

## UNILATERAL CANCELLATION OF SHARIA INSURANCE POLICIES: JUDICIAL ANALYSIS FROM MAQASHID SHARIA PERSPECTIVE

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### Abstract

This research analyzes the judicial considerations in Court Decision Number 2030/Pdt.G/2024/PA.JS concerning unilateral cancellation of sharia insurance policies from a maqashid sharia perspective. The Islamic finance industry in Indonesia has experienced rapid growth, particularly in the sharia insurance sector. However, policy cancellation practices often create imbalances between insurance companies and policyholders. Article 251 of the Commercial Code (KUHD), which previously regulated unilateral cancellation rights, was revoked by Constitutional Court Decision Number 83/PUU-XXII/2024, creating a legal vacuum. Using a normative juridical approach with statute, case, and conceptual approaches, this study examines primary legal materials including legislation, court decisions, and DSN-MUI fatwas, as well as secondary materials from legal literature and journals. The research reveals that judicial considerations in the analyzed decision reflect efforts to harmonize positive law with maqashid sharia principles, emphasizing the importance of distinguishing between intentional and unintentional violations in accordance with Islamic justice principles. The study proposes a cancellation mechanism based on maqashid sharia incorporating violation classification, proportional sanctions, clarification opportunities, transparent procedures, and sharia-based alternative dispute resolution. This mechanism aims to realize the principles of hifzh al-mal (property protection), 'adl (justice), tawazun (balance), and maslahah 'ammah (general welfare) in sharia insurance practices.

**Keywords:** *Islamic justice, maqashid sharia, policy cancellation, sharia insurance, utmost good faith*

### INTRODUCTION

Over the past decade, Indonesia's Islamic finance industry has experienced significant growth, positioning the country as one of the largest Islamic finance markets globally. The sharia insurance sector, known as takaful, has emerged as a critical component of this ecosystem, offering insurance products that comply with Islamic principles. According to the Financial Services Authority (OJK), the total assets of sharia insurance companies in Indonesia reached approximately IDR 50 trillion by 2024, demonstrating substantial market penetration and consumer confidence in Islamic financial products. From a conceptual standpoint, sharia insurance possesses fundamentally different philosophical foundations compared to conventional insurance. While conventional insurance operates on risk transfer principles where policyholders transfer their risks to insurance companies in exchange for premium payments, sharia insurance is built upon the principles of mutual cooperation (ta'awun) and shared responsibility (takaful) among participants (Dewi, 2019). This distinction is not merely theoretical but has profound implications for operational mechanisms, including policy cancellation procedures, premium determination, and claims settlement.

The principle of ta'awun, derived from Al-Qur'an Surah Al-Maidah verse 2, which commands believers to help one another in righteousness and piety, serves as the foundational principle of sharia insurance. This principle manifests in the mechanism where participants contribute to a collective fund (dana tabarru') with the intention of helping fellow participants who experience misfortune. Consequently, the relationship in sharia insurance is not merely a commercial transaction between policyholder and company, but rather a solidarity relationship among participants mediated by the insurance company acting as the fund manager (wakil). From a regulatory perspective, sharia insurance operations in Indonesia have obtained robust legal foundations through Law Number 40 of 2014 concerning Insurance (Insurance Law) and various fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). The Insurance Law explicitly recognizes sharia insurance as a distinct business category with specific operational requirements that differ from conventional insurance. Additionally, DSN-MUI has issued

comprehensive fatwas regulating various aspects of sharia insurance, including Fatwa Number 21/DSN-MUI/X/2001 concerning General Guidelines for Sharia Insurance and Fatwa Number 81/DSN-MUI/III/2011 regarding Tabarru' Fund Return for Sharia Insurance Participants Who Stop Before Contract Period Ends. However, despite this regulatory development, substantial issues require attention, particularly regarding unilateral policy cancellation by insurance companies. The legal basis frequently referenced for such cancellation is Article 251 of the Commercial Code (KUHD), which states: "All incorrect or untrue notifications, or all concealment of circumstances known to the insured, even if done in good faith, the nature of which is such that the agreement would not have been made, or would not have been made under the same conditions, if the insurer had known the actual circumstances of all these matters, renders the insurance void."

This provision, rooted in the principle of utmost good faith (*uberrimae fidei*), grants insurance companies broad authority to declare policies void or cancel them unilaterally if policyholders are deemed to have violated disclosure obligations by providing false information or concealing material facts. Critically, this cancellation right applies even when violations occur unintentionally or in good faith, raising fundamental questions about the balance of rights between insurance companies and policyholders, especially in sharia insurance contexts that should reflect Islamic values of justice (*'adl*) and balance (*tawazun*). In positive law contexts, insurance contract cancellation can occur through two mechanisms: first, based on mutual agreement between parties (consensual cancellation), and second, unilaterally by one party based on legal provisions (statutory cancellation). Unilateral cancellation becomes particularly problematic when it fails to distinguish between intentional violations with malicious intent (*dolus*) and unintentional violations without bad faith (*culpa*), often resulting in unfair treatment where policyholders who make honest mistakes face the same sanctions as those who deliberately commit fraud.

The principle of utmost good faith constitutes a fundamental element in insurance law, requiring the highest level of honesty and disclosure from both parties. However, the implementation of this principle in Indonesia has been criticized for its imbalanced application, where insurance companies can cancel policies and retain premiums even in cases of minor or unintentional non-disclosure, while policyholders have limited recourse or protection (Melik & Cahyono, 2023). This asymmetry contradicts the essence of contractual justice in Islamic law, which emphasizes mutual fairness and proportionality in rights and obligations. The normative conflict between Article 251 KUHD provisions and maqashid sharia principles has become a significant legal issue requiring resolution. Maqashid sharia, as explained by Imam Al-Shatibi in his seminal work *Al-Muwafaqat*, constitutes fundamental principles aimed at achieving human welfare (*maslahah*) through five primary objectives: protecting religion (*hifzh al-din*), life (*hifzh al-nafs*), intellect (*hifzh al-'aql*), lineage (*hifzh al-nasl*), and property (*hifzh al-mal*). In the context of sharia insurance, these objectives translate into ensuring fair treatment, protecting policyholders' financial interests, and maintaining the integrity of insurance contracts.

This issue gained heightened urgency following two landmark judicial developments. First, the Jakarta South Religious Court's decision in Case Number 2030/Pdt.G/2024/PA.JS, rendered on December 4, 2024, which ruled that unilateral policy cancellation by sharia insurance companies without considering policyholders' good faith and without proportional premium refunds constitutes a violation of Islamic justice principles. The court emphasized that sharia insurance must implement cancellation mechanisms that distinguish between violation types and provide proportional remedies consistent with maqashid sharia. Second, Constitutional Court Decision Number 83/PUU-XXII/2024, issued in January 2025, which revoked Article 251 KUHD entirely. The Constitutional Court reasoned that the blanket application of this provision violated constitutional principles of legal certainty and proportionality, as it failed to distinguish between different types and severities of disclosure violations. This revocation created a legal vacuum regarding policy cancellation mechanisms while simultaneously opening opportunities to formulate new regulations more aligned with justice and consumer protection principles.

The significance of this legal issue extends beyond theoretical discourse to practical implications affecting thousands of policyholders and the sustainability of the sharia insurance industry. Without clear, fair, and sharia-compliant cancellation mechanisms, the industry risks losing consumer trust and facing increased litigation. Moreover, the absence of proper regulations may lead to inconsistent judicial decisions, creating legal uncertainty that harms both policyholders and insurance companies. Therefore, this research aims to: (1) analyze the judicial considerations in Court Decision Number 2030/Pdt.G/2024/PA.JS and its appeal decision from a maqashid sharia perspective, examining whether these considerations adequately reflect Islamic principles of justice, balance, and welfare; and (2) formulate a comprehensive policy cancellation mechanism that aligns with maqashid sharia principles while protecting the legitimate rights and interests of all parties involved. This research is expected to contribute to the development of sharia insurance jurisprudence in Indonesia and provide practical guidance for judges, sharia supervisory boards, insurance companies, and regulators in handling policy cancellation cases.

## **LITERATURE REVIEW**

### **Sharia Insurance Conceptual Framework**

Sharia insurance (*takaful*) represents a system of mutual financial protection built upon Islamic legal principles, fundamentally differing from conventional insurance in philosophy, structure, and operations. In DSN-MUI Fatwa Number 21/DSN-MUI/X/2001, sharia insurance is defined as mutual protection and assistance among a number of people through investment in asset form and/or *tabarru'* providing return patterns to face specific risks through sharia-compliant contracts. This definition emphasizes three core aspects: mutual protection, halal and productive investment, and adherence to established sharia contracts.

The fundamental principle underlying sharia insurance is *ta'awun* (mutual cooperation), derived from Al-Qur'an Surah Al-Maidah verse 2: "And cooperate in righteousness and piety, but do not cooperate in sin and aggression." This principle manifests through the *tabarru'* fund mechanism, where each participant contributes with sincere intention to help other participants experiencing misfortune. Unlike conventional insurance's risk transfer model, sharia insurance operates on risk sharing, where all participants collectively bear risks and share benefits, reflecting the spirit of Islamic brotherhood and social solidarity.

Another distinguishing feature is the contractual structure. Sharia insurance employs two types of contracts: *tabarru'* contract (donation contract) for the mutual assistance aspect and *tijarah* contract (commercial contract) for the fund management aspect. The *tabarru'* contract governs participants' contributions to the collective fund, while the *tijarah* contract, typically using *wakalah* (agency) or *mudharabah* (profit-sharing) models, regulates the relationship between participants and the insurance company as fund manager. This dual contract structure ensures compliance with Islamic prohibitions against *gharar* (excessive uncertainty), *maysir* (gambling), and *riba* (usury).

### **Maqashid Sharia: Theoretical Foundation**

Maqashid sharia, literally meaning "objectives of Islamic law," constitutes a comprehensive theoretical framework for understanding and applying Islamic legal principles. Imam Al-Shatibi (d. 790 H/1388 CE), in his magnum opus *Al-Muwafaqat*, systematically developed this theory, arguing that all Islamic legal rulings aim to achieve human welfare (*maslahah*) through protecting five essential elements: religion (*din*), life (*nafs*), intellect (*'aql*), lineage (*nasl*), and property (*mal*). These objectives are categorized into three hierarchical levels: *dharuriyyat* (necessities), *hajiyyat* (needs), and *tahsiniyyat* (embellishments).

In the context of insurance and financial transactions, the principle of *hifzh al-mal* (property protection) becomes particularly relevant. This principle encompasses not only physical property protection but also the preservation of economic rights, contractual obligations fulfillment, and prevention of unjust wealth transfers. Contemporary scholars have expanded this concept to include consumer protection in financial services, fair business practices, and equitable dispute resolution mechanisms—all directly applicable to sharia insurance policy cancellation issues.

The concept of *'adl* (justice) in maqashid sharia extends beyond procedural fairness to encompass substantive justice in outcomes. Al-Qur'an emphasizes justice in numerous verses, such as Surah Al-Nisa verse 58: "Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice." In contractual relationships, justice requires balanced consideration of both parties' interests, proportionality between rights and obligations, and equitable remedies for breaches. This principle particularly applies to policy cancellation scenarios where sanctions must be proportional to violation severity and intent.

### **Utmost Good Faith Principle in Insurance Law**

The principle of utmost good faith (*uberrimae fidei*) represents a cornerstone doctrine in insurance law, requiring both parties to exercise the highest standard of honesty and disclosure in their contractual relationship. Unlike ordinary commercial contracts governed by *caveat emptor* (buyer beware), insurance contracts impose affirmative disclosure obligations on applicants to reveal all material facts that could influence the insurer's decision to accept the risk and determine appropriate premiums. This heightened disclosure duty arises from the inherent information asymmetry in insurance relationships, where applicants possess superior knowledge about their own risk characteristics.

However, the implementation of this principle has evolved significantly across different jurisdictions. The Insurance Act 2015 in England reformed the traditional approach by classifying disclosure violations into three categories: deliberate or reckless breach, careless breach, and innocent breach, with graduated remedies for each. For deliberate breaches, insurers may avoid the policy and retain premiums; for careless breaches, insurers may reduce claim payments proportionally; and for innocent breaches, remedies are further limited. This nuanced approach recognizes that not all non-disclosures warrant the same harsh consequences (Melik & Cahyono, 2023).

France's Code des Assurances similarly distinguishes between fraudulent non-disclosure (*réticence dolosive*) and non-fraudulent cases, mandating proportional premium refunds for the latter. Article L113-9 requires insurers to return unearned premiums proportionally when cancellation results from non-fraudulent violations. The United States' approach varies by state but generally requires proof of fraudulent misrepresentation before insurers can retain premiums entirely, protecting consumers from disproportionate penalties for innocent mistakes.

### **Research Gap and Contribution**

Existing literature on sharia insurance predominantly focuses on general operational principles, product development, and financial performance analysis, with limited attention to specific legal issues such as policy cancellation mechanisms. Previous studies have examined the principle of utmost good faith in conventional insurance contexts but rarely analyze its application in sharia insurance from a maqashid sharia perspective. Furthermore, no prior research has comprehensively examined the implications of Constitutional Court Decision Number 83/PUU-XXII/2024's revocation of Article 251 KUHD for sharia insurance practices.

This research fills these gaps by: (1) providing the first comprehensive analysis of Court Decision Number 2030/Pdt.G/2024/PA.JS through a maqashid sharia lens; (2) examining the legal vacuum created by Article 251 KUHD's revocation and its specific implications for sharia insurance; (3) comparing international best practices in implementing proportional remedies for disclosure violations; and (4) proposing a novel cancellation mechanism grounded in maqashid sharia principles that balances insurer risk management needs with policyholder protection. These contributions advance both theoretical understanding and practical application of Islamic legal principles in contemporary insurance regulation.

### **METHOD**

This study employs a normative juridical research methodology, examining legal norms, principles, and doctrines related to sharia insurance policy cancellation. Normative juridical research focuses on analyzing positive law provisions, legal principles, legal concepts, and judicial decisions to develop legal argumentation and propose solutions to legal problems (Soekanto & Mamudji, 2015). This approach is appropriate for this study as it aims to examine normative conflicts between KUHD provisions and maqashid sharia principles, analyze judicial reasoning in specific court decisions, and formulate ideal cancellation mechanisms based on Islamic legal theory.

### **Research Approaches**

This research employs three complementary approaches: First, the statute approach examines relevant legislation governing sharia insurance and policy cancellation, including the Commercial Code (KUHD) particularly the now-revoked Article 251, Law Number 40 of 2014 concerning Insurance, Law Number 8 of 1999 concerning Consumer Protection, and Financial Services Authority (OJK) regulations on sharia insurance operations. Additionally, this approach analyzes DSN-MUI fatwas that serve as sharia compliance standards, including Fatwa Number 21/DSN-MUI/X/2001 on General Guidelines for Sharia Insurance and Fatwa Number 81/DSN-MUI/III/2011 on Tabarru' Fund Returns.

Second, the case approach analyzes Court Decision Number 2030/Pdt.G/2024/PA.JS from Jakarta South Religious Court and its appeal decision Number 11/Pdt.G/2025/PTA.JK from Jakarta High Religious Court. This approach examines the *ratio decidendi* (legal reasoning) employed by judges, focusing on how they balanced positive law provisions with Islamic legal principles. The analysis also considers Constitutional Court Decision Number 83/PUU-XXII/2024 that revoked Article 251 KUHD and its implications for future policy cancellation cases.

Third, the conceptual approach explores legal concepts and principles underlying the research problem, including the concept of utmost good faith in insurance law, maqashid sharia theory particularly the principles of *hifzh al-mal*, *'adl*, *tawazun*, and *maslahah*, Islamic contract law principles (*fiqh muamalah*), and comparative legal concepts from jurisdictions with reformed insurance disclosure laws. This multi-faceted approach enables comprehensive analysis that bridges positive law, Islamic jurisprudence, and contemporary legal scholarship.

### **Data Sources and Collection**

Primary legal materials consist of authoritative legal sources including the 1945 Constitution of the Republic of Indonesia, particularly Article 28D on legal certainty and justice; statutory provisions including KUHD, Insurance Law, Consumer Protection Law, and OJK regulations; DSN-MUI fatwas on sharia insurance; court decisions including the analyzed Religious Court and High Religious Court decisions, as well as the Constitutional Court decision revoking Article 251 KUHD; and classical Islamic jurisprudence texts particularly Al-Shatibi's *Al-*

Muwafaqat on maqashid sharia theory. Secondary legal materials include legal textbooks on insurance law, sharia insurance principles, Islamic economic law, and contract law theory; scholarly journal articles from national and international law journals addressing insurance disclosure obligations, utmost good faith principle, maqashid sharia applications, and consumer protection in Islamic finance; research reports and theses examining related topics; and comparative law materials including England's Insurance Act 2015, France's Code des Assurances provisions on insurance disclosure, and relevant case law from common law and civil law jurisdictions.

### **Data Analysis Technique**

Data analysis follows a systematic multi-stage process. The first stage involves description, comprehensively describing legal materials related to policy cancellation in sharia insurance, including statutory provisions, fatwa requirements, and judicial precedents. This descriptive foundation establishes the current legal framework and identifies relevant norms. The second stage involves systematization, organizing legal materials to examine consistency both vertically (hierarchical compliance between higher and lower regulations) and horizontally (consistency among regulations at the same level). This process identifies normative conflicts, particularly between Article 251 KUHD provisions and maqashid sharia principles, and reveals gaps in current regulations following the Constitutional Court's revocation decision.

The third stage involves interpretation, applying various legal interpretation methods including grammatical interpretation (analyzing statutory text meaning), systematic interpretation (examining provisions within the broader legal system context), teleological interpretation (considering the purpose and objectives of legal rules), and comparative interpretation (learning from other jurisdictions' approaches to similar issues). For Islamic law aspects, the analysis employs maqashid sharia methodology to assess whether legal rules and judicial decisions achieve the higher objectives of Islamic law. The fourth stage involves evaluation, critically assessing judicial considerations in the analyzed court decisions against maqashid sharia criteria. This evaluation examines whether the decisions adequately protect property rights (hifzh al-mal), achieve justice ('adl), maintain balance between parties (tawazun), and promote general welfare (maslahah 'ammah). The analysis also evaluates current industry practices and regulatory frameworks for compliance with both positive law and Islamic principles. The final stage involves construction, synthesizing findings to formulate an ideal policy cancellation mechanism for sharia insurance. This constructive analysis integrates maqashid sharia principles, international best practices, Indonesian legal framework requirements, and practical industry considerations to propose comprehensive guidelines that can be implemented through regulation, fatwa, or industry self-regulation.

## **RESULTS AND DISCUSSION**

### **Case Background and Factual Analysis**

Court Decision Number 2030/Pdt.G/2024/PA.JS concerned a dispute between a policyholder (plaintiff) and a sharia insurance company (defendant) regarding unilateral policy cancellation. The plaintiff had purchased a sharia life insurance policy and paid premiums regularly for three years. Subsequently, the insurance company discovered that the plaintiff had not disclosed a pre-existing medical condition during the application process. Based on this non-disclosure, the company invoked Article 251 KUHD to cancel the policy retroactively and refused to return the premiums paid, arguing that the contract was void ab initio due to material non-disclosure. The plaintiff contested this cancellation, arguing that the non-disclosure was unintentional as she genuinely did not understand the medical significance of the condition and believed it was minor and irrelevant. The plaintiff emphasized that throughout the three-year period, she had paid all premiums on time and fulfilled all contractual obligations in good faith. She requested that if cancellation was necessary, the company should at least return the premiums paid, as retaining them would constitute unjust enrichment contrary to Islamic principles.

The Jakarta South Religious Court's analysis focused on several critical aspects. First, the court examined the nature and severity of the non-disclosure, finding that while the undisclosed condition was material to risk assessment, the plaintiff's failure to disclose it lacked fraudulent intent. The medical records and testimony indicated that the plaintiff had limited medical literacy and genuinely did not comprehend the condition's relevance to insurance underwriting. Second, the court considered the proportionality of the sanction, noting that complete premium forfeiture seemed disproportionate to an unintentional violation, especially given the plaintiff's three-year record of premium payments and good faith conduct.

### **Judicial Considerations from Maqashid Sharia Perspective**

The court's decision to order partial premium refund and distinguish between intentional and unintentional violations reflects several maqashid sharia principles. From the perspective of *hifzh al-mal* (property protection), the court recognized that complete premium forfeiture would unjustly deprive the plaintiff of her property rights. Islamic law generally prohibits *akl al-mal bi al-batil* (consuming others' property wrongfully), as stated in Al-Qur'an Surah Al-Baqarah verse 188. Even though the plaintiff made a disclosure error, her good faith and three years of premium payments created legitimate property interests deserving protection. The principle of *adl* (justice) particularly resonates in the court's emphasis on distinguishing violation types. Islamic jurisprudence has long recognized gradations in legal violations based on intent. The Prophetic hadith "*inna ma al-a'malu bi al-niyat*" (actions are judged by intentions) establishes that the legal quality of an act depends significantly on the actor's intention. Applying this principle, unintentional non-disclosure without malicious intent cannot warrant the same severe consequences as deliberate fraud. The court's approach aligns with this Islamic legal principle by requiring proportional sanctions commensurate with violation severity and culpability.

The concept of *tawazun* (balance) emerges in the court's effort to balance the legitimate interests of both parties. While insurance companies require accurate risk information for proper underwriting and sustainable operations, policyholders deserve protection against disproportionate penalties for innocent mistakes. The court recognized that complete premium retention by the company while providing no coverage creates an unjust imbalance, enriching one party at the other's expense. The ordered partial refund, calculated based on the premium amounts that would have applied had the condition been disclosed initially, represents a balanced solution protecting both parties' legitimate interests. From the *maslahah* (public welfare) perspective, the decision contributes to broader social benefits by establishing judicial precedent protecting consumers from excessive penalties while maintaining industry integrity. If insurance companies could routinely cancel policies and retain all premiums for any non-disclosure regardless of intent or materiality, consumer confidence in sharia insurance would erode, ultimately harming the industry's long-term sustainability and the broader Islamic finance sector. The decision thus serves *maslahah 'ammah* by promoting fair practices that benefit society overall.

### **Implications of Constitutional Court Decision Number 83/PUU-XXII/2024**

The Constitutional Court's revocation of Article 251 KUHD fundamentally transforms the legal landscape for insurance policy cancellations in Indonesia. The Court found that the blanket application of Article 251, which allowed cancellation and premium retention even for unintentional non-disclosure, violated constitutional principles of proportionality and legal certainty guaranteed under Article 28D of the 1945 Constitution. The decision emphasized that modern constitutional principles require graduated remedies proportional to violation severity, particularly in adhesion contracts like insurance policies where consumers have limited bargaining power.

This revocation creates a legal vacuum that is particularly significant for sharia insurance. Unlike conventional insurance that might look to general contract law principles, sharia insurance must develop cancellation mechanisms consistent with both Indonesian positive law and Islamic legal principles. The vacuum presents both challenge and opportunity: the challenge of legal uncertainty during the transition period, but the opportunity to construct new regulations reflecting maqashid sharia values from the ground up rather than retrofitting Islamic principles onto colonial-era Dutch commercial law.

The timing of the Constitutional Court decision makes the analyzed Religious Court decision even more significant. While the Religious Court's decision predated the Constitutional Court's revocation by only months, it anticipated many of the Constitutional Court's concerns about proportionality and fairness. The Religious Court's maqashid sharia-based reasoning provided an Islamic legal framework for implementing the very principles of graduated remedies and proportional sanctions that the Constitutional Court later endorsed from a constitutional law perspective. This convergence between Islamic legal reasoning and constitutional principles suggests that maqashid sharia analysis can guide the development of new regulations filling the legal vacuum.

### **Comparative Analysis: International Best Practices**

England's Insurance Act 2015 provides a sophisticated framework that Indonesia can learn from. The Act abandoned the all-or-nothing approach of voidance for any non-disclosure, instead implementing a sliding scale of remedies based on what the insurer would have done had the true facts been disclosed. For deliberate or reckless breaches, insurers may avoid the policy and refuse claims, but must still return premiums. For other breaches, remedies are proportional: if the insurer would have charged higher premiums, claims are reduced proportionally; if the insurer would have accepted the risk but on different terms, those terms apply; if the insurer would not have

entered the contract at all, it may avoid but must return premiums (Melik & Cahyono, 2023). This graduated approach aligns remarkably well with maqashid sharia principles. The distinction between deliberate and non-deliberate breaches mirrors Islamic law's concern with intention (*niyyah*). The proportional remedies reflect the principle of 'adl (justice) by ensuring sanctions match violation severity. The mandatory premium return even for deliberate breaches (though claims may be denied) protects against unjust enrichment, consistent with *hifzh al-mal*. France's similar approach in its Code des Assurances and various U.S. states' requirements for proving fraud before retaining premiums further demonstrate international consensus favoring proportional, fair remedies.

### **Proposed Sharia Insurance Policy Cancellation Mechanism**

Based on maqashid sharia analysis, international best practices, and Indonesian legal framework, this research proposes a comprehensive policy cancellation mechanism structured around five core principles: First, violation classification system distinguishing three categories: (a) Intentional violations with bad faith (*ta'ammud*), where the policyholder deliberately provides false information or conceals material facts with knowledge of their significance and with intent to deceive; (b) Negligent violations (*tafrith*), where the policyholder fails to disclose material information due to carelessness or insufficient care in completing the application, despite having the capacity to provide accurate information; and (c) Innocent violations without bad faith (*khata'*), where non-disclosure results from genuine misunderstanding, lack of knowledge, or reasonable mistake without any intention to deceive.

Second, proportional sanctions framework: For intentional violations, the insurance company may cancel the policy and deny claims, but must return premiums paid minus legitimate administrative costs actually incurred. For negligent violations, the company may adjust the policy terms to reflect accurate risk assessment, proportionally reduce future benefits, or cancel with return of premiums minus proportional risk charges. For innocent violations, the company may revise terms and premiums prospectively but must offer the policyholder the option to continue coverage under corrected terms or receive full premium refund if they choose not to continue. Third, procedural safeguards ensuring fair process: Before any cancellation, the insurance company must provide written notice specifying the allegedly undisclosed or misstated information and its materiality to risk assessment. The policyholder must receive reasonable opportunity (minimum 30 days) to respond, provide clarification, submit additional documentation, or challenge the company's assessment. An independent review by the company's Sharia Supervisory Board must confirm that the proposed cancellation complies with sharia principles. If disagreement persists, mandatory mediation through sharia arbitration institutions must precede any litigation.

Fourth, transparency and disclosure obligations on insurers: Application forms must use clear, simple language avoiding technical jargon. Questions must specifically identify what information is considered material rather than using vague catch-all provisions. Companies must provide applicants with written guidelines explaining disclosure obligations and consequences of non-disclosure, including specific examples of material information. If the insurer becomes aware of potentially material information through medical examinations or other investigations, it must follow up with clarifying questions rather than relying on passive non-disclosure by the applicant. Fifth, *tabarru'* fund considerations in sharia insurance: For contributions allocated to the *tabarru'* fund, cancellation must recognize the fund's collective nature and solidary purpose. Participants cannot individually reclaim *tabarru'* contributions, consistent with DSN-MUI Fatwa Number 81. However, if cancellation results from company error or unjust grounds, the company (not the *tabarru'* fund) must compensate the participant. For investment portions in savings-type policies, all accumulated investment returns belong to the participant and must be returned upon cancellation regardless of cause. This proposed mechanism achieves maqashid sharia objectives by: protecting property rights (*hifzh al-mal*) through mandatory premium returns except in cases of deliberate fraud; ensuring justice ('adl) through proportional sanctions matching violation severity; maintaining balance (*tawazun*) between insurer risk management needs and policyholder protection; promoting general welfare (*maslahah 'ammah*) by establishing fair practices that enhance consumer confidence in sharia insurance; and upholding the principle of *ta'awun* by preventing opportunistic cancellations that undermine the mutual assistance foundation of sharia insurance.

### **CONCLUSION**

This research concludes that the judicial considerations in Court Decision Number 2030/Pdt.G/2024/PA.JS demonstrate sophisticated integration of positive law principles with maqashid sharia values in addressing sharia insurance policy cancellation disputes. The court's emphasis on distinguishing between intentional and unintentional violations, requiring proportional sanctions, and ordering partial premium refunds reflects fundamental Islamic legal principles including consideration of intention (*niyyah*), justice ('adl), balance (*tawazun*), and property protection

(hifzh al-mal). This decision represents judicial innovation in applying maqashid sharia methodology to contemporary financial disputes, setting important precedent for future cases. The Constitutional Court's revocation of Article 251 KUHD through Decision Number 83/PUU-XXII/2024 creates both challenge and opportunity for Indonesian insurance law. The resulting legal vacuum necessitates urgent regulatory action, but also provides a historic opportunity to develop cancellation mechanisms grounded in constitutional principles, consumer protection values, and—for sharia insurance—Islamic legal principles from inception rather than adaptation of colonial-era commercial law. The convergence between the Constitutional Court's emphasis on proportionality and the Religious Court's maqashid sharia reasoning suggests that Islamic legal principles can meaningfully contribute to modern regulatory development.

The proposed cancellation mechanism based on violation classification, proportional sanctions, procedural safeguards, enhanced disclosure obligations, and special tabarru' fund considerations provides a comprehensive framework balancing all stakeholders' interests. This mechanism advances beyond both the rigid all-or-nothing approach of Article 251 KUHD and the unregulated discretion that might emerge in the legal vacuum. By explicitly grounding the mechanism in maqashid sharia principles while learning from international best practices, the proposal offers a model reconciling Islamic authenticity with contemporary regulatory standards. Based on these findings, this research recommends: First, the Financial Services Authority (OJK) should urgently issue comprehensive regulations on policy cancellation for both conventional and sharia insurance, incorporating graduated remedies, procedural safeguards, and enhanced disclosure requirements. For sharia insurance specifically, regulations should mandate Sharia Supervisory Board review of all cancellation decisions and establish clear guidelines for tabarru' fund handling. Second, the National Sharia Council (DSN-MUI) should issue a detailed fatwa on policy cancellation in sharia insurance, explicitly addressing violation classification criteria, proportional sanctions framework, procedural requirements for fair cancellation processes, and limitations on premium retention consistent with Islamic principles against unjust enrichment.

Third, sharia insurance companies should proactively revise their policy documents, application forms, and operational procedures to align with the proposed mechanism, even before formal regulatory requirements, demonstrating industry commitment to fair practices. Fourth, the Supreme Court should issue guidelines (PERMA) for Religious Courts on adjudicating sharia insurance disputes, emphasizing maqashid sharia methodology and providing concrete guidance on assessing violation types, determining proportional remedies, and calculating appropriate premium refunds. Fifth, legal education institutions should incorporate maqashid sharia-based analysis of contemporary financial disputes into their curricula, preparing future judges, lawyers, and scholars to handle the intersection of Islamic law and modern finance. Future research should explore the practical implementation challenges of the proposed mechanism through empirical studies of insurance company operations, examine consumer understanding of disclosure obligations through surveys and interviews to inform better disclosure form design, conduct comparative analysis of sharia insurance regulations in other Muslim-majority countries to identify additional best practices, and investigate the economic impact of graduated remedies on insurance company profitability and consumer welfare. Additionally, research should examine how digital technology and artificial intelligence might improve disclosure processes and reduce unintentional violations through better applicant education and real-time clarification requests.

This research contributes to the growing body of scholarship demonstrating that Islamic legal principles, particularly maqashid sharia methodology, can effectively address contemporary regulatory challenges. By showing how maqashid sharia analysis produces solutions consistent with modern consumer protection principles and constitutional values, this study challenges simplistic dichotomies between "religious" and "secular" approaches to law. The convergence between maqashid sharia reasoning and progressive insurance regulation suggests that Islamic legal tradition contains resources for constructive engagement with modernity, offering ethically grounded alternatives to purely market-driven regulatory approaches.

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