

MAŞLAḤAH, TRANSPARENCY, AND ASSET PROTECTION: A STUDY OF INVESTOR PROTECTION IN THE ISLAMIC CAPITAL MARKET WITHIN CONTEMPORARY SHARIA FINANCIAL FATWAS

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Abstract

Purpose - This study aims to analyze the construction and application of the principles of *maşlahah*, transparency, and asset protection in contemporary Islamic finance fatwas, with a focus on DSN-MUI Fatwa No. 157/DSN-MUI/A/IU/2024 regarding the protection of investor assets in the Islamic capital market. This study evaluates how the limits of *maşlahah* according to Sheikh Said Ramadhan al-Bûthî are operationalized within the normative framework of fatwas, as well as their implications for strengthening the principles of transparency and investor protection.

Methods - This research is a literature review employing a descriptive-analytical approach. The primary sources consist of the text of DSN-MUI Fatwa No. 157/DSN-MUI/A/IU/2024 and the work of al -Bûthî, namely "*Dhawâbith al-Maşlahah fi al-Syari'ah al-Islamiyyah*," which are analyzed based on the five parameters of *maşlahah* and the principle of *ḥifẓ al-māl* within the framework of the *maqāsid al-shari'ah*.

Findings - DSN-MUI Fatwa No. This is reflected in regulations that emphasize the segregation and protection of investor assets, the strengthening of transparency principles in fund management, and oversight of potential deviations. This fatwa explicitly closes loopholes in practices leading to usury (*riba*), uncertainty (*gharar*), market manipulation, and other forms of injustice toward investors. This fatwa explicitly closes loopholes in practices leading to usury (*ribā*), uncertainty (*gharar*), market manipulation, and other forms of injustice toward investors. The principle of *ḥifẓ al-māl* (protection of wealth) serves not only as a normative goal but also functions as an ethical and legal foundation for building an accountable and sustainable asset protection system. These findings indicate a shift from a normative approach toward a more applied approach in the formulation of contemporary Islamic financial fatwas

Contribution/limitations - This study bridges the gap between classical *maşlahah* theory and modern financial practices. However, it remains normative in nature and has not yet been empirically tested.

Originality - This study offers an original perspective on understanding the relevance of classical thought as a moral and legal foundation for strengthening the Islamic capital market system.

Keywords *Maṣlaḥah, Asset Protection, Investor Protection, Islamic Capital Market, Contemporary Sharia Financial Fatwas*

Abstrak

Tujuan - Penelitian ini bertujuan untuk menganalisis konstruksi dan penerapan prinsip *maṣlaḥah*, transparansi, dan perlindungan aset dalam fatwa keuangan syariah kontemporer, dengan fokus pada Fatwa DSN-MUI No. 157/DSN-MUI/A/IU/2024 tentang perlindungan aset investor di pasar modal syariah. Studi ini mengevaluasi bagaimana batasan *maṣlaḥah* menurut Syekh Said Ramadhan al-Bûthî dioperasionalkan dalam kerangka normatif fatwa, serta implikasinya terhadap penguatan prinsip transparansi dan perlindungan investor.

Metode - Penelitian ini merupakan studi kepustakaan dengan pendekatan deskriptif-analitik. Sumber utama berupa teks fatwa DSN-MUI No. 157/DSN-MUI/A/IU/2024 dan karya al-Bûthî yakni “*Dhawâbith al-Maṣlaḥah fi al-Syari’ah al-Islamiyyah*”, yang dianalisis berdasarkan lima batasan *maṣlaḥah* serta prinsip *hiḏḏ al-mal* dalam kerangka *maqāṣid* syariah.

Temuan - Fatwa DSN-MUI No. 157/DSN-MUI/A/IU/2024 tidak hanya merujuk secara normatif pada prinsip *maṣlaḥah* sebagaimana dirumuskan oleh Syekh Said Ramadhan al-Bûṡī, tetapi juga mengoperasionalkannya dalam bentuk mekanisme regulatif yang konkret. Hal ini tercermin dalam pengaturan yang menekankan pemisahan dan perlindungan aset investor, penguatan prinsip transparansi dalam pengelolaan dana, serta pengawasan terhadap potensi penyimpangan. Fatwa ini secara tegas menutup celah praktik yang mengarah pada *riba*, *gharar*, manipulasi pasar, dan bentuk ketidakadilan lainnya terhadap investor. Prinsip *hiḏḏ al-māl* (perlindungan harta) tidak hanya sebagai tujuan normatif, tetapi berfungsi sebagai dasar etis dan yuridis dalam membangun sistem perlindungan aset yang akuntabel dan berkelanjutan. Temuan ini mengindikasikan adanya pergeseran dari pendekatan normatif menuju pendekatan yang lebih aplikatif dalam formulasi fatwa keuangan syariah kontemporer.

Kontribusi dan Keaslian - Penelitian ini berkontribusi dalam mempertemukan teori *maṣlaḥah* klasik dengan praktik keuangan modern. Meskipun masih bersifat normatif dan belum diuji secara empiris.

Keaslian - Penelitian ini menawarkan orisinalitas dalam memahami relevansi pemikiran klasik sebagai landasan moral dan hukum bagi penguatan sistem pasar modal syariah.

Kata kunci: *Maṣlaḥah, Perlindungan Aset, Perlindungan Investor, Pasar Modal Syariah, Fatwa Keuangan Syariah Kontemporer*

INTRODUCTION

Over the past two decades, the Islamic capital market has grown rapidly and has become an important part of the global financial architecture, particularly in Muslim-majority countries such as Malaysia, Saudi Arabia, the United Arab Emirates, and Indonesia (Ahmed, 2006). The growth of global sukuk, the increase in Islamic stock market capitalization, and the rising number of Muslim investors indicate that the Sharia-based financial system is no longer marginal but has become mainstream within the

international financial industry. This development highlights the need for an investment system that not only promises financial returns but also upholds ethical values, justice, and sustainability in accordance with the principles of *maqāṣid al-sharī’ah*.

In Indonesia, as one of the countries with the largest Muslim populations in the world, the Islamic capital market has shown a consistent growth trend, both in terms of the number of investors, the market capitalization of Islamic stocks, and sukuk issuance. The increase in participation by Sharia retail investors in

recent years reflects the public's growing awareness of investments that adhere to Islamic principles (Sholikah et al., 2024). In response to these developments, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has issued various fatwas as normative and legal guidelines to ensure that all capital market activities remain within the Sharia framework. One of the key principles is *hifz al-māl*, or the protection of assets, which aims to safeguard investors' assets and prevent them from engaging in practices prohibited in Islam, such as *ribā*, *gharar* (uncertainty), and market manipulation (Fad and Imron, 2022; Khalidin et al., 2023).

Although the DSN-MUI fatwa has provided fairly clear guidelines for Sharia-compliant investments, its implementation in the real world does not always proceed smoothly. Various challenges must be faced, ranging from the complexity of investment instruments and market volatility to legal loopholes that may be exploited by certain parties (Judijanto et al., 2025; Syahputra and Armayani, 2020). In Islamic law, the concept of *maṣlahah* (public interest) is often used as the basis for establishing Sharia policies (Dahlan et al., 2023; Musfiroh et al., 2024). However, as explained by Sheikh Said Ramadhan al-Bûthî, *maṣlahah* cannot be applied indiscriminately (Dahlan et al., 2023). Limitations must be observed to ensure that they do not conflict with the fundamental principles of Islam, such as the Qur'an, Sunnah, *Qiyās*, and higher

maṣlahah (Syaripuddin, 2020; Zuhri, 2019).

Thus, it is necessary to further understand how these limitations on *maṣlahah* are integrated into the DSN-MUI fatwas, particularly in the context of protecting investor assets in the Islamic capital market. If these *maṣlahah* boundaries are not properly observed, there is a risk that the issued fatwas may actually create loopholes for practices inconsistent with *maqāṣid al-sharī'ah* or even harm investors in the long term (Fatah et al., 2022; A. Ibrahim and Salam, 2021; Mujahidin, 2022). Therefore, it is important to examine how the limits of *maṣlahah* have been implemented in the DSN-MUI fatwas and to what extent they are effective in maintaining a balance between business profits and adherence to Sharia principles. This study draws on the ideas of Sheikh Said Ramadhan al-Bûthî regarding the importance of the *maṣlahah* principle to ensure that the application of Islamic law remains in harmony with the *maqāṣid al-sharī'ah* (Buṭī, 1967). The focus is on how these limitations are integrated into the DSN-MUI Fatwa No. 157/DSN-MUI/A/IU/2024, particularly in efforts to protect investor assets through the principle of *hifz al-māl*. This fatwa emphasizes that investments must be free from *ribā*, *gharar*, and manipulative practices to create a fair and secure system for all parties (National Sharia Council (DSN), 2024).

Previous research on the Islamic capital market indicates an integrative

trend between regulation and *maqāṣid al-sharī'ah*. (Ulum and Khoirul, 2023; Zuardi et al., 2025) highlight weaknesses in screening standards regarding investor protection; however, their analysis remains at the regulatory-technical level without methodological testing of the concept of *maṣlahah* (Lauri and Rifai, 2025; Lutfiyah et al., 2022), emphasizing the importance of implementing the DSN-MUI fatwas and institutional synergy with the OJK, but have not evaluated the substance of the fatwas normatively (Rifai et al., 2022), present a critique of DSN-MUI fatwas from the perspective of social impact and the use of *murakkab* contracts, although their discussion is general in nature and not specific to a single fatwa. (Batubara, n.d.; Ningsih et al., 2025; Nursandi and Ardiansyah, 2025; Solihin and Akbar, 2025). Although it reinforces the argument that the Islamic capital market and its regulations align with the *maqāṣid al-sharī'ah*, the approach used tends to be affirmative and has not yet tested whether this regulatory framework strictly meets the criteria of *maṣlahah mu'tābarah*. Thus, there is a significant academic gap: no study has specifically examined DSN-MUI Fatwa No. 157/2024 through the parameters of *maṣlahah* limitations according to Sheikh Said Ramadhan al-Bûthî. Most previous studies position *maqāṣid* as normative legitimization, not as a critical testing tool.

This study aims to examine in greater depth how the limits of *maṣlahah* are

integrated into DSN-MUI Fatwa No. 157/DSN-MUI/A/IU/2024 regarding the protection of investor assets in the Islamic capital market. The main questions to be addressed are: how is the concept of the limits of *maṣlahah* according to Sheikh Said Ramadhan al-Bûthî applied in this fatwa, and to what extent does its application effectively realize the principle of *hifẓ al-māl* as a tangible form of protection for investors? This question is relevant because in the practice of Islamic investment, asset protection concerns not only individual security but also touches on aspects of public trust, system stability, and moral responsibility in Islamic economic governance. Theoretically, this study is grounded in Sheikh Said Ramadhan al-Bûthî's thought regarding the limits of *maṣlahah*. (Hidayati et al., 2023; Judijanto et al., 2025; Lestari Andia Kusuma; Masuwd, Mowafg Abraham, 2025; Sari, 2024). This framework is then linked to the concept of *maqāṣid al-sharī'ah*, particularly *hifẓ al-māl*, as the primary objective of asset protection within the Islamic economic system. In this study, the framework is not only presented conceptually but is also used as an analytical tool to examine the substance of the fatwa, evaluate its legal arguments, and determine whether the regulated asset protection mechanisms truly reflect proportional public interest and do not deviate from the fundamental principles of Sharia.

METHOD

This study is a normative legal study employing the *uṣūl al-fiqh* (normative-*uṣūliyyah*) approach. This method was chosen based on the nature of the study, which focuses on textual and conceptual analysis, particularly DSN-MUI Fatwa No. 157/DSN-MUI/A/IU/2024 and the concept of the limits of *maṣlaḥah* as formulated by Sheikh Said Ramadhan al-Bûthî. Subsequently, the analytical approach is employed to examine and assess the extent to which the substance of the fatwa aligns with the boundaries of *maṣlaḥah* as defined by al-Bûthî. Subsequently, the analytical approach is employed to examine and assess the extent to which the substance of the fatwa aligns with the boundaries of *maṣlaḥah* as defined by al-Bûthî. The data sources in this study consist of primary and secondary data. Primary data consists of the official text of DSN-MUI Fatwa No. 157/DSN-MUI/A/IU/2024 as well as the major works of Sheikh Said Ramadhan al-Bûthî discussing the limits of *maṣlaḥah*, *Dhawâbith al-Maṣlaḥah fi al-Syari'ah al-Islamiyyah*. Meanwhile, secondary data includes books, scientific journals, and previous research discussing the *maqāṣid al-sharī'ah*, *hiḏ al-māl*, *uṣūl al-fiqh*, and regulations of the Islamic capital market.

Data collection was conducted through documentary research, which involved the tracing, critical reading, and cataloging of relevant literature. This process was conducted selectively, considering the relevance of the topic

and the credibility of the sources. The data analysis was carried out in stages. First, the researcher selected and mapped the sections of the fatwa directly related to the protection of investor assets. Second, these provisions were classified based on the aspects of asset protection, risk prevention, and oversight mechanisms. Third, a normative analysis was conducted by comparing the substance of the fatwas with the criteria for the limits of *maṣlaḥah* according to al-Bûthî, such as not contradicting the Qur'an, Sunnah, or *Qiyās*, and not disregarding a higher public interest. To ensure the validity of the analysis, this study employed source triangulation, specifically by comparing fatwa texts with al-Bûthî's primary works as well as relevant literature on *uṣūl al-fiqh* and *maqāṣid al-sharī'ah*. This step was taken to ensure that the interpretation was not one-sided but remained within a consistent methodological framework. The analysis process was also conducted iteratively and reflectively to ensure consistency between the textual data and the theoretical parameters used.

RESULTS AND DISCUSSION

A Normative Reconstruction of Investor Asset Protection in the Fatwa of the MUI National Sharia Council

DSN-MUI Fatwa No. 157/DSN-MUI/A/IU/2024 was issued in the context of the increasingly complex and dynamic development of Islamic capital markets. The growth of Islamic

investment instruments, increase in the number of retail investors, and diversification of financial products have led to increased potential risks, including operational risks, moral hazard risks, and misuse of investor funds. This fatwa not only reaffirms the prohibition against the practices of *ribā*, *gharar*, and market manipulation, but also seeks to establish a more systemic protection framework.

Whereas investor protection was previously understood primarily from a technical regulatory perspective, this fatwa positions such protection as part of the realization of *maqāṣid al-sharī'ah*, particularly *hifẓ al-māl* (preservation of wealth) (Rahmi et al., 2024). Therefore, asset protection functions not only as a risk-mitigation mechanism but also as a manifestation of moral responsibility in

Sharia investment governance. In this context, the fatwa serves as a normative instrument that bridges the dynamics of modern markets and Sharia principles.

The Substantive Structure of Fatwas: From Normative Prohibitions to Systemic Design

Structurally, Fatwa No. 157/DSN-MUI/A/IU/2024 demonstrates a regulatory framework that is not merely declarative but also operational. The substance of the fatwa can be mapped into three main pillars of protection, namely: the segregation and safeguarding of investor funds, the reinforcement of transparency principles, and oversight of investment management.

Table 1. Main Pillars of Protection in the Fatwa

No	Main Axis	Regulatory Framework in the Fatwa	Emphasized Protection Measures
1.	Segregation and Safeguarding of Investor Funds	The fatwa emphasizes the importance of segregating investor funds from the manager’s funds and prohibits the commingling of assets	Provides structural safeguards to prevent the misuse of investor funds and ensure clarity regarding ownership
2.	Transparency in Investment Management	Emphasizes the obligation to disclose information regarding contracts, risks, and mechanisms for managing and distributing returns	Reducing the potential for <i>gharar</i> and ambiguity that could harm investors
3.	Oversight and Prevention of Deviations	Strengthening oversight functions to ensure compliance with Sharia principles	Preventing usury, manipulation, and moral hazard while maintaining public trust

Source: compiled by the author

Based on Table 1, it shows that. First, the fatwa emphasizes the importance of

separating investor funds from manager funds. This provision aims to prevent the commingling of assets, which could potentially lead to conflicts of interest or the misuse of funds. Normatively, this separation of funds constitutes a concrete implementation of the principle of clarity of ownership (*tamyīz al-amwāl*) in *fiqh al-mu'āmalah*. From a *maqāṣid* perspective, this measure strengthens the structural protection of investors' assets. Second, the fatwa underscores the obligation of transparency in investment management. Transparency here does not merely mean openness of information, but also clarity regarding the contract, management mechanisms, and the distribution of profits and risks.

This provision is directly related to the prevention of *gharar* (uncertainty), which is prohibited in Islam. By clarifying the rights and obligations of the parties, the fatwa seeks to close loopholes of uncertainty that could harm investors. Third, oversight is a crucial component of the fatwa's structure. Oversight is intended to ensure that investment mechanisms operate in accordance with Sharia principles and do not deviate from established regulations. This oversight is not merely preventive but also corrective. In this context, asset protection is not understood as passive protection, but rather as an active system that safeguards market stability and integrity. This means that the fatwa does not stop at stating "no usury" or "no gharar," but formulates concrete

mechanisms to ensure that these prohibitions are truly realized in practice.

The Orientation of *Hifz al-Māl* in the Architecture of Fatwa Regulation

One of the key aspects evident in this fatwa is how the principle of *hifz al-māl* is positioned not merely as an abstract goal, but also as an operational foundation in designing asset protection mechanisms. *Hifz al-māl* in the *maqāṣid al-sharī'ah* tradition implies safeguarding wealth from damage, loss, injustice, and exploitation (Lestari Andia Kusuma; Masuwd, Mowafg Abraham, 2025). In the capital market context, this meaning is expanded to include the protection of system stability and public trust. Fatwa No. 157/DSN-MUI/A/IU/2024 demonstrates that asset protection targets not only investors' individual interests but also the collective interests of the market. When investor funds are clearly segregated, information is managed transparently, oversight mechanisms are strengthened, and private assets and the credibility of the entire Sharia financial system are protected. This structure indicates that the fatwa does not merely reaffirm norms but seeks to establish investment governance aligned with the *maqāṣid al-sharia*. Within this framework, asset protection serves as the intersection of ethics, law, and institutional design in the Islamic capital market.

The Limits of *Maṣlaḥah* According to Sheikh Said Ramadhan al-Bûthî

The concept of *maṣlaḥah* in Islamic law is often understood as a flexible instrument to address changing times. However, this flexibility is not without limits. Sheikh Said Ramadhan al-Bûthî, through his work *Dhawâbith al-Maṣlaḥah fi al-Syari'ah al-Islamiyyah*, emphasized that *maṣlaḥah* must be strictly controlled

so that it does not become a free-for-all in the name of the “public interest” (Bûṭî, 1967). For al-Bûthî, *maṣlaḥah* is not a standalone and autonomous source of law, but rather a principle that must be fully subject to the framework of *uṣūl al-fiqh*. He formulated five limitations (*dawābiṭ*) to ensure that *maṣlaḥah* remains within the orbit of sharia (Ngabas et al., 2025). As follows:

Table 2. Limits of *Maṣlaḥah* (Public Interest) in Preserving the Integrity of Islamic Law

No	Limitations (<i>dawābiṭ</i>)	Methodological Functions	Implications in <i>Ijtihād</i>
1.	Not in conflict with the Qur'an	Ensuring the supremacy of <i>naṣṣ qaṭ'ī</i>	<i>Maṣlaḥah</i> (public interest) must not override explicit texts
2.	Not in conflict with the Sunnah	Maintaining consistency with the Prophet's practices	Claims of public interest must align with the prophetic spirit
3.	Does not contradict <i>Qiyās</i>	Maintains the consistency of legal logic	<i>Maṣlaḥah</i> must not override the principles of <i>uṣūl al-fiqh</i>
4.	Not disregarding a higher <i>maṣlaḥah</i>	Affirming the hierarchy of values	Partial interests must not sacrifice <i>ḍarūriyyāt</i>
5.	In harmony with the <i>maqāṣid al-sharī'ah</i>	Directed toward the objectives of Shari'ah	<i>Maṣlaḥah</i> must truly realize <i>hiḍz al-dīn</i> , <i>hiḍz al-naḥs</i> , <i>hiḍz al-'aql</i> , <i>hiḍz al-nasl</i> , and <i>hiḍz al-māl</i> .

Source: compiled by the author

As shown in Table 2, the limitations outlined here are not merely technical but hold significant methodological importance in preserving the integrity of Islamic law. The following provides an explanation of these limitations.

Not Contrary to the Qur'an

The first limitation emphasized by al-Bûthî is that *maṣlaḥah* must not contradict the *qaṭ'ī* texts of the Qur'an. Methodologically, this means that *maṣlaḥah* cannot be used as a justification for disregarding or reinterpreting clear and explicit text. The methodological

implication of this is the supremacy of the revelation over human rationality. No matter how beneficial it may seem, *Maṣlaḥah* cannot override the provisions explicitly established in the Qur'an. Thus, law is not determined by the perception of benefit alone, but by conformity with the primary source of sharia. Al-Bûthî rejects overly progressive approaches that use public *maṣlaḥah* as a pretext to reinterpret clear prohibitions, such as usury. In the context of modern economics, for example, he rejected the argument that an interest-based system could be

permitted because it is deemed to bring economic stability. For al-Bûthî, economic stability cannot override the clarity of textual prohibition.

Not Contrary to the Sunnah

The second criterion is conformity with the Prophet's Sunnah. Methodologically, this indicates that the Prophet's practices and explanations serve as the operational reference for interpreting *maṣlaḥah*. Al-Bûthî observes that many modern practices are cloaked in arguments of public interest but actually contradict the spirit and practices of the Prophet. Therefore, the Sunnah serves as a verification tool for claims of *maṣlaḥah*. Al-Bûthî's critique here is quite sharp: he rejects the use of *maṣlaḥah* to justify legal innovations that lack precedent or the spirit of the Sunnah. In his view, Islamic law is not a utilitarian system determined solely by the end result but a normative system rooted in the prophetic example. When compared to asy-Syatibi, the differences begin to emerge. Asy-Syatibi emphasizes *maqāṣid* as the spirit of sharia and allows for a more contextual interpretation of the Sunnah within the framework of sharia's general objectives. Al-Bûthî, conversely, is more cautious and tends to limit the expansion of meaning if it lacks a strong foundation in the Prophet's practice (Aiman et al., 2024).

Not Contrary to Qiyas

The third criterion is that it must not contradict valid *qiyas*. Methodologically,

this means that *maṣlaḥah* must align with established patterns of legal analogy in *uṣūl al-fiqh* (Nuhung, 2024). For al-Bûthî, *qiyas* functions as a rational bridge that remains anchored to the *nash*. Therefore, if a claim of *maṣlaḥah* contradicts the result of a valid *Qiyās*, then that claim must be rejected. *Maṣlaḥah* must not bypass the methodological framework established by the scholars. This is al-Bûthî's caution. He seeks to prevent the emergence of "unrestrained *ijtihād*" that uses *maṣlaḥah* as a justification to bypass the procedures of *uṣūl al-fiqh*. In his view, the flexibility of Islamic law must remain within a strict methodological discipline (A. Ibrahim and Salam, 2021; Musfiroh et al., 2024; Nasution et al., 2025; Pardiannyah, 2022). This approach differs from that of some contemporary *maqāṣid* thinkers who tend to make *maqāṣid* the primary framework and treat *qiyās* as a secondary instrument. Al-Bûthî, on the other hand, firmly upholds the classical structure of *uṣūl al-fiqh*.

Not Neglecting Higher *Maṣlaḥah*

The fourth boundary concerns the hierarchy of *maṣlaḥah*. Not all *maṣlaḥah* share the same degree of importance. *Maṣlaḥah* of a *darūriyyāt* (primary) nature must take precedence over those of a *ḥājjiyyāt* (secondary) or *taḥsīniyyāt* (supplementary) nature. The methodological implication is the existence of a hierarchy of values in Islamic law. A policy may bring short-term economic benefits; however, if it sacrifices more fundamental principles,

such as justice or social stability, it cannot be justified (Syaripuddin, 2020; Tahir, 2020). Al-Bûthî cautions that partial *maṣlahah* is often claimed to be in the public interest, when in fact it undermines the greater public good (Aiman et al., 2024; Dahlan et al., 2023; Sakban et al., 2022). This critique is relevant in the context of modern economics, where growth is often used to legitimize policies that risk undermining distributive justice. In this regard, al-Bûthî is relatively in line with asy-Syatibi, who also emphasizes the hierarchy of *maqāṣid*. However, al-Bûthî is more cautious in determining whether a policy truly falls under the category of *ḍarūriyyāt* or is merely a rhetorical claim.

Not Contrary to the *Maqāṣid al-Sharī'ah*

The final criterion asserts that *maṣlahah* must align with the primary objectives of Sharia: safeguarding religion, life, intellect, lineage, and property. Here, it is evident that al-Bûthî does not reject the *maqāṣid* but places them within a controlled framework. The methodological implication is that the *maqāṣid* function as evaluative parameters, not as freestanding sources of law. Public interest must genuinely support the realization of the *maqāṣid*, not merely invoke them as a pretext (Albani et al., 2022; Lestari Andia Kusuma; Masuwd, Mowafg Abraham, 2025). From these five limitations, it is evident that al-Bûthî adopts a more restrictive stance than al-Ghazali and

asy-Syatibi. While al-Ghazali allows for *maṣlahah* mursalah within certain limits, and asy-Syatibi systematically expands the *maqāṣid* approach, al-Bûthî, on the other hand, seeks to “lock down” *maṣlahah* so that it does not stray from the control of the nash and classical *uṣūl al-fiqh* methodology (Tahir, 2020; Zuardi et al., 2025). This position can be understood as a response to modern tendencies that are too lenient in using *maṣlahah* to justify policies.

Analysis of the Integration of the Limits of *Maṣlahah* in the Fatwa on Investor Asset Protection in the Sharia Capital Market

This section seeks to analyze DSN-MUI Fatwa No. 157/DSN-MUI/A/IU/2024 through the five limits of *maṣlahah* formulated by Sheikh Said Ramadhan al-Bûthî. The objective is not merely to demonstrate that the fatwa is “sharia-compliant,” but to assess how its normative arguments are constructed, to what extent it aligns with the *uṣūl al-fiqh* framework, and whether its approach is restrictive, moderate, or progressive in addressing the realities of the modern capital market.

Conformity of the Fatwa with the Qur'an and Sunnah

One of the main foundations of Fatwa No. 157/2024 is the assertion that all mechanisms for protecting investor assets must be free from *ribā*, *gharar*, and manipulative practices. The prohibition of *ribā* explicitly refers to QS. Al-Baqarah: 275, which affirms that Allah

permits trade and prohibits *ribā* (Pardiansyah, 2022). In the capital market, there is a potential for practices that substantively resemble usury, such as schemes promising fixed returns without considering real risks. Referring to Quranic verse Al-Baqarah: 275, the fatwa affirms that investor protection must not be pursued through means that violate fundamental Sharia principles. This means that investment security must not be built upon the certainty of usurious returns. Similarly, the prevention of *gharar* refers to the hadith prohibiting *bai' al-gharar* (transactions involving uncertainty), which may manifest as a lack of transparency in information, manipulation of reports, or ambiguity in contracts and risk allocation (Bakti et al., 2022; Khalidin et al., 2023; Nursobah et al., 2025; Pardiansyah, 2022; Suhendar et al., 2023). Therefore, the principle of transparency in fatwas is not merely intended as a practice of good governance but as a direct implementation of the prohibition against *gharar* in the Sunnah. Here, it is evident that textual evidence from the Qur'an and Sunnah is used as a methodological parameter, not merely for formal legitimization.

Fatwas do not merely cite textual evidence but make it the foundation of regulatory design. For example, the principle "*al-ghunmubi al-ghurm*" (profit is commensurate with risk) is highly relevant to investor protection (D. Ibrahim, 2019). This principle affirms

that one is not entitled to profit without bearing risk. In the context of capital markets, this principle prevents unilateral exploitation and ensures a balance between the rights and obligations of the parties. Investor protection, therefore, does not mean eliminating risk, but ensuring that risk is distributed fairly. From al-Bûthî's perspective, this fatwa clearly does not contradict the Qur'an and Sunnah. In fact, it demonstrates a systematic effort to operationalize the texts within a modern economic context. This means that the validity of the public interest established by the fatwa is determined not only by the existence of textual evidence but also by the consistency of its application in practice. This means that the validity of the public interest established by the fatwa is determined not only by the existence of textual evidence but also by the consistency of its application in practice. From al-Bûthî's perspective, this is where the limits of prudence are tested: whether regulatory innovations remain within the boundaries of the text or implicitly expand them.

Compatibility with *Qiyās* and Principles of *Uṣūl al-Fiqh*

From the perspective of *qiyās*, this fatwa draws an analogy between modern capital market practices and classical contracts in *fiqh al-mu'āmalah*, such as *Muḍārabah*, *Musyārahah*, and *Wakālah*. Investment in the Islamic capital market is understood as a form of

participation in real-world businesses based on profit-sharing, not interest-bearing lending. In some aspects, the fatwa appears to expand the meaning. For example, the concepts of fund segregation and oversight mechanisms are not explicitly found in the same form in classical literature but were developed in response to systemic needs. Here, contextual *ijtihad* is evident, remaining rooted in the principles of *uṣūl al-fiqh* (Fad and Imron, 2022; Musfiroh et al., 2024; Rahayu et al., 2024; Suhendar et al., 2023; Yusuf et al., 2024).

From al-Bûthî's perspective, such expansion is valid as long as it does not contradict valid *qiyās* and does not deviate from the *nash*. Some contemporary *maqāṣid* thinkers might argue that greater flexibility is needed for the Islamic capital market to compete globally. However, an overly lenient approach risks opening the door to deviations. This is where the methodological tension arises between the need for innovation and the discipline of *uṣūl al-fiqh*. Fatwa No. 157 appears to take a moderate position: it does not close the door to innovation but ensures that such innovation does not stray from the framework of *qiyās* and the fundamental principles of Sharia. Within the context of al-Bûthî's limitations, this position tends to align with a cautious, restrictive approach. Methodologically, the question is whether the analogy with classical contracts truly preserves the legal *'illat* in its entirety or merely adopts its formal

structure. If the *'illat* of risk distribution and contractual justice remains intact, then such *qiyās* is valid. However, if systemic innovation exceeds the substance of classical contracts, there is potential tension with al-Bûthî's restrictive limits.

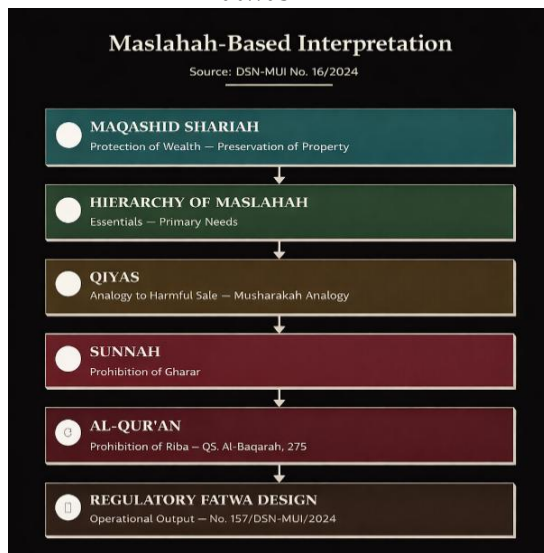
***Hifẓ al-Māl* as an Operational Orientation**

The principle of *hifẓ al-māl* in this fatwa appears to be translated into a concrete system design. First, the segregation of investor funds constitutes a form of structural protection. This prevents the commingling of assets that could potentially harm investors. This is not merely a moral recommendation but an institutional mechanism with legal implications. Second, transparency serves as informational protection. Investors are granted the right to clear information regarding the contract, risks, and fund management. Thus, the protection of assets is achieved not only through physical or administrative safeguards but also through informational clarity. Third, supervision acts as systemic protection. Supervision ensures that investment mechanisms operate in accordance with Sharia principles and do not deviate from established regulations (Ad-Dimyati, 2000; Zuhri, 2019).

In this context, *hifẓ al-māl* does not stop at the individual level but extends to the financial system level. From this analysis, it can be concluded that the fatwa does not merely promote moral

values but establishes a concrete technical-operational framework. Therefore, *hiḏ al-māl* in this fatwa does not remain at the normative level but transforms into a structural design. However, its effectiveness remains contingent on institutional governance and oversight. Within al-Būthī's framework, *maṣlaḥah* is valid only if its realization is tangible and not merely conceptual. Thus, the distinction between normative validity and empirical effectiveness is crucial.

Figure 1. Integration of *Maṣlaḥah* Boundaries in Fatwas



Source: compiled by the author

Based on Figure 1, the integration of *maṣlaḥah* limitations in Fatwa No. 157/2024, categorized as moderate-restrictive, indicates that the fatwa institution does not treat *maṣlaḥah* as an independent legal basis capable of freely legitimizing financial innovations, but rather as a legal consideration that remains within the framework of *nash*

and *qiyās*. This pattern indicates an effort to maintain the continuity of classical fiqh methodology while responding to modern economic needs, so that *maṣlaḥah* functions more as an instrument of legal policy reasoning than as an autonomous source of law. In the theory of the limitations of *maṣlaḥah* developed by al-Būthī, it is emphasized that *maṣlaḥah* must be subject to the hierarchy of evidence and cannot be used if it contradicts the *nash*. Modern fatwa institutions tend to adopt a *maqāṣid* approach institutionally to bridge modern regulatory needs with classical fiqh authority, thereby producing a hybrid model of *ijtihād* that remains methodologically controlled (Biand et al., 2024). Thus, the moderate-restrictive character of Fatwa No. 157/2024 reflects a typology of institutional *ijtihād* that seeks to balance doctrinal stability with the demands of modern economic innovation (Dahlan et al., 2023).

The Dialectic of Normativity and Flexibility: Re-examining the Boundaries of *Maṣlaḥah* in Sharia Capital Market Regulation

Normatively, Fatwa No. 157/2024 demonstrates strong consistency with the principles of the Qur'an, Sunnah, *Qiyās*, and *maqāṣid al-sharī'ah*. It successfully establishes a systematic asset protection framework through segregation of funds, transparency, and oversight. As a religious legal instrument, the fatwa possesses high

moral legitimacy; however, its implementation heavily depends on institutional structures and the compliance of market participants. This is where a potential gap between norms and reality arises. Asset protection may be very strong in theory, but in practice, it remains vulnerable to moral hazard, information asymmetry, or technical regulatory loopholes. Without testing the effectiveness of implementation, the fatwa risks becoming an ideal framework, whose impact on actual investor protection remains unquantified. Previous studies have tended to evaluate Islamic capital market regulations positively, emphasizing the formal alignment between fatwas and the principles of *maqāṣid*. However, these studies have not explicitly examined the methodological tension between textual adherence and the need for regulatory innovation. In this regard, the findings of this study differ by situating fatwas within a dialectical framework between normativity and flexibility.

From an economic law perspective, regulations that rely too heavily on normativity may also face challenges in adapting to rapidly changing market dynamics (Nigeria, 2023). Modern capital markets operate with highly dynamic instrumental innovations. If the Sharia regulation lacks responsive evaluation and update mechanisms, it risks falling structurally behind. Therefore, the emerging academic debate centers not on the normative

validity of fatwas but on the effectiveness and sustainability of their implementation within the complex capital market ecosystem. As previously outlined, al-Bûthî adopts a relatively restrictive stance regarding the application of *maṣlaḥah*. He rejected treating *maṣlaḥah* as a free justification that could override the texts and methodologies of classical *uṣūl al-fiqh*. This approach has the advantage of preserving the normative integrity of Sharia. This prevents legal relativism and limits overly utilitarian interpretations.

In the context of the Sharia capital market, this approach ensures that investor protection is not achieved at the expense of fundamental principles, such as the prohibition of *riba* or *gharar*. However, compared with the more flexible contemporary *maqāṣid* approach, al-Bûthî's position can be viewed as more rigid. Modern *maqāṣid* thinkers tend to view the objectives of Sharia as a dynamic framework that allows for the adaptation of law to ever-evolving socioeconomic realities. In this approach, *maṣlaḥah* can serve as a creative instrument to respond to financial innovations, provided that the objectives of justice and balance are maintained. Thus, the emerging dialectic is not between right and wrong, but between normative stability and regulatory adaptability. Normativity serves to preserve the integrity of the text and methodology, while flexibility serves to maintain the relevance of the law within

an ever-changing economic context. This tension constitutes the space for contemporary *ijtihad*.

In this context, the tension between flexibility and textual adherence becomes a central issue in the development of Islamic economic law. Fatwa No. 157/2024 appears to adopt a position relatively close to al-Bûthî's approach: cautious, normative, and firmly rooted in the discipline of *uṣūl al-fiqh*. From this dialectic, it is evident that the primary issue is not whether the fatwa is correct or incorrect, but rather how Islamic law responds to economic modernity. Al-Bûthî's restrictive approach provides a solid normative foundation, while the contemporary *maqāṣid* approach offers adaptive flexibility. The challenge ahead is to find a balance between the two. Thus, this study not only demonstrates that DSN-MUI Fatwa No. 157/2024 aligns with al-Bûthî's *maṣlahah* framework but also opens space for critical reflection on the direction of Islamic economic law development amidst global market dynamics.

Re-examining the boundaries of al-Bûthî's *maṣlahah* within the context of the Islamic capital market entails assessing to what extent this restrictive framework remains productive in the face of financial innovation. This study demonstrates that these boundaries are effective as a normative control mechanism but require evaluative implementation tools to avoid being confined to textual legitimacy alone. In

other words, normative strength must be balanced with empirical testing of the effectiveness of investor protection. Unlike previous studies that tended to assess normative suitability descriptively, this study offers a critical reading of the tension between normativity and flexibility and demonstrates that the development of Islamic economic law requires a sustainable methodological balance.

CONCLUSION

This study concluded that DSN-MUI Fatwa No. 157/DSN-MUI/A/IU/2024 on the protection of investor assets demonstrates methodological consistency with Sheikh Said Ramadhan al-Bûthî's framework for defining *maṣlahah* at both the normative and operational levels. The fatwa not only refers to the prohibitions of *riba* and *gharar* in the Qur'an and Sunnah but is also constructed through *qiyās* (analogy) with classical contracts and is directed toward the *maqāṣid al-sharī'ah*, particularly *ḥifẓ al-māl*. Moreover, the principle of *maṣlahah* in this fatwa does not remain at the conceptual level but is operationalized in the form of concrete regulatory mechanisms, such as the segregation and protection of investor assets, the enhancement of transparency in fund management, and oversight of potential market deviations and manipulation. Thus, *ḥifẓ al-māl* functions not only as a normative objective but also as an ethical and legal foundation for building an accountable and

sustainable asset protection system within the Islamic capital market.

The findings of this study indicate that the fatwa approach tends to be restrictive and cautious in maintaining the normative integrity of Sharia, yet simultaneously reveals a shift from a normative to a more applied approach in the formulation of contemporary Islamic financial fatwas. The dialectic between normativity and flexibility is a central issue in the development of Islamic economic regulation, as fatwas serve not only as legal legitimization instruments but also as regulatory instruments within the modern financial system. Therefore, the analytical framework based on al-Bûṭī's *maṣlaḥah* constraints used in this study can serve as an evaluative model to assess the methodological consistency of fatwas and other Sharia regulations. Further empirical research on the effectiveness of fatwa implementation in capital market practices is needed to comprehensively measure the extent to which investor protection mechanisms formulated in fatwas impact investor protection and the stability of the Islamic financial system.

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