

BAY' AS-SALAM IN TRANSITION : A MAQASID SYARI'AH ANALYSIS THROUGH ISLAM TRANSITIVE THEORY

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ABSTRACT

This article critically examines the contemporary transformation of bay' as-salam within modern Islamic finance by integrating Qur'anic principles, Prophetic norms, and maqāṣid al-Syarī'ah through Islam Transitive Theory. While classical Islamic sources clearly authorize bay' as-salam as a necessity-based forward sale contract under strict conditions, its current institutional and digital implementations raise significant normative concerns. Existing studies predominantly assess bay' as-salam through formal legal permissibility, often neglecting its ethical objectives and socio-economic purpose. Addressing this gap, the study employs a qualitative normative-analytical approach, combining tafsīr aḥkām, critical hadith analysis, and an operationalized maqāṣid framework. The findings reveal a recurring pattern of formal compliance without substantive ethical realization, particularly in terms of risk allocation, contractual transparency, and speculative orientation. By applying Islam Transitive Theory, this article reconceptualizes Islamic law as a dynamic normative system that must translate textual legitimacy into ethical governance across changing contexts. The study contributes a transitive maqāṣid-based evaluative model that moves beyond binary classifications of lawful and unlawful, offering a graded assessment of ethical coherence. This framework has significant implications for Syarī'ah governance, Islamic financial regulation, and the future sustainability of bay' as-salam as an ethically grounded instrument in contemporary Islamic finance.

Keywords: *Bay' as-salam. Islam transitive theory, maqāṣid syari'ah, qur'an and sunnah in financial contracts, Islamic commercial law*

ABSTRAK

Artikel ini secara kritis mengkaji transformasi kontemporer bay' as-salam dalam keuangan Islam modern dengan mengintegrasikan prinsip-prinsip Al-Qur'an, norma-norma Nabi, dan maqāṣid as-Syarī'ah melalui Teori Transitif Islam. Meskipun sumber-sumber Islam klasik secara jelas mengizinkan bay' as-salam sebagai kontrak penjualan berjangka berdasarkan kebutuhan dengan syarat-syarat ketat, implementasi institusional dan digitalnya saat ini menimbulkan kekhawatiran normatif yang signifikan. Studi yang ada sebagian besar menilai bay' as-salam melalui kelayakan hukum formal, seringkali mengabaikan tujuan etis dan tujuan sosial-ekonominya. Untuk mengatasi kesenjangan ini, studi ini menggunakan pendekatan kualitatif normatif-analitis, yang menggabungkan tafsīr aḥkām, analisis hadis kritis, dan kerangka maqāṣid yang dioperasionalkan. Temuan menunjukkan pola berulang dari kepatuhan formal tanpa realisasi etis yang substansial, terutama dalam hal alokasi risiko, transparansi kontrak, dan orientasi spekulatif. Dengan menerapkan Teori Islam Transitif, artikel ini merekonseptualisasikan hukum Islam sebagai sistem normatif dinamis

yang harus mentransformasikan legitimasi teks menjadi tata kelola etis dalam konteks yang terus berubah. Studi ini mengusulkan model evaluatif berbasis maqāṣid yang transitif, yang melampaui klasifikasi biner antara halal dan haram, dan menawarkan penilaian berjenjang terhadap koherensi etis. Kerangka kerja ini memiliki implikasi signifikan bagi tata kelola Syari'ah, regulasi keuangan Islam, dan keberlanjutan masa depan bay' as-salam sebagai instrumen yang berlandaskan etika dalam keuangan Islam kontemporer.

Kata kunci: Bay' as-salam, Teori Islam transitif, maqāṣid syari'ah, Al-Qur'an dan Sunnah dalam kontrak keuangan, Hukum Perdagangan Islam.

A. INTRODUCTION

The rapid expansion of Islamic finance in contemporary economic systems has intensified scholarly attention toward classical Islamic contracts and their modern adaptations. Among these contracts, *bay' as-salam* occupies a distinctive position as a forward sale agreement that permits deferred delivery of goods in exchange for immediate payment. Historically, *bay' as-salam* was designed to address practical needs in agrarian and trade-based societies, particularly to assist farmers and producers in securing capital before harvest. Its permissibility is firmly grounded in the Qur'an and authenticated prophetic traditions, most notably Qur'anic verse al-Baqarah [2]:282, which establishes principles of contractual clarity and documentation, and several *ṣahīḥ* hadiths narrated by Ibn 'Abbās that impose strict conditions regarding specification, measurement, and delivery time (Bukhari: 1986).

In recent decades, however, *bay' as-salam* has undergone a significant transformation. No longer confined to simple bilateral transactions, it has been institutionalized within Islamic banking, supply-chain financing, and increasingly, digital and platform-based commercial environments. This transition reflects the adaptability of Islamic commercial law to evolving economic contexts, yet it simultaneously raises critical normative concerns. Modern implementations often involve complex financial intermediaries, standardized digital contracts, and large-scale risk distribution mechanisms that differ substantially from the socio-economic realities in which *bay' as-salam* was originally practiced. As a result, a growing tension has emerged between the classical permissibility of *bay' as-salam* and the ethical and juridical implications of its contemporary applications.

Existing scholarship on *bay' as-salam* largely approaches the subject from two dominant perspectives. Classical fiqh studies tend to focus on definitional boundaries, legal conditions, and juristic consensus regarding the contract's permissibility (Az-Zuhaili: 1989). Meanwhile, contemporary Islamic finance literature emphasizes operational feasibility, risk mitigation strategies, and regulatory compliance within modern financial institutions (Kamali 2002). While both approaches contribute valuable insights, they share a common limitation: Qur'anic verses and prophetic traditions are predominantly treated as sources of formal legal legitimacy rather than as dynamic normative frameworks capable of governing and evaluating modern financial practices. Consequently, the ethical objectives embedded within the *Syarī'ah* particularly those related to justice, transparency, and harm prevention are often insufficiently integrated into contemporary analyses of *bay' al-salam*.

This gap becomes particularly evident in institutional and digital implementations of *bay' al-salam*, where contractual complexity may obscure the very conditions that classical jurists sought to safeguard. Practices resembling speculative forward contracts, excessive risk transfer to weaker parties, or ambiguity in delivery and specification raise concerns regarding *gharar* and potential injustice (Iqbal and Mirakhor 2011). Yet, many studies continue to assess these practices primarily through formal compliance with contractual conditions, without systematically examining whether they align with the broader objectives (*maqāṣid*) of Islamic law. This reveals a deeper methodological problem: the absence of an evaluative framework capable of mediating between classical textual norms and contemporary economic realities.

To address this limitation, this article adopts Islam Transitive Theory, as formulated by Ansari Yamamah, as its primary theoretical framework. Islam Transitive Theory conceptualizes Islamic law as a dynamic and relational system in which normative values must actively "transit" from textual sources into social, economic, and institutional contexts (Yamamah 2021). Within this framework, Islamic legal norms are not static commands confined to historical circumstances, but transformative principles intended to guide ethical conduct and social justice across changing environments. Law, therefore, is assessed not only by its textual conformity but by its capacity to produce equitable and morally coherent outcomes.

Integrating Islam Transitive Theory with *maqāṣid al-Syarī'ah* enables a reorientation of *bay' as-salam* analysis from formal permissibility toward normative governance. Rather than asking whether contemporary *salam* contracts merely satisfy classical conditions, this approach examines whether they effectively translate the ethical objectives of the *Syarī'ah* into present-day financial practices. Core *maqāṣid* such as justice (*'adl*), transparency (*bayān*), prevention of harm (*daf' al-mafṣadah*), and realization of public welfare (*jalb al-maṣlahah*) are employed as operational criteria to evaluate modern implementations of *bay' al-salam* (Jasser 'Audah 2008). In this sense, *maqāṣid* function not as abstract moral ideals, but as concrete evaluative tools that regulate the transitive movement of Islamic law from text to practice.

Within this analytical framework, Qur'anic verse al-Baqarah [2]:282 is reinterpreted beyond its conventional classification as a procedural guideline for debt documentation. The verse articulates a comprehensive model of contractual governance grounded in clarity, accountability, and legal certainty principles that are directly applicable to contemporary digital contracts and institutional financing structures (Chapra 2008). Similarly, the prophetic hadiths regulating *bay' as-salam* are examined not only through authenticity verification (*takhrīj*), but also through their epistemological role as boundary-setting norms that restrict speculative behavior and protect vulnerable economic actors. These sources collectively demonstrate that the permissibility of *bay' as-salam* is inseparable from its ethical constraints.

The novelty of this study lies in its integrative and transitive approach. Unlike previous research that treats Qur'anic and prophetic texts as static legitimizing references, this article positions them as active normative regulators within a dynamic legal system. By combining *tafsīr ahkām*, critical hadith analysis, and *maqāṣid al-Syarī'ah* within the framework of Islam Transitive Theory, the study offers a new conceptual model for evaluating *bay' as-salam* in contemporary contexts. This model shifts the analytical focus from binary judgments of lawful and unlawful toward a nuanced assessment of ethical coherence and social impact.

Accordingly, this article argues that the continued relevance of *bay' as-salam* in modern Islamic finance depends not merely on its classical permissibility, but on its capacity to embody the transitive ethical vision of Islamic law. By operationalizing *maqāṣid al-*

Syarī'ah as evaluative instruments, the study contributes a theoretically grounded framework that bridges the gap between classical jurisprudence and contemporary financial practice. This contribution is expected to enrich Islamic legal theory, inform *Syarī'ah* governance in financial institutions, and provide a critical lens for assessing future innovations in Islamic commercial law.

B. ANALYSIS AND DISCUSSION

1. Analysis

a. Qur'anic Normative Framework: QS. Al-Baqarah 282 As Contract Governance in Bay' As-salam

Al-Qur'an chapter al-Baqarah [2], verse: 282 said:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلَئَ هُوَ فَلْيُمْلِلْ لِهُ بِالْعَدْلِ وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ وَلَا يَأْب الشُّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْمَؤْا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ۗ ذَٰلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمٌ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُوهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضَارَّ كَاتِبٌ وَلَا شَهِيدٌ وَإِنْ تَفَعَّلُوا فَإِنَّهُ ۗ فَسَوْفَ بِكُمْ ۗ وَاتَّقُوا اللَّهَ ۗ وَيُعَلِّمُكُمُ اللَّهُ ۗ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ۝

The Meaning: "O you who believe, when you deal with each other in transactions for a specified period, write it down. Let a scribe among you write it down fairly. Let not the scribe refuse to write it down as Allah has taught him. Let him write it down, and let the debtor dictate it. Let him be mindful of Allah, his Lord, and let him not reduce it in the slightest. If the debtor is of limited understanding, weak (in condition), or unable to dictate it himself, let his guardian dictate it correctly. Ask for the testimony of two male witnesses among you. If there are no two male witnesses, (it is permissible to have) one male and two females among those whom you approve as witnesses, so that if one of them forgets, the other can remind her. Let not the witnesses refuse when they are called upon. Do not be weary of recording it until its due date, whether it is small or large. That is more just in the sight of Allah, more reliable as evidence, and more likely to prevent doubt, except for immediate transactions that you conduct among yourselves. There is no sin on you if you do not record them. Take witnesses when you buy and sell, and do not make it difficult for the recorder or the witnesses. If you do so, it is indeed a sin for you. Fear Allah; Allah teaches you, and Allah is All-Knowing of everything. (Qur'an Chapter Al-Baqarah, Verse: 282).

This verse constitutes the most comprehensive normative foundation for contractual governance in Islamic law. Often described as the longest verse in the Qur'an, it addresses

deferred transactions (*mu'āmalāt mu'ajjalah*) by establishing principles of documentation, clarity, accountability, and witness verification. Classical jurists have traditionally interpreted this verse as a procedural directive aimed at preventing disputes in debt-based transactions (Az-Zuhaili 1989). However, when examined through the lens of Islam Transitive Theory, the verse reveals a broader normative architecture that extends beyond procedural compliance toward ethical regulation of economic relations.

Within the context of *bay' al-salam*, QS. 2:282 provides a foundational framework that governs the legitimacy of deferred delivery contracts. Although the verse does not explicitly mention *bay' al-salam*, classical exegetes and jurists have consistently linked its normative content to salam transactions due to their shared feature of temporal deferment (Qudamah 2004). The command to record transactions (*fa'ktubūhu*), specify terms clearly, and uphold fairness between parties reflects an overarching Qur'anic concern with contractual transparency and justice principles that are central to the permissibility of *bay' as-salam* as an exception to the general prohibition of selling non-existent goods.

From a classical *tafsīr aḥkām* perspective, scholars such as al-Qurṭubī and Ibn al-'Arabī emphasized that the verse aims to safeguard parties from ambiguity (*gharar*) and potential exploitation arising from deferred obligations (Al-Qurtubi 1964). The requirement of written documentation is not merely administrative; it serves as a normative mechanism to ensure that economic necessity does not override ethical discipline. In the case of *bay' al-salam*, where payment precedes delivery, the Qur'anic insistence on clarity and specification becomes even more critical, as the risk of uncertainty is inherently higher.

Applying Islam Transitive Theory allows this verse to be reinterpreted as a normative governance model rather than a context-bound procedural rule. According to Ansari Yamamah, Islamic legal norms must transition from textual articulation to functional implementation while preserving their ethical objectives (Yamamah 2019). In this framework, QS. 2:282 operates as a transitive norm that regulates how deferred contracts should function within evolving economic systems. Its principles are not exhausted by compliance with classical juristic conditions, but must be continuously reactivated to govern new contractual forms, including institutional and digital *bay' as-salam* arrangements.

When analyzed through a *maqāṣid al-Syarī'ah* lens, the normative dimensions of QS. 2:282 align closely with key objectives relevant to commercial transactions. The emphasis

on documentation and specification reflects the maqṣad of transparency (*bayān*), while the insistence on fairness between debtor and creditor embodies the maqṣad of justice (*‘adl*) (Jasser ‘Audah 2008). Moreover, the verse’s repeated concern with preventing harm such as coercion, manipulation, or forgetfulness corresponds to the maqṣad of *daf‘ al-mafṣadah*. These maqāṣid-oriented principles provide a substantive معيار (benchmark) for evaluating whether contemporary *bay‘ as-salam* practices truly reflect Qur’anic ethical intent.

In modern applications, however, the transitive function of QS. 2:282 is often reduced to formalistic compliance. Digital contracts and standardized banking documents may fulfill technical requirements of documentation, yet still obscure substantive risks borne disproportionately by one party. In some institutional *salam* products, contractual complexity replaces clarity, undermining the very objective that the verse seeks to achieve. This phenomenon illustrates a normative disjunction: while the form of Qur’anic compliance is preserved, its ethical substance is weakened (Mirakhor and Askari 2010).

Islam Transitive Theory provides a critical lens to identify and address this disjunction. By emphasizing the movement of norms from text to social reality, the theory challenges purely formal readings of QS. 2:282 and demands an evaluation of outcomes. Within this framework, a *bay‘ as-salam* contract cannot be considered fully compliant with Qur’anic guidance merely because it is documented or digitally recorded; it must also demonstrate ethical coherence in terms of risk distribution, transparency of obligations, and protection of vulnerable parties. This approach shifts the evaluative focus from procedural sufficiency to normative effectiveness.

Furthermore, the Qur’anic model of contract governance articulated in QS. 2:282 establishes a foundational ethical boundary that complements the prophetic regulations of *bay‘ al-salam*. While the Sunnah specifies technical conditions such as quantity, quality, and delivery time the Qur’an provides the overarching governance principles that frame these conditions within a moral economy. Together, they form an integrated normative system that restricts speculative practices and anchors deferred transactions in ethical responsibility (Kamali 2002).

Accordingly, this study argues that QS. al-Baqarah [2]:282 should be understood as a transitive normative framework that actively governs contemporary *bay‘ as-salam* practices. Its principles of clarity, justice, and harm prevention must be operationalized

through *maqāṣid al-Syarī'ah* to evaluate modern contractual innovations. By repositioning the verse as a model of contract governance rather than a static procedural rule, this analysis reinforces the central claim of the article: that the legitimacy of *bay' as-salam* in contemporary Islamic finance depends on its capacity to embody the ethical objectives of Islamic law across changing economic contexts.

b. Hadis Analysis of Bay' As-salam: The Prophetic Sunnah as Boundary-Setting Norms

The permissibility of *bay' as-salam* in Islamic law is inseparable from the normative authority of the Prophetic Sunnah. While the Qur'an provides overarching principles of contractual governance, the Sunnah articulates detailed operational boundaries that regulate deferred delivery transactions. Several *ṣaḥīḥ* hadiths narrated by Ibn 'Abbās explicitly authorize *bay' as-salam* while simultaneously imposing stringent conditions concerning specification, measurement, and delivery time. These narrations establish *bay' as-salam* not as a general license for forward sales, but as a carefully restricted exception (*rukhsah*) grounded in necessity and ethical discipline (Ibnu Taimiyyah 1995).

Among the most frequently cited narrations is the hadith recorded in *Ṣaḥīḥ al-Bukhārī*, *Ṣaḥīḥ Muslim*, and *Sunan Nasa'i* in which the Prophet Muḥammad (peace be upon him) stated:

حَدَّثَنَا صَدَقَةٌ، أَخْبَرَنَا ابْنُ عُيَيْنَةَ، عَنْ ابْنِ أَبِي نُجَيْحٍ، عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ، عَنْ أَبِي الْمُنْهَالِ، عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَا: "قَدِمَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَدِينَةَ وَهُمْ يُسَلِّفُونَ فِي التَّمْرِ السَّنَتَيْنِ وَالثَّلَاثَ، فَقَالَ: "مَنْ أَسْلَفَ فِي شَيْءٍ فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ، وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ".

The Meaning: "When the Prophet arrived in Medina, the people there used to make advance payments (salam) for dates for one, two, or three years. Then he said: "Whoever engages in salam transactions for something, let him do so with known measurements, known weights, and known times."

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَرُهَيْبِيُّ بْنُ حَرْبٍ، قَالَا: حَدَّثَنَا وَكَيْعٌ، عَنْ سُفْيَانَ، عَنْ ابْنِ أَبِي نُجَيْحٍ، عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ، عَنْ أَبِي الْمُنْهَالِ، عَنْ ابْنِ عَبَّاسٍ، قَالَ: "قَدِمَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَدِينَةَ وَهُمْ يُسَلِّفُونَ فِي التَّمْرِ السَّنَتَيْنِ أَوْ الثَّلَاثَ فَقَالَ: "مَنْ أَسْلَفَ فِي التَّمْرِ فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ، وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ".

The Meaning: Ibn ‘Abbas Said, Muhammad saw. said: “Whoever enters into a salam transaction, let him do so with a specified measure, specified weight, and a specified term” (Al-Qushayri 1604).

فَتَيْبَةُ بْنُ سَعِيدٍ قَالَ حَدَّثَنَا سُفْيَانُ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ عَنْ أَبِي الْمُنْهَالِ عَنْ ابْنِ عَبَّاسٍ قَدِيمَ رَسُولِ اللَّهِ ﷺ الْمَدِينَةَ وَالنَّاسُ يُسَلِّفُونَ فِي التَّمْرِ السَّنَتَيْنِ وَالثَّلَاثَ، فَتَهَاؤُهُمْ، وَقَالَ: «مَنْ أَسْلَفَ سَلَفًا فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ»

The Meaning: Ibn Abbas said: The Prophet came to Medina, while they made advance payments for fruits for two or three years. Then the Messenger of Allah said: “Whoever makes an advance payment for something, let him do so with a known measure, a known weight, and a known time.”

Classical jurists unanimously regarded this hadith as the cornerstone of *bay‘ as-salam* regulation, emphasizing that any deviation from these conditions invalidates the transaction. The Sunnah, therefore, does not merely permit *bay‘ al-salam*; it actively constrains it.

From a classical jurisprudential perspective, scholars such as al-Nawawī and Ibn Qudāmah interpreted these prophetic conditions as mechanisms to eliminate *gharar* and prevent dispute (*nizā‘*) between contracting parties. (An-Nawawi 1996) The insistence on precise specification of quantity and quality reflects a broader ethical concern with transactional transparency, while the requirement of a fixed delivery time ensures predictability and fairness. These conditions collectively demonstrate that the Sunnah treats *bay‘ as-salam* as an exception justified by economic necessity, rather than a flexible instrument for speculative gain.

Applying Islam Transitive Theory allows these hadiths to be reconceptualized as boundary-setting norms within a dynamic legal system. According to Ansari Yamamah, prophetic norms function transactively by defining the ethical limits within which legal adaptation may occur (Yamamah 2022). In this sense, the Sunnah does not merely describe historical practices; it delineates normative borders that must govern the transitive movement of Islamic law from classical contexts to contemporary realities. The conditions articulated in the hadiths of *bay‘ as-salam* thus operate as ethical safeguards that regulate how far contractual innovation may extend.

When examined through a *maqāṣid al-Syarī'ah* lens, the boundary-setting function of these hadiths becomes even more apparent. The requirement of precise specification directly serves the *maqṣad* of transparency (*bayān*), while the prohibition of ambiguity aligns with the *maqṣad* of harm prevention (*daf'u al-mafṣadah*) (Jasser 'Audah 2008). Moreover, by restricting *bay' as-salam* to clearly defined terms, the Sunnah seeks to preserve justice (*'adl*) by preventing disproportionate risk transfer, particularly to weaker economic actors such as farmers or small producers. The ethical orientation of these hadiths thus extends beyond formal legality toward substantive fairness.

In contemporary applications, however, the boundary-setting role of the Sunnah is frequently diluted. Institutional and digital implementations of *bay' as-salam* often involve standardized contracts that formally reference prophetic conditions but functionally obscure them through complex documentation or risk-shifting mechanisms. In some cases, the specification required by the Sunnah is replaced with generalized descriptions, while delivery timelines are rendered contingent upon external variables. Such practices raise critical questions regarding the continued normative force of the Sunnah in regulating modern financial instruments (Kamali 2002).

Islam Transitive Theory provides a critical lens to evaluate this normative dilution. Within this framework, adherence to prophetic norms is assessed not only by formal reference but by substantive implementation. A *bay' as-salam* contract that nominally cites hadith-based conditions yet fails to uphold their ethical objectives cannot be considered fully compliant with the Sunnah. This approach challenges reductionist readings that equate textual citation with normative fulfillment, emphasizing instead the ethical outcomes produced by the transaction.

Furthermore, the Sunnah's role as a boundary-setting authority complements the Qur'anic governance model articulated in QS. al-Baqarah [2]:282. While the Qur'an establishes general principles of contractual clarity and accountability, the hadiths of *bay' as-salam* provide concrete operational limits that translate these principles into practice. Together, they form an integrated normative system that restricts speculative behavior and anchors deferred transactions within a moral economy. This integration underscores the article's central claim that Islamic legal legitimacy is inseparable from ethical coherence.

Accordingly, this study argues that the prophetic hadiths governing *bay' as-salam* should be understood as transitive normative constraints that actively regulate contemporary financial practices. Their relevance does not diminish with changing economic contexts; rather, it intensifies as contractual complexity increases. By reasserting the boundary-setting function of the Sunnah through Islam Transitive Theory and *maqāshid al-syarī'ah*, this analysis contributes a critical framework for evaluating the ethical validity of modern *bay' as-salam* arrangements beyond mere formal permissibility.

2. Discussion

a. Qur'an-Hadis-Maqashid Synthesis Through Islam Transitive Theory

The preceding analyses of Qur'anic and prophetic foundations reveal that *bay' as-salam* is governed by a layered normative structure rather than a singular legal authorization. The Qur'an, particularly QS. al-Baqarah [2]:282, establishes a comprehensive framework of contractual governance rooted in clarity, accountability, and justice, while the Sunnah delineates precise operational boundaries that restrict uncertainty and speculative behavior. When synthesized through *maqāshid al-Syarī'ah* and examined via Islam Transitive Theory, these sources collectively form a dynamic evaluative system capable of regulating contemporary transformations of *bay' al-salam*.

From a transitive perspective, Islamic law does not operate through isolated textual commands, but through an integrated normative movement that connects text (*naṣ*), ethical objectives (*maqāshid*), and social reality (Hallaq 1997). The Qur'an articulates the ethical architecture of contractual relations, the Sunnah operationalizes this architecture through boundary-setting norms, and *maqāshid al-Syarī'ah* function as evaluative instruments that assess whether contemporary practices successfully embody these values. This tripartite structure challenges reductionist approaches that assess *bay' as-salam* solely on the basis of formal legality.

Critically, the synthesis demonstrates that the permissibility of *bay' as-salam* is conditional and purposive rather than absolute. Classical jurists consistently emphasized that *salam* is an exception (*rukhsah*) justified by economic necessity, particularly to facilitate production and alleviate liquidity constraints (Ibn Qudamah 1997). The Qur'anic emphasis on documentation and fairness, combined with prophetic insistence on strict specification,

reflects a deliberate effort to prevent necessity from degenerating into exploitation. When contemporary financial practices extend *bay' as-salam* beyond these ethical constraints by introducing excessive complexity, asymmetrical risk distribution, or speculative intent the transitive chain between text and purpose becomes fractured.

Islam Transitive Theory provides a conceptual mechanism to identify this fracture. According to Ansari Yamamah, a legal norm fails transitivity when it is formally preserved but ethically disconnected from its intended social function (Yamamah 2019). In the context of modern *bay' as-salam*, this failure is evident where Qur'anic and prophetic references are retained symbolically, while their normative substance is diluted. For example, digital contracts may satisfy documentation requirements in form, yet undermine transparency through technical opacity. Similarly, prophetic conditions of specification may be nominally acknowledged while functionally circumvented through flexible or contingent clauses.

A *maqāsid*-based synthesis exposes the ethical implications of such practices. Justice (*'adl*) requires proportional distribution of risk and benefit between contracting parties, yet some institutional *salam* structures transfer disproportionate risk to producers or end-users. Transparency (*bayān*) demands clear and intelligible contractual terms, which are often compromised in standardized financial documentation. Harm prevention (*daf' al-mafṣadah*) seeks to eliminate *gharar* and speculative uncertainty, yet contemporary adaptations may inadvertently replicate the very risks that classical jurists sought to avoid (Auda 2008). These tensions indicate that formal compliance alone is insufficient to establish normative legitimacy.

The integrated framework proposed in this study reframes *bay' as-salam* as an ethical-economic institution rather than a technical financial instrument. By synthesizing Qur'an, Sunnah, and *maqāsid* through Islam Transitive Theory, the analysis shifts the evaluative focus from whether a contract is permissible to how and to what extent it realizes the objectives of Islamic law. This approach introduces a graded assessment of compliance, recognizing that legitimacy exists along a spectrum rather than as a binary category.

This synthesis also clarifies the respective roles of Qur'anic and prophetic sources within Islamic legal reasoning. The Qur'an functions as a source of normative governance, articulating foundational ethical principles that must guide contractual relations across contexts. The Sunnah, by contrast, operates as a system of normative constraints that delimit

acceptable forms of adaptation. *Maqāshid as-Syarī'ah* mediate between these sources and contemporary realities, ensuring that legal adaptation remains ethically anchored. Together, they constitute a cohesive regulatory system capable of responding to modern economic challenges without sacrificing moral coherence.

From a critical standpoint, this integrated model exposes the limitations of current Islamic finance discourse, which often prioritizes market compatibility over ethical depth. By foregrounding the transitive relationship between text, purpose, and practice, the study challenges prevailing tendencies to equate *Syarī'ah* compliance with contractual engineering. Instead, it calls for a recalibration of Islamic finance toward its normative foundations, emphasizing ethical accountability alongside economic efficiency (Mirakhor and Askari 2010).

Accordingly, this article advances a conceptual contribution by offering a Qur'an, Hadis, *Maqāshid* synthesis grounded in Islam Transitive Theory as an evaluative framework for *bay' as-salam*. This framework not only clarifies the ethical boundaries of permissible adaptation but also provides methodological guidance for assessing other classical contracts undergoing contemporary transformation. In doing so, it reinforces the central thesis that Islamic law retains its relevance not through rigid textualism, but through its capacity to ethically govern change.

b. Critical Evaluation Of Contemporary *Bay As-Salam* Practices: A Transitive-Maqashid Based Analysis

The contemporary application of *bay' as-salam* reflects a significant shift from its classical socio-economic setting toward institutionalized and technologically mediated financial environments. Islamic banks, financial intermediaries, and digital platforms increasingly employ *salam* based contracts as instruments for liquidity provision, supply chain financing, and digital transactions. While these developments demonstrate the adaptability of Islamic commercial law, they also raise critical normative questions regarding the extent to which modern practices remain faithful to the ethical constraints articulated in the Qur'an and the Sunnah.

From a transitive perspective, this transformation represents a crucial testing ground for Islamic law's capacity to govern change. Classical *bay' as-salam* functioned as a necessity-based contract (*'aqd hājī*), primarily intended to support producers particularly

farmers by providing upfront capital while minimizing uncertainty through strict contractual conditions (Az-Zuhaili 1989). In contrast, contemporary salam products are often embedded within complex financial structures that redistribute risk across multiple parties, sometimes detaching the contract from its original ethical rationale.

One prominent issue concerns risk allocation. In classical jurisprudence, jurists such as Ibn Qudāmah emphasized that *bay' as-salam* is permissible only when its conditions ensure fairness and prevent exploitation (*ẓulm*) (Ibn Qudamah 1997). However, in modern institutional settings, risk is frequently transferred disproportionately to producers or end-clients through penalty clauses, contingent delivery mechanisms, or market-linked pricing structures. From a *maqāṣid* perspective, such arrangements conflict with the objective of justice (*'adl*), as they undermine the equitable distribution of contractual burdens.

A second critical issue lies in contractual transparency. QS. al-Baqarah [2]:282 and the prophetic hadiths governing *bay' as-salam* place exceptional emphasis on clarity of specification and documentation. Classical scholars interpreted these requirements as safeguards against *gharar* and dispute (Al-Qurtubi 1964). In contemporary practice, however, transparency is often compromised by highly technical contractual language and standardized digital documentation that, while legally valid, may not be intelligible to all parties. This phenomenon illustrates what Islam Transitive Theory identifies as formal compliance without ethical realization, where normative principles are preserved in form but weakened in substance (Yamamah 2019). Transitive theory explain more he said : this issue becoe one of part important thing he called this by *Hifzh al-Shu'un al-Ijtima'iyah* (Protecting Social Welfare). As previously explained, the fifth part or classical version of the concept of al-daruriyyah al-khamsah is hifz al-mal (protecting property). To a larger extent, hifz al-mal in this perspective, seems to be more individual and partial because not everyone has the opportunity to maintain or take care of his property. In circumstances where a person does not possess property, what item does he intend to protect? Therefore, the concept of hifz al-maal in respect to al-daruriyyah al-khamsah and the Transitive Islamic version was expanded with the term al-shu'un al-ijtima'iyah (social welfare). In this section, welfare is distinguished into two types: individual (as-syu'uni al-syakhshiyah) and social (as syu'uni alijtima'iyah) (Yamamah 2022).

The term welfare is not only related to the protection of property rather it is closely associated with the needs and maintenance of various other aspects of life. These include social and psychological aspects, law enforcement-ethical norms, respect, care and fulfillment of rights, availability of jobs, as well as personal and communal forms related to the rationality and availability of these needs (Yamamah 2019).

The issue of speculation further complicates contemporary *bay' as-salam* practices. Classical jurists consistently rejected any form of salam that resembled speculative forward trading, emphasizing that the contract must be tied to real economic activity and genuine production (An-Nawawi 1996). Yet, some modern implementations blur the line between necessity-based financing and profit-driven speculation, particularly when salam contracts are repeatedly traded or used primarily as hedging instruments. Such practices challenge the *maqṣad* of harm prevention (*daf'u al-maḥṣadah*) by reintroducing uncertainty and volatility that Islamic law seeks to restrain.

Islam Transitive Theory provides a critical analytical lens to evaluate these developments. According to Ansari Yamamah, a legal norm loses its transitive validity when it is detached from its ethical purpose and reduced to a technical instrument. (Yamamah 2019). Applied to *bay' al-salam*, this insight reveals that contemporary practices must be assessed not only by their conformity to classical conditions, but by their capacity to reproduce the ethical outcomes envisioned by the *Syarī'ah*. A contract that satisfies formal requirements yet undermines transparency, justice, or social welfare represents a failure of normative transitivity.

When synthesized with *maqāṣid as-syarī'ah*, this analysis underscores the need for graded ethical evaluation. Rather than classifying modern *bay' as-salam* practices as simply lawful or unlawful, the transitive *maqāṣid* framework allows for a nuanced assessment of ethical adequacy. Contracts may exhibit partial compliance, ethical deficit, or normative coherence depending on how effectively they realize the objectives of justice, transparency, and public interest (Auda 2008). This approach offers a more realistic and intellectually rigorous tool for assessing financial innovation within Islamic law.

Ultimately, the critical evaluation of contemporary *bay' as-salam* practices reveals a recurring pattern: the expansion of contractual form without a corresponding deepening of ethical substance. While institutionalization and digitization are not inherently incompatible

with Islamic law, they demand a heightened commitment to normative governance. Without such commitment, *bay' as-salam* risks being transformed from an ethically grounded mechanism of economic support into a *Shari'ah*-branded financial instrument devoid of its original moral intent.

Accordingly, this study argues that contemporary *bay' as-salam* practices must be continuously evaluated through a transitive *maqāsid* lens to ensure their alignment with the ethical vision of Islamic law. Such evaluation is essential not only for safeguarding normative integrity, but also for preserving the credibility of Islamic finance as a moral alternative within the global economic system.

C. CONCLUSION

The findings of this study demonstrate that the contemporary legitimacy of *bay' as-salam* cannot rest solely on its classical permissibility. Although Qur'anic and prophetic sources clearly authorize the contract under strict conditions, its modern institutional and digital applications reveal a persistent pattern of formal compliance without normative realization. Many contemporary practices preserve contractual form while diluting ethical substance through asymmetrical risk allocation, contractual opacity, and speculative orientation. From the perspective of Islam Transitive Theory, this condition reflects a breakdown in normative transitivity, where legal norms remain textually intact but become ethically disconnected from their original socio-economic purpose. Consequently, *bay' as-salam* risks being transformed from a necessity based mechanism supporting real economic activity into a *Syari'ah* branded financial instrument driven primarily by profit maximization.

By integrating Qur'anic governance principles, prophetic boundary-setting norms, and *maqāsid al-Syari'ah* within a transitive framework, this study offers a critical evaluative model that moves beyond binary classifications of permissibility. Justice (*'adl*), transparency (*bayān*), and harm prevention (*daf' al-mafsadah*) are operationalized as concrete criteria for assessing contemporary *salam* practices, revealing varying degrees of ethical adequacy rather than absolute compliance. This approach contributes a substantive theoretical advancement by repositioning Islamic law as a dynamic moral system capable of governing financial transformation without sacrificing its ethical foundations. Practically, the study

underscores the urgency for *Syarī'ah* governance institutions to shift from formalistic validation toward substantive ethical assessment, ensuring that *bay' as-salam* remains aligned with its foundational objective of promoting fairness, social welfare, and economic justice in contemporary Islamic finance.

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