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Operationalizing Contemporary *Istiḥsān*: A Methodological Framework for Navigating Innovation in Capital and Digital Markets

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Abstract: The application of *istiḥsān* in the digital economy continues to face challenges related to subjectivity and the lack of methodological transparency. This study aims to formulate a seven-stage *istiḥsān* operational model as a structured framework for enhancing accountability in Sharia economic legal reasoning. Employing a critical juridical-normative approach grounded in legal coherence theory, the proposed model provides objective criteria to guide mujtahids in determining exceptional legal rulings. The model was validated through two strategic case studies: (1) a retrospective analysis of Sukuk instruments and (2) a prospective analysis of Non-Fungible Tokens (NFTs). The findings demonstrate that the model successfully reconstructs the implicit legal reasoning underlying established Sukuk fatwas, thereby confirming its retrospective consistency. Prospectively, when applied to NFTs, the model functions as a rigorous evaluative filter that permits innovation only when the anticipated maṣlaḥah outweighs the potential mafsadah. In cases where secondary harms—such as the environmental costs associated with energy consumption and speculative market bubbles—predominate, the model justifies restricting such innovations. This study makes a significant academic contribution by transforming contemporary *istiḥsān* from an abstract jurisprudential concept into a replicable, transparent, and auditable analytical framework. It demonstrates that structured ijtihād provides a robust governance mechanism for fostering ethical, accountable, and sustainable Sharia-compliant innovation in global capital markets.

Keywords: Digital Ethics; Fatwa Accountability; *Istiḥsān*; Legal Coherence; NFT.

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INTRODUCTION

In the treasures of Islamic law, *istiḥsān* occupies a strategic position as a method of ijtihad that provides a valve of strategic flexibility in contemporary jurisprudence.[1] Methodologically, it serves as a corrective instrument against the formalistic *qiyās* jalī, thereby allowing the establishment of laws more in harmony with justice and substantive benefit.[2] In the era of the digital economy marked by complex innovations such as fintech and digital assets (NFTs), the urgency of *istiḥsān* is increasing to bridge the normative value of sharia with the demands of the dynamic modern market.[3]

Despite its vital role, the application of *istiḥsān* has historically faced sharp criticism for potential subjectivity and legal deviations.[4] Formalization efforts by contemporary scholars such as Mohammad Hashim Kamali have sought to establish a methodological framework by emphasizing the close relationship between *istiḥsān* and established *maṣlaḥah* and authentic *'urf*.[5] Various recent studies have also sought to define the limits of the application of *istiḥsān* in Islamic financial products to maintain the integrity of the law. For instance, Ishak and Sharoni examined the general role of *istiḥsān* in validating modern

[1] Bambang, "Ijtihad and the Dynamics of Islamic Legal Interpretation: An Epistemological Exploration in the Contemporary Context," *Nusantara: Journal of Law Studies* 3, no. 1 (2024): 56–67, https://doi.org/https://doi.org/10.5281/zenodo.17373912. Alimatul Farida, Abu Yasid, and Muhammad Lathoif Ghozali, "Peran Istiḥsān Dalam Dinamisasi Pemikiran Hukum Ekonomi Syariah," *Jurnal Mu'allim* 5, no. 2 (July 2023): 320–332, https://doi.org/10.35891/muallim.v5i2.3640. Husni Husni, Miftahul Khairat, and Hidayatina Hidayatina, "Can Secular Law Be Understood as Sharia Law? A Philosophical Exploration," *International Journal of Sharia and Law* 1, no. 2 (December 2025): 159–176, https://doi.org/10.65211/ijsl.v1i2.17.

[2] Panji Adam, "Penerapan Metode Istihsan Pada Bidang Muâmalah Mâliyyah (Hukum Ekonomi Syariah)," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 1 (February 2021): 68, https://doi.org/10.33087/jiubj.v21i1.1208.

[3] Anwar Habibi Siregar, "Peran Mazhab Fikih Dalam Pembentukan Hukum Islam Klasik Dan Modern," *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 4, no. 3 (June 2025): 541–559, https://doi.org/10.55606/jurrish.v4i3.5952.

[4] Legal *deviation* in this case means the risk of serious deviations or unauthorized deviations from the established basic principles (*uṣūl*) of sharia. Risks arise when legal transfers are made without strict criteria or without valid *maṣlaḥah* justification , so that the resulting decision (fatwa) is considered too liberal or too far from the legal consensus (*ijmā'*) or the stronger principles of *qiyās*.

[5] Mohammad Hashim Kamali, "Istiḥsān and the Renewal of Islamic Law," *Islamic Studies* 43, no. 4 (2004): 561–581.

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Islamic banking products,[6] while Alimatul Farida et al. highlighted its dynamic nature in contemporary economic fatwas.[7] More recently, Alhejaili attempted to contextualize legal exceptions in complex financial engineering and derivatives.[8] However, most of these studies are still trapped in conceptual-theoretical discourse.[9]

A fundamental methodological gap lies in the lack of operational rigor to address the complex demands of global capital market accountability and governance. Previous research has not provided an explicit verification mechanism that systematically compels mujtahids to do two crucial things: (1) document the search for pure sharia alternatives before deciding on legal diversion through *istiḥsān*, and (2) evaluate interdisciplinary ethical dilemmas—such as environmental impacts or secondary maysir—that are often overlooked in conventional *qiyās* analysis. The absence of these operational procedures often renders claims of objectivity in economic fatwas methodologically untested.

Therefore, this study aims to reconstruct the 7-stage *istiḥsān* operational model as a solution to fill these operational and accountability gaps. To address the overarching methodological gaps in contemporary Islamic economic law, the novelty of this research lies in the radical transformation of *istiḥsān* from a conventional, intuitive-abstract principle into a structured, replicable "ijtihad algorithm." While previous literature remains trapped in conceptual discourse, this study introduces an explicit verification matrix that disciplines the legal diversion process (*i'dālah al-ḥukm*), ensuring objectivity, auditability, and multi-layered governance for contemporary fatwa-issuing authorities.

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[6] Muhammad Shahrul Ifwat Ishak and Syairazi Muhammad Husni Mohd Sharoni, "The Role of Istihsan in Applying Maslahah in Islamic Finance," *Journal of Islamic Finance* 11, no. 1 (June 2022): 113–120, https://doi.org/10.31436/jif.v11i1.640.

[7] Alimatul Farida, Abu Yasid, and Muhammad Lathoif Ghozali, "Peran Istiḥsān Dalam Dinamisasi Pemikiran Hukum Ekonomi Syariah."

[8] Mohammad Alhejaili, "Harmonising Derivatives with Shari'ah: Ethical Practices and Regulatory Insights," *International Journal of Islamic and Middle Eastern Finance and Management* 18, no. 5 (August 2025): 1132–1149, https://doi.org/10.1108/IMEFM-03-2024-0163.

[9] See: Salma Salma, "Istihsan Dan Pembaruan Hukum Islam," *Jurnal Ilmiah Al-Syir'ah* 13, no. 1 (June 2016), https://doi.org/10.30984/as.v13i1.7. Darliana Darliana et al., "Pembaharuan Hukum Islam Di Indonesia (Pendekatan Metode Istihsan)," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 4, no. 1 (March 2022): 1–14, https://doi.org/10.47435/al-ahkam.v4i1.851.

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To guide this operational framework, this study formulates a coherent set of inquiry paths, focusing on how the proposed 7-stage operational model of *istiḥsān* can be systematically implemented to reinforce accountability in Sharia economic law. Furthermore, this study investigates the precise ways in which this algorithmic framework reveals the implicit reasoning of established financial instruments, such as Sukuk, through a retrospective analysis, while simultaneously evaluating how effectively the model functions prospectively as an interdisciplinary filter to navigate highly speculative and environmentally challenging digital innovations, such as Non-Fungible Tokens (NFTs). By testing the model against these dual analytical designs—the retrospective validation of Sukuk and the prospective navigation of NFTs—this research operationally demonstrates *istiḥsān*'s capacity to serve as a rigorous, sustainable, and adaptive legal mechanism within global capital markets. By testing the model against these dual analytical designs—the retrospective validation of Sukuk and the prospective navigation of NFTs—this research operationally demonstrates *istiḥsān*'s capacity to serve as a rigorous, sustainable, and adaptive legal mechanism within global capital markets.

METHOD

This study employs a critical juridical-normative approach [10] operationalized through the normative reconstruction method,[11] aiming to deconstruct classical *istiḥsān* procedures and reconstruct them into a framework compatible with the digital economy. Grounded in the legal coherence theory[12] within the *Uṣūl al-Fiqh* tradition, coherence is

[10] The critical juridical-normative approach ensures that this research has strong roots in the Islamic legal tradition (juridical-normative), while at the same time daring to challenge and reform these traditional practices to achieve accountability and contemporary (critical) relevance.

[11] Aula Damayanti, "Contribution Of Islamic Law To Legal Development In Indonesia," *MILRev : Metro Islamic Law Review* 1, no. 1 (December 2022): 17, https://doi.org/10.32332/milrev.v1i1.6188. Rachmad Safa'at, "Ambivalensi Pendekatan Yuridis Normatif Dan Yuridis Sosiologis Dalam Menelaah Sistem Kearifan Lokal Masyarakat Adat Dalam Pengelolaan Sumber Daya Alam," *Lex Jurnalica* 10, no. 1 (2013): 46–62, https://doi.org/https://doi.org/10.47007/lj.v10i1.353.

[12] Legal coherence theory argues that law must not only be formally correct (according to relevant textual postulates), but must also be coherent, that is, consistent, harmonious, and in line with the larger legal system as well as the moral principles or main goals of the system. If a legal decision conflicts with the basic principles or main objectives of the system, it is considered inconsistent and, therefore, flawed, although

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measured through the systemic alignment between *'illah* (legal ratio), *qawā'id fiqhīyah* (legal maxims), and *maqāṣid al-sharī'ah* as teleological goals.[13] The research data comprises authoritative Uṣūl al-Fiqh texts from the Hanafi and Maliki madhhabs, DSN-MUI Fatwas, the regulatory authority in Indonesia, and AAOIFI standards, a global benchmark for cross-jurisdictional validity, all selected via the purposive sampling method.[14]

Data analysis is executed through three systematic stages, beginning with a thematic and comparative analysis to codify classical procedural elements of *istiḥsān* and identify legal decision variables.[15] This is followed by procedural synthesis to formulate the 7-stage model,[16] converting the codification into a linear sequence of legal algorithms that addresses subjectivity by establishing mandatory "stop points" for rejecting alternative standard solutions. Finally, the framework undergoes a coherence and prescriptive power test,[17] utilizing two strategic analytical designs: a retrospective analysis of Sukuk instruments to serve as an audit-trail test that uncovers implicit reasoning structures, and a prospective analysis of Non-Fungible Tokens (NFTs) using a *maṣlaḥah-mafsadah* evaluation matrix that integrates interdisciplinary ethical and environmental data. The author acknowledges that,

formally it may be correct. See: Richard H. Fallon Jr, "A Constructivist Coherence Theory of Constitutional Interpretation," *Harvard Law Review* 100, no. 6 (1987): 1189–1286.

[13] Husni Husni and Miftahul Khairat, "Penetration of Muamalah Jurisprudence into Indonesian Law," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (November 2024): 699–722, https://doi.org/10.29240/jhi.v9i2.11116.

[14] Husni, Eficandra, and Miftahul Khairat, "The Communal Veto Right: Reconstructing Shuf'ah to Counter Asset Grabbing," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 2 (December 2025): 331–340, https://doi.org/10.31958/juris.v24i2.14954.

[15] Mashal Mufleh Jarrah, Safa Hakem Mestarih, and Ghazi Ayed Alghathian, "Judicial Interpretation of Legal Texts: A Study in Jordanian Legislation," *Cogent Social Sciences* 10, no. 1 (December 2024), https://doi.org/10.1080/23311886.2024.2354359. Mustafa Shah, "The Case of Variae Lectiones in Classical Islamic Jurisprudence: Grammar and the Interpretation of Law," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 29, no. 2 (June 2016): 285–311, https://doi.org/10.1007/s11196-016-9461-1.

[16] Arun Sen and Ajay S. Vinze, "Understanding the Complexity of the Model Formulation Process: A Protocol Analysis Approach*," *Decision Sciences* 28, no. 2 (April 1997): 443–473, https://doi.org/10.1111/j.1540-5915.1997.tb01318.x. P. Merrell and D. Manocha, "Model Synthesis: A General Procedural Modeling Algorithm," *IEEE Transactions on Visualization and Computer Graphics* 17, no. 6 (June 2011): 715–728, https://doi.org/10.1109/TVCG.2010.112.

[17] Mahmood Jawad Abu-AlShaeer, "From Qiyas to Quantification: Reimagining Evidentiary Standards in Islamic Law through Statistical Methodologies," *International Journal of Sharia and Law* 1, no. 1 (June 2025): 29–44, https://doi.org/10.65211/ybkj5j81.

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as a normative-conceptual study, this framework carries the potential for subjective interpretive bias in weighting maṣlaḥah, thereby necessitating further empirical validation through collective fatwa simulations to reach broader methodological consensus.

RESULTS AND DISCUSSION

The Basic Concept of *Istiḥsān*

Traditionally, *istiḥsān* has been understood as a method of establishing law that prioritizes substantive justice over the rigidity of formal analogy (*qiyās jālī*).[18] Its methodological roots, as emphasized in the Ḥanafī School,[19] rested on the mujtahid's legal preference for stronger but hidden postulates (*dalīl khafī*).[20] Although these instruments have historically proven effective in providing legal flexibility, their operating procedures are often intuitive and depend heavily on the personal integrity and intellectual depth of a *faqīh*.[21] This makes the source and validation of classical *istiḥsān* tend to be casuistic and difficult to replicate institutionally in the modern legal system. In the development of contemporary sharia economics, reliance on legal intuition alone poses a significant challenge to accountability.[22] Unstructured classical procedures pose a risk of subjectivity

[18] Ya'qūb bin 'Abd al-Wahhab al-Bāḥisīn, *Al-Istiḥsān; Ḥaqīqatuh, Anwā'uh, Ḥujjīyatuh, Taṭbīqātuh al-Mu'āṣiraẖ* (Riyadh: Maktabaẖ al-Rusyd, 2007). Syarif Hidayatullah, Akhmad Mustangin, and Alfitra Firmansyah, "The Relevance of Istihsan to Contemporary Public Life: An Analysis of the Theory of Legal Change," *Al-Afkar, Journal For Islamic Studies* 8, no. 2 (2025): 390–408, https://doi.org/https://doi.org/10.31943/afkarjournal.v8i2.2105.

[19] In the Ḥanafī school, *istiḥsān* is a methodological principle to maintain legal flexibility, but Imam Abū Ḥanīfaẖ himself does not impose any clear limits on it. al-Bāḥisīn, *Al-Istiḥsān; Ḥaqīqatuh, Anwā'uh, Ḥujjīyatuh, Taṭbīqātuh al-Mu'āṣiraẖ*., p. 47

[20] Al-Karẖī, as quoted by al-Qarāfī, defines *istiḥsān* as "abandoning *qiyās* in favor of stronger evidence". Šihāb al-Dīn Aḥmad bin Idrīs bin 'Abd al-Raḥmān al-Qarāfī, *Nafā`is Al-Uṣūl Fī Syarḥ al-Maḥṣūl*, ed. 'Ādil Aḥmad 'Abd al-Mawjūd and 'Alī Muḥammad Mu'awwaḍ (Mekkah: Nazār Muṣṭafā al-Bāz, 1995)., Juz 9, p. 4032. See also: Muḥammad bin Aḥmad bin Muṣṭafā bin Aḥmad Abū Zahraẖ, *Uṣūl Al-Fiqh* (t.tp.: Dâr al-Fikr al-'Arabî, 1958)., p. 262

[21] The practice of *istiḥsān* has emerged since the time of the Companions, for example in the policy of Umar bin Khattab who replaced the right of spoils of war for Sawād's land with the granting of a fixed wage. See: al-Qāsim bin Salām Abu 'Ubayd, *Kitāb Al-Amwāl* (Beirut: Dâr al-Kutub al-'Ilmîyaẖ, 1987)., pp. 62-65. Ya'qūb bin Ibrāhīm bin Ḥabīb bin Sa'd Abū Yūsuf, *Al-Ḫarāj*, ed. Sa'd Ḥasan Sa'd, 'Abd al-Ra`ūf Muḥammad (Beirut: Dâr al-Ma'rifaẖ, 1979)., p. 36

[22] Syawaluddin Hanafi, "Urgensi Pemikiran Syams Al-Aimmah Al-Syarakhsi Tentang Al-Istihsan Dalam Menjawab Problematika Hukum Dalam Masyarakat," *TASAMUH: Jurnal Studi Islam* 12, no. 2 (September 2020): 335–354, https://doi.org/10.47945/tasamuh.v12i2.252.

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and make it difficult to standardize global financial products. As seen in this draft, a transformation is needed from a 'personal-intuitive' method to a 'systemic-operational' one. The urgency of this reconstruction is not to replace the substance of *istiḥsān*, but to strengthen its validity through more measurable stages, so that the transfer of law is no longer seen as a 'legal coincidence', but rather a methodological decision that can be tested.

This study proposes a 7-stage operational model as a methodological bridge that synergizes the rigidity of sharia texts with the dynamics of capital and digital markets. In contrast to the sometimes overly abstract approach of *Maqāṣid*, this model offers a more precise instrument by inserting mechanisms of 'alternative search' and 'verification of coherence' to mitigate the risk of ijtihad bias. To clarify the methodological position of this model among the classical tradition and other modern approaches, the following comparison table provides a comprehensive overview of the transformations of the main variables of this study.

Table 1: Comparative Benchmarking of *Istiḥsān* Operational Models

Comparison Dimensions	**Classic *Istiḥsān* (Traditional/Hanafi)**	**Ijtihad *Maqāṣidī* Modern (e.g., Jasser Auda)**	**7-Stage Operational Model (This Study)**
Nature	Intuitive and case-based (casuistic).	Philosophical and systemic.	Procedural and Matrix-based.
Triggers for Legal Transfers	Legal intuition (*dhauq al-faqīh*) against hidden evidence.	Alignment with human values and universal goals.	Failure of standard solutions (*qiyās*) and the existence of measurable *ḥaraj*.
Working Procedure	It is not formally structured (depending on the expertise of the mujtahid).	Holistic, yet often lacking technical steps for specific economic contracts.	It is systematic and linear, with evaluation instruments at each stage.
Validation Method	Consensus (*ijmā'*) or '*urf* (tradition) of society.	Significance of benefits to the public (*maslahaḥ' āmmaḥ*).	Verification of Legal Coherence and Analysis of Alternative Sharia Options.
Bias Mitigation	Integrity and personal piety of the mujtahid.	Analysis of multidimensional	The obligation to test the non-exclusion

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	impacts on society.	option before taking the *istiḥsān* step.

Source: Synthesized by the author from various sources (2026)

Istiḥsān Methodology in Contemporary Law Determination

In the context of contemporary economic law, the application of *istiḥsān* cannot be understood merely as a legal exception based on the personal intuition of the mujtahid. As outlined in the previous section, contemporary *istiḥsān* must become a systemic methodology for navigating digital and capital-market innovations. This methodological urgency arises because modern economic instruments such as *Sukuk* and digital assets require accountability standards that are not only aligned with the Sharia text but also capable of addressing operational complexities in the field.[23]

This methodological transformation is built on the two main foundations contained in this draft research. First, the transition from "intuitive subjectivity" to "procedural objectivity". If, in the classical tradition, *istiḥsān* is often triggered by a faqīh's objection to the rigidity of the analogy (qiyās)[24], then, in this operational model, the trigger must be based on a measurable *ḥaraj* (difficulty) matrix and an analysis of the impact of the benefit.[25] Second, strengthening the validation function. Contemporary methodology requires that every *istiḥsān* decision pass the stage of verification of legal coherence to ensure that the exceptions taken do not harm other fundamental principles of sharia.[26]

[23] Alhejaili, "Harmonising Derivatives with Shari'ah: Ethical Practices and Regulatory Insights."

[24] As a method of analogy, *qiyās* is based on the similarity of '*illat* between the two cases. Tāj al-Dīn 'Abd al-Wahhāb bin 'Alī bin 'Abd al-Kāfī Al-Subkī, *Jam' al-Jawāmi' Fī Uṣūl al-Fiqh* (Beirut: Dâr al-Kutub al-'Ilmîyaḧ, 2003)., p. 80

[25] In some situations, the results of *qiyās* may give rise to *ḥaraj* or incompatibility with the goals of the sharia. Thus, *istiḥsān* provides a rational exception based on stronger evidence or *maṣlaḥaḧ*. Mohammad Hashim Kamali, "Maqasid Al-Shari'ah and Ijtihad as Instrument s of Civilisational Renewal: A Methodological Perspective," *ICR Journal* 2, no. 2 (January 2011): 245–271, https://doi.org/10.52282/icr.v2i2.647.

[26] Al-Šāṭibī said that the purpose of sharia is the benefit of mankind in this world and the hereafter at the same time. Ibrāhīm bin Mūsā bin Muḥammad al-Ġarnāṭī Al-Šāṭibī, *Al-Muwāfaqāt*, ed. Abû 'Ubaydaḧ Mašûr bin Ḥasan Âl Salmân (Kairo: Dâr Ibn 'Affân, 1997)., Juz 2, p. 9

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Therefore, the reconstruction of the 7-stage model proposed in this study is an effort to discipline the ijtihad process. This methodology is not intended to change the substance of the *istiḥsān* of the Ḥanafī School that is at the root of this research, but rather to provide a more precise evaluation instrument. To provide a more operational picture and answer the challenge of methodological replication, the following is an indicator matrix that serves as a measuring instrument for each stage in this model:

Table 2: Operational Matrix and Measurable Indicators of the 7-Stage *Istiḥsān* Framework

Stage	Measurable Indicators	Evaluative Tools
1. Identify the problem	Anomalies are detected between formal compliance (*qiyās*) and substantive justice or economic efficiency.	Gap Analysis: A comparison of formal legal outcomes vs market realities.
2. Analysis of alternative options	Mandatory exploration of standard sharia solutions (e.g., *muššārakaẖ* contracts or pure *ijārah* contracts) before moving on to exceptions.	Feasibility Test: A standard option feasibility test in solving a problem.
3. Detection of *ḥaraj* (difficulty)	There is concrete evidence of public hardship, significant financial losses, or barriers to innovation if the law of origin is enforced.	Impact Assessment: Negative impact assessment (quantitative/qualitative).
4. Application of the exemption postulate	The discovery of stronger evidence (*dalīl khafī*) in the form of *maṣlaḥah*, *'urf*, or verified *ḍarūrah* claims.	Evidence Mapping: Mapping the legal basis of relevant exceptions.
5. Verification of coherence	The test of whether the exception is contrary to the basic principles of shari'a (*maqāṣid*) or the regulation of authority.	Consistency Check: Test the alignment with Kulliyat al-Khamsah.
6. Decision formulation	The formulation of a specific draft legal decision, limiting the scope of the exemption so that it does not expand without control.	Drafting Precision: Determination of the scope of the decision.
7. Evaluation & mitigation	Periodic review of the effectiveness of decisions and the provision of solutions in the event of a conflict of opinion (*ikhtilāf*).	Feedback Loop: A mechanism for monitoring and conflict resolution.

Source: Synthesized by the author from various sources (2026)

The separation of the stages into more granular evaluation units aims to meet procedural accountability standards in international legal research. By positioning the 'alternative option analysis' as an independent stage before the determination of *istiḥsān*, this study emphasizes that the proposed model is not merely a normative justification, but

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an instrument of strict ijtihad discipline. This ensures that any 'legal diversion' has a clear methodological audit trail, so that research findings on *Sukuk* and NFT cases will later have a higher and measurable level of analytical validity.

Epistemological Advantages and Novelty of the 7-Stage Model Methodology

Based on the operational and comparative matrix already outlined, this 7-stage model offers three main methodological contributions that distinguish it from previous *istiḥsān* literature. First, the transformation from intuition to procedure (procedural objectivity). In an effort to overcome subjectivity, this model introduces procedural objectivity by requiring alternative analyses. The main epistemological advantage of this model lies in its attempt to discipline 'legal intuition' (*dhauq al-faqīh*), which, in the classical tradition, is often considered difficult to measure externally. By breaking down the ijtihad process into seven interlocking stages, this model mitigates the risk of bias in mujtahid justification. As a result, the legal decision-making process is no longer personal but is now more transparent and accountable, and can be replicated by fatwa institutions and other regulatory authorities.

The second advantage lies in this model's ability to inject temporal and dynamic dimensions into the structure of ijtihad. In contrast to the classic approach, which is sometimes seen as static, this 7-stage model accommodates changes in reality through a scalable feedback loop. By placing 'Evaluation and Mitigation' as a cyclical closing stage, this model ensures that an *istiḥsān* decision remains relevant as long as its constituent variables—such as *'urf* (economic tradition) and *ḍarūraẗ* (urgent need)—remain unchanged. This provides room for Islamic law to adapt to the acceleration of digital innovation without losing its footing in permanent sharia principles (*thawābit*).

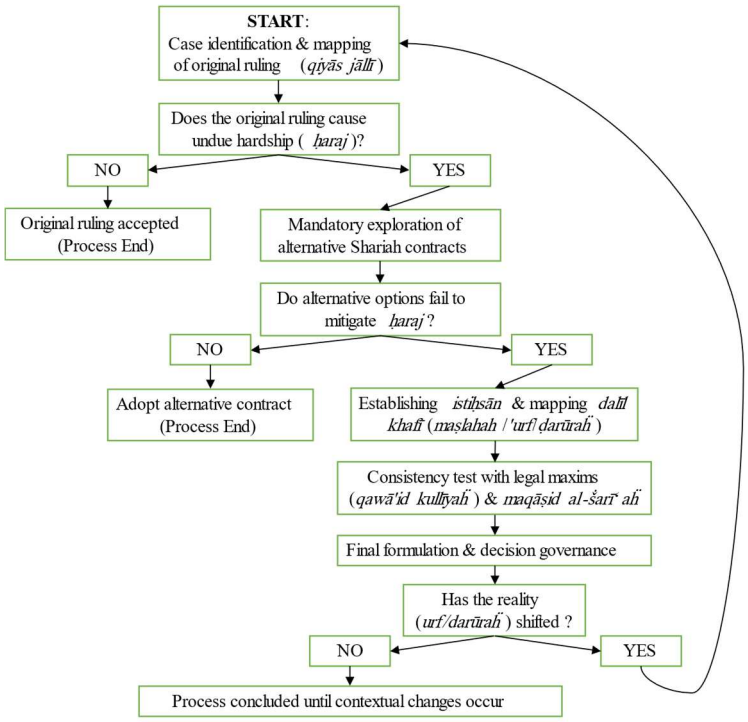
The third advantage is its ability to strengthen legal coherence through a multi-layered verification process. In this model, coherence is understood not only as the absence of contradiction between postulates, but as the systemic alignment between the legal exception (*istiḥsān*) and the great edifice of *qawā'id kullīyaẗ* and *maqāṣid al-sharī'aẗ*. The 'Verification of Coherence' stage serves as a critical filter to ensure that the benefits pursued

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through *istiḥsān* do not disregard other universal principles of sharia. Thus, this model guarantees that any economic law innovation remains within the corridor of an intact, logical, and internally consistent Islamic legal system.[27]

All three advantages are integrated into the systemic workflow as visualized in Figure 1. This chart does not merely show a chronological order, but represents a mechanism of control (decision points) that ensures accountability for the legal transition from *qiyās jālī* to *istiḥsān*. Through this cyclical structure, the 7-stage model ensures that any legal exceptions are based on coherence verification and rigorous evaluation of reality, while mitigating the risk of subjectivity in contemporary economic ijtihad.

Figure 1: Istihsan Process Chart



Procedurally, the plot in Figure 1 begins with a strict mapping of the law of origin (*qiyās jālī*). The first critical phase is the evaluation of legal impacts, where this model requires proof of the existence of a real, verified *ḥaraj* (difficulty). In contrast to the intuitive

[27] Timur Kuran, "The Absence of the Corporation in Islamic Law: Origins and Persistence," *The American Journal of Comparative Law* 53, no. 4 (2005): 785–834, https://doi.org/10.1093/ajcl/53.4.785.

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approach, this stage ensures that the move towards *istiḥsān* is not premature, but rather triggered by an anomaly between formal compliance and substantive justice found on the ground. The core phase of this model lies in the synchronization between the exception postulate and the principle of *maqāṣid al-sharī'aḧ*. At this stage, legal diversion is tested through a legal coherence filter to ensure that the decision does not stand in isolation. This emphasizes the model's superiority in maintaining the systemic integrity of Islamic law, in which any legal innovation remains within the corridor of universal rules (qawā'id kullīyaḥ).

At the end of the stage, the model introduces a continuous evaluation mechanism that is responsive to changing economic realities (*'urf*). The cyclical flow (back arrow) in the image indicates that each legal formulation is dynamic; it remains in effect as long as the underlying emergency or urgent need persists. This sharpening of the evaluative aspect provides a guarantee of accountability that the proposed *istiḥsān* methodology can navigate the uncertainties in modern financial instruments in a sustainable manner. In contemporary economics, the visualized methodology is a vital tool for developing innovative financial products that comply with Sharia principles.[28] For example, in high-risk financing instruments that may be strictly *qiyās* considered to contain *ġarar*, this *istiḥsān* model allows for modification of contracts (e.g., *musyārakaḧ mutanāqiṣaḧ* products or sharia derivative structures) on the grounds of greater benefit and *ḥājaḧ* (needs) of the market.[29] A similar approach enables legal adaptation to changes in the global regulatory system without compromising Sharia identity.

Thus, *istiḥsān* does not stand as an autonomous method, but becomes an integral part of the complementary system of *Uṣūl al-Fiqh*. It provides flexibility and dynamism in the establishment of laws, while other methods, such as *qiyās* and *istiṣḥāb*, provide stability and certainty. Within this framework, the *istiḥsān* methodology emphasizes the importance

[28] Ishak and Mohd Sharoni, "The Role of Istihsan in Applying Maslahah in Islamic Finance."
[29] Nik Abdul Rahim Nik Abdul Ghani, Hanafi Nazri, and Nurul Asikin Binti Abdul Razak, "Stock Scalping and Shariah Legitimacy in Modern Capital Markets," *Nusantara: Journal of Law Studies* 5, no. 1 (January 2026): 1–24, https://doi.org/10.5281/zenodo.18357939.

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of balancing adherence to the text with the demands of practical benefit.[30] The *istiḥsān* principle, which serves as a valve of flexibility, opens up great opportunities for product innovation, but its application in economic reality requires analytical acumen at the technical level. Therefore, the next part of this study will operationalize the 7-stage model through case studies of contemporary Islamic financial products, and will also analyze the methodological and regulatory challenges faced by mujtahids in the modern era.

Application of *Istiḥsān* in Contemporary Economics

The analysis in this section is divided into two methodological functions to test the reliability and contribution of the proposed 7-stage model. First, retrospective coherence testing, which uses *Sukuk* instruments to demonstrate how this model can provide more detailed reasoning documentation. The focus is not on changing established legal outcomes, but rather on providing procedural flows to support methodological audit processes in complex financial structures. Second, prospective applications, which use the case of non-fungible token (NFT) digital assets to explore the potential of models in mapping legal considerations on new economic phenomena. Here, the model serves as an auxiliary framework for navigating legal uncertainty while prioritizing transparency and accountability.

1. Retrospective analysis of *sukuk* instruments as a test of methodological coherence

   The application of the 7-stage model to *Sukuk* instruments demonstrates how it provides a systematic reasoning framework for established legal decisions. Here is a procedural reconstruction:

   a. Phase 1: mapping of the law of origin and detection of *ḥaraj* (stages 1 & 3). The problem is the need for large long-term infrastructure financing (*maṣlaḥaẗ ḍarūrīyaẗ*). Rigid *qiyās* jalī will prohibit instruments that resemble bonds because

[30] Johari Johari et al., "Istiḥsān Method and Its Relevance to Islamic Law Reform: Content Analysis of Fatwa of Majelis Ulama Indonesia on Corneal Transplant," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (July 2023): 1–20, https://doi.org/10.18860/j-fsh.v15i1.18442.

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they contain elements of ribawi (fixed interest) or *ġarar* (too high a risk for investors if it is purely *shirkah*).

b. Phase 2: the obligation to explore alternative options (stage 2). At this stage, the model "forced" the testing of purely sharia instruments based on shirkah (*mushārakaḥ* or *muḍārabaḥ*). In contrast to direct justification, this stage critically documents why such pure instruments are considered unfeasible in today's capital market ecosystem—especially given the demands of risk mitigation and the certainty of principal returns for public investors. The failure of this alternative option becomes an absolute condition (conditio sine qua non) before moving on to the *istiḥsān* procedure.

c. Phase 3: *istiḥsān* formulation and coherence verification (stages 4 & 5). *Istiḥsān* is done by shifting the legal construction from the analogy of bonds towards the ijārah (rent-rent) or *murābaḥaḥ* (buying and selling) contracts whose assets underlie the issuance of *Sukuk*. The verification stage ensures that these exceptions do not simply meet market demands, but are systemically coherent with *maqāṣid al-sharī'aḥ*, in particular the protection of property (*ḥifẓ al-māl*) through the productivity of assets and the protection of life (*ḥifẓ al-nafs*) through the benefits of infrastructure development.

d. Methodological implications: justification bias mitigation. This reconstruction demonstrates that the 7-stage model can transform the decision-making process from an intuitive to a procedural one. By requiring proof of the failure of alternative options (Stage 2), this model effectively serves as a deterrent to post-hoc justification, ensuring that *istiḥsān* remains a scientifically accountable emergency door.

2. Prospective application: legal navigation of digital assets (non-fungible tokens)

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The NFT case represents a complex challenge for muamalah jurisprudence because it involves ambiguity between creative innovation and systemic risk.[31] The 7-stage model test on NFTs aims to demonstrate how *istiḥsān* can provide a prescriptive solution that goes beyond simple *qiyās* analysis.

a. Mitigation of environmental externalities (*ḍarar* analysis)

An early *qiyās* analysis tends to equate NFTs with intellectual property rights (*qiyās khafī*) that are allowed. However, the 7-stage model demands deeper verification:

1) Implementation of stage 5 (verification of *maqāṣid* & interdisciplinary ethics): This model requires a mujtahid to enter environmental science data related to blockchain energy consumption. Based on the principle of lā ḍarar wa lā ḍirār, the financial benefits of monetizing works of art are considered to be lost if their supporting instruments (such as proof-of-work protocols)[32] cause massive and collective environmental damage (*mafsadaḥ*).
2) Structural solution (stage 6). The result is not an absolute ban, but a conditional permissibility. *Istiḥsān* can only be granted if the NFT is issued on top of a green infrastructure (such as proof-of-stake) that is measurably energy-efficient. Here, the model provides objective ethical boundaries as a condition for the legitimacy of an innovation.

[31] An NFT can be defined as a unique digital certificate of ownership. Imagine someone has a digital painting, song, or even a selfie, NFT is proof that they are the rightful owner of the work in the digital world. NFTs are stored on the blockchain, a kind of digital ledger that records all transactions. So, if someone else buys an NFT, their ownership data is permanently recorded and cannot be changed. See: Muhammad Usman Noor, "NFT (Non-Fungible Token): Masa Depan Arsip Digital? Atau Hanya Sekedar Buble?," *Pustakaloka* 13, no. 2 (December 2021): 223–34, https://doi.org/10.21154/pustakaloka.v13i2.3289.

[32] A PoW-based blockchain is an environmental *mafsada in* the form of massive and continuous consumption of electrical energy. He emerged from this mining competition demanding that the miners do it. Sharia law will reject assets that methodologically pose a collective environmental hazard.

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b. Control of extreme speculation (*maysir* & *ġarar* analysis)

The second risk of NFTs is that 99% of their trading on the secondary market is driven by pure speculation (*maysir*), which creates ġarar fāḥiṣ (extreme obscurity) and potentially violates the maqāṣid (i.e., ḥifẓ al-māl against destructive practices). The main problem is the dominance of speculation that approaches the practice of digital gambling.

1) Implementation of stage 2 (exploration of alternative options): The model procedurally forces the mujtahid to identify whether there are utility-based NFT alternatives rather than mere speculative collectibles.[33] If utility-based instruments (such as digital licenses or membership certificates) are better able to safeguard wealth (*ḥifẓ al-māl*), then *istiḥsān* for speculative NFTs should be suspended.
2) Implementation of stages 4 & 6 (formulation & governance): *Istiḥsān* is directed to validate platforms that have risk-mitigation mechanisms, such as setting a minimum limit on the underlying asset or protocols that reject pump-and-dump schemes. This model allows the mujtahid to provide structural conditions that ensure digital innovation continues to function as a real economic tool, not a covert gamble.

This critical application demonstrates that the 7-stage model can address the weaknesses of *maṣlaḥah* mursalah by providing layers of interdisciplinary ethical verification and procedural risk mitigation. In a broader perspective, this model reinforces the theory of legal coherence in *Uṣūl al-Fiqh*. In contrast to the approach of legal positivism, which is often stuck on textual-formal compliance, this 7-stage model offers substantive coherence that ensures economic innovation is not only aligned with

[33] The real utility intent here is an NFT that grants its owner certain rights or functions in the real or digital world. Its value comes from the right of use attached to it. Meanwhile, *collectibles* are NFTs whose value is driven by scarcity, aesthetics, or digital identity. Its value is dominated by market perception and speculation.

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regulations but also methodologically bound to the spirit of maqāṣid al-sharī'a through rigorous and transparent testing.

The analysis of the application of the *istiḥsān* operational model in the case of *sukuk* (conceptual validation) and NFT (critical contributory application) definitively confirms its role as an adaptive and accountable method of ijtihad. This model successfully demonstrates methodological coherence with ex post fatwas while offering a prescriptive solution to complex digital ethics-legal dilemmas (e.g., environmental and secondary machine issues). This shows that *istiḥsān* bridges the gap between rigid *qiyās* jalī principles and market needs (*'urf* and *maṣlaḥaẗ*) through a systematic verification process.

Nevertheless, the success of *istiḥsān* as an engine of strategic innovation is inseparable from the risks inherent in its nature as a law of exception. The use of the *istiḥsān* postulate based on maṣlaḥaẗ and *'urf* demands high accountability and governance to prevent abuse and justification bias. Therefore, mujtahids and fatwa authorities face methodological and regulatory challenges in consistently applying *istiḥsān*, as discussed below, as well as in reviewing the strategic prospects of this method for determining the future direction of the development of the sharia economic ecosystem.

Discussion: Methodological Challenges and Strategic Prospects of *Istiḥsān*

Although the 7-stage model offers a more accountable structure, its effectiveness in the real financial ecosystem remains dependent on several critical variables.

1. Methodological challenges: navigating subjectivity in *ikhtilāf*

   The transformation from intuition to procedure does not necessarily remove the risk of subjectivity, but rather moves it to the level of qualitative evaluation (Stage 3). The main challenge arises when there is disagreement (ikhtilāf) over the weighting of *maṣlaḥah*. For example, in Islamic fintech, authorities may differ in weighing the value of financial inclusion for microenterprises against the systemic risk of default.

   The 7-stage model facilitates this distinction by providing a transparent audit trail—why one maslahaẗ is chosen over another—but does not automatically standardize

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legal outcomes. This confirms that this model is an instrument of navigation, not a substitute for mujtahid authority. Therefore, further integration between this model and collective governance in international fatwa forums is needed to mitigate sectoral bias.

2. Strategic prospects: *istiḥsān* as an accelerator of Islamic financial innovation

Beyond these challenges, this model positions *istiḥsān* not merely as a post-hoc justification, but as a strategic legal planning framework responsive to global trends:

a. Decentralized Finance (DeFi) & Smart Contracts: This model enables the design of smart contracts that automatically mitigate risks and moral hazards. *Istiḥsān* can validate mechanisms of automatic execution that, although they deviate from classical manual formalities, still guarantee substantive justice in accordance with the *maqāṣid*.
b. Social protection in the platform economy: *Istiḥsān* provides flexibility for the design of on-demand takaful products. This addresses the massive ḥājah (need) of freelancers for dynamic micro-protection, which may be difficult to accommodate within rigid traditional *qiyās*.
c. ESG (environmental, social, and governance) integration: Through stage 5 (*maqāṣid* verification), this model can construct conditional laws that require adherence to sustainability criteria. Financial innovation is judged not only from the halal aspect, but also from its contribution to *ḥifẓ al-bī'ah* (environmental protection) as a contemporary extension of *maqāṣid*.

Overall, the above mapping of challenges and prospects shows that this 7-stage model is more than just a tool for legal analysis. It serves as a framework that assists mujtahid and regulators in balancing the demands of economic innovation with the principles of sharia prudence. By operationalizing these stages, the application of *istiḥsān* in the digital economy can be carried out in a more measurable, transparent, and accountable manner, so that every policy produced has a strong evidentiary basis amid global market dynamics.

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CONCLUSION

This research has reconstructed the flow of *istiḥsān* ijtihad from a normative discourse to a more systemic and transparent 7-stage operational model. Through retrospective testing of the *Sukuk* instrument, the study showed that the model could provide more detailed reasoning documentation for established legal decisions, thereby improving its procedural accountability. Meanwhile, prospective applications of NFTs demonstrate the model's role as a framework for navigating legal uncertainty by integrating interdisciplinary ethical verification—particularly regarding environmental impact and risk mitigation. The findings of this study confirm that the use of *istiḥsān* in contemporary economics is no longer intuitive but must pass through the failure filter of alternative options and be verified for coherence with the principles of Maqāṣid al-sharī'aḥ. This model does not claim to eliminate subjectivity—since interpretation is an inherent characteristic of Islamic law—but it does significantly mitigate bias by ensuring transparency at each decision point. Thus, this framework offers a methodological refinement that positions *istiḥsān* as a more ethical and measurable legal planning instrument.

The author recognizes that, as a conceptual-normative study, this model still requires further empirical testing through collective fatwa simulations to assess its reliability across qualitative differences in the determination of *maṣlaḥah*. Future research is expected to expand the scope of this instrument to other disruptive economic phenomena and to integrate a stronger consensus model to strengthen the standards of ijtihad methodology in the global Islamic financial markets.

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AUTHOR'S CONTRIBUTIONS

The authors are fully responsible for the entire research process. The first author is fully responsible for conceptualizing and developing the 7-stage *Istiḥsān* operational model, analyzing case studies, and completing manuscript revisions in response to reviewers' input. Correspondence writers and other member authors contribute to theoretical validation, literature review, reference curation, as well as final editing of manuscripts. All authors have reviewed and approved the final version of the submitted manuscript.

CONFLICT OF INTEREST

The author states that there is no conflict of interest, either financial or personal, with any party or organization that could affect objectivity or bias the content and findings of this study.

AI USAGE STATEMENT

In preparing this manuscript, the author uses artificial intelligence (AI) primarily to improve linguistic clarity and narrative structure and to assist in systematically decomposing the methodological framework. The author has independently reviewed and edited the results of the use of the tool, and is fully responsible for the validity and originality of all scientific material contained in this work.

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