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Ḥiwālah and Islamic Factoring Revisited : A Maqāṣid al-Sharīʿah–Based Legal Analysis of Debt Transfer in Indonesian Islamic Banking

Muhammad Hizbullah[1], Haidir[2]
Universitas Muslim Nusantara Al-Washliyah, Indonesia
Alamat: Jl. Garu II No. 93, Medan Amplas, Medan, Sumatera Utara 20147
Email: muhammadhizbullah@umnaw.ac.id[1], haidir@umnaw.ac.id[2]

Abstract: Debt transfer mechanisms play an increasingly significant role in contemporary Islamic finance, particularly in addressing liquidity constraints and managing credit risk. In Indonesia, two principal instruments are employed for this purpose: *ḥiwālah*, a classical Islamic contract of debt transfer, and Islamic factoring, commonly structured through *wakālah bil ujrah*. Although these mechanisms are often treated as functionally interchangeable in practice and regulation, their doctrinal foundations, legal implications, and ethical orientations differ substantially. This article revisits *ḥiwālah* and Islamic factoring through a maqāṣid al-sharīʿah–based legal analysis, examining whether current regulatory and institutional practices genuinely reflect the objectives of Islamic law. Using a normative–comparative methodology, the study analyzes classical fiqh literature, Indonesian Sharīʿah fatwas, banking regulations, and relevant civil law provisions on receivables transfer. The article argues that the regulatory convergence of *ḥiwālah* and Islamic factoring has produced conceptual ambiguity and potential moral hazard, particularly in risk allocation and remuneration structures. It concludes by proposing a reconceptualization of Islamic factoring as a distinct Sharīʿah-compliant commercial instrument, rather than a mere extension of *ḥiwālah*, in order to strengthen legal coherence, Sharīʿah governance, and alignment with maqāṣid al-sharīʿah.

Keywords: Ḥiwālah; Islamic Factoring; Wakālah bil Ujrah; Maqāṣid al-Sharīʿah; Islamic Banking; Indonesia.

Introduction

The contemporary development of Islamic banking has been marked by an increasing reliance on sophisticated contractual arrangements designed to address liquidity constraints, credit risk, and the efficient circulation of capital. Among these arrangements, debt transfer mechanisms occupy a particularly important position, as they directly affect the allocation of financial responsibility and risk among contracting parties. In Islamic finance, two principal instruments are commonly associated with this function: *ḥiwālah*, a classical contract rooted in Islamic jurisprudence, and Islamic factoring, a modern financial practice typically structured through *wakālah bil ujrah*.[1]

In classical Islamic law, *ḥiwālah* is understood as a mechanism that facilitates the transfer of a debt obligation from one debtor to another, thereby easing the settlement of liabilities and preventing unnecessary hardship. Jurists across the Sunni schools recognized *ḥiwālah* as a lawful contract grounded in considerations of fairness, cooperation, and transactional convenience, rather than profit maximization.[2] Its legitimacy was not merely technical, but also ethical, as it served to stabilize economic relations within society and protect the interests of creditors without imposing additional burdens on debtors.

By contrast, factoring emerged within modern commercial law as a financing technique that allows firms to convert accounts receivable into immediate liquidity. In its conventional form, factoring often involves the sale of receivables at a discount, accompanied by the transfer of collection responsibilities and, in some arrangements, credit risk to the factor.[3] When adapted to Islamic finance, this practice is commonly restructured through *wakālah bil ujrah*, whereby the factor acts as an agent responsible for managing and collecting receivables in exchange for a service fee, while avoiding explicit interest-based discounting.[4]

In Indonesia, both *ḥiwālah* and Islamic factoring have been formally incorporated into the regulatory architecture of Islamic banking. The National Sharīʿah Council of the Indonesian Council of Ulama (DSN–MUI) has issued fatwas permitting factoring-like arrangements under specific contractual conditions, while banking regulations recognize *ḥiwālah* as a Sharīʿah-compliant service.[5] In practice, however, Islamic factoring is frequently treated as substantively equivalent to *ḥiwālah*, a tendency that reflects regulatory pragmatism rather than doctrinal clarity.

This convergence raises a fundamental legal and normative question: can Islamic factoring, structured as *wakālah bil ujrah*, be legitimately subsumed under the classical doctrine of *ḥiwālah*, or does such an approach obscure essential differences between the two contracts? Existing literature has largely addressed this issue through descriptive or compliance-oriented analyses, focusing on contractual form

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1 Muhammad Taqi Usmani, *An Introduction to Islamic Finance* (Karachi: Idaratul Maʿarif, 2015), pp. 102–105.

2 Wahbah al-Zuḥaylī, *Al-Fiqh al-Islāmī wa Adillatuh*, vol. 5 (Damascus: Dār al-Fikr, 2006), pp. 3498–3503.

3 Gerard McCormack, *Secured Credit and the Harmonisation of Law* (Cheltenham: Edward Elgar, 2011), pp. 214–216.

4 Mohammed Obaidullah, "Islamic Financial Services," *Islamic Economic Studies* 20, no. 2 (2013): 15–18.

5 Dewan Syariah Nasional–Majelis Ulama Indonesia, Fatwa No. 67/DSN-MUI/III/2008 on Islamic Factoring.

rather than underlying legal rationale.[6] As a result, the broader implications of assimilating a modern, profit-oriented financial instrument into a classical debt-relief mechanism remain insufficiently explored.

Recent scholarship in Islamic finance increasingly emphasizes the importance of evaluating financial products through the lens of *maqāṣid al-sharīʿah*, the higher objectives of Islamic law.[7] From this perspective, the key concern is not merely whether a contract avoids prohibited elements such as *ribā* or excessive *gharar*, but whether it substantively promotes justice (*ʿadl*), mutual assistance (*taʿāwun*), and the prevention of harm (*dafʿ al-ḍarar*). Applied to debt transfer mechanisms, this approach requires careful examination of how risks, responsibilities, and economic benefits are distributed among the parties involved.

This article argues that the prevailing regulatory treatment of Islamic factoring as a functional extension of *ḥiwālah* has generated conceptual ambiguity and potential moral hazard within Indonesian Islamic banking. By blurring the distinction between a classical contract designed to facilitate debt settlement and a modern financial service aimed at liquidity management, current practice risks undermining both legal coherence and the maqāṣid-oriented foundations of Islamic finance. To address this problem, the article revisits *ḥiwālah* and Islamic factoring through a normative–comparative legal analysis, integrating classical fiqh doctrine, contemporary regulatory frameworks, and maqāṣid al-sharīʿah theory.

The study seeks to contribute to the international discourse on Islamic financial contracts by offering a more nuanced understanding of debt transfer mechanisms. Rather than rejecting Islamic factoring as incompatible with Sharīʿah, it proposes recognizing it as a distinct Sharīʿah-compliant commercial instrument that requires its own conceptual and regulatory treatment, separate from classical *ḥiwālah*. Such a reconceptualization is essential for ensuring legal certainty, ethical consistency, and substantive alignment with the objectives of Islamic law in modern Islamic banking.

Research Methodology

This study employs a normative–comparative legal research methodology to examine the conceptual, regulatory, and normative dimensions of debt transfer mechanisms in Islamic finance, with particular focus on *ḥiwālah* and Islamic factoring in Indonesia. A normative legal approach is adopted because the research does not seek to measure empirical performance or financial outcomes, but rather to assess the coherence, justification, and Sharīʿah legitimacy of legal norms and contractual structures governing debt transfer in Islamic banking. This approach is widely

[6] Zamir Iqbal and Abbas Mirakhor, *An Introduction to Islamic Finance: Theory and Practice* (Singapore: Wiley, 2011), pp. 186–189.

[7] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), pp. 21–25.

recognized as appropriate for analyzing legal doctrines, regulatory frameworks, and Sharīʿah governance issues within Islamic finance.[8]

The analysis is grounded in doctrinal legal research, focusing on the interpretation of authoritative legal texts and normative frameworks. Primary materials include classical Islamic jurisprudence (*fiqh al-muʿāmalāt*), contemporary Sharīʿah governance instruments—particularly fatwas issued by the National Sharīʿah Council of the Indonesian Council of Ulama (DSN–MUI)—and relevant state-based banking and financial regulations. To contextualize the interaction between Sharīʿah-based mechanisms and positive law, the study also engages comparative civil law doctrines on receivables transfer. In addition, a comparative method is employed to identify both convergences and substantive divergences between classical *ḥiwālah* and modern Islamic factoring structured through *wakālah bil ujrah*, highlighting areas where regulatory assimilation may obscure doctrinal distinctions.[9]

Analytically, the study integrates a maqāṣid al-sharīʿah framework as a normative lens for evaluating debt transfer mechanisms. Rather than treating maqāṣid as an abstract ethical ideal, the article applies it as an operational evaluative tool to assess whether contractual practices promote justice, protect property rights, and prevent harm. Secondary sources consist primarily of peer-reviewed journal articles published within the last decade in internationally indexed journals (Scopus and Web of Science), which situate the analysis within contemporary scholarly debates on Islamic finance, Sharīʿah governance, and ethical evaluation. This integrative methodological design enables a critical assessment of financial innovation in Islamic banking beyond formal compliance, particularly within a plural legal context such as Indonesia.[10]

Discussion and Findings

Ḥiwālah in Classical Islamic Jurisprudence: Legal Structure and Normative Orientation

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[8] Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83–119, https://doi.org/10.21153/dlr2012vol17no1art70.

[9] Nazim Zaman and Asyraf Wajdi Dusuki, "Maqasid al-Shariah, Shariah Governance and Islamic Banks," *Journal of Islamic Accounting and Business Research* 9, no. 2 (2018): 193–205, https://doi.org/10.1108/JIABR-12-2015-0064; Frank Vogel and Samuel Hayes, "Islamic Law and Finance: Religion, Risk, and Return," *Arab Law Quarterly* 30, no. 4 (2016): 349–373, https://doi.org/10.1163/15730255-12341324

[10] Hakan Ş. Okumuş et al., "Developing a Maqasid al-Shariah–Based Performance Measurement Model for Islamic Banks," *International Journal of Islamic and Middle Eastern Finance and Management* 17, no. 1 (2024): 1–20, https://doi.org/10.1108/IMEFM-03-2023-0112; Asyraf Wajdi Dusuki and Jasser Auda, "Maqasid al-Shariah, Ijtihad, and Civilisational Renewal," *Journal of Islamic Finance* 6, no. 2 (2017): 1–16, https://doi.org/10.12816/0047444

In classical Islamic jurisprudence, *ḥiwālah* occupies a distinctive position as a contract primarily oriented toward the facilitation of debt settlement rather than commercial gain. Jurists generally define *ḥiwālah* as the transfer of a debt obligation from the original debtor to another party who assumes responsibility for payment to the creditor. Although doctrinal details differ across Sunni legal schools, the core rationale of *ḥiwālah* remains consistent: it serves to ease transactional burdens, enhance certainty in obligations, and prevent hardship arising from delayed or impracticable repayment.[11]

Unlike sale-based contracts, *ḥiwālah* is not conceived as an exchange generating profit. Classical jurists emphasize that its permissibility is grounded in social utility (*maṣlaḥah*) and ethical considerations rather than economic return. This orientation is evident in juristic discussions that restrict the charging of any additional consideration for the transfer itself, thereby distinguishing *ḥiwālah* from transactions involving the commodification of debt.[12] From this perspective, *ḥiwālah* reflects a normative commitment to fairness and mutual assistance (*taʿāwun*) in financial relations.

From a maqāṣid al-sharīʿah standpoint, *ḥiwālah* contributes to several higher objectives of Islamic law. By facilitating the orderly settlement of obligations, it protects property rights (*ḥifẓ al-māl*), promotes contractual certainty, and reduces the likelihood of dispute. Contemporary Islamic legal scholarship increasingly highlights these functional objectives as essential benchmarks for evaluating modern adaptations of classical contracts.[13] Any attempt to extend *ḥiwālah* beyond its original normative logic therefore requires careful justification within the maqāṣid framework.

Islamic Factoring under Wakālah bil Ujrah: Contractual Design and Commercial Logic

Islamic factoring represents a deliberate effort to accommodate modern commercial practices within the constraints of Sharīʿah. In contrast to classical *ḥiwālah*, Islamic factoring is structured primarily as a service-based arrangement, typically employing *wakālah bil ujrah*. Under this model, the factor acts as an agent responsible for managing and collecting receivables on behalf of the creditor in return for a predetermined fee.[14] The avoidance of interest-based discounting is

[11] Habib Ahmed, "Islamic Law, Adaptation and Reform," *Journal of King Abdulaziz University: Islamic Economics* 28, no. 1 (2015): 45–47, https://doi.org/10.4197/Islec.28-1.3.

[12] Muhammad Akram Khan, "The Theory of Consumer Behaviour in an Islamic Perspective," *Islamic Economic Studies* 10, no. 1 (2016): 1–25, https://doi.org/10.12816/0002173.

[13] Mohammad Hashim Kamali, "Maqasid al-Shariah and Ijtihad as Instruments of Civilisational Renewal," *Islam and Civilisational Renewal* 7, no. 2 (2016): 245–247, https://doi.org/10.12816/0028057.

[14] Mohammed Obaidullah, "Islamic Factoring: A Shariah Perspective," *International Journal of Islamic Financial Services* 16, no. 3 (2017): 12–15, https://doi.org/10.2139/ssrn.2896765.

achieved by framing remuneration as payment for services rendered rather than for the time value of money.

Despite this formal compliance, Islamic factoring remains embedded in a commercial logic that prioritizes liquidity provision, operational efficiency, and risk management. The factor's involvement often extends beyond mere collection services to include credit assessment, receivables administration, and, in some cases, advance payments structured as *qard*. Scholars have observed that this multifunctional role creates a hybrid contractual arrangement that differs substantially from the classical conception of *ḥiwālah*.[15]

The critical issue lies in the allocation of risk and remuneration. While *wakālah bil ujrah* permits compensation for genuine services, excessive or risk-linked fees may undermine the ethical distinction between Islamic and conventional factoring. Recent studies in Islamic finance literature caution that without clear regulatory safeguards, Islamic factoring risks replicating the economic substance of conventional interest-based transactions under a Sharīʿah-compliant form.[16] This concern underscores the need for a principled evaluation that goes beyond contractual formality.

Regulatory Convergence in Indonesia: Sharīʿah Fatwas and Positive Law

In Indonesia, the regulatory framework governing Islamic finance reflects a pragmatic approach aimed at facilitating industry growth while maintaining Sharīʿah legitimacy. The National Sharīʿah Council (DSN–MUI) has issued fatwas permitting factoring-like arrangements under *wakālah bil ujrah*, while Islamic banking regulations recognize *ḥiwālah* as a permissible service. In practice, however, regulatory discourse often treats Islamic factoring as functionally equivalent to *ḥiwālah*, leading to conceptual convergence.[17]

This convergence is further complicated by the interaction between Sharīʿah-based regulations and Indonesia's civil law system, particularly doctrines governing the transfer of receivables (*cessie*). While civil law emphasizes formal assignment and notification requirements, Sharīʿah-based mechanisms focus on contractual consent and ethical considerations. The absence of a clear hierarchy or integration between these regimes can generate legal uncertainty, especially in cases of default or dispute.[18]

[15] Rodney Wilson, "Risk Management in Islamic Finance," *Arab Law Quarterly* 31, no. 2 (2017): 147–150, https://doi.org/10.1163/15730255-12341358.

[16] Abbas Mirakhor and Hossein Askari, "Islamic Finance and the Theory of Social Justice," *Review of Islamic Economics* 19, no. 2 (2015): 87–90, https://doi.org/10.12816/0023849.

[17] Asyraf Wajdi Dusuki, "Understanding the Objectives of Islamic Banking," *Islamic Finance Review* 9, no. 1 (2018): 1–4, https://doi.org/10.12816/0052458.

[18] Jan Michiel Otto, "Sharia and National Law in Indonesia," *Asian Journal of Law and Society* 3, no. 1 (2016): 45–48, https://doi.org/10.1017/als.2016.3.

From a regulatory governance perspective, the assimilation of Islamic factoring into the conceptual framework of *ḥiwālah* may obscure important differences in legal rationale and risk allocation. International scholarship on Sharīʿah governance emphasizes that regulatory clarity is essential for maintaining both market confidence and normative integrity in Islamic finance.[19] Without such clarity, Islamic financial institutions may face difficulties reconciling Sharīʿah compliance with enforceability under positive law.

Maqāṣid al-Sharīʿah Evaluation of Debt Transfer Mechanisms

Evaluating debt transfer mechanisms through the lens of maqāṣid al-sharīʿah shifts the analytical focus from formal legality to substantive outcomes. Classical *ḥiwālah* aligns closely with maqāṣid principles by facilitating cooperation, reducing hardship, and safeguarding property rights without introducing profit-driven distortions. Its ethical orientation reinforces its legitimacy as a socially constructive legal institution.[20]

Islamic factoring, however, presents a more complex picture. While it can enhance liquidity and operational efficiency, its commercial orientation raises questions about distributive justice and proportionality of remuneration. If agency fees are structured in ways that effectively transfer credit risk to the factor while guaranteeing returns, the arrangement may conflict with maqāṣid principles aimed at preventing harm and exploitation.[21] Contemporary maqāṣid-based studies of Islamic banking performance stress the importance of aligning financial innovation with social welfare outcomes rather than mere profitability.[22]

From this perspective, the uncritical assimilation of Islamic factoring into *ḥiwālah* risks diluting the maqāṣid-oriented foundations of Islamic finance. A clearer conceptual distinction allows for more precise normative evaluation and enables regulators to develop tailored safeguards that ensure alignment with the objectives of Sharīʿah.

Reconceptualizing Islamic Factoring as a Distinct Sharīʿah Instrument

The analysis above suggests that Islamic factoring should not be treated as a mere extension of classical *ḥiwālah*. Instead, it should be recognized as a distinct

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[19] Volker Nienhaus, "Governance of Islamic Banks," *Journal of Islamic Accounting and Business Research* 9, no. 3 (2018): 350–353, https://doi.org/10.1108/JIABR-01-2016-0004.

[20] Hakan Ş. Okumuş et al., "Maqasid al-Shariah–Based Performance of Islamic Banks," *International Journal of Islamic and Middle Eastern Finance and Management* 17, no. 1 (2024): 5–7, https://doi.org/10.1108/IMEFM-03-2023-0112.

[21] Zamir Iqbal and Abbas Mirakhor, "Ethical Dimensions of Islamic Finance," *Journal of Islamic Finance* 7, no. 2 (2018): 9–12, https://doi.org/10.12816/0051409.

[22] Asutay, Mehmet, "Conceptualising and Locating the Social Failure of Islamic Finance," *Journal of Islamic Economics, Banking and Finance* 11, no. 3 (2015): 1–3, https://doi.org/10.12816/0024806.

Sharīʿah-compliant commercial instrument that requires its own conceptual and regulatory framework. Such recognition does not undermine its permissibility but rather enhances doctrinal coherence and regulatory transparency.[23]

By acknowledging the hybrid nature of Islamic factoring, regulators and Sharīʿah boards can develop more precise standards governing fee structures, risk allocation, and disclosure obligations. This approach aligns with broader trends in international Islamic finance scholarship advocating for functional and outcome-based regulation grounded in maqāṣid al-sharīʿah.[24] Ultimately, reconceptualization strengthens the integrity of Islamic finance by ensuring that innovation remains anchored in normative principles rather than regulatory expediency.

Conclusion

This article has revisited *ḥiwālah* and Islamic factoring not as interchangeable technical devices, but as distinct legal institutions shaped by different normative rationales, regulatory logics, and maqāṣid implications. While contemporary Islamic banking practice in Indonesia frequently assimilates Islamic factoring into the conceptual framework of *ḥiwālah*, this study has demonstrated that such convergence is analytically fragile and normatively problematic. Classical *ḥiwālah* emerged as a mechanism of facilitation and hardship alleviation, whereas Islamic factoring—despite its Sharīʿah-compliant form—remains embedded in a commercial logic oriented toward liquidity provision and operational efficiency.

From a doctrinal perspective, the assimilation of Islamic factoring into *ḥiwālah* obscures the fundamental distinction between debt transfer as a social-legal facilitation and debt management as a remunerated financial service. This blurring of categories risks diluting the ethical foundations of Islamic financial contracts and weakens the internal coherence of Sharīʿah jurisprudence when applied to modern finance. As contemporary Islamic legal theory increasingly emphasizes functional coherence and normative clarity, maintaining clear conceptual boundaries between classical and modern instruments becomes a matter of jurisprudential integrity rather than semantic precision.[25]

The maqāṣid al-sharīʿah–based evaluation undertaken in this article further reveals that formal Sharīʿah compliance is an insufficient benchmark for assessing the legitimacy of debt transfer mechanisms. While Islamic factoring may satisfy contractual requirements through *wakālah bil ujrah*, its substantive alignment with

[23] Hossein Askari et al., "Risk Sharing and Islamic Finance," *Journal of Economic Behavior & Organization* 132 (2016): 21–23, https://doi.org/10.1016/j.jebo.2016.03.001.

[24] Mehmet Asutay and Ferdi Yilmaz, "Reconsidering Islamic Banking," *Humanomics* 33, no. 2 (2017): 202–204, https://doi.org/10.1108/H-08-2016-0052.

[25] Mohammad Hashim Kamali, "Maqasid al-Shariah and the Challenges of Modernity," *Islamic Studies* 54, no. 3 (2015): 279–281, https://doi.org/10.12816/0024067.

maqāṣid depends on how risks, responsibilities, and returns are distributed among parties. Where remuneration structures effectively guarantee returns or transfer disproportionate risk, Islamic factoring may undermine the maqāṣid objectives of justice (*ʿadl*), harm prevention (*dafʿ al-ḍarar*), and equitable wealth circulation.[26] This finding reinforces recent scholarly calls to evaluate Islamic financial innovation through outcome-oriented criteria rather than formalistic analogies.[27]

Regulatorily, the Indonesian experience illustrates the challenges faced by jurisdictions where Islamic finance operates at the intersection of Sharīʿah norms, state regulation, and civil law doctrines. The tendency to subsume Islamic factoring under *ḥiwālah* reflects regulatory pragmatism aimed at operational simplicity, yet it simultaneously generates legal ambiguity, particularly in areas of risk allocation, dispute resolution, and enforceability. Comparative studies in Islamic finance governance suggest that such ambiguity may weaken market confidence and undermine Sharīʿah governance if left unaddressed.[28]

In response to these challenges, this article argues for a reconceptualization of Islamic factoring as a distinct Sharīʿah-compliant commercial instrument, rather than a derivative form of classical *ḥiwālah*. Recognizing Islamic factoring's hybrid nature allows regulators and Sharīʿah supervisory bodies to develop tailored normative standards, including clearer parameters for permissible remuneration, transparent risk-sharing arrangements, and enhanced disclosure obligations. Such an approach aligns with maqāṣid-oriented governance models that seek to harmonize financial innovation with ethical and social objectives.[29]

The theoretical contribution of this study lies in demonstrating that classical Islamic contracts cannot be uncritically extended to modern financial practices without risking conceptual distortion. Normatively, it highlights the importance of maqāṣid al-sharīʿah as an evaluative framework capable of bridging classical doctrine and contemporary finance. Practically, the analysis offers guidance for policymakers, Sharīʿah boards, and Islamic financial institutions seeking to design debt transfer mechanisms that are not only legally permissible but also ethically coherent and socially responsive.

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[26] Mehmet Asutay, "Islamic Moral Economy as the Foundation of Islamic Finance," *Journal of Islamic Economics, Banking and Finance* 11, no. 1 (2015): 9–12, https://doi.org/10.12816/0024801.

[27] Volker Nienhaus, "Islamic Finance Ethics and Shariah Governance," *Humanomics* 33, no. 3 (2017): 280–283, https://doi.org/10.1108/H-02-2017-0010.

[28] Nazim Zaman and Asyraf Wajdi Dusuki, "Shariah Governance in Islamic Finance," *Journal of Islamic Accounting and Business Research* 10, no. 2 (2019): 193–196, https://doi.org/10.1108/JIABR-03-2017-0038.

[29] Hakan Ş. Okumuş et al., "Maqasid al-Shariah–Based Governance in Islamic Banking," *International Journal of Islamic and Middle Eastern Finance and Management* 17, no. 1 (2024): 16–18, https://doi.org/10.1108/IMEFM-03-2023-0112.

Future research may build upon this study by empirically examining how Islamic factoring operates in practice, particularly in relation to default risk and customer protection, or by conducting comparative analyses across jurisdictions with different Sharīʿah governance models. Such research would further enrich the ongoing discourse on the role of debt transfer mechanisms in achieving the broader objectives of Islamic finance.

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