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THE JUST REGULATION OF IMMATERIAL LOSSES IN SHARIA ECONOMIC DISPUTES: RECONSTRUCTION OF TA'WID BASED ON MAQASID AL-SYARI'AH

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Abstract
This article examines the regulation of immaterial losses in sharia economic disputes and proposes a reconstruction through maqashid al-syariah as an analytical tool. The normative basis for compensation has been recognized through the concepts of *ta'wid* and *daman* in the Compilation of Sharia Economic Law (KHES) and the DSN-MUI fatwa, but this formulation stops at the principle and interprets "real losses" primarily as nominal costs. This study uses normative legal research methods with statutory, conceptual, and historical approaches. The first finding shows that a narrow reading of the term "real" is not a neutral stance, but rather creates a double maqashid deficit: on the one hand, the law only restores *hifz al-mal* and ignores *hifz al-nafs* , *hifz al-'aql* , and *hifz al-'ird* ; on the other hand, the lack of norms encourages judges to borrow general civil law without a sharia filter, thereby opening up the risk of *gharar* and unlawful enrichment. The second finding offers an ideal regulatory model that redefines "real" functionally, recognizes immaterial losses in a limited and measurable manner within the paradigm of recovery (*jabr al-darar*), maps four categories of losses to the maqashid they protect, establishes thresholds based on the hierarchy *of darurriyyat–hajiyyat–tashiniyyat* and the principle of proportionality, and designs layered evidence and guided discretion. The novelty of this article lies in providing an operative framework for immaterial losses guided by maqashid, which has not been provided by KHES, fatwas, or previous studies. The most realistic update is carried out through strengthening KHES within the framework of PERMA, affirmation of DSN-MUI, and the Supreme Court's technical guidelines for Religious Court judges.

Keywords: immaterial losses; Islamic economics; *ta'wid* ; *maqashid al-syariah* ; corrective justice.

1. Introduction

Law is fundamentally present to guarantee justice, certainty, and benefit to society. In the practice of dispute resolution, the losses suffered by the parties do not always take the form of a reduction in assets that can be directly calculated. Disputes often cause psychological suffering, fear, social pressure, loss of comfort, damaged reputation, and other moral losses that do not immediately appear as expenditure figures. Therefore, the regulation of compensation is an important part of the legal system, including in Islamic economic law, because compensation aims to place the injured party as much as possible in a decent situation if the violation had not occurred (Hamidi, 2011; Harahap, 1986). Within the Islamic framework, compensation carries a unique double burden, namely to restore the victim while maintaining the purity of the transaction from *usury* , *gharar* , and *maisir* .

In Indonesian civil law, compensation obligations typically arise from breach of contract and unlawful acts, both of which can result in both material and immaterial losses. Material losses are relatively easy to measure because they relate to tangible economic value, while immaterial losses are more complex because they involve non-economic aspects. Recognition of immaterial losses in positive law is still limited. The Civil Code does not provide a comprehensive operational definition, although Articles 1370, 1371, and 1372 provide specific scope for cases involving death, bodily injury or disability, and insult. Jurisprudence emphasizes that claims for immaterial damages must be adequately described and proven. This situation demonstrates that immaterial losses are not unknown, but their conceptual and evidentiary standards still depend heavily on the judge's discretion (Santoso Az, 2011; Mantili, 2019; Suryoutomo, Mariyam, & Satria, 2022).

In Islamic economic law, the issue becomes more specific. The concept of compensation is known as *ta'wid* and *daman* . Article 20 number 37 of the KHES defines *ta'wid* as compensation for real losses paid by the party in default. DSN-MUI Fatwa Number 43/DSN-MUI/VIII/2004 and DSN-MUI Fatwa Number 129/DSN-MUI/VII/2019 also emphasize that *ta'wid* can only be charged for real losses or real costs, not for expected profits. This formulation is important because it builds a fence from the outset so that compensation does not turn into interest, excessive penalties, or speculative claims full of *gharar* (DSN-MUI, 2004; DSN-MUI, 2019; Supreme Court of the Republic of Indonesia, 2008).

Problems arise when the term "real" is interpreted too narrowly, as if it only encompasses losses that can be proven by receipts, cost reports, or numerical documents. With this interpretation, truly actual non-material losses, such as psychological suffering, damage to business reputation, loss of security in transactions, and disruption of socio-economic functions, do not find a normative home. The Banda Aceh Sharia Court's decision No. 324/Pdt.G/2024/MS.Bna illustrates this dilemma. In a musyarakah dispute between the plaintiff and a sharia bank, the panel of judges declared the defendant in breach of contract and granted material damages, but rejected the immaterial claim on the grounds that it was not concretely proven and lacked a strong legal basis. This case demonstrates how the lack of parameters places judges between the demands of substantive justice and the limitations of available norms.

The phenomenon of claims for immaterial damages is not a sporadic phenomenon. In judicial practice, such claims are often filed for amounts that even exceed those for material losses, arguing that such losses are difficult to quantify and are left entirely to the judge's discretion. The same pattern is seen in both general and religious courts and touches on a wide variety of disputes, ranging from control of disputed objects to contractual relationships. This trend has become increasingly relevant with the growth of Islamic financial institutions and businesses, as modern Islamic economic transactions are no longer simple but involve institutional relationships that can lead to non-economic losses such as reputational damage, loss of security, and psychological distress that significantly impact the continuity of economic activity. When similar issues arise in Islamic economic disputes, the need for clearer regulations becomes even more pressing, as judges face not only demands for justice and certainty but also the obligation to ensure that decisions comply with Islamic principles.

Several previous studies have addressed this issue from different angles. Studies on the theories *of daman* and *ta'wid* emphasize that compensation in Islamic law is oriented toward restitution of tangible losses, not punishment (Asmuni, 2007; Miharja, 2016; Hanifuddin, 2020). Studies on civil court practices highlight inconsistencies in the evidence and assessment of immaterial losses by judges (Mantili, 2019; Suryoutomo, Mariyam, & Satria, 2022), while studies on Islamic economic decisions examine judges' reasoning in compensation cases (Maula, 2024). On the other hand, the literature on maqashid (the principles of Islamic law) positions maqashid al-sharia as the fundamental paradigm of Islamic law and economics (Muzlifah, 2013; Jalili, 2021; Nasution & Nasution, 2020). However, no study has yet developed a systematic operational framework for immaterial losses in Islamic economics guided by maqashid (Islamic principles), that maps loss categories to the maqashid they protect, establishes thresholds based on the maqashid hierarchy, and simultaneously designs evidence that mitigates *gharar* and safeguards access to justice. This article aims to fill this gap.

The novelty of this article lies in its use of the maqasid al-syariah not as rhetorical legitimacy, but as an analytical tool that operates on two levels simultaneously. First, maqasid is used to diagnose normative gaps as a matter of balancing sharia objectives, not merely a technical matter of litigation. Second, maqasid is used to formulate an ideal regulatory framework operationally. Two questions are answered: first, how is the regulation of immaterial losses in current sharia economic law when read through the maqasid framework? And second, what is the ideal form of regulation based on maqasid to achieve justice. This study is expected to contribute to the development of sharia economic law that maintains transaction integrity while strengthening protection for victims.

2. Methods

This study uses a normative legal research method, namely research that places norms, principles, doctrines, and legal concepts as the main objects of study (Diantha, 2017; Marzuki, 2011). The focus is directed at the regulation of immaterial losses in sharia economic disputes along with the accompanying operational norm gaps. Three approaches are used in a complementary manner. The legislative approach examines the Civil Code, Law Number 3 of 2006 concerning Religious Courts, Law Number 48 of 2009 concerning Judicial Power, PERMA Number 2 of 2008 concerning KHES, and the DSN-MUI fatwa on *ta'wid* . The conceptual approach reads the doctrine of *ta'wid* , *daman* , maqashid al-syariah, corrective justice, and the theory of regulatory formation. The historical approach traces the development of compensation thinking in fiqh and civil law.

The legal materials used consist of primary legal materials in the form of laws and regulations, KHES, DSN-MUI fatwas, and relevant court decisions; secondary legal materials in the form of books, journal articles, theses, and muamalah fiqh doctrines; and tertiary legal materials to explain concepts and terms. The analytical framework that serves as the main tool is maqashid al-syariah in the classical formulation of al-Ghazili and al-Syatibi which is read together with the contemporary development of Ibn 'Asyur and Auda. From this framework, two test devices are used, namely the hierarchy of benefits *darurriyyat–hajiyyat–tashiniyyat* and the rules *of la darar wa la dirar* and *al-darar yuzal* . The analysis is carried out prescriptively and hermeneutically: each legal material is interpreted to find the meaning, limits, and emptiness of norms, then directed to compile a regulatory model that should apply.

As a theoretical framework, maqashid al-syariah is understood as the goals that sharia aims to achieve for the benefit of humanity. In the classical formulation, these goals are narrowed down to five to six basic interests, namely the preservation of religion (*hifz al-din*), life (*hifz al-nafs*), reason (*hifz al-'aql*), descendants (*hifz al-nasl*), and property (*hifz al-mal*), which some scholars add to the preservation of honor (*hifz al-'ird*). These interests are arranged in three levels, namely *darurriyyat* or primary needs that are the foundation of life, *hajiyyat* or secondary needs that support, and *tashiniyyat* or tertiary needs that perfect (al-Ghazili, 1993; al-Syatibi, 1997). In contemporary reading, maqashid does not stop at being a list of interests to be protected, but develops into a functional framework for assessing whether a norm truly realizes the benefit and upholds justice (Ibn 'Asyur, 2001; Auda, 2008). This framework is used to examine the regulation of immaterial losses, both at the diagnosis and reconstruction stages.

3. Results and Discussion

A. Regulation of Immaterial Losses in Current Sharia Economic Law: Maqashid Reading of the Emptiness of Norms

The position of Islamic economics within the Indonesian legal system cannot be understood simply as an expansion of the types of cases examined by the Religious Courts. Since the amendment to the Religious Courts Law, Islamic economic disputes have become part of the absolute authority of the Religious Courts. This placement emphasizes that legal relationships arising from Islamic contracts cannot be read simply through general civil logic, but must be understood in conjunction with the Islamic principles that underlie the contract, such as trustworthiness, justice, good faith, the prohibition of usury (*riba)* , the prohibition of *gharar (gharar)* , and the prohibition of profiting from the loss of another party. Islamic economics thus operates within a mixed legal structure: from a procedural perspective, it still uses civil procedural law, but from a substantive perspective, it must refer to the KHES (Estimated Law), the DSN-MUI fatwas, and the doctrine of muamalah jurisprudence (Asmuni, 2007; Hanifuddin, 2020).

Within the framework of maqashid, *ta'wid* is essentially an instrument *of jabr al-darar* , namely, repairing damages arising from violations. This function embodies the principles of *la darar wa la dirar* and *al-darar yuzal* , thus aiming to uphold corrective justice without creating new *ẓulm* . Because of its fundamentally restorative nature, *ta'wid* must not be transformed into punishment, time-based additions, or merely assumed benefits. The “real” fence inherent in *ta'wid* therefore does not stand alone; it is part of the sharia's way of maintaining the balance of exchange and preventing exploitation. The question is how this fence is translated in practice.

Normatively, Islamic economic law does provide a basis through Article 20 number 37 of the KHES and the DSN-MUI fatwa on *ta'wid* . However, these instruments stop at affirming principles and do not yet provide operational norms for interpreting non-material losses. There is no formulation that answers whether psychological suffering, damage to business reputation, loss of security, or disruption of socio-economic functions can be qualified as real losses. There are also no standards for testing the level of seriousness, causal relationship, evidence, and amount of compensation. This gap creates uncertainty for judges and parties (Maula, 2024).

This gap is rooted in a long-standing debate in Islamic jurisprudence (fiqh) regarding whether non-material benefits and interests can be considered assets whose losses must be compensated. Some Hanafi scholars tend to view benefits as something that is not classified as assets, so that losses of benefits do not essentially give rise to compensation obligations, except in certain circumstances such as waqf assets, the assets of young children, or benefits lost over the long term. In contrast, the majority of Malikiyah, Shafi'iyah, and Hanafi scholars view benefits as valuable assets, so that their destruction or loss can give rise to *daman obligations* (Al-Zuhaily, 1998; Asmuni, 2007; Hanifuddin, 2020). This debate demonstrates that the issue of non-material losses is not a foreign issue in the Islamic legal tradition, but has long been a field *of discussion* . Reading this debate through the maqashid (maqashid) helps to frame it more clearly, because the measure is not merely the outward form of the loss, but rather whether a protected sharia objective is actually disrupted.

Herein lies the first fundamental finding. A narrow reading of the word "real" is not a neutral stance towards sharia; instead, it creates an imbalance in the maqashid (objectives of the law). By recognizing only nominal losses, the law *de facto* treats *hifz al-mal* as the only goal worthy of restoration, while *hifz al-nafs* (psychic integrity), *hifz al-'aql* (peace of mind), and *hifz al-'ird* (self-respect and effort) are left unrestored. Yet, in the *darurriyyat scheme* formulated by al-Ghazili and systematized by al-Syatibi, these four goals stand on an equal footing with the protection of property, with some scholars even placing the soul, mind, and honor in a higher position (al-Ghazili, 1993; al-Syatibi, 1997; Nasution & Nasution, 2020). Closing the door to losses that befall the maqashid, while opening the door to losses of property alone, is actually a reversal of the priorities of the maqashid: the material is protected, while the more fundamental is ignored.

From a corrective justice perspective, a narrow interpretation of "real" leaves serious problems. Corrective justice requires restoring the balance damaged by the violation, placing the injured party in a decent situation, as far as possible, without excessive enrichment (Kurniawan, Marzuki, Agustin, & Amalia, 2018). If the damaged balance includes dignity, security, or business reputation, then too narrow a restoration actually leaves some losses without legal response. In modern economic relations, reputation and security are not secondary elements, but rather part of the social capital that determines a person's ability to maintain their economic activities. Thus, the corrective goal of *ta'wid* will not be fully achieved as long as the meaning of "real" is locked only on nominal losses.

This inequality is reinforced by the procedural dimension. At the level of procedural law, judges are bound by the principle of *non ultra petita* as reflected in Article 178 paragraph (3) HIR and Article 189 paragraph (3) RBg, so the existence of claims for immaterial losses is highly dependent on the quality of the plaintiff's posita and petitum. If the form of loss is not described, the causal relationship is not explained, and the legal basis is not adequately formulated, the judge's room to provide recovery becomes narrow. The next difficulty lies in the burden of proof: immaterial losses are not always present in the form of numerical documents. Damaged reputations, psychological stress, shame, and loss of security generally arise through patterns of social relationships, changes in behavior, testimony, or communication traces. If judges only demand financial evidence, almost all immaterial claims will stop at the initial stage; conversely, if judges are too lenient, room for speculative claims is wide open (Afriana, Rahmawati, & Mantili, 2022).

Viewed from the perspective of maqashid, this procedural obstacle is not merely a matter of legal technique. When a weaker party, such as a small customer or micro-business owner, cannot afford to bring in experts or expensive professional documentation, and the law demands an impossible standard of proof, then the right to factual recovery can only be enjoyed by parties with substantial resources. A law that appears neutral but results in perpetuating unequal bargaining positions is contrary to the maqashid *raf'al-haraj* , namely eliminating narrowness, and with the character *of samahah* or ease that is characteristic of sharia (Ibn 'Asyur, 2001). In other words, the absence of norms not only ignores some substantive maqashid, but also hinders the upholding of the maqashid of justice at the level of access.

This normative vacuum then gives rise to another risk, namely a paradigm shift. Because judges are not allowed to reject cases on the grounds of the absence of law or unclear, while the parties demand answers, the argument shifts to general civil law, specifically Article 1365 of the Civil Code and the doctrine of immaterial losses that develops therein. This practical path is understandable, but if positive law is used as the primary source without adequate sharia filter, what occurs is not filling the gap, but rather a change in the nature of *ta'wid* . Immaterial compensation in general civil law is firmly based on the principle of propriety and the development of jurisprudence, whereas in sharia economics every financial burden must remain connected to the prohibition of *usury* , the prevention *of gharar* , and the goal of recovery (Kurniawan, Marzuki, Agustin, & Amalia, 2018).

From a maqashid perspective, this situation creates a double maqashid deficit. On the one hand, there is *under-protection* , where losses suffered by *hifz al-nafs* , *hifz al- 'aql* , and *hifz al-'ird* are left unrecovered because they do not pass the narrow interpretation of "real." On the other hand, there is the risk of *over-reach* , where when general civil law is adopted without filtering, the loose logic of compensation can open the way to *gharar* and unlawful enrichment or *akl amwal al-nas bi al-baṭil* . These two poles are both far from maqashid: the first ignores the protection that should be, and the second threatens the integrity of the transactions that sharia is intended to protect. This explains why decisions tend to go in different directions and disparities easily occur.

Thus, the findings in this section confirm that the current regulation of immaterial losses in Islamic economic law remains partial. The normative basis is in place, but an operational framework has not yet been established to address actual non-material losses. The fundamental issue is not whether immaterial losses are permissible, but rather the absence of maqasid parameters that guide judges in distinguishing serious claims from speculative ones. This diagnosis serves as the basis for the reconstruction in the following section, as legal reforms that do not proceed from a mapping of maqasid risk repeating the same inequalities.

B. Reconstruction of Ideal Arrangements Based on Maqasid al-Syari'ah

The reconstruction of the regulation of immaterial losses must be built on a clear value orientation to avoid falling into two equally problematic tendencies: rigid formalism or excessively liberal propriety. This orientation is maqashid al-sharia, with social justice as the direction of protection and the correction of inequality as the function of compensation. From this orientation, three mutually supporting working principles are derived: restoration, certainty, and benefit. The principle of restoration positions compensation as a correction for imbalances resulting from violations; the principle of certainty demands that the categories of losses, standards of proof, and assessment parameters be clearly stated; the principle of benefit demands that regulations not only be formally valid but also provide real protection without introducing new injustices (Muzlifah, 2013; Jalili, 2021).

The assertion that compensation has a restorative character has strong roots in the treasury of Islamic jurisprudence. A number of Islamic legal thinkers, notably al-Qarafi and al-'Izz ibn 'Abd al-Sa'lam , distinguish between *al-jawabir* , which is an imposition that is intended to repair and restore civil losses, and *al-zawajir* , which is an imposition that is deterrent and punitive. *Ta'wid* stands within the realm *of al-jawabir* , so its purpose is *jabr al-darar* and not deterrence (Asmuni, 2007; Al-Zuhaily, 1998). This classic distinction is important for reconstruction because it emphasizes a boundary that must not be crossed: the expansion of recognition to immaterial losses must not shift *ta'wid* into an instrument of punishment or a means of enriching the claimant. By using *al-jawabir* as a framework, the maqashid of recovery is maintained while opening up space for the recognition of actual non-material losses.

The key to the reconstruction lies in reinterpreting the term "real" in a functional-maqashidic sense. "Real" should not be read as "nominal," but rather as actual, identifiable loss, having a proper causal relationship to the violation, and verifiable through objective indicators, although not always in the form of direct monetary expenditure. This interpretation is consistent with contemporary readings of maqashid that shift the concept of *hifz* from merely passive safeguarding to functional protection and empowerment, and place human honor and dignity as objectives protected by sharia (Ibn 'Asyur, 2001; Auda, 2008). With this interpretation, proven psychological suffering, traceable damage to reputation, or the apparent loss of security resulting from behavioral changes can still be considered real losses in the sharia sense because they are real and not imaginary. At the same time, a guardrail remains: claims that rely entirely on subjective feelings without objective indicators remain close to *gharar* and are therefore rejected.

A comparison with the civil law tradition clarifies this position. The Dutch legal system recognizes *smartengeld* , or condolence money, as compensation for suffering, the determination of which is left to the court's discretion based on justice and fairness. This approach offers flexibility but rests on a loose principle of fairness. Sharia economic law cannot simply adopt it, as every burden must pass through the filter of prohibitions *on usury* and *gharar* , as well as a restitutionary orientation. Therefore, redefining "real" based on maqasid (the principle of justice) does not simply replicate the expansion of immaterial losses in civil law, but rather establishes a distinct framework that permits recognition only as long as the loss is actual, measurable, and does not violate sharia principles.

Based on this reinterpretation, immaterial losses worthy of recognition can be mapped to the maqashid (objectives of law) they protect, so that recognition does not exist in a value vacuum. This mapping also serves as the heart of reconstruction, as it is here that the maqashid acts as an analytical tool, providing a rationale for why a loss deserves restitution.

The first category is serious psychological suffering, directly related to *the hifz al-nafs (self-control)* and *hifz al-'aql (* awareness). This category includes mental distress, persistent fear, trauma, or severe anxiety arising from the actions of the counterparty in a sharia-compliant economic relationship and disrupting the integrity of one's soul and mental functioning. This type of suffering should not be equated with the ordinary disappointments that commonly arise in business relationships. It can only be recognized if supported by objective indicators, such as professional testimony, consistent behavioral changes, or corroborating social facts.

The second category is damage to a business's reputation or honor, which is related to *hifz al-'ird* and is also connected to *hifz al-mal* because in modern transactions, reputation is a social capital. Actions that inappropriately stigmatize a contract partner, spread derogatory information, or embarrass the counterparty in the collection and dispute resolution process can undermine the partner's trust and disrupt business continuity. As long as the damage to reputation can be objectively demonstrated, it is relevant to qualify as immaterial loss in Islamic economic disputes, because what is protected is not merely feelings of offense, but honor, which is one of the main objectives of sharia.

The third category is the loss of a sense of security and peace in transactions, which is based on the principle of trust and maintaining peace (*tuma'ninah*) as part of *hifz al-nafs* . The principle of trust is the foundation of muamalah; when one party engages in intimidation, humiliating pressure, or actions that cause prolonged anxiety, the sense of security as a prerequisite for muamalah is also damaged. This category is especially relevant in long-term relationships such as financing, business cooperation, and services that depend on trust, because sharia transactions are essentially based not only on formal agreements but also on mutually maintained trust.

The fourth category is the disruption of socio-economic functions due to non-material losses, which are at the intersection of *hifz al-mal* and *hifz al-'ird* in the dimension of productive capacity. What is meant is not lost profits, but rather a situation where non-material suffering has affected a person's ability to carry out their social and economic functions properly, for example, a small business owner who can no longer carry out normal activities because their reputation is destroyed in their business environment. In such circumstances, protection of property cannot be strictly separated from protection of dignity and social trust, because both support the continuity of muamalah.

Once the categories are mapped, the ideal arrangement must establish thresholds to prevent recognition from becoming a gateway to unlimited claims. This threshold is most appropriately based on the hierarchy of benefits in maqashid. The first threshold is actuality, that is, the loss has actually occurred and is not merely a concern that may arise in the future. The second threshold is seriousness, which can be justified through the hierarchy of *darurriyyat–hajiyyat–tahsiniyyat* : only losses that reach the level of *daruri* or *hajj* , that is, those that affect the basic protection or needs that support it, are worthy of restitution. Minor inconveniences that only interfere with the *tahsini level* are *darar yasir* or minor losses that are commonly borne in contractual relationships and are tolerable in Islamic jurisprudence. The third threshold is a sufficiently close and reasonable causal link between the violation and the loss (al-Syatibi, 1997 ; Auda, 2008).

The fourth threshold is proportionality, which serves as the next sharia fence. Proportionality demands that compensation not exceed the level of truly proven impact, and asserts that elements that have been covered through material compensation should not be recalculated as immaterial. In terms of maqashid, this principle maintains the character *of ta'wid* as *jabr* and not *'uqubah* , while also preventing unlawful enrichment. Consequently, immaterial compensation should not be calculated based on interest, the time value of money, expected profits, or formulas resembling commercial penalties, as all of these fall outside the nature of restitution. This limitation is an application of *sadd al-dhara'i'* , namely, closing the path that can lead to *gharar* and *riba* . Therefore, the clearer the categories and the more stringent the indicators, the less room there is for demands based on assumptions or the intention to punish.

The core of an ideal regulation is not simply a definition, category, and threshold; it must address how immaterial losses are proven. The standard of proof needs to be layered to simultaneously address *gharar* and safeguard access to justice. These two objectives, both derived from the maqashid (law of action), are to protect the defendant's assets from false claims while simultaneously eliminating the burden of hardship on the weaker party. The first layer is direct evidence, such as letters, recordings, screenshots of communications, news reports, professional reports, or administrative documents. The second layer is objective indirect evidence, such as communication patterns, changes in business relationships, or social actions that indicate stigmatization. The third layer is witness testimony and *qarinah (religious opinion)* , which mutually reinforce each other. The use of *qarinah* as evidence has a strong foundation in the Islamic jurisprudence tradition, as emphasized by Ibn Qayyim al-Jawziyyah, who stated that judges can determine the law based on convincing signs and circumstances (Ibn Qayyim al-Jawziyyah, 1961; Miharja, 2016).

This layered model is important for two reasons. First, it mitigates *gharar (unclear possibility)* because judges are not solely reliant on the plaintiff's subjective arguments. Second, it safeguards access to justice because plaintiffs are not always burdened with expensive professional evidence. Within this framework, once the plaintiff has presented compelling preliminary evidence, the burden of refuting or explaining the situation can shift proportionately to the defendant. It should also be emphasized that proving immaterial losses is not identical to proving nominal losses mathematically. What must first be proven is the existence of the loss, its seriousness, and its causal relationship; only then can the judge determine the appropriate amount of compensation. In this way, Islamic economic law does not lose its precision, but also does not force every suffering to be rigidly translated into a numerical document from the outset.

Assessing the amount of compensation requires special treatment of judicial discretion. In cases of immaterial losses, discretion cannot be eliminated, but discretion left too free will give rise to disparities. Therefore, what is needed is a transformation from free discretion to guided discretion, which within the maqashid framework can be understood as *ijtihad taṭbiqi* or ijtihad of application that weighs the public interest in a controlled manner. Ideal regulations require judges to consider at least five parameters: the level of culpability of the perpetrator, the intensity of the impact experienced by the victim, the duration of the loss, the social scope of the loss, and its impact on the socio-economic function of the injured party.

These five parameters have clear rationale. The degree of culpability is important because losses resulting from minor negligence differ from losses resulting from deliberate, repeated, and demeaning acts. The intensity of the impact is necessary to distinguish between minor, moderate, and serious losses. Duration is crucial because losses that are quickly recovered cannot be equated with prolonged losses. Social reach determines whether the loss is known only to a limited extent or spreads across a wide business network. The impact on socioeconomic functions ensures that the business and transactional context remains part of the assessment. Based on these parameters, judges can establish classifications of minor, moderate, and serious as guidelines, rather than as rigid statutory tariffs. Most importantly, each decision must explain why a case is placed in a particular category and how that category leads to the imposed penalty, thereby minimizing room for arbitrariness.

For this reconstruction to work, an appropriate regulatory framework is needed. Institutionally, the most realistic form is strengthening the KHES through revisions or additions to norms within the framework of PERMA Number 2 of 2008. New norms can include operational definitions of immaterial losses, recognized categories, thresholds, layered standards of proof, and parameters for assessing the magnitude. Strengthening the KHES needs to be accompanied by an affirmation of the DSN-MUI regarding sharia limits so that immaterial compensation does not include interest, speculative *opportunity loss , or penalties that are contrary to the nature of ta'wid* . At the practical level, the Supreme Court needs to develop technical guidelines for Religious Court judges in the form of a consideration structure, a layered model of proof, and examples of parameter application, supported by regular guidance through the religious chamber.

This institutional step is essentially a form of *siyasah shar'iyyah* , namely a legal policy aimed at realizing the benefit (*jalb al-masalih*) and preventing harm (*dar' al-mafasid*). In addition to functioning repressively after a dispute occurs, clear regulations also have a preventive effect, because sharia business actors who know from the outset that certain immaterial losses can be requested for limited and measured recovery will be encouraged to prepare contracts, collection procedures, and service governance more ethically. In this sense, reconstruction also helps uphold the maqashid of maintaining trust and trust in the muamalah ecosystem, which is the foundation of the sharia business world.

Ultimately, the maqashid-based reconstruction demonstrates that the three objectives of law: certainty, utility, and justice, need not be rigidly opposed, but can be unified under the umbrella of maqashid. Certainty is achieved when definitions, categories, proof, and compensation parameters are clearly stated, thereby simultaneously protecting property and eliminating *gharar* . Utility is achieved when norms can truly be used by the courts and parties to resolve disputes fairly, which is the embodiment of *maslahah* . Justice is achieved when victims of real non-material losses are not left without redress, while the defendant remains protected from excessive demands, which is a form of corrective justice. Thus, the reform of the regulation of immaterial losses does not undermine the identity of sharia, but rather enhances its function, namely protecting all maqashid in a balanced manner, not just property.

4. Conclusion

The regulation of immaterial losses in Indonesian sharia economic law is currently partial. The normative basis is provided through the concepts of *ta'wid* and *daman* in Article 20 number 37 of the KHES and Fatwas DSN-MUI Number 43/DSN-MUI/VIII/2004 and Number 129/DSN-MUI/VII/2019, but the operational framework is not yet able to address non-material losses such as psychological suffering, damage to business reputation, loss of security, and disruption of socio-economic functions. Read through maqashid, this gap creates a double deficit: a narrow reading of the term "real" excludes losses that befall *hifz al-nafs* , *hifz al-'aql* , and *hifz al-'ird* , resulting in *under-protection* , while borrowing general civil law without a sharia filter opens up the risk *of over-reach* in the form of *gharar* and unlawful enrichment. This results in disparity in decisions and uncertainty of proof.

Form the ideal setting is meaningful settings repeat " real " functional and recognizing loss immaterial in a way limited , serious , actual , can verified , have connection causal and proportional in paradigm recovery . The model map four category losses , namely suffering psychic serious , damage reputation or honor effort , loss of sense of security , and disruption function social economy , on the maqashid it protects ; set threshold based on hierarchy *darurriyyat – hajiyyat – tashiniyyat* and principles proportionality ; designing proof layered through proof direct , proof No objective direct , witness , and *qarinah* ; as well as change discretion free become discretion guided through five assessment parameters magnitude . In terms of institutional , the most realistic update done through strengthening of KHES in framework of PERMA Number 2 of 2008, DSN-MUI's affirmation regarding sharia limits, and guidelines technical Supreme Court for Religious Court judges .

Based on these conclusions, three recommendations are proposed. First, the Supreme Court needs to revise or supplement the norms in PERMA Number 2 of 2008 and KHES to include definitions, categories, thresholds, standards of proof, and parameters for assessing the magnitude of immaterial losses. Second, the DSN-MUI needs to provide normative affirmation that immaterial compensation remains within the *ta'wid paradigm* and must not include elements of interest, speculative *opportunity loss* , or punitive penalties. Third, Religious Court judges need to formulate legal considerations that explicitly explain the categories of losses, evidence, causal relationships, and compensation parameters. This research is normative in nature and therefore has limitations; further empirical studies of Religious Court decisions across regions are needed to test and refine the proposed model.

REFERENCES

Afriana, A., Rahmawati, E., & Mantili, R. (2022). Batasan asas hakim pasif dan aktif pada peradilan perdata. *Jurnal Bina Mulia Hukum*, 7(1), 142–154.

al-Ghazili, A. H. (1993). *al-Mustasfa min 'Ilm al-Usul*. Beirut: Dar al-Kutub al-'Ilmiyyah.

al-Syatibi, I. (1997). *al-Muwafaqat fi Usul al-Shari'ah* (M. Al Salman, Ed.). al-Khubar: Dar Ibn 'Affan.

Al-Zuhaily, W. (1995). *al-Mas'uliyah 'an Fi'li al-Ghair*. Damaskus: Dar al-Maktabi.

Al-Zuhaily, W. (1998). *Naẓariyyat al-Daman aw Ahkam al-Mas'uliyyah al-Madaniyyah wa al-Jina'iyyah fi al-Fiqh al-Islami*. Damaskus: Dar al-Fikr.

Asmuni. (2007). Teori ganti rugi (*dhaman*) perspektif hukum Islam. *Millah*, 6(2), 109–124.

Auda, J. (2008). *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought.

Diantha, M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Group.

DSN-MUI. (2004). *Fatwa Nomor 43/DSN-MUI/VIII/2004 tentang Ganti Rugi (Ta'wid)*.

DSN-MUI. (2019). *Fatwa Nomor 129/DSN-MUI/VII/2019 tentang Biaya Riil sebagai Ta'wid Akibat Wanprestasi*.

Hamidi, J. (2011). *Hermeneutika Hukum: Sejarah, Filsafat, & Metode Tafsir*. Malang: UB Press.

Hanifuddin, I. (2020). Ganti rugi perspektif fiqh ekonomi. *Muslim Heritage*, 5(1), 1–26.

Harahap, M. Y. (1986). *Segi-Segi Hukum Perjanjian*. Bandung: PT Alumni.

Ibn 'Asyur, M. Ṭ. (2001). *Maqasid al-Shari'ah al-Islamiyyah* (M. al-Ṭahir al-Mesawi, Ed.). Amman: Dar al-Nafa'is.

Ibn Qayyim al-Jawziyyah, M. (1961). *al-Ṭuruq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*. Kairo: Maṭba'at al-Madani.

Indonesia. (2006). *Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama*.

Indonesia. (2009). *Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*.

Jalili, A. (2021). Teori maqashid syariah dalam hukum Islam. *Jurnal Syariah dan Hukum*, 3(2), 74–88.

Kurniawan, F., Marzuki, P. M., Agustin, E., & Amalia, R. (2018). Unsur kerugian dalam *unjustified enrichment* untuk mewujudkan keadilan korektif. *Yuridika*, 33(1), 133–155.

Mahkamah Agung RI. (2008). *Peraturan Mahkamah Agung Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah*.

Mantili, R. (2019). Ganti kerugian immateriil terhadap perbuatan melawan hukum dalam praktik. *Jurnal Hukum De'Jure*, 4(2), 210–225.

Marzuki, P. M. (2011). *Penelitian Hukum* (Edisi Revisi, Cet. 7). Jakarta: Prenada Media Group.

Maula, I. (2024). *Tinjauan Hukum Ekonomi Syariah tentang Ganti Kerugian Immateriil dalam Sengketa Ekonomi Syariah* (Tesis). Lampung: UIN Raden Intan Lampung.

Miharja, J. (2016). Konsep ganti rugi perspektif hukum Islam. *Muamalat*, 8(2), 133–155.

Muzlifah, E. (2013). Maqashid syariah sebagai paradigma dasar ekonomi Islam. *Economic: Journal of Economic and Islamic Law*, 4(2), 73–94.

Nasution, M. S. A., & Nasution, R. H. (2020). *Filsafat Hukum Islam dan Maqashid Syariah*. Jakarta: Kencana.

Santoso Az, L. (2011). *Hak dan Kewajiban Hukum Nasabah Bank*. Yogyakarta: Pustaka Yustisia.

Suryoutomo, M., Mariyam, S., & Satria, A. P. (2022). Koherensi putusan hakim dalam pembuktian ganti rugi immateriel perbuatan melawan hukum. *Jurnal Pembangunan Hukum Indonesia*, 4(1), 1–18.