

The Imperative of Establishing a Dedicated *Taflis* Act as *Lex Specialis* within National Bankruptcy Law: A *Siyasah Syar'iyah* Perspective

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ABSTRACT

Islamic economic growth generates legal relationships that may end in insolvency, yet Law Number 37 of 2004 offers no regime tailored to sharia contracts, and bankruptcy proceedings remain with the Commercial Court despite the Religious Courts' absolute jurisdiction over Islamic economic disputes (Law Number 3 of 2006). This disharmony affects forum, procedure, contract status, and estate management. Previous studies diagnose this friction or call for consolidated regulation without formulating its design. This study analyzes the urgency of a Taflis Act as *lex specialis* in national bankruptcy law from the *siyasah syar'iyah* perspective through normative legal research with statutory, conceptual, historical, and philosophical approaches. The findings show juridical urgency from normative vacuum and disharmony, sociological urgency from the need for legal certainty, and philosophical urgency from justice, public welfare, the protection of wealth (*hifz al-mal*), and balanced debtor and creditor interests. The study contributes an integrated regulatory model in which a Sharia Bankruptcy Qualification Test, contract examination, a Sharia Commercial Court within the Religious Courts, and sharia curators operate as components of one system. Under *siyasah syar'iyah*, the Act falls within the state's authority to legislate for public welfare and complements the national bankruptcy regime, governing bankruptcy arising from sharia contracts.

1. INTRODUCTION

The development of the Islamic economy in Indonesia, encompassing sharia banking, financing, insurance, capital markets, and pawnshops, has become integral to the national economic system and has attained juridical recognition through Law Number 3 of 2006 on Religious Courts and Law Number 21 of 2008 on Sharia Banking (Republik Indonesia, 2006, 2008). It has also produced increasingly complex legal relationships, some of which end in debtor insolvency, for which Indonesian positive law has yet to provide a specific settlement mechanism. Three sets of norms frame the settlement of such cases. Law Number 3 of 2006 vests the Religious Courts with authority over Islamic economic disputes, broadened by the Elucidation to Article 49 letter i to sharia banks, sharia microfinance institutions, sharia insurance and reinsurance, sharia mutual funds, sharia bonds, sharia securities, sharia financing, sharia pawnshops, pension funds of sharia financial institutions, and sharia business (Lubis, 2021). Law Number 21 of 2008 requires sharia business activities, products, and services to comply with Sharia Principles established by fatwa of the Indonesian Ulema Council, making DSN-MUI fatwas a key reference for sharia conformity (Dewan Syariah Nasional Majelis Ulama Indonesia [DSN-MUI] Republik Indonesia, 2008, Art. 26 paras. 1 and 2). Meanwhile, the national bankruptcy regime still rests on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang*, PKPU), a general regime whose cases are heard by the Commercial Court (Republik Indonesia, 2004). These norms produce legal problems at three levels. Institutionally, the competence

of the Religious Courts over Islamic economic disputes and that of the Commercial Court over bankruptcy raise the question of where the two converge. Substantively, Law Number 37 of 2004 contains no provisions on sharia contract characteristics, sharia compliance review, the status of sharia-based assets, or the settlement of estates carrying sharia characteristics, although contract characteristics determine whether a debtor's obligation exists at all: in a *murabahah* contract the customer owes a selling price comprising cost and margin rather than loan interest, and in *mudharabah* and *musyarakah* contracts business losses cannot automatically constitute default because of the risk-sharing principle inherent in them. Normatively, a fatwa cannot substitute for statutory law, hence the need for a legislative construction that integrates sharia principles into the national legal system.

Studies of the last decade have examined these problems from several angles. Anand, Aditya, and Abrianto (2017) observed a tendency to transform the essence of sharia debt into conventional debt relationships, and Romlah (2023) found Religious Court authority over sharia bankruptcy settlement ineffective for lack of a specific legal instrument. Annisa (2024) attributed the dualism of authority to the lack of synchronization between Law Number 37 of 2004 and the sharia economic dispute framework, and Kartika and Harahap (2023) found that sharia banking cases are still submitted to the Commercial Court despite the absolute competence of the Religious Courts, calling for unification and harmonization of regulation. Prihasmoro, Sopyan, Abdullah, and Sufiarina (2024) concluded that *al-taflis* falls within the absolute competence of the Religious Courts and that Commercial Court decisions insufficiently consider, or disregard, sharia principles. Rusdiyono and Mu'allim (2022), studying *baitul maal wa tamwil* bankruptcy in Yogyakarta through a *maqashid al-syari'ah* approach, concluded that a new, consolidated regulation is the ideal solution, and Siswanto, Achmad, Qotadah, and Ramli (2023) showed that conventional Commercial Court procedure produces outcomes conflicting with sharia norms. These studies illuminate the friction between sharia bankruptcy and the conventional regime, but they diagnose the problem, concentrate on particular institutions, or call for consolidated or harmonized regulation without formulating its design. What remains underdeveloped is a comprehensive legislative construction that positions a dedicated Taflis Act as *lex specialis* to the general bankruptcy regime, grounds it in juridical, sociological, and philosophical urgency, and specifies how it would operate institutionally and procedurally. This article offers novelty in three respects. It grounds the urgency of a Taflis Act in juridical, sociological, and philosophical dimensions anchored in *siyasah syar'iyah*; it formulates a Sharia Bankruptcy Qualification Test that serves as a gatekeeping mechanism before a case is examined further, ascertaining that the underlying relationship is governed by sharia principles; and it integrates that test with contract examination, a Sharia Commercial Court within the Religious Courts, and *sharia curators* as components of one regulatory model. These are addressed through normative legal research with statutory, conceptual, historical, and philosophical approaches, elaborated in the Methods section. From the perspective of *siyasah syar'iyah*, state lawmaking is an instrument for realizing public welfare provided it does not contradict sharia principles, as the maxim *tasharruf al-imam 'ala al-ra'iyah manutun bi al-maslahah* affirms (Satriani, Putri, & Zikriani, 2025). A Taflis Act may accordingly be positioned as state legal policy that secures certainty, justice, the protection of wealth, and utility in Islamic economic bankruptcy settlement. This article thus aims to analyze why a dedicated Taflis Act is necessary within the national bankruptcy law system and to construct the urgency of its enactment from the perspective of *siyasah syar'iyah*.

2. METHODS

This study employs normative legal research, treating law as a body of norms, through four approaches. The statutory approach examines the relationship among Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, the Religious Courts Law, the Sharia

Banking Law, and related regulations. The conceptual approach constructs sharia bankruptcy, or *taflis*, as a special regime within national law. The historical approach traces milestones in Islamic economic regulation and judicial authority, namely Law Number 3 of 2006, Law Number 21 of 2008, Law Number 50 of 2009, and Constitutional Court Decision Number 93/PUU-X/2012. The philosophical approach examines justice, public welfare, *hifz al-mal*, and the protection of the parties' interests, grounded in *siyasah syar'iyah*. Primary legal materials are Law Number 37 of 2004, Law Number 3 of 2006, Law Number 21 of 2008, Law Number 50 of 2009, Law Number 12 of 2011 as amended, and Constitutional Court Decision Number 93/PUU-X/2012, with DSN-MUI fatwas, the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi Syariah*, KHES), and Financial Services Authority (*Otoritas Jasa Keuangan*, OJK) regulations as normative references. Secondary materials are books, journal articles, theses, and classical and contemporary works on bankruptcy law, Islamic economic law, *maqashid al-syar'iah*, and *siyasah syar'iyah*. Materials were selected for their relevance to bankruptcy, sharia contracts, judicial authority, or state legislative authority; their legal force; their currency (studies mainly from the last ten years, with classical works retained for conceptual grounding); and their scholarly credibility. They were collected through library research: legislation and the court decision from official publications, fatwas from the official DSN-MUI website, and literature from journal databases and repositories using keywords such as *taflis*, Islamic bankruptcy, *lex specialis*, and sharia contract.

The analysis is prescriptive analytical: it identifies what the law provides (analytical stage) and formulates what it ought to provide (prescriptive stage), following the six steps of Figure 1. The analytical stage inventories the materials (Step 1), identifies normative gaps and the dualism of authority (Step 2), defines *taflis* as a special regime (Step 3), and derives the standards of justice, public welfare, and *hifz al-mal* from *siyasah syar'iyah* (Step 4). The prescriptive stage applies these standards, with an analogy from the special regulation that Law Number 21 of 2008 accords sharia banking, to construct the urgency of a *Taflis Act* (Step 5), then formulates its model, retaining a proposal only if it answers an identified gap, conforms to sharia principles, and fits the national legal system (Step 6).

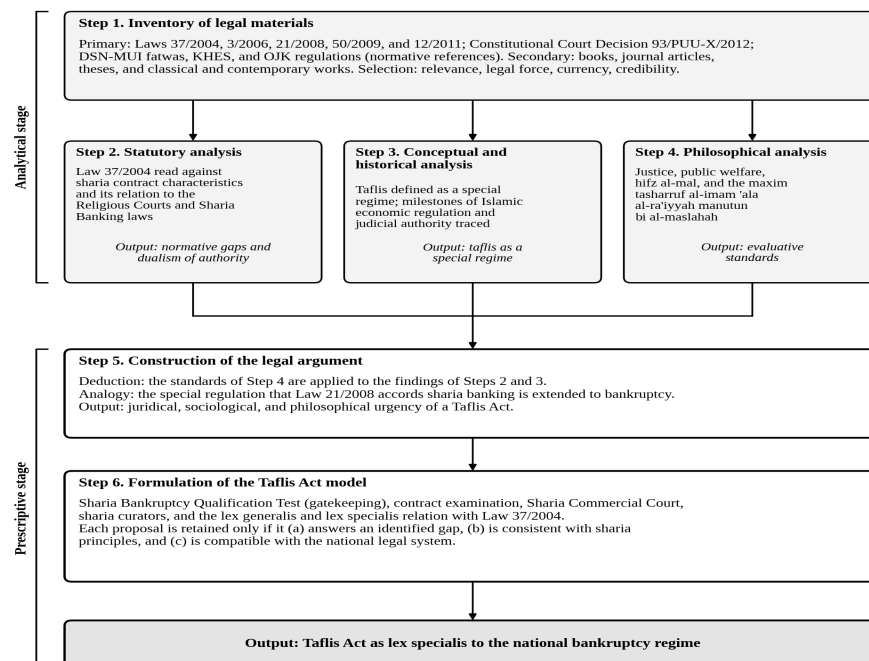


Figure 1. Research Steps and Legal Argument Construction

3. RESULTS AND DISCUSSION

Limitations of Law Number 37 of 2004 and the Dualism of Judicial Authority

Law Number 37 of 2004 was enacted in response to the need to renew national bankruptcy law, regulating bankruptcy and the suspension of debt payment obligations (PKPU) together with the legal consequences that arise once a debtor is declared bankrupt. To date, it remains the principal foundation of the national bankruptcy system, notwithstanding that some of its provisions have been altered by subsequent legislative developments and Constitutional Court decisions. The problem is that it was not designed specifically to resolve legal relationships arising from sharia contracts: its basic construct rests on the concepts of debt, creditor, debtor, bankruptcy estate, verification of claims, and settlement of the estate within the framework of general civil law (Republik Indonesia, 2004, Art. 1 paras. 1, 2, 3, and 6). These concepts can in principle be applied to sharia transactions insofar as they do not conflict with the characteristics of the contract concerned, but direct application without an adaptation mechanism may generate problems where the substance of the relationship differs from a conventional debt relationship. In a *mudharabah* contract, for example, the relationship between the capital owner and the business manager cannot be understood merely as one between creditor and debtor, since the manager is not always obliged to return the capital in a fixed amount when a loss results from business risk rather than negligence or breach; similarly, in *musyarakah*, the parties bear risk in specific proportions determined by the construction of the contract. Before determining whether an obligation exists that can serve as the basis of a *taflis* petition, the judge must therefore understand the substance of the contract and the cause from which the obligation arises. These characteristics show that sharia bankruptcy is not simply a matter of replacing the term bankruptcy with *taflis*; it demands reconstruction at the levels of norms, institutions, procedures, and the mechanism for managing the bankruptcy estate, particularly a norm determining which parts of the national regime may be applied directly, which must be adapted, and which must rely on special principles derived from sharia contracts.

This limitation is institutional as much as substantive. One of the fundamental issues in Islamic economic bankruptcy is the relationship between the authority of the Commercial Court and that of the Religious Courts. Law Number 3 of 2006 expanded the absolute authority of the Religious Courts to examine and resolve Islamic economic cases, marking an important development in national legal politics, while Law Number 50 of 2009 goes further, its Article 3A paragraph (1) supplying the normative basis for a special court to be formed within the Religious Courts by law (Republik Indonesia, 2009), which may serve as one juridical basis for developing a Sharia Commercial Court (*Pengadilan Niaga Syariah*) competent to hear *taflis* cases. This is not merely an institutional matter but relates to the competence of judges, since *taflis* cases may involve *murabahah*, *mudharabah*, *musyarakah*, *ijarah*, *salam*, and *istisna'* contracts, ownership of assets, sharia guarantees, and the distribution of the bankruptcy estate, requiring the integration of expertise in bankruptcy law and Islamic economic law (Maksum, 2015). A Sharia Commercial Court staffed by judges competent in both fields can reduce the potential for conflict of competence between the Commercial Court and the Religious Courts while offering the parties certainty as to forum (Najib, Sa'adah, & Nurcahyono, 2024).

The Urgency of Enacting a *Taflis* Act as *Lex Specialis*

The urgency of enacting a *Taflis* Act can be seen from at least three dimensions: juridical, sociological, and philosophical. Juridically, there is a need for harmonization among Law Number 37 of 2004, the Religious Courts Law, the Sharia Banking Law, the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi Syariah*, KHES), the regulations of the Financial Services Authority (*Otoritas Jasa Keuangan*, OJK), and the norms and fatwas concerning Islamic economic activity. Law Number 21 of 2008 itself shows that sharia banking activity has characteristics distinct

from conventional banking and therefore requires special regulation (Republik Indonesia, 2008). The same logic can be applied to bankruptcy. Where sharia business activity already enjoys special regulation, the mechanism for resolving payment failure arising from sharia transactions likewise requires regulation capable of accommodating those characteristics. The formation of a *Taflis* Act also accords with the principles of lawmaking. Law Number 12 of 2011, as amended several times, positions the formation of legislation as a process that must be planned, integrated, and sustained in order to meet the legal needs of society (Republik Indonesia, 2011). Accordingly, the *Taflis* Act can be positioned as an instrument of legal harmonization that bridges the national bankruptcy regime and the characteristics of Islamic economic law. Sociologically, the growth of Islamic economic activity increases the likelihood of disputes and of inability to meet obligations in sharia transactions. This condition requires a settlement mechanism that provides certainty to business actors, financial institutions, investors, and the public.

Legal certainty becomes all the more important because failure to perform obligations under a sharia contract cannot always be understood through a debt and credit approach alone: each contract carries a different allocation of risk, so the determination of the parties' obligations, ownership or control of assets, and the mechanism for sharing business results cannot be separated from the type of underlying contract. The difference is evident, for instance, in the *murabahah* contract, which is oriented toward a sale and purchase transaction with a profit margin, compared with *mudharabah* and *musyarakah*, which have a profit and loss sharing character and place business risk differently among the parties (Archer, Karim, & Sundararajan, 2010; Diallo, Fitrijanti, & Tanzil, 2015). Consequently, in bankruptcy cases arising from sharia contracts, examining whether an obligation has fallen due cannot rest on the nominal amount of the claim alone; it must also consider the source and character of the legal relationship that gave rise to the obligation. Therefore, the *Taflis* Act is expected to serve not only as an instrument once a debtor has failed to pay, but also to provide restructuring and settlement mechanisms that allow a business to continue where it retains prospects. This approach is consistent with modern bankruptcy law, which no longer treats bankruptcy merely as an instrument of liquidation but also as a mechanism of collective settlement and business rescue. Philosophically, *taflis* law must be built on justice and public welfare. The aim of bankruptcy settlement is not solely to satisfy the interests of creditors; it must also attend to the protection of the rights of debtors, third parties, and workers, as well as broader economic interests. From the perspective of Islamic law, the protection of wealth (*hifz al-mal*) is among the primary objectives of *maqashid al-syari'ah*. Accordingly, *taflis* settlement should not be directed solely at repaying debts; it must also ensure that no wealth is taken or controlled unlawfully, provide certainty over the ownership of assets, and guarantee the just distribution of wealth to those entitled to it (Rusdiyono & Mu'allim, 2022). Thus, within Islamic law, the *maqashid al-syari'ah* approach to bankruptcy settlement treats the protection of wealth, justice, and the welfare of the parties as integral to the *taflis* settlement process (Kamali, 2025).

The Sharia Bankruptcy Qualification Test, Contract Examination, and Settlement of the Bankruptcy Estate

The formation of a *Taflis* Act should be accompanied by a preliminary mechanism that determines whether a case genuinely constitutes sharia bankruptcy, because sharia status is determined by the source of the legal relationship and the characteristics of the transaction, not by the identity of the debtor, creditor, or business entity. Not every legal relationship in a sharia transaction takes the form of debt and credit; it may be a sale and purchase (*murabahah*), profit and loss sharing financing (*mudharabah* and *musyarakah*), a lease (*ijarah*), the ordering or manufacture of goods (*salam* and *istisna'*), or another contract with different rights, obligations, and risk allocation. Without such a mechanism, the essence of sharia financing risks being converted into

conventional debt (Anand et al., 2017), and cases based on sharia contracts continue to be processed in the Commercial Court (Najib, Sa'adah, & Nurcahyono, 2024). This mechanism is formulated as the Sharia Bankruptcy Qualification Test, a gatekeeping stage that precedes any further examination of the case and covers at least the following: examination of the source of the obligation; identification and validation of the contract; examination of the characteristics of the rights and obligations of the parties; examination of the object of the transaction; examination of the conformity of the contract with sharia principles; examination of whether default or business risk is present; examination of the ownership of assets that will enter the bankruptcy estate; and examination of the possibility of mixed assets or obligations between sharia and conventional transactions.

In a *murabahah* contract, for example, the judge must ensure that the transaction genuinely has the character of a sale and purchase, that there is an object being traded, that the cost price and margin can be identified, and that the payment obligation arises from that contract; in a *mudharabah* or *musyarakah* contract, the judge instead needs to distinguish a business loss that constitutes business risk from a failure to perform obligations caused by default. For this test to operate as a legal model rather than a checklist, the Taflis Act should assign it to the panel of the Sharia Commercial Court at the outset of the proceedings, *ex officio* or on a party's objection, since qualification fixes the forum and the applicable regime and thus demands mastery of both bankruptcy law and Islamic economic law, including KHES (Maksum, 2015). The standard of proof should be the simple, *prima facie* proof already used for bankruptcy petitions under Article 8 paragraph (4) of Law Number 37 of 2004 (Republik Indonesia, 2004): the test asks only whether the relationship is on its face a sharia one, leaves the validity of the contract and the status of the claim to the subsequent contract examination, and resolves residual doubt in favor of retaining the case to secure certainty of forum. Because a finding of non-qualification concerns the applicable regime rather than the validity of the contract or the existence of the claim, the case should be transferred to the Commercial Court without a new filing rather than dismissed, which protects the petitioner from losing time; a case with both sharia and conventional obligations should instead be split, with the former examined under the Taflis Act and the latter verified under Law Number 37 of 2004. As this ruling disposes of the forum, it must be open to challenge without slowing the proceedings through a separate appeal: a ruling that retains the case is challenged together with the main decision, while a ruling of non-qualification may be challenged directly by cassation to the Supreme Court within eight days, and a final decision remains open to judicial review, consistent with Articles 11 and 14 of Law Number 37 of 2004 (Republik Indonesia, 2004). The test is thus not meant to add procedural formality but to prevent misqualification of the case from the outset while keeping the proceedings as expeditious as conventional bankruptcy examination.

Once a case qualifies, the contract examination decides the status of the claim. The contract is not merely an evidentiary document but the primary source for understanding the legal relationship between the parties (Akbar & Sinaga, 2025). Unlike conventional bankruptcy, where a creditor-debtor relationship is generally construed from a matured payment obligation alone, each sharia contract carries a different mechanism for fulfilling performance, so examining the legal relationship in a *taflis* case cannot stop at identifying a debt; it must also identify the contract from which the obligation arises (Hidayati, 2024). The Taflis Act should therefore require the judge to examine the contract's validity, object, allocation of rights and obligations, payment mechanism, risk allocation, guarantees, and legal consequences of breach before determining the status of the claim. In this context, DSN-MUI fatwas can serve as a normative reference for identifying the relevant sharia principles, though their standing must be placed proportionally within the national legal system rather than as a substitute for statutory law (DSN-MUI, n.d.). Accordingly, the Taflis Act needs to regulate the relationship among statutes, KHES, DSN-MUI fatwas, OJK regulations, and other sources of law so that judges receive clear guidance in examining cases. Sharia bankruptcy is further distinguished

from general bankruptcy by the management and distribution of the bankruptcy estate, guided by the protection of wealth (*hifz al-mal*) as one of the primary objectives of *maqashid al-syari'ah* (Khattak, 2018). This principle bears directly on the concept of the bankruptcy estate because not all assets under a debtor's control are automatically owned by the debtor; sharia transactions may involve assets owned by other parties, contract objects, or funds with a special status. The curator must therefore be able to distinguish assets truly owned by the debtor from assets that legally remain the right of third parties, a need heightened because sharia contracts generate different relations of ownership, control, and risk from one contract to another (Rusdiyono & Mu'allim, 2022). The protection of *hifz al-mal* in sharia bankruptcy is thus directed not only at optimizing the settlement of the estate but also at the accurate identification of ownership and the protection of assets outside it, which is why the certification of sharia curators is required in the formation of the Taflis Act, to identify assets, assess ownership status, verify claims, and settle the estate in accordance with the characteristics of the transaction. In distribution, the principle of justice remains the primary foundation: the rights of secured, preferred, and concurrent creditors must continue to be respected under national law, but their application to assets originating from sharia transactions must take into account the characteristics of ownership and the contract. Hence, *taflis* law should not be oriented solely toward the liquidation of assets but also toward protecting the rights of all parties who have legal relationships with those assets.

Reconstruction Model of the *Taflis* Act as *Lex Specialis* of the National Bankruptcy Regime

The formation of a Taflis Act does not mean repealing Law Number 37 of 2004; rather, the two can be placed in a relationship of *lex generalis* and *lex specialis*, with Law Number 37 of 2004 remaining the general regime of national bankruptcy while the Taflis Act serves as the special regime for bankruptcy whose legal obligations originate from contracts or economic activity based on sharia principles. This relationship can be formulated as shown in Figure 2.

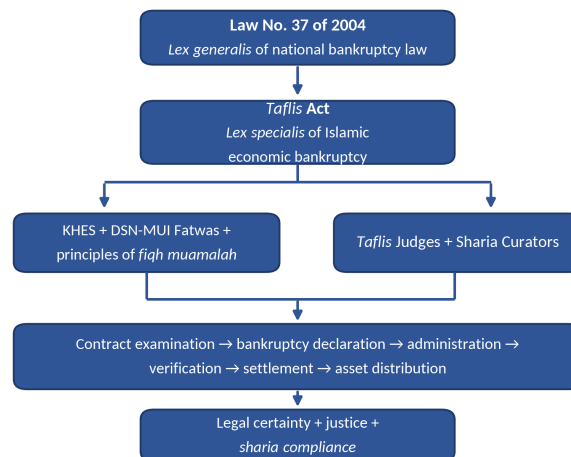


Figure 2. Legal Design of the *Taflis* Act as *Lex Specialis* to the National Bankruptcy Law

In certain circumstances, the provisions of Law Number 37 of 2004 remain applicable *mutatis mutandis* insofar as they are not specifically regulated in the Taflis Act and do not conflict with sharia principles. The eighteen elements of substance that the Taflis Act should at least cover are not an unordered checklist but form four functional clusters that mirror the sequence in which a *taflis* case is actually handled, from the threshold question of forum to the closure of the estate, as set out in Table 1.

Table 1. Substance of the Taflis Act by Functional Cluster

Cluster	Elements	Function
A. Institutional and procedural gate	1. General provisions on <i>taflis</i> ; 2. Principles and objectives of sharia bankruptcy; 3. Authority of	Establishes the forum and the threshold: fixes which court and

Cluster	Elements	Function
	the Sharia Commercial Court; 4. Competence of judges; 5. Requirements for a <i>taflis</i> petition; 6. Sharia Bankruptcy Qualification Test	which judges may hear a case and screens, at the outset, whether it belongs to the <i>taflis</i> regime at all
B. Substantive examination of the obligation	7. Examination and validation of contracts; 8. Insolvency test; 9. Restructuring of obligations under sharia principles	Once a case is admitted, determines the status of the claim and whether the debtor's difficulty is genuine insolvency or a restructurable business risk
C. Normative reference and estate administration	10. Standing of DSN-MUI fatwas as a legal reference; 11. Standing and competence of sharia curators; 12. Management and settlement of the bankruptcy estate; 13. Protection of third-party assets; 14. Mechanism for distributing the bankruptcy estate	Governs how the estate is identified, managed, and distributed under <i>hifz al-mal</i> , with fatwas guiding the curator's assessment of ownership and sharia conformity
D. Relation to the general regime and closure	15. Provisions on mixed contracts between sharia and conventional transactions; 16. Legal remedies; 17. Transitional provisions; 18. Closing provisions	Delimits the boundary between the Taflis Act and Law Number 37 of 2004, provides finality through remedies, and governs the transition of pending cases

Source: summarized by authors (2026)

The four clusters are sequential and interdependent rather than free-standing. Cluster A supplies the forum and the gatekeeping function of the Sharia Bankruptcy Qualification Test discussed above; only a case that passes this gate proceeds to Cluster B, where the contract examination decides the status of the claim and, in turn, whether an insolvency test or a restructuring path applies. The outcome of Cluster B determines what enters the bankruptcy estate in Cluster C, where DSN-MUI fatwas inform the sharia curator's identification of ownership, consistent with their standing as a normative reference rather than a substitute for statutory law, and where the protection of third-party assets and the distribution mechanism jointly operationalize *hifz al-mal*. Cluster D closes the model by fixing where the Taflis Act ends and Law Number 37 of 2004 resumes: mixed-contract provisions extend the qualification logic of Cluster A to cases with both sharia and conventional obligations, legal remedies extend the cassation and judicial review already available under Articles 11 and 14 of Law Number 37 of 2004 to rulings under the Act, and transitional and closing provisions govern cases pending when the Act takes effect. This model allows national bankruptcy law to retain the unity of its system while at the same time recognizing the specificity of Islamic economic law.

The *Taflis* Act from the Perspective of *Siyasah Syar'iyah*

Within Islamic law, one approach to formulating and determining legal policy (*istinbat al-ahkam*) in state affairs is the concept of *siyasah syar'iyah*, understood in the modern legal context as a framework of Islamic legal politics: the regulation of public affairs by those in power on the basis of sharia principles, oriented toward realizing public welfare and preventing harm. 'Abd al-Wahhab Khallaf explains it as the management of the state's public affairs that secures welfare and averts harm, so long as it does not contravene the limits and general principles of sharia, encompassing not only the administration of government but also the formation of legislation, legal policy, the judiciary, and the regulation of social matters requiring state policy (Iqbal, 2007; Khallaf, 1988). In the modern legal context, this authority is realized through legislation, by which the state determines institutional forms, procedures, court competence, dispute settlement mechanisms, and the protection of citizens' rights. The maxim *tasharruf al-imam 'ala al-ra'iyah manutun bi al-maslahah* provides the basis that a ruler's policy must be directed toward public welfare (Al-Jawziyyah, n.d.; Al-Mawardi, n.d.), a principle relevant to the *Taflis* Act because bankruptcy law is

essentially a state instrument for regulating conflicts of interest between debtors and creditors collectively and justly. From this perspective, the formation of the *Taflis* Act is not merely a technical legislative choice but a form of state *tasharruf* in safeguarding the economic welfare of society.

Beyond the authority of the state, the *maqashid al-syari'ah* framework supplies a substantive foundation for the Act through the preservation and protection of wealth (*hifz al-mal*), one of the five essential necessities (*al-daruriyyat al-khams*) that constitute the fundamental objectives of sharia (Al-Ghazali, 1993; Kamali, 2025). This encompasses not only the recognition and protection of ownership rights but also the prevention of damage and unlawful control, as well as the just regulation of the circulation and distribution of wealth, and bears directly on bankruptcy law because bankruptcy is essentially concerned with the protection, control, management, and distribution of a debtor's assets to secure the rights of creditors fairly. Bankruptcy settlement from a sharia perspective must therefore ensure that this process proceeds justly and without causing *mafsadah* (harm) to debtors and creditors (Zailani, Satar, & Zakaria, 2022): that the debtor's assets are not unlawfully transferred, that creditors' rights are protected, that third-party assets are not mistakenly included in the estate, and that settlement proceeds are distributed on a clear legal basis. Accordingly, *hifz al-mal* can serve as a philosophical principle in drafting *taflis* norms, particularly with regard to: (1) the identification of the bankruptcy estate; (2) the protection of third-party assets; (3) the prevention of unlawful transfers of assets; (4) the fair valuation of assets; (5) the verification of claims; (6) the distribution of settlement proceeds; and (7) the protection of the continuity of businesses that still hold economic value. Finally, the principle of *maslahah* can guide the institutional design of the Act, particularly the formation of a Sharia Commercial Court: where Islamic economic cases have special characteristics, an institution with special competence can provide legal certainty, efficient case settlement, and improved quality of decisions (Al-Syathibi, n.d.; Khallaf, 2003), a need that accords with the strengthening of the Religious Courts' authority under Article 49 letter i of the Religious Courts Law. The Constitutional Court, through Decision Number 93/PUU-X/2012, likewise affirmed the importance of legal certainty in resolving Islamic economic disputes and considered that an unclear forum may produce overlapping authority, making a Sharia Commercial Court a *maslahah* measure if designed to provide certainty of forum, competent judges, and case examination that attends to contract characteristics and sharia principles. Article 3A of Law Number 50 of 2009 provides the basis that such a special court may be formed within the Religious Courts by law (Republik Indonesia, 2009); the *Taflis* Act may therefore simultaneously serve as its basis, with judges competent in bankruptcy and Islamic economic law and curators competent in managing assets originating from sharia transactions.

4. CONCLUSION

The enactment of a dedicated *Taflis* Act as *lex specialis* within national bankruptcy law is juridically, sociologically, and philosophically urgent: Law Number 37 of 2004 remains silent on sharia contract characteristics, compliance review, risk allocation, and sharia-derived assets, leaving the division of authority between the Commercial Court and the Religious Courts unresolved; the growing Islamic economy demands a settlement system that affords legal certainty and extends beyond liquidation to restructuring where a business retains prospects; and *taflis* law must rest on justice, public welfare, the protection of wealth (*hifz al-mal*), and balance among debtors, creditors, and third parties. From a *siyasah syar'iyah* perspective, this urgency positions the *Taflis* Act as a state policy for public welfare, functioning as *lex specialis* to Law Number 37 of 2004 as *lex generalis*, with the latter applying *mutatis mutandis* where the Act is silent. The proposed model operationalizes this urgency through four interdependent clusters: an institutional and procedural gate, comprising the Sharia Commercial Court and the Sharia Bankruptcy Qualification Test, fixes the forum and screens each case at the outset on simple proof, subject to cassation and judicial review;

a substantive examination of the obligation, through contract examination, an insolvency test, and restructuring, decides the status of the claim; normative reference and estate administration, through DSN-MUI fatwas, sharia curators, and *hifz al-mal*-based management, govern how the estate is identified, protected, and distributed; and provisions on mixed contracts, legal remedies, and transitional arrangements delimit the boundary with the general regime. Together, these clusters position *taflis* law as integral to a national bankruptcy framework responsive to Indonesia's expanding Islamic economy, and invite legislators, the Supreme Court, OJK, DSN-MUI, and Islamic economic law scholars, practitioners, and industry actors to carry this construction forward into a working draft of the Act.

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