Ahkam: Jurnal Ilmu Syariah
https://journal.uinjkt.ac.id/index.php/ahkam

Towards a Sharia Derivatives Law: Harmonizing Religious Fatwas and Financial Regulation in Indonesia

10.15408/ajis.v26i1.50050

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Abstract

This article examines the legal status of sharia-compliant derivative instruments in Indonesia by analysing the relationship between DSN-MUI Fatwa No. 96/DSN-MUI/IV/2015 and the positive legal framework governing Islamic finance. Although the fatwa permits sharia hedging for genuine risk-management purposes, its legal force remains institutionally incomplete because it has not been fully translated into binding statutory or regulatory instruments. Drawing on normative legal research and a comparative analysis of Malaysia, Pakistan, and the United Arab Emirates, this article develops a Sharia-Institutional Conformity framework. The framework argues that effective harmonisation requires the simultaneous satisfaction of two conditions: substantive sharia compliance and institutional legal certainty. The Indonesian case shows that the first condition has been substantially met through the DSN-MUI fatwa authority. In contrast, the second remains underdeveloped due to fragmented regulatory integration among DSN-MUI, OJK, Bank Indonesia, and legislative institutions. The article contributes to Islamic financial law by reframing the fatwa-law gap not merely as a problem of regulatory absence, but as a structural failure of institutional translation. It recommends a phased harmonisation model consisting of technical implementing regulations, strengthened cross-agency coordination, and ultimately a Sharia Financial Products Law or dedicated Sharia Derivatives Law.

Abstrak

Artikel ini mengkaji status hukum instrumen derivatif syariah di Indonesia dengan menganalisis hubungan antara Fatwa DSN-MUI No. 96/DSN-MUI/IV/2015 dan kerangka hukum positif yang mengatur keuangan syariah. Meskipun fatwa tersebut memperbolehkan lindung nilai syariah untuk kebutuhan manajemen risiko yang nyata, kekuatan hukumnya masih belum lengkap secara institusional karena belum sepenuhnya diterjemahkan ke dalam instrumen peraturan yang mengikat. Dengan menggunakan penelitian hukum normatif dan analisis perbandingan terhadap Malaysia, Pakistan, dan Uni Emirat Arab, artikel ini mengembangkan kerangka Sharia-Institutional Conformity. Kerangka ini berargumen bahwa harmonisasi yang efektif mensyaratkan pemenuhan dua kondisi secara simultan: kepatuhan substantif terhadap syariah dan kepastian hukum institusional. Kasus Indonesia menunjukkan bahwa kondisi pertama telah relatif terpenuhi melalui otoritas fatwa DSN-MUI, sedangkan kondisi kedua masih belum memadai karena integrasi regulasi antara DSN-MUI, OJK, Bank Indonesia, dan lembaga legislatif masih terfragmentasi. Artikel ini berkontribusi pada hukum keuangan Islam dengan membingkai kesenjangan antara fatwa dan hukum bukan sekadar sebagai ketiadaan regulasi, melainkan sebagai kegagalan struktural dalam penerjemahan institusional. Artikel ini merekomendasikan model harmonisasi bertahap melalui peraturan teknis, koordinasi lintas lembaga, dan pembentukan Undang-Undang Produk Keuangan Syariah atau Undang-Undang Derivatif Syariah.

Keywords:
Sharia derivatives; Fatwa positivisation; DSN-MUI; Islamic financial law; Legal harmonization; Hedging instruments

How to Cite:
Yusuf, C., et al. (2026). Towards a Sharia Derivatives Law: Harmonizing Religious Fatwas and Financial Regulation in Indonesia. AHKAM: Jurnal Ilmu Syariah, 26(1). https://doi.org/10.15408/ajis.v26i1.50050

Introduction

Derivative instruments are central to modern financial risk management. In conventional banking, derivatives allow financial institutions and corporate clients to manage exposures to currency, commodity, and interest-rate fluctuations. Islamic financial institutions face the same commercial risks, yet they must structure any risk-management instrument within the limits of sharia principles, particularly the prohibition of riba, maysir, and excessive gharar (El-Gamal, 2006; Hanif, 2011). This makes sharia-compliant derivatives legally and conceptually difficult: they are needed for prudential risk management, but their contractual design must avoid transforming hedging into speculative gain (Abdullah & Dusuki, 2006; Faisal, 2016).

In Indonesia, DSN-MUI Fatwa No. 96/DSN-MUI/IV/2015 provides the principal normative basis for sharia hedging. The fatwa permits certain derivative-like arrangements for genuine hedging purposes, especially where the transaction is supported by real economic need and avoids speculative elements (Faisal, 2016; Fikri & Rahma, 2024; Widjaja, 2024). However, the fatwa alone does not settle the legal problem. In Indonesia's positive legal system, fatwas may guide Islamic financial practice, but they do not automatically acquire the same binding force as statutes, government regulations, OJK regulations, or Bank Indonesia regulations (Afrelian & Furqon, 2019; Kasdi, 2018; Wahid, 2016). The central problem, therefore, is not merely whether sharia derivatives are religiously permissible, but whether and how that permissibility can be translated into enforceable legal certainty.

Existing scholars have made important contributions to this debate. Wahid (2016) examines the transformation of DSN-MUI fatwas into regulatory instruments. Baidhowi et al. (2023) analyse the positivisation of DSN-MUI fatwas within sharia banking law. Faisal (2016) discusses sharia derivatives and the fatwa on tahawwut. These works demonstrate that fatwas possess significant normative and institutional authority. However, they do not fully explain the specific institutional conditions required for fatwa-based sharia derivative norms to become binding, operational, and dispute-resolvable within Indonesia's financial regulatory architecture. This is the gap addressed by this article.

The unresolved issue is therefore not whether fatwas matter in Indonesian Islamic finance, but how far their normative authority can travel once a financial product requires enforceability, prudential supervision, dispute settlement, and standardised documentation. A fatwa may authorise a transaction from a sharia perspective. However, it does not by itself determine contractual risk allocation, the evidentiary standard for breach, supervisory responses to mis-selling, or the remedies available to customers and counterparties. In the case of sharia derivatives, the problem becomes more acute because the instrument is forward-looking and contingent. The article accordingly treats the fatwa-law relationship as an institutional translation problem: how a norm produced by a recognised religious authority becomes operationally enforceable in practice within modern financial regulation and market supervision.

The article advances the argument that the regulatory problem of sharia derivatives in Indonesia should be understood through the lens of Sharia-Institutional Conformity Theory. Under this framework, a sharia financial instrument is legally effective only when it satisfies two cumulative dimensions: first, substantive conformity with sharia principles; and second, institutional conformity with positive legal certainty. Indonesia has substantially satisfied the first dimension through DSN-MUI Fatwa No. 96/DSN-MUI/IV/2015. However, it has not yet fully satisfied the second dimension, as the fatwa has not been consistently translated into binding statutory or technical regulatory norms.

The research question is therefore formulated as follows: under what legal and institutional conditions can DSN-MUI Fatwa No. 96/DSN-MUI/IV/2015 be harmonised with Indonesia's positive financial regulation so that sharia-compliant derivative instruments

acquire both religious legitimacy and binding legal certainty? The article answers this question through normative legal analysis and comparative institutional inquiry involving Malaysia, Pakistan, and the United Arab Emirates.

The issue begins with legal pluralism and the position of Islamic law within the modern nation-state. In plural legal systems, religious norms may be socially authoritative without necessarily becoming formally enforceable state law (Kasdi, 2018; Wahid, 2016). Indonesia represents this complexity. Islamic legal norms influence banking, capital markets, family law, philanthropy, and commercial transactions; yet their legal force depends on whether the state chooses to incorporate them into legislation, judicial references, or administrative regulation (Afrelian & Furqon, 2019; Radliyah et al., 2018).

This literature helps explain why fatwas cannot be treated simply as informal ethical opinions. In Islamic finance, fatwas often serve a quasi-regulatory function: they define which products may be offered, how contracts should be structured, and which forms of profit, risk, or uncertainty are permissible (Adnan et al., 2024; Hartini et al., 2025; Suhendar et al., 2023). However, pluralism also produces uncertainty. Where fatwas guide market conduct but are not clearly embedded in state law, financial institutions may face a dual compliance burden: religious compliance on one side, and legal enforceability on the other (Islamic Financial Services Board, 2010).

A further implication of legal pluralism is that the validity of a norm may differ across social, religious, and juridical registers. A fatwa can be valid within the epistemic community of Islamic jurisprudence and persuasive within Islamic banking practice, yet remain incomplete as a source of state-enforceable obligation. This layered validity is not a weakness of Islamic law; rather, it is a structural feature of plural legal ordering. The difficulty emerges when market actors require a single operational answer: whether a contract may be booked, audited, litigated, capitalised, and supervised as a legally reliable instrument. The sharia derivatives debate shows that pluralism becomes problematic not because more than one normative order exists, but because no stable bridge converts religious authorisation into regulatory certainty. In this sense, the Indonesian case is not merely a doctrinal dispute over derivatives; it is a test case for how Islamic legal authority is translated into state-centred financial governance.

The second body of literature focuses on the institutional status of DSN-MUI fatwas. Wahid (2016) shows that DSN-MUI fatwas may enter the legal system through transformation into regulations, judicial reasoning, or sectoral administrative rules. Baidhowi et al. (2023) similarly argue that positivisation has played a central role in the development of sharia banking law. Other studies show that DSN-MUI fatwas influence banking regulation, sharia supervision, digital Islamic finance, and the development of Islamic financial products (Hidayati et al., 2023; Judijanto et al., 2025; Maghfur, 2025; Munif et al., 2024). These studies are important because they reject the simplistic view that fatwas are purely non-legal. In practice, fatwas often become the normative source for state regulation.

However, much of the literature analyses fatwa transformation at a general level, particularly regarding Islamic banking products already familiar to regulators and courts (Luthfiyah et al., 2022; Zikra et al., 2024). Sharia derivatives pose a more difficult case. Their complexity lies not only in their sharia permissibility but also in their risk-management function, valuation, enforceability, disclosure, supervision, and dispute settlement (Faisal, 2016; Widjaja, 2024). A fatwa may permit hedging, but without technical rules on product design, documentation, accounting treatment, prudential limits, and dispute resolution, the instrument remains institutionally fragile.

The derivative context exposes the limits of these general accounts. Many studies on DSN-MUI fatwas focus on products that already possess a relatively familiar contractual form, such as murabahah financing, musyarakah participation, or mudharabah profit-sharing. Those instruments can often be understood through established civil-law categories, banking

documentation, and judicial practice. Sharia derivatives are different. Their legal effect is not exhausted by the naming of a contract or the avoidance of prohibited elements. They require a regulatory answer to timing, settlement, documentation, valuation, close-out, counterparty risk, and the relationship between hedging purpose and speculative misuse. For that reason, the question is no longer simply whether DSN-MUI fatwas can be transformed into regulation in general, but whether a fatwa governing a complex risk-management instrument can be translated into enforceable legal infrastructure without losing its sharia rationale.

Sharia derivatives and hedging instruments sharpen the same legal problem. Earlier studies have shown that Islamic finance may accommodate risk-management tools where the transaction is based on real economic need and does not function as speculation (Faisal, 2016; Fikri & Rahma, 2024; Widjaja, 2024). *Wa'ad*-based structures are commonly used because they allow parties to create a promise-based mechanism without replicating conventional derivative speculation. This contractual technique is useful, but it does not eliminate all legal risk. The enforceability of wa'ad, the characterisation of the underlying transaction, and the distinction between hedging and speculative trading remain legally sensitive (Abdullah & Dusuki, 2006; El-Gamal, 2006).

Faisal's work on Islamic derivatives in Indonesia is particularly relevant because it addresses the fatwa on tahawwut (Faisal, 2016). However, the present article extends that inquiry by shifting the analytical focus from doctrinal permissibility to institutional enforceability. It asks not only whether Sharia derivatives may be allowed under Islamic law, but also how the state should translate that allowance into binding legal instruments. This distinction is crucial. A product may be sharia-compliant yet still legally uncertain if the positive legal framework does not recognise its structure, documentation, and dispute-resolution consequences (Radliyah et al., 2018; Samsudin et al, 2023). This approach also resonates with literature on pragmatic fiqh formalisation and the use of necessity-based legal maxims in contemporary DSN-MUI reasoning (Iswanaji & Wahyudi, 2017; Mustofa, 2019).

The wa'ad-based structure also deserves more careful legal treatment than is usually provided in descriptive accounts. In sharia hedging, wa'ad is attractive because it avoids immediate bilateral exchange of uncertain future obligations while allowing parties to manage genuine exposure. However, the legal character of wa'ad remains sensitive. If the promise is treated as merely moral, the hedge may become commercially unreliable. If it is treated as fully binding in the same manner as a conventional derivative obligation, the structure may collapse into the very bilateral uncertainty that sharia doctrine seeks to avoid. The problem is therefore not only one of permissibility but also one of legal calibration: the promise must be strong enough to support market reliance, yet limited enough to preserve the sharia distinction between hedging and speculation (Faisal, 2016; Fikri & Rahma, 2024; Widjaja, 2024).

This point has practical consequences. Without clear legal calibration, Islamic banks may either avoid sharia hedging altogether or apply it inconsistently through internal documentation. Avoidance leaves Islamic financial institutions exposed to currency and commodity risks that conventional institutions can manage more flexibly. Inconsistent application, by contrast, may expose customers and banks to disputes over whether the transaction was truly based on real need or merely used Islamic terminology to reproduce speculative exposure. The literature on sharia derivatives should therefore move beyond the question of doctrinal acceptability and ask how permissibility can be converted into a stable institutional design. That is the precise gap addressed by the present study.

The question of fatwa positivisation and regulatory harmonisation is therefore central. Scholars generally agree that the relationship between DSN-MUI and state regulators has become increasingly important in Indonesia's Islamic finance sector (Baidhowi et al., 2023; Hartini et al., 2025; Wahid, 2016). Nevertheless, existing scholarship often assumes that positivisation is a linear process: a fatwa is issued, regulators adopt it, and legal certainty

follows. The case of sharia derivatives shows that this assumption is incomplete. Positivisation may be partial, uneven, or technically insufficient (Masrurah & Muzalifah, 2022; Munif et al., 2024). A fatwa may be recognised in principle but remain operationally ineffective because technical regulations have not been issued (Pujiaty et al., 2023).

This article, therefore, contributes to the literature by developing Sharia-Institutional Conformity Theory as an evaluative framework. The framework does not treat sharia compliance and legal certainty as alternatives. It treats them as cumulative conditions. The article's originality lies in demonstrating that Indonesia's sharia derivatives problem is not simply the absence of religious approval, nor is it merely the absence of any regulation. It is the absence of a coherent institutional pathway through which sharia approval becomes enforceable, supervisable, and litigable legal certainty.

The novelty of this framework lies in its insistence that the two dimensions must be cumulative. A product that satisfies sharia compliance but lacks legal certainty remains vulnerable to regulatory hesitation. Conversely, a product that receives formal regulatory recognition but lacks genuine sharia conformity would fail to meet the ethical and jurisprudential foundations of Islamic finance. The framework thus rejects a trade-off model in which religious legitimacy and legal enforceability are treated as competing objectives. It instead proposes an integrative model: sharia legitimacy supplies the substantive normative foundation, while state law supplies the institutional form through which that legitimacy becomes predictable, enforceable, and reviewable. In truth, the central problem of sharia derivatives lies exactly at this junction.

Method

This study employs normative legal research using a statutory, conceptual, and comparative institutional approach. Normative legal research is appropriate because the article examines legal norms, institutional authority, regulatory coherence, and the relationship between religious fatwas and positive law. The study does not conduct interviews or quantitative testing. Instead, it analyses legal materials and scholarly literature to determine whether Indonesia's existing framework provides adequate legal certainty for sharia-compliant derivatives. This design is consistent with prior doctrinal studies of fatwa transformation and Islamic financial regulation (Baidhowi et al., 2023; Munif et al., 2024; Wahid, 2016).

Primary legal materials include DSN-MUI Fatwa No. 96/DSN-MUI/IV/2015 on sharia hedging, Law No. 21 of 2008 on Sharia Banking, Law No. 4 of 2023 on Financial Sector Development and Strengthening, relevant OJK regulations, Bank Indonesia regulations concerning foreign exchange and risk management, and legal instruments governing Islamic financial institutions. These materials were selected because they directly concern Islamic financial products, regulatory authority, and the legal position of sharia-compliant financial transactions in Indonesia.

For the Indonesian legal materials, the analysis distinguishes between instruments that confer substantive sharia legitimacy and instruments that create enforceable legal certainty. DSN-MUI Fatwa No. 96/DSN-MUI/IV/2015 is treated as the principal sharia-normative source for Islamic hedging, while Law No. 21 of 2008 and Law No. 4 of 2023 are treated as the principal statutory context for Islamic banking and financial-sector governance (Dewan Syariah Nasional-Majelis Ulama Indonesia, 2015; Republic of Indonesia, 2008; Republic of Indonesia, 2023). This distinction is important because the article does not assume that the fatwa itself is equivalent to legislation. Rather, it asks how far the fatwa has been translated into legal forms capable of binding regulators, financial institutions, and adjudicatory bodies.

Secondary materials include peer-reviewed journal articles, institutional reports, and scholarly books on Islamic finance, fatwa authority, sharia governance, derivative instruments, and legal pluralism (El-Gamal, 2006; Islamic Financial Services Board, 2010). These sources are used to identify prior debates and to position the article's contribution. The article also uses comparative materials from Malaysia, Pakistan, and the United Arab Emirates. These jurisdictions were selected because each provides a model of closer integration between sharia authority and formal financial regulation, although their institutional structures differ.

The analytical framework is Sharia-Institutional Conformity Theory. The framework evaluates legal effectiveness through two cumulative dimensions. The first is substantive sharia compliance: whether the instrument avoids riba, maysir, and excessive gharar and is used for genuine hedging rather than speculation. The second is institutional legal certainty: whether the instrument is recognised, supervised, and enforceable under binding state law or formal regulatory instruments. An instrument satisfies the framework only when both dimensions are met.

Operationally, the framework is applied through a two-dimensional conformity test. The first test asks whether the instrument is normatively permissible under sharia because it is linked to real economic exposure, avoids riba and speculative maysir, and reduces rather than creates excessive gharar. The second test asks whether the instrument is supported by a state-recognised legal pathway: statutory recognition, regulatory adoption, supervisory standards, enforceable documentation rules, and dispute-resolution references. A product that satisfies only the first test may be religiously legitimate, but it remains institutionally fragile; a product that satisfies both tests becomes legally operable within the financial system.

The analysis proceeds in two stages. First, the article conducts a doctrinal examination of the Indonesian legal framework to identify the normative, institutional, and operational gaps between DSN-MUI Fatwa No. 96 and positive law. Second, it conducts comparative institutional analysis to identify how Malaysia, Pakistan, and the UAE integrate sharia authority into financial regulation. The comparative analysis is not intended to mechanically transplant foreign law, but to identify regulatory design options that may be adapted to Indonesia's constitutional and administrative structure.

The limitation of this method is that it does not empirically measure implementation by banks, regulators, courts, or sharia supervisory boards. The article, therefore, does not claim to represent practitioner perceptions or market behaviour. Its contribution is doctrinal and conceptual: it clarifies the legal architecture required for sharia derivatives to obtain both sharia legitimacy and positive legal certainty. Future empirical research may test these propositions through interviews with regulators, Islamic banking practitioners, sharia supervisory boards, and dispute-resolution institutions.

The statute approach is used to identify the legal effects of statutes, regulations, and fatwas within Indonesia's financial governance hierarchy. The conceptual approach is used to clarify the meaning of sharia compliance, fatwa positivisation, legal certainty, and institutional translation. The comparative approach is not used to claim that Malaysia, Pakistan, or the UAE provide a perfect model for Indonesia. Rather, it is used to identify regulatory techniques that may illuminate Indonesia's options, especially where religious supervisory authority is linked to financial regulation through binding standards, centralised interpretation, or formalised sharia governance frameworks (Bank Negara Malaysia, 2021; Islamic Financial Services Board, 2010; State Bank of Pakistan, 2024).

The comparative jurisdictions were selected because they represent different modalities of institutional integration. Malaysia illustrates a centralised model in which sharia advisory authority is formally embedded in the financial regulatory system. Pakistan illustrates a model that combines central-bank guidance with sharia governance requirements for Islamic banking institutions. The UAE illustrates a more plural institutional setting in which Islamic finance

governance operates through federal and financial-centre structures, including higher sharia authority and specialised financial regulation. The comparative exercise, therefore, does not rank these jurisdictions mechanically. It asks which institutional features recur when sharia financial instruments are made legally reliable.

Institutional Translation of Sharia Derivatives: Substantive Legitimacy, Regulatory Gaps, & Comparative Models

The analysis shows that DSN-MUI Fatwa No. 96/DSN-MUI/IV/2015 satisfies the substantive sharia-compliance dimension of the proposed framework. The fatwa recognises the need for hedging in Islamic financial transactions and seeks to distinguish legitimate risk mitigation from speculative trading (Faisal, 2016; Fikri & Rahma, 2024; Widjaja, 2024). Its normative structure reflects core sharia concerns: the avoidance of riba, maysir, and excessive gharar; the presence of genuine economic need; and the use of permissible contractual structures such as wa'ad-based mechanisms.

This point is important because it shows that the problem of sharia derivatives in Indonesia is not primarily a problem of religious permissibility. The fatwa provides a substantive normative basis for financial institutions that need to manage currency or market risk. The problem lies elsewhere: the fatwa's normative legitimacy has not yet been matched by a sufficiently comprehensive positive legal framework (Afrelian & Furqon, 2019; Kasdi, 2018; Suhendar et al., 2023).

A further regulatory issue is that Indonesia's regulatory problem consists of three interrelated gaps. The first is a normative gap: sharia permissibility does not automatically become statutory recognition. The second is an institutional gap: there is no single formal pathway through which DSN-MUI fatwas on complex financial instruments are systematically transformed into binding regulations by OJK, Bank Indonesia, or the legislature. The third is an operational gap: Islamic financial institutions lack sufficiently detailed technical guidance on product documentation, risk treatment, supervisory standards, and dispute-resolution consequences (Hartini et al., 2025; Luthfiyah et al., 2022; Munif et al., 2024).

The normative gap appears because the permissibility of tahawwut under DSN-MUI Fatwa No. 96 does not automatically determine the civil-law consequences of breach, enforceability, standard documentation, or judicial interpretation. The institutional gap arises because DSN-MUI, OJK, Bank Indonesia, and the legislature occupy different positions of authority without a fully articulated mechanism for converting sharia derivative norms. The operational gap appears in product design, risk documentation, internal sharia supervision, and dispute resolution. These three gaps explain why Islamic financial institutions may recognise the fatwa yet still hesitate to rely on sharia derivatives as routine risk-management tools.

This three-level categorisation refines the existing literature. It shows that regulatory dissonance is not merely the absence of one statute. It is the cumulative effect of fragmented institutional translation. DSN-MUI may provide sharia approval, OJK may supervise financial service institutions, Bank Indonesia may regulate monetary and foreign-exchange aspects, and courts may resolve disputes. However, without a coordinated legal mechanism, each institution operates within its own domain, leaving sharia derivatives legally incomplete.

The categorisation also clarifies why a single reform instrument may be insufficient if it addresses only one layer of the problem. A statute may solve the normative gap by recognising sharia derivatives. However, it will not, by itself, solve the operational gap unless it authorises technical standards for documentation, risk disclosure, governance, and supervision. A POJK may solve part of the operational gap, but it may remain vulnerable if the statute does not clearly identify the legal status of fatwa-based instruments. Likewise, internal

bank policies may assist implementation but cannot substitute for public legal certainty. The Indonesian regulatory challenge is therefore architectural: different institutions must perform different legal functions in a coordinated sequence.

Another important point is that fatwa positivisation in Indonesia has been more successful for familiar Islamic banking products than for complex derivative instruments. Contracts such as *murābaḥah*, *muḍārabah*, *mushārakah*, and *ijārah* have clearer doctrinal and regulatory pathways because they have been more extensively incorporated into banking practice, KHES, and regulatory guidance (Abdullah et al., 2023; Aprilianti, 2022; Zikra et al., 2024). Sharia derivatives are different. They involve future performance, valuation risk, market exposure, and contractual documentation that may not be easily accommodated by existing rules (Faisal, 2016; Samsudin et al, 2023).

This also explains why analogy with familiar contracts should be used carefully. *Murābaḥah*, *muḍārabah*, *mushārakah*, and *ijārah* are embedded in a broader body of banking practice, contract templates, supervisory learning, and dispute-resolution experience. Sharia derivatives, by contrast, combine contract law, prudential risk management, foreign-exchange exposure, accounting treatment, and sharia governance. The instrument, therefore, requires a thicker regulatory architecture than ordinary recognition of a classical contract form.

This analysis challenges overly optimistic assessments of fatwa positivisation. The fact that Islamic finance law has progressed in some areas does not mean that all sharia financial products enjoy equal legal certainty. Sophisticated instruments require more than general fatwa recognition. They require technical legal infrastructure.

The partial nature of positivisation is therefore not a minor technical inconvenience. It affects the competitive position of Islamic finance. Conventional institutions can rely on established derivative documentation, market conventions, and regulatory familiarity. Islamic institutions, by contrast, must ensure both sharia legitimacy and legal enforceability. If the second condition is underdeveloped, the Islamic sector may be forced either to bear unmanaged market risk or to rely on ad hoc contractual engineering. Neither option is ideal. The first weakens prudential stability; the second weakens transparency and may increase compliance risk. This explains why sharia derivatives require more than product approval. They require a legal ecosystem capable of sustaining the product throughout its life cycle, from approval and documentation to supervision and dispute resolution.

Comparatively, the analysis shows that Malaysia, Pakistan, and the UAE demonstrate stronger mechanisms of institutional translation. Although their systems differ, each jurisdiction provides a clearer link between sharia supervisory authority and formal financial regulation (Bank Negara Malaysia, 2021; Islamic Financial Services Board, 2010). These models do not suggest that Indonesia should copy foreign law wholesale. Rather, they show that sharia compliance must be coupled with regulatory enforceability, institutional coordination, and technical implementation standards (El-Gamal, 2006; Hanif, 2011).

The comparative materials also show that harmonisation is not achieved by merely mentioning sharia principles in financial legislation. Malaysia relies on central-bank standards and the institutional role of the Shariah Advisory Council; Pakistan uses the State Bank of Pakistan's sharia governance framework to translate sharia compliance into supervisory expectations; and the UAE locates the Higher Shari'ah Authority within the central-bank architecture for licensed Islamic financial activities (Bank Negara Malaysia, 2021; Central Bank of the United Arab Emirates, n.d.; State Bank of Pakistan, 2024). The common feature is institutional translation: religious norms are connected to supervisory authority, enforceable documentation, and regulatory accountability.

The comparative analysis also shows that effective integration normally involves three institutional techniques. The first is authoritative interpretation, where a designated sharia body provides binding or highly persuasive guidance on permissibility. The second is regulatory

incorporation, where the financial regulator translates that guidance into rules, standards, or supervisory expectations. The third is operational standardisation, in which market actors are provided with documentation and governance requirements that reduce interpretive fragmentation. Indonesia has elements of the first technique through DSN-MUI, and elements of the second through OJK and Bank Indonesia's general authority. What remains underdeveloped is the systematic connection between them, particularly for complex instruments whose legal effect depends on future performance and risk settlement.

Table 1.
Comparative Regulatory Architecture for Sharia Derivatives

Country	Regulatory Body	Fatwa Integration Mechanism	Legal Instrument	Degree of Binding Authority	Lessons for Indonesia
Malaysia	Bank Negara Malaysia and Shariah Advisory Council	Shariah rulings are integrated into the central bank's regulatory architecture and guide Islamic financial institutions.	Central-bank standards, Islamic financial services legislation, and Shariah governance framework.	High: sharia decisions are closely connected to regulatory compliance.	Indonesia may strengthen DSN-MUI's role through formal regulatory adoption by OJK and Bank Indonesia.
Pakistan	State Bank of Pakistan and Sharia Governance Bodies	Sharia standards are translated into operational manuals and regulatory guidance for Islamic banking.	Central-bank circulars, prudential guidelines, and Islamic banking instructions.	Moderate to high: operational standards provide enforceable guidance.	Indonesia may develop technical manuals for wa'ad-based hedging and documentation standards.
United Arab Emirates	Central Bank, Higher Shari'ah Authority, and financial free-zone regulators	Centralised sharia supervision is embedded within formal financial regulation.	Central-bank standards and Islamic finance regulatory rulebooks.	High within regulated financial sectors.	Indonesia may consider a harmonisation committee linking DSN-MUI, OJK, BI, and dispute-resolution bodies.
Indonesia	DSN-MUI, OJK, Bank Indonesia, and relevant courts	A fatwa provides normative sharia legitimacy but is not systematically transformed into detailed, binding regulations for derivatives.	Fatwa, sectoral laws, partial financial regulations, and internal bank policies.	Partial: sharia legitimacy exists, but institutional legal certainty remains incomplete.	A phased model is needed: implementing regulations, technical standards, and eventually a Sharia Financial Products Law.

Source: Author's synthesis based on comparative regulatory analysis.

The analysis confirms Wahid's argument that the transformation of DSN-MUI fatwas into positive law remains partial and uneven (Wahid, 2016). However, this article extends that argument by showing that derivative instruments expose the limits of partial positivisation

more sharply than ordinary Islamic banking contracts. A fatwa may be sufficient to establish religious legitimacy, but it is not sufficient to resolve enforceability, supervision, and dispute settlement where the financial product is structurally complex (Faisal, 2016; Widjaja, 2024)s.

This modification is central to the article's contribution. Prior scholarship may correctly describe fatwa positivisation as a progressive development in Indonesian Islamic finance, but the derivative context reveals that positivisation is not binary. A fatwa can be recognised, respected, and operationally influential while still failing to provide the legal infrastructure required for complex financial products. The Indonesian case, therefore, demonstrates a middle condition between pure non-recognition and full codification: partial institutionalisation without complete legal operability.

The analysis also refines Baidhowi et al.'s analysis of fatwa positivisation in sharia banking law (Baidhowi et al., 2023). Positivisation has indeed progressed in Indonesia, but the progress is uneven across product categories. The article therefore proposes a more cautious view: Indonesia has developed a partial fatwa-regulation interface, not yet a complete institutional architecture for sharia financial innovation (Hartini et al., 2025; Judijanto et al., 2025; Munif et al., 2024).

Third, the analysis also refines comparative scholarship on Islamic finance regulation. The lesson from Malaysia, Pakistan, and the UAE is not that Indonesia must copy another jurisdiction's model. Institutional transplantation would be too crude because Indonesia's constitutional, administrative, and religious authority structures are different. The relevant lesson is functional: Indonesia needs a formal mechanism that connects DSN-MUI's sharia authority with the supervisory authority of OJK and Bank Indonesia, while preserving legislative clarity and judicial usability.

This discussion also explains why the proposed Sharia Derivatives Law should not be understood as an attempt to freeze Islamic finance into rigid statutory form. The objective is not to replace ijtihad with codification. Rather, the objective is to create an institutional channel through which ijtihad can operate with legal effect in a regulated financial market. A well-designed statute would leave room for DSN-MUI to develop sharia standards while requiring OJK and Bank Indonesia to translate those standards into product governance, disclosure, prudential treatment, and dispute-resolution mechanisms. The legal value of such legislation would lie not only in recognition but in coordination.

Recent scholarship on the bureaucratization and transformation of DSN-MUI fatwas strengthens this interpretation. Alfitri's analysis of MUI's quasi-legislative authority shows that fatwa effectiveness in Indonesia has increasingly depended on administrative embedding rather than purely theological persuasion (Alfitri, 2020). More recent work by Nasrudin et al. argues that DSN-MUI fatwas have shifted from nonbinding religious opinions to legal-rational authority through bureaucratisation, institutional positioning, and regulatory recognition (Nasrudin et al., 2025). These studies support, but also sharpen, the present article's claim: the decisive issue is not whether DSN-MUI fatwas possess social or moral authority, but whether that authority is converted into operational legal standards for specific financial products. In the context of sharia derivatives, this conversion remains incomplete because product-specific rules governing documentation, risk disclosure, enforceability, and dispute settlement have not yet aligned with the fatwa's permissive doctrine.

The central theoretical contribution of this article is the proposition that effective fatwa-law harmonisation requires simultaneous satisfaction of two institutional conditions: substantive sharia compliance and formal legal certainty. Indonesia currently satisfies only the first. DSN-MUI Fatwa No. 96 provides the religious normative foundation, but the legal system has not yet supplied a comprehensive mechanism through which that foundation becomes binding, operational, and adjudicable (Baidhowi et al., 2023; Masrurah & Muzalifah, 2022; Wahid, 2016).

This proposition has significance beyond Indonesia. In plural legal systems, religious authority may be socially legitimate yet legally incomplete. Conversely, state law may be formally binding yet substantively insufficient if it ignores sharia requirements. The governance challenge is therefore not to choose between fatwa and legislation, but to design a legal pathway in which sharia legitimacy and legal certainty reinforce one another.

Seen from this angle, Sharia-Institutional Conformity Theory offers a middle position between two familiar but incomplete approaches. The first approach is doctrinal permissibility, which asks whether a product is halal or haram but may say little about enforceability. The second approach is regulatory formalism, which asks whether a product is recognised by state law, but may understate the need for sharia epistemic legitimacy. The proposed framework insists that Islamic financial law requires both. Its theoretical contribution is modest but important: it reframes harmonisation as a problem of institutional completeness rather than a mere problem of legal hierarchy.

Malaysia, Pakistan, and the UAE demonstrate that sharia financial regulation becomes more effective when religious authority is embedded in formal regulatory structures. Malaysia provides the strongest example of centralised sharia authority linked to financial regulation (Bank Negara Malaysia, 2021). Pakistan illustrates the value of technical operational manuals. The UAE demonstrates how centralised sharia supervision can operate within a sophisticated financial regulatory environment (El-Gamal, 2006; Islamic Financial Services Board, 2010). These jurisdictions collectively show that harmonisation is not achieved simply by respecting fatwas; it is achieved by converting fatwa norms into enforceable and supervisable legal instruments.

For Indonesia, the most realistic approach is phased harmonisation. In the short term, OJK and Bank Indonesia should issue implementing regulations and technical guidelines adopting DSN-MUI Fatwa No. 96 into financial-sector practice. In the medium term, a cross-agency Sharia Financial Regulatory Harmonisation Committee should coordinate DSN-MUI, OJK, Bank Indonesia, KHES authorities, and dispute-resolution institutions (Luthfiyah et al., 2022; Radliyah et al., 2018). In the long term, the legislature should consider a Sharia Financial Products Law or a dedicated Sharia Derivatives Law to provide statutory recognition for complex Islamic financial instruments (Pujiaty et al., 2023; Suhendar et al., 2023).

The proposed reform should therefore avoid two extremes. The first extreme is symbolic codification, in which legislation merely declares support for sharia-derived measures without establishing technical standards. The second extreme is technocratic regulation detached from DSN-MUI authority, which may create market certainty but weaken sharia legitimacy. A sound harmonisation model must preserve both normative integrity and institutional enforceability.

A phased model would also reduce institutional resistance. In the first phase, OJK and Bank Indonesia could issue coordinated implementing regulations that adopt DSN-MUI Fatwa No. 96 as the sharia basis for permissible hedging transactions, while specifying documentation, disclosure, risk management, and reporting requirements. In the second phase, DSN-MUI, OJK, Bank Indonesia, and industry associations could develop standard contract templates and supervisory guidance. In the third phase, the legislature could enact a broader Sharia Financial Products Law or a dedicated Sharia Derivatives Law to consolidate the relationship between fatwa authority, regulatory supervision, and dispute settlement. Such sequencing is more realistic than expecting comprehensive legislation to emerge immediately.

The same point is visible in adjacent fields of sharia financial innovation. A recent study of sharia fintech observes that harmonisation between DSN-MUI fatwas and OJK regulations improves legal certainty only when normative guidance is accompanied by regulatory supervision, consumer-protection standards, and technological readiness (Suaidi et al., 2025). Although fintech differs from derivatives, the institutional problem is structurally analogous.

Both fields involve financial products that emerge faster than classical fiqh categories and faster than sectoral regulation can fully absorb. The comparison supports the phased model proposed here: legal harmonisation should begin with coordinated implementing rules and then move toward statutory consolidation once product practice and supervisory capacity have matured.

A dedicated sharia derivatives framework should not merely declare that fatwas are binding. That would risk formalism without operational clarity. Nor should it allow regulators to detach product legality from sharia supervision. That would risk weakening the religious legitimacy of Islamic finance. The better model is institutional translation: DSN-MUI defines substantive sharia parameters; OJK and Bank Indonesia translate those parameters into technical regulatory standards; courts and dispute-resolution bodies apply those standards in concrete cases; and the legislature supplies the statutory foundation for long-term coherence.

Such a model would also protect market participants. Islamic financial institutions would obtain clearer guidance on permissible product structures. Customers would obtain stronger legal protection. Regulators would gain a clearer supervisory basis. Courts would have more determinate legal materials for resolving disputes (Radliyah et al., 2018). In this sense, harmonisation is not merely a theological or doctrinal issue. It is a governance condition for the safe development of Islamic financial markets (Adnan et al., 2024; Aisyah & Anggara, 2024).

From a governance perspective, the proposed model would strengthen accountability across the chain of Islamic financial regulation. DSN-MUI would remain the authoritative source of sharia interpretation. OJK would supervise product governance and market conduct. Bank Indonesia would address the monetary, foreign-exchange, and prudential implications arising from hedging currency exposure. Courts and dispute-resolution bodies would gain clearer interpretive materials when disputes arise. This distribution of functions is preferable to leaving each institution to infer its role from general mandates. It also reflects the reality that sharia derivatives sit at the intersection of religious normativity, private contract, financial supervision, and macroprudential risk.

Thus, the article's micro-level contribution is not merely that Indonesia needs another regulation. Its more precise claim is that sharia derivatives require a legally traceable chain of norm production: fatwa formulation, regulatory adoption, technical standardization, contractual incorporation, supervisory monitoring, and judicial recognition. If any link in this chain is missing, sharia compliance remains normatively plausible but legally fragile. This is why the proposed framework avoids both maximalist codification and minimalist reliance on fatwa alone.

Conclusion

This article has shown that the legal problem of sharia derivatives in Indonesia is not the absence of religious permission, but the incompleteness of institutional translation. DSN-MUI Fatwa No. 96/DSN-MUI/IV/2015 provides substantive sharia legitimacy for hedging instruments by distinguishing genuine risk management from speculative exposure. Yet that legitimacy remains legally fragile unless it is translated into binding regulations, supervisory standards, enforceable documentation, and dispute-resolution references. The Sharia-Institutional Conformity framework developed in this article therefore requires two cumulative conditions: substantive sharia compliance and formal legal certainty.

The article recommends a phased harmonisation model. In the short term, OJK and Bank Indonesia should issue coordinated technical rules adopting Fatwa No. 96 for sharia-compliant hedging, including documentation, disclosure, risk-management, and prudential

treatment. In the medium term, DSN-MUI, OJK, Bank Indonesia, KHES authorities, and dispute-resolution institutions should develop standardised guidance and interpretive coordination. In the long term, the Government and DPR may consider a Sharia Financial Products Law or a dedicated Sharia Derivatives Law. Future empirical research should test these proposals through interviews with regulators, Islamic banking practitioners, sharia supervisory boards, treasury officers, and adjudicators, so that the proposed architecture reflects Indonesia's institutional and market realities.

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