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THE RELEVANCE OF THE PRINCIPLE OF BALANCE (AL-MUSAWAH) IN SHARIA ECONOMIC CONTRACT LAW TO CONSUMER PROTECTION

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ABSTRACT

This study aims to analyze the relevance of the principle of equality (*al-musawah*) in Islamic contract law to consumer protection in the contemporary era. The often-unequal bargaining position between business actors and consumers, particularly in the application of standard clauses in modern contracts, provides an important background for this study. This research employs a qualitative method based on library research, using a juridical-normative approach and a Sharia approach. Secondary data sources were obtained from the literature on *fiqh muamalah*, the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah/KHES), Fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), and the Consumer Protection Law. The collected data were analyzed descriptively and analytically using both deductive and inductive methods. The results of the study indicate that the principle of *al-musawah* in Islamic contract law is not merely a matter of formal equality, but also constitutes a moral and juridical obligation to establish contractual justice and prevent elements of injustice (*dhulm*) and deception or excessive uncertainty (*gharar*). The relevance of this principle to consumer protection is manifested through the substantive fulfillment of the principle of mutual consent (*an-taradin*), whereby consumers have the right to transparent information and the freedom to make choices without coercion or undue pressure. Therefore, the consistent application of the principle of *al-musawah* in every Sharia economic contract can serve as a strong legal instrument for protecting consumer rights while simultaneously creating a fair and just transactional environment.

1. INTRODUCTION

Islamic contract law, or *fiqh muamalah*, plays a crucial role in regulating modern economic activities so that they continue to operate within the framework of Sharia principles. Through valid contracts or agreements (*akad*), transacting parties bind themselves in a legal relationship that establishes reciprocal rights and obligations. In the principles of Islamic economics, a contractual relationship is not solely intended to pursue material profit, but must also uphold the values of justice (*'adalah*), public benefit (*maslahah*), and mutual consent (*an-taradin*) in order to prevent elements of injustice (*dhulm*) (Hasanah & Syaikhu, 2023). Therefore, Islamic contract law essentially serves as a fundamental foundation for creating a healthy and transparent transactional environment capable of protecting the rights of all parties involved, including both business actors and consumers (Pratama & Ramadani, 2024). Nevertheless, the current development of the Islamic business and financial industries reveals significant challenges concerning the imbalance of bargaining power in the formation of contractual relationships, in which consumer rights are often placed in a vulnerable and disadvantaged position.

This imbalance is reflected in the widespread unilateral use of standard clauses by business actors, both in the Islamic banking sector, non-bank financial institutions, and e-commerce platforms. Standard-form contracts, which generally operate on a "take it or leave it" basis, tend to place consumers in a difficult position: either accept all the one-sided terms and conditions or cancel the transaction they need. This imbalance creates information asymmetry and the potential for exploitation, which, from the perspective of *fiqh muamalah*, may lead to practices of injustice (*dhulm*) and undermine the genuine element of mutual consent (Sari & Wardani, 2024).

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The issue of consumer protection demonstrates that the enforcement of Islamic economic law should not focus solely on the formal fulfillment of the pillars and validity requirements of a contract. Rather, it must also address the substantive dimension of law, namely contractual justice, which protects consumers as the weaker party (Ningsih & Fitriani, 2023). Consumers whose legal rights are adequately protected will develop a higher level of trust in the Sharia market ecosystem, which in turn can contribute positively to the sustainable growth of the Islamic economy at the national level.

Table 1. Analysis of the Contractual Gap between Actual Conditions and the Ideal Target

Elements of a Contract	Actual Conditions on the Ground	The Ideal Objective of Islamic Law
The Parties' Bargaining Positions	Dominated by business operators through unilateral contracts	Equal and balanced (Al-Musawah)
The Principle of Voluntary Consent	Purely a formality (take it or leave it)	Substantive in nature (An-Taradin)
Transparency of Information	Involves information asymmetry (potential for gharar)	Transparent and clear, without manipulation
The Nature of the Legal Relationship	Exploitative towards the weaker party	Mutually beneficial, without injustice

The problem of unilateral contractual imbalance is commonly found across various areas of contemporary Islamic economic transactions. Based on data on consumer disputes, many financing agreement drafts or digital contracts place a disproportionate burden of risk on consumers. Business actors often exempt themselves from certain legal responsibilities, while consumers are subject to severe sanctions or penalties without being given sufficient opportunity to negotiate (Anwar & Hidayat, 2023). This condition indicates that the legal instruments currently applied in Islamic contractual relationships have not yet fully and optimally internalized the principle of balance. Therefore, it is necessary to revitalize the fundamental principles of Islamic contracts in order to restore contractual justice and provide strong legal protection for consumers.

One of the most relevant conceptual principles for addressing the challenges of contractual imbalance is the Principle of Equality or *Al-Musawah*. This principle emphasizes that Islamic law regards every legal subject entering into a contractual relationship as occupying an equal and balanced position; no party should consider itself superior to the extent that it can dictate terms to another party (Hakim & Aziz, 2025). Through the internalization of the principle of *al-musawah*, the drafting of contracts should be conducted fairly, with rights and obligations distributed proportionally. The application of this principle not only ensures the validity of a contract from a formal legal perspective but also eliminates opportunities for subtle forms of deception (*gharar*) and concealed coercion. Consequently, consumer protection rights, such as the right to accurate information and the right to comfort and security in consumption, can be properly fulfilled (Fadli & Utami, 2024).

Various previous studies have extensively examined the issue of consumer protection. However, most have continued to approach it normatively through the perspective of Law Number 8 of 1999 concerning Consumer Protection, or have examined the principle of *al-musawah* separately within the scope of criminal law and Islamic political thought (Lestari & Wijaya, 2023; Rohman et al., 2024). Research that specifically integrates the theoretical concept of *al-musawah* in Islamic contract law as an instrument for consumer protection in modern transactions remains relatively limited. Therefore, the novelty of this research lies in an in-depth analysis of the relevance and substantive application of the principle of *al-musawah* as a legal analytical framework for critically examining the imbalance of standard clauses in contemporary Islamic economic contracts, with the aim of formulating a comprehensive framework for consumer protection.

Based on the foregoing background, this study aims to comprehensively analyze and describe the relevance of the principle of balance (*al-musawah*) in Islamic contract law to consumer protection in the contemporary era. This research is expected to provide practical contributions to regulators, such as the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and the Financial Services Authority

(OJK), as well as Islamic business actors in drafting fair and equitable contractual agreements. In addition, this study is expected to make a theoretical contribution by strengthening the literature on Islamic economic law, particularly concerning the actualization of classical principles of *fiqh muamalah* in responding to the dynamics of modern consumer protection.

2. METHODS

This study employs normative legal research (juridical-normative research) with a focus on library research. This method was selected because the study aims to examine, analyze, and conceptualize in depth the relevance of the principle of balance (al-musawah) in Islamic contract law to consumer protection through the examination of legal documents and scholarly literature. Normative legal research focuses on the analysis of legal principles, regulatory harmonization, and the systematics of written law relevant to the research object (Mulia & Ramadhan, 2024). Through the library research approach, the researcher collects, examines, and systematically integrates various theoretical perspectives from fiqh muamalah with positive consumer protection law in order to produce objective and comprehensive conclusions (Suryani, 2023).

The research approaches employed in this study include the Sharia approach (syar'i/shariah approach) and the conceptual approach (conceptual approach). The Sharia approach is used to examine the theological foundations, principles of Islamic jurisprudence (qawa'id fiqhiyyah), and the thoughts of classical and contemporary scholars regarding the implementation of the principle of *al-musawah in contractual relationships within muamalah transactions (Rahman & Hidayat, 2025). Meanwhile, the conceptual approach is applied by referring to the fundamental concepts of contract law, contractual justice, and consumer protection doctrines in order to address the imbalance of bargaining power resulting from the use of standard clauses in the modern business environment (Pratama, 2023). The integration of these two approaches enables the researcher to identify the intersection between the ideals of Islamic contract law and the practical need to protect consumer rights.

The data sources used in this study consist entirely of secondary data, which are categorized into three main types of legal materials: primary, secondary, and tertiary legal materials (Fadli, 2024). Primary legal materials include the texts of the Qur'an and Hadith relating to muamalah, the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah/KHES), Fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) concerning contractual agreements, and Law Number 8 of 1999 concerning Consumer Protection. Secondary legal materials consist of contemporary *fiqh muamalah books, indexed national and international scholarly journals, theses, and previous research findings relevant to the issue of contractual balance. Meanwhile, tertiary legal materials include legal dictionaries, the Kamus Besar Bahasa Indonesia (Great Dictionary of the Indonesian Language), and encyclopedias, which serve to clarify specific legal terms used in the study.

Data collection was conducted through documentary studies and digital literature searches (online literature searching) using the Google Scholar, Garuda, and Moraref databases. The data collection process began with the screening of literature using specific keywords such as "principle of balance," "al-musawah" "Islamic contract law," and "consumer protection." The identified literature was then rigorously selected based on substantive relevance, recency of publication (2023–2026), and the credibility of the publishing journals. Documents that met the selection criteria were subsequently read comprehensively, their key points were recorded through critical reading, and they were classified according to the focus of the discussion to facilitate the subsequent analysis process (Sari & Wardani, 2024).

The primary instrument in this normative legal research is the researcher themselves (human instrument), supported by a content analysis guide and a data classification table (Anwar, 2023). The analytical guide was developed based on several conceptual indicators, including: (1) the textual and contextual understanding of the principle of al-musawah in fiqh muamalah; (2) forms of contractual imbalance in modern transactions; and (3) the manifestation of al-musawah as an instrument for protecting consumer rights. The use of structured instruments is intended to maintain analytical consistency and ensure that all aspects of the research can be examined comprehensively without overlooking any important data.

Data analysis was conducted descriptively and analytically using deductive and inductive reasoning methods (Utami & Saputra, 2024). Deductive analysis was employed by drawing conclusions from general premises namely, the theoretical doctrine of the principle of balance (al-musawah) in Islamic contract law to assess its application to specific cases, particularly consumer protection in relation to standard contractual clauses. Conversely, the inductive method was used to examine real-world phenomena of transactional imbalance in modern markets and subsequently derive legal solutions based on Sharia values.

All analyzed legal materials were then qualitatively interpreted to produce logical and systematic legal reasoning.

The indicators of analytical success or the validity of the findings in this conceptual study are measured based on the degree to which theoretical validity and coherence of the legal arguments are achieved (Ningsih, 2023). The research is considered successful if it is able to: (1) clearly describe the position of the principle of al-musawah within the structure of Islamic contract law; (2) identify legal gaps or forms of imbalance that disadvantage consumers in the practice of modern contracts; and (3) formulate a logical and applicable framework concerning the relevance of enforcing the principle of al-musawah as a guarantee of consumer protection in Sharia-based transactions. If inconsistencies among the literature or a lack of synchronization among legal materials are identified during the analysis process, the researcher conducts a further review of the supporting legal materials for verification until a valid and comprehensive final conclusion is obtained.

3. RESULTS AND DISCUSSIONS

Results

The Theoretical Construction of the Principle of Al-Musawah in Sharia Economic Contracts

Based on an examination of the doctrines of *fiqh muamalah* and contemporary principles of Islamic economic law, it was found that the principle of balance (*al-musawah*) constitutes a fundamental pillar in determining the substantive validity of a contract (*akad*). The principle of *al-musawah* requires that all legal subjects involved in Islamic economic contracts occupy an equal position, particularly in terms of bargaining power. This position is not merely a formal equality at the time of the exchange of offer and acceptance (*ijab-qabul*), but also entails the proportional fulfillment of rights and obligations among the parties in order to prevent unilateral exploitation.

Within the framework of the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah/KHES) and the fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), the principle of *al-musawah* is translated into the principle of fair freedom of contract. The findings indicate that Islamic contractual relationships require balance in three main aspects: (1) information transparency to eliminate uncertainty (*gharar*); (2) fair determination of the exchange value or price of the object of the contract, thereby preventing excessive disparity (*ghaban fahish*); and (3) balanced distribution of the risk of loss based on the principle of *al-ghunmu bil-ghurmi*.

The Reality of Inequality in Standard Clauses in Contemporary Sharia Economic Contracts

Content analysis of various agreement drafts in the modern Islamic economic industry including Islamic banking financing contracts, Islamic insurance policies, and e-commerce terms and conditions reveals a significant gap between the ideality of Islamic contract law doctrines and market realities. The primary issue is driven by the massive use of standard clauses by business actors. Business actors utilize their dominant economic and informational positions to formulate contracts based on a "take-it-or-leave-it" principle. Consequently, consumers' rights are diminished, and they are compelled to accept unfair terms in order to obtain the products or services they need. This imbalance gives rise to a concealed defect of consent (*cacat ridha*) on the part of consumers. The mapping of various forms of violations of the principle of contractual equilibrium in practice is summarized in Table 1.

Table 1. Analysis of Inequities in Standard Contract Clauses from the Perspective of Islamic Economic Contracts

Aspects of Contractual Clauses	The Reality of Standard Contract Clauses in Practice	An Analysis of Violations from the Perspective of the Principle of Al-Musawah
Risk Exoneration Clause	The business operator is exempt from liability in the event of product defects or operational system errors.	It violates the principle of risk balance (al-ghunmu bil ghurmi) because the burden of loss is placed on the consumer.
Unilateral Amendment Clause	The business operator reserves the right to amend	It undermines the validity of a reciprocal contract and

	tariffs, administrative fees or the terms of the contract at any time without the consumer's consent.	erodes the pillar of mutual consent (*mutual consent*).
Indemnity Clause (Ta'widh)	Consumers are subject to heavy fines and the strict enforcement of security in the event of late payment, with no leeway for emergencies.	It disregards the principle of justice ('adalah), the principle of ease (taysir), and the spirit of mutual assistance (ta'awun).
Choice of Law Clause	The legal venue for dispute resolution is unilaterally determined at a remote and onerous location	It eliminates equality of rights (al-musawah) for consumers in obtaining legal justice.

Discussion

The findings of this normative legal study demonstrate that the principle of balance (*al-musawah*) in Islamic economic contract law has highly significant relevance to strengthening the consumer protection system. While positive law regulations often struggle to keep pace with the sophistication of business actors in drafting digital contracts, Islamic legal doctrine offers a comprehensive substantive approach.

In contemporary Islamic economic transactions, consumers' signing of contracts or clicking digital agreement buttons is often not based on genuine consent (*an-taradin*), but rather on economic coercion arising from a lack of bargaining power. Consumers are not provided with sufficient opportunity to negotiate the terms and conditions contained in the contractual draft. In *fiqh muamalah*, such unequal and exploitative contractual conditions may be categorized as a concealed form of injustice (*dhulm*) that undermines the sanctity and validity of the contract itself (Sari & Wardani, 2024).

The application of exoneration clauses in modern economic contract drafts constitutes concrete evidence of the disregard for the principle of *al-musawah*. The principles of *fiqh muamalah* establish that the benefits obtained by one party should be proportionate to the risks that the same party is prepared to bear. When an Islamic business actor obtains full financial benefits from consumers while transferring all operational risks onto the consumers, the legal balance has collapsed (Anwar & Hidayat, 2023). This is contrary to the prohibition against consuming one another's wealth through wrongful means, as emphasized in Islamic law.

Therefore, the contemporary actualization of the principle of *al-musawah* as an instrument of consumer protection can be implemented through three legal resolution schemes:

First, Eliminating Information Asymmetry (Anti-*Gharar*): The principle of *al-musawah* requires absolute transparency from Islamic economic business actors. All product information, hidden costs, and legal consequences arising from the contract must be clearly and comprehensively disclosed, without concealing any material provisions in fine print. Such information disclosure is a prerequisite for consumers to provide valid and informed consent (Fadli & Utami, 2024).

Second, Reconstructing the Fair Distribution of Rights and Obligations: The drafting of contracts should no longer be dominated unilaterally by the legal teams of business actors. Consumer protection rights must be integrated into the contractual provisions, including balanced and proportionate compensation clauses when business actors commit a breach of contract (*wanprestasi*) or fail to meet established service standards (Ningsih & Fitriani, 2023).

Third, Regulatory Intervention Based on *Maslahah Mursalah*: To actualize the principle of *al-musawah* in practice, regulatory and supervisory authorities, such as the Financial Services Authority (Otoritas Jasa Keuangan/OJK) in cooperation with the National Sharia Council of the Indonesian Ulema Council (Dewan Syariah Nasional–Majelis Ulama Indonesia/DSN-MUI), should implement strict standardization and Sharia audits of industry contract drafts. Standard-form contracts that substantially contain exploitative clauses should be declared legally defective or null and void in order to protect the public interest and broader societal welfare (*maslahah*) (Hasanah & Syaikhu, 2023).

Thus, this theoretical integration demonstrates that the principle of *al-musawah* should no longer be positioned merely as an abstract classical fiqh concept. Rather, the principle of balance must be transformed into a living legal instrument (*living law*) capable of addressing and correcting inequalities arising from standard-form contractual clauses in the modern era. Consistent enforcement of the principle of *al-musawah* is essential to achieving contractual justice while ensuring the realization of the higher objectives of Islamic law (*maqashid al-shariah*) within the national Islamic economic ecosystem (Rohman et al., 2024).

4. CONCLUSION

Based on the results of the literature analysis and discussion presented above, the study on the relevance of the principle of balance (*al-musawah*) in Islamic economic contract law to consumer protection can be concluded as follows: First, the principle of *al-musawah* in Islamic economic contract law occupies a vital substantive position and is not merely a formal requirement during the conclusion of a contract. This principle requires equality of bargaining power, the proportional fulfillment of rights and obligations, and guarantees of distributive justice for the parties involved in a transaction, with the aim of realizing genuine consent (*an-taradin*) and eliminating wrongful elements (*batil*).

Second, the phenomenon of unilateral use of standard-form clauses by business actors in the modern economic era has demonstrably undermined the principle of *al-musawah*. The practice of drafting contracts on a "take-it-or-leave-it" basis creates legal inequalities that disadvantage consumers through the inclusion of risk-exoneration clauses, disproportionate penalties, and concealed information manipulation, which may lead to practices of injustice (*dhulm*) and ambiguous deception (*gharar*).

Third, the principle of *al-musawah* has highly significant and practical relevance as an instrument of consumer protection. Its actualization in the contemporary era is manifested through three main pillars: restoring full information transparency to mitigate the risks of information asymmetry; reconstructing the fair allocation of transactional risks based on the legal maxim *al-ghunmu bil ghurmi* (benefit is accompanied by liability/risk); and strengthening the intervention of regulatory authorities, particularly the Financial Services Authority (OJK) and the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), to audit industry contract drafts on the basis of the public interest (*maslahah mursalah*). Accordingly, consistent enforcement of the principle of *al-musawah* is essential to achieving contractual justice while safeguarding consumer rights against exploitative business practices.

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