

Environmental and Social Safeguards in Indonesia's Green *Ṣukūk*: Integrating *Maqāṣid al-Sharī'a* for Sustainable Governance

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Abstract:

Indonesia has issued sovereign green *ṣukūk* since 2018, yet project financing regulations do not link environmental and social safeguards to eligibility. This article examines the legal force of the safeguards and whether *maqāṣid* obliges the state to address this gap. Using normative legal research with statutory, conceptual, and comparative approaches, it maps Government Regulation Number 16 of 2023 against the World Bank's ten environmental and social standards. It interprets findings through classical and contemporary *maqāṣid* theory and the Indonesian Ulema Council's climate change fatwa, comparing Indonesia's regime with Malaysia's sustainable and responsible investment *ṣukūk* framework. The regulation addresses environmental and social feasibility generally but provides no risk classification, exclusion list, grievance mechanism, or sanctions for safeguard breaches. Safeguards remain dispersed across nonbinding issuer frameworks and sectoral statutes, creating a norm-linkage gap. The article recommends dual assurance that incorporates safeguards into binding project eligibility criteria through regulatory provisions and the Sharia compliance channel, making environmental and social protection enforceable obligations within sovereign green *ṣukūk* financing.

Keywords:

environmental and social safeguards; green *ṣukūk*; *maqāṣid al-sharī'a*; Sharia compliance; sovereign *ṣukūk* regulation

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Introduction

Indonesia sold the world's first sovereign green *ṣukūk* in 2018. By the end of 2024, the government had raised USD 6.60 billion through global green *ṣukūk*, IDR 40.60 trillion through retail green *ṣukūk*, and IDR 31.17 trillion through a wholesale series.¹ These numbers are large. Indonesia sold the world's first sovereign green *ṣukūk* in 2018.² Yet the legal basis behind them is thinner than the numbers suggest. The second-party opinion on the 2018 framework gave it only a "Medium Green" rating and warned that some eligible projects could include elements of deforestation.³ In January 2025, the Forestry Minister defended a plan to convert about 20 million hectares of forest into food and energy estates, and an official analysis identified 2.3 million hectares of protected forest for that purpose.⁴ The National Commission on Human Rights received 1,025 complaints on the right to welfare in 2020 alone, and agrarian conflicts linked to development projects formed part of that figure.⁵ A green label on a state security does not, by itself, stop any of these harms. The question is whether Indonesian law binds the label to safeguards that can be checked and enforced.

Scholarship on green *ṣukūk* has grown fast, but most of it asks financial questions. Studies have measured how green *ṣukūk* prices react to global risk, climate shocks, and pandemic uncertainty.⁶ Others have tested hedging value,

¹ Directorate General of Budget Financing and Risk Management, "Green Sukuk Allocation and Impact Report 2025" (Jakarta: Ministry of Finance of the Republic of Indonesia, 2025), <https://api-djppr.kemenkeu.go.id/web/api/v1/media/8C2C3353-9134-43B3-9307-D465DE7C2CB8>.

² Philippe H Le Houérou, "A Catalyst for Green Financing in Indonesia," *East Asia & Pacific on the Rise (World Bank Blog)*, 2018, <https://blogs.worldbank.org/en/eastasiapacific/catalyst-green-financing-indonesia>.

³ CICERO Center for International Climate Research, "Second Opinion on the Republic of Indonesia's Green Bond and Green Sukuk Framework" (Oslo: CICERO, 2018).

⁴ Mongabay, "Indonesia Targets 2.3M Hectares of Protected Forests for Food and Biofuel Crop Production," *Mongabay*, 2025, <https://news.mongabay.com/2025/02/indonesia-targets-2-3m-hectares-of-protected-forests-for-food-biofuel-crop-production/>.

⁵ Antara, "Komnas HAM: Konflik Agraria Akibat Pembangunan Masih Terus Terjadi," *Antara*, 2021, <https://www.antaranews.com/berita/2343786/komnas-ham-konflik-agraria-akibat-pembangunan-masih-terus-terjadi>.

⁶ Syed Mabruk Billah and Nadia Adnan, "Navigating Environmental Concerns and Geopolitical Risks: A Study on Green Sukuk and Islamic Equities amid Climate Crisis and the Russia-Ukraine Conflict," *Energy Strategy Reviews* 53 (2024): 101372, <https://doi.org/10.1016/j.esr.2024.101372>; Mabruk Billah, Ahmed H Elsayed, and Sinda Hadhri, "Asymmetric Relationship between Green Bonds and Sukuk Markets: The Role of Global Risk Factors," *Journal of International Financial Markets, Institutions and Money* 83 (2023): 101728, <https://doi.org/10.1016/j.intfin.2022.101728>; Feriel Hariz,

the green premium, and investor intention.⁷ A further group maps issuance trends, drivers, and development paths in Malaysia and Indonesia.⁸ Reviews of the field confirm this pattern. Paltrinieri and colleagues found that *ṣukūk* research clusters around pricing and market behavior, while Setiawan and Putri showed that 60 percent of the Scopus-indexed sustainable *ṣukūk* studies they reviewed were theoretical.⁹

A second body of work links green *ṣukūk* to development goals and to *maqāṣid al-sharī'a*. Ali and colleagues tested the effect of green *ṣukūk* on growth, social development, and financial performance in Indonesia, and Suwanan and

Taicir Mezghani, and Mouna Boujelbene Abbas, "Modeling Dependence Structure between Green Sukuk Spread in Malaysia and Uncertainty Factors before and during the COVID-19 Pandemic," *Journal of Islamic Accounting and Business Research* 16, no. 5 (2025): 950–75, <https://doi.org/10.1108/JIABR-10-2022-0285>.

⁷ Yusuf Arazi Faisal, "Examining the Purchase Intentions of Indonesian Investors for Green Sukuk," *Sustainability* 15, no. 9 (2023): 7430, <https://doi.org/10.3390/su15097430>; Muhammad Abubakr Naeem, "Religion vs Ethics: Hedge and Safe Haven Properties of Sukuk and Green Bonds for Stock Markets Pre- and during COVID-19," *International Journal of Islamic and Middle Eastern Finance and Management* 16, no. 2 (2023): 234–52, <https://doi.org/10.1108/IMEFM-06-2021-0252>; Burak Pirgaip and Ozgur Arslan-Ayaydin, "Exploring the Greenium in the Green Sukuk Universe: Evidence from the Primary Market," *International Journal of Islamic and Middle Eastern Finance and Management* 17, no. 3 (2024): 423–40, <https://doi.org/10.1108/IMEFM-05-2023-0186>.

⁸ Mohammad Syafiq Abdullah and J S Keshminder, "What Drives Green Sukuk? A Leader's Perspective," *Journal of Sustainable Finance and Investment* 12, no. 3 (2022): 985–1005, <https://doi.org/10.1080/20430795.2020.1821339>; Endri Endri, Bella Tahya Hania, and Ahmad Ma'ruf, "Corporate Green Sukuk Issuance for Sustainable Financing in Indonesia," *Environmental Economics* 13, no. 1 (2022): 38–49, [https://doi.org/10.21511/ee.13\(1\).2022.04](https://doi.org/10.21511/ee.13(1).2022.04); J S Keshminder, Mohammad Syafiq Abdullah, and Marina Mardi, "Green Sukuk – Malaysia Surviving the Bumpy Road: Performance, Challenges and Reconciled Issuance Framework," *Qualitative Research in Financial Markets* 14, no. 1 (2022): 76–94, <https://doi.org/10.1108/QRFM-04-2021-0049>; Nazrul Hazizi Noordin, "Trends and Determinants of Sustainability Sukuk Issuance: Evidence from Global Markets," *Journal of Islamic Monetary Economics and Finance* 12, no. 3 (2026), <https://doi.org/10.21098/jimfv12i3.3341>; Andrea Paltrinieri, "A Bibliometric Review of Sukuk Literature," *International Review of Economics and Finance* 86 (2023): 897–918, <https://doi.org/10.1016/j.iref.2019.04.004>.

⁹ Paltrinieri, "A Bibliometric Review of Sukuk Literature"; D Setiawan and F S Putri, "From Shariah to SDGs: A Hybrid Review of Sustainable Sukuk Research," *Journal of Islamic Accounting and Finance Research* 8, no. 1 (2026): 1–24, <https://doi.org/10.21580/jiafr.2026.8.1.28025>; Azhar Alam, "Development and Evaluation of Islamic Green Financing: A Systematic Review of Green Sukuk," *Environmental Economics* 14, no. 1 (2023): 61–72, [https://doi.org/10.21511/ee.14\(1\).2023.06](https://doi.org/10.21511/ee.14(1).2023.06); Rotana S Alkadi, "Towards a Sustainable Future: A Comprehensive Review of Green Sukuk," *Review of Accounting and Finance* 23, no. 4 (2024): 467–88, <https://doi.org/10.1108/RAF-03-2023-0105>; Indar Fauziah Ulfah, "A Structured Literature Review on Green Sukuk (Islamic Bonds): Implications for Government Policy and Future Studies," *Journal of Islamic Accounting and Business Research* 15, no. 7 (2024): 1118–33, <https://doi.org/10.1108/JIABR-10-2022-0255>.

colleagues examined its role in climate resilience during the pandemic.¹⁰ Systematic reviews have linked Islamic finance with the Sustainable Development Goals and with *maqāṣid* reasoning.¹¹ Izzati and colleagues found strong alignment between Indonesian green *ṣukūk*, *maqāṣid*, and the goals, but they stressed that governance and transparency determine credibility.¹² Musari proposed blending green *ṣukūk* with cash *waqf*-linked *ṣukūk* as a fiscal instrument against climate change.¹³ Zainuri and colleagues went further. They built a *fiqh al-bī'a* test and applied it to fifteen project groups financed in 2024.¹⁴ On the legal side, Edris and colleagues observed that Indonesian law lacks an integrated mechanism that joins green verification, Sharia audit, and community assessment.¹⁵ Wan Zahari proposed that green *ṣukūk* be recognized

¹⁰ Qaisar Ali, "An Empirical Study of the Effects of Green Sukuk Spur on Economic Growth, Social Development, and Financial Performance in Indonesia," *Environment, Development and Sustainability* 26, no. 8 (2024): 21097–123, <https://doi.org/10.1007/s10668-023-03520-6>; Ahmad Fauzi Suwunan, Siti Munir, and Sri Merlinda, "Analisis Peran dan Tantangan Green Sukuk bagi Ketahanan Perubahan Iklim pada Wilayah Rentan Selama Pandemi COVID-19," *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 4, no. 4 (2022): 978–89.

¹¹ B Harahap, T Risfandy, and I N Fitri, "Islamic Law, Islamic Finance, and Sustainable Development Goals: A Systematic Literature Review," *Sustainability* 15, no. 8 (2023): 6626, <https://doi.org/10.3390/su15086626>; Hanani Farhah Harun and Nurshazwanie Rahmat, "Islamic Finance for Sustainable Development: A Mixed-Methods Systematic Review and Bibliometric Analysis of SDG Alignment," *International Journal of Sustainable Development and Planning* 20, no. 1 (2025): 99–107, <https://doi.org/10.18280/ijssdp.200111>; Lukman Raimi, Ibrahim Adeniyi Abdur-Rauf, and Saheed Afolabi Ashafa, "Does Islamic Sustainable Finance Support Sustainable Development Goals to Avert Financial Risk in the Management of Islamic Finance Products? A Critical Literature Review," *Journal of Risk and Financial Management* 17, no. 6 (2024): 236, <https://doi.org/10.3390/jrfm17060236>.

¹² A N Izzati, S S Tumuyu, and Y M A Wardhana, "Reconceptualizing Green Sukuk through Maqashid Al-Shariah for Advancing Sustainable Development Goals," *Journal of Islamic Economics Lariba* 11, no. 2 (2025): 1833–62, <https://doi.org/10.20885/jielariba.vol11.iss2.art22>.

¹³ Khairunnisa Musari, "Integrating Green Sukuk and Cash Waqf Linked Sukuk, the Blended Islamic Finance of Fiscal Instrument in Indonesia: A Proposed Model for Fighting Climate Change," *International Journal of Islamic Khazanah* 12, no. 2 (2022): 133–44, <https://doi.org/10.15575/ijik.v12i2.17750>.

¹⁴ M D Zainuri, M L Nawafil, and N Nurhasanah, "Assessing Indonesia's Green Sukuk Projects through the Framework of Fiqh al-Bī'ah," *Al-Hurriyah: Jurnal Hukum Islam* 11, no. 1 (2026): 135–66, <https://doi.org/10.30983/al-hurriyah.v11i1.10488>.

¹⁵ Mochamad Edris, "Legal Frameworks for Green Sukuk: Bridging Sharia-Compliant Environmental Finance and Community Development," *Khazanah Sosial* 8, no. 1 (2026), <https://doi.org/10.15575/ks.v8i1.51741>.

within the World Bank Environmental and Social Framework through joint Sharia and safeguard compliance statements.¹⁶

These studies leave one question open. None of them reads the binding Indonesian regulation on project financing through state *ṣukūk*, article by article, against an external safeguard standard. Most of them also still refer to Government Regulation Number 56 of 2011, which Government Regulation Number 16 of 2023 on Project Financing through the Issuance of State Sharia Securities (PP 16/2023) revoked on 3 April 2023. The present article fills that gap in three ways. It maps PP 16/2023 against all ten World Bank standards and separates what the regulation says from what sectoral statutes and non-binding frameworks say. It names the resulting problem a norm-linkage gap rather than a legal vacuum because the safeguards exist in Indonesian law but do not attach to the eligibility rules governing *ṣukūk* proceeds. It also builds a *maqāṣid* argument that ends in a concrete duty of the state and in a concrete legal channel, namely the *Sharia compliance* process that Law Number 19 of 2008 on State Sharia Securities already requires. Earlier *maqāṣid* studies of green *ṣukūk* stop at alignment. They show that projects meet the law's objectives, but they do not specify who must act when a project does not. This article moves from alignment to obligation. It identifies the addressee of the duty, the textual basis of the duty, and the article of positive law through which the duty can bind. That shift turns *maqāṣid* from a lens of evaluation into a source of regulatory design.

This article asks two questions. The first asks where environmental and social safeguards sit in the legal regime for sovereign green *ṣukūk* and how much binding force they carry. The second asks whether *maqāṣid al-sharī'a*, read through the classical sources and the fatwa of the Indonesian Ulema Council on climate change, obliges the state to give those safeguards binding force. The discussion covers the binding regulation, the issuer frameworks of 2018, 2021, and 2025, the relevant sectoral statutes, and the Malaysian framework for comparison. The article does not measure the environmental performance of individual projects. That task belongs to empirical studies such as the one by Zainuri and colleagues.¹⁷

¹⁶ Wan Mohd Zulhafiz Wan Zahari, "Operationalising Green Sukuk within the World Bank Environmental and Social Framework," *Discover Environment* 3 (2025): 288, <https://doi.org/10.1007/s44274-025-00490-6>.

¹⁷ Zainuri, Nawafil, and Nurhasanah, "Assessing Indonesia's Green Sukuk Projects through the Framework of Fiqh al-Bi'ah."

The study uses normative legal research. Its legal materials fall into three groups. Primary materials comprise Law Number 19 of 2008 on State Sharia Securities, PP 16/2023 with its elucidation, the sectoral statutes listed in Table 1, Fatwa DSN-MUI Number 69 of 2008, and Fatwa of the Indonesian Ulema Council (MUI) Number 86 of 2023 on the Law of Controlling Global Climate Change. The statutory texts were taken from the official gazette versions published in the state legal documentation network (JDIH). Secondary materials comprise the issuer's green and sustainable securities frameworks, their second-party opinions, allocation and impact reports, and scholarly literature. The Sharia materials comprise *uṣūl al-fiqh* works, *ḥadīth* collections, and legal maxims. The analysis proceeds in three steps. The first step reads every article of PP 16/2023 through grammatical and systematic interpretation and records a provision as "located" only when its text addresses the requirement of a given standard. The second step maps the findings against the ten standards of the World Bank Environmental and Social Framework (ESF), which serves as an external benchmark rather than as binding law.¹⁸ The third step tests the result against *maqāṣid* reasoning and against the Malaysian sustainable and responsible investment (SRI) *ṣukūk* regime, using a functional comparison of rules that perform the same task. Table 1 records the binding law outside the regulation in a separate column to avoid overstating the gap.

Maqāṣid al-Sharī'a and the Place of the Environment

Al-Ghazālī defined *maṣlaḥa* as the preservation of the purpose of the Lawgiver. He counted that purpose as five things: religion, life, intellect, lineage, and property. Whatever secures these five is *maṣlaḥa*, and whatever forfeits them is *mafsada*.¹⁹ Al-Shāṭibī added a scale. He sorted interests into *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥṣīniyyāt*, and he tied the weight of obedience or disobedience to the size of the benefit or harm at stake.²⁰ In this classical frame, the five are the highest tier. Harm to any of them is the gravest harm the law recognizes.

¹⁸ World Bank, "The World Bank Environmental and Social Framework" (Washington, DC: World Bank, 2017), <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework>.

¹⁹ Abū Ḥāmid Muḥammad ibn Muḥammad al-Ghazzālī, *Al-Mustasfā min 'Ilm al-Uṣūl*, ed. Muḥammad 'Abd al-Salām 'Abd al-Shāfi (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), 174.

²⁰ Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī, *Al-Muwāfaqāt*, ed. Abū 'Ubaydah Mashhūr ibn Ḥasan al-Salmān (Al-Khabar: Dār Ibn 'Affān, 1997), 17–20.

The environment has no named seat in that list. One position keeps the list closed and treats ecological protection as a means to *ḥifẓ al-nafs* and *ḥifẓ al-māl*. Kamali describes this reading and also shows that later jurists have treated the list as open to reasoned extension.²¹ Ibn 'Āshūr moved the center of gravity from the individual to the community. He held that the general objective of the law is to preserve the order of the *umma* (*nizām al-umma*).²² Auda then read the *maqāṣid* as an open, purposeful system whose parts respond to new conditions.²³ Dusuki and Bouheraoua applied this line of thought to Islamic finance and argued that *Sharia compliance* should serve the objectives of the law rather than its legal forms alone.²⁴ Recent Indonesian work builds on these foundations and applies *ḥifẓ al-bī'ah* to forest fires and climate change.²⁵

This article does not need to settle that debate. Its argument works under either reading. If *ḥifẓ al-bī'ah* stands alone, environmental harm is a direct harm to a *ḍarūrī* objective. Even if it falls under *ḥifẓ al-nafs*, ecological collapse still threatens life, lineage, and property at once. The harm also has two features that raise its rank. It spreads across the whole social order, and much of it cannot be undone once it happens. Irreversibility is the author's criterion here, not a doctrine borrowed from a named jurist, and it matters because a harm that forecloses repair calls for prevention rather than compensation.

From a *Ḍarūrī* Objective to a Duty of the State

The step from an objective to a legal duty needs textual support. Al-Qarāfī, as reported in item 2 of the considerations section of Fatwa MUI Number 86 of 2023, holds that the Sharia makes weighty interests obligatory and guards them

²¹ Mohammad Hashim Kamali, "Maqasid al-Shari'ah, Ijtihad and Civilisational Renewal" (International Institute of Islamic Thought and IAIS Malaysia, 2012).

²² Muḥammad al-Ṭāhir Ibn 'Āshūr, *Treatise on Maqāṣid al-Sharī'ah* (London: International Institute of Islamic Thought, 2006), 2.

²³ Jasser Auda, *Maqashid al-Shariah as Philosophy of Islamic Law: A System Approach*, ed. Shiraz Khan, 1st ed. (London: The International Institute of Islamic Thought, 2008), 21–25, 45–51.

²⁴ Asyraf Wajdi Dusuki and Said Bouheraoua, "The Framework of Maqasid al-Shari'ah and Its Implication for Islamic Finance," *Islam and Civilisational Renewal* 2, no. 2 (2011): 316–36, <https://doi.org/10.52282/icr.v2i2.697>.

²⁵ Muhammad Ramsah, Ahmad Dakhoir, and Puji Rahmiati, "Reconceptualizing Hifz al-Bī'ah within Maqāṣid al-Sharī'ah: An Islamic Environmental Jurisprudence Analysis of Forest and Land Fires in Kalimantan," *Mir'ah: Family Law and Legal Culture* 3, no. 1 (2026): 20–34, <https://doi.org/10.23971/mirah.v3i1.560>; Zainuri, Nawafil, and Nurhasanah, "Assessing Indonesia's Green Sukuk Projects through the Framework of Fiqh al-Bī'ah."

with prohibitions. He adds that it forbids grave harms so that they are prevented rather than merely repaired. The same fatwa reports, in item 1 of that section, al-Shāṭibī's view²⁶ that the greatest harm is whatever obstructs the five *ḍarūrī* matters. The fatwa then addresses the environment directly in items 1 to 3 of its second ruling. It declares acts that damage nature and drive the climate crisis *ḥarām*. It singles out uncontrolled deforestation and forest burning. It also makes mitigation and adaptation obligations for all parties.

The addressee of the public duty is the ruler. The *ḥadīth* that every person is a shepherd answerable for his flock names the *imām* first among those who will be questioned.²⁷ The Ottoman *Majalla* turns this idea into administrative rules. The ruler's action over his subjects depends on *maṣlaḥa*, harm must be removed, and averting harm takes precedence over securing benefit.²⁸ The harm maxim has a textual root in the *ḥadīth* "*lā ḍarar wa lā ḍirār*." Its single chains are weak, but al-Albānī graded it authentic on the strength of its several routes.²⁹

The fatwa also frames the government's duty in plain terms. In items 1(g)–(h) of its third ruling, it asks the central government to consider climate factors in every legal product and policy, and to attend to environmental and climate impacts when it accepts investment. Sovereign *ṣukūk* proceeds are investment funds that the state accepts and allocates for spending. The direction therefore reaches green *ṣukūk* by extension. That extension is the author's reading, not the fatwa's own words. Put simply, a state that sells a green label while leaving its safeguards optional is like a builder who hangs a fire exit sign on a painted wall.

Two cautions keep this argument within its sources. First, the sources establish a duty of protection, but they do not prescribe one legal instrument. The maxim *mā lā yatimm al-wājib illā bih fa-huwa wājib* binds the state to secure effective protection wherever it commits public funds.³⁰ The choice between a regulation, a ministerial rule, or a Sharia criterion is a matter of *siyāsa shar'iyya*,

²⁶ Al-Shāṭibī, *Al-Muwāfaqāt*, 198–99.

²⁷ Muḥammad Ibn Ismā'īl al-Bukhārī, "Kitāb Al-Jumū'a," in *Ṣaḥīḥ Al-Bukhārī*, ed. Muḥammad Zuhayr Ibn Nāṣir al-Nāṣir (Beirut: Dār Ṭawq al-Najāh, 2001); Muslim ibn al-Ḥajjāj, "Kitāb Al-Imārah," in *Ṣaḥīḥ Muslim*, ed. Muḥammad Fu'ād 'Abd al-Bāqī (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, n.d.), 1829.

²⁸ 'Alī Ḥaydar, *Durar al-Hukkām fī Sharḥ Majallat al-Ahkām* (Beirut: Dār al-Jīl, 1991).

²⁹ Muḥammad Nāṣir al-Dīn al-Albānī, *Silsilat al-Aḥādīth al-Ṣaḥīḥah*, n.d., 250; Muḥammad Ibn Yazīd Ibn Mājāh, *Sunan Ibn Mājāh*, ed. Muḥammad Fu'ād 'Abd al-Bāqī (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyya, n.d.), 2340–41.

³⁰ Al-Ghazzālī, *Al-Mustaṣfā min 'Ilm al-Uṣūl*, 57.

and effectiveness decides it. Second, fatwas of the Indonesian Ulema Council are not statutes within the Indonesian hierarchy of legislation set by Law Number 12 of 2011 on the Formation of Laws and Regulations, as amended by Law Number 13 of 2022.³¹ Their force in this setting comes from the channel that Law Number 19 of 2008 opens for Sharia conformity and from the role that Articles 12(2) and 20(e) of PP 16/2023 give to the National Sharia Council (DSN-MUI) in setting Sharia criteria for projects.

The External Benchmark and the Dual Assurance Idea

The World Bank adopted its Environmental and Social Framework in 2016 and applied it to new projects from October 2018. The framework replaced the older safeguard policies with ten standards that bind borrowers. The standards cover risk assessment, labor, resource efficiency, community safety, land acquisition, biodiversity, indigenous peoples, cultural heritage, financial intermediaries, and stakeholder engagement.³² Dann and Riegner read the reform as a negotiated compromise between borrowing states, civil society, and the Bank. The compromise gave borrowers more room but kept affected people in view as holders of claims.³³ This article uses the ten standards as a checklist, not as law that binds Indonesia. The standards are useful because they are complete, public, and familiar to investors.

The dual assurance concept provides the prescriptive framework. It requires that a green *ṣukūk* pass two tests at the same time: a Sharia test by a Sharia body and a safeguard test against a recognized standard. Wan Zahari proposed a joint compliance statement co-signed by both sides.³⁴ Studies that combine ESG and *maqāṣid* indices point in the same direction. They treat *maqāṣid* as the ethical core and ESG criteria as measurable indicators. Survey evidence from Saudi Arabia indicates that stakeholders value ESG disclosure

³¹ Tri Harnowo and Fachry Hasani Habib, "Islamic Law and Environment Issues: Indonesian Ulama Council's Fatwas on Climate Change," *Ahkam: Jurnal Ilmu Syariah* 24, no. 1 (2024): 101–18, <https://doi.org/10.15408/ajis.v24i1.34161>.

³² World Bank, "The World Bank Environmental and Social Framework."

³³ Philipp Dann and Michael Riegner, "The World Bank's Environmental and Social Safeguards and the Evolution of Global Order," *Leiden Journal of International Law* 32, no. 3 (2019): 537–59, <https://doi.org/10.1017/S0922156519000293>.

³⁴ Wan Zahari, "Operationalising Green Sukuk within the World Bank Environmental and Social Framework."

most when it aligns with Islamic finance principles.³⁵ The frame also needs a theory of bindingness. Abbott and Snidal describe legal arrangements along three dimensions: obligation, precision, and delegation. Hard law scores high on all three, while soft law is weaker on at least one of them.³⁶ Shaffer and Pollack add that hard and soft law can complement each other, but they can also work against each other when a soft instrument absorbs the pressure that would otherwise produce binding rules.³⁷ Choudhury shows that soft standards on business and human rights gain force only when monitoring and institutional links harden them.³⁸ This article builds on these accounts. It uses the term "norm-linkage gap" to refer to a specific situation. A protective norm is present in the legal order, often with some precision, but no binding rule links it to the decision it should control. The gap is legal, not moral. It asks whether breaching the safeguard changes anything for the project.

The Binding Regime After 2023

PP 16/2023 is the binding rule for project financing through state *ṣukūk*. It has sixty articles. Article 59 revoked the earlier regulation of 2011 in full. Several claims that circulate in the literature therefore no longer hold. The regulation does not list seven green project categories. Article 10 names four groups of projects: infrastructure, public services, empowerment of domestic industry, and other development in line with strategic government policy. The green categories come from the issuer's Green Bond and Green *Ṣukūk* Framework, which is a policy document of the Ministry of Finance. Reporting also works

³⁵ Edian Fahmy, "Measuring Contemporary Islamic Banking Sustainability: Integrating ESG and Maqashid al-Syarī'ah in Indonesia," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 351–78, <https://doi.org/10.32332/milrev.v5i1.12880>; Arman Mergaliyev, "Higher Ethical Objective (Maqasid al-Sharī'ah) Augmented Framework for Islamic Banks: Assessing Ethical Performance and Exploring Its Determinants," *Journal of Business Ethics* 170, no. 4 (2021): 797–834, <https://doi.org/10.1007/s10551-019-04331-4>; L. Renfiana, "A Contemporary Framework for Integrating Maqāsid al-Sharī'ah and ESG in Designing Sharia Capital Market Indices," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 635–85, <https://doi.org/10.32332/milrev.v5i1.13091>; Hesham Shalhoob, "ESG Disclosure and Financial Performance: Survey Evidence from Accounting and Islamic Finance," *Sustainability* 17, no. 4 (2025): 1582, <https://doi.org/10.3390/su17041582>.

³⁶ Gregory C Shaffer and Mark A Pollack, "Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance," *Minnesota Law Review* 94 (2010): 706–99.

³⁷ Shaffer and Pollack.

³⁸ Barnali Choudhury, "Balancing Soft and Hard Law for Business and Human Rights," *International and Comparative Law Quarterly* 67, no. 4 (2018): 961–86, <https://doi.org/10.1017/S0020589318000155>.

differently from what older studies describe. Articles 48 and 49, read with the elucidation to Article 49, require quarterly reports on physical progress and fund absorption to the Minister of Finance and the Minister of National Development Planning.

The regulation is not silent on the environment. Article 16(4)(a)–(b) requires that a feasibility study include economic, financial, legal, social, and environmental analysis, together with a risk profile. Articles 20(b)–(c) require the planning minister to assess social and environmental feasibility and risk mitigation when projects are added to the priority list. These provisions matter. They show that the lawmaker knew environmental and social questions were relevant. Yet the regulation stops there. It sets no risk classification, no content for an impact assessment, no exclusion list, no grievance mechanism, and no consequence for an adverse finding.

Where the Safeguards Sit: A Gap Analysis

Table 1 sets out the result of the article-by-article reading. For each World Bank standard, it records the provision found in PP 16/2023, the binding law outside the regulation, and an assessment. The third column is important. Indonesia does have environmental approval rules, a land acquisition statute, a labor code, and a public information law. The question in each row is whether PP 16/2023 connects that law to the decision to finance a project with *sukūk* proceeds.

Table 1
Gap analysis of Government Regulation No. 16 of 2023 against the World Bank
environmental and social standards

Standard	Core requirement (paraphrased)	Provision located in PP 16/2023	Binding law outside PP 16/2023	Assessment
ESS1 Assessment and management of risks and impacts	Project-level assessment of environmental and social risks before approval, proportionate to risk, with a management	Feasibility study must include social and environmental analysis and a risk profile (art. 16(4)(a)–(b)); planning minister assesses social and environmental feasibility and risk	Environmental approval under Law No. 32 of 2009 as amended by Law No. 6 of 2023; Government	Partial. Generic reference only; not linked to eligibility, screening, or enforcement.

Standard	Core requirement (paraphrased)	Provision located in PP 16/2023	Binding law outside PP 16/2023	Assessment
	plan and monitoring.	mitigation (art. 20(b)–(c)). No risk classification, no assessment content, no consequence of an adverse finding.	Regulation No. 22 of 2021.	
ESS2 Labour and working conditions	Fair treatment, safe and healthy work, and a grievance mechanism for project workers, including contracted workers.	None located. Arts. 16(4) and 20(b) refer to “social” feasibility only in general terms.	Manpower Law No. 13 of 2003 as amended by Law No. 6 of 2023.	Absent. General labour law applies but is not tied to eligibility or monitoring.
ESS3 Resource efficiency and pollution prevention	Resource efficiency, pollution prevention, and greenhouse gas measures in design and operation.	None located.	Law No. 32 of 2009; Government Regulation No. 22 of 2021.	Absent.
ESS4 Community health and safety	Protection of communities from project-related health, safety, and security risks, including structural safety.	None located. The minimum risk profile in art. 21(1) contains no community health or safety risk.	Construction Services Law No. 2 of 2017.	Absent.
ESS5 Land acquisition and	Avoid or minimise resettlement; compensate and	None located. Art. 26(2)(b) and (3)(b) require projects to be “not problematic”; the	Law No. 2 of 2012 on Land Acquisition for Development in	Absent. Governed by <i>lex generalis</i>

Standard	Core requirement (paraphrased)	Provision located in PP 16/2023	Binding law outside PP 16/2023	Assessment
involuntary resettlement	restore livelihoods where acquisition is unavoidable.	elucidation reads this as legal, technical, and operational readiness, not resettlement.	the Public Interest, as amended by Law No. 6 of 2023.	with no link to eligibility.
ESS6 Biodiversity and living natural resources	Protect and conserve biodiversity and habitats; manage living natural resources sustainably.	None located.	Forestry Law No. 41 of 1999; Law No. 32 of 2009; Law No. 5 of 1990 on Conservation of Living Natural Resources and Their Ecosystems.	Absent. The non-binding framework treats biodiversity as an eligibility theme only.
ESS7 Indigenous peoples	Respect the rights, identity, and livelihoods of indigenous peoples, with meaningful consultation and, in defined cases, free, prior and informed consent.	None located.	Constitutional Court Decision No. 35/PUU-X/2012 on customary forests; Forestry Law No. 41 of 1999.	Absent. Terminological gap between the ESF category and masyarakat hukum adat.
ESS8 Cultural heritage	Protect cultural heritage from project impacts and provide chance-find procedures.	None located.	Cultural Heritage Law No. 11 of 2010.	Absent.
ESS9 Financial intermediaries	Intermediaries assess and manage the environmental	Structural analogue: on-lending to regional governments and state-owned enterprises (arts.	Environmental approval regime; regional loan rules referred to	Partial analogue with a specific omission. The

Standard	Core requirement (paraphrased)	Provision located in PP 16/2023	Binding law outside PP 16/2023	Assessment
	and social risks of the sub-projects they finance.	25–37). Minimum risk profile lists credit, liquidity, currency, legal, strategic, reputational, and Sharia risk (art. 21(1)); environmental and social risk is not listed. Sanctions (art. 36) attach to repayment default.	in arts. 18(3) and 27(3).	clearest single-provision gap.
ESS10 Stakeholder engagement and information disclosure	Early and continuing engagement with affected parties, disclosure of information, and a grievance mechanism.	Quarterly reports on physical progress and fund absorption to the Minister of Finance and the planning minister (art. 48(1)–(2)); reporting forms part of government financial accountability (elucidation to art. 49). No public disclosure, consultation, or grievance mechanism.	Public Information Disclosure Law No. 14 of 2008; participation provisions of Law No. 32 of 2009.	Absent.

Source: author's analysis of Government Regulation No. 16 of 2023 and the World Bank Environmental and Social Framework.

Table 1 shows two rows with partial coverage and eight rows with no coverage in the regulation. The partial rows are ESS1 and ESS9. For ESS1, the regulation names social and environmental analysis in the feasibility study, but it does not link that analysis to eligibility or screening. The ESS9 row is the sharpest single finding. Articles 25 to 37 of PP 16/2023 allow the government to pass *şukūk* proceeds on to regional governments and state-owned enterprises (*penerusan SBSN*) through loans or government investment. This channel functions as a financial intermediary, which is exactly what ESS9 addresses. Article 21(1) of PP 16/2023 then lists seven minimum risks for this channel: credit, liquidity, currency, legal, strategic, reputational, and *sharī'a* risk.

Environmental and social risk is not on the list. The sanctions in Article 36 attach only to repayment default.

The eight absent rows do not mean that Indonesian law is empty. Environmental approval under Law Number 32 of 2009 still applies to any project that requires it. Land acquisition still follows Law Number 2 of 2012. The problem is that these statutes operate as *lex generalis*. They apply to every project, whether or not *shukūk* funds it. They do not make a breach grounds for denying or suspending *shukūk* financing. A project can fail its community, lose a land dispute, or damage a habitat and still remain on the priority list.

This finding sharpens earlier empirical work. Mohamad and colleagues surveyed eighty infrastructure project actors in Indonesia. They found that only 40 percent of World Bank indicators performed well and met expectations, and the hazardous materials indicator under ESS3 had the lowest conformity at 29.45 percent.³⁹ Their study measured practice. It did not ask where the rules sit. The present analysis locates one cause at the level of law. When the financing rule does not link safeguards to eligibility, weak practice carries no financial cost for the project owner. Work on land acquisition supports the same reading. Meckelburg and Wardana showed how the "public interest" label has been used to acquire land for projects that serve political and business elites.⁴⁰ Rosmidah and colleagues proposed screening for indigenous rights and free, prior, and informed consent before strategic projects acquire land. Studies of mining law reach a similar conclusion on consent.⁴¹

The ESS7 row also exposes a vocabulary problem. The World Bank speaks of indigenous peoples. Indonesian law speaks of *masyarakat hukum adat*, whose recognition depends on regional acts and, for forests, on Constitutional Court Decision Number 35/PUU-X/2012 of 16 May 2013. Bedner and Arizona

³⁹ Abdullah and Keshminder, "What Drives Green Sukuk? A Leader's Perspective."

⁴⁰ Rebecca Meckelburg and Agung Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia," *Land Use Policy* 137 (2024): 107017, <https://doi.org/10.1016/j.landusepol.2023.107017>; Muhtadi Muhtadi, "Public Interest Development in Indonesia: Considerations Regarding Land Acquisition and Its Impact on the Environment," *International Journal of Sustainable Development and Planning* 17, no. 8 (2022): 2419–26, <https://doi.org/10.18280/ijstdp.170827>.

⁴¹ Rosmidah, "Reconstructing Land Acquisition Law for Indonesia's National Strategic Projects," *Jurnal IUS Kajian Hukum dan Keadilan* 14, no. 2 (2026): 376–99, <https://doi.org/10.29303/ius.v14i2.1952>; La Ode Dediharsiadi, Adhe Ismail Ananda, and Zico Junius Fernando, "Free, Prior, and Informed Consent in Indonesia's Mining Law: Comparative Lessons from Canada and Norway," *Indonesian Comparative Law Review* 8, no. 1 (2025): 1–15, <https://doi.org/10.18196/iclr.v8i1.27659>.

showed that this recognition route is slow and uneven.⁴² A safeguard in PP 16/2023 would therefore need its own definition of affected customary communities. Borrowing the ESF term without adapting it would leave many communities outside the scope of the rule.

The rows on labor, community safety, and disclosure show a different pattern. Here the problem is not a missing statute but a missing audience. Article 48 of PP 16/2023 sends progress reports upward to two ministers. It does not send anything outward to the people who live next to the project. Law Number 14 of 2008 on Public Information Disclosure grants citizens a general right to request public information, yet the right to ask is weaker than the duty to publish. A worker injured on a *ṣukūk*-financed site or a family whose water source is polluted has no project-level channel through which to raise the harm. The annual allocation and impact reports speak to investors in aggregate numbers. They do not name the complaints that affected communities have filed, and PP 16/2023 does not ask them to. Transparency, in short, flows toward capital and away from communities.

The cultural heritage row completes the picture. Law Number 11 of 2010 protects cultural heritage and sets procedures for chance finds. PP 16/2023 mentions neither heritage nor places of worship. The omission looks minor for a green program, yet many transport and water projects run through old settlements, graveyards, and sacred sites. The Sharia review under Article 20(e) is the natural home for such a check, because the protection of places of worship falls within *hiḥẓ al-dīn*. At present, that review asks whether the activity is lawful. It does not ask whether the project destroys what a community holds sacred.

Safeguards in Soft Law: The Norm-Linkage Gap

The absence of safeguards in PP 16/2023 does not mean Indonesia's green *ṣukūk* program lacks safeguards altogether. The Green Bond and Green *Ṣukūk* Framework of 2018 lists eligible sectors and excludes new fossil fuel power capacity, large hydropower, and nuclear-related assets. The second-party opinion records that candidate projects are tagged in the budget as mitigation or adaptation, screened against the framework, and required to comply with

⁴² Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–34, <https://doi.org/10.1080/14442213.2019.1670246>.

environmental impact assessment.⁴³ The Government Securities Framework for the SDGs, published in August 2021, expanded the exclusion list. It excludes child and forced labor, fossil fuel, nuclear assets, hydropower above 30 MW, biomass grown in areas of high biodiversity, highly polluting infrastructure such as airports and new roads, and agriculture projects related to forest conversion.⁴⁴ In 2025, the government replaced it with a Sustainable Government Securities Framework, which received a second-party opinion from Sustainable Fitch on 30 April 2025.⁴⁵ Allocation and impact reports appear every year.

Here lies the paradox. Indonesia has built its most detailed green safeguards in the documents that bind the least. A framework is a promise from the issuer to investors. It does not amend PP 16/2023, nor does it give an affected community a legal hook. The exclusion list is in a policy document, while the rule that determines which projects receive funding says nothing about exclusions. That is the norm-linkage gap in its plainest form. The safeguard exists, but the eligibility decision does not depend on it.

The soft law also has gaps of its own. The 2021 framework selects projects through budget tagging. Line ministries tag their spending, the planning ministry validates its fit with the nationally determined contribution, and the Ministry of Finance endorses the list.⁴⁶ The selection procedure does not mention environmental impact assessment, safeguards, or environmental and social risk. The framework also says nothing about resettlement, indigenous peoples, cultural heritage, stakeholder consultation, or grievance handling. The 2025 framework widened the eligible categories, but the issuer's own report on it describes no new safeguard procedure. In other words, the exclusion list has grown more detailed, while the process that would enforce it has stayed where it was.

The wider green bond literature explains why this matters. Park described the green bond market as a regime in which investors and private standard

⁴³ CICERO Center for International Climate Research, "Second Opinion on the Republic of Indonesia's Green Bond and Green Sukuk Framework."

⁴⁴ Ministry of Finance of the Republic of Indonesia, "Republic of Indonesia SDGs Government Securities Framework" (Jakarta: Ministry of Finance, 2021), 26–27.

⁴⁵ Directorate General of Budget Financing and Risk Management, "Green Sukuk Allocation and Impact Report 2025," 24.

⁴⁶ Ministry of Finance of the Republic of Indonesia, "Republic of Indonesia SDGs Government Securities Framework," 27–28.

setters act as regulators.⁴⁷ Flammer found that corporate green bonds improve environmental performance mainly when a third party certifies them, and Tang and Zhang found that stock markets reward green bond announcements.⁴⁸ Credibility, in other words, has a market price. Other studies point to missing standards and greenwashing as the main threats to the market.⁴⁹ Tolliver and colleagues linked green bond growth to national climate pledges, which makes sovereign credibility part of the product.⁵⁰ A sovereign issuer sits in a special position. It writes the framework and it also writes the law. Voluntary safeguards make sense for a private company that cannot legislate. They make much less sense for a state that can. Dikau and Volz showed that public financial authorities already shape green finance through their mandates, so the state has tools beyond persuasion.⁵¹

The forest conversion plan of 2025 shows the risk in practice. The CICERO opinion had already flagged a possible deforestation element in 2018. Research on food estates on peatland rated the socio-economic and ecological risk as moderate to high.⁵² Nothing in PP 16/2023 prevents a project linked to forest conversion from entering the priority list, provided that it passes the general feasibility test. The irony is sharp. The 2021 framework already excludes agriculture projects related to forest conversion, yet that exclusion binds no one when PP 16/2023 decides eligibility. Had the 2023 regulation copied this

⁴⁷ Stephen Kim Park, "Investors as Regulators: Green Bonds and the Governance Challenges of the Sustainable Finance Revolution," *Stanford Journal of International Law* 54, no. 1 (2018): 1–47.

⁴⁸ Caroline Flammer, "Corporate Green Bonds," *Journal of Financial Economics* 142, no. 2 (2021): 499–516, <https://doi.org/10.1016/j.jfineco.2021.01.010>.

⁴⁹ Umair Saeed Bhutta, "Green Bonds for Sustainable Development: Review of Literature on Development and Impact of Green Bonds," *Technological Forecasting and Social Change* 175 (2022): 121378, <https://doi.org/10.1016/j.techfore.2021.121378>; Pauline Deschryver and Frederic de Mariz, "What Future for the Green Bond Market? How Can Policymakers, Companies, and Investors Unlock the Potential of the Green Bond Market?," *Journal of Risk and Financial Management* 13, no. 3 (2020): 61, <https://doi.org/10.3390/jrfm13030061>.

⁵⁰ Clara Tolliver, Alexander Ryota Keeley, and Shunsuke Managi, "Drivers of Green Bond Market Growth: The Importance of Nationally Determined Contributions to the Paris Agreement and Implications for Sustainability," *Journal of Cleaner Production* 244 (2020): 118643, <https://doi.org/10.1016/j.jclepro.2019.118643>.

⁵¹ Simon Dikau and Ulrich Volz, "Central Bank Mandates, Sustainability Objectives and the Promotion of Green Finance," *Ecological Economics* 184 (2021): 107022, <https://doi.org/10.1016/j.ecolecon.2021.107022>.

⁵² Irma Yeny, "Examining the Socio-Economic and Natural Resource Risks of Food Estate Development on Peatlands: A Strategy for Economic Recovery and Natural Resource Sustainability," *Sustainability* 14, no. 7 (2022): 3961, <https://doi.org/10.3390/su14073961>.

exclusion into its eligibility article, the question would now be settled by law rather than by policy. Liu and Lai made a similar point about Malaysia. They found that adopting international green bond principles gave Malaysian green *ṣukūk* global acceptance but also left it open to greenwashing.⁵³ Raeni and colleagues likewise argued that Indonesian green *ṣukūk* reporting needs to move from transparency to traceability.⁵⁴

The Sharia Channel as the Missing Link

The legal order already contains one binding route into eligibility. Article 25 of Law Number 19 of 2008 requires the Minister of Finance to request a fatwa or a statement of Sharia conformity for every issuance of state *ṣukūk*. Articles 12(2) and 20(e) of PP 16/2023 go further at the project level. They leave the criteria for Sharia-compliant projects to DSN-MUI, and they make Sharia conformity one of the factors that the planning minister must assess. This means that a Sharia criterion is not advice. It is a condition that the regulation itself makes decisive.

The channel already carries a binding rule on the use of funds. Fatwa DSN-MUI Number 69 of 2008 on State Sharia Securities states, in items 4 and 5 of its special provisions, that the use of SBSN assets must conform to *sharī'a* principles. It also states that the use of issuance proceeds must not contradict those principles. Fatwa MUI 86/2023 has since declared uncontrolled deforestation and forest burning *ḥarām*. Read together, the two fatwas mean that *ṣukūk* proceeds spent on such activity would breach a Sharia condition of the issuance itself. No new statute would be needed. The link runs from Fatwa 86/2023, through Fatwa 69/2008 and the DSN-MUI project criteria, into Article 20(e) of PP 16/2023. This is the most protected claim to novelty in this article. It does not ask Indonesian law to import a foreign standard. It asks Indonesian Sharia governance to apply its own prohibitions.

One step in this chain remains untested. PP 16/2023 refers to project criteria set by DSN-MUI, and Indonesian legal documentation identifies them as

⁵³ Felicia H M Liu and Karen P Y Lai, "Ecologies of Green Finance: Green Sukuk and Development of Green Islamic Finance in Malaysia," *Environment and Planning A: Economy and Space* 53, no. 8 (2021): 1896–1914, <https://doi.org/10.1177/0308518X211038349>.

⁵⁴ Raeni Raeni, Ian Thomson, and Ann-Christine Frandsen, "Mobilising Islamic Funds for Climate Actions: From Transparency to Traceability," *Social and Environmental Accountability Journal* 42, no. 1–2 (2022): 38–62, <https://doi.org/10.1080/0969160X.2022.2066553>.

DSN-MUI Decision Number 01/DSN-MUI/III/2012 on Criteria of Projects in Accordance with Sharia Principles.⁵⁵ The text of that decision is not publicly available. The author therefore cannot say whether it names environmental harm as a ground for exclusion. The argument does not depend on the answer, because Fatwa 69/2008 already bars uses of proceeds that contradict Sharia. The criteria decide only whether that bar works at the screening stage. If they are silent on the environment, the channel is open but unused. MUI has shown that it can use fatwas as tools of conservation. Its fatwas on wildlife protection and forest burning are earlier examples.⁵⁶ Harnowo and Habib observed that MUI's engagement with climate change had long been indirect, and Fatwa 86/2023 changed that.⁵⁷ Testriono and Billahi warn, however, that religious environmentalism in Indonesia meets real political and economic resistance.⁵⁸ A *fatwa* that stays outside the eligibility criteria will change little.

DSN-MUI has a method for taking this step. Studies of its fatwas show a council that adapts rulings when the underlying reasons and interests change. Hidayati and colleagues trace this flexibility in the council's fatwas on digital finance, where it relied on progressive legal reasoning to set Sharia standards for new products.⁵⁹ Fakhрина and Hamid observe, however, that this flexibility has mostly served to admit market products rather than to restrain them.⁶⁰ An environmental criterion for *şukūk* projects would test whether the same

⁵⁵ Jaringan Dokumentasi dan Informasi Hukum Kabupaten Tegal, "Perluasan Pemanfaatan Instrumen SBSN Untuk Pembiayaan Proyek," n.d., https://jdih.tegalkab.go.id/file-download/mono-grafi/1753068834_artikel_2.pdf.

⁵⁶ Fachruddin Majeri Mangunjaya and Gugah Praharawati, "Fatwas on Boosting Environmental Conservation in Indonesia," *Religions* 10, no. 10 (2019): 570, <https://doi.org/10.3390/rel10100570>.

⁵⁷ Harnowo and Habib, "Islamic Law and Environment Issues: Indonesian Ulama Council's Fatwas on Climate Change."

⁵⁸ Testriono and S Billahi, "Revisiting Religious Environmentalism in Indonesia: Navigating Ethics, Politics, and Policy," *Studia Islamika* 32, no. 3 (2025): 405–19, <https://doi.org/10.36712/sdi.v32i3.46674>; Jens Koehrsen, "Muslims and Climate Change: How Islam, Muslim Organizations, and Religious Leaders Influence Climate Change Perceptions and Mitigation Activities," *WIREs Climate Change* 12, no. 3 (2021): e702, <https://doi.org/10.1002/wcc.702>.

⁵⁹ Tri Hidayati et al., "Digitalization of Islamic Finance: Epistemological Study of the National Sharia Board-Indonesian Council of Ulama's Fatwa," *Al-Ahkam* 33, no. 2 (2023): 255–78, <https://doi.org/10.21580/ahkam.2023.33.2.17324>.

⁶⁰ Agus Fakhрина and Abdul Hamid, "Sacralizing the Market? The Role of DSN-MUI in the Legal-Economic Legitimacy of Islamic Banking in Indonesia," *Ahkam: Jurnal Ilmu Syariah* 25, no. 1 (2025): 125–42, <https://doi.org/10.15408/ajis.v25i1.40879>.

method can say no. It would turn a tool of market accommodation into a tool of restraint.

The Sharia channel also answers an old criticism. Zainuri and colleagues found that current assessment practice displaces normative Islamic principles from the evaluation of green *ṣukūk* projects.⁶¹ Ironically, the *ṣukūk* program already has a Sharia gate that every project must pass. That gate checks the contract structure and the activity's halal status. It does not yet check whether the activity destroys what the *maqāṣid* protect. A Sharia review that ignores ecological harm certifies the form of the transaction while leaving its substance unexamined.

Operationalizing the *Maqāṣid* as Regulatory Mechanisms

Table 2 turns the argument into mechanisms. Each row pairs one *maqṣad* with one or two World Bank standards and identifies the article in PP 16/2023 where a mechanism could be introduced. Each of the ten standards appears once. The table also states the textual and *uṣūl* anchors and marks where the mapping is classical and where it rests on the author's analogy.

Table 2
Operationalizing the *maqāṣid* dimensions as regulatory mechanisms in the SBSN project-financing framework

<i>Maqṣad</i>	ESF standard	Proposed mechanism and insertion point in PP 16/2023	Textual and <i>uṣūl</i> anchor	Basis of mapping
<i>Ḥifẓ al-dīn</i> (religion)	ESS8	Sharia conformity is already an assessment factor (arts. 12[2], 20[e]). Extend art. 20 to effects on places of worship and cultural heritage, with chance-find procedures in the regulation delegated by art. 23.	Quran 22:40; al-Ghazālī, <i>al-Mustasfā</i> 174 (religion first among the five).	Classical. Mapping to ESS8 is analogical, since heritage is wider than religion.
<i>Ḥifẓ al-naḥs</i> (life)	ESS2, ESS4	Add community and occupational health and	Quran 5:32; Ibn Mājah nos. 2340–41 (<i>lā ḍarar</i>	Classical.

⁶¹ Zainuri, Nawafil, and Nurhasanah, "Assessing Indonesia's Green Sukuk Projects through the Framework of Fiqh al-Bi'ah."

<i>Maqṣad</i>	ESF standard	Proposed mechanism and insertion point in PP 16/2023	Textual and <i>uṣūl</i> anchor	Basis of mapping
		safety risk to the minimum risk profile (art. 21[1]) and to the feasibility study (art. 16[4]); allow suspension recommendations for serious safety breaches (art. 52).	<i>wa lā ḍirār</i>); <i>Majalla</i> art. 20.	
<i>Ḥifẓ al-'aql</i> (intellect)	ESS10	Extend reporting (art. 48) to public disclosure of environmental and social indicators and to grievance handling; require a record of stakeholder consultation in the feasibility study (art. 16[4]).	Quran 2:42 and 2:283 (against concealing truth or testimony); <i>al-Mustasfā</i> 174.	Extended by analogy; the step to informed decision-making is the author's argument.
<i>Ḥifẓ al-nasl</i> (lineage)	ESS5, ESS7	Require a resettlement and livelihood restoration plan and documented consultation with affected customary communities in the feasibility study (art. 16[4]) and priority-list assessment (arts. 20, 22); list uncompensated displacement among the exclusion criteria.	Quran 2:205 (destruction of tilth and offspring); <i>al-Bukhārī</i> no. 2452 and <i>Muslim</i> no. 1610 (wrongful taking of land), by analogy.	Classical; the inter-generational livelihood reading is interpretive.
<i>Ḥifẓ al-māl</i> (property)	ESS1, ESS9	Add environmental and social risk to art. 21(1) and risk classification to art. 20; require an environmental and social management system for recipients of on-lending	Quran 4:58 and 59:7; <i>al-Bukhārī</i> nos. 893, 7138 and <i>Muslim</i> no. 1829 (every person is a shepherd); <i>Majalla</i> art. 58.	Classical. Treating public funds as entrusted property of the community is

<i>Maqṣad</i>	ESF standard	Proposed mechanism and insertion point in PP 16/2023	Textual and <i>uṣūl</i> anchor	Basis of mapping
		(arts. 25–35); extend sanctions in art. 36 to safeguard breaches.		the author's characterisation.
<i>Ḥifẓ al-bī'ah</i> (environment)	ESS3, ESS6	Set a negative screening list for the priority list (art. 22) in the regulation delegated by art. 23, e.g. primary forest and critical habitat conversion; make valid environmental approval a condition of eligibility (art. 20); allow suspension recommendations (art. 52).	Quran 7:56, 30:41, 28:77 and 2:30 (<i>khalīfah</i>); <i>Majalla</i> art. 30; Fatwa MUI 86/2023, (1)–(2).	Extended and contested. Subsumed under <i>ḥifẓ al-naḥs</i> in the classical structure; independent per Ibn 'Āshūr and Auda as read in this article.

Source: author's analysis.

Three points explain the table. First, *ḥifẓ al-māl* carries the heaviest regulatory load. Public funds are held in trust for the community, and the maxim that the ruler's action depends on *maṣlaḥa* applies to every rupiah of *ṣukūk* proceeds.⁶² The simplest reform follows from this: add environmental and social risk to the list in Article 21(1). One phrase in one article would close the ESS9 gap for the on-lending channel.

Second, the mapping of *ḥifẓ al-'aql* to disclosure and grievance handling rests on analogy. The intellect needs accurate information to make choices, and the Quran forbids concealing the truth.⁶³ The step from that prohibition to a public grievance mechanism is the author's. It is defensible, but it should not be presented as settled doctrine.

Third, *ḥifẓ al-bī'a* carries the negative screening list. The list can sit in the ministerial regulation that Article 23 delegates, so that technical detail stays out of the main regulation. The Quran forbids corruption on earth after it has been

⁶² Ḥaydar, *Durar al-Ḥukkām fī Sharḥ Majallat al-Aḥkām*, 58.

⁶³ M A S Abdel Haleem, *The Qur'an: A New Translation* (Oxford: Oxford University Press, 2004), 2 : 283.

set right, and it ties visible corruption on land and sea to what human hands have earned.⁶⁴ Fatwa 86/2023 has already named the worst forms of that corruption. A negative list that excludes primary forest conversion and critical habitat would simply write those forms into the eligibility rule.

Lessons and Limits of the Malaysian Comparison

Malaysia offers the closest comparison. The Securities Commission Malaysia issued its Sustainable and Responsible Investment *Shukūk* Framework in 2014 and revised it in 2019. The revision aligned eligible projects with the national SRI roadmap and set requirements for the use of proceeds, internal project evaluation, management of proceeds, and annual reporting. These requirements are set out in the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework, which the Securities Commission issued under section 377 of the Capital Markets and Services Act 2007. They therefore bind every issuer that chooses the SRI label. The binding core is disclosure and reporting. The appointment of an independent expert to assess the eligible projects remains optional.

The comparison should not be overstated. In October 2023, the Securities Commission Malaysia published its “Maqasid al-Shariah Guidance for the Islamic Capital Market”. The document is principles-based. It names six aspirations: humanity, justice and benevolence, clarity and transparency, flexibility and innovation, fiduciary duty and accountability, and accessibility and inclusivity. The Commission stated that it complements the existing rules and does not replace them. Malaysia has not turned *maqāsid* into binding safeguard rules either. What it has done is give its disclosure and reporting duties the form of regulatory guidelines. Indonesia maintains its equivalent duties within a framework drafted by the issuer itself.

The structural difference also limits transfer. Malaysia's market is led by corporate issuers, and one regulator supervises them. Indonesia's program is sovereign. The Ministry of Finance issues, line ministries and state enterprises execute, the planning ministry selects, and DSN-MUI certifies. No single regulator stands above the issuer, because the issuer is the state. Wan Zahari's comparison of the two countries identified regulatory fragmentation and weak

⁶⁴ Abdel Haleem, 7:56, 30:41, 28:77.

enforceability as the main obstacles to formal safeguard integration.⁶⁵ Alhowaish reached a comparable view on Saudi municipal green bonds, where adoption required regulatory alignment and stakeholder coordination.⁶⁶ Indonesia can transfer the Malaysian idea that labeled issuance carries binding disclosure duties. It cannot transfer the Malaysian enforcement structure without adaptation.

A Dual Assurance Design for the Indonesian Sovereign Model

The proposals below follow the insertion points in table 2. They are ordered by the binding force they would carry, from the strongest to the weakest. They are not the only permissible form, because the choice among instruments belongs to *siyāsa shar'īyya*. What matters is that at least one route makes the safeguards decisive for eligibility.

The strongest route is an amendment of PP 16/2023. Article 16(4) would require an environmental and social assessment scaled to project risk, a record of stakeholder consultation, and a plan for resettlement and livelihood restoration where land is taken. Article 20 would add environmental and social risk classification to the assessment factors and make valid environmental approval a condition of eligibility. Article 21(1) would add environmental and social risk to the minimum risk profile for on-lending, and Article 36 would extend sanctions to serious safeguard breaches. Article 48 would add public disclosure of environmental and social indicators and a grievance channel, while Article 52 would allow the evaluating ministers to recommend suspension in the event of a serious breach.

The second route runs through the delegated regulations. The ministerial regulation under Article 23 could set out the negative screening list, the risk categories, and the procedure for chance finds of cultural heritage. The Ministry of Finance could issue a parallel rule on disclosure under Article 38. This route

⁶⁵ Wan Zahari, "Operationalising Green Sukuk within the World Bank Environmental and Social Framework."

⁶⁶ Abdulkarim K Alhowaish, "Green Municipal Bonds and Sustainable Urbanism in Saudi Arabian Cities: Toward a Conceptual Framework," *Sustainability* 17, no. 9 (2025): 3950, <https://doi.org/10.3390/su17093950>.

is faster. It keeps technical detail flexible, but it binds less firmly than the regulation itself.

The third route is the Sharia channel. DSN-MUI could revise its criteria for Sharia-compliant projects so that activities declared *ḥarām* in Fatwa 86/2023 fail the Sharia test. Each issuance would then carry one joint statement signed by the Sharia body and by an independent environmental verifier. This is the dual assurance model in its Indonesian form. It asks both gates to look at the same project at the same time.

All three routes should follow the proportionality used by the World Bank framework itself. A full assessment should apply to high- and substantial-risk projects. Low-risk projects, such as retrofitting public buildings, need a lighter path. Without proportionality, the reform would burden small regional executors more than the large projects that carry the real risk.

Implications, Strengths, and Limitations

The findings carry three implications. For Indonesian legislators, the gap is small in text but large in effect. A handful of amendments would move safeguards from policy into law. For Sharia bodies, the findings show that Sharia *compliance* can carry environmental content without leaving its own sources. For Islamic legal theory, the article shows one path from a *maqṣad* to a regulatory duty that passes through textual evidence, legal maxims, a contemporary fatwa, and a statutory channel.

The study has clear strengths. It reads the regulation now in force rather than its predecessor that was revoked. It separates regulation, sectoral statutes, and soft law, preventing the common error of calling the whole regime a vacuum. It also marks which parts of the *maqāṣid* mapping are classical and which rest on analogy.

The study also has limits. It is doctrinal and does not measure project outcomes. It could not read the DSN-MUI project criteria, so the screening step for the Sharia channel remains untested. It read the 2021 framework in full, but it could examine the 2025 framework only through the issuer's allocation and impact report. Finally, it does not assess the political feasibility of amending a regulation that the government adopted only in 2023. Future research should test the Sharia channel against the DSN-MUI documents and follow individual projects from the priority list to completion.

Conclusion

Indonesia's sovereign green *ṣukūk* rests on a norm-linkage gap rather than on a legal vacuum. PP 16/2023 names social and environmental feasibility, but eight of the ten World Bank standards find no provision in it. Its clearest defect is the risk list for on-lending, which omits environmental and social risk altogether. The safeguards that do exist live in issuer frameworks and in sectoral statutes that never decide whether a project receives *ṣukūk* money. The *maqāṣid* analysis shows that this arrangement falls short of what Islamic law asks of the state. The classical treatment of *ḍarūrī* harms, the shepherd *ḥadīth*, the legal maxims, and Fatwa MUI 86/2023 together place a duty of protection on the government wherever it commits public funds. The article's contribution to Islamic legal studies is to show that this duty already has a binding channel in Indonesian law. The Sharia compliance process that Law Number 19 of 2008 and PP 16/2023 make decisive can carry environmental prohibitions into project eligibility.

Lawmakers should amend Articles 16, 20, 21, 36, 48, and 52 of PP 16/2023 so that environmental and social risk becomes a condition of eligibility and a ground for sanction. The planning ministry should place a negative screening list in the regulation delegated by Article 23. DSN-MUI should review its project criteria in light of Fatwa 86/2023 and co-sign a joint compliance statement with an independent environmental verifier for each issuance. Researchers should obtain the text of DSN-MUI Decision 01/DSN-MUI/III/2012, obtain the full text of the 2025 framework, and follow selected projects in the field to test whether binding safeguards change outcomes.[a]

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