JURIS (Jurnal Ilmiah Syariah)
Vol. 24, No. 2 (2025), pp. 295-310
ISSN: 1412-6109; E-ISSN: 2580-2763
DOI: 10.31958/juris.v24i2.15863

From Classical *Fiqh* to Commercial Court: Reconciling *Taflīs* and *Actio Pauliana* in Indonesian Legal Practice

Yapiter Marpi[1*], Hari Purwadi[1], Pujiyono Suwadi[1], Hazeem Moutawally Elsyafei[2]

[1]Sebelas Maret University, Surakarta, Indonesia
[2]Al-Ahgaff University, Yaman

Corresponding Author: yapitermarpi@gmail.com

Recieved: 05-08-2025 | *Revised: 12-12-2025* | *Accepted: 17-12-2025*

Abstract: The rapid expansion of Islamic finance in Indonesia has exposed a critical doctrinal rift between the secular, proceduralist national bankruptcy regime and the ethical-legal foundations of *sharīʿah*-compliant transactions. This study examines the applicability of the conventional *actio pauliana* doctrine—a cornerstone of creditor protection under Law No. 37 of 2004—to insolvencies governed by Islamic economic principles. Employing a normative-juridical methodology, the research conducts a critical comparative analysis of statutory provisions, Commercial Court jurisprudence, and classical Islamic legal texts, using Ibn Rushd's (Averroes) doctrine of *taflīs* (insolvency) as its primary jurisprudential lens. The findings reveal a profound normative dissonance. The rigid, formalist application of *actio pauliana* systematically marginalizes substantive *sharīʿah* scrutiny, creates jurisdictional conflicts over the definition of insolvency, and sidelines specialized religious expertise. This failure of the formal system has consequently spurred the rise of unregulated digital and informal dispute resolution mechanisms, which, while adaptive, fragment legal certainty and undermine collective creditor protections. The article makes an original contribution by applying Ibn Rushd's classical framework to this modern dilemma. It concludes by proposing a tripartite integrative model for legal harmonization, involving regulatory recognition of *sharīʿah* contracts, the establishment of specialized judicial panels, and the procedural integration of *sharīʿah*-based assessments into bankruptcy proceedings. These reforms are essential to align Indonesia's legal infrastructure with its Islamic finance sector, ensuring substantive justice, restoring stakeholder confidence, and fostering sustainable growth.

Keywords: *Actio Pauliana*; Ibn Rushd (Averroes); Islamic Bankruptcy; Legal Harmonization; *Sharīʿah* Economics; *Taflīs*

Introduction

The rapid growth of Islamic finance has transformed Indonesia into one of the most dynamic laboratories for Sharia-based economic governance (Hussein et al., 2024; Rammal et al., 2025). Islamic banking, sukuk issuance, and Sharia-compliant financing schemes have become integral components of the national financial system, reflecting both market demand and state policy commitments (Hassan et al., 2026; Le et al., 2022). However, this institutional expansion has not been matched by a corresponding development in bankruptcy law capable of accommodating the ethical and jurisprudential foundations of Islamic economic transactions. When insolvency arises in Sharia-based contracts, dispute resolution mechanisms remain overwhelmingly governed by conventional bankruptcy law, particularly Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU). This regulatory imbalance generates significant legal and normative tensions (Amrizal et al., 2025; Kurniawan et al., 2025; Yuhelson & Nur Hakim, 2025).

In positive law, bankruptcy is primarily understood as a procedural mechanism designed to ensure equitable distribution of a debtor's assets among creditors (Liu & Li, 2025; Maruli et al., 2025). The doctrine of *actio pauliana*, which allows the annulment of a debtor's prejudicial legal acts prior to bankruptcy, occupies a central role in protecting creditor interests. Rooted in civil law traditions, this doctrine prioritizes transactional certainty and creditor equality (Anindra, 2022; Marpi et al., 2023; Wiguna et al., 2024). Yet,

when applied to Sharia-based economic relations, *actio pauliana* raises deeper questions concerning moral accountability, social justice, and the ethical limits of state coercion. Islamic law conceptualizes insolvency (*taflīs*) not merely as a legal status but as a condition imbued with moral, social, and religious dimensions (bin Md Nor et al., 2025).

Classical Islamic jurisprudence emphasizes compassion toward insolvent debtors, transparency in financial dealings, and the prevention of unjust enrichment. The Qurʾān explicitly encourages creditors to grant respite to debtors in genuine hardship, while the Sunnah underscores the moral virtue of easing financial burdens (Ropiah, 2025). These normative commitments situate bankruptcy within a broader ethical framework that transcends adversarial legalism (Dusuki et al., 2012). Among classical jurists, Ibn Rushd (Averroes) offers one of the most systematic and nuanced treatments of *taflīs*. In *Bidayat al-Mujtahid*, he examines divergent juristic opinions on asset restriction, creditor priority, and state intervention, grounding his analysis in methodological pluralism and *maqāṣid al-sharīʿa* (Ege, 2017).

Despite the richness of this jurisprudential heritage, contemporary Indonesian bankruptcy law has yet to meaningfully integrate Islamic legal reasoning. The exclusive jurisdiction of Commercial Courts over bankruptcy cases, even when the underlying contracts are explicitly Sharia-compliant, further exacerbates this disconnect (Prihasmoro et al., 2024). The absence of a specific regulatory framework for Islamic bankruptcy not only creates doctrinal inconsistency but also risks eroding public confidence in Sharia financial institutions. Against this backdrop, this article asks a central question: to what extent can *actio pauliana* be harmonized with Islamic economic law through the interpretive framework of Ibn Rushd's doctrine of *taflīs*?

This study contributes to the literature in three ways. First, it provides a theoretically grounded reinterpretation of *actio pauliana* informed by classical Islamic jurisprudence. Second, it exposes structural limitations in Indonesia's bankruptcy regime when applied to Sharia-based transactions. Third, it proposes an integrative harmonization model that aligns procedural efficiency with Islamic ethical commitments. Such an approach is essential for ensuring substantive justice and sustainable development in Indonesia's Islamic economic system.

Literature Review

Bankruptcy in Positive Law

In Indonesian positive law, bankruptcy is defined as a general confiscation of a debtor's assets following a court declaration that the debtor has failed to pay at least one due and collectible debt (Martin, 2021). Law No. 37 of 2004 establishes the procedural architecture of bankruptcy, including the role of curators, supervisory judges, and legal remedies such as cassation and judicial review (Kadir & Sabirin, 2025; Ningsih, 2025). The doctrine of *actio pauliana*, regulated in Articles 41–47, enables curators or creditors to challenge debtor transactions conducted in bad faith prior to bankruptcy that harm creditor interests (Marpi et al., 2023).

Scholarly analyses emphasize that *actio pauliana* serves as a preventive and corrective mechanism against asset dissipation (Ciaptacz, 2021; Gutiérrez Pérez, 2024; Jiménez Gómez, 2019; Marpi et al., 2023; Mularski & Klaczak, 2022). Nevertheless, empirical studies reveal significant evidentiary challenges in proving debtor intent and creditor harm, particularly when third-party rights are involved. These difficulties are compounded in cases involving Sharia-based contracts, where ethical considerations and religious norms intersect with formal legal requirements.

Taflīs in Islamic Jurisprudence

In Islamic law, *taflīs* denotes a state of insolvency characterized by a debtor's inability to fulfill financial obligations. Classical jurists differ on the legal consequences of *taflīs*, particularly regarding asset restriction and state intervention (Rusdiyono & Mu'allim, 2022). Ibn Rushd identifies two primary conditions: insolvency where assets are insufficient to cover debts, and insolvency where no assets remain despite outstanding obligations (Marsetiaji et al., 2025; Motzki, 2010). The Maliki, Shafiʿi, and Hanbali schools generally permit state-imposed restrictions on asset use for the benefit of creditors, while the Hanafi school adopts a more restrained approach (Nazaritavakkoli & Pasdar, 2025; Samavati, 2020).

Ibn Rushd's contribution lies in his comparative methodology and emphasis on underlying legal rationales (Ahsan, 2025; Firdaus & Riyadi, 2025). Rather than privileging a single doctrinal position, he evaluates juristic disagreements in light of broader objectives, including fairness, prevention of harm, and social stability. This approach renders his doctrine particularly relevant for contemporary legal harmonization efforts (Alsayyed, 2025; Rusyd, 2007).

Method

This study adopts a normative–juridical research design combined with a conceptual and jurisprudential approach to examine *actio pauliana* at the intersection of Indonesian positive bankruptcy law and Islamic economic law. Normative legal research is employed to analyze binding legal norms, doctrinal constructions, and judicial reasoning rather than empirical behavior. The primary legal materials consist of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) and selected decisions of the Indonesian Supreme Court and Commercial Courts concerning *actio pauliana*. These sources are examined to identify the legal structure, evidentiary standards, and normative objectives of creditor protection within the existing bankruptcy regime. Judicial decisions are treated as authoritative expressions of applied legal reasoning, revealing how statutory norms operate in practice.

To capture the Islamic legal dimension, the study relies on classical Islamic legal texts as normative sources, with particular emphasis on Ibn Rushd's *Bidayat al-Mujtahid wa Nihāyat al-Muqtaṣid*, supplemented by Qurʾānic verses, Prophetic traditions, and juristic opinions from the major Sunni schools of law. Secondary materials include peer-reviewed international journal articles and scholarly monographs on bankruptcy law, Islamic economic law, and legal pluralism. The analysis is conducted through qualitative doctrinal interpretation and comparative legal reasoning, whereby statutory provisions and judicial practices are critically assessed in light of Ibn Rushd's doctrine of *taflīs* and the objectives of Islamic law (*maqāṣid al-sharīʿa*), particularly justice, protection of wealth, and prevention of harm (Auda, 2008). This methodological framework enables both normative evaluation and reform-oriented analysis aimed at proposing a coherent model for harmonizing positive bankruptcy law with Sharia-based principles.

Results and Discussion

Procedural Formalism and the Marginalization of Substantive *Sharīʿah* Scrutiny: A Disjuncture of Legal Paradigms

The application of Indonesia's Bankruptcy Law (Law No. 37 of 2004) to *sharīʿah*-compliant transactions reveals a profound and systematic disjuncture between legal paradigms (Silalahi et al., 2025; Yulianto et al., 2022). Commercial Courts, vested with exclusive bankruptcy jurisdiction, predominantly employ a rigid procedural formalism that systematically marginalizes the substantive ethical and juridical foundations of the underlying Islamic contracts. This formalist approach mechanically transposes the secular, creditor-centric doctrine of *actio pauliana* onto relationships governed by a normatively distinct system, thereby reducing complex moral-economic defaults to mere procedural failures (Wang et al., 2025). The analysis uncovers that this marginalization is not a superficial oversight but a structural consequence of a legal framework ill-equipped to engage with the ontological principles of Islamic finance, leading to outcomes that are procedurally sound yet substantively incongruent with the expectations and rights of the contracting parties.

The theoretical roots of this dissonance become clear when examined through the methodological lens of Ibn Rushd. His magnum opus, *Bidayat al-Mujtahid*, was conceived as a direct intellectual response to an era of juristic stagnation marked by uncritical imitation (*taqlīd*) and dogmatic adherence to school doctrines. He sought to rejuvenate Islamic jurisprudence by redirecting focus from the mere outcomes of legal rulings (*fatāwā*) to their underlying methodological causes and rationales (*asbāb al-ikhtilāf*) (Sabri, 2012). His work is characterized as pioneering the philosophy of jurisprudence, aiming to archaeologically unearth the epistemological foundations and internal logic of legal formulations. Consequently, for Ibn Rushd, understanding a rule on insolvency (*taflīs*) was inseparable from comprehending the hermeneutical process and ethical objectives (*maqāṣid*) that produced it. In stark contrast, the Indonesian Commercial

Courts' current practice represents a modern form of the very *taqlīd* Ibn Rushd critiqued—not to past mujtahids, but to a positivist legal text. Judges faithfully replicate the procedural steps of *actio pauliana* under Article 41 PKPU—scrutinizing temporal proximity, adequacy of consideration, and debtor intent to harm creditors—while remaining agnostic or indifferent to the *fiqh* architecture of the original *murābaḥah* or *ijārah* contract (Djumadi et al., 2025; Fadul et al., 2024). This constitutes a critical failure to engage in what Ibn Rushd modeled: the analytical movement from the surface-level legal disagreement to its deeper methodological and purposive roots.

This procedural bracketing of *sharīʿah* leads to concrete doctrinal mismatches when *actio pauliana*is invoked. The core element of "creditor prejudice" is defined purely in financial and numerical terms within the PKPU framework. However, within Islamic law, "harm" (*ḍarar*) and "prejudice" carry a broader ethical resonance intertwined with concepts like *gharar* (excessive uncertainty) and *mafsadah* (corruption). For instance, a debtor's pre-bankruptcy sale of a *murābaḥah* asset at a significant discount to a family member may neatly satisfy the PKPU's criteria for a voidable preferential transfer. A formalist judicial review would annul it. Yet, an Ibn Rushd-inspired analysis would demand a deeper inquiry: Was the sale motivated by desperation to fulfill a more pressing Sharīʿah obligation, such as providing basic sustenance (*nafaqah*) for dependents? The principle of *ḥifẓ al-nasl* (protection of progeny) within *maqāṣid al-sharīʿah* could ethically justify (Arfan et al., 2024), or at least morally contextualize, an act that secular law deems purely prejudicial. By ignoring this layered normative context, the court's annulment, while legally valid, risks enforcing a procedural justice that violates the substantive justice principles upon which the financial relationship was originally constituted. The debtor and the creditors opted into a system governed by *ḥalāl* and *ḥarām*; the court resolves their dispute using a logic entirely external to that system.

The marginalization extends into the realm of evidence and procedure, further alienating the *sharīʿah* dimension. The ascertainment of debtor intent is a pivotal yet notoriously challenging aspect of *actio pauliana* claims. In conventional cases, courts infer intent from circumstantial evidence. In *sharīʿah*-based insolvencies, a holistic assessment of intent would necessarily involve evaluating the debtor's actions against Islamic ethical benchmarks like *nīyah* (intention) and *ihsān* (beneficence) (Johan et al., 2020). However, court records show no indication that judges consider whether the debtor's conduct, though financially detrimental to creditors, was ethically defensible within the Islamic framework they subscribed to. Furthermore, the institutional mechanism for incorporating such expertise—the *sharīʿah* advisory board of the financial institution—is typically sidelined. Their potential role is reduced to a binary confirmation of the contract's initial validity, not an ongoing assessment of the ethical contours of the default or the permissibility of specific recovery actions. This creates an evidential vacuum where the normative universe of the contract is rendered judicially invisible, and the authority to interpret the parties' rights and duties is wholly usurped by a state law paradigm.

Table 1. Paradigmatic Comparison: *Actio Pauliana* vs. Islamic *Taflīs* in Adjudication

Adjudicative Focus	Formalist *Actio Pauliana* Application	Substantive *Taflīs* Analysis (Ibn Rushd's Method)
Core Objective	Creditor equality & asset preservation for collective procedural fairness.	Achieving a balance between creditor rights (*ḥaqq al-ādī*) and debtor dignity/ethical excusability, guided by *maqāṣid*.
Definition of "Harm"	Narrowly economic: reduction in asset pool available for distribution.	Holistic (*ḍarar*): includes financial loss, violation of contractual trust (*amānah*), and deviation from *sharīʿah* ethical covenants.
Assessment of Intent	Secular "bad faith": intent to disadvantage creditors economically.	Contextual *nīyah*: evaluates purpose against *sharīʿah* obligations (e.g., was asset disposal for a *ḥalāl* necessity like debt to God (*ḥaqq Allāh*) or family welfare?).

Adjudicative Focus	Formalist *Actio Pauliana* Application	Substantive *Taflīs* Analysis (Ibn Rushd's Method)
Role of Contract Type	Legally irrelevant; all debts are monetarily equivalent.	Central; the fiqh rules of the specific contract (*bayʿ, ijārah, mushārakah*) define the nature of the liability and permissible remedies.
Source of Authority	Statutory text (PKPU) and secular civil law precedents.	Primary texts (*Qurʾān, Sunnah*), juristic consensus (*ijmāʿ*), reasoned analogy (*qiyās*), and the objectives of the Law (*maqāṣid*).
Evidentiary Standard	Documentary and circumstantial proof of financial effect and temporal proximity.	Incorporates testimony on *sharīʿah* compliance and ethical context, potentially from qualified *fiqh* experts.

Source: Data processed by the author (2025)

This procedural formalism generates a self-reinforcing cycle of normative alienation. Because the formal system fails to provide a congruent forum for justice, stakeholders in Islamic finance are incentivized to seek resolution elsewhere—through informal settlements, religious arbitration (*ṣulḥ*), or digital dispute platforms. While these alternatives offer cultural resonance, their growth further sidelines the formal bankruptcy process, depriving it of the very cases that could compel its evolution. The Commercial Court, rarely confronted with sophisticated arguments grounded in comparative *fiqh*, has little opportunity to develop jurisprudential competence in this area, perpetuating its reliance on formalism. This cycle exposes a critical gap in Indonesia's legal infrastructure for its Islamic economy: a state-sanctioned process for collective debt resolution that, in its operational logic, systematically excludes the foundational norms of the financial system it purports to regulate. The consequence is not merely technical but existential for the Islamic finance sector, undermining the very proposition that its ethical commitments can find meaningful protection within the national legal order.

Contested Authority and the Judicial Construction of 'Insolvency'

The adjudication of bankruptcy in Sharia-compliant transactions reveals a fundamental and unresolved contest over legal authority, centering on the power to define the constitutive condition of insolvency itself. This contest operates on two interconnected levels: first, a jurisdictional clash between the state's Commercial Courts and the Religious Courts; and second, a normative conflict between the positivist, cash-flow definition enshrined in Law No. 37 of 2004 and the holistic, ethically embedded concept of *taflīs* within Islamic jurisprudence. The empirical evidence demonstrates that the Commercial Court's monopoly over bankruptcy declarations, while procedurally efficient, systematically imposes a secular legal ontology onto relationships governed by Sharia principles. This imposition marginalizes alternative sources of normative authority—namely, the Religious Courts and Sharia advisory boards—and creates a definitional framework for insolvency that is often incongruent with the ethical expectations and contractual foundations of Islamic finance, thereby generating a systemic legitimacy deficit (Rejeki, 2022b).

The jurisdictional dimension of this contest is starkly illustrated by cases involving Islamic Microfinance Institutions (LKMS), such as Baitul Maal wat Tamwil (BMT) (Anwar et al., 2023; Haerudin et al., 2023; Rejeki, 2022a; Rizal et al., 2025). Despite Law No. 1 of 2013 on Microfinance Institutions providing a basis for Sharia-based operations (Thalib et al., 2021), bankruptcy disputes involving these entities consistently fall within the absolute authority of the Commercial Courts, which are part of the general court system. This creates what scholars identify as a "legal vacuum" or a situation of normative "blending," where Sharia economic disputes are resolved within a secular procedural arena. The bankruptcy of BMT Fisabilillah, adjudicated by the Semarang Commercial Court, stands as a concrete example of this dynamic. This jurisdictional arrangement effectively sidelines the Religious Courts, which,

under Indonesian law, hold absolute authority over matters of Sharia economic law (Rejeki, 2022b). Consequently, a body of judges specializing in civil and commercial law, rather than *fiqh al-muʿāmalāt*, becomes the final arbiter for determining the failure of a contract built on principles of *ḥalāl* and *ḥarām*. This not only weakens the institutional mandate of the Religious Courts but also severs the substantive link between the dispute's origins and its resolution, prioritizing procedural uniformity over normative specialization (Rejeki, 2022b).

At the heart of this jurisdictional contest lies the deeper conflict over defining the trigger for intervention: the state of insolvency. The PKPU Law employs a strictly positivist and procedural definition. Insolvency is declared upon the general default of a debtor who has two or more creditors and fails to pay at least one due and enforceable debt. This definition is binary, backward-looking, and concerned solely with the fact of non-payment. In stark contrast, the Islamic concept of *taflīs*, as elaborated by classical jurists like Ibn Rushd, is inherently substantive and contextual. Ibn Rushd's methodological approach integrated rigorous textual analysis with a focus on the objectives of the law (*maqāṣid al-sharīʿa*), treating economic rulings within a holistic ethical framework. Within this framework, *taflīs* is not merely a financial status but a condition of proven incapacity (*ʿajz*) that invites a more nuanced inquiry. It considers the debtor's overall financial health, the nature of the debt (whether stemming from productive investment or consumption, from necessity or extravagance), and the presence of genuine hardship (*ʿusr*).

The following table summarizes the key divergences between these two competing constructs of insolvency:

Table 2. Comparative Analytical Dimensions of Positivist Insolvency (PKPU Law) and *Taflīs* (Ibn Rushd's Framework)

Analytical Dimension	Positivist Insolvency (PKPU Law)	*Taflīs* (Ibn Rushd's Framework)
Primary Trigger	Failure to pay one due, collectible debt.	Proven financial incapacity (*ʿajz*) and inability to meet obligations.
Temporal Focus	Backward-looking (proof of default).	Present-focused (assessment of current and prospective capacity).
Core Assessment	Procedural fact of non-payment.	Substantive condition of the debtor, including causes of distress.
Debt Evaluation	All overdue debts are legally equivalent.	Moral and economic distinction between debts (e.g., necessity vs. luxury).
Guiding Principle	Creditor equality and procedural certainty.	Justice (*ʿadl*), prevention of harm (*rafʿ al-ḍarar*), and compassion (*raḥmah*).
Declaring Authority	State-appointed Commercial Court judge.	*Ḥākim* (judge) or authority informed by *fiqh* assessment.

Source: Data processed by the author (2025)

The practical consequence of the Commercial Court's adoption of the positivist definition is the effective erasure of the Islamic construct from the formal legal process. When a BMT or an Islamic bank petitions for bankruptcy, the court examines ledgers and payment histories, not the *fiqh* compliance of the debtor's conduct or the potential for Sharia-compliant restructuring (*iṣlāḥ*). This creates a significant gap in rights protection. A debtor facing temporary distress due to a genuine shock may be pushed into liquidation under the PKPU, whereas a *taflīs* assessment might prescribe a forced restructuring (*hajr*) or a

recommended grace period (*muhlat*), as encouraged in the Qur'an. The court's narrow construction thus forecloses remedies that are central to the Islamic ethical response to financial failure.

This authority contest further manifests in the sidelining of specialized Sharia expertise within the bankruptcy process. While Islamic financial institutions are mandated to have Sharia Supervisory Boards (DPS) to ensure contract compliance, their role is virtually absent in Commercial Court proceedings. Their potential function in providing an expert opinion on whether a debtor's situation constitutes genuine *ʿusr* warranting protection, or whether certain assets are religiously restricted (like *waqf* properties), is neither sought nor institutionalized. The court relies instead on curators and judges whose expertise is in conventional asset recovery, as seen in high-profile *actio pauliana* cases like Batavia Air, where the focus was solely on unraveling transactions in bad faith without any parallel Sharia assessment (Haryanto & Calvin, 2023). This creates an institutional void where the entity most qualified to interpret the normative dimensions of the dispute is rendered irrelevant, delegitimizing the process in the eyes of stakeholders who deliberately engaged with a Sharia-based system.

The findings in this section delineate a clear pattern of contested authority that structurally disadvantages the Islamic legal paradigm. The Commercial Courts' jurisdictional hegemony enforces a secular, cash-flow definition of insolvency that is procedurally efficient but normatively narrow. This dominance actively marginalizes the alternative authority of the Religious Courts and the specialized expertise of Sharia bodies, preventing the integration of the more holistic, ethical, and compassionate conception of *taflīs* (Supardin et al., 2025). The result is a formal legal process that, while delivering procedural finality, operates in a state of normative dissonance with the foundational principles of the contracts it adjudicates. This dissonance undermines procedural justice by failing to provide a forum that is competent in the specific normative law governing the dispute, thereby weakening legal certainty and protection for parties who have contractually opted into the Sharia system.

The Rise of Digital and Informal Mechanisms as Adaptive, Yet Unregulated, Alternatives

The institutional rigidity and normative dissonance of Indonesia's formal bankruptcy regime, as documented in previous sections, have catalyzed a significant and adaptive response from the Islamic finance ecosystem: the proliferation of digital platforms and community-based informal dispute resolution mechanisms. This phenomenon is not merely a parallel system but a direct social and technological adaptation to the formal system's failure to provide a procedurally accessible and normatively congruent forum for resolving Islamic financial defaults. Empirical evidence, including industry ethnography and regulatory reports, reveals that stakeholders are increasingly bypassing the Commercial Courts in favor of private digital arbitration services, closed social media mediation groups, and traditional religious arbitration (*ṣulḥ*). While these adaptive mechanisms enhance access to justice by offering culturally resonant, swift, and cost-effective solutions, they operate in a profound regulatory vacuum. This void raises critical questions about legal certainty, creditor equality, and the systemic integrity of Indonesia's Islamic economic landscape, ultimately fragmenting the coherent application of insolvency principles.

The drivers for this shift are multifaceted, rooted in both the push of formal system inadequacies and the pull of informal mechanism advantages. As established, the Commercial Court's procedural formalism and marginalization of *sharīʿah* scrutiny create a legitimacy deficit for devout stakeholders. Concurrently, a significant gap exists between public understanding of Islamic finance and access to its formal institutions. Data from Indonesia's Financial Services Authority (OJK) reveals an "anomaly" where public literacy regarding Islamic financial products is notably higher than actual financial inclusion, partly due to a limited number of formal institutions. This environment of high awareness but constrained formal access creates fertile ground for alternative solutions. Furthermore, chronic challenges within the sector—such as a shortage of human resources competent in both management and *sharīʿah* law, and inconsistent governance across institutions—erode confidence in standardized formal processes (Batool, 2025). In this context, digital and community-based forums emerge as attractive alternatives. They prioritize the Islamic ethical principles of compassion (*raḥmah*), mutual consultation (*shūrā*), and amicable settlement (*iṣlāḥ*), often explicitly referencing the Qurʾānic encouragement for debt respite. Their speed and lower cost stand

in stark contrast to the protracted and expensive nature of formal bankruptcy litigation under the PKPU law.

The operational models of these informal mechanisms reveal their adaptive nature but also their core vulnerabilities. Commonly, they function as follows: a creditor or debtor initiates a complaint within a dedicated digital forum or through a trusted community leader (Liu & Shen, 2025). A mediator, often a respected figure with religious knowledge or industry experience, facilitates negotiations aimed at a consensual restructuring (*taḥkīm* or *ṣulḥ*). The outcome is typically a new agreement for rescheduled payments, debt forgiveness (*'afw*), or a debt-for-equity swap structured on an Islamic basis. Crucially, these processes operate without reference to the *actio pauliana* doctrine. A transaction that would be voidable in a Commercial Court as a preferential transfer—such as a debtor hurriedly repaying a family member's loan before defaulting on an institutional debt—may be tacitly approved or overlooked in an informal settlement focused solely on achieving communal harmony and a face-saving solution for the debtor. The following table contrasts the core characteristics of these parallel systems:

Table 3. Comparative Analytical Dimensions of Formal Bankruptcy (PKPU/Commercial Court) and Informal Digital–Community Resolution Mechanisms

Analytical Dimension	Formal Bankruptcy (PKPU/Commercial Court)	Informal Digital/Community Mechanisms
Primary Objective	Enforceable legal finality and equitable asset distribution among all creditors.	Restore social harmony (*ṣulḥ*), provide debtor relief, and achieve a mutually acceptable, expedient solution.
Guiding Norms	Positive state law (PKPU), with marginal *Sharīʿah* consideration.	*Sharīʿah* principles, communal ethics, and business practicality.
Key Procedural Safeguard	*Actio Pauliana* (annulment of prejudicial acts).	No equivalent mechanism; relies on mediator wisdom and party goodwill.
Evidentiary Standard	Formal documentation, financial forensics.	Oral testimony, digital chat records, community reputation.
Outcome Enforcement	State coercion via court decree.	Social pressure, religious obligation, and threat of community ostracization.

Source: Data processed by the author (2025)

This adaptive turn, however, generates significant systemic risks that underscore its characterization as an "unregulated alternative." First, it creates a severe protection gap for creditors outside the immediate community circle. A *ṣulḥ* agreement sanctified by a local mediator can effectively bind only its participants, leaving other distant or institutional creditors without notification or recourse. This violates the fundamental bankruptcy principle of collective creditor procedure, potentially allowing debtors to manipulate assets with impunity. Second, the digitization of these informal processes introduces novel complexities regarding evidence validity, informed consent, and data privacy. Negotiations conducted via WhatsApp or Facebook groups may lack clear records, be susceptible to coercion, or expose sensitive financial information. Third, and most critically, this trend fragments the development of a coherent national jurisprudence on Islamic insolvency (*taflīs*). Each successful informal settlement represents a lost opportunity for the formal system to grapple with, and progressively develop, legal principles that harmonize *actio pauliana* with *sharīʿah*. The formal system, deprived of these cases, remains stagnant in its proceduralism, while the informal system evolves in isolation, without accountability or standardization.

The proliferation of these mechanisms is thus a double-edged sword, symptomatic of both the resilience of Islamic communal ethics and the failure of state-led legal integration. It demonstrates a

market-driven demand for dispute resolution that is not only efficient but also ethically legible within an Islamic framework. However, its unregulated nature threatens to undermine the very values of transparency (*bayyinah*), justice (*'adl*), and protection of property (*ḥifẓ al-māl*) that it seeks to uphold. It creates a parallel, opaque shadow system for debt resolution that operates without the safeguards designed to prevent fraud and ensure fair treatment. This scenario presents a clear challenge for regulators: to neither suppress these organic, culturally vital practices nor allow them to erode the foundations of financial accountability. The sustainable path forward lies in formalizing a structured interface—such as recognizing accredited *sharīʿah*-compliant mediation as a mandatory first step, with the Commercial Court reserved for enforcement and review—thereby channeling this adaptive energy into a hybrid system that balances ethical resonance with legal certainty.

The findings in this section delineate the rise of digital and informal dispute resolution as a direct, pragmatic response to the formal bankruptcy system's normative and procedural shortcomings. These mechanisms fulfill a critical demand for accessible, *sharīʿah*-congruent justice, filling the void left by the Commercial Courts' rigid formalism. Yet, their operation beyond the reach of *actio pauliana* and other PKPU safeguards creates significant risks: the erosion of collective creditor rights, the lack of procedural transparency, and the systemic bifurcation of insolvency practices. This trend represents a fundamental negotiation of authority, where societal norms and technological innovation are de facto privatizing a core function of economic governance. The consequence is a deepening of the very regulatory gap that initially spurred their growth, posing a formidable challenge to the coherence, integrity, and sustainable development of Indonesia's Islamic financial system.

Towards an Integrative Model for *Actio Pauliana* and *Taflīs*

The empirical findings presented in the previous sections collectively reveal the Indonesian legal system's struggle to reconcile its universalist, procedurally-driven bankruptcy regime with the particularist, ethically-grounded nature of Islamic financial transactions. This discussion interprets these results by returning to the central theoretical framework of the study: the jurisprudential lens of Ibn Rushd's *taflīs*. We argue that the identified tensions between formal law and informal practices, and between procedural uniformity and substantive Sharia norms, are not mere technical oversights but symptoms of a deeper normative disjuncture. Ibn Rushd's comparative methodology, which sought to uncover the underlying rationales (*'ilal*) and higher objectives (*maqāṣid*) of legal rulings, provides a critical tool for moving beyond this impasse. It guides us toward a reconceptualization of *actio pauliana*—from a blunt instrument of creditor recovery into a more nuanced mechanism capable of adjudicating within a pluralistic ethical framework.

1. Re-Contextualizing the Findings: Formal Law and Informal Adaptation as Co-Constitutive Phenomena

The rise of digital and informal dispute resolution mechanisms is not simply a market failure or a rejection of state law; it is a direct, rational, and culturally resonant adaptation to the formal system's inadequacies. This dynamic exemplifies what legal pluralism scholars describe as a "living law" responding to the "black-letter law." The formal bankruptcy system, governed by the Indonesian Bankruptcy Law (IBL) and administered by Commercial Courts, offers a structured path for collective insolvency resolution that can lead to either liquidation or, through the PKPU process, a court-supervised restructuring. However, as demonstrated, its procedural formalism and secular ontology render it a normatively alien forum for Islamic finance stakeholders.

Consequently, the turn to informal *ṣulḥ* (amicable settlement) and digital mediation is a pragmatic exercise in *maṣlaḥah* (public interest) and the pursuit of *iṣlāḥ* (reconciliation). These alternatives fulfill the unmet demand for a process that is not only swift and affordable but also ethically legible and capable of delivering outcomes perceived as *'adl* (just) within an Islamic worldview. This aligns with the finding that Indonesia's insolvency framework explicitly accommodates both court-supervised and out-of-court processes, acknowledging that resolution can occur through formal law or contract. The informal mechanisms represent the extreme end of this out-of-court spectrum, operating entirely on contractual and social norms rather than statutory procedure.

However, this adaptive vitality comes at a significant cost to the integrity of the financial system. The very absence of *actio pauliana* and other collective safeguards in these informal spaces creates the risk of a predatory shadow system. As identified, debtors can manipulate assets, and creditors outside the immediate community can be unfairly excluded, violating the core bankruptcy principles of transparency and equal treatment. This creates a paradox: the mechanisms that best embody Islamic ethical principles of compassion and communal harmony operate in a space devoid of the procedural safeguards necessary to prevent abuse and ensure those very ethics are upheld for all parties. This tension cannot be resolved by suppressing informality but only by reforming the formal system to make it a credible and attractive option (Basri et al., 2024).

2. Ibn Rushd's Method and the Path to Normative Integration

Ibn Rushd's approach in *Bidayat al-Mujtahid* provides a blueprint for this reform. He did not seek to erase juristic differences but to understand their epistemological and teleological roots. Applying this to the current dilemma means moving beyond the superficial conflict between "state law" and "religious law" to interrogate their foundational objectives. The IBL's *actio pauliana*, as seen in its application by curators and adjudication by courts, fundamentally aims for *ḥifẓ al-māl* (protection of wealth) through the prevention of fraudulent dissipation and the assurance of equitable distribution. This objective is not inherently at odds with Islamic law. The divergence lies in the *method* of achieving it and the *scope* of values considered.

A formalist application of *actio pauliana* considers only the financial effect and secular intent. An Ibn Rushd-inspired application would demand a layered inquiry. Before annulling a pre-bankruptcy transfer, a court would need to assess: (1) the financial prejudice to creditors; (2) the debtor's intent (*nīyah*) as contextualized by Sharia obligations (e.g., was the asset sold to fulfill a more pressing *ḥaqq Allāh* [right of God] or family welfare (*nafaqah*) obligation?); and (3) whether the annulment itself would cause greater *ḍarar* (harm) or violate a higher *maqṣad* (objective), such as the protection of lineage (*ḥifẓ al-nasl*) (Rusyd, 2007). This transforms *actio pauliana* from a binary legal rule into a balancing test guided by the overarching *maqāṣid al-sharīʿah*.

Similarly, the contested definition of insolvency can be harmonized through a tiered procedural model. The PKPU process already provides for a suspension of payments and a chance for restructuring. For Sharia-based debts, this process could be enhanced by mandating a parallel assessment. A court-appointed expert in *fiqh al-muʿāmalāt* could evaluate whether the debtor's condition meets the classical criteria of *ʿusr* (genuine hardship) or *iʿsār* (destitution), the findings of which could inform the court's decision on whether to mandate a grace period (*muhlat*) or a forced restructuring (*hajr*) instead of immediate liquidation. This integrates the holistic *taflīs* assessment into the formal PKPU framework, making the state's authority responsive to religious normative authority.

3. Proposing an Integrative Harmonization Framework

Based on this analysis, a coherent harmonization model must operate on three interconnected levels: regulatory, institutional, and procedural. The goal is not to create a parallel, segregated system for Islamic bankruptcy, but to build a hybrid, responsive system within the existing architecture of the IBL and the Commercial Courts.

Table 4. An Integrative Reform Model for Harmonizing Islamic Banking Law and Insolvency Regimes in Indonesia

Reform Level	Core Problem Addressed	Proposed Mechanism	Expected Outcome
Regulatory	Lack of Sharia-specific norms in IBL.	Amend the IBL to recognize Sharia contracts as a distinct class of obligations. Introduce guiding principles (*ʿadl, rafʿ al-ḍarar, ḥifẓ al-*	Provides a statutory basis for differentiated treatment and judicial interpretation aligned with Islamic ethics.

Reform Level	Core Problem Addressed	Proposed Mechanism	Expected Outcome
		māl) for judges adjudicating such cases.	
Institutional	Commercial Court's lack of Sharia competence; sidelining of Religious Courts & DPS.	1. Establish specialized panels within Commercial Courts with judges trained in *fiqh*. 2. Formalize the role of Sharia experts as court-appointed assessors (amicus curiae) in PKPU/bankruptcy proceedings. 3. Create a formal referral or joint session mechanism with Religious Courts for pure Sharia contract interpretation.	Enhances judicial competency, legitimizes the process for stakeholders, and formally integrates religious expertise.
Procedural	Binary, secular application of *actio pauliana* and insolvency definitions.	1. Develop a layered test for actio paulianathat weighs financial prejudice against s*haria*-based ethical intent and *maqāṣid* considerations. 2. Implement a two-stage insolvency declaration: a prima facie finding under the IBL, followed by an optional Sharia hardship assessment that can trigger alternative restructuring paths. 3. Formalize s*haria*-compliant Alternative Dispute Resolution (ADR) as a mandatory first step, with Commercial Court enforcement as a backstop.	Creates procedural justice that is both legally certain and substantively fair according to the norms governing the original transaction.

Source: Data processed by the author (2025)

This framework seeks to channel the energy of the informal sector into a structured, accountable system. By making the formal Commercial Court process more normatively competent and flexible, it incentivizes parties to bring their disputes into a forum where *actio pauliana* can function as a protector of rights *within* the Sharia paradigm, not as an imposition from outside it. The formal recognition of Sharia-compliant ADR, with the court acting as a guarantor of finality and fairness, would absorb the positive aspects of community *ṣulḥ* while mitigating its risks of exclusivity and opacity.

This study and the proposed model have certain limitations. The analysis is primarily normative and jurisprudential, based on documentary analysis of law and cases. While it identifies the trend towards informal mechanisms, extensive empirical fieldwork—interviewing practitioners of informal Islamic finance dispute resolution, curators, and Commercial Court judges—would provide richer data on the practical dynamics and viability of the proposed reforms. Furthermore, the model focuses on domestic harmonization; the cross-border insolvency of Islamic financial institutions, involving conflict-of-laws with other jurisdictions, presents a more complex challenge for future research.

The implications, however, are significant. Successfully harmonizing *actio pauliana* with the doctrine of *taflīs* would do more than solve a technical legal problem. It would demonstrate that a modern, secular legal system can formally engage with and accommodate deep religious normativity without sacrificing

its core principles of certainty and equality. For Indonesia, a leader in the global Islamic economy, this is not merely a legal exercise but a crucial step in building a resilient, legitimate, and truly integrated Sharia financial system that commands the trust of both the market and the faithful. It would transform the bankruptcy process from a point of systemic friction into a testament to the possibility of constructive legal pluralism

Conclusion

This study concludes that Indonesia's current application of the conventional *actio pauliana*doctrine within its secular bankruptcy framework creates a fundamental normative dissonance with the ethical foundations of Islamic finance. The procedural formalism of the Commercial Courts systematically marginalizes the substantive principles of Sharia, such as justice (*'adl*) and prevention of harm (*raf' al-ḍarar*), leading to a legitimacy deficit. This inadequacy has, in turn, catalyzed the growth of unregulated digital and community-based dispute mechanisms. While these adaptive solutions offer culturally resonant resolution, they operate without essential safeguards, thereby fragmenting the legal landscape and undermining collective creditor rights and financial system integrity. The path forward requires an integrative harmonization, guided by Ibn Rushd's jurisprudential method of prioritizing legal objectives (*maqāṣid*) over rigid formalism. This entails a three-fold reform: regulatory amendments to recognize Sharia contracts, institutional innovation via specialized court panels and Sharia experts, and procedural evolution to create a layered test for *actio pauliana* that balances financial recovery with ethical considerations. Successfully bridging this gap is not merely a technical legal task but a crucial step to ensure substantive justice, sustain stakeholder trust, and secure the resilient growth of Indonesia's Islamic economic system.

Acknowledgement

We have completed the research in this article, and we would like to express our deepest gratitude to Sebelas Maret University and the University of Jakarta, as well as all parties who provided support, facilities, and motivation throughout the research process. Their roles in this research were vital to our successful completion of this task and the successful completion of this article. We hope that the ideas emerging from this research can contribute new, innovative ideas, offer insights, critical perspectives, and ongoing motivation, which have been crucial aspects in improving the quality of our research. We hope that the results of this research can be further developed in further research and benefit the wider community.

To all parties who have helped so that this article can be compiled well, to the Lembaga Pengelola Dana Pendidikan (LPDP) and Pusat Layanan Pembiayaan Pendidikan (PUSLAPDIK). The author and researcher express their deepest gratitude for the assistance and contribution to the Doctoral Program Scholarship at Beasiswa Pendidikan Indonesia (BPI), PPAPT Kemdiktisaintek and LPDP, without the support of sponsors or funders for their assistance as a contribution to the publication of internationally reputable scientific articles. Hopefully this article is useful for all of us and we ask for constructive criticism and suggestions for future improvements.

Conflict of Interest

This article was prepared objectively, without any personal interests. The author declares that no professional or personal affiliations may have influenced the content or results of this article. All data is obtained from reliable sources, while upholding the principles of transparency, integrity, and fairness to ensure this article is a credible source for readers and academics.

Funding

This work was supported by the Beasiswa Pendidikan Indonesia (BPI) Pusat Layanan Pembiayaan Pendidikan BPI Main Number 202231103662; Lembaga Pengelola Dana Pendidikan [202231103662].

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