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The Evolution of Shariah Influence in Government Procurement of Goods and Services: Historical Growth and Legal Certainty of Contractor Payment

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Abstract: Government procurement of goods and services, as the largest instrument of state expenditure, must be imbued with divine values in accordance with Article 29 of the 1945 Constitution of the Republic of Indonesia, which in the context of Indonesia's Muslim majority population contains the potential for the integration of shariah principles. However, empirical reality demonstrates delayed contractor payments that disrupt cash flow and project continuity, as evidenced by the Waskita Karya case of 2023. This study aims to analyze the historical evolution of shariah principle influence in the Indonesian government procurement system and the extent to which its implementation provides legal certainty of payment for contractors. The research employs a normative legal research method with historical, statutory, and conceptual approaches, analyzing hierarchical regulations from the 1945 Constitution to implementing regulations using the theories of Savigny (historical jurisprudence), Radbruch (the purpose of law), and maqashid syariah (hifdz al-mal). The results demonstrate shariah evolution through four periods: the pre-regulation era (1973 to 1999, shariah vacuum), the reform era (2000 to 2007, independent regulation), SBSN integration (2008 to 2017, Law No. 19/2008), and expansion (2018 to the present, Government Regulation No. 16/2023). Substantive implementation is present through the State Treasury Law No. 1/2004, Ministry of Finance Regulation No. 145/2017 (advance payment), and Government Regulation No. 22/2020 (14-day limit), yet remains empirically problematic due to bureaucratic obstacles and weak enforcement. The study concludes that the pattern of gradual shariah penetration has succeeded in the financing domain (SBSN), but remains partial in the procedural domain. The recommendations include explicit codification of shariah contractual principles and late-payment sanctions for comprehensive legal certainty

Keyword: Evolution, Shariah Influence, Government Procurement of Goods and Services, Historical Growth, Legal Certainty of Contractor Payment.

INTRODUCTION

Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) affirms that "The State shall be based upon the belief in the One and Only God,"

which signifies that the entire administration of the state, including government procurement of goods and services, must at all times be inspired by divine values (Majelis Permusyawaratan Rakyat Republik Indonesia, 2002). As affirmed by Asshiddiqie, the Indonesian Constitution is the most theistically grounded constitution in the world, such that all public policies, including procurement, must reflect those values (Asshiddiqie, 2014). In the context of Indonesia as a country with a Muslim majority population, this provision constitutes a constitutional foundation for the integration of shariah principles in public policy (Tahir Azhary, 2015), as evidenced by various government policies that have gradually adopted the values of maqashid syariah in state governance (Ardyansyah & Amalia, 2025).

Furthermore, Article 29 paragraph (2) of the UUD NRI 1945 states that "The State guarantees all persons the freedom of worship, each according to his or her own religion or belief." This constitutional guarantee provides space for Muslims to conduct muamalah in accordance with shariah principles (Kansil & Kansil, 2003), including in the implementation of procurement contracts, given that shariah contract law does not confine itself to the private sphere but extends to all aspects of economic transactions, including those involving government parties (S. Anwar, 2007).

In addition, Article 33 paragraph (4) of the UUD NRI 1945 stipulates that "The national economy shall be organized based on economic democracy with the principles of togetherness, just efficiency, sustainability, environmental awareness, self-sufficiency, and by maintaining a balance of progress and national economic unity." Government procurement of goods and services constitutes the largest instrument of state expenditure (Sutedi, 2012a), touching nearly all sectors of the economy (Simamora et al., 2021), such that the principle of just efficiency in Article 33 paragraph (4) directly demands that procurement mechanisms, including contractor payment, be executed in a fair, proportional, and planned manner consistent with values aligned with shariah principles (Organisation for Economic Co-operation and Development, 2023). The principle of just efficiency in government procurement requires the certainty of payment mechanisms for contractors as a form of legal protection for service providers (Purwosusilo, 2014).

Law Number 17 of 2003 on State Finance, Article 3 paragraph (1), stipulates that state finances shall be managed in an "orderly, law-abiding, efficient, economical, effective, transparent, and accountable manner with due regard to a sense of justice and propriety." This principle of justice and propriety is substantively aligned with the shariah principle prohibiting gharar (uncertainty) and the obligation to fulfill iltizam (contractual obligation), so that the state is legally bound to ensure that payments to contractors are made in a timely and just manner. According to Sutedi, this state finance framework constitutes the primary legal umbrella governing all aspects of government procurement expenditure, including payment mechanisms to goods and services providers (Sutedi, 2012).

Law Number 1 of 2004 on State Treasury, Article 21 paragraph (1), stipulates that "Payments charged to the State Revenue and Expenditure Budget or Regional Revenue and Expenditure Budget shall not be made before goods and/or services are received," while paragraph (3) regulates the mechanism for verifying the material truth of contractors' billing rights. This provision normatively constructs a performance-based payment mechanism consistent with the shariah principle that payment must be made upon fulfillment of obligation (iltizam), as constructed in the theory of akad in the fikih muamalah (S. Anwar, 2007).

Law Number 2 of 2017 on Construction Services, Article 47 paragraph (1), requires every construction contract to explicitly include a clause on payment procedures, while Article 53 paragraph (1) stipulates that "The Service User is obligated to pay an advance to the Service

Provider." This provision concerning the obligation of advance payment is substantively related to the concept of 'urbun in fikih muamalah (Mardani, 2012). Presidential Regulation Number 16 of 2018 in conjunction with Presidential Regulation Number 12 of 2021 on Government Procurement of Goods and Services, Article 7 paragraph (1), establishes

procurement principles comprising efficiency, effectiveness, transparency, openness, competitiveness, fairness, and accountability. Article 53 paragraph (1) requires advance payment to providers, while Article 85 governs performance-based payment. Normatively, these provisions construct a payment certainty system that must be consistently implemented by all budget users as parties representing the state in procurement contracts (Simamora et al., 2021).

Government Regulation Number 22 of 2020 on Implementing Regulations of the Construction Services Law, Article 68 paragraph (3), explicitly stipulates a payment deadline of no later than 14 calendar days after the billing document is received, a norm that provides concrete legal certainty for contractors. This provision constitutes an operationalization of the principle of legal certainty (legal certainty).

Ministry of Finance Regulation Number 145/PMK.05/2017 on Procedures for Payment Charged to the State Budget Before Goods and/or Services Are Received, Article 2, provides that payment charged to the State Budget before goods and/or services are received may be made in the form of advance payment for the procurement of goods and/or services, which serves as a mechanism of cash flow certainty for contractors. The guarantee of cash flow certainty is regarded as a fundamental prerequisite for the sustainability of contractors' businesses, given that late payment in construction projects constitutes a serious problem as it disrupts cash flow, delays project implementation, and causes financial losses to both service providers and users (Adrian, 2025).

Law Number 19 of 2008 on State Shariah Securities (SBSN), Article 1 number 1, defines SBSN as state securities issued based on shariah principles, while Article 4 states that SBSN may be used to finance certain government activities, including project construction financing. This law constitutes a significant normative milestone that formally integrates shariah instruments into the Indonesian government procurement financing system, marking the beginning of a new era in the evolution of shariah influence in government procurement of goods and services. Since the issuance of the SBSN Law, the Indonesian government has consistently utilized state sukuk instruments as a source of financing for strategic infrastructure projects constructed through the government procurement mechanism (Latifah, 2020).

State Shariah Securities (SBSN) function as a financing instrument and funding source for government procurement of goods and services, particularly for nationally strategic infrastructure projects. Pursuant to Article 4 of Law Number 19 of 2008 on SBSN, the government is authorized to issue state sukuk to finance project construction implemented by ministries and state institutions. The technical mechanism is further regulated through Government Regulation Number 16 of 2023

on Project Financing Through the Issuance of SBSN, which expands the scope of project proponents to include regional governments and state-owned enterprises (Priatmoko et al., 2024). Operationally, the primary variant is Project Based Sukuk (PBS), namely sukuk specifically issued to finance certain projects listed in the state budget using an ijarah contract as its basis. The funds generated from PBS issuance are directly allocated to finance procurement contracts at the relevant ministries and state institutions, so that contractors implementing the projects ultimately receive payment from shariah-based funding sources. Nopijantoro affirms that SBSN PBS is an alternative instrument with the advantage of transparency because each project is directly connected to its financing source, unlike conventional bonds which constitute general financing (Nopijantoro, 2017). Accordingly, SBSN functions not only as a fiscal instrument but also as a mechanism guaranteeing the certainty of fund availability for contractor payment in government procurement based on shariah principles.

Historically, the integration of shariah principles in the Indonesian government procurement system has developed gradually and in a non-linear fashion. The most important milestone was the enactment of Law Number 19 of 2008 on SBSN, which for the first time

formally permitted government project financing using shariah instruments. Since then, the issuance of state sukuk of the Project Based Sukuk (PBS) type has grown significantly and become one of the primary instruments of national infrastructure financing: in the period from 2013 to 2018 alone, SBSN PBS series directly contributed to the financing of infrastructure projects across various sectors (Secretariat of State of the Republic of Indonesia, 2023). In its development, the government issued Government Regulation Number 16 of 2023, which expanded the scope of projects that may be financed through SBSN, including infrastructure, public services, and domestic industry development, on the condition that those projects must comply with shariah principles based on criteria established by the National Shariah Board of the Indonesian Council of Ulama .

Nevertheless, the transformation of shariah influence in Indonesian government procurement has proceeded more dominantly on the financing side than on the procedural governance side of procurement itself. To date, there is no regulation that explicitly and comprehensively integrates shariah principles into all stages of the government procurement process from planning, provider selection, to payment. Previous research has shown that although the Presidential Regulation on government procurement of goods and services is substantively not contrary to muamalah principles in shariah economic law, there is as yet no explicit adoption of shariah principles in the procurement regulation itself (Zulfikar, 2020). The problem of payment uncertainty for contractors in government procurement constitutes an empirical reality that has long been a serious concern. Research conducted in Jambi City found that late payment in construction projects constitutes a serious problem that disrupts contractor cash flow, delays project implementation, and causes financial losses to both service providers and users, with causes originating from contractors, consultants, and project owners (the government) themselves (Adrian, 2025).

The case of PT Waskita Karya (Persero) Tbk, which experienced a bond default in February 2023, highlights potential cash flow challenges in government infrastructure projects, where delayed payments may constitute one contributing factor. Nevertheless, the default should be understood as a multifaceted issue involving various financial and structural determinants. In the past, the government procurement of goods and services process was frequently associated with lengthy procedures, multilayered documentation, and the potential for late payments that disadvantaged service providers (Directorate General of State Treasury, 2024). From the perspective of construction law, the condition in which the government as the service user fails to fulfill its payment obligations in a timely manner constitutes a breach of contract that entitles the contractor to suspend its performance, a situation that not only causes financial harm to the contractor but also threatens the continuity of the construction project as a whole (Ercolaw, n.d.).

Based on the foregoing description, this study aims to analyze the evolution and historical growth of shariah principle influence in the Indonesian government procurement system, as well as to analyze the extent to which the implementation of shariah principles in government procurement provides legal certainty of payment for implementing contractors.

METHOD

This study constitutes normative legal research (normative legal research), namely research that examines law as written norms through the analysis of primary, secondary, and tertiary legal materials. The choice of this research type is based on the research focus that emphasizes the review of legislation, doctrine, and judicial decisions as its primary object, rather than empirical social facts in the field (Mamuji, 2018).

This study employs three approaches simultaneously. First, the historical approach (historical approach), used to trace the evolution and historical growth of shariah principle influence in the government procurement system over time, by examining the chronological development of regulations (Marzuki, 2019). Second, the statutory approach (statute approach),

used to analyze all applicable and relevant legislation hierarchically from the 1945 Constitution to its implementing regulations (Marzuki, 2019). Third, the conceptual approach (conceptual approach), used to construct an analytical framework based on legal doctrines, Savigny's historical jurisprudence theory, Radbruch's theory of the purpose of law, and maqashid syariah theory, in order to analyze contractor payment legal certainty (Marzuki, 2019).

The research specification is descriptive-analytical in nature, meaning that it systematically describes the applicable legislation and practices, then analyzes them in depth to discover relevant meanings, gaps, and juridical solutions (Mamuji, 2018).

Data sources and collection techniques are conducted through library research (library research) of three legal materials. Primary legal materials include the UUD NRI 1945, laws, government regulations, presidential regulations, and ministerial regulations. Secondary legal materials include law books, accredited scholarly journals, and previous research findings. Tertiary legal materials include law dictionaries and encyclopedias (Mamuji, 2018).

The analytical technique employed is qualitative-normative analysis with a prescriptive method, meaning that it does not merely describe the existing norm (*lex lata*), but formulates the norm that ought to apply (*lex ferenda*) in order to guarantee contractor payment certainty based on shariah principles in government procurement (Marzuki, 2019).

RESULTS AND DISCUSSION

The Evolution and Historical Growth of Shariah Principle Influence in the Indonesian Government Procurement System

Periodization of Evolution

Referring to Savigny's Theory of Historical Jurisprudence, law grows organically with society as a manifestation of *volksgeist* (the spirit of the nation) and never ceases to develop in accordance with the dynamics of civilization (Aulia, 2020). From this perspective, the permeation of shariah principles into the Indonesian government procurement system is not a sudden or exclusively by-design phenomenon, but rather a long, gradual historical process that reflects the legal consciousness (*rechtsbewusstsein*) of Indonesian Muslim society that has been continuously strengthening. Based on a normative-historical analysis of applicable regulations, the evolution of shariah influence in government procurement can be mapped into four main periods as follows.

First Period: The Era of Special Pre-Regulation and the Absence of the Shariah Dimension (1973 to 1999)

Prior to the year 2000, government procurement of goods and services in Indonesia did not yet have its own independent regulation. Procurement was still regulated as an inseparable part of the Presidential Decree on State Budget Implementation, ranging from Presidential Decree Number 14A of 1980, Presidential Decree Number 29 of 1984, to Presidential Decree Number 16 of 1994. During this era, the procurement mechanism was focused solely on the procedural aspects of conventional state expenditure, namely general tender, limited tender, direct appointment, and direct procurement, without in any way accommodating the value dimension or shariah principles in its governance (Listiyanto, 2012).

In this period, the shariah financial system in Indonesia was indeed just beginning to establish itself, marked by the founding of Bank Muamalat Indonesia in 1991 as the first shariah bank. However, its influence had not yet reached the realm of government procurement. Zulfikar affirms that in this era, government procurement operated entirely within the logic of conventional positive law without any accommodation of muamalah principles (Zulfikar, 2020). Accordingly, this period constitutes the era of the absence of the shariah dimension (*vacuum syariah*) in the Indonesian government procurement system.

Second Period: The Era of Reform and Independent Procurement Regulation (2000 to 2007)

A new chapter began in the post-reform era with the issuance of Presidential Decree Number 18 of 2000 on Guidelines for the Implementation of Government Agency Procurement, constituting the first procurement regulation that stood independently and separately from the State Budget Presidential Decree. This regulation was subsequently replaced by Presidential Decree Number 80 of 2003, which became a milestone of procurement reform and underwent seven amendments before being revoked in 2010 (Listiyanto, 2012).

Although regulations in this period began to include more structured procurement principles such as transparency, efficiency, healthy competition, and non-discrimination, the shariah dimension remained entirely absent from their substantive content. These principles, though substantively consistent with Islamic values, were not explicitly linked to shariah principles. One noteworthy fact is that during this period, specifically in 2007, the Government established the National Public Procurement Agency (LKPP) pursuant to Presidential Regulation Number 106 of 2007, an institutional step that strengthened procurement governance at the national level and became the institutional infrastructure for procurement reform in subsequent periods.

Third Period: The Era of Integration of Shariah Instruments in Procurement Financing (2008 to 2017)

This period marks the most significant turning point in the history of the evolution of shariah influence in Indonesian government procurement. There are two primary normative momenta that drove this transformation.

First, the enactment of Law Number 19 of 2008 on State Shariah Securities (SBSN). Pursuant to Article 4 of this Law, the government was formally granted the authority to use state sukuk as a project financing instrument, including projects implemented through the government procurement mechanism (Republik Indonesia, 2008). This law constitutes the first milestone that formally integrated shariah principles into the government procurement financing chain, transforming the paradigm from exclusively conventional financing to financing based on *ijarah* and *musyarakah* principles through sukuk instruments. Latifah notes that for more than a decade, SBSN has played a real role in infrastructure development in the health, education, social, economic, and environmental sectors, so that shariah principles have *de facto* entered the government procurement chain through the financing channel (Latifah, 2020).

Second, in 2011 Government Regulation Number 56 of 2011 on Project Financing Through the Issuance of SBSN was issued, which operationalized the authority for shariah-based project financing into concrete technical mechanisms. This regulation governs procedures for the proposal, establishment, and monitoring of projects financed by SBSN by ministries and state institutions. The most operationally relevant variant of this regulation is the issuance of Project Based Sukuk (PBS) since 2012, namely sukuk specifically issued to finance certain projects listed in the state budget. Nopijantoro affirms that PBS possesses the advantage of transparency because each project is directly connected to its financing source, unlike conventional bonds which constitute general financing (Nopijantoro, 2017).

During this period, Law Number 21 of 2008 on Shariah Banking was also enacted, which strengthened the overall shariah financial ecosystem and provided a legal basis for the use of shariah banking products in transactions related to government procurement (Republik Indonesia, 2008). As for Presidential Regulation Number 54 of 2010 governing technical procurement, although it did not explicitly contain shariah principles, Zulfikar demonstrated that its substance was consistent with *muamalah* principles, including the principle of *ikhtiyari* (voluntary), *amanah* (keeping promises), *ikhtiyati* (prudence), and the prohibition of exploitation (Zulfikar, 2020).

There are several factors that drove the transformation in this period, including: the increasing awareness and demand of Muslim communities for shariah products and mechanisms in economic life; the government's need for diversification of development financing sources beyond conventional loans with currency risk exposure; the growth of the global shariah financial market that prompted Indonesia to integrate shariah instruments into its fiscal policy; and pressure from intellectual communities and religious scholars to place Islamic values in public policy as guaranteed by Article 29 of the UUD NRI 1945 (Khairunnisa et al., 2021).

Fourth Period: The Era of Expansion and Institutional Strengthening of Shariah in Procurement (2018 to the Present)

This most recent period is marked by two primary regulations that further strengthen and expand shariah influence in the government procurement system. First, Presidential Regulation Number 16 of 2018 in conjunction with Presidential Regulation Number 12 of 2021 on Government Procurement of Goods and Services explicitly introduced the principle of justice ('adl) as one of the seven procurement principles (Article 7 paragraph (1)), established sustainable procurement as an objective (Article 4 sub-paragraph h), and promoted economic equality (Article 4 sub-paragraph g), values that are substantively aligned with maqashid syariah (Presidential Regulation No. 16, 2018). This regulation does not literally mention "shariah" in its text, yet the integration of values of justice, togetherness, and protection of vulnerable parties (small and medium enterprises and cooperatives) therein reflects the penetration of the shariah spirit into procurement principles. Bangun notes that the procurement dispute resolution mechanism in this regulation is, substantively, compatible with the principles of Al-Sulh (peaceful settlement) and Tahkim (arbitration) in shariah economic law (Bangun et al., 2023).

Second, Government Regulation Number 16 of 2023 on Project Financing Through the Issuance of SBSN represents a significant leap in this evolution. This regulation expands the scope of SBSN project proponents which previously (Government Regulation No. 56/2011) was limited to Ministries and State Institutions, now to also include Regional Governments and State-Owned Enterprises. Randi affirms that this expansion constitutes an institutional breakthrough that has the potential to make shariah principles a financing instrument that touches almost all levels of government, from the central to the regional level (Randi, 2025). Furthermore, this Government Regulation requires every project financed by SBSN to fulfill the shariah compliance criteria established by the National Shariah Board of the Indonesian Council of Ulama (DSN-MUI), so that the shariah supervisory mechanism becomes an official component of the government procurement cycle.

Analysis: Patterns and Factors of Transformation

Based on the foregoing historical review, it may be identified that the evolution of shariah influence in Indonesian government procurement follows a pattern of gradual penetration (gradual penetration) moving from the periphery to the core, beginning from the financing side (the aspect of project funding), then extending to the value dimension of procurement principles, and now proceeding toward more comprehensive integration through the expansion of SBSN institutional scope.

There are three primary factors that have historically driven this transformation. First, the socioreligious factor: as a country with a Muslim majority population, there has been a continuously growing social pressure for the public legal system, including government procurement, to reflect Islamic values. Second, the economic-fiscal factor: the limited capacity of the state budget has driven the government to seek alternative financing instruments, and sukuk has become the answer that simultaneously meets fiscal needs as well as shariah aspirations. Third, the normative-institutional factor: the strengthening of the shariah economic

law ecosystem, from the Shariah Banking Law, the SBSN Law, to the Compilation of Shariah Economic Law (KHES), has created a normative infrastructure that enables shariah values to legitimately permeate the government procurement of goods and services system (Ardyansyah & Amalia, 2025).

The Extent to Which the Implementation of Shariah Principles in Government Procurement Provides Legal Certainty of Payment for Implementing Contractors

Conceptual Framework: Shariah Principles and Legal Certainty of Payment

Before analyzing the extent to which the implementation of shariah principles provides legal certainty of payment for contractors, it is first necessary to construct a conceptual framework linking the two elements. From the perspective of shariah economic law, legal certainty of payment derives from the principle of the validity of akad (contract), which demands that every economic transaction must fulfill its essential elements and conditions, free from elements of gharar (uncertainty), riba (usury/interest), and maysir (speculation). The validity of akad is not sufficient based merely on the agreement of the parties, but must also fulfill the values of justice, maslahah (public welfare), and the prohibition of elements that are unlawful (Saputra et al., 2025).

In the context of government procurement contracts, shariah principles demand the fulfillment of three primary values: First, 'adl (justice), which requires a balance of rights and obligations between the government as the service user and the contractor as the service provider. Second, amanah (honesty and trustworthiness), which requires each party to fulfill its promises and obligations as agreed in the contract, including the government's obligation to pay on time. Third, the prohibition of gharar, which demands clarity and certainty in all aspects of the transaction, including the mechanism, timeframe, and amount of payment. Zulfikar affirms that a procurement agreement governed by the principles of shariah economic law fundamentally gives rise to rights and obligations of the parties, the non-fulfillment of which constitutes a breach of contract that may be resolved through a mechanism of justice (Zulfikar, 2020).

Syamsul Anwar affirms that shariah contract law does not confine itself to the private sphere but extends to all aspects of economic transactions, including those involving government parties. The principle of iltizam (obligation) in shariah signifies that every party that receives performance is obligated to fulfill its counter-performance in full, proportionally, and in a timely manner. In government procurement contracts, the government which receives work, goods, or services from the contractor has a shariah obligation to pay in accordance with the contract value and within the agreed time period (S. Anwar, 2007).

Mardani links the concept of hifdz al-mal (protection of property) as one of the five maqashid syariah with the contractor's right to payment. From this perspective, the contractor's right to payment for work that has been handed over and accepted constitutes property that must be protected by the legal system. A state that obstructs or unlawfully delays the fulfillment of such rights is in reality violating the principle of hifdz al-mal demanded by shariah (Mardani, 2012).

Normative Analysis: The Convergence of Shariah Principles with Procurement Regulations

Normative examination demonstrates that shariah principles have been substantively, though not always explicitly, integrated into the Indonesian government procurement and payment regulatory system. This analysis is conducted hierarchically from the legislative level to technical regulations.

Law Number 1 of 2004 on State Treasury

Article 21 paragraph (1) contains the principle of performance-based payment, namely that payments charged to the State Budget or Regional Budget shall not be made before goods and/or services are received. This is consistent with the shariah principle that payment is made upon fulfillment of *iltizam*. Article 21 paragraph (3) requires the verification of the material truth of contractors' billing rights before payment is executed, a mechanism that reflects the principle of *amanah* and accuracy in the fulfillment of obligations. Zulfikar affirms that the substance of Indonesian government procurement regulations is aligned with *muamalah* principles, including the principle of *ikhtiyari* (voluntary), *amanah* (keeping promises), and *ikhtiyati* (prudence) (Zulfikar, 2020).

Presidential Regulation Number 16 of 2018 in Conjunction with Presidential Regulation Number 12 of 2021

Article 7 paragraph (1) establishes seven procurement principles, wherein the principles of *adil* (fair) and *akuntabel* (accountable) are substantively derived from the shariah principles of *'adl* and *amanah* (Presidential Regulation Number 16, 2018). Ardyansyah, Syah, and Amalia affirm that public policy referring to *maqashid syariah* must consider property protection (*hifdz al-mal*), which in the procurement context is realized through certain, fair, and timely payment to service providers (Ardyansyah & Amalia, 2025).

The principle of property protection (*hifdz al-mal*) in *maqashid syariah* is realized through three important pillars in the procurement context: the affirmation of the validity of legitimate *akad* (contract), the implementation of the prohibition of *gharar* (harmful uncertainty and speculation) in transactions, and the obligation of transaction recording to ensure transparency (Munthe & Madani, 2026). These three pillars have normatively been reflected in the procurement and payment mechanism regulated under Presidential Regulation Number 16 of 2018.

Ministry of Finance Regulation Number 145/PMK.05/2017

Article 2 of this regulation provides that payments charged to the State Budget before goods and/or services are received may be made in the form of advance payment, which serves as a mechanism of cash flow certainty for contractors and is consistent with the shariah principle concerning the right to proportional and planned payment. This advance payment provision is substantively correlated with the concept of *'urbun* in *fikih muamalah*, namely advance payment as a sign of seriousness and commitment to contractual performance.

Government Regulation Number 22 of 2020 on the Implementation of the Construction Services Law

Article 68 paragraph (3) stipulates a payment deadline of no later than 14 calendar days after the billing document is received. This 14-day deadline provision constitutes a form of translating the principle of the prohibition of *gharar* (uncertainty) into a concrete and measurable positive norm. This provision provides legal certainty for contractors that payment will be executed within a clear and measurable timeframe, avoiding uncertainty that is detrimental to one of the parties (PP No. 22, 2020). Purwosusilo affirms that the certainty of payment mechanisms constitutes an essential component of legal protection for goods and services providers, such that this payment deadline norm constitutes a real manifestation of the principle of legal protection in procurement (Purwosusilo, n.d.).

Government Procurement Contract as a Hybrid Contract: Analysis of Payment Certainty

One of the distinctive characteristics that differentiates government procurement contracts from ordinary commercial contracts is its hybrid nature, namely being subject to two legal regimes simultaneously: private law (civil and contract law) and public law (administrative law and state finance law). Yohanes Sogar Simamora affirms that a contract in

which one of the parties involves the government is in fact subject to two different legal regimes, such that in entering into a contract that ought to be subject to private law, the government cannot shed its position as a public legal entity subject to public law (Directorate General of State Treasury, 2024).

This hybrid character has direct implications for contractor payment certainty. On the one hand, under private law (Article 1338 of the Civil Code), a valid contract binds the parties as if it were a statute (*pacta sunt servanda*), so that the government's payment obligation possesses the same binding force as contractual obligations between private parties. On the other hand, from the public law perspective, payment must proceed through a strict budgetary mechanism pursuant to the State Treasury Law. When these two regimes do not operate harmoniously, a contractor who has fulfilled its performance may become trapped in payment uncertainty.

Law Number 2 of 2017 on Construction Services explicitly requires every construction contract to include a payment procedure clause (Article 47 paragraph (1)) and mandates advance payment to service providers (Article 53 paragraph (1)). This advance payment provision is substantively related to the concept of *'urbun* in *fikih muamalah*, demonstrating a convergence between positive law and shariah principles in government construction contracts.

Empirical Reality: The Gap Between Norms and Implementation

Although normatively there exists a comprehensive legal framework providing payment certainty to contractors, empirical reality demonstrates a significant gap in its implementation. Data from the National Public Procurement Agency (LKPP) in 2023 recorded that 62 percent of 48,000 construction work packages experienced completion delays, with 23 percent categorized as critical contracts. This condition is caused not only by contractor default, but also frequently originates from late payments by the government that disrupt contractor cash flow.

Adrian's research (2025) in Jambi City found that late payment in construction projects constitutes a serious problem that disrupts cash flow, delays project implementation, and causes financial losses to both service providers and users, with the primary causes being weak administrative implementation, incomplete billing documentation, and dissatisfaction with work quality (Adrian, 2025). In the past, the government procurement of goods and services process was frequently associated with lengthy procedures, multilayered documentation, and the potential for late payments that disadvantaged service providers (Directorate General of State Treasury, 2024).

The gap between norms and implementation can be analyzed using Radbruch's formula. Haerunisa affirms that Radbruch's theory demands that law equitably fulfill three fundamental values: justice (*Gerechtigkeit*), utility (*Zweckmassigkeit*), and legal certainty (*Rechtssicherheit*). When contractor payments are delayed or not executed in accordance with applicable norms, all three values are simultaneously violated: injustice toward contractors who have fulfilled their performance, the futility of existing norms, and the loss of legal certainty that should protect contractors (Haerunisa, 2024).

Implementation of Shariah Principles in the Payment Dispute Resolution Mechanism

Another important dimension of the implementation of shariah principles in providing legal certainty of payment for contractors is through the dispute resolution mechanism. Bangun notes that the procurement dispute resolution mechanism regulated in national regulations is substantively compatible with the principles of *Al-Sulh* (peaceful settlement) and *Tahkim* (arbitration) in shariah economic law (Bangun et al., 2023).

LKPP Regulation Number 18 of 2018 on Dispute Resolution Services for Government Procurement Contracts provides a dispute resolution mechanism through mediation, conciliation, and arbitration (Article 3 paragraph (1)). These three mechanisms are substantively aligned with the shariah approach that prioritizes *ishlah* (peaceful resolution) before resorting

to formal litigation. In the context of payment disputes, this mechanism opens space for contractors to obtain their rights through a channel that prioritizes substantive justice over procedural formalism.

Supreme Court Jurisprudence Number 1/Yur/Kor/2018 affirms that the payment of a project that has not been completed does not constitute a state loss and does not fulfill the element of unlawfulness if it meets certain requirements. This jurisprudential affirmation provides additional legal guarantees for contractors that their billing rights for work that has been handed over and accepted receive adequate legal protection.

Nevertheless, Bangun also highlights that in practice, mediating judges frequently disregard the affirmation of the elements of *Al-Sulh* and *Tahkim* as mentioned in shariah economic law, so that the procurement contract dispute resolution process using an alternative dispute resolution approach frequently reaches an impasse. This condition demonstrates that the integration of shariah principles in the dispute resolution mechanism is still partial and has not been optimally implemented.

SBSN Instruments and Their Implications for Payment Certainty

From the financing dimension, the SBSN (State Shariah Securities) instrument used to finance government procurement projects has important implications for contractor payment certainty. Latifah notes that SBSN as a financing instrument based on the *ijarah* principle has the characteristic that the funds raised are directly allocated for specific projects (project-based financing), thereby theoretically providing certainty of fund availability for contract implementation and payment (Saputra et al., 2025).

The Project Based Sukuk (PBS) mechanism that directly links sukuk issuance to specific projects should reduce the risk of unavailability of payment funds for contractors, since each project has its own identified financing source. However, in practice, the mechanism for disbursing SBSN funds for contractor payment must still go through the same bureaucratic budget procedures as non-SBSN projects, so that it does not always result in better payment certainty.

Saputra et al. underscore that in shariah economic practice, the fulfillment of the legality aspect of *akad* constitutes a foundation for creating legal certainty and protection for the parties. This implies that projects financed by SBSN, because they employ an *ijarah* contract that is lawful under shariah, should provide stronger legal protection for contractors with respect to payment, since the payment obligation is attached to the *akad* that has been agreed upon and supervised by the DSN-MUI (Latifah, 2020).

Comprehensive Assessment: The Extent to Which Shariah Principles Provide Legal Certainty of Payment

Based on the foregoing normative and empirical analysis, a comprehensive assessment may be formulated regarding the extent to which the implementation of shariah principles in government procurement provides legal certainty of payment for contractors.

First, normatively, shariah principles (*'adl*, *amanah*, prohibition of *gharar*, *hifdz al-mal*) have been substantively integrated into the Indonesian government procurement and payment system, though not always explicitly. The principles of justice, transparency, accountability, and performance-based payment mechanisms in Indonesian procurement regulations are substantively aligned with shariah requirements. In this regard, the implementation of shariah principles has provided a sufficiently adequate normative foundation for legal certainty of contractor payment.

Second, from the financing dimension (SBSN/sukuk), the implementation of shariah principles provides certainty of fund availability for sukuk-financed projects, due to the project-based financing mechanism inherent in this instrument. However, certainty of fund availability

does not automatically correlate with certainty of payment disbursement to contractors, given the applicable bureaucratic disbursement procedures.

Third, from the dimension of the dispute resolution mechanism, shariah principles (Al-Sulh, Tahkim) have been integrated into the procurement dispute resolution system, yet their implementation is not yet optimal due to insufficient understanding and application of shariah values by mediators.

Fourth, empirically, the gap between norms and implementation remains significant. Shariah principles that have been normatively integrated have not been consistently implemented in government procurement and payment practice. Late payments, bureaucratic complexity, and the imbalance of bargaining positions between the government and contractors remain an ongoing reality.

Fifth, the most crucial point is that the implementation of shariah principles in Indonesian government procurement remains asymmetric: stronger on the financing side (SBSN) than on the procedural governance side of procurement. There is as yet no regulation that explicitly and comprehensively integrates shariah contractual principles into the entire procurement cycle, from planning to payment to contractors. This gap, from Radbruch's perspective, demonstrates that the value of legal certainty has not yet been fully realized for contractors in government procurement (Firdaus, 2025).

Recommendations: Strengthening Legal Certainty of Payment Through the Integration of Shariah Principles

Based on the foregoing analysis, at least three recommendations may be proposed to strengthen legal certainty of contractor payment through more comprehensive shariah principle integration.

First, explicit codification of shariah contractual principles into procurement regulations, particularly regarding payment mechanisms, is required. This means that the principle of the prohibition of gharar (certainty of mechanism, timeframe, and amount of payment), the principle of amanah (compliance with the obligation of timely payment), and the principle of hifdz al-mal (protection of contractors' billing rights) need to be explicitly translated into the technical payment norms in the Presidential Regulation on Procurement.

Second, the enforcement of firm and just sanctions mechanisms for late payment by the government needs to be strengthened. Shariah principles demand that a party who fails to fulfill its obligations bears proportionate consequences. In this context, the mechanism of compensation for late payment that has normatively been regulated needs to be consistently implemented.

Third, the strengthening of the capacity of procurement mediators and dispute resolvers with an understanding of shariah economic law needs to become a policy agenda. The substantive compatibility between the procurement dispute resolution mechanism and the shariah principles of Al-Sulh and Tahkim needs to be optimized so that contractors may obtain justice and certainty of their payment rights through an effective and just mechanism.

CONCLUSION

This study concludes that the evolution of shariah principle influence in the Indonesian government procurement system follows a pattern of gradual penetration, reflecting Savigny's theory of historical jurisprudence as a manifestation of the *volksgeist* of Muslim society. The historical periods are divided into four stages: the pre-regulation era (1973 to 1999) without the shariah dimension; the reform era (2000 to 2007) with independent regulation; the integration of shariah instruments (2008 to 2017) marked by the SBSN Law No. 19/2008 and Government Regulation No. 56/2011; and expansion (2018 to the present) through Presidential Regulation No. 16/2018 in conjunction with No. 12/2021 and Government Regulation No. 16/2023 that expands SBSN to regional governments and state-owned enterprises. Driving factors include

the socioreligious, economic-fiscal, and normative-institutional dimensions, with SBSN as the primary milestone that transformed the procurement project financing paradigm from conventional to shariah-based *ijarah* and project-based *sukuk*.

Regarding the implementation of shariah principles (*'adl*, *amanah*, prohibition of *gharar*, *hifdz al-mal*) in providing legal certainty of contractor payment, normative analysis demonstrates substantive integration through the State Treasury Law No. 1/2004 (performance-based payment), Ministry of Finance Regulation No. 145/PMK.05/2017 (advance payment), Government Regulation No. 22/2020 (14-day limit), and SBSN that guarantees project funds. However, empirically there remains a significant gap: late payments disrupt contractor cash flow (Jambi study), bureaucracy is complex, and bond default cases such as *Waskita Karya* (2023) persist. From Radbruch's perspective, the three values (justice, certainty, and utility) have not yet been optimally realized due to partial implementation, particularly the asymmetry in financing over procedural matters. The recommendations include: explicit codification of shariah *akad* in the Presidential Regulation, late-payment sanctions, and mediator training based on *Al-Sulh* and

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