

Sharia Governance and Regulatory Supervision in Islamic Banking: A Comparative Legal Analysis Between Indonesia and Malaysia

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Article Info	Abstract
Article history: Received : Januari 7, 2026 Revised : Februari 28, 2026 Accepted : Maret 20, 2026 Available online : Juni 28, 2026 *Corresponding author email : i000230061@student.ums.ac.id Phone number: 085822921050 Keywords: sharia governance, fiduciary duty, strict liability, Indonesia, malaysia.	This study aims to critically analyze and compare the legal frameworks for Sharia governance and regulatory oversight in Islamic banking between Indonesia and Malaysia. This normative-doctrinal legal research employs a statutory analysis of Indonesia's Law No. 21/2008 and Malaysia's IFSA 2013, combined with a comparative approach. Indonesia's decentralized-partnership model is flexible but prone to regulatory lag and limited liability for the Sharia board. Conversely, Malaysia's two-tier centralized model ensures immediate legal certainty but risks triggering defensive Sharia oversight due to the aggressive personal strict criminal liability imposed under Section 28 of the IFSA 2013. This study highlights the paradigm shift in the supervisory body's fiduciary duty, evolving from a purely advisory role in Indonesia to that of strict compliance officers in Malaysia. It proposes the concepts of a "Structural Regulatory Bridge" and "Proportional Civil Liability" to reform Indonesia's Sharia governance without stifling product innovation in the Islamic financial sector.
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INTRODUCTION

The growth of the global Islamic banking industry in recent years has shifted the financial paradigm from an alternative market to an integral part of the international financial system. Unlike conventional banking, which relies solely on financial risk mitigation, the existence of Islamic banking is highly dependent on the level of public trust in Sharia *compliance* (Alam et al., 2021; Faizi, 2024). This Sharia compliance directly influences the operational quality and sustainability performance of Islamic banks globally

(Alam et al., 2022). Therefore, *Sharia governance* is not merely a supplementary operational tool but a pillar of legal certainty that ensures all products, contracts, and financial instruments offered are in line with the principles of Islamic law (Tuzzahroh & Laela, 2022), in order to realize substantive economic justice within the framework of Sharia-based public interest (Saputro et al., 2025). Failure to uphold Sharia governance not only poses reputational risks but can also trigger civil disputes due to uncertainty regarding the legal status of products marketed to the public.

Within the Islamic finance landscape in Southeast Asia, Indonesia and Malaysia are two major hubs that share sociological and demographic similarities but have chosen different legal frameworks for regulating their Islamic finance governance (Hasan & Muhsyaf, 2024). Indonesia, through Law No. 21 of 2008 on Islamic Banking, has adopted a decentralized-partnership oversight model that divides authority between the Financial Services Authority (OJK) as the prudential regulator and the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) as the external fatwa-issuing authority (Wardana & Andri, 2024). In contrast, Malaysia, through *the Islamic Financial Services Act* (IFSA) 2013, implements a *two-tier* centralized model, in which *the Shariah Advisory Council* operates directly under the legal structure of Bank Negara Malaysia (BNM) with jurisdictional authority that is final and binding on both financial institutions and the courts (Latif & Ahmad, 2021).

Although both countries have well-established legal codes, fundamental differences in the institutional placement of these Sharia supervisory bodies raise serious doctrinal issues regarding legal certainty and regulatory effectiveness. In Indonesia, DSN-MUI fatwas are only formally *legally* binding after they are incorporated into OJK regulations, which often results in *regulatory* lag as well as potential disparities in interpretation between the financial supervisory authority and the Sharia Supervisory Board at the bank level (Mukti, 2023). A legal issue arises in Article 26 of Law No. 21 of 2008, which stipulates that DSN-MUI fatwas must be incorporated into OJK regulations to have legally binding force. From a doctrinal perspective, this mechanism creates a legal vacuum or “*vagueness of norms*” when there is a *regulatory* lag between the issuance of a fatwa and its codification into positive law, thereby triggering legal uncertainty for industry participants (Wardana & Andri, 2024). This situation stands in stark contrast to the legal framework in Malaysia. Through Sections 56 and 57 of *the Islamic Financial Services Act* (IFSA) 2013, the legal standing of decisions by *the Shariah Advisory Council* (SAC) of Bank Negara Malaysia is established as final and binding positive law—not only for financial institutions but also for the bench in civil courts (Latif & Ahmad, 2021). This model of absolute centralization in Malaysia, while ensuring immediate legal certainty, is often criticized from a doctrinal perspective because it curtails the autonomy of contemporary legal *ijtihad* at the internal level of bank supervisory boards and narrows the scope for judicial interpretation in Shariah business disputes (Febrina & Abdulah, 2024).

Most previous studies comparing these two countries are still limited to empirical-managerial approaches, such as measuring the effectiveness of *Sharia compliance*, mapping the risk management landscape, or examining banks' financial performance following regulation (Ab Ghani et al., 2024; Apriantoro et al., 2025; Faizi, 2024). Modern issues such as the impact of digitalization on the efficiency of supervisory boards have also begun to be examined from a macro perspective (Cherni & Amar, 2024). However, there remains a scarcity of normative-doctrinal legal studies that specifically contrast these two statutory texts from the perspective of legal certainty theory and *the fiduciary duty* of supervisory bodies. Therefore, the main novelty of this article lies in its comparative-doctrinal analysis of the limits of legal authority, the binding force of legal instruments issued by supervisory bodies, and the implications for the civil liability of Sharia supervisory boards when legal interpretations differ between monetary and religious authorities.

Based on this research gap, this article aims to conduct an in-depth analysis and comparison of the legal architecture of Sharia governance and regulatory oversight in Indonesia and Malaysia. Through a doctrinal analysis of Law No. 21/2008 and the IFSA 2013, this study seeks to outline the legal implications of the oversight models implemented by each country. The results of this comparison are expected to provide conceptual recommendations for strengthening Sharia banking regulations in Indonesia, particularly in optimizing supervisory functions without compromising legal certainty and the independence of Sharia authorities.

RESEARCH METHOD

This study is a normative or doctrinal legal study that focuses on the conceptual analysis of statutory texts, articles, legal principles, and regulatory documents (Wardana & Andri, 2024). The approaches used in this study include *the statutory approach* and *the comparative approach*. The statutory approach is applied to critically examine the consistency of norms and the hierarchy of Islamic banking regulations in effect in each country. Meanwhile, the comparative approach was used to directly compare the legal architecture, the scope of legal authority, and the *Sharia* governance models between Indonesia and Malaysia (Mukti, 2023).

The legal materials used in this study consist of primary and secondary legal sources. Primary legal sources include the main legislative acts of both countries, namely Law No. 21 of 2008 on Islamic Banking and related Financial Services Authority regulations in Indonesia, as well as *the Islamic Financial Services Act* (IFSA) 2013 and the *Shariah Governance Policy Document* (SGPD) issued by Bank Negara Malaysia. Secondary legal materials were retrieved from prominent academic database, including Google Scholar, Scopus, ScienceDirect, and HeinOnline. The selection criteria for secondary sources were defined based on specific inclusion criteria: (1) peer-reviewed journal articles and legal monographs published predominantly within the last five years (2021-2026); (2) literature

written in English or Indonesian focusing directly on Sharia governance, regulatory supervision, fiduciary duty, and Islamic banking law; and (3) comparative legal analyses between Indonesia and Malaysia. The collection of legal materials was conducted through structured library research, involving the inventory, thematic codification, and categorization of legal texts relevant to the issue of Sharia oversight.

Subsequently, all collected legal materials were analyzed using qualitative content *analysis*. Legal reasoning was conducted using the deductive method, which involves drawing specific conclusions regarding the legal implications of regulatory oversight from general legal principles and the applicable statutory texts in both countries (Faizi, 2024).

RESULT AND DISCUSSION

The Dynamics of Sharia Governance Structures: Malaysia's Centralized Model vs. Indonesia's Decentralized Model.

A normative-comparative study of the legal structure of *Sharia* governance in Indonesia and Malaysia reveals a stark dichotomy in the paradigms governing the structural and hierarchical positioning of Sharia supervisory bodies. These differences encompass the distribution of authority from the macro level (state regulators) to the micro level (Sharia banking institutions).

In Indonesia, the Sharia governance model is classified as *the Decentralized-Partnership Model*. Under Law No. 21 of 2008 on Sharia Banking, Sharia supervisory authority is fragmented across two structurally distinct institutions (Arifin et al., 2025). The first pillar is the Financial Services Authority (OJK), which acts as the state's prudential regulator, assessing the financial health and legal compliance of banks. The second pillar is the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), which acts as the sole external body responsible for issuing fatwas on Sharia compliance (Wardana & Andri, 2024).

At the micro level (banking institutions), the Sharia Supervisory Board (DPS) is positioned independently within the bank's internal structure. Pursuant to Article 32 of Law No. 21/2008, DPS members are appointed by the General Meeting of Shareholders (GMS) upon the recommendation of the DSN-MUI (Poundrianagari, 2021). However, legally speaking, there is no structural chain of command, formal coordination, or direct reporting channel of a daily, mandatory nature between the DPS at the micro level of the banking sector and the OJK or Bank Indonesia as the central bank. The DPS functions solely internally to provide opinions on Sharia compliance to the board of directors without possessing independent external legal enforcement authority (Mukti, 2023).

In contrast, Malaysia implements a highly formalized *Two-Tier Centralized Model* that is fully integrated under the umbrella of the country's monetary authority. Based on the legal framework of *the Islamic Financial Services Act* (IFSA) 2013 and *the Central Bank of Malaysia Act* (CBMA) 2009, Shariah governance falls directly under the jurisdiction of Bank Negara Malaysia (BNM). At the macro level (First Tier), BNM's *Shariah Advisory Council* (SAC) serves

as the country's highest Shariah authority (Latif & Ahmad, 2021). SAC members are officially appointed by the Yang di-Pertuan Agong (King of Malaysia) upon the recommendation of the Minister of Finance after consultation with BNM, granting them absolute political and legal legitimacy as an official state body (Faizi, 2024).

At the micro level (Second Level), every Islamic bank is required to establish a *Shariah Committee* (SC). Unlike the Indonesian model, the SC in Malaysia is explicitly positioned as a direct extension of the BNM's Shariah Advisory Council (SAC) at the bank level. There is a strict chain of command and reporting obligation from the SC to the BNM's SAC. According to the BNM's *Shariah Governance Policy Document* (SGPD), every decision made by the SC at the micro level of a bank must comply with and must not contradict in the slightest the rulings issued by the BNM's SAC at the macro level (Arifin et al., 2025)

From a doctrinal perspective, the sharp distinction between these two governance models has implications for the degree of *legal certainty* and the potential for jurisdictional *friction*. In the context of Indonesian constitutional law, the fragmented nature of the decentralization-partnership model creates serious issues regarding legal legitimacy. From the perspective of administrative law, the DSN-MUI is a non-governmental civil society organization (ormas); consequently, its legal products known as "fatwas" fall outside the hierarchy of national legislation as stipulated in Law No. 12 of 2011 on the Formation of Legislation. This institutional fragmentation triggers what is known as a "regulatory lag" and "*vagueness of norms*," as civil-Sharia fatwas only become binding on the banking industry after they are formally incorporated into OJK Regulations (POJK) (Mukti, 2023). This also contributes to a lack of standardized competency requirements for local Sharia supervisors, who are often appointed based solely on their status as charismatic religious figures rather than on adequate technical auditing capabilities (Triasari & De Zwart, 2021).

The lack of a direct chain of command from the bank's DPS to the OJK also weakens the function of preventive supervision. DPS members are often caught in a dilemma of dual loyalty: on the one hand, they are morally responsible for ensuring *sharia compliance* under the mandate of the DSN-MUI, but on the other hand, they are paid and appointed by bank management through the General Meeting of Shareholders (GMS), which limits their independence when systemic sharia violations occur on the part of bank management (Tuzzahroh & Laela, 2022).

On the other hand, Malaysia's two-tier centralized model has successfully eliminated the problem of *regulatory lag* and instantly ensured a very strong degree of legal certainty. Because the SAC is directly embedded within the Central Bank (BNM) and is legislatively recognized by the CBMA 2009, the SAC's decisions automatically take effect as positive law without the need for an additional regulatory absorption process (Latif & Ahmad, 2021). However, doctrinal analysis shows that this absolute centralization is not without legal weaknesses. The concentration of Sharia interpretive authority in a single body (the BNM's SAC) has the potential to stifle the body of contemporary Islamic legal *ijtihad* at the micro level of banking.

Shariah committees at the bank level have lost their independence to formulate creative *shariah opinions* that are responsive to the dynamics of local market transactions, as their scope for *ijtihad* has been rigidly restricted by the macro-level provisions of the BNM's Shariah Advisory Council (SAC) (Sencal & Asutay, 2021). Consequently, these limitations on the scope of *ijtihad* have the potential to reduce the strategic contribution of the supervisory board toward achieving the *sustainability performance* targets of Islamic banking itself (Jan et al., 2021). Furthermore, consolidating religious authorities under the central bank's control risks creating tension between the independence of *ijtihad* in muamalah jurisprudence and the state's macroeconomic monetary policy interests. Religious authorities may be "subjugated" to maintain financial market stability during a crisis (Faizi, 2024).

Reconstructing the Fiduciary Duty of Sharia Supervisory Bodies: Personal-Criminal Liability (Strict Liability) vs Preventive-Administrative Functions.

A comparative study of the *legal liability* of Sharia supervisory bodies in Indonesia and Malaysia reveals extremely stark disparities in the reconstruction of their *fiduciary duties*. These differences place the supervisory boards in both jurisdictions within vastly different liability matrices when *Sharia non-compliance* occurs that harms the interests of customers.

In Indonesia, pursuant to Law No. 21 of 2008 on Sharia Banking, the Sharia Supervisory Board (DPS) is positioned as the equivalent of the internal supervisory body overseeing the company's operations (the Board of Commissioners). Pursuant to Article 32 of Law No. 21/2008, the primary duties of the DPS are to provide advice and recommendations to the Board of Directors and to oversee the bank's operations to ensure compliance with Sharia principles (Poundrianagari, 2021). However, in the event of systemic Sharia non-compliance that causes financial loss to customers or disrupts the bank's stability, Law No. 21/2008 does not stipulate *specific criminal sanctions* or joint and several personal civil liability for members of the DPS. Civil liability and the management of corporate operations rest entirely with the *Board of Directors* based on the principles of limited liability company law (Tuzzahroh & Laela, 2022). In practice, the Sharia Supervisory Board in Indonesia performs only preventive and administrative functions, which exempt its members from the risk of personal legal liability.

In contrast, Malaysia, through the *Islamic Financial Services Act* (IFSA) of 2013, has restructured the legal standing of the *Shariah Committee* (SC) with very stringent accountability standards through the doctrine of strict liability. This provision is explicitly set forth in Section 28 of the IFSA of 2013. Under Section 28(1), every Islamic financial institution is required to ensure that all its operations and products are in full compliance with Islamic law. In the event of a failure to comply with Shariah, Section 28(3) stipulates that any member of the *Shariah Committee* who approves or fails to prevent such a transaction is *jointly liable* and bears personal criminal liability (Abdul Rahman & Bukair, 2021). This negligence is classified as a serious criminal offense punishable by a maximum

prison sentence of 8 years or a personal fine of up to RM 25 million (equivalent to Rp 85 billion), or even a combination of both (Latif & Ahmad, 2021).

From a doctrinal perspective, the reconstruction of the legal responsibilities of Sharia supervisory bodies is closely related to the scope of *fiduciary duty* in modern corporate law. In Indonesia, the role of the DPS which is limited to preventive and administrative functions raises serious accountability issues. Although the DPS bears the moral responsibility of ensuring that transactions comply with Sharia law, Indonesia's legal structure creates what is known as "*attenuated liability*." DPS members are appointed by the General Meeting of Shareholders (GMS) and receive honoraria directly from bank management, but they lack the executive authority to immediately halt non-compliant transactions (Suryani et al., 2024). This dual loyalty is exacerbated by the absence of personal civil liability. When a dispute arises between a customer and an Islamic bank due to a defect in the contract (for example, a murabahah contract that turns out not to fulfill the essential elements of a sale), civil courts place the entire burden of compensation on the bank's board of directors as the decision-making body, while the DPS is exempt from formal legal liability (Ab Ghani et al., 2024). The absence of personal legal risk has the potential to render the Supervisory Board's oversight function passive and merely an administrative formality (a "*rubber-stamping body*").

On the other hand, the *strict liability* model implemented by Malaysia under Section 28 of the IFSA 2013 has shifted the regulatory paradigm from passive-reactive to active-defensive. From a doctrinal perspective, *strict liability* eliminates the requirement for the prosecutor to prove the existence of criminal intent (*mens rea*) on the part of *Shariah Committee* members; the prosecutor need only prove that a failure to comply with Shariah has occurred and that the SC member was negligent in exercising their preventive authority (Abdul Rahman & Bukair, 2021). This compels every Shariah Committee member in Malaysia not only to rely on management reports but also to conduct daily investigations firsthand in collaboration with the integrated *Shariah Audit* and *Shariah Review* functions (Astuti et al., 2024)

However, this excessively severe legal burden also gives rise to negative doctrinal implications. The very high risk of personal criminal liability in Malaysia has the potential to trigger a phenomenon of "*defensive Shariah oversight*," in which Shariah scholars and academics are reluctant to serve on *Shariah Committees* for fear of facing criminal sanctions due to operational errors committed by lower-level bank staff (Latif & Ahmad, 2021). Furthermore, oversight that is overly focused on mitigating personal criminal liability can stifle innovation in Shariah-compliant financial products. Shariah Committee members will tend to adopt a very rigid stance and reject progressive new products in order to protect themselves from the threat of Section 28 of the IFSA 2013 (Suryani et al., 2024)

The novelty of this section lies in a comparative-doctrinal analysis that unpacks the implications of the paradigm shift in *the fiduciary duty of Sharia supervisory bodies*

from a purely advisory role (*advisory board*) in Indonesia to that of a compliance enforcer with criminal liability (*strict compliance officer*) in Malaysia. Unlike previous studies, which generally examine Sharia governance from the perspective of corporate financial performance or social disclosure (Ab Ghani et al., 2024; Suryani et al., 2024), this study specifically evaluates how the burden of personal criminal liability affects the legal behavior of Sharia supervisors and the independence of their *ijtihad*.

The practical contribution of this study is to formulate draft policy recommendations for Indonesian regulators (the OJK and the DPR) to undertake a legal overhaul of the Sharia Banking Law. This study proposes the concept of “*Proportional Civil Liability*” as a middle ground. Instead of imposing extreme criminal sanctions, as in Malaysia which risk creating a shortage of Sharia experts Indonesia should introduce administrative sanctions and joint and several civil liability for Sharia Supervisory Board (DPS) members proven to have committed *gross negligence* in carrying out their Sharia compliance oversight functions. This is essential to enhance the effectiveness of oversight without undermining the national Sharia banking innovation ecosystem.

Table 1. Comparative Legal Matrix of Sharia Governance: Indonesia vs. Malaysia

Dimension / Parameter	Indonesia (Law No. 21/2008 & OJK Regulations)	Malaysia (IFSA 2013 & CBMA 2009)
Governance Model	Decentralized-Partnership Model	Two-Tier Centralized Model
Macro Authority (State Level)	Dual authority: OJK (prudential regulation) and DSN-MUI (external non-governmental fatwa body).	Single unified authority: Bank Negara Malaysia (BNM) via the Shariah Advisory Council (SAC).
Micro Organ (Bank Level)	Sharia Supervisory Board (DPS) placed internally within the bank structure.	Shariah Committee (SC) serving as a direct extension of BNM’s SAC.
Appointment Mechanism	Appointed by the General Meeting of Shareholders (GMS) upon DSN-MUI recommendation.	Appointed by the bank with mandatory approval from BNM; SAC members appointed by the King (<i>Yang di-Pertuan Agong</i>).
Chain of Command & Reporting	No direct daily imperative reporting line or enforcement authority from DPS to OJK.	Strict hierarchical chain of command and mandatory reporting line from SC to SAC BNM.
Legal Binding Force of	Fatwas require formal	SAC rulings automatically

Rulings	absorption into OJK Regulations (POJK) to become legally binding (<i>prone to regulatory lag</i>).	constitute binding positive law on financial institutions and civil courts.
Fiduciary Duty & Legal Liability	Preventive-Administrative Function: No personal civil or specific criminal liability for DPS (<i>attenuated liability</i>).	Strict Compliance Officer: Personal joint and several criminal liability (<i>strict liability</i> under Sec. 28 IFSA 2013: max. 8 years prison or RM 25 million fine).

CONCLUSION

This normative-comparative study found that the differences in legal architecture between Indonesia and Malaysia have far more complex and profound legal and operational implications than previously assumed in theoretical discussions. The application of the doctrine of *strict liability* under Section 28 of the IFSA 2013 in Malaysia, while ensuring immediate legal certainty at the macro level, has proven to trigger the phenomenon of “*defensive Shariah oversight*.” Personal fear of extreme criminal penalties (8 years’ imprisonment and a fine of RM 25 million) for members of *the Shariah Committee* has significantly curtailed the courage to engage in contemporary legal *ijtihad* and stifled the space for innovation in Shariah-compliant financial products at the bank level. In contrast, Indonesia’s decentralization-partnership model, based on Law No. 21/2008, has proven to offer high flexibility in legal *ijtihad* and embodies the spirit of *civil society* partnership. However, this model suffers from an acute structural weakness in the form of *attenuated liability* resulting from the Sharia Supervisory Board (DPS) being assigned a purely preventive-administrative role without any formal personal civil or criminal liability; consequently, their supervisory function is often reduced to a mere corporate formality (*rubber-stamping*).

Academically, this study makes a significant scientific contribution by reinforcing previous findings regarding the existence of *regulatory lag* in Indonesia resulting from the fragmented incorporation of non-governmental DSN-MUI fatwas into OJK regulations (Mukti, 2023). This study also successfully challenges the validity of the long-held normative view that assumes a strict correlation between the imposition of severe criminal penalties and an increase in the integrity of Sharia compliance. On the contrary, extreme criminal penalties actually lead to a shortage of experts and stifle innovation in banking contracts. As a theoretical innovation, this study introduces two new concepts that enrich the scientific body of knowledge in Islamic economic law: the concept of the “Structural Regulatory Bridge” as a solution for harmonizing decentralized institutions in Indonesia, and the concept of “*Proportional Civil Liability*” as a formula to balance the legal accountability of supervisory bodies without crippling the Islamic banking business

climate.

Although it offers a sharp doctrinal analysis, this study has limitations due to its focus on normative legal analysis based on the codification of statutory texts (Law No. 21/2008 and IFSA 2013), and thus is unable to measure empirical-psychological aspects, such as risk perception or the daily moral burden actually felt by supervisory board members; therefore, further research is strongly recommended to employ a *socio-legal* approach using in-depth interviews. As a policy recommendation, the Indonesian House of Representatives (DPR) and the Financial Services Authority (OJK) are advised to immediately amend the Sharia Banking Law to establish a “Structural Regulatory Bridge” by providing a coordination channel and whistleblowing *protection* for supervisory board members directly to the OJK, as well as implementing “Proportional Civil Liability” sanctions in the form of specific personal joint and several liability for supervisory board members proven to have committed gross negligence (*gross negligence*). Meanwhile, Bank Negara Malaysia is recommended to review the rigidity of Section 28 of the IFSA 2013 by adopting a protective clause the “*Shariah Business Judgment Rule*” to shield *Shariah Committee* members from personal criminal liability arising from tactical operational errors by lower-level staff, rather than from negligence in their strategic oversight functions.

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