

Comparison of Islamic Trade Law in the Indonesian and Malaysian Stock Exchanges

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Abstract

The development of Islamic capital markets in Southeast Asia reflects growing demand for ethical and Sharia-based trading systems. Indonesia and Malaysia play strategic roles in this sector but differ in their Islamic Trade Law frameworks and implementation. This study examines and compares the legal foundations and application of Islamic Trade Law in the Indonesian and Malaysian Stock Exchanges, focusing on legal basis, institutional structure, supervisory mechanisms, investor protection, and dispute resolution. Using a normative juridical approach with a comparative law method, the research relies on statutory regulations, capital market authority rules, Sharia fatwas, court decisions, and relevant academic literature. The findings reveal that Indonesia adopts a collaborative model combining state law and religious fatwas, while Malaysia incorporates Sharia standards directly into binding positive law. These approaches influence regulatory flexibility, consistency, and supervisory structures. Despite structural differences, both countries share the objective of establishing a fair, transparent, and sustainable Islamic capital market. The study concludes that integrating Indonesia's normative flexibility with Malaysia's regulatory consistency offers a potential model for strengthening Islamic Trade Law and advancing regional harmonization efforts.

Keywords

Comparative Law; Islamic Capital Market; Islamic Trade Law; Indonesia; Malaysia.

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INTRODUCTION

Current global economic developments reflect growing interest in value- and ethics-based economic systems, including Islamic economics and business. This system has expanded not only in Muslim-majority countries but also in various jurisdictions that recognize the significant potential of Islamic finance and trade as an alternative to conventional systems. Islamic Trade Law forms an integral part of Islamic economic law, governing sale and purchase, investment, and commercial transactions in accordance with Sharia principles. These principles include the

prohibition of *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (speculation), as well as the obligation to uphold justice, transparency, and balance in every transaction¹.

Trade is no longer limited to direct transactions between individuals; it has evolved through capital market instruments such as shares, *sukuk*, and mutual funds. The Islamic capital market serves as an investment platform that integrates market mechanisms with Sharia values. Indonesia and Malaysia hold strategic positions in the development of Islamic capital markets in Southeast Asia². Both countries have large Muslim populations and relatively advanced regulatory frameworks supporting the growth of the Islamic finance industry.

In Indonesia, the Islamic capital market has grown significantly, reflected in the increasing number of Sharia-compliant securities and rising investor interest in Islamic investment products. The regulatory framework is shaped through cooperation between state authorities and religious institutions. Malaysia, on the other hand, is widely recognized as a global pioneer in Islamic capital markets, supported by an integrated ecosystem and strong policy backing. The country has developed standards and trading practices that serve as international references³. Although both jurisdictions adopt Sharia principles, differences remain in the regulation and implementation of Islamic Trade Law, influenced by national legal systems, institutional structures, and policy approaches.

These differences are evident in the criteria for Sharia-compliant securities, systems of Sharia compliance supervision, and mechanisms for resolving disputes arising from capital market transactions. In Indonesia, the implementation of Islamic Trade Law is strongly influenced by the role of the capital market authority and religious fatwas that carry normative authority. This reflects a collaborative model between state law and Islamic law⁴. In Malaysia, Sharia standards are formally incorporated into binding positive law, making them an integral part of regulatory enforcement.

The divergence in approach has implications for legal certainty, investor protection, and the effectiveness of market supervision. Legal certainty is essential for fostering a stable investment climate. Investors require assurance that transactions comply with Sharia principles while also being legally protected. Consistency in Sharia standards presents an additional challenge, as variations in the interpretation of *fiqh muamalah* principles may arise.

Differences in interpretation can influence Sharia trading practices across jurisdictions, including Indonesia and Malaysia. A comparative legal study is therefore necessary to identify similarities, differences, and the respective strengths of each system. Through comparative analysis, it becomes possible to examine how both countries formulate and implement Islamic

¹ Mohammad Hashim Kamali, "Maqasid Al-Shariah and Its Application in Islamic Finance," *Islam and Civilisational Renewal* 8, no. 1 (2017): 7–28.

² Zulkifli Hasan and Aishath Muneeza, "Shariah Standardization and Cross-Border Investment," *ISRA International Journal of Islamic Finance* 14, no. 2 (2022): 156–73.

³ Mohammad Hashim Kamali, "Shariah Governance and Regulatory Reform," *Islam and Civilisational Renewal* 15, no. 1 (2024): 25–44.

⁴ Siti Zubaidah Ismail, "Investor Confidence and Legal Certainty in Islamic Finance," *Arab Law Quarterly* 37, no. 1 (2023): 67–90.

Trade Law within their capital markets. The study also evaluates the effectiveness of existing regulations in supporting the sustainable development of Islamic capital markets. Findings from this research may provide a foundation for regulatory refinement and potential harmonization efforts in the future.

Regional harmonization of Islamic Trade Law could strengthen capital market integration and enhance competitiveness. This research contributes to the literature on Islamic business law, particularly in the capital market sector. It offers practical insights for policymakers, regulators, and market participants in developing more effective regulatory frameworks. The study focuses on comparing the legal framework of Islamic Trade Law and its application in the capital markets of Indonesia and Malaysia. The analysis covers legal foundations, institutional structures, supervisory mechanisms, and trading practices of Sharia-compliant securities. It examines the similarities and differences between the two legal systems and explores the historical, juridical, and sociological factors shaping them.

The research adopts a normative juridical approach with a comparative law method. Legal materials include statutory regulations, fatwas, judicial decisions, and relevant academic literature. The study is expected to serve as a reference for other countries seeking to develop Islamic capital markets and to provide both theoretical and practical contributions to strengthening a fair and sustainable Sharia trading ecosystem.

METHODS

This study applies a normative juridical approach using a comparative law method to examine and contrast the legal framework of Islamic Trade Law and its implementation in the capital markets of Indonesia and Malaysia⁵. The analysis centers on positive legal norms, Sharia principles, and legal doctrines governing Sharia-compliant securities trading in both jurisdictions. Primary legal materials consist of statutory regulations, capital market authority rules, fatwas issued by Sharia supervisory bodies, and relevant court decisions. Secondary materials include academic books, peer-reviewed journals, and prior research that support and deepen the analysis. Tertiary sources, such as legal dictionaries and encyclopedias, are used to clarify key concepts. All legal materials are collected through systematic library research⁶.

Data analysis is conducted qualitatively through legal interpretation and normative comparison of the applicable regulations in Indonesia and Malaysia. The classified materials are examined to identify similarities, differences, and distinctive features of each Islamic Trade Law system. The findings are then assessed against the principles of fiqh muamalah and the objectives of Sharia (maqashid al-shariah) to evaluate the consistency of regulatory frameworks with Sharia

⁵ Ran Hirschl, "Comparative Matters in Law: Methodological Reflections," *Annual Review of Law and Social Science* 19 (2023): 1–20.

⁶ Geoffrey Samuel, "Comparative Law and the Juridical Method," *The American Journal of Comparative Law* 65, no. 4 (2017): 733–58.

values⁷. Conclusions are drawn deductively, moving from general legal provisions to specific findings. This method provides a comprehensive assessment of the effectiveness of Islamic Trade Law implementation in the capital markets of both countries and supports the formulation of recommendations aimed at strengthening and harmonizing future regulatory development.

RESULTS AND DISCUSSION

Islamic Trade Law represents the application of fiqh muamalah principles, which emphasize justice, public interest, and balance in every transaction. In capital markets, these principles are translated into rules governing financial instruments, trading mechanisms, and the conduct of market participants. Indonesia and Malaysia both place Sharia principles at the foundation of their Islamic capital market development⁸. Differences in national legal systems, however, shape how these principles are implemented, creating distinct characteristics in each jurisdiction. Fiqh muamalah provides both an ethical and juridical framework for economic activity, including capital market transactions⁹. While its principles are universal, their application requires contextual interpretation aligned with contemporary needs. The state plays a central role in transforming Sharia principles into operational regulations, taking into account legal, economic, and social considerations. This process results in diverse regulatory models across countries¹⁰.

Regulatory variation is closely linked to the structure of each national legal system. Indonesia adopts a pluralistic legal system, while Malaysia applies a more integrated approach. These differences influence how Sharia principles are incorporated into positive law. In the capital market sector, the impact is visible in institutional structures and rule-making mechanisms¹¹. The same foundational principles may therefore produce different regulatory practices. Historical development also shapes each country's approach¹². In Indonesia, Islamic law evolved through gradual social adaptation¹³. In Malaysia, the integration of Islamic law into the state system was undertaken more systematically from an early stage. This historical divergence affects the

⁷ Mathias Siems, "Comparative Law in a Global Context: Contemporary Challenges," *International and Comparative Law Quarterly* 73, no. 1 (2024): 1–25.

⁸ Mohammad Omar Farooq, "Riba, Gharar, and Maysir in Contemporary Financial Transactions," *Arab Law Quarterly* 33, no. 4 (2019): 365–89.

⁹ Muhammad Ayub, "Legal Foundations of Islamic Finance Regulation," *Journal of Islamic Banking and Finance* 37, no. 1 (2020): 7–22.

¹⁰ Habib Ahmed, "Islamic Law, Adaptability and Financial Development," *Arab Law Quarterly* 30, no. 2 (2016): 123–45.

¹¹ Nor Hayati Ahmad, "Regulatory Harmonization in ASEAN Islamic Capital Markets," *Journal of Southeast Asian Economies* 39, no. 1 (2022): 112–29.

¹² Engku Rabiah Adawiah Engku Ali, "Legal Integration of Shariah Standards in Malaysia's Capital Market," *Malayan Law Journal Articles*, 2018.

¹³ Kamaruzaman Noordin and Zulkifli Hasan, "Dispute Resolution in Islamic Finance: Court and Arbitration Practices," *Journal of Islamic Law Review* 16, no. 2 (2020): 131–54.

relationship between state law and Islamic law, which in turn influences the regulatory design of Islamic capital markets.

Government policy direction further determines the development of Islamic Trade Law. Proactive policies tend to generate comprehensive regulations, while reactive approaches may lead to fragmented frameworks¹⁴. Indonesia and Malaysia demonstrate differing policy strategies, reflected in their respective Islamic capital market regulations. The implementation of fiqh muamalah principles in capital markets results from interaction between Sharia norms and national circumstances¹⁵. Understanding this interaction is essential to assessing the characteristics of Islamic Trade Law in each country. This perspective explains why Indonesia and Malaysia have developed different regulatory models, forming the basis for comparative legal analysis.

In Indonesia, the legal framework of Islamic Trade Law in capital markets is built upon integration between state regulations and religious fatwas¹⁶. Islamic capital market rules derive from statutory provisions and fatwas issued by recognized Sharia authorities. These fatwas serve as normative references in determining the Sharia compliance of financial products and activities. This model reflects complementary dual sources of law and strengthens the legitimacy of Islamic Trade Law¹⁷. In Malaysia, Islamic Trade Law is directly embedded within the positive legal system. Sharia standards are formally adopted into binding state regulations, granting them strong legal authority. This integration promotes uniform application across the financial sector and creates a structured framework of legal certainty¹⁸.

The difference in approach affects regulatory formation. In Indonesia, regulation often begins with a fatwa that is later incorporated into technical rules. In Malaysia, regulatory provisions are formulated directly by state authorities with reference to national Sharia standards. Each model presents advantages and limitations¹⁹. Indonesia demonstrates greater normative flexibility, while Malaysia achieves stronger regulatory consistency. Indonesia periodically issues a Sharia Securities List based on assessments of issuers' business activities and specific financial ratios. Malaysia applies a similar mechanism with a more centralized standard-setting process²⁰.

¹⁴ Ashraf Md. Hashim, "Centralized Shariah Governance and Regulatory Consistency," *ISRA International Journal of Islamic Finance* 12, no. 1 (2020): 45–60.

¹⁵ Zamir Iqbal and Abbas Mirakhor, "Ethical Dimensions of Islamic Finance: Theory and Practice," *Journal of King Abdulaziz University: Islamic Economics* 31, no. 1 (2018): 3–16.

¹⁶ Aishath Muneeza and Nafis Alam, "Comparative Shariah Governance: Malaysia and Other Jurisdictions," *ISRA International Journal of Islamic Finance* 11, no. 2 (2019): 222–40.

¹⁷ Zulkifli Hasan, "Shariah Governance in Islamic Finance: The Malaysian Experience," *Journal of Islamic Finance* 6, no. 1 (2017): 1–15.

¹⁸ M Umer Chapra, "The Role of Justice in Islamic Economic Systems," *Islamic Economic Studies* 26, no. 1 (2018): 1–24.

¹⁹ Nafis Alam, Syed Aun R Rizvi, and Mustafa Mohd Hanefah, "Islamic Capital Markets: A Comparative Study of Regulatory Frameworks," *Journal of Islamic Accounting and Business Research* 7, no. 2 (2016): 122–39.

²⁰ Renny Supriyatni, "Fatwa and Positive Law in Indonesian Islamic Capital Market Regulation," *Indonesian Journal of International & Comparative Law* 6, no. 1 (2019): 45–67.

Differences in assessment methodology influence the number and types of Sharia-compliant securities available, affecting investor choice.

Sharia compliance supervision in Indonesia combines regulatory oversight with the role of Sharia supervisory boards within institutions. This model emphasizes internal monitoring. Malaysia applies centralized supervision through a national Sharia authority, creating greater uniformity²¹. Indonesia's decentralized model allows contextual adaptation, while Malaysia's centralized system promotes systematic enforcement. Both face challenges in maintaining compliance as Islamic financial products continue to expand²². Investor protection is recognized as fundamental in both jurisdictions, with transparency serving as a core requirement in Sharia securities trading²³. Indonesia regulates disclosure obligations through capital market laws, while Malaysia integrates transparency into its governance framework. Investor protection reflects the overall quality of the legal system.

Dispute resolution in Indonesia may proceed through courts or arbitration, including Sharia-based arbitration as an alternative aligned with Islamic principles²⁴. Malaysia integrates dispute settlement more directly within the judicial system, offering procedural clarity. Arbitration in Indonesia retains strategic value due to its flexibility. Investor protection also depends on ensuring Sharia compliance of financial products and transactions. Investors seek not only financial security but also assurance that their investments conform to Islamic principles. Sharia supervisory institutions function as guardians of market integrity, reflecting the multidimensional nature of legal protection²⁵. Indonesia implements investor protection through a combination of market regulation and authoritative fatwas. Malaysia embeds protection directly into binding statutory frameworks. Both aim to guarantee legal security for investors.

The effectiveness of dispute resolution mechanisms influences investor confidence. Disputes arising from Islamic capital market transactions require forums that understand both positive law and Sharia principles. The availability of multiple dispute settlement channels ensures access to justice²⁶. Indonesia reflects legal pluralism, while Malaysia emphasizes centralization. Institutional capacity ultimately determines effectiveness. Institutionally, Indonesia involves multiple actors, whereas Malaysia adopts a more centralized structure. Centralization facilitates coordination; pluralism encourages broader participation. Each

²¹ Norazlina Abd Wahab, "Governance and Compliance in ASEAN Islamic Markets," *Journal of Financial Crime* 30, no. 2 (2023): 354–72.

²² Aam S Rusydiana and Abrista Devi, "Islamic Capital Market Development in Indonesia: A Bibliometric Review," *Economies* 11, no. 4 (2023): 102.

²³ Nafis Alam, "Islamic Capital Markets and Sustainability," *Global Finance Journal* 59 (2024): 100820.

²⁴ Andri Soemitra, "Regulatory Framework of Islamic Capital Market in Indonesia," *Al-Iqtishad: Journal of Islamic Economics* 9, no. 2 (2017): 327–48.

²⁵ Abdulrahman Yousri Ahmed, "Legal Pluralism in Islamic Finance," *Arab Law Quarterly* 35, no. 3 (2021): 245–68.

²⁶ Engku Rabiah Adawiah Engku Ali and Nurhidayah Mansor, "Central Bank and Shariah Advisory Council Authority," *Malayan Law Journal*, 2022.

structure shapes regulatory dynamics²⁷. The prohibition of riba is consistently applied in both countries. Interest-based instruments are excluded from Sharia-compliant classification. Differences arise in tolerance levels for certain financial ratios, reflecting variations in juristic interpretation. Such variation is inherent in Islamic legal thought²⁸.

The prohibition of gharar guides the evaluation of capital market products. Instruments with excessive uncertainty are generally disallowed. Although both jurisdictions uphold this principle, interpretations of uncertainty differ, influencing product innovation. The prohibition of maysir is enforced through oversight of speculative practices. Both countries distinguish investment from excessive speculation, though defining the boundary remains complex. Regulatory adaptability is therefore essential²⁹. Principles of justice and balance are implemented through transparent trading systems. Electronic trading platforms enhance transparency and efficiency. Indonesia and Malaysia have modernized their systems while maintaining ethical standards³⁰.

The comparison indicates that neither model is entirely superior. Indonesia offers normative flexibility; Malaysia provides regulatory consistency. Combining these strengths could produce a more balanced framework. Mutual learning between the two jurisdictions enhances regulatory quality³¹. The development of Islamic capital markets requires equilibrium between certainty and flexibility. Legal certainty fosters long-term investor trust, while flexibility allows adaptation to financial innovation. An integrated model may establish uniform standards while permitting contextual adjustment³². Such an approach aligns with the adaptive character of Islamic law, which responds to social change without abandoning foundational principles.

Strengthening cooperation among capital market authorities is a strategic step. Collaboration through data exchange, joint guidelines, and professional training enhances institutional capacity and cross-border trust³³. This foundation supports regional alignment of standards. Regional harmonization of Sharia standards facilitates cross-border investment and strengthens competitiveness. Harmonization must respect national legal sovereignty and requires sustained dialogue and regulatory coordination. Information exchange reduces the risk of

²⁷ Ahmad Dahlan Malik, "The Evolution of Islamic Capital Market Law in Indonesia," *Journal of Islamic Law Studies* 4, no. 1 (2022): 33–52.

²⁸ Zulkifli Hasan and Engku Rabiah Adawiah Engku Ali, "Comparative Islamic Finance Law: Indonesia and Malaysia," *ISRA International Journal of Islamic Finance* 16, no. 1 (2025): 1–20.

²⁹ Nafis Alam and Syed Aun R Rizvi, "Digitalization and Islamic Capital Markets," *Pacific-Basin Finance Journal* 68 (2021): 101614.

³⁰ Andriansyah Yulian and Siti Nurjanah, "Sharia Securities Screening in Indonesia," *Al-Iqtishad: Journal of Islamic Economics* 13, no. 1 (2021): 93–110.

³¹ Abdul Ghafar Ismail and Nur Azura Sanusi, "Investor Protection in Islamic Capital Markets," *International Journal of Economics and Management* 14, no. 1 (2020): 55–72.

³² Rofikoh Rokhim and Taufik Hidayat, "Financial Literacy and Islamic Capital Market Participation," *International Journal of Islamic and Middle Eastern Finance and Management* 15, no. 3 (2022): 487–503.

³³ Mohammad Akram Laldin and Hafas Furqani, "Maqasid Al-Shariah in Modern Islamic Finance Regulation," *Islamic Economic Studies* 29, no. 2 (2021): 85–102.

regulatory arbitrage³⁴. From the perspective of fiqh muamalah, interpretative diversity is part of Islamic legal dynamism. In capital markets, such diversity must be managed to prevent fragmentation. The effectiveness of Islamic Trade Law also depends on human resource capacity. Market participants must understand Sharia principles. Education and training are essential to ensure proper implementation³⁵.

Islamic financial literacy significantly influences market participation. Higher literacy increases engagement. Indonesia and Malaysia have implemented literacy programs, yet challenges remain. Educational innovation is required. Universities, training institutions, industry actors, and community organizations play vital roles in expanding awareness of Islamic capital market principles. Collaborative initiatives broaden outreach and strengthen informed participation. Sustained education fosters legally and ethically conscious investors, enhancing market quality. Beyond participation rates, the depth of investor understanding is equally important. Well-informed investors make rational decisions and are less vulnerable to misleading information. Literacy materials must address both legal and Sharia dimensions comprehensively to promote market stability.

Educational strategies should reflect social and cultural diversity. Context-sensitive outreach through digital media, community engagement, and trusted public figures can expand inclusivity. Inclusive literacy forms a strong foundation for future Islamic capital market development. Digitalization introduces new opportunities. Technology-based Sharia financial products continue to grow, requiring adaptive legal frameworks to maintain relevance. Indonesia and Malaysia must periodically update regulations to address technological change. Government support remains decisive. Fiscal incentives can accelerate growth. Malaysia has pursued incentive policies more aggressively, while Indonesia is progressing in that direction. Effective policy design supports sustainable expansion.

This comparative study highlights the need to balance flexibility and certainty. Flexibility supports innovation; certainty ensures trust. An optimal system integrates both elements. Theoretical implications include strengthening the concept of legal pluralism within Sharia-based regulation. Pluralism can coexist with unification when supported by coordination and institutional commitment. Practically, regulatory refinement remains necessary. Indonesia may draw lessons from Malaysia's integration model, while Malaysia may consider Indonesia's normative adaptability. Exchange of best practices strengthens the ecosystem.

The ultimate objective of Islamic Trade Law is justice for investors, issuers, and society. Both countries are progressing toward that goal, though continuous improvement is required. This study confirms that comparing Islamic Trade Law in Indonesia and Malaysia offers a comprehensive understanding of regulatory dynamics, implementation models, and ongoing challenges. The findings provide a foundation for more effective policy development and

³⁴ Tri Haryanto, "Comparative Legal Analysis of Islamic Capital Market Supervision in Indonesia and Malaysia," *Hasanuddin Law Review* 6, no. 2 (2020): 189–207.

³⁵ Norazlina Abd Wahab and Abdul Rahman, "Shariah Supervision and Compliance in Islamic Capital Markets," *Journal of Financial Regulation and Compliance* 27, no. 2 (2019): 201–19.

contribute to the advancement of Islamic business law scholarship. Future research may expand empirical dimensions to complement this normative analysis.

CONCLUSION

Islamic Trade Law in Indonesia and Malaysia is equally grounded in the principles of fiqh muamalah, yet it has developed through different regulatory models. Indonesia applies a collaborative approach between state law and religious fatwas, while Malaysia incorporates Sharia standards directly into its positive legal framework. These differences affect regulatory formation, supervisory systems, investor protection, and dispute resolution mechanisms. Despite these distinctions, both countries pursue the same objective: establishing a fair, transparent, and sustainable Islamic capital market. Neither model is entirely superior, as each presents distinct strengths and limitations. A combination of Indonesia's normative flexibility and Malaysia's regulatory consistency offers a potential ideal framework. This study highlights the importance of harmonizing Sharia standards, strengthening inter-regulatory cooperation, and enhancing Islamic financial literacy as prerequisites for regional capital market development. Government policy support, regulatory adaptation to digital transformation, and the improvement of human resource capacity remain decisive factors. Theoretically, the research deepens understanding of legal pluralism within Islamic business law. Practically, it provides a foundation for refining national regulations and promoting the exchange of best practices between Indonesia and Malaysia, contributing to a more just and competitive Sharia trading ecosystem.

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