the justice in risk distribution in non-profit sharing contracts such as *murabahah*, *ijarah*, and *istishna*, which now dominate the national Islamic banking financing portfolio.² These contracts structurally place customers in a position where they bear greater risk compared to the bank, while profits have been predetermined with a rigid margin that is unresponsive to changes in the customer's economic conditions.³ The dominance of non-profit

¹ Zakiyah Zulfa Rahmah et al., "The Evolution of Islamic Banking in Indonesia: Challenges, Opportunities, and Future Prospects," *Jurnal Akuntansi Dan Keuangan Islam* 13, no. 2 (2025): 161-75, <https://doi.org/10.61111/jakis.v13i2.888>.

² Hamsir Hamsir, Nila Sastrawaty, and Zainuddin Zainuddin, "The Dominance of Debt-Based Financing in Islamic Banking: Legal Challenges and Implications in Indonesia," *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 2 (2025): 145-56.

³ Alam I. Asadov, "Ownership Risk in Contemporary Islamic Banking," in *Growth and Emerging Prospects of International Islamic Banking*, ed. Abdul Rafay (United States of America: IGI Global Scientific Publishing, 2020), 189-211, <https://doi.org/10.4018/978-1-7998-1611-9.ch011>.

sharing contracts, which account for more than 70 percent of total financing in Islamic banking, raises serious concerns about the consistency of practices with the fundamental principles of Islamic economics that uphold balance and justice.⁴

The issue of risk justice becomes increasingly apparent when examined from a contractual perspective, where Islamic banks in practice often transfer almost all economic loss risks to customers through mechanisms such as guarantees, late fees, and non-negotiable standard clauses.⁵ This phenomenon is substantially not much different from the practice of conventional interest-based banking, whereas one of the main arguments for the superiority of Islamic banks is their absence in the system of unilateral risk exploitation.⁶ This imbalance creates complex legal issues, as the existing sharia banking regulations, including Law Number 21 of 2008 on Sharia Banking and various *fatwas* of the National Sharia Council, have not explicitly and comprehensively regulated the mechanism of risk distribution justice in non-profit sharing contracts.⁷ As a result, there is a normative vacuum that opens up space for practices that are formally Sharia-compliant but substantially do not reflect the true values of Islamic justice.

In the context of Islamic law, justice is one of the fundamental values that cannot be separated from every *muamalah* transaction.⁸ *Maqashid shariah*, as a theory of the objectives of Islamic law developed by scholars such as Al-Ghazali,⁹ Al-Syathibi, and contemporary thinkers like Ibn Asyur¹⁰ and Jasser Auda,¹¹ offers a comprehensive analytical framework to assess whether a legal practice has truly realised public benefit or instead caused harm.¹² In the dimension of *hifzh al-mal* (protection of wealth), *maqashid shariah* not only demands the formal validity of a contract¹³ but also requires that the distribution of rights and obligations, including risks, occurs fairly and proportionally among the parties involved.¹⁴

The imbalance in risk distribution in non-profit sharing contracts is not merely an academic issue, but also has tangible legal and socio-economic implications for the community of Islamic banking service users. Customers experiencing economic difficulties often do not receive adequate protection because the existing contract structure tends to prioritise the bank's interests over achieving a balance between the parties.¹⁵ In fact, the presence of Islamic banks is expected to be an alternative that is not merely labelled halal procedurally, but also substantively just in carrying out the function of financial intermediation based on Islamic values.¹⁶ Therefore, a conceptual and normative reconstruction of risk justice based on *maqashid sharia* is necessary to provide a theoretical foundation for regulatory renewal, product development, and strengthening legal protection for sharia banking customers in Indonesia.

⁴ Sutrisno Sutrisno and Agus Widarjono, "Is Profit-Loss-Sharing Financing Matter for Islamic Bank's Profitability? The Indonesian Case," *Risks* 10, no. 11 (2022): 207, <https://doi.org/10.3390/risks10110207>.

⁵ Istianah Zainal Asyiqin, "Legal Relationship Between Fund Depositors and Managing Banks in Mudharabah Deposit at Islamic Banks," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 1 (2025): 112-26, <https://doi.org/10.22373/petita.v10i1.485>.

⁶ Yaaseen Maswood, "A Critical Evaluation of Articles Related to Islamic Banking," *International Journal of Recent Technology and Engineering* 8, no. 254 (2019): 302-6, <https://doi.org/10.35940/ijrte.B1057.07825419>.

⁷ Sunil Khandelwal and Khaled Aljifri, "Risk Sharing vs Risk Shifting: A Comparative Study of Islamic Banks," *Journal of Islamic Accounting and Business Research* 12, no. 8 (2021): 1105-23, <https://doi.org/10.1108/JIABR-08-2018-0121>.

⁸ Risfiana Mayangsari, "Consumer Protection in Muamalah Transactions," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 11, no. 1 (2024): 206, <https://doi.org/10.29300/mzn.v11i1.4958>.

⁹ Nurlinda Nurlinda, "Revisiting Al-Ghazali's Thought: Contemporary Integration of Islamic Spirituality and Economics for Community Development," *Nusantara: Journal of Law Studies* 3, no. 1 (2024): 36-55, <https://doi.org/10.5281/zenodo.17373640>.

¹⁰ Dhika Tabrozi, "Ijtihad Maqashid Sharia in the Thought of Asy-Syatibi and Muhammad At-Tahir Ibn Ashur," *Al-Mazaahib: Jurnal Perbandingan Hukum* 13, no. 1 (2025): 1-28, <https://doi.org/10.14421/al-mazaahib.v13i1.4068>.

¹¹ Sangkot Sirait et al., "The Contribution of Jasser Auda in Maqashid Al Syari'ah Concept on Islamic Education Psychology," *AL-MUADDIB: Jurnal Kajian Ilmu Kependidikan* 4, no. 2 (2022): 116-34, <https://doi.org/10.46773/muaddib.v4i2.360>.

¹² Muhammad Harfin Zuhdi and Mohamad Abdun Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1818, <https://doi.org/10.22373/sjhh.v8i3.24918>.

¹³ Abubakar Balarabe et al., "Shariah Governance of Cryptocurrencies: Risks, Parameters and Regulatory Solutions," *Jurisdictie: Jurnal Hukum Dan Syariah* 16, no. 2 (2025): 452-81, <https://doi.org/10.18860/j.v16i2.35817>.

¹⁴ Mesi Herawati, "Analyzing the Islamic Securities Crowdfunding System through the Lens of Maqashid Sharia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 11, no. 2 (2024): 464, <https://doi.org/10.29300/mzn.v11i2.4785>.

¹⁵ Robert C. Merton and Richard T. Thakor, "Customers and Investors: A Framework for Understanding the Evolution of Financial Institutions," *Journal of Financial Intermediation* 39 (2019): 4-18, <https://doi.org/10.1016/j.jfi.2018.06.002>.

¹⁶ Junaidi Junaidi, "Islamic Banks' Contribution to Indonesia Districts' Economic Growth and Poverty Alleviation," *Journal of Economics, Finance and Administrative Science* 29, no. 58 (2024): 294-308, <https://doi.org/10.1108/JEFAS-06-2021-0097>.

This research aims to analyze and deeply examine the concept of risk justice found in the non-profit sharing contract structure of Islamic banking in Indonesia and then evaluate it through the *maqashid sharia* framework as a benchmark for substantial conformity with Islamic legal values. Additionally, this research intends to formulate a conceptual and normative reconstruction of risk distribution justice that can serve as a reference for the development of regulations, *fatwas*, and operational policies for Islamic banking that are more just and favor the welfare of all contracting parties.

Previous studies have examined various aspects of Islamic banking from diverse perspectives but still have their own limitations in scope. Previous studies such as Beyond Profit: *Maqāsid al-Sharī'ah* in Islamic Finance Through Partnership Contracts and Profit-Loss Sharing Principle in the Islamic Finance Industry,¹⁷ focus more on profit sharing contracts (*mudharabah* and *musyarakah*) as ideal instruments in Islamic finance, while the study on Overcoming Asymmetric Information with A Profit Sharing System at Bank Sharia: Acceleration of Theory and Practice¹⁸ is oriented towards the technical issues of information asymmetry and the regulation of investment accounts within the profit sharing scheme alone. Meanwhile, several studies discussing *murabahah*, such as The Law Concept of Sharia Banking Compliance on Murabaha Financing in Indonesia¹⁹ and Murabaha Financing of The Indonesian Islamic Banks Under an Islamic Economic Law and The *Fatwa* DSN MUI,²⁰ tend to be limited to the aspect of legal compliance (sharia compliance) without exploring the dimension of substantive justice that should be the essence of non-profit sharing contracts themselves. As for the research "Is Profit-Loss-Sharing Financing Matter for Islamic Bank's Profitability? The Indonesian Case"²¹ and "Profitability and Risk in Indonesian Islamic Banks: Do Profit-Loss Sharing Contracts Matter?"²² more oriented towards the analysis of profitability and the operational implementation of Indonesian Islamic banking, so the perspective of risk distribution justice does not become its main focus. Research on risk management such as "Developing a Vulnerability-Based Conceptual Model for Managing Risk in Non-Profit Projects: A Multicase Study in a European Country"²³ and "Risk Sharing vs. Risk Shifting: A Comparative Study of Islamic Banks" indeed touches on issues of risk and social justice, but their discussions are general and macro in nature, not specifically analyzing how risk distribution in non-profit sharing contracts such as *murabahah*, *ijarah*, and *istishna* can be deeply examined through the *maqashid sharia* framework.

This limitation shows a clear research gap. Previous studies have not sufficiently explained whether the structure of non-profit sharing contracts in Indonesian Islamic banking reflects substantive risk justice between banks and customers. The existing literature also tends to separate the discussion of Islamic banking regulation, *muamalah* principles, and *maqashid sharia*, whereas these three elements should be integrated to assess whether a contract is not only formally valid but also materially fair. Therefore, this article offers a normative reconstruction of risk justice by placing *maqashid sharia* as the main evaluative framework for examining the proportionality, transparency, and fairness of risk allocation in non-profit sharing contracts.

The research problem is examined in two aspects: first, how is the concept of risk justice in non-profit sharing contracts in Indonesian Islamic banking? Second, how should the normative reconstruction of risk justice in non-profit sharing contracts be formulated to align with the principles of *maqashid sharia*?. The novelty of this research lies in its integrative framework that connects risk justice, Indonesian Islamic banking regulation, DSN-MUI *fatwas*, and *maqashid sharia* to construct a model of non-profit sharing contracts that is not only sharia-compliant in form but also just in substance.

¹⁷ Aisyah As-Salafiyah, Mohammad Mahbubi Ali, and Aam Slamet Rusydiana, "Beyond Profit: Maqāsid Al-Sharī'ah in Islamic Finance Through Partnership Contracts ('Uqūd Al-Ishtirāk)," in *Islamic Financial Markets and Institutions: Challenges, Financial Stability, and Inclusivity*, ed. Farhad Taghizadeh-Hesary et al. (Singapore: Springer, Singapore, 2025), 175-94, https://doi.org/10.1007/978-981-96-8650-6_9.

¹⁸ Muaidy Yasin et al., "Overcoming Asymmetric Information with A Profit Sharing System at Bank Sharia : Acceleration of Theory and Practice," *Journal of Economics, Finance and Management Studies* 6, no. 08 August 2023 (2023): 185-93, <https://doi.org/10.37394/232032.2023.1.18>.

¹⁹ Mohammad Ghazali et al., "The Law Concept of Sharia Banking Compliance on Murabaha Financing in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1391, <https://doi.org/10.22373/sjhk.v8i3.11313>.

²⁰ Bismi Khalidin and Armiadi Musa, "Murabaha Financing of The Indonesian Islamic Banks Under an Islamic Economic Law and The Fatwa DSN MUI," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 2 (2023): 203-2018, <https://doi.org/10.22373/petita.v8i2.238>.

²¹ Sutrisno and Widarjono, "Is Profit-Loss-Sharing Financing Matter for Islamic Bank's Profitability? The Indonesian Case."

²² Agus Widarjono, Md. Mahmudul Alam, and Abdur Rafik, "Profitability and Risk in Indonesian Islamic Banks: Do Profit-Loss Sharing Contracts Matter?," *Journal of Islamic Accounting and Business Research*, 2025, 1-20, <https://doi.org/10.1108/JIABR-09-2023-0317>.

²³ Khandelwal and Aljifri, "Risk Sharing vs Risk Shifting: A Comparative Study of Islamic Banks."

Literature Review

Non-Profit Sharing Contracts in Indonesian Islamic Banking

Non-profit sharing contracts in Islamic banking refer to contracts that do not primarily place profit and loss sharing as the core mechanism of the financing relationship. In Indonesian Islamic banking practice, this category is commonly represented by *murabahah*, *ijarah*, and *istishna*. These contracts differ from *mudharabah* and *musyarakah* because the bank's return is generally determined through margin, rental payment, or agreed sale value rather than through the sharing of business profit. Therefore, the legal structure of these contracts requires careful analysis to ensure that the allocation of rights, obligations, and risks remains consistent with sharia principles.

Murabahah is a sale-based contract in which the bank purchases an asset and resells it to the customer at the acquisition price plus an agreed margin. Normatively, the bank should bear ownership risk before the asset is transferred to the customer. However, in practice, the use of *wakalah* arrangements may reduce the bank's actual exposure to ownership risk when the customer is authorized to purchase the asset on behalf of the bank.²⁴ This practice becomes problematic if the contract only maintains the formal structure of *murabahah* but shifts most economic risks to the customer.

Ijarah is a lease-based contract in which the benefit of an asset is transferred to the customer in return for rental payment. In this contract, the ownership of the asset remains with the bank during the lease period, while the customer only receives the right to use the asset. Consequently, risks related to ownership should not automatically be imposed on the customer unless the loss arises from negligence or breach of contract.²⁵ The fairness of *ijarah* depends on whether the contract clearly separates the risk of ownership from the risk of use.

Istishna is a manufacturing or construction-based contract in which an object is ordered according to agreed specifications. This contract is relevant in financing goods or projects that require production before delivery. The main legal issue in *istishna* concerns the allocation of risk during the production process, delay, defect, or non-conformity of the ordered object. Therefore, *istishna* must be examined to determine whether the customer's position is sufficiently protected when the object has not yet been completed or delivered according to the agreed terms. The different legal characters of *murabahah*, *ijarah*, and *istishna* show that each contract contains a specific pattern of risk allocation. Therefore, the discussion of non-profit sharing contracts cannot be separated from the principle of risk justice, because the validity of a sharia contract must also be assessed from whether the burden of risk is placed on the party that legally and economically should bear it.

The Principle of Risk Justice in Islamic Contract Law

Risk justice in Islamic contract law is not merely concerned with the equal distribution of risk between the parties. It refers to the proportional relationship between the benefit received and the burden assumed by each party in a contractual relationship. A contract may be formally valid but still substantively unjust if one party receives stable benefits while the other party bears excessive economic risks. This is why risk justice must be assessed beyond the textual validity of contractual clauses.

The principle of *al-ghunm bil ghurm* provides a foundational rule that entitlement to gain must be accompanied by willingness to bear risk. This principle rejects contractual arrangements that allow one party to secure profit without assuming any meaningful responsibility for the risks attached to the transaction. In Islamic banking, this principle requires the bank to bear the legal and economic consequences of ownership, financing, or service provision according to the nature of the contract.

²⁴ Mohamad Anwar Thalib et al., "Loss Accounting Practices among Takjil Sellers Grounded in Local Cultural And Religious Values," *JURNAL AL-QARDH* 8, no. 2 (December 31, 2023): 78-88, <https://doi.org/10.23971/jaq.v8i2.6509>.

²⁵ Zaki Ahmad et al., "An Exploratory Study On The Possibility Of Replacing Tawarruq Based Islamic Banking Products Using Other Alternatives," *International Journal of Management and Applied Research* 7, no. 2 (June 5, 2020): 147-64, <https://doi.org/10.18646/2056.72.20-011>.

If the bank shifts all risks to the customer while retaining a fixed margin or return, the substance of risk justice becomes weakened.²⁶

The principle of *al-kharaj bil dhaman* also strengthens the relationship between benefit and liability. A party who enjoys the benefit of an asset or transaction must also bear the corresponding liability attached to that benefit. In *murabahah*, this means that the bank must bear ownership risk before selling the asset to the customer. In *ijarah*, the bank as owner must bear risks related to ownership, while the customer only bears risks arising from misuse or negligence.²⁷

Risk justice also requires transparency, balance of bargaining position, and protection against clauses that create unfair burdens. Standard form contracts in Islamic banking may become problematic when customers do not have adequate opportunity to understand, negotiate, or question the allocation of risk. This concern is relevant because customers often occupy a weaker position in terms of information, financial literacy, and bargaining power. Therefore, risk justice must be understood as a combination of distributive, procedural, and substantive justice in Islamic contractual relations. This understanding of risk justice becomes the conceptual bridge to *maqashid shariah*. Risk allocation in Islamic banking contracts should not only be examined through contractual clauses and *fiqh* principles, but also through the broader objectives of Islamic law that require protection of wealth, prevention of exploitation, and realization of fairness in economic relations.

Maqashid shariah as the Theoretical Foundation of Risk Justice

Maqashid shariah provides the theoretical foundation for evaluating whether Islamic banking contracts truly realize the objectives of Islamic law. In the context of financial transactions, *maqashid shariah* does not only require formal compliance with contractual requirements but also demands the realization of justice, welfare, and protection from harm. A contract that satisfies formal elements may still be inconsistent with *maqashid shariah* if it produces exploitation, imbalance, or excessive risk transfer.²⁸ Therefore, *maqashid shariah* is essential for examining the substantive quality of non-profit sharing contracts.

The protection of wealth, or *hifzh al-mal*, is the most relevant *maqashid* dimension in assessing risk justice in Islamic banking. *Hifzh al-mal* requires that wealth be acquired, transferred, and circulated through lawful and fair mechanisms.²⁹ It also requires protection against unjust enrichment, manipulation, *gharar*, *tadlis*, and contractual practices that place one party in a structurally disadvantaged position. In this sense, Islamic banking must not only avoid *riba* formally but must also prevent unfair allocation of financial burdens.

Maqashid shariah also supports the need for substantive justice in banking contracts. Substantive justice requires that the real economic effect of a contract must be consistent with the ethical purpose of sharia. If a *murabahah*, *ijarah*, or *istishna* contract is structured in a way that resembles conventional debt-based financing and transfers almost all risk to customers, then the contract requires normative evaluation.³⁰ This evaluation is necessary to determine whether the contract reflects Islamic legal values or merely reproduces conventional risk-shifting practices under sharia terminology.

In contemporary Islamic economic law, *maqashid shariah* should function as an evaluative framework for regulators, DSN-MUI, Sharia Supervisory Boards, and Islamic banks. It can be used to test whether contractual clauses, *fatwas*, and banking practices create balance between legal certainty and substantive fairness. This approach allows Islamic banking law to move beyond

²⁶ Wahyu Jatmiko, Abdullah Iqbal, and M. Shahid Ebrahim, "On the Ethicality of Islamic Banks' Business Model," *British Journal of Management* 35, no. 1 (January 30, 2024): 115-36, <https://doi.org/10.1111/1467-8551.12703>.

²⁷ Mohammad Mansoor Khan, "Islamic Banking and Finance: Shariah Governance in Theory and Practice," *Journal of Management Research* 11, no. 2 (February 18, 2019): 1, <https://doi.org/10.5296/jmr.v11i2.14141>.

²⁸ Muhammad Shahrul Ifwat Ishak and Nur Syahirah Mohammad Nasir, "Maqasid Al-Shari'ah in Islamic Finance: Harmonizing Theory and Reality," *The Journal of Muamalat and Islamic Finance Research*, June 1, 2021, 108-19, <https://doi.org/10.33102/jmifr.v18i1.334>.

²⁹ Abdul Qoyum, "Maqasid Ash-Shari'ah Framework and the Development of Islamic Finance Products: The Case of Indonesia," *Tazkia Islamic Finance and Business Review* 12, no. 2 (September 4, 2018), <https://doi.org/10.30993/tifbr.v12i2.150>.

³⁰ Hechem Ajmi et al., "PRINCIPAL-AGENT PREFERENCES IN IMPERFECT MARKETS: THEORETICAL ANALYSIS ON MURABAHAH AND IJARAH," *Journal of Islamic Monetary Economics and Finance* 5, no. 1 (May 16, 2019): 117-44, <https://doi.org/10.21098/jimf.v5i1.1050>.

formalistic compliance and toward a more justice-oriented model.³¹ Therefore, *maqashid syariah* becomes the main theoretical basis for reconstructing risk justice in non-profit sharing contracts.

Research Design and Methodology

This research uses normative legal research, which examines law as a system of norms, principles, and legal doctrines. This method is appropriate because the study focuses on risk justice in non-profit sharing contracts in Indonesian Islamic banking by analyzing Islamic banking regulations, DSN-MUI *fatwas*, Islamic legal principles, and *maqashid syariah*. The research does not examine empirical behavior through field data, but evaluates the normative structure of *murabahah*, *ijarah*, and *istishna* contracts to determine whether their risk allocation reflects substantive justice in Islamic economic law. The approaches used in this research are the statute approach and the conceptual approach. The statute approach is applied by examining Law Number 21 of 2008 concerning Islamic Banking, relevant implementing regulations, and DSN-MUI *fatwas* governing Islamic banking contracts. The conceptual approach is used to analyze the concepts of risk justice, *al-ghunm bil ghurm*, *al-kharaj bil dhaman*, *hifzh al-mal*, and *maqashid syariah* as the theoretical framework for assessing the fairness of risk distribution in non-profit sharing contracts.

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include Islamic banking regulations, DSN-MUI *fatwas*, and Islamic legal sources derived from the Qur'an, *hadith*, and the *ijtihad* of scholars. Secondary legal materials include books, journal articles, research reports, and scholarly works related to Islamic banking, Islamic contracts, risk justice, and *maqashid syariah*. Tertiary legal materials include legal dictionaries, encyclopedias, and glossaries used to clarify relevant legal and Islamic finance terminology. The legal materials are analyzed through qualitative normative analysis by linking positive law, *muamalah fiqh*, and *maqashid syariah*. Positive law is used to identify the formal legal basis of Islamic banking contracts, while *muamalah fiqh* is used to assess the validity and ethical limits of contractual risk allocation. *Maqashid syariah* is then used as an evaluative framework to determine whether the contracts are not only formally valid but also substantively fair, especially in protecting wealth and preventing unjust risk transfer. *Murabahah*, *ijarah*, and *istishna* are selected as the objects of study because they represent dominant non-profit sharing contracts in Indonesian Islamic banking and contain important issues of ownership risk, asset risk, payment obligation, defect, delay, and liability allocation. This selection makes the analysis more transparent and academically accountable.

Findings and Discussion

The Concept of Risk Justice in Non-Profit Sharing Contracts of Islamic Banking in Indonesia

Islamic banking in Indonesia has developed rapidly since the enactment of Law Number 21 of 2008 concerning Islamic Banking, which provides a strong legal foundation for the operationalization of financial institutions based on Islamic principles. Among the various products offered, non-profit sharing contracts occupy the largest portion of the financing portfolio of Indonesian Islamic banks.³² The prevalence of these contracts prompts essential inquiries regarding the implementation of equitable risk distribution in each transaction, given that Islam emphasizes the principle of balance and the prohibition of inflicting harm on one party within a contract. Risk justice in this context does not merely mean nominal equality between the rights and obligations of the parties but rather the alignment between the burden of risk borne and the economic benefits obtained by each party in the contract.³³

³¹ Muhammad Yusuf et al., "Integrated Reporting, Corporate Governance, and Financial Sustainability in Islamic Banking," *Uncertain Supply Chain Management* 12, no. 1 (2024): 273-90, <https://doi.org/10.5267/j.uscm.2023.9.022>.

³² Andi Herawati, Zainuddin, and Syarif Raehana, "Islamic Economic Law Perspectives of Profit-Sharing Systems (Teseng) in the Cultivation of Rice Fields in Bugis-Makassar Community, South Sulawesi, Indonesia," *Manchester Journal of Transnational Islamic Law & Practice* 20, no. 1 (2024): 4-6.

³³ Mathilde de Goër de Herve, Thomas Schinko, and John Handmer, "Risk Justice: Boosting the Contribution of Risk Management to Sustainable Development," *Risk Analysis* 45, no. 11 (2025): 3452-66, <https://doi.org/10.1111/risa.14157>.

The concept of risk justice in *muamalah* jurisprudence is fundamentally rooted in the principles of *al-ghunm bil ghurm* (profit comes with risk) and *al-kharaj bil dhaman* (benefit comes with liability).³⁴ These two principles emphasize that it is not permissible under Sharia for someone to gain profit from a transaction without being willing to bear the accompanying risk. In the context of non-profit sharing contracts, risk justice does not mean that risk must be evenly distributed between the two parties, but rather that the distribution of risk should be proportional, transparent, and in accordance with the agreed-upon contract character.³⁵ Sharia contracts differ from conventional interest-based contracts, where the customer typically bears the risk unilaterally.

The issue that then arises in contemporary Islamic finance practices is the tendency of some institutions to formally adopt Shariah contracts but empty them of the true substance of risk justice.³⁶ This phenomenon is known in contemporary *fiqh* literature as *hilah*, which refers to the use of contracts that are outwardly valid but aim to evade the substantive provisions of Sharia.³⁷ For example, when an Islamic bank applies *murabahah* but avoids actual asset ownership through various protective clauses that transfer all risks to the customer from the beginning, the essence of the principle of *al-ghunm bil ghurm* has been violated even though the name of the contract remains Islamic. The contract's validity is based on its adherence to the text and the fulfillment of *maqashid al-akad*, the substantive goals it aims to achieve within the framework of transactional justice.³⁸

In the context of *murabahah* as a sale and purchase contract with the determination of profit margins, it is the most dominant non-profit sharing contract in Indonesian Islamic banking, even reaching more than 50% of total financing in many Islamic banks.³⁹ In this contract, the bank first purchases the asset and then sells it to the customer at the acquisition price plus the agreed margin. In theory, the bank bears the ownership risk during the phase between the purchase and sale of the asset. However, in practice, many Islamic banks implement a *wakalah* mechanism to transfer the purchasing process to the customers themselves, so the ownership risk that the bank should bear becomes very minimal or even nonexistent.⁴⁰ This condition raises serious questions about whether risk justice is truly realized or whether *murabahah* is merely a Shariah wrapper for what is essentially an interest-based transaction.

In *murabahah*, risk injustice may occur when standard clauses and *wakalah* mechanisms reduce the bank's actual ownership risk while placing the consequences of asset procurement, delay, defect, or payment difficulty on the customer. Although Law Number 21 of 2008 and the relevant DSN-MUI *fatwas* recognize *murabahah* as a sale contract, its implementation must still reflect clarity of object, price, margin, and responsibility of the parties. Therefore, when the bank secures a predetermined margin but avoids meaningful ownership risk, the contract may be formally valid but substantively inconsistent with *maqashid syariah*.

In *ijarah*, risk injustice may arise when the customer is required to bear major maintenance costs, asset damage, insurance burden, or loss of the leased object before ownership is transferred. Normatively, the bank as owner should bear ownership-related risks, while the customer should only bear risks arising from negligence, misuse, or breach of contract. If ownership risk is entirely

³⁴ Nasrun Mohamad Ghazali et al., "Fiqh Maxim of 'Al-Ghurm Bi Al-Ghunm': A Critique on the Interpretation of the Maxim Relating to Risk-Return Concept in Islamic Banking and Finance," *ISRA International Journal of Islamic Finance*, 16(2), 16, no. 2 (2024): 4-19, <https://doi.org/https://doi.org/10.55188/ijif.v16i2.412>.

³⁵ Nurhuda Athira Zainudin et al., "A Comparative Study on Risk Allocation for Different Procurement Type in Malaysian Industry," *IOP Conference Series: Earth and Environmental Science* 1067, no. 1 (2022): 012066, <https://doi.org/10.1088/1755-1315/1067/1/012066>.

³⁶ Muhammad Ayub and M. Fahim Khan, "Evolving Monetary Economics in Islamic Perspective," *Journal of Islamic Monetary Economics and Finance* 7, no. 2 (2021): 317-40, <https://doi.org/10.21098/jimf.v7i2.1372>.

³⁷ Edib Smolo and Abubakar Muhammad Musa, "The (Mis)Use of Al-Hilah (Legal Trick) and Al-Makhrāj (Legal Exit) in Islamic Finance," *Journal of Islamic Accounting and Business Research* 11, no. 10 (2020): 2169-82, <https://doi.org/10.1108/JIABR-01-2020-0009>.

³⁸ Djumadi Djumadi et al., "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>.

³⁹ A. Rio Makkulau, "Shariah Murabahah Financing in Islamic Banks," *BANCO: Jurnal Manajemen Dan Perbankan Syariah* 5, no. 1 (2023): 66-73, <https://doi.org/10.35905/banco.v5i1.5157>.

⁴⁰ Azharsyah Ibrahim and Abdul Jalil Salam, "A Comparative Analysis of DSN-MUI Fatwas Regarding Murabahah Contract and the Real Context Application (A Study at Islamic Banking in Aceh)," *Samarah* 5, no. 1 (2021): 372-401, <https://doi.org/10.22373/sjkh.v5i1.8845>.

transferred to the customer while the bank continues to receive rental payments, the principle of *al-kharaj bil dhaman* is weakened and the customer's legal position becomes disproportionate.

In *istishna*, risk injustice can appear when the customer is required to continue payment although the ordered object is delayed, defective, or not in accordance with agreed specifications. Since *istishna* is based on the production or construction of an object according to agreed terms, the risk must be allocated according to control over production, delivery, and conformity of the object. Clauses that shift these risks entirely to the customer weaken contractual balance, especially when the agreement is drafted as a non-negotiable standard contract.

These examples show that risk allocation in *murabahah*, *ijarah*, and *istishna* must be assessed through positive law, DSN-MUI *fatwas*, *muamalah fiqh*, and *maqashid syariah* as an integrated normative basis. Positive law provides legal recognition, DSN-MUI *fatwas* provide sharia legitimacy, while *maqashid syariah*, particularly *hifzh al-mal*, requires proportionality, transparency, prevention of exploitation, and protection of customers as the weaker contractual party. Thus, risk justice is not limited to formal compliance with contract clauses, but must also reflect substantive fairness in Islamic banking transactions.

Normative Reconstruction of Risk Justice in Non-Profit Sharing Contracts of Islamic Banking Based on the Principles of *Maqashid syariah*

Islamic banking as a financial institution based on Islamic values has undergone significant development, particularly in the diversification of products and services.⁴¹ One of the phenomena that has attracted the attention of academics and practitioners of sharia economic law is the widespread use of non-profit sharing contracts such as *murabahah*, *ijarah*, and *istishna* in the financing portfolio of sharia banking.⁴² These contracts are structurally different from *musyarakah* and *mudharabah*, which place the profit sharing mechanism at the core of Islamic financial relations. This reality raises fundamental questions about whether the distribution of risk in non-profit sharing contracts reflects the principle of justice that is the essence of all transactions in Islam, making normative reconstruction an academic and practical necessity.

The concept of normative reconstruction in this context refers to the effort to rebuild the legal and ethical framework that governs risk allocation in non-profit sharing contracts, not merely amending the wording of contract clauses but reformulating its philosophical foundation.⁴³ This reconstruction is necessary because, in the empirical practice of Islamic banking, non-profit sharing contracts are often criticized as functional replicas of conventional products merely wrapped in Arabic terminology. *Murabahah*, for example, is often implemented in a way that shifts almost all the risk to the customer, making it resemble interest-based credit in terms of the distribution of its economic burden.⁴⁴ Normative reconstruction, therefore, cannot be done partially; it must be rooted in a comprehensive and authoritative value system, which in the Islamic tradition is none other than *maqashid syariah*.

Maqashid syariah, as the highest objectives of Islamic law formulated by al-Ghazali and further developed by al-Shatibi, establish five fundamental protections: religion, life, intellect, lineage, and property. In the context of Islamic economic and banking law, the dimension of *hifzh al-mal* (protection of wealth)⁴⁵ becomes the central point of analysis, although the other dimensions remain structurally relevant. Protection of wealth does not only mean the protection of ownership in a static sense but also includes guarantees that the circulation of wealth occurs fairly, productively, and free

⁴¹ Khoirudin Khoirudin and Mawardi Mawardi, "Sistem Perbankan Syariah Dan Landasan Filosofinya," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi Dan Perbankan Syariah* 10, no. 1 (2021): 240-51, <https://doi.org/https://doi.org/10.30651/jms.v10i1.24837>.

⁴² Khandelwal and Aljifri, "Risk Sharing vs Risk Shifting: A Comparative Study of Islamic Banks."

⁴³ Muhammad Dzikirullah H. Noho et al., "Pengaktualisasian Itikad Baik Dalam Mencapai Hukum Kontrak Yang Progresif Di Indonesia," *Progressive Law and Society (PLS)* 1, no. 2 (2023): 1-9, <https://doi.org/https://doi.org/10.14710/pls.22898>.

⁴⁴ Khalidin and Musa, "Murabaha Financing of The Indonesian Islamic Banks Under an Islamic Economic Law and The Fatwa DSN MUI."

⁴⁵ Zainuddin Zainuddin, "Restorative Justice Concept on Jarimah Qishas in Islamic Criminal Law," *Jurnal Dinamika Hukum* 17, no. 3 (2017): 335-41.

from exploitation.⁴⁶ Modern thinkers like Ibn Ashur and Jasser Auda have broadened the concept of *maqasid* by including principles of social justice, honorable freedom of contract, and equilibrium in economic relations as essential components of Sharia's objectives in contemporary society.⁴⁷

Risk justice in Islamic law contracts is not a single concept that can be interpreted in a single manner. It is a normative construct that simultaneously unites three dimensions: distributive justice, which demands a proportional distribution of risk according to the capacity and position of the parties; procedural justice, which promotes transparency, openness of information, and the freedom to contract without coercion; and substantive justice,⁴⁸ which mandates that the contract not contain excessive *gharar*, *maysir*, or *zhulm* in any form. These three dimensions are susceptible to distortion in non-profit sharing contracts if they are not protected by a robust normative framework. The bank, as the party with the most information, capital, and bargaining power, has the potential to dominate the risk structure in a manner that is not proportional to the benefits received by the customer.

Upon examination through the prism of *maqashid sharia*, numerous practices in contemporary non-profit sharing contracts demonstrate significant normative tensions. In *murabahah*, the use of market interest rates as a benchmark to determine profit margins suggests that the contract's orientation is more oriented toward financial efficiency than distributional justice.⁴⁹ In *ijarah muntahia bittamlik*, the clause that transfers the risk of asset damage to the customer prior to the legitimate transfer of ownership may be deemed inconsistent with the principle that the party holding the ownership rights should bear the risk of ownership (*dhaman*).⁵⁰ This is not solely a technical-legal matter; rather, it is a matter of Islamic economic ethics that pertains to the fundamental principles of *maqashid*, specifically whether wealth is distributed in a manner that promotes welfare or exacerbates inequality.

Risk justice is not just a technical issue of contracts in the context of *maqashid sharia*, especially when it comes to *hifzh al-mal* (protection of wealth). It is also about the substance of fully protecting the economic rights of all parties involved.⁵¹ Imam al-Ghazali emphasized that the preservation of wealth necessitates the prohibition of all forms of economic injustice, including the unjust transfer of risk to the inferior party.⁵² The contract is not only problematic from a *fiqh* perspective but also contradicts the broader Sharia objective of establishing a just economic order when the customer is the party enduring all or most of the risk without adequate compensation in a Sharia banking contract. Information transparency (information symmetry) in the relationship between the bank and the customer is also closely associated with risk justice. Islam rigorously prohibits *tadlis* (deception through concealment of information)⁵³ and *gharar* (harmful uncertainty) in all transactions,⁵⁴ as these two practices create an imbalance that enables one party to exploit the ignorance of the other. In a *murabahah* contract, customers have the right to a thorough understanding of the asset's acquisition price, margin components, and any additional expenses. This information enables them to determine whether the risks they incur are proportional to the benefits they receive.⁵⁵ It is ultimately counterproductive to the mission of Islamic economic outreach, as the lack of transparency in this

⁴⁶ Dimas Fadilah, "Peran Kebijakan Pemerintah Indonesia Dalam Menjaga Stabilitas Ekonomi: Tinjauan Maqasid Syariah Tentang Hifzh Al-Mal," *Jurnal Global Ilmiah* 2, no. 6 (2025): 1-18, <https://doi.org/10.55324/jgi.v2i6.196>.

⁴⁷ Felicitas Opwis, "New Trends in Islamic Legal Theory: Maqāṣid Al-Sharī'a as a New Source of Law?," *Die Welt Des Islams* 57, no. 1 (2017): 7-32, <https://doi.org/10.1163/15700607-00571p03>.

⁴⁸ de Goër de Herve, Schinko, and Handmer, "Risk Justice: Boosting the Contribution of Risk Management to Sustainable Development."

⁴⁹ Rida Ahroum, Othmane Touri, and Boujemâa Achchab, "Murabaha and Musharakah Moutanaquissah Pricing: An Interest-Free Approach," *Journal of Islamic Accounting and Business Research* 11, no. 1 (January 2020): 201-15, <https://doi.org/10.1108/JIABR-12-2016-0147>.

⁵⁰ Asadov, "Ownership Risk in Contemporary Islamic Banking."

⁵¹ de Goër de Herve, Schinko, and Handmer, "Risk Justice: Boosting the Contribution of Risk Management to Sustainable Development."

⁵² Nurlinda, "Revisiting Al-Ghazali's Thought: Contemporary Integration of Islamic Spirituality and Economics for Community Development."

⁵³ Mayangsari, "Consumer Protection in Muamalah Transactions."

⁵⁴ Mohammad Hashim Kamali, Yasushi Suzuki, and Mohammad Dulal Miah, "Dilemmas and Challenges in Islamic Finance," in *Dilemmas and Challenges in Islamic Finance: Looking at Equity and Microfinance*, ed. Yasushi Suzuki and Mohammad Dulal Miah (Routledge, 2018), 45-57, <https://doi.org/10.1201/9781315105673>.

⁵⁵ Makkulau, "Shariah Murabahah Financing in Islamic Banks."

matter violates Sharia principles and undermines public trust in Islamic banking institutions as a whole.

The social dimensions of *maqashid shariah*, specifically *hifz al-nafs* (protection of life) and *hifz al-'aql* (protection of intellect), are also pertinent to discussions of risk justice in Islamic banking, although they are frequently disregarded in limited *fiqh muamalah* analyses. Customers, particularly those from lower-middle economic backgrounds, may experience substantial psychological and physical distress as a result of financial pressure resulting from penalty clauses, fines, or unjust risk transfers in non-profit sharing contracts.⁵⁶ In the context of comprehensive *maqashid al-sharia*, genuine Islamic banking should function as a tool of empowerment that reduces the burden on society, rather than solely serving as a new source of pressure that is simply labeled differently from conventional banking. This moral responsibility is inherent in the entire Islamic banking ecosystem, including regulators, the Sharia supervisory board, bank management, and consumers.

Operationally, the normative reconstruction of risk justice in non-profit sharing contracts must begin at the level of contract clauses. *Murabahah*, *ijarah*, and *istishna* contracts should contain clearer provisions regarding ownership risk, asset risk, defect, delay, maintenance responsibility, payment obligation, and the legal consequences of customer default. Standard clauses that automatically transfer all risks to customers need to be reformulated so that the allocation of risk corresponds to the legal character of each contract. This reconstruction is important to ensure that Islamic banking contracts do not merely fulfill formal sharia requirements but also reflect proportionality, transparency, and substantive justice.

At the regulatory level, the reconstruction of risk justice requires clearer normative standards in Islamic banking regulations. These standards should not only recognize *murabahah*, *ijarah*, and *istishna* as valid Islamic banking products, but also define minimum requirements for fair risk allocation according to the legal character of each contract. OJK supervision should therefore assess not only prudential compliance, but also whether the contractual structure prevents unilateral risk shifting and protects customers from disproportionate legal burdens.

At the level of DSN-MUI *fatwas*, normative reconstruction requires a more explicit formulation of risk justice as part of sharia compliance. *Fatwas* concerning *murabahah*, *ijarah*, and *istishna* should be interpreted and implemented by emphasizing the principles of *al-ghunm bil ghurm*, *al-kharaj bil dhaman*, prohibition of *gharar*, prohibition of *tadlis*, and protection of wealth under *maqashid shariah*. The *fatwa* framework should guide Islamic banks to ensure that the party receiving economic benefit also bears the relevant legal and economic responsibility. In this sense, sharia compliance must be understood not only as formal conformity with contract names and procedures, but also as the realization of justice in risk distribution.

The Sharia Supervisory Board also has a central role in making normative reconstruction more operational. Its function should not be limited to approving products and reviewing formal documents, but must include substantive assessment of whether contract clauses place customers in a fair legal position. The Board should examine whether the use of *wakalah* in *murabahah*, asset liability in *ijarah*, and production or delivery risk in *istishna* remain consistent with *maqashid shariah*. This substantive supervision is necessary to prevent Islamic banking products from losing their ethical foundation and becoming similar to conventional debt-based transactions.

In the contractual practices of Islamic banks, normative reconstruction requires clear disclosure, customer understanding, and meaningful consent. Banks should explain price structure, margin, rental obligation, asset risk, penalty mechanism, and default consequences in a language that customers can understand before the contract is signed. This approach ensures that non-profit sharing contracts are not merely valid in form, but also fair in substance and consistent with *maqashid shariah*.

⁵⁶ Fernando Gómez and Mireia Artigot, "Ex-Post Fairness Controls and Contract Design: The Spanish Experience," in *Consumer Law and Economics*, ed. Klaus Mathis and Avishalom Tor (Cham: Springer International Publishing, 2021), 133-50, https://doi.org/10.1007/978-3-030-49028-7_7.

Conclusion

This study concludes that the dominance of non-profit sharing contracts in Indonesian Islamic banking, particularly *murabahah*, *ijarah*, and *istishna*, creates a substantive issue of risk justice when the allocation of risk between banks and customers is not proportional. Although these contracts are formally recognized under Islamic banking law and DSN-MUI *fatwas*, their implementation may shift ownership risk, asset risk, delay risk, or contractual burden to customers through standard clauses and financing mechanisms. This condition weakens the principles of *al-ghunm bil ghurm* and *al-kharaj bil dhaman*, because the party receiving economic benefit must also bear the relevant legal and economic responsibility.

Normative reconstruction is therefore required to ensure that non-profit sharing contracts are not only sharia-compliant in form but also fair in substance. From the perspective of *maqashid shariah*, particularly *hifzh al-mal*, risk justice must be built through distributive justice, procedural justice, and substantive justice. This reconstruction should be implemented through clearer contract clauses, stronger Islamic banking regulations, consistent interpretation of DSN-MUI *fatwas*, more substantive OJK supervision, active assessment by the Sharia Supervisory Board, and transparent contractual practices by Islamic banks.

The main contribution of this article is the formulation of an integrative normative model that connects positive law, *muamalah fiqh*, and *maqashid shariah* to assess and reconstruct risk allocation in non-profit sharing contracts. This model affirms that Islamic banking must go beyond procedural avoidance of *riba* by ensuring proportional risk allocation, protecting customers from unjust risk shifting, and realizing fairness, transparency, and public benefit as the substantive objectives of *maqashid shariah*.

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