



Research Article

Ensuring Compliance with the Principle of *Tafriq al-halal 'an al-haram* in Sharia Syndicated Financing: A Sharia Economic Law Perspective

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Abstract

The research investigates the implementation of the principle of *tafriq al-halal 'an al-haram* in Islamic syndicated financing within the framework of Islamic economic law. Employing a normative juridical method and a conceptual approach, the research examines the foundational legal and ethical considerations that guide contract selection, risk-sharing, and compliance in multi-institutional syndication schemes. The research identifies key challenges, including divergent interpretations of Sharia among syndicate members, difficulties in structuring legally valid yet Sharia-compliant documentation, and the absence of interest-based penalties in cases of default. To address these issues, the research proposes several practical solutions, such as the use of standardized Sharia governance frameworks, the role of lead arrangers in harmonizing compliance, and the integration of transparent risk-sharing mechanisms based on *musyarakah* or *mudharabah* contracts. The consistent implementation of the *tafriq al-halal 'an al-haram* principle is found to be instrumental not only in ensuring Sharia compliance in complex financial structures but also in enhancing public trust and fostering the sustainable development of the Islamic financial industry.

Keywords: Sharia Economic Law; Syndicated; *Tafriq al-halal 'an al-haram*.

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Introduction

The development of the Islamic finance industry in Indonesia has experienced significant progress, driven by the increasing demand for financial products that adhere to Sharia principles (Nafisah & Nisa, 2024). One of the financing instruments that has gained prominence in funding large-scale projects is syndicated financing (Sayekti, Mauleny, Alhusain, & Lisnawati, 2020). Syndicated financing involves multiple financial institutions collaborating to fund projects or substantial capital

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requirements, necessitating a cooperative agreement among financial institutions within a single contract to fulfill these financing needs (Abdullah, Mubarak, Al Hakim, & Witro, 2023). This financing mechanism is particularly relevant within the context of Islamic finance, as an increasing number of large-scale projects in Indonesia are being financed through Sharia-compliant schemes (Yusuf & Wibowo, 2024).

A fundamental principle in Islamic economic law is ensuring that every transaction or contract is free from *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling) while strictly adhering to Sharia principles (Mahipal, Wahyudin, Zahara, & Patahuddin, 2024). One of the key legal maxims guiding the implementation of Islamic economic law is *Tafriq al-Halal 'an al-Haram* (separating the permissible from the prohibited). This principle serves as a foundation for identifying and ensuring that economic activities comply with halal standards and are not intermingled with elements prohibited by Sharia (Musadad, Zahro, & Mustaniroh, 2024). In the dynamic landscape of Islamic finance, syndicated financing has emerged as an increasingly preferred instrument. However, the complexity of syndicated transactions often creates ambiguity regarding the distinction between *halal* and *haram* financial elements (Nabil & Ismail, 2024). The *Tafriq al-Halal 'an al-Haram* principle provides a crucial framework for ensuring that every aspect of syndicated financing aligns with Islamic financial principles.

Within the context of Sharia-compliant syndicated financing, this principle becomes particularly relevant, as this financing model involves multiple entities, including both Islamic and conventional financial institutions, thereby increasing the risk of mixing halal and haram financial components (Umam, 2021). Sharia syndicated financing is a form of collaboration among multiple financial institutions that provides large-scale funding for a project or entity (Dewan Syariah Nasional MUI, 2014). While this financing model addresses the limitations of individual financial institutions in providing substantial funding, it also presents challenges in ensuring Sharia compliance, particularly when participating institutions operate under different financial system frameworks.

Several Sharia syndicated financing projects have been implemented in Indonesia, covering various infrastructure sectors. One notable example is the Semarang-Demak Toll Road Project, with a financing value of IDR 1.34 trillion and a total investment of IDR 5.44 trillion (Damara, 2022). This project involves the construction of a 27 km toll road, divided into two sections. The first section, spanning 10.69 km, was developed by the government, while the second section, covering 16.31 km, was constructed by PT PP Semarang Demak (Walfajri, 2022). The toll road is expected to enhance connectivity and function as a flood barrier against tidal flooding in the Semarang area. The financing was led by PT Bank Syariah Indonesia (BSI), with the participation of several other Islamic banks (Yulian, 2022). Another significant project is the

Preservation of the East Sumatra Highway, with a financing value of IDR 644.76 billion. PT Jalintim Adhi Abipraya executed the project, which includes the preservation of a 29.87 km road along with bridges and vehicle weighing facilities. BSI served as the mandated lead arranger in this syndicated financing and utilized the *Ijarah Muntahiyah bit Tamlik* contract for funding (Kurniawan, 2021).

The Serang-Panimbang Toll Road Project received financing of IDR 1.8 trillion under a Public-Private Partnership (PPP) scheme. The project was financed by BSI and other Islamic banks (Novelino, 2021) and aims to accelerate infrastructure development in Banten Province while supporting the growth of special economic zones (Hanggi, 2021). Additionally, the Factory Development Project by PT Indah Karya (Persero) secured financing of IDR 125 billion. Bank Jateng Syariah facilitated the Islamic syndicated financing to support the construction of a plywood, wood pellet, and wind turbine manufacturing plant. This project demonstrates the diversification of Sharia-compliant financing in the industrial sector (Subbagian Humas, 2019). These Sharia-compliant syndicated financing projects in Indonesia demonstrate a strong commitment to supporting infrastructure and economic development through financing mechanisms that adhere to Islamic financial principles. With various initiatives, including toll road construction and industrial development, the Islamic finance sector is playing an increasingly vital role in national economic growth.

This issue is a critical concern in Islamic economic law, particularly in preserving the integrity of Islamic transactions and maintaining public confidence in the Islamic financial system (Qothrunnada, Iswanto, Fitrotus, Hendrarti, & Subekan, 2023). Therefore, the implementation of the *Tafriq al-Halal 'an al-Haram* principle serves as a key solution in separating non-compliant elements from Sharia-compliant ones while ensuring that syndicated financing remains halal and adheres to Sharia principles (Amin, 2017). The application of the *Tafriq al-Halal 'an al-Haram* principle in Islamic syndicated financing is not without challenges. Variations in the interpretation of Islamic law, the complexity of transaction structures, and the dynamics of global financial markets are among the key factors that must be addressed (Andatu, 2021). However, despite these challenges, the implementation of this principle also presents opportunities for innovation in the development of Islamic financial products and instruments, ensuring greater alignment with market demands and Sharia compliance (Muhsin, 2019).

This research presents a gap by examining Sharia syndicated financing through the lens of the principle of *Tafriq al-Halal 'an al-Haram*, which has not been extensively explored in previous studies.

Sharia syndicated financing has received normative legitimacy through DSN-MUI Fatwa No. 91/2014 and has been extensively discussed from technical, legal, and regulatory perspectives, including the application of general legal maxims such as *al-*

kharaj bi al-dhaman and al-ghurm bi al-ghunm. However, none of the existing studies have specifically addressed the purification of contracts through the application of the principle of *tafriq al-halal 'an al-haram*, particularly in relation to syndicated financing structures involving both Islamic and conventional financial institutions. Prior research by Ariswanto et.al., (2021) primarily emphasizes the formal compliance of syndicated financing with Islamic economic law and the role of multi-contract frameworks in interbank collaboration. Meanwhile, the research by Samudra et.al., (2023) adopts a normative legal approach based on fatwas and statutory regulations, and Nurjamil et.al., (2024) further highlight the importance of the maxim *al-kharaj bi al-dhaman* in risk and profit distribution. Therefore, a study that applies the principle of *tafriq al-halal 'an al-haram* to the context of Sharia syndicated financing offers a conceptual innovation that is crucial for evaluating the extent to which Sharia compliance is maintained within cross-system syndication structures. It also makes a meaningful contribution to the contemporary development of *fiqh al-mu'amalah* and the practical application of Islamic economic law in the banking sector.

The principle of *Tafriq al-Halal 'an al-Haram* must be examined in Sharia syndicated financing to ensure that all financial transactions comply with Islamic legal principles. Given the growing significance of syndicated financing in infrastructure and economic development, the application of *Tafriq al-Halal 'an al-Haram* is essential to ensuring that Islamic financial transactions remain free from prohibited elements. A comprehensive examination of this principle contributes to the development of robust financial structures, ensuring full Sharia compliance, mitigating risks, and enhancing the credibility of Islamic finance in the global market. This article seeks to analyze the application of *Tafriq al-Halal 'an al-Haram* in Islamic syndicated financing from the perspective of Islamic economic law. The discussion will encompass an analysis of Sharia principles governing syndicated financing, the challenges encountered in practice, and strategic solutions that can be implemented to ensure that syndicated financing remains fully compliant with Sharia principles.

Methods

This article employs a normative juridical research method, focusing on examining the legal norms, principles, and doctrines relevant to the practice of syndicated financing in Islamic economic law. According to Efendi & Rijadi (2022), normative legal research aims to explore the internal logic and structure of legal norms by analyzing primary and secondary legal materials, including statutory regulations, fatwas, and scholarly interpretations. This methodological choice is appropriate for understanding both the legal foundation and conceptual framework of syndicated financing from a Sharia perspective. The research employs two interrelated approaches: (1) the conceptual approach, and (2) the statutory (legislative) approach. The conceptual approach is employed to examine the theoretical foundations of

syndicated financing within Islamic jurisprudence (*fiqh al-mu'amalah*), specifically the principles that ensure conformity with Sharia, such as the avoidance of *riba*, *gharar*, and *maysir*, as well as the upholding of justice and transparency. This includes the application of Islamic legal maxims (*qawā'id fiqhiyyah*), specifically the principle of *tafriq al-halal 'an al-haram*, which plays a critical role in distinguishing and separating permissible financial practices from prohibited ones, especially in complex contractual arrangements involving both Sharia-compliant and conventional financial institutions.

Simultaneously, the statutory approach is applied to analyze relevant legal instruments and authoritative fatwas, particularly DSN-MUI Fatwa No. 91/DSN-MUI/IV/2014 concerning Sharia syndicated financing (*al-tamwīl al-mashrifī al-mujamma'*). This fatwa provides a legal foundation for implementing syndicated financing structures within Islamic banking, including permissible forms of cooperation, contract arrangements, and regulatory safeguards. Supporting literature from contemporary Islamic finance scholarship further enriches the normative analysis by contextualizing the fatwa within broader legal and ethical considerations. Through this combined normative-conceptual and statutory approach, the research aims to critically evaluate the implementation of Sharia principles in syndicated financing practices, while also assessing the extent to which the integration of conventional financial actors challenges the integrity of Sharia-compliant contracts. The methodology is therefore structured not only to assess formal legal validity but also to ensure substantive compliance with the objectives of Islamic law (*maqāṣid al-sharī'ah*).

Results and Discussion

Syndicated financing is one of the product innovations with great potential in the development of the Islamic finance industry (Saratian, Mulyowahyudi, & Kurniasih, 2019). This financing is achieved by combining the resources of several financial institutions to finance large or high-scale projects that may not be feasible for a single institution to finance alone. With syndication, Islamic financial institutions can increase their financing capacity, diversify their portfolio, and participate in large projects that have a significant impact on the economy, such as infrastructure, energy, and industrial sectors (Nuzulia, 2019).

DSN-MUI Fatwa No. 91 of 2014 was issued as a guideline for Islamic financial institutions in implementing syndicated financing in accordance with Sharia principles. This fatwa outlines the principles governing the procedures and requirements for implementing Shariah-compliant syndicated financing, including provisions related to contracts, profit sharing, and the prohibition of *riba* and *gharar* (uncertainty) elements in transactions (Dewan Syariah Nasional MUI, 2014). The existence of this fatwa is crucial for maintaining Shariah compliance in syndicated

financing activities, which often involve multiple parties with diverse roles and interests.

The Principle of *Tafriq al-halal 'an al-haram*

In general, public understanding, when there is a mixture between the halal and the haram, the dominant legal ruling defaults to prohibition, in line with the fiqh principle “*idza ijtama ‘a al-ḥalāl wa al-ḥarām ghalaba al-ḥarām*,” meaning that when the lawful and the unlawful are combined, the unlawful prevails. However, this principle is not considered fully applicable in the domain of economic transactions, according to the Indonesian National Sharia Council (DSN-MUI). As Amin (2017) notes, in such cases, the principle is appropriate because the unlawful component has irreversibly affected the lawful, thereby necessitating a comprehensive ruling of prohibition.

However, when applied to the realm of Islamic finance, the indiscriminate application of this maxim becomes problematic. Financial assets differ fundamentally from consumable goods in that they are not unlawful by substance (*ḥarām li-‘aynihi*), but rather by the method of acquisition (*ḥarām li-ghayrihi*). This distinction is not merely theoretical; it has critical implications for practice (Amin, 2017). For example, when an Islamic bank participates in a syndicated loan with a conventional bank, concerns may arise regarding the halalness of the capital structure. Suppose the Islamic bank can clearly identify and isolate its funds from those of the conventional institution through separate contracts, accounts, or escrow mechanisms. In that case, the unlawful component does not necessarily taint the lawful one. In such cases, the more appropriate principle is “*tafriq baina al-ḥalāl wa al-ḥarām*” the separation between what is lawful and unlawful.

This approach is not without precedent. Classical scholars such as Ibn Ṣalāḥ and Ibn Taymiyyah recognized the possibility of isolating unlawful portions from mixed assets. As cited by al-Suyūṭī in *Al-Ashbāḥ wa al-Naẓā’ir*, Ibn Ṣalāḥ stated: “If ḥalāl wealth is mixed with ḥarām and cannot be distinguished, the solution is to extract the ḥarām portion and utilize the rest.” (As-Suyuthi, 1996). Likewise, Ibn Taymiyyah affirmed that “if a person's wealth is mixed with lawful and unlawful elements, then the unlawful element must be taken out, and the rest is lawful” (Taimiyah, 1996). While these statements were made in pre-modern contexts, they remain applicable in modern financial systems, where technological infrastructure and regulatory frameworks allow for the clear tracing and separation of fund flows.

The relevance of this distinction is particularly apparent in Indonesia’s dual banking system, where Islamic financial institutions often operate alongside conventional ones. The DSN-MUI's adoption of the *tafriq* principle reflects this operational reality. For example, when establishing a new Islamic bank from a parent conventional bank, the purification of initial capital often involves the identification of permissible sources, with impermissible portions being redirected to charitable causes, a practice

supported by Sharia supervisory boards. This mechanism allows Islamic financial institutions to maintain Sharia compliance without invalidating the entire structure due to association with conventional entities (Lail & Ali Hisyam, 2022).

Therefore, while the maxim “*ghalaba al-harām*” retains its validity in contexts of inseparable impurity, its blanket application in finance risks undermining practical solutions developed by contemporary Islamic finance practitioners. Instead, the use of *tafriq al-halāl ‘an al-harām* offers a more nuanced and operationally viable approach, allowing for both fidelity to Sharia and functionality within a mixed economic environment (Totok, 2023). This doctrinal flexibility is not a deviation from tradition but a necessary adaptation rooted in *maqāṣid al-sharī’ah*, ensuring that Islamic financial practices remain both ethically sound and pragmatically feasible.

Syndicated Financing

Sharia syndicated financing represents a collaborative funding mechanism whereby multiple Islamic financial institutions pool their resources to finance a large-scale project or business entity that typically exceeds the lending capacity of a single institution. This mode of financing, known in the fatwa of the National Sharia Council (DSN-MUI) as *al-Tamwīl al-Mashrifī al-Mujamma’*, involves an agreement between a consortium of Islamic banks or between Islamic and conventional financial institutions acting in a Sharia-compliant manner to jointly finance a specific project under clear contractual and Sharia-based governance structures (Dewan Syariah Nasional MUI, 2014). While definitions vary slightly in the literature, the core objective remains consistent: to facilitate capital-intensive, long-term financing under Islamic legal and ethical standards (Ariswanto et al., 2021; Karim, 2010; Nasution, 2018).

What distinguishes Islamic syndicated financing from its conventional counterpart lies not merely in the contractual form, but in the enforcement of Sharia principles, including the prohibition of *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (speculation), as well as the requirement of *akad* (binding contract) that reflects risk-sharing and asset-backed financing. As such, Sharia-compliant syndicated financing avoids conventional interest-bearing loan structures and instead utilizes contracts such as *murabahah*, *musharakah*, or *wakalah bil ujah*, depending on the nature of the project and the agreement among participating institutions (Karim, 2010).

Syndicated financing in Islamic finance is generally structured into three primary types, each with its own operational and compliance implications. First, lead syndication designates one bank as the lead arranger, which is responsible for structuring the deal, managing the documentation, and liaising with the client. In a Sharia-compliant context, the lead bank must also ensure that all legal documentation, risk-sharing, and profit-distribution mechanisms adhere to Islamic financial principles. Second, the club deal involves a group of banks, typically fewer in number, that collectively negotiate and contribute equally to the financing, with no single lead

arranger. In this structure, transparency of profit and risk-sharing mechanisms across the syndicate is essential to avoid contractual ambiguity (*gharar*). Lastly, sub-syndication occurs when participating banks in the original syndicate further divide and delegate their financing portions to external parties, without a direct relationship to the primary borrower. While this model may introduce complexity, Sharia compliance is maintained so long as all contractual transfers are transparent, do not involve prohibited elements, and retain traceability of ownership and responsibility (Himmah, 2021; Ahmad Ifham Sholihin, 2013).

Despite these structural similarities with conventional syndicated financing, Islamic syndication requires additional layers of ethical compliance and due diligence. For instance, projects financed must be halal in nature, not involving industries such as alcohol, gambling, or conventional banking. Moreover, profit returns must be clearly derived from underlying assets or services, not from speculative capital gains or interest-based returns. This reinforces the *maqāṣid al-sharī'ah* objective of preserving justice, transparency, and mutual benefit within contractual relationships.

In practice, Islamic syndicated financing has been successfully applied in significant infrastructure developments and energy projects across the Middle East and Southeast Asia. In Indonesia, for example, syndicated financing based on *musharakah* has been used to fund toll road projects, with the fatwas of DSN-MUI serving as the primary legal and ethical reference. These cases demonstrate that Sharia-based syndication is not merely a parallel version of a conventional tool, but a model rooted in Islamic economic values that promotes inclusive cooperation and shared responsibility.

Legal Foundations of Sharia Syndicated Financing: A Substantive Integration of Normative and Regulatory Frameworks

Sharia syndicated financing is based on a hybrid legal foundation that integrates divine revelation, prophetic tradition, Islamic legal reasoning (*ijtihad*), fatwas, and national regulations. However, for this financing model to operate effectively in modern economies, each component must not only be cited but contextualized within actual financial structures and legal instruments.

From a normative Islamic perspective, the Qur'anic verse QS. Al-Maidah: 2 “Help each other in virtue and piety, and do not help one another in sin and transgression” serves as a moral-legal basis for collaboration in financial undertakings (Puspitasari, 2022). Its relevance in syndicated financing lies in the endorsement of collective effort among Islamic banks in financing projects that contribute to public benefit (*maslahah*), such as infrastructure or energy. However, this principle must be operationalized through transparent Sharia screening processes that ensure the object of financing and all participants' roles align with ethical finance, thereby avoiding complicity in activities deemed haram.

Likewise, QS. Al-Baqarah: 275 “Allah has permitted trade and forbidden *riba*” establishes the doctrinal boundary that all forms of syndicated financing must avoid interest-based returns. This principle influences the contractual structure of syndicated financing, mandating the use of Sharia-compliant contracts such as *murabahah*, *musharakah*, or *wakalah*, depending on the project's nature. Nevertheless, in practice, ensuring all syndicated participants—including any conventional banks abide by these restrictions presents regulatory and operational challenges, especially in mixed syndications.

The Hadith narrated by Abu Daud, “Their conditions bind Muslims, unless they legalize what is unlawful or forbid what is lawful,” further strengthens the role of contractual integrity. In syndicated financing, this translates into the enforceability of *akad* (contracts) that reflect mutual consent and Sharia compliance in both substance and form (Rachmad & Pratiwi Susanty, 2021). However, standardization of clauses across syndicate participants remains a persistent obstacle in cross-institutional agreements, particularly when involving multi-jurisdictional parties.

From the standpoint of contemporary Islamic legal reasoning, Fatwa DSN-MUI No. 91/DSN-MUI/IV/2014 provides a critical operational reference. It outlines the permissible structures, the responsibilities of lead arrangers, and the principles for revenue sharing. While this fatwa fills a normative vacuum, its application has been uneven. For instance, several syndicated projects have struggled with aligning their profit distribution methods with fatwa prescriptions due to differing interpretations of Sharia among participating banks.

Transitioning to positive law, the Financial Services Authority (OJK) Regulation No. 28/POJK.03/2019 on Sharia Syndicated Financing provides a national regulatory framework that translates Sharia principles into banking supervision language. This regulation requires risk-sharing, prohibits interest, and obliges transparency. Nevertheless, regulatory enforcement mechanisms remain limited, particularly in monitoring compliance after contract signing. POJK No. 31/POJK.05/2014 offers a broader governance framework for Islamic financial institutions but stops short of addressing interbank collaboration in depth.

The inclusion of Law No. 19 of 2008 on State Sharia Securities (SBSN) may appear peripheral at first glance, but it holds strategic relevance in project-based syndicated financing. In some cases, syndicated funds are combined with sukuk issuances to form hybrid capital structures, especially for government-backed infrastructure projects. However, coordination between sukuk mechanisms and syndication contracts remains underdeveloped and lacks integrated legal instruments.

Thus, while it is often claimed that Sharia syndicated financing enjoys a “strong legal foundation,” such a statement must be qualified. The theoretical alignment between Islamic sources, fatwas, and national regulations indeed exists; however, their

practical integration faces several legal, operational, and interpretive challenges. Addressing these gaps is crucial to ensure that syndicated financing not only complies with Sharia but also functions as a robust, scalable financing tool in modern Islamic economies.

Application of Contracts and Institutional Roles in Syndicated Financing

In the practice of Sharia syndicated financing, the diversity of contracts reflects the flexibility of Islamic finance in accommodating complex, large-scale project funding. However, the selection of contracts cannot be divorced from the functional roles of each party involved in the syndicate structure. Therefore, it is essential not merely to enumerate the types of contracts but to contextualize their practical relevance, implementation challenges, and Sharia compliance implications.

Generally, contracts in syndicated financing are classified into two categories: (1) contracts among syndication participants, and (2) contracts between the syndicate entity and the customer receiving the financing. DSN-MUI Fatwa No. 91/DSN-MUI/IV/2014 serves as the primary legal and ethical guideline for structuring such arrangements (Samudra et al., 2023). Contracts such as *mudharabah*, *musyarakah*, and *wakalah* are frequently used among syndicate members. For instance, *mudharabah* is appropriate when the bank provides capital and delegates project management to another party (Mursid, 2020), while *musyarakah* is better suited for joint ventures where all parties contribute capital and share both profits and risks (Aeda, Ulfa Variana, Bagus Singandaru, & Ningsih, 2022). *Wakalah* is typically used to authorize one party to act on behalf of others within the syndicate, particularly for administrative or operational execution (Ramadanti, 2022).

On the other hand, in dealings with clients, syndicate entities may employ sales-based (*bai'*), lease-based (*ijarah*), or partnership-based contracts depending on the nature of the financed asset or service (Nurhisam, Eriyanti, Mundakir, Mursid, & Khulwah, 2024). *Bai' al-murabahah*, for example, is often used for asset procurement with a disclosed profit margin (Usman & Utina, 2023), while *al-ijarah al-muntahiyah bi al-tamlik* is common in asset leasing with ownership transfer at the end of the lease term (Toewoeh, 2023). *Musyarakah mutanaqisah* has gained popularity in real estate and construction financing, where ownership shares shift gradually over time (Al Fasiri, 2021). *Al-Ijarah al-Muntahiyah bi al-Tamlik*, which is a lease that ends with the transfer of ownership of goods to the tenant (Abdul Basir, Prihanto, Fahrizal, & Sri Imaniyati, 2022).

The syndicate's institutional structure also significantly influences the selection of contracts and risk management. Key roles such as arranger and lead bank are responsible for designing the financial structure and selecting appropriate contracts, ensuring they comply with Sharia principles. The facility agent manages administrative functions – such as disbursement, repayment tracking, and inter-party

communication—and typically operates under a *wakalah* contract. However, in practice, defining the scope of agency (*niyabah*) responsibilities and authority often presents challenges, particularly in mixed syndicates involving both Islamic and conventional institutions (A I Sholihin, 2015).

Additional roles, such as the security agent and escrow agent, are vital in protecting the syndicate's interests in the event of default. Their appointment must adhere to trust-based (*amanah*) or guarantee-based (*kafalah*) frameworks and ensure complete transparency in asset custody and disbursement. Disparities in contractual interpretations between Islamic and conventional institutions can result in inconsistent application unless anticipated through robust, harmonized legal documentation (A I Sholihin, 2015).

These roles require internal coordination mechanisms grounded in Islamic values, such as *ta'awun* (cooperation) and *mas'uliyah* (responsibility), and are supervised by each institution's internal Sharia supervisory board. The most significant challenge lies not only in designing an efficient financing structure but also in maintaining Sharia integrity amid the operational diversity of participating institutions.

Sharia syndicated financing involves more than pooling funds it demands an integrated framework linking contract structures, institutional roles, and ethical compliance. Each component must be assessed in light of real-world risks and operational feasibility to ensure that syndicated financing not only adheres to Sharia principles but also fulfills the objectives of Islamic finance (*maqasid al-shariah*) by promoting justice, transparency, and mutual benefit.

Mechanism of Sharia Compliant Syndicated Financing

The mechanism of syndicated financing within Islamic finance involves a collaborative process among multiple financial institutions, yet it must strictly adhere to Sharia principles, including the prohibitions against *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (speculation or gambling). In contrast to conventional syndicated loans, Islamic syndicated financing employs Sharia-compliant contracts and incorporates mechanisms designed to ensure ethical use of funds, equitable risk-sharing, and continuous compliance monitoring across the financing lifecycle (Jamaluddin, 2022).

This process typically begins when a financing request is submitted by a corporate entity or a sponsor of a government-linked project. From the outset, the project's purpose and nature are carefully vetted to confirm alignment with halal (permissible) activities. The institution that receives the request usually assumes the role of the lead arranger or mandated lead arranger (MLA).

Once appointed, the lead arranger, usually an Islamic bank or the Islamic window of a conventional bank, undertakes the responsibility of structuring the deal and

managing coordination among participating institutions. Equally important is the appointment of a Sharia advisor or supervisory board (SSB), whose role is to oversee every aspect of the deal to ensure it complies with Islamic jurisprudence. This oversight extends to the selection of contract types such as Murabaha, Ijara, Musharakah, or Istisna, tailored according to the asset class or project specifications.

In structuring the financing, the lead arranger defines key terms including profit margins, payment schedules, and duration. These terms must remain free from elements of *riba*. For example, in a Murabaha-based syndicate, the banks jointly purchase the underlying asset and resell it to the client at a fixed markup, with the profit margin disclosed in advance. In a Musharakah arrangement, all participating banks contribute capital and share both profits and losses in proportion to their investment, reflecting the Sharia principle of *mudarabah wa al-musharakah*, or risk-sharing.

Following this, the lead arranger invites other Islamic or Islamic-window banks to join the syndication. Each prospective participant conducts independent Sharia due diligence, reviewing not only the credit profile of the client but also ensuring that the client's revenue sources and operational practices comply with Islamic ethical standards. This due diligence may involve obtaining fatwas and aligning on both contract selection and profit-sharing formulas.

After agreement is reached, the syndication contract is signed, detailing the roles and responsibilities of all parties, profit-sharing arrangements, repayment procedures, and mechanisms for resolving disputes, each framed within Sharia guidelines. If agency roles (*wakalah*) are required, they are also clearly stipulated, particularly concerning fund management and client representation.

Once contracts are in place, funds are disbursed either in full or in tranches, depending on the contract type. In the case of Istisna, disbursements follow the project's milestone achievements. Importantly, funds must be used exclusively for the Sharia-compliant purposes stated in the agreement. The syndicate typically appoints a syndication agent, often the lead arranger, who monitors both financial administration and ongoing Sharia compliance, working in collaboration with the client's internal Sharia audit unit.

Throughout the financing lifecycle, the syndication agent oversees project implementation, risk exposure, and profit distribution. Profit payments, which replace interest, are allocated in accordance with each party's share. In equity-based contracts like Musharakah, losses are similarly distributed proportionally, upholding the principle of *al-kharaj bi al-daman*, which asserts that return must be commensurate with risk. Sharia audits and progress reports are periodically conducted, with any deviation promptly rectified under SSB supervision.

As the financing matures, the process culminates with repayment and settlement of profits. Should a default occur, any resolution or restructuring must also comply with Sharia tenets. For example, late payment penalties cannot be interest-based. Instead, non-compensatory *ta'zir* fines may be imposed and directed to charitable causes. Restructuring may involve shifting to a different contract type or extending the financing period, without unilaterally increasing profit margins.

Islamic syndicated financing offers a structured platform for collective resource mobilization and risk-sharing (*takaful*), aligning with the overarching objectives of *maqasid al-shariah*, which promote justice, transparency, and protection from exploitation (Dusuki & Bouheraoua, 2011). A fundamental difference from conventional syndication lies in its contract structure and reward mechanisms, where asset-backed and partnership models replace interest-based returns (Obaidullah, 2005).

However, blended syndications that involve both Islamic and conventional institutions introduce notable complexities. While conventional banks may enforce interest on late payments, Islamic institutions must ensure that any delay penalties are non-compensatory and directed toward charitable purposes, rather than included in earnings (ISRA, 2016). Documentation must also support dual compliance, often necessitating parallel contracts or side agreements to satisfy both Sharia and civil legal systems (Kamali, 2000).

Continuous Sharia governance remains pivotal throughout the financing arrangement. It must extend beyond initial structuring and remain active during project implementation, risk evaluation, and conflict resolution. Institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) provide comprehensive regulatory frameworks to guide such processes (AAOIFI, 2017; IFSB, 2017). Nevertheless, the integrity, competence, and independence of the appointed Sharia Supervisory Board (SSB) are critical to successful implementation.

While syndicated financing enables scale and diversification of financial exposure, integrating it within a Sharia-compliant framework requires more than procedural modifications. It demands robust Sharia risk governance, meticulous contract drafting, and active involvement from Sharia oversight bodies to ensure that the entire financing journey, from fund origination to closure, remains consistent with the ethical, legal, and theological values of Islamic finance.

Sharia Compliant Syndicated Financing Scheme

The Sharia-compliant syndicated financing scheme for large-scale investment projects begins with assessing the capital needs of a borrower, typically a corporate entity or a government-affiliated institution, seeking funds for major initiatives such as toll roads, power plants, or industrial zones. Unlike conventional syndicated financing,

this process incorporates an initial screening to ensure that the project aligns with Islamic principles. The screening focuses on ensuring that the project does not involve prohibited (haram) sectors such as gambling, alcohol, or interest-based financial services, in line with Sharia compliance requirements (Abdullah et al., 2023). Once the project is deemed permissible, the borrower approaches a Sharia-compliant financial institution with expertise in structuring syndicated financing agreements (Nawawi, Suganda, & Hasanah, 2024).

A designated Islamic financial institution is appointed as the Lead Arranger, responsible for structuring the syndication, preparing the necessary legal documents, identifying potential participant banks, and ensuring adherence to Sharia principles throughout the financing process (Abdullah et al., 2023). The institution works in tandem with an internal Sharia Supervisory Board (SSB) or external Sharia advisors, who are essential in auditing the proposed structure to confirm that no prohibited elements, such as *riba* (usury), *gharar* (excessive uncertainty), or *maysir* (speculation), are present (Dewan Syariah Nasional MUI, 2014).

The next step involves selecting appropriate Islamic financing contracts, such as Musharakah, Mudarabah, Ijarah, or Murabahah, based on the project's nature, projected cash flows, and associated risks. A thorough feasibility assessment is conducted in collaboration with financial experts and Sharia scholars to ensure the chosen contract reflects the principles of risk-sharing (Mudarabah/Musharakah) or trade-based arrangements (Murabahah/Ijarah), ensuring that the contract does not mimic a conventional loan disguised as an Islamic financing tool (Abdullah et al., 2023).

The Lead Arranger then prepares a detailed financing proposal for presentation to other Islamic financial institutions. Each participant bank conducts its own due diligence process, which includes evaluating the project's risk, assessing the borrower's compliance with Sharia principles, and verifying that the proposed contracts align with their internal policies. A common challenge arises from varying interpretations of Sharia compliance among different institutions' Sharia boards, particularly in areas such as profit-sharing mechanisms, default penalties, and asset permissibility (Nawawi et al., 2024).

Once all parties have agreed on the proposal, the syndication agreement is executed. This agreement outlines the rights and obligations of all involved parties, including contractual frameworks, disbursement schedules, risk allocation, dispute resolution procedures, and Sharia compliance mechanisms. Key clauses within the agreement are framed to adhere to the principle of *al-kharaj bi al-daman*, which asserts that one may only earn profit by assuming risk, ensuring ethical and legal compliance in all financial dealings (Dewan Syariah Nasional MUI, 2014).

Disbursement of funds occurs according to the provisions specified in the underlying contract. In the case of an Istisna agreement, for example, funds are disbursed in phases corresponding to specific project milestones. The borrower is contractually obligated to use the funds solely for halal (permissible) purposes. The Lead Arranger, serving as the syndication agent, is responsible for overseeing periodic financial reporting and ensuring ongoing Sharia compliance in collaboration with the borrower's internal audit functions (Abdullah et al., 2023).

The risk-sharing mechanism is central to the financing structure. Under a Musharakah agreement, profits and losses are shared in proportion to each participant's capital contribution. For Murabahah agreements, the profit margins are agreed upon at the outset of the transaction. In instances where actual project outcomes diverge from initial projections, Sharia-compliant restructuring measures are implemented. These measures may involve financial audits, performance evaluations, and adjustments to profit margins, all of which must remain within the boundaries of Sharia principles (Nawawi et al., 2024).

Upon the financing's maturity, the borrower repays the financing in accordance with the terms set forth in the agreement, with profits distributed in proportion to each bank's equity share. In the event of a default, charging interest is strictly prohibited under Sharia principles. Instead, non-compensatory penalties, known as *ta'zir*, may be imposed. These penalties are directed to charitable causes, further aligning the transaction with ethical practices. Any necessary restructuring processes must ensure that the prohibition of *riba* remains intact, including maintaining the original profit margin or renegotiating the terms with mutual consent (Dewan Syariah Nasional MUI, 2014).

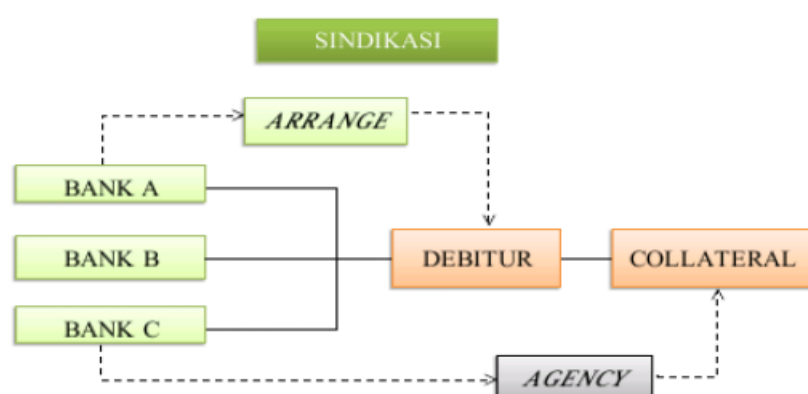


Figure 1. Syndicated Financing Scheme (Yose & Trihantana, 2017).

Sharia-compliant syndicated financing faces several critical challenges that hinder its effective implementation. One of the primary challenges is the divergence in Sharia interpretations across participating banks. These differences can complicate the

harmonization of contractual structures and legal documentation, leading to inconsistencies in how these agreements are executed (Nawawi et al., 2024). Moreover, the documentation requirements are often complex. The need to develop legally binding agreements that meet both domestic legal standards and international Sharia principles demands substantial legal and financial expertise. This expertise is crucial for ensuring that these agreements strike a balance between enforceability and ethical compliance.

Another significant challenge arises from managing defaults. The prohibition of interest-based penalties in Islamic finance necessitates the creation of alternative mechanisms for handling defaults and restructuring. These solutions must remain within the boundaries set by Sharia principles, which complicates the development of universally applicable frameworks. Additionally, cross-border legal variability further complicates the enforcement of Sharia-compliant clauses in syndicated transactions. Disparities between national legal systems become particularly problematic when disputes arise across jurisdictions. To address this issue, robust legal frameworks and harmonized dispute resolution mechanisms are essential.

Sharia-compliant syndicated financing is not simply a conventional financing model with Islamic contracts applied on top; it represents a distinct system grounded in ethical values, risk-sharing, and justice. The success of its implementation hinges on a deep alignment between legal structures, economic feasibility, and Sharia rulings. Understanding the complexities of contract selection, interbank coordination, and Sharia governance is pivotal in developing robust frameworks for Islamic syndication. These frameworks, if properly constructed, have the potential to support sustainable infrastructure and development projects on a global scale.

Implementation of the Principle of *Tafriq al-halal 'an al-haram* in Sharia Syndicated Financing from the Perspective of Sharia Economic Law

The principle of *Tafriq al-halal 'an al-haram*, which involves the separation of what is lawful (halal) from what is unlawful (haram), is a cornerstone of Islamic economic jurisprudence, particularly in the realm of complex financial transactions. This principle seeks to uphold the integrity and purity of Islamic financial practices by ensuring that any haram elements are clearly identified and isolated from the permissible components (Moh. Ihsan, 2024). In the context of Sharia economic law, *Tafriq al-halal 'an al-haram* is essential, especially in transactions where different financial practices might intermingle. This contrasts with the principle of *idza ihtama' al-halal wa al-haram ghuliba al-haram* (when halal and haram mix, the haram prevails), as *Tafriq al-halal 'an al-haram* allows for the possibility of purification if the haram components are distinctly identifiable and can be isolated (Misdawati & Islamy, 2022). Notably, in such financial arrangements, what is considered haram typically pertains

not to the physical assets or funds themselves but to the manner in which these assets are acquired (*ligairih*) (Setiawati, 2020).

In Sharia-compliant syndicated financing, multiple financial institutions collaborate to fund large-scale projects. While these structures are ideally composed entirely of Islamic financial entities, they often include conventional banks in practice. The inclusion of conventional elements introduces interest-based funding, which creates compatibility issues with Sharia principles (Putro, Saratian, & Lutfi, 2024). In such settings, the principle of *Tafriq al-halal 'an al-haram* becomes crucial, operating through several mechanisms.

Sharia-compliant institutions must ensure that the funds they use are derived from halal sources. When conventional contributions are included, the respective share from these conventional banks must be allocated to non-core project functions. This ensures that Sharia-compliant activities remain unaffected by the presence of interest-based elements. Islamic institutions are also required to utilize Sharia-compliant contracts, such as *murabahah*, *ijarah*, and *musharakah*, while avoiding any mingling with interest-based structures. Each institution's participation in the syndicate must be governed independently by its own legal and financial framework to maintain compliance with Sharia principles. Furthermore, returns generated from Islamic financing activities should be separated from those that stem from conventional means. If some profits are derived from conventional methods, these funds must be purified by allocating them to public welfare or charitable causes, in line with the fatwas issued by Sharia supervisory bodies.

Although these mechanisms have a strong theoretical foundation, their practical implementation in syndicated financing projects remains limited, as seen in several real-world challenges (Fakhri, 2019). The complexities of mixed syndications present several difficulties. One of the key issues is structural complexity, as harmonizing Islamic and conventional financial systems within multi-institutional syndicates is inherently challenging. For instance, in the financing of toll roads such as the Solo Yogyakarta project, the involvement of conventional banks led to entangled cash flows, raising questions regarding Sharia compliance (Tarasov, 2019).

There are also significant gaps in standardization. The interpretation and application of Sharia principles vary across different Islamic financial institutions. What one institution may allow, another may deem impermissible, which creates inconsistencies and legal ambiguities. Another issue is the need for robust supervision and transparency. Properly segregating and channeling profits and funds requires sophisticated monitoring systems. Unfortunately, not all Islamic financial institutions have the necessary technological infrastructure to manage these processes effectively (Johan, 2021).

To address these challenges, several solutions have been proposed. One such solution is enhanced Sharia governance. The active involvement of Sharia Supervisory Boards (DPS) throughout all stages of syndicated financing is essential. However, the effectiveness of these boards varies significantly across jurisdictions, and in some cases, they may not have the authority to enforce decisions on conventional partners. Technology-based monitoring is another potential solution. The integration of blockchain technology or advanced financial tracking tools could ensure transparency and traceability of fund flows. However, these solutions require significant capital investment and cross-platform interoperability, which many institutions currently lack. Additionally, international regulatory bodies, such as AAOIFI or IFSB, could issue standardized protocols for hybrid syndications. While this could help streamline practices, the adoption of such guidelines remains voluntary in many regions.

While the principle of *Tafriq al-halal 'an al-haram* provides a valuable framework for ensuring Sharia compliance, its effective implementation depends on several contextual factors, including regulatory support, technological capacity, and mutual agreements among syndicate members. Without addressing residual risks, such as the indirect benefit derived from interest-based instruments, claims of Sharia compliance may remain more aspirational than fully realized.

In conclusion, the application of *Tafriq al-halal 'an al-haram* in Sharia syndicated financing holds promise but also presents significant practical challenges. By adopting a critical and context-sensitive approach, supported by robust supervision, appropriate technological tools, and real-world case examples, Islamic financial institutions can more effectively safeguard Sharia compliance in an increasingly complex and hybridized financing landscape.

Conclusion

The principle of *tafriq al-halal 'an al-haram* serves as a vital jurisprudential framework for ensuring Sharia compliance in syndicated financing, particularly in complex financial structures involving both Islamic and conventional institutions. This study has demonstrated that while the principle offers a normative ideal for maintaining the integrity of Islamic finance, its practical implementation remains fraught with challenges.

Key difficulties include the structural entanglement of halal and haram elements in mixed syndications, disparities in Sharia interpretation among financial institutions, and inadequate mechanisms for supervision and transparency. Furthermore, the absence of standardized regulatory guidance exacerbates inconsistencies in contract structuring and compliance monitoring.

To address these challenges, the study recommends: (1) strengthening the role and authority of Sharia Supervisory Boards (DPS) throughout all stages of the financing

process, (2) investing in technological infrastructure, such as blockchain, to trace and segregate funds in real time, and (3) promoting harmonization of Sharia standards through regional and global regulatory frameworks.

While the application of the *tafriq* principle has the potential to enhance public trust and foster the growth of a sustainable Islamic finance industry, such outcomes cannot be assumed without acknowledging the limitations. Achieving effective implementation will require not only legal and institutional reforms but also ongoing scholarly engagement to develop context-sensitive frameworks that respond to evolving financial realities.

Future research should examine empirical case studies of syndicated financing that have attempted to operationalize this principle, including comparative analyses across jurisdictions. This would offer more profound insights into best practices and identify replicable models for broader application.

Conflict of Interest

The authors declare no conflict of interest.

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