



The Missing Shield: Addressing Jurisprudential Lag and Structural Misalignment in Malaysia's Islamic Fintech Regulatory Framework

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ABSTRACT

Malaysia is a global leader in Islamic finance, supported by a sophisticated Shariah governance framework and robust regulatory institutions. However, the rapid rise of Islamic fintech has revealed structural tensions within a regulatory architecture originally designed for centralized financial institutions rather than decentralized, technology-driven platforms. This article argues that the issue is not a complete absence of regulation, but a form of regulatory misalignment in which statutory design, supervisory jurisdiction, and Shariah governance mechanisms struggle to keep pace with fintech's speed and functional diversity. Through doctrinal analysis of the Islamic Financial Services Act 2013 and relevant regulatory frameworks, this study identifies gaps in Shariah compliance enforcement, jurisdictional coordination, and consumer religious-risk protection. It reconceptualises the notion of a "legal vacuum" as a jurisprudential-operational gap rather than legislative absence. In response, the paper proposes a structured reform comprising four calibrated models: a standalone Islamic Fintech Act, targeted IFSA amendments, a federal harmonisation mechanism for Shariah fintech governance, and a dedicated consumer protection charter. By translating jurisprudential critique into actionable institutional pathways, this study contributes to the evolving discourse on Islamic fintech regulation. It argues that sustainable leadership in Islamic fintech requires regulatory coherence in ensuring that technological innovation remains aligned with constitutional realities and the higher objectives of Maqasid al-Shariah.

Keywords – Islamic Fintech, Shariah Governance, Consumer Protection, Regulatory Framework, Malaysia.

INTRODUCTION

Financial technology (fintech) is revolutionizing the global financial system by leveraging technologies such as artificial intelligence (AI), blockchain, machine learning, and big data analytics. These technological integrations enhance transactional efficiency, algorithmic decision-making, and financial accessibility, leading to time, cost, and material savings for both consumers and service providers (Vakkapatla, 2024). Hence, the necessity of human-to-human interaction in monetary transactions has become increasingly important as financial transactions in daily life are increasingly automated and digital. The modes of interaction between consumers and service providers across various sectors, vis-à-vis the financial industry, including banking, investment, lending, and commerce, have undergone rapid integration of fintech, ushering in a new era of transactional practices. However, the velocity of fintech innovation has exposed structural limitations within the regulatory framework originally designed for centralized banking institutions.

The emergence of such technologies presents unique challenges in Islamic finance. Islamic fintech, the integration of Shariah-compliant financial principles with digital innovation, is a rapidly growing subsector. The core objective of Islamic fintech emerging in financial systems extends beyond merely delivering fintech services to Muslim consumers but offering a value-based alternative grounded in the principles of justice, transparency, and equitable risk-sharing, predicated on the principle of Maqasid Shariah. Islamic fintech has the potential to expand access to ethical finance, the moral economy, and microfinance, and to promote social justice among unserved and underserved populations (Jam'an et al., 2024).

Despite their unique characteristics, Islamic fintech faces critical legal and regulatory challenges. The integration of fintech into Islamic finance has revived longstanding debates concerning the adaptation of Islamic financial principles to conventionally dominated financial systems. For decades, Islamic scholars, regulators, and



practitioners have deliberated how well Islamic finance remains true to its foundational Maqasid Shariah principles, *riba* (interest), *gharar* (uncertainty), and *maysir* (gambling), while operating the framework originally designed for conventional finance. The introduction of fintech into Islamic finance may not align with Shariah principles (Asma et al. 2025).

In Malaysia, Islamic fintech operates within a pre-existing Shariah governance structure primarily developed for institutional Islamic banking under the Islamic Financial Services Act 2013 (IFSA), structurally misaligned with decentralised, API-driven, and blockchain-based financial architectures. The technical sophistication and adaptability requirements of Islamic finance necessitate the provision of ethical, socially responsible, and Shariah-compliant financial solutions (Barafwala & Mehta, 2023; Nur Alia et al., 2026). As such, the development and integration of Islamic fintech, including the legal and regulatory framework, must navigate not only technology complexity and evolution but also adhere to the true and comprehensive principles of Shariah (Laldin & Djafri, 2019).

Moreover, Islamic fintech solutions ensure that the underlying contracts, transaction mechanisms, and business models are permissible under Shariah law (Jam'an et al., Fathorrozi & Hamzah, 2024). There is a lack of cohesive legal instruments that explicitly govern Islamic fintech, resulting in a gap between application and governance. This gap is primarily due to the fragmented nature of Islamic financial law, which comprises both state and non-state-generated laws, standards, and practices. Addressing this gap is crucial for the sustainable development and integration of Islamic Fintech within a broader financial ecosystem.

Reconceptualising The "Legal Vacuum"

The term "legal vacuum" requires doctrinal clarification. In regulatory theory, a legal vacuum does not necessarily denote the total absence of law. Rather, it refers to a functional regulatory deficiency in which existing statutes fail to regulate the new phenomena coherently, consistently, or normatively.

The alleged vacuum involves three distinct categories:

1. Legislative absence where no statute expressly governing Islamic fintech as a distinct regulatory class.
2. Regulatory fragmentation involving overlapping yet uncoordinated jurisdictions among the Bank Negara Malaysia (BNM), the Securities Commission (SC), and the State Islamic Religious Council (SIRC).
3. Normative inconsistency with divergent state fatwas concerning digital assets and zakat obligations.

Malaysia does not suffer from total legislative absence. Instead, the deficiency lies in the structural misalignment between institution-centric regulation and the decentralized fintech ecosystem. The "legal vacuum" is therefore jurisprudential operational rather than statutory non-existence.

The Development Of Islamic Fintech

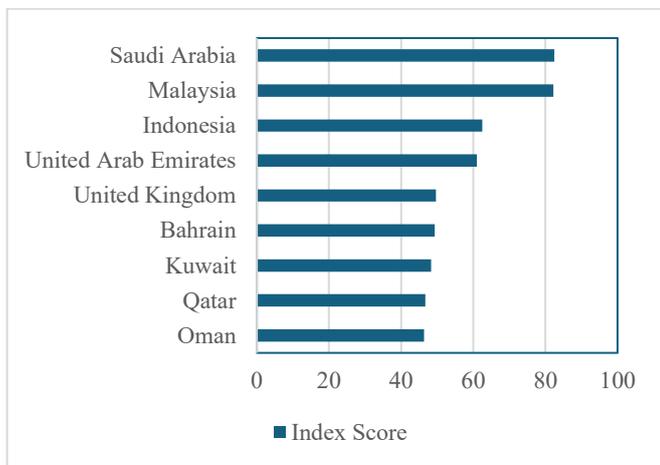
The emergence of Islamic fintech in finance represents a significant evolution in the Islamic finance landscape, driven by the convergence of technological innovation and Shariah principles. Briefly, the term fintech refers to the emergence of the terms 'technology' and 'finance,' while Islamic fintech refers to Islamic financial technology. Islamic fintech comprises modern, advanced digital financial services and technological products that adhere to Islamic principles, incorporating the conditions and provisions adopted by Islamic banking and finance institutions (Slimani et al., 2024). Al-Amine (2019) defines Islamic fintech as the application of modern technology to financial services that adhere to all aspects of Shariah. Islamic fintech covers the application of modern financial technologies, such as blockchain, smart contracts, lending platforms, peer-to-peer lending, and artificial intelligence, in compliance with Shariah principles. While fintech openly seeks to expand opportunities to enhance efficiency, accessibility, and inclusivity in finance, Islamic fintech adheres to the boundaries set by ethics and principles derived from the Al-Quran, As-Sunnah, and Islamic jurisprudence (Sheela et al., 2024).

It is pertinent to establish the concept of Islamic fintech alongside traditional Islamic finance. Scholars widely agree that Islamic fintech is a transformative initiative that realizes the digital world in accordance with Islamic principles (Laldin & Djafri, 2019). Islamic fintech highlights the importance of aligning digital advancement

with Shariah principles, specifically Maqasid Shariah objectives in the financial system, by delivering both ethical and socially conscious finance to the consumer.

The main objective of Islamic fintech is to lift people out of poverty by promoting financial inclusion among the unserved and underserved, in line with Islamic finance. The key features of Islamic finance include asset-backed financing, stability, financial inclusion, and overall development (Mohamed et al., 2023). While these key features remain, Islamic fintech promotes the expansion of Islamic finance through technology by integrating Shariah principles into the rapid evolution of fintech, realigning the significance of Islamic finance in the digital world.

Malaysia has long positioned itself as a leader in Islamic finance, serving as a testament to decades of visionary and strategic planning. Notably, Malaysia maintained its position as the top-ranked country in the Global Islamic Economy Indicator (GIEI) for eight consecutive years. Malaysia currently ranks second in the Global Islamic Fintech (GIFT) Index, ceding its leading position in Saudi Arabia for the first time (Global Islamic Fintech Report 2024/25, 2025).



Source: Global Islamic Fintech Report 2024/25 (2025)

Figure 1: Global Islamic Fintech Rank 2024/2025

As of 2024, 21 Islamic fintech companies were operating in Malaysia, out of 286 fintech companies registered in the country. A notable development in the Islamic fintech sector, with an increase from 17 to 21 registered Islamic fintech companies (Malaysia Fintech Report, 2024). The growth of Islamic fintech in Malaysia is significant, with a significant portion of the Muslim population adhering to Islamic laws and principles. The following table shows the notables based on data from the Malaysia Fintech Report for 2024:

Table 1: List of Islamic fintech companies in Malaysia

Company	Focus Product/Segment	Year Founded
Airo	Robo-advisory, Islamic WealthTech	2020
AMB Connect	Equity crowdfunding	2022
CapBay Islamic	Supply chain financing for SMEs (Islamic arm)	~2018
du-it B2C	Islamic digital banking, B2C financing	2021
Ethis	Islamic crowdfunding, P2P lending	2015
Finterra	Blockchain-based waqf & zakat platform	2018
Funding Societies	SME financing (Islamic offerings added 2023)	2016
Global Sadaqah	Charity, zakat, waqf crowdfunding	2017
Go Barakah	Islamic savings, personal finance tools	2021
IslamicMarkets	Islamic finance investment analytics platform	2020



Kestrl	Islamic personal finance and open banking app	2019
Koha	Digital Islamic will (<i>Wasiyyah</i>) & inheritance	2021
MADCash	Micro-financing & B40 credit tools	2020
PayHalal	Shariah-compliant payment gateway	2019
Pewarisan	Digital Islamic estate & hibah management	2022
Sedania As-Salam	Tawarruq-based digital financing solutions	2008
Shoraka Digital	Digital Ar-Rahnu, commodity murabahah	2019
TFX Islamic	Islamic trade & supply chain finance	2019
Tulus	Islamic wealth & pension planning platform	2021
Wahed	Halal global robo-advisor	2017
Webull (Malaysia)	Shariah-compliant retail stock trading app	2021

Source: Author's compilation based on Malaysia Fintech Report, 2024)

Legal And Regulatory Framework

Malaysia's framework supports Islamic fintech development through institutions such as Bank Negara Malaysia (BNM) and Securities Commission Malaysia (SC). As one of the leaders in Islamic fintech, Malaysia's regulatory framework, often characterized as comprehensive and mature, serves as the backbone of the sector's sustained growth (Mohamad et al., 2024; Triyanta & Hassan, 2024).

Doctrinal Analysis of IFSA 2013

IFSA 2013 to regulate licensed Islamic financial institutions. A section-by-section doctrinal reading reveals structural limitations when applied to fintech entities.

Section 28 of the Islamic Financial Services Act 2013 (IFSA) imposes a statutory duty of Shariah compliance on licensed Islamic financial institutions under the supervisory framework of Bank Negara Malaysia. However, many Islamic fintech operators are not legally classified as such institutions, creating a regulatory asymmetry whereby Shariah-branded fintech entities may operate without the same mandatory statutory governance obligations.

Section 29 of the Islamic Financial Services Act 2013 establishes the Shariah Advisory Council (SAC) as the authoritative body for determining Islamic financial matters. However, the mechanism operates primarily on a deliberative and reactive basis and is therefore not structurally designed to accommodate the rapid, real-time innovation cycles characteristic of fintech development.

Part IX of the Islamic Financial Services Act 2013 mandates the establishment of internal Shariah governance structures, including Shariah committees, within licensed Islamic financial institutions. However, because these requirements presume institutional scale and administrative capacity, early-stage fintech startups may lack the structural and financial resources necessary to implement fully compliant governance frameworks.

Regulatory Framework

Bank Negara Malaysia is responsible for Islamic fintech regulations and policies across banking, takaful, and payments, including digital banks, e-payments, and e-wallet platforms. BNM plays a pivotal role in overseeing the licensing, supervision, and policy development of Islamic fintech in Malaysia. BNM has issued several key policy documents that establish operational, licensing, and compliance standards, including the Licensing Framework for Digital Banks, which provides guidelines for establishing and governing digital banks. The Policy Document on the Fintech Regulatory Sandbox Framework 2024 allows firms to test their products in a controlled, monitored environment. The 2024 amendment considerably streamlined the eligibility criteria for admission to the sandbox and instituted an expedited "Green Lane" for accredited financial entities demonstrating robust governance, thereby enhancing regulatory accessibility and fostering wider engagement. The Policy Document on Electronic Money (E-Money) regulates the issuance of e-money and digital wallets,



strengthening requirements for risk governance, consumer asset protection, and clarity, while instituting more stringent supervision for extensive e-money providers.

Conversely, the Securities Commission oversees Islamic fintech activities in the capital market, such as equity crowdfunding, robo-advisory, tokenized Islamic securities (sukuk), and peer-to-peer financing. The SC has also issued several policy documents as guidelines for the capital market domain. Guidelines on Digital Assets to establish rules for offering and trading digital tokens, improving investor protection, increasing transparency, and ensuring safer use of digital assets. The Shariah Screening Assessment Toolkit for Unlisted Micro, Small, and Medium Enterprises guides screening the Shariah status of MSMEs in the unlisted market to benefit equity crowdfunding and P2P financing platform operators. Guidelines on Islamic Capital Market Products and Services set comprehensive governance standards for Islamic capital market offerings, including ECF, P2P financing, sukuk, and Islamic exchange-traded funds (ETFs). Collectively, these frameworks support the development of Islamic fintech in Malaysia, reinforcing its global leadership role in Islamic finance.

The Disconnect In Islamic Fintech Regulation

A fundamental structural misalignment between decentralized technological innovations and an institution-centric regulatory framework characterizes the contemporary Islamic fintech landscape in Malaysia. While Malaysia has a mature Islamic financial ecosystem, the current legal architecture remains primarily designed for traditional, centralized banking institutions. This mismatch fails to account for the unique operational realities of fintech, which rely on horizontal networks, APIs, and blockchain protocols. Consequently, the industry needs to navigate a patchwork of regulations that lacks the depth and technological foresight required to accommodate such pluralistic structures (Razak et al., 2020).

This systemic friction, jurisdictional divergence, and institutional duality. At the state level, the lack of national uniformity has led to conflicting fatwas on digital assets, as seen in the varied zakat mandates across Selangor, Perlis, and Pahang (Mohd Azman, A. J. H. & Markom, R., 2025). Simultaneously, fintech entities, particularly robo-advisors, face a dual-burden compliance mandate, requiring them to satisfy the distinct requirements of the Securities Commission (SC) and the Shariah Advisory Council (SAC) without a unified consolidation conduit (Borhan et al., 2025).

The most critical hurdle, however, is the jurisprudential lag inherent in the traditional process of scholarly consensus (ijma'). While the muzakarah (deliberation) process is foundational to Islamic law, its reactive nature often fails to keep pace with the unprecedented velocity of fintech advancement (Fadila et al., 2023). This temporal gap creates a governance vacuum, resulting in operational uncertainty and inconsistent ethical interpretations. Without a transition toward an agile, Shariah-responsive legal framework, the Malaysian Islamic fintech sector remains vulnerable to fragmented oversight, distinct ethical discrepancies, and significant gaps in consumer protection.

Distinct Ethical Standards And The Governance Of Islamic Finance

The governance of Islamic fintech is an ethical exceptionalism that distinguishes it from conventional systems, even when integrated with similar modern technologies. This distinctiveness is rooted in the teleological foundations of Shariah, specifically the prohibition of *riba* (usury), *gharar* (ambiguity), and *maysir* (speculation) while prioritizing risk-sharing and social justice. However, as digital financial products evolve at unprecedented speed, a normative disconnect has emerged between classical Shariah frameworks and their algorithmic implementation, leaving many digital activities operating in ethical gray zones.

Malaysia's approach to ethical governance is uniquely bifurcated, institutionalized through a dual-layered oversight system. While Bank Negara Malaysia (BNM) and the Securities Commission (SC) provide the macro-regulatory environment, Islamic fintech entities are also subject to specialized supervision by the Shariah Advisory Councils (SAC). These councils ensure that fintech solutions do not merely avoid prohibitions but actively align with the *Maqasid Shariah* (the higher objectives of Islamic law) (Razak et al., 2020). This requirement for ethical insulation demands a level of oversight that transcends standard financial regulation, seeking to harmonize technological efficiency with moral integrity.



Despite these institutional efforts, the accelerated evolution of fintech has outpaced the practical application of Shariah principles. The absence of a unified, comprehensive legal framework has led to interpretive inconsistency, with compliance processes and ethical screenings varying significantly across platforms. While Islamic values such as economic equilibrium and moral conduct should serve as the primary indicators for financial decision-making, the current legal landscape lacks the structural agility to consistently enforce these standards. Consequently, the existing framework fails to fully embrace the distinctive ethical character of Islamic finance, as it lacks a cohesive mechanism to translate the abstract goals of Maqasid Shariah into the rigid, automated reality of modern fintech.

The Missing Shield: Regulatory Gaps And The Erosion Of Consumer Protection In Islamic Fintech

The absence of a robust, Shariah-responsive legal framework has left a significant "missing shield" in the Malaysian market, creating an environment where consumers are increasingly vulnerable to financial and religious risk. While the current oversight by Bank Negara Malaysia (BNM) and the Securities Commission (SC) covers traditional banking, it lacks specialized, integrated mechanisms to protect users from the unique risks of the digital Islamic space.

A hypothetical gold trading company illustrates a jurisdictional blind spot rather than a mere instance of regulatory non-compliance. By marketing gold-backed instruments such as a Gold Storage Account and a Gold Asset Enhancement scheme as "Shariah-compliant," the company effectively capitalised on the religious confidence of Malaysian investors. Although the platform relied on endorsement from a reputable Shariah research institution, this reliance demonstrates how Shariah representation may occur in the absence of mandatory statutory audit enforcement.

The regulatory gap emerged because the company is a reporting entity under the Anti-Money Laundering Act (AMLA) and not a prudentially supervised Islamic financial institution. Consequently, the absence of a mandatory independent Shariah evidences regulatory classification risk, not mere operational misconduct.

Toward A Jurisprudential Coherent Reform

The regulatory deficiencies identified in Malaysia's Islamic fintech ecosystem are not merely administrative irregularities but structural manifestations of regulatory perimeter misalignment. As fintech dissolves traditional institutional boundaries, regulation anchored in entity-based supervision struggles to capture functionally equivalent digital actors. Accordingly, reform must move beyond incremental policy adjustments and instead adopt a jurisprudentially coherent recalibration of regulatory design.

The four-tier reform, together with a continuum of intervention intensity ranging from comprehensive legislative codification to targeted governance harmonisation.

Model I: A Standalone Islamic Fintech Act — Structural Recalibration Through Legislative Codification. The most robust reform option is the enactment of a dedicated Islamic Fintech Act. From a regulatory theory perspective, this represents a shift from entity-based supervision toward activity-based regulation, thereby realigning the regulatory perimeter with functional financial conduct rather than institutional form.

Such legislation would:

1. Statutorily define "Islamic fintech" as a distinct regulatory category.
2. Impose mandatory independent Shariah audit certification on any entity invoking Shariah compliance in its commercial representation.
3. Codify consumer religious-risk disclosure obligations, recognising that Islamic financial harm may extend beyond pecuniary loss to include moral and spiritual injury (hifz al-mal and hifz al-din).

The jurisprudential advantage of this model lies in its structural clarity. It eliminates classification ambiguity and ensures that Shariah branding triggers statutory accountability. However, it requires significant legislative coordination and political consensus.



Model II: Targeted IFSA Amendments — Regulatory Parity Through Functional Extension

A less disruptive yet doctrinally meaningful approach involves targeted amendments to the Islamic Financial Services Act 2013.

First, Section 28 (Duty to Ensure Shariah Compliance) could apply to any fintech entity that expressly markets its products as Shariah-compliant, irrespective of its licensing category, to ensure that actors performing economically comparable Islamic financial functions are subject to equivalent Shariah governance standards.

Second, a Digital Shariah Advisory Fast-Track Mechanism could be institutionalised within the Shariah Advisory Council framework to mitigate jurisprudential lag without undermining scholarly deliberation, thereby reconciling classical consultative processes with technological acceleration.

This model enhances regulatory parity while preserving existing statutory architecture.

Model III: Federal Shariah Fintech Harmonisation Council — Normative Convergence Within Constitutional Boundaries

Malaysia's constitutional allocation of Islamic matters to the states creates inherent risks of normative divergence in digital asset regulation. While such pluralism is constitutionally legitimate, fintech's borderless nature amplifies compliance uncertainty.

A Federal Shariah Fintech Harmonisation Council could operate as a coordination mechanism rather than a centralising authority issuing nationally recognised digital asset standards while respecting state fatwa sovereignty. This model draws upon cooperative federalism principles, facilitating normative convergence without constitutional encroachment. Its jurisprudential function is to mitigate interpretive fragmentation while preserving institutional legitimacy.

Model IV: Islamic Fintech Consumer Protection Charter — Embedding Religious Risk into Regulatory Disclosure

The final reform pathway emphasises regulatory proportionality and consumer-centric governance. An Islamic Fintech Consumer Protection Charter would require:

- Transparent articulation of Shariah reasoning,
- Public disclosure of independent Shariah audit reports,
- Explicit religious-risk warnings, where compliance interpretations remain contested.

This model recognises that consumer vulnerability in Islamic fintech is dual-dimensional: financial and moral. By embedding Shariah transparency into disclosure architecture, the regulatory framework internalises Maqasid al-Shariah objectives within consumer protection doctrine.

Taken together, the four proposed models offer a layered and practical roadmap for reform rather than a one-dimensional solution. Each model addresses a different dimension of the structural misalignment currently affecting Islamic fintech governance. Model I redefines the regulatory boundary, ensuring that Islamic fintech remains within the statutory perimeter. Model II strengthens accountability by extending Shariah compliance obligations to functionally similar fintech actors. Model III reduces fragmentation by encouraging coordinated interpretation across jurisdictions, while Model IV centres consumer protection by embedding ethical transparency and religious-risk disclosure within the regulatory framework.

This approach moves the discussion beyond abstract or rhetorical calls for reform. Instead, it translates jurisprudential concerns into concrete and implementable institutional strategies. The aim is to restore coherence that Islamic fintech governance aligns realistically with Malaysia's constitutional structure while remaining faithful to the ethical foundations of Shariah. Ultimately, Malaysia develops a regulatory framework that is responsive to technological innovation, doctrinally consistent, and genuinely reflective of the higher objectives of Maqasid al-Shariah.



CONCLUSION

Malaysia's Islamic fintech sector emerges from a position of institutional strength. Over several decades, the country has developed a mature Islamic finance ecosystem grounded in structured Shariah governance, regulatory credibility, and supervisory discipline. However, the rapid expansion of fintech has fundamentally altered the operational landscape of financial services. Financial intermediation of licensed banking institutions through digital platforms, algorithmic processes, and borderless technological infrastructures. In contrast, much of the existing legal framework remains anchored in an earlier institutional paradigm. The central issue, therefore, is regulatory misalignment. When entities can invoke Shariah-compliant branding without being subject to equivalent statutory oversight, or when consumers face uncertainty regarding the authenticity of Shariah adherence in digital products, the consequences extend beyond financial exposure. They implicate public trust, religious confidence, and the reputational integrity of Islamic finance as a whole. Islamic fintech users often engage these platforms not solely as economic participants but as individuals seeking ethical and religious alignment in their financial decisions. Such expectations necessitate corresponding regulatory protection. Reform, accordingly, should be principled and structurally calibrated rather than reactive. The objective is regulatory coherence with statutory definitions, Shariah standards, audit mechanisms, and disclosure requirements that evolve in tandem with technological innovation. Alignment between innovation and governance is essential for Islamic fintech to develop sustainably within Malaysia's legal and regulatory framework.

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