

TRANSLATING FIQH PRINCIPLES INTO ISLAMIC FINANCIAL PRACTICE: REFLECTIONS ON MALAYSIA'S HAJAH AND DARURAH POLICY DOCUMENT

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Abstract: This paper examines Bank Negara Malaysia's 2024 Policy Document on Hajah and Darurah and its implications for Shariah governance and supervision in Malaysia. While practitioner commentary and recent studies discuss selected provisions or applications, limited attention has been given to comparing all three regulatory categories with their underlying juristic distinctions. Using qualitative textual and policy analysis, the study examines the full Policy Document and compares Hajah Type 1, Hajah Type 2, and Darurah across six dimensions: the nature and scope of hardship; the applicability and conditionality of Shariah Advisory Council (SAC) rulings; duration and proportionality; governance responsibilities; approval and reporting routes; and the relationship with recovery or resolution. The analysis shows that the framework reflects the elevation of need, proportionality, removal and comparison of harm, and the withdrawal of relief when its grounds cease. Hajah Type 2 and Darurah are both conditional, temporary, and proportionate, but Hajah Type 2 remains below the Darurah threshold, whereas Darurah requires a recovery-or-resolution trigger alongside the other conditions in paragraph 9.7. The study offers a preliminary comparison of the policy's regulatory categories and the juristic positions reviewed. It concludes that the framework provides structured guidance for institutional decision-making, while the consistency and effects of its application require further empirical research.

Keywords: Hajah, Darurah, Shariah governance, Islamic banking, Takaful, Malaysia

1. Introduction

Malaysia's Islamic finance sector has evolved from a niche offering into a core component of the financial system. BNM reports that Islamic financing accounted for 48% of total financing in 2025, on a measure that includes development financial institutions (Bank Negara Malaysia, 2025). This development has taken place within a regulatory architecture led by Bank Negara Malaysia (BNM). It also presents a recurring legal and supervisory question: how can Islamic financial institutions respond to genuine hardship without turning Shariah concessions into open-ended commercial discretion? *Hajah* (need) and *Darurah* (dire necessity) provide juristic bases for limited facilitation, but their application requires defined thresholds and controls.

The question is not new, and the criticism it attracts is well documented. A body of scholarship argues that Islamic financial institutions have invoked hardship-based maxims to authorise products that could not otherwise be justified, and that this reflects weaknesses in Shariah governance rather than genuine juristic necessity (Abozaid, 2016; Al-Nahari et al., 2022; Siddique & Rashid, 2019). The remedy proposed is institutional: that categories of need be defined in advance by a competent collective body rather than case by case within each institution.

BNM issued the Policy Document on *Hajah* and *Darurah* on 3 January 2024, with an effective date of 2 January 2025 (Bank Negara Malaysia, 2024). It establishes general preconditions, a three-category classification, and enhanced governance for *Hajah* Type 2 and *Darurah*, including referral to BNM's Shariah Advisory Council (SAC) for *Darurah*. The document is therefore an instance of precisely the institutional remedy the literature proposes, and it raises a question for juristic examination: how faithfully does a supervisory taxonomy of this kind carry over the juristic distinctions it draws on?

This paper argues that BNM's principal regulatory innovation is a governance translation mechanism, in which hardship is converted into differentiated categories, SAC ruling conditions, recovery-or-resolution triggers, and governance and reporting controls. The analysis proceeds in two movements. It first sets out the juristic material on *Hajah* and *Darurah*, including the *maqasid* hierarchy, the scope-based division of need, the elevation doctrine, and the limits classical scholarship places on hardship-based concession. It then compares the policy against that material, asking of each provision whether it preserves a classical position, reconstructs it on a different criterion, or departs from it. The paper accordingly treats the policy neither as a codification of Fiqh nor as a purely prudential instrument, but as a structured reception in which some juristic commitments are carried over intact, some are restated in administrable form, and some operate without being articulated.

2. Literature Review

2.1 Hardship and Concession in the Legal Maxims

The juristic treatment of hardship is organised through *al-qawa'id al-fiqhiyyah*, the legal maxims that summarise recurring patterns of ruling across the Islamic law. Zakariyah (2015) traces *al-mashaqqah tajlib al-taysir* (hardship begets facilitation) to its Qur'anic, prophetic, and consensual bases, and treats it as one of the five leading maxims from which subsidiary rules on concession are derived. Jaber and Abu al-Basl (2024) examine the same maxim as applied within Islamic financial institutions.

Two further maxims govern the outer limit of facilitation. *Al-darurat tubih al-mahzurat* (necessities permit prohibitions) authorises departure from an ordinary rule where the conditions of necessity are satisfied (Zakariyah, 2012; Ibn Nujaym, 1999; Rohim, 2022). *Al-Darurah tuqaddaru bi-qadariha* confines the resulting concession to the extent and duration that the hardship requires (Aziz & Ahmad, 2018). Alongside these, *al-'ada muhakkama* establishes custom as a source of legal determination, which supplies the juristic basis for treating commercial practice (*'urf tijari*) as relevant to permissibility (Zakariyah, 2012).

The policy also identifies *al-darar yuzal* (harm must be removed), *al-darar al-ashadd yuzal bi al-darar al-akhaff* (greater harm is removed by lesser harm), and *idha daqa al-amr ittasa'a wa idha ittasa'a daqa* (constraint allows flexibility, which disappears when the constraint is over) (Bank Negara Malaysia, 2024, Appendix 1). These maxims connect the

reason for granting a concession with its limits: the response should remove the relevant harm, avoid an equally or more harmful outcome, and remain tied to the circumstances that justify it.

A related concept is *umum al-balwa*, the widespread affliction or difficulty that is hard to avoid. In the classical discussion of legal alleviation, al-Suyuti identifies seven grounds of *takhfif* (Concession): travel, illness, compulsion, forgetfulness, ignorance, hardship and widespread affliction and deficiency (Al-Suyuti, 1983). Abd Razak and Ramli (2018) describe *umum al-balwa* as a form of *mashaqqah* (hardship) closely connected to *Darurah* that triggers *rukhsah* (Concession), and situate it within al-Suyuti's grounds of concession. The concept matters here because it is one of the two descriptive criteria on which BNM's first category rests.

The maxims are not free-standing permissions. Bakar and Rahim (2021) and Rohim (2022) connect them to the *maqasid* hierarchy, in which al-Shatibi distinguishes *daruriyyat* (essentials), *hajiyyat* (needs), and *tahsiniyyat* (embellishments). Only the first two admit relaxation. Furthermore, this hierarchy functions as a preference structure to resolve conflicting interests; the five commonly identified essentials are religion, life, intellect, lineage, and property.

2.2 Darurah: Competing Definitions and the Conditions of Invocation

Scholarship contains a narrow and a broad interpretation of *Darurah*. On the narrow view, it is confined to circumstances approaching loss of life, a position associated in the classical literature with al-Suyuti and al-Qurtubi and others (Siddique & Rashid, 2019). Isa (2016) documents this view interpretation in operation, finding that *Darurah* was expressly relied upon in fourteen of forty-five Malaysian medical fatwas and applies only where no lawful means exists to prevent harm to life.

On the broad perspective, *Darurah* extends beyond life to the remaining essential interests, so that severe harm to property or to the ordered conduct of affairs may qualify. This is the view that follows from al-Shatibi's treatment of *daruriyyat* as the interests without which the affairs of religion and of this world lose their order (Bakar & Rahim, 2021; Siddique & Rashid, 2019). The broader reading provides a basis for considering institutional hardship, but any application must still identify the essential interest threatened and show that the conditions of necessity are met.

Both views attach conditions. Isa (2016) and Rohim (2022) identify the recurring requirements: the harm must be established by evidence rather than mere conjecture, no lawful alternative may be available, the concession is confined to the minimum required, and it lapses when the necessity lapses. Abozaid (2016) argues that these conditions are frequently asserted and rarely tested, and that invoking *Darurah* does not convert a prohibited product into one permissible in the first place.

2.3 Hajah: Scope, Elevation, and the General or Specific Divide

Hajah is a need whose absence causes hardship without endangering the essentials. Agha and Shafii (2021) formulate parameters for legitimate need-based ruling with reference to AAOIFI Shariah standards. They observe that public need allows a greater freedom than private need because the Shariah grants the public concession through an open-ended statement. Husnul Fatarib et al. (2020) treat *Hajah* as a basis for contemporary *ijtihad* while warning that some scholars conflate it with what they describe as a pseudo-*Darurah*, and thereby permit arrangements that remain *riba* in substance.

Classical scholarship divides *Hajah* by scope rather than severity. *Hajah aammah* is a general need affecting the community at large; *hajah khassah* is the need faced by a particular community or by the people of a particular profession (Mustofa, 2018; Siddique & Rashid, 2019). Whether the latter may be elevated to the position of necessity was disputed. Al-Juwayni permitted elevation only for the general need; al-Zarkashi extended it to the specific need; al-Suyuti combined the two in the formulation that *Hajah*, whether general or specific, is treated as *Darurah*, and Ibn Nujaym adopted the combined form (Siddique & Rashid, 2019; Ibn Nujaym, 1999).

Mustofa (2018) shows that this maxim, in its full form *al-hajah qad tunazzalu manzilah al-darurah ammatan kanat aw khassah*, is a frequently invoked juristic basis in the Islamic finance fatwas of Indonesia's Dewan Syariah Nasional. Two limits attach to the elevation. It does not extend to what is prohibited in itself, so *riba* remains outside its reach however pressing the need. And where a need is elevated, it becomes subject to the rules governing *Darurah*, which means the resulting concession is temporary rather than continuing (Siddique & Rashid, 2019).

2.4 Distinguishing Hajah from Darurah

Siddique and Rashid (2019) set out five differences drawn from Zarqa, Abu Zahrah, Ibn al-Qayyim, and al-Shatibi. Relaxation granted on the basis of *Hajah* is treated as continuing, whereas relaxation granted on the basis of *Darurah* is temporary. *Darurah* can render permissible what is prohibited in itself (*haram bi al-dhat*), whereas *Hajah* operates only on what is prohibited by reason of an external factor (*haram bi al-ghayr*). *Hajah* may relax what is prohibited as a preventive measure, while what is prohibited by clear text can be relaxed only by *Darurah*. *Darurah* provides an excuse in matters prohibited by the Qur'an and Sunnah, while *Hajah* operates mainly where the conflict is with general juristic principles. Finally, *Darurah* subsumes *Hajah* but not the reverse.

The second distinction is the operative constraint for financial application. Kamali (2003) sets out the underlying division between what is prohibited for its own sake and what is prohibited by reason of an attendant factor, and Zakariyah (2012) applies it to mortgage contracts. The Organisation of Islamic Cooperation Fiqh Academy applied the same limit in holding that housing is a genuine need but that interest-based housing finance cannot be permitted on the basis of *Hajah* (Siddique & Rashid, 2019).

2.5 Hardship-Based Concession in Contemporary Islamic Finance

Applied scholarship divides between those developing the doctrine and those criticising its use. On the developmental side, Agha and Shafii (2021) construct parameters for need-based rulings, and Aziz and Ahmad (2018) assess *Darurah* in tawarruq against the *kulliyat*, noting that organised tawarruq was ruled impermissible by the OIC International Islamic Fiqh Academy yet continued in Malaysian practice on a *Darurah* argument. Dalvi et al. (2025) find that *Darurah* is the principal justification in mortgage and insurance fatwas issued for non-Muslim-majority jurisdictions, while recording objections to that use.

On the critical side, Al-Nahari et al. (2022) argue that demand for financial products falls under *hajiyyat* and *tahsiniyyat* rather than *daruriyyat*, so that institutions should refer to *Hajah* and not *Darurah*, and that the contrary practice reflects a conceptual flaw in how *maqasid* reasoning is applied. Abozaid (2016) makes the stronger claim that reliance on *Darurah* in Islamic banking is generally unwarranted and is traceable to weak Shariah governance.

Siddique and Rashid (2019) reach a related conclusion, finding that *Hajah* rather than *Darurah* is what is actually invoked in practice and that it has been exploited to some extent.

A separate literature examines the governance arrangements through which such rulings are made. Grassa (2013) contrasts the centralised Malaysian model, in which a statutory Shariah Advisory Council issues binding rulings, with the decentralised model prevalent in the Gulf. Haridan et al. (2018) study two Malaysian Islamic banks and report gains in religious assurance alongside persistent concerns about the independence and technical competence of Shariah boards. Mohamad Yusof and Ali (2021) and Mohd Ariffin (2022) describe the allocation of responsibilities and the Shariah-risk framework within which the policy operates.

2.6 Research Questions and the Gap

To assess the Policy Document's regulatory taxonomy, this study examines three contested research questions concerning the application of *Darurah* and *Hajah*:

RQ1: How should the scope of *Darurah* be understood in a regulatory context: according to the narrow view documented by Isa (2016), or the broader view required for institutional application?

RQ2: Can a specific need be elevated to the position of necessity in the regulatory and financial context? Mustofa (2018) and Agha and Shafii (2021) treat this as settled doctrine, whereas Abozaid (2016) and Al-Nahari et al. (2022) argue that its use in finance is routinely overstated.

RQ3: Is a *Hajah*-based concession permanent or temporary? Husnul Fatarib et al. (2020) distinguish between permanence for the community and temporariness for the individual, while Zakariyah (2012) maintains that need-based permission lasts only until a compliant alternative becomes available.

Academic engagement with the Policy Document is emerging but remains fragmented. Ishak (2025) briefly interprets its eligibility and governance controls through the principle of *sadd al-dharai*. Zakaria et al. (2025) apply its *Hajah* Type 2 and proportionality requirements to profit commissions arising from reinsurance arrangements, while Abdullah et al. (2025) examine the related issue of *al-ianah ala al-maṣiyah* in transfers between Islamic and conventional financial institutions. Abdul Halim et al. (2026) advance a stricter assessment of *Hajah* Type 2 from the same prohibitory perspective. Practitioner commentary by Allen & Gledhill (2024) and Alsagoff and Hashim (2024) explains the Policy Document's classification, governance, and reporting requirements.

These studies illuminate particular principles or applications, but they do not compare all three regulatory categories across the six analytical dimensions adopted in this study. The present study therefore will be an addition to the existing literature rather than a first analysis of the Policy Document.

3. Methodology

This study adopts a qualitative approach. It asks: how does BNM's 2024 Policy Document on *Hajah* and *Darurah* distinguish *Hajah* Type 1, *Hajah* Type 2, and *Darurah*; how are those distinctions translated into governance, approval, reporting, and supervisory requirements; and to what extent do they correspond to the juristic positions from which their vocabulary is drawn?

The Policy Document issued on 3 January 2024 is the primary legal-policy text. The entire document is examined, with Parts B and C and Appendices 1 to 4 providing the principal

material for analysis. Relevant provisions are identified by their status as mandatory standards (S) or non-mandatory guidance (G), and their use as illustrations is recorded separately. The Fiqh, Shariah-governance, and bank-resolution literature reviewed in Section 2 was selected purposively for direct relevance to the concepts and institutional mechanisms under examination. BNM's Financial Stability Review article and Annual Report 2025 are used as explanatory and later regulatory context, respectively.

The research-gap assessment was supplemented by targeted searches on Google Scholar, Scopus, Consensus and Scite using combinations of '*hajah*', '*Darurah*', 'Bank Negara Malaysia', and 'policy document', together with searches of regulatory, practitioner, and university websites. These searches supported the selection of relevant material but were not a systematic review and do not establish the absence of other studies.

The analysis compares the three categories across six dimensions: the nature and coverage of the hardship; the applicability and conditionality of the SAC ruling; the duration, quantum, and proportionality of the concession; the allocation of responsibilities among the board, Shariah committee, senior management, and control functions; the approval, notification, and supervisory route; and the relationship between the classification and recovery or resolution. The framework combines deductive criteria from the literature, particularly scope, proportionality, and governance responsibility, with document-specific distinctions concerning SAC rulings, reporting routes, and recovery or resolution. The six dimensions therefore organise the documentary material for comparison; they are not six separate methods or findings.

The document analysis proceeds in three steps. First, definitions, standards, guidance, governance provisions, and illustrations are extracted and organised under the six dimensions; a provision may inform more than one dimension. Second, these provisions are compared with the doctrinal positions in Section 2 to identify correspondence, regulatory adaptation, or possible tension. Third, the policy's illustrations are examined against that comparison, with the limits of any inference made explicit. Table 1 presents the regulatory comparison, while Section 5 and Table 2 develop the juristic interpretation. For example, paragraph 9.5(d) informs the duration and proportionality dimension in Table 1 and the discussion of temporary *Hajah* concessions in Section 5.4.

Two limitations follow. The study evaluates conceptual coherence and regulatory design, not implementation outcomes, and does not examine confidential supervisory data, individual institutional decisions, SAC deliberations, or stakeholder views. The classical positions are drawn principally from secondary scholarship and the authorities cited in the Policy Document; the paper does not claim a comprehensive independent examination of the Arabic primary texts.

4. Analysis of the Hajah and Darurah Policy Document

The policy applies to licensed Islamic banks, licensed takaful and professional retakaful operators, conventional banks and investment banks approved to conduct Islamic banking business, and prescribed development financial institutions approved to conduct Islamic financial business (Bank Negara Malaysia, 2024, para. 5.2). Paragraphs 1.7 and 1.8 locate the new categories within the *fiqhiyyah* perspective; established *usuliyyah* permissions, including *ijarah* and *salam*, are outside these requirements. It translates hardship and necessity into a three-category framework, *Hajah* Type 1, *Hajah* Type 2, and *Darurah*, using mandatory standards (S) and non-mandatory guidance (G). The distinction matters because the enhanced operational requirements in Part C apply only to *Hajah* Type 2 and *Darurah* (para. 10.1). Table

1 presents the six analytical dimensions and adds the policy illustrations as supporting examples.

Table 1. Comparative Regulatory Classification of Hajah Type 1, Hajah Type 2, and Darurah

Dimension	Hajah Type 1	Hajah Type 2	Darurah
Hardship basis	Difficult to avoid or customary commercial practice.	Non-customary; affects a specific person or entity; below <i>Darurah</i> .	Non-customary; affects a specific person or entity; triggers recovery or resolution and may or may not have systemic impact.
SAC ruling	Permissible without specific conditions or limitations; continues until overridden.	Permissible with specific conditions or limitations.	Permissible with conditions or limitations appropriate to extreme stress.
Duration and quantum	No fixed case-specific duration; the ruling continues until superseded.	Temporary and proportionate, with appropriate duration and quantum.	Temporary and proportionate, with appropriate duration and quantum.
Governance and Reporting	Ordinary governance requirements apply; no enhanced Part C process.	Shariah committee assessment; board oversight; management implementation; independent control review.	Shariah committee assessment; board oversight; management implementation; independent control review.
Approval and reporting	SAC referral under paragraph 9.2 if no prior ruling; no Part C reporting route.	Shariah committee decision and board agreement; notification and reporting to BNM.	SAC referral and written notification to BNM under Part C.
Recovery or resolution	No recovery-or-resolution trigger.	Below the <i>Darurah</i> threshold; no recovery-or-resolution trigger.	Recovery or resolution action is the distinguishing trigger.
Policy illustrations	T+2 foreign-exchange settlement; conventional nostro account.	Insurance coverage; group liquidity support; government-mandated financing.	Resolution funding through a conventional loan from an international body.

The comparison shows that BNM does not operationalize the categories through severity alone. The framework combines the source and scope of hardship, the form of the SAC ruling,

temporal and quantitative limits, and the regulatory route. Its sharpest boundary is between *Hajah* Type 2 and *Darurah*: both are case-specific, conditional, temporary, and proportionate, but only *Darurah* is tied to a recovery-or-resolution trigger, and systemic impact is possible rather than mandatory (Bank Negara Malaysia, 2024, paras. 9.3, 9.5, 9.7, and 10.1).

4.1 Hajah Type 1: Widespread or Customary Hardship

Hajah Type 1 covers hardship arising from a practice or situation that is difficult to avoid (*'umum al-balwa*) or widely accepted as commercial custom (*'urf tijari*). Its SAC ruling is unconditional and remains applicable until superseded, and unlike the other two categories it is not subject to the enhanced Part C process (Strict internal controls mandated by BNM) (Bank Negara Malaysia, 2024, paras. 9.3 and 10.1). Two illustrations are given: settlement of a foreign currency exchange within two days of the transaction date, T+2 being recognised as customary commercial practice; and use of a conventional nostro account where Shariah-compliant accounts are absent or insufficient in another jurisdiction, such balances typically earning zero or minimal returns (paras. 9.3 and 9.4).

4.2 Hajah Type 2: Specific and Conditional Concessions

Hajah Type 2 concerns a non-customary hardship experienced by a specific person or entity that remains below the *Darurah* threshold. It requires a conditional SAC ruling and temporary, proportionate application by duration and quantum, and it is subject to the enhanced Part C governance and reporting process (Bank Negara Malaysia, 2024, paras. 9.5 and 10.1 to 12.22). Under the general preconditions the institution must demonstrate that a Shariah-compliant alternative is absent or impracticable and that the concession will not create equal or greater harm.

Three illustrations are given (Bank Negara Malaysia, 2024, paras. 8.3 and 9.6). A client in a wakalah financing arrangement covering an overseas oil and gas exposure may obtain conventional insurance after exhausting reasonable efforts to secure takaful. During a stress event, a full-fledged Islamic bank may provide funds or excess high-quality liquid assets to its banking group to mitigate contagion risk, as a last resort. And a full-fledged Islamic prescribed institution may execute a Shariah non-compliant financing transaction where the government mandates it and no other institution can provide it.

4.3 Darurah: Recovery or Resolution Triggered Necessity

Darurah is the policy's highest-severity category. It concerns a non-customary hardship experienced by a specific person or entity that triggers recovery or resolution action. The hardship may or may not have systemic impact, so systemic effect is not a necessary condition (Bank Negara Malaysia, 2024, para. 9.7). Like *Hajah* Type 2 it is non-customary, case-specific, conditional, temporary, and proportionate; the distinguishing criterion is the recovery-or-resolution trigger.

A single illustration is given, confined to resolution funding. Where a resolution authority has identified an institution for resolution, exhausted all possible funding options, and can obtain the remaining funding only through a conventional loan from an international body, it may use that option (Bank Negara Malaysia, 2024, para. 9.8). This is not an open-ended authorisation for every crisis-management tool.

4.4 Dynamic Reclassification of Hardship

Paragraph 9.9 recognises that a hardship category may change with the nature and severity of the underlying event, and illustrates movement between *Hajah* Type 1 and *Hajah* Type 2 where a practice ceases to be, or becomes, customary within the industry. The policy links this reclassification to the maxim that a need may attain the status of necessity, whether general or specific (Bank Negara Malaysia, 2024, para. 9.9).

5. Translating the Maxims: Correspondence, Reconstruction, and Departure

Sections 2 and 4 described the juristic material and the regulatory framework separately. This section places them side by side. For each classical distinction it asks whether the policy preserves the classical position, reconstructs it on a different criterion, or departs from it. Table 2 summarises the result.

5.1 Regulatory Adoption of the Elevation Doctrine

The regulatory framework explicitly adopts the classical legal maxim of elevation: *al-hajah qad tunazzalu manzilah al-darurah ammatan kanat aw khassah* (a need, whether general or specific, may be elevated to the status of a necessity). Rather than serving as a blanket statement of flexibility, this maxim functions as a specific juristic mechanism. It allows scholars to treat severe, unmet needs with the same legal weight as extreme emergencies, thereby permitting temporary regulatory concessions. BNM's rendering captures a synthesis developed in classical scholarship: while al-Juwayni permitted elevation only for general needs and al-Zarkashi extended it to specific needs, al-Suyuti and Ibn Nujaym combined both into the comprehensive form used today (Siddique & Rashid, 2019; Ibn Nujaym, 1999). The clause concerning generality and specificity is the operative element of this synthesis, which the policy explicitly attributes to Muhammad al-Zuhaili's *Al-Qawaid al-Fiqhiyyah wa Tatbiqatuha fi al-Madhahib al-Arba'ah*. The correspondence between classical doctrine and modern regulation is direct. The policy is not alone in relying on this maxim; Mustofa (2018) documents its frequent use in Indonesian Islamic finance fatwas. By incorporating a rule already established in contemporary Shariah decision-making, BNM attaches the maxim to a defined administrative consequence. Specifically, it provides the legal basis for dynamically reclassifying hardship between categories as market circumstances change, with each category triggering its own specific supervisory route and governance controls.

5.2 General and Specific Need Against Hajah Type 1 and Hajah Type 2

The classical division of *Hajah* by scope has points of correspondence with the policy's division between Type 1 and Type 2. *Hajah* Type 1 rests on *'umum al-balwa* and *'urf tijari*, both of which describe generality: a difficulty widely encountered or a practice widely accepted (Abd Razak & Ramli, 2018; Zakariyah, 2012). *Hajah* Type 2 requires that the hardship be experienced by a specific person or entity (Bank Negara Malaysia, 2024, paras. 9.3 and 9.5). The classical illustration of *hajah khassah*, a need confined to the people of a particular place or trade, resembles the policy's concern with a specific need, although the two classifications need not be identical (Mustofa, 2018; Siddique & Rashid, 2019).

The correspondence is partial. Classical scholarship divides needs by the number of people affected and it is this basis that Agha and Shafii (2021) adhere to when they state that a

public need allows for more freedom than a private need. BNM's framework, however, does not rely on scope alone. For example, under strict classical fiqh, a single bank facing an isolated liquidity crisis might not qualify for a general public concession. Yet, under BNM's adapted framework, that specific bank can trigger *Hajah Type 2* relief because the policy combines the specific scope of the hardship with modern regulatory controls such as mandatory SAC conditions, temporary duration limits, and the enhanced Part C reporting process (Bank Negara Malaysia, 2024, paras. 9.3, 9.5, and 10.1). These requirements operate together; the form of the SAC ruling does not replace the other classification criteria.

The policy can therefore be read as a regulatory adaptation of distinctions familiar to the juristic literature. It makes them usable within an institutional decision-making process, but the analysis does not establish that *Hajah Type 1* and *Type 2* reproduce the classical categories exactly. At the same time, this regulatory adaptation requires institutions to ground their classification based on the actual facts of the hardship, rather than being defined by the regulatory reporting route itself.

5.3 Prohibition in Itself and Prohibition by External Factor

The most significant constraint in the classical material is that *Hajah* cannot render permissible what is prohibited in itself (Kamali, 2003; Zakariyah, 2012). The Organisation of Islamic Cooperation Fiqh Academy applied this in refusing to justify interest-based housing finance on the basis of need, notwithstanding that housing was accepted as a genuine need (Siddique & Rashid, 2019). Husnul Fatarib et al. (2020) identify the failure to observe this limit as the characteristic error in contemporary need-based reasoning.

The policy's most clearly *riba*-bearing illustration is the conventional loan obtained from an international body during resolution, which is placed under *Darurah* (Bank Negara Malaysia, 2024, para. 9.8). Abdul Halim et al. (2026, pp. 302-305) adopt a stricter position by warning that the *Hajah Type 2* liquidity illustration may amount to *al-i'ānah 'alā al-ma'ṣiyah*. Abdullah et al. (2025), however, consider such a transfer conditionally permissible where it protects the Islamic financial institution, prevents systemic disruption and is accompanied by safeguards against the use of the funds for Shariah-non-compliant activities. These differing assessments demonstrate that the illustration alone does not establish the contractual form or Shariah characterisation of every arrangement. Similarly, the observation that conventional nostro balances normally earn zero or minimal returns does not establish the absence of interest (Bank Negara Malaysia, 2024, para. 9.4). A case-specific assessment remains necessary, taking account of the contractual terms, purpose and use of the funds, the applicable SAC ruling and the cumulative conditions imposed by the Policy Document.

5.4 Permanence and Temporariness

The clearest point of tension concerns duration, and it is one on which the literature itself is divided. Siddique and Rashid (2019) report the classical position that relaxation granted on the basis of *Hajah* is continuing while relaxation granted on the basis of *Darurah* is temporary. Husnul Fatarib et al. (2020) refine this by distinguishing permanence for the community from temporariness for the individual. Zakariyah (2012) frames need-based permission differently again, as lasting only until a Shariah-compliant alternative becomes available.

The policy needs to be read within its stated scope. Paragraph 1.8 excludes established *usuhiyyah* permissions, such as *ijarah* and *salam*, from the new requirements. The continuing permissibility of such contracts is distinct from the duration of a particular institutional

concession. Within the *fiqhiyyah* framework, the *Hajah* Type 1 ruling continues until superseded, whereas *Hajah* Type 2 and *Darurah* are temporary and proportionate (Bank Negara Malaysia, 2024, paras. 9.3, 9.5, and 9.7). Paragraph 9.5(b) expressly places *Hajah* Type 2 below the *Darurah* threshold.

The elevation doctrine (a need, whether general or specific, may be elevated to the status of a necessity) offers one juristic explanation for applying necessity-related limits to a particular need. It does not follow that every temporary *Hajah* concession must be reclassified as *Darurah*. Paragraph 9.5(d) itself requires proportionality for *Hajah* Type 2 and cites *al-Darurah tuqaddaru bi-qadariha* in footnote 17. BNM's later explanation also connects the duration of an exception with the continuing hardship (Bank Negara Malaysia, 2025, p. 43). The framework can therefore be read alongside the distinction between a continuing general permission and a temporary application to a specific case (Husnul Fatarib et al., 2020; Siddique & Rashid, 2019). This remains an interpretation of the relationship between the rules, rather than proof that the elevation doctrine is their sole basis.

5.5 The General Preconditions as Regulatory Dawabit (Parameters)

Paragraph 8.3 reproduces the classical conditions on invoking necessity in regulatory form. It requires certainty or a high probability of hardship, which corresponds to the requirement that the harm be supported by evidence rather than mere conjecture; a necessary departure from an existing Shariah principle or ruling; the absence or impracticability of a Shariah-compliant alternative, which corresponds to the exhaustion requirement emphasised by Isa (2016); and an assessment showing no equal or greater harm, which corresponds to the weighing exercise of *fiqh al-muwazana*h.

The removal and comparison of harm also have practical consequences. *Al-darar yuzal* directs attention to the harm the proposed concession is intended to remove, while the lesser-harm maxim informs the comparison of available responses. Paragraph 8.3(d) requires that the chosen response avoid equal or greater harm to the stakeholders concerned. The maxim linking flexibility to constraint is reflected in the temporary and proportionate treatment of *Hajah* Type 2 and *Darurah*, under which the extent of relief remains tied to the hardship (Bank Negara Malaysia, 2024, Appendix 1 and paras. 9.5(d) and 9.7(d)).

Paragraph 8.4 makes an institutional restriction explicit: hardship arising solely from profitability risk, or from weak governance and internal controls, cannot support a concession (Bank Negara Malaysia, 2024). This is best read as a regulatory answer to the criticism documented in Section 2.5. Abozaid (2016) traces the misuse of *Darurah* in Islamic banking directly to weak Shariah governance, and Al-Nahari et al. (2022) argue that product demand is wrongly elevated to the level of essentials. A rule that excludes profitability-driven hardship at the threshold addresses both objections through an *ex ante* restriction rather than through case-by-case scrutiny after the fact.

Recent applications also illustrate how the policy's *fiqh* principles operate beyond its formal classification of hardship. Ishak (2025) interprets the eligibility and governance requirements as an expression of *sadd al-dharā'i* 'intended to prevent the misuse of hardship-based concessions. This is an interpretive *usul al-fiqh* perspective rather than a maxim expressly listed in Appendix 1. In the *takaful* context, Zakaria et al. (2025) demonstrate that proportionality depends on the actual reinsurance arrangement, its calculation formula and its effect on the *takaful* fund, rather than the description "profit commission" alone.

5.6 Summary of the Translation

Table 2. Classical Positions and Their Treatment in the 2024 Policy Document

Classical position	Policy provision	Relationship
Hajah, whether general or specific, may be treated as Darurah (al-Suyuti; Ibn Nujaym)	Reclassification maxim in paragraph 9.9	Expressly reflected in paragraph 9.9; its application remains subject to the relevant parameters.
Hajah divided by scope into 'ammah and khassah	<i>Hajah</i> Type 1 ('umum al-balwa, 'urf tijari) and <i>Hajah</i> Type 2 (specific person or entity), paragraphs 9.3 and 9.5	Partial correspondence: the policy combines source and scope with SAC ruling conditions and the supervisory process.
<i>Hajah</i> cannot permit what is prohibited in itself; Darurah can	The clearest <i>riba</i> -bearing illustration is the conventional resolution loan (paragraph 9.8); paragraph 9.6 does not specify all contractual features of the <i>Hajah</i> Type 2 cases.	The examples do not establish a categorical <i>riba</i> -based boundary. The contractual terms and applicable SAC rulings require examination.
Continuing general permissions and temporary concessions for particular needs are distinguished in the literature.	<i>Usuliyyah</i> permissions are outside the requirements (paragraph 1.8); <i>Hajah</i> Type 1 continues until superseded, while <i>Hajah</i> Type 2 and <i>Darurah</i> are temporary (paragraphs 9.3, 9.5, 9.7).	Elevation offers one explanation; temporariness does not itself turn <i>Hajah</i> Type 2 into <i>Darurah</i> .
Conditions on invoking necessity: evidence of harm, no practicable lawful alternative, minimum extent, and lapse when its grounds cease.	General preconditions in paragraph 8.3; exclusion in paragraph 8.4	Expressed through assessment requirements and an explicit restriction on profitability and governance-based claims.

The policy addresses the three questions identified in Section 2.6 through its regulatory categories. Its treatment of institutional hardship is compatible with a broader account of the protected interests, while *Darurah* is bounded by the recovery-or-resolution requirement and the other conditions in paragraph 9.7. Paragraph 9.9 invokes a maxim covering both general and specific needs. On duration, the framework distinguishes continuing rulings from temporary applications. These correspondences do not, by themselves, settle every juristic disagreement reviewed above.

The comparison supports a preliminary comprehension of the policy as a structured reception of juristic principles. It incorporates the elevation maxim and expresses proportionality, scope, and governance considerations through regulatory requirements. The illustrations leave some questions about the nature of the prohibited arrangements unresolved, while the temporary treatment of *Hajah* Type 2 admits more than one juristic explanation.

These are matters for further articulation and examination, rather than grounds for asserting either complete doctrinal correspondence or inconsistency.

6. Implications for Islamic Financial Supervision and Shariah Governance

6.1 Institutionalizing Hardship and Systemic Risk

Classical discussions often explain hardship through individual examples, whereas contemporary Islamic finance applies *Hajah* and *Darurah* reasoning to institutional circumstances (Siddique & Rashid, 2019). BNM's policy makes that move explicit while retaining a requirement that the hardship affect a specific person or entity for *Hajah* Type 2 and *Darurah* (Bank Negara Malaysia, 2024, paras. 5.2, 9.5, and 9.7). Institutional distress can create effects beyond the entity experiencing it, which is why work on dual-banking systems examines Islamic banks through a systemic-risk lens (Rizwan et al., 2022) and resolution scholarship identifies the need to reconcile resolution mechanisms with Shariah requirements (Awadzi & El Khoury, 2020; Rulindo & Rifqi, 2022). Consistently, BNM's guidance identifies institutional, legal, macroeconomic, customer, and external-event perspectives that may inform the description of hardship (para. 12.5).

6.2 Recovery, Resolution, and the Boundary of Darurah

The policy links recovery and resolution triggers to *Darurah*, not to *Hajah* Type 2 as such. A capital or liquidity crisis does not automatically constitute *Darurah*: the general preconditions in paragraph 8.3 and the criteria in paragraph 9.7 must still be satisfied, including the absence or impracticability of Shariah-compliant alternatives and the requirements of temporariness and proportionality. The policy also does not create general legal powers for lender-of-last-resort facilities, bridge banks, or deposit restructuring; its *Darurah* illustration is narrower (Bank Negara Malaysia, 2024, para. 9.8).

This boundary is where the framework does its most useful work. The corporate insurance case, in which a client cannot obtain takaful for an overseas exposure because of the cover required or location constraints, illustrates *Hajah* Type 2. Resolution funding from an international body illustrates *Darurah*. The recovery-or-resolution requirement provides a defined regulatory reference point for *Darurah*, alongside the other conditions in paragraph 9.7. Assessing whether those conditions are met still requires institutional and supervisory judgment (paras. 9.6 to 9.8).

6.3 Governance Roles and Supervisory Control

The enhanced governance requirements in Part C of the policy document apply specifically to *Hajah* Type 2 and *Darurah*. The Shariah committee must ensure rigorous deliberation and proper justification, and the minutes must record the relevant assessment, concerns, and dissent. The board holds overall responsibility, approves internal policies, challenges proposed applications, and considers duration and exit strategy. Senior management implements the relevant policies and controls, while independent control functions review and monitor implementation (Bank Negara Malaysia, 2024, paras. 10.1 and 11.3 to 11.11). These requirements build on BNM's broader allocation of responsibilities (Mohamad Yusof & Ali, 2021) and complement the Shariah-risk architecture described by Mohd Ariffin (2022).

The design responds to a documented weakness. Haridan et al. (2018) report persistent concerns about the independence and technical competence of Shariah boards in Malaysian Islamic banks, and Abozaid (2016) attributes the misuse of hardship reasoning to weak Shariah governance. By distributing responsibility across four functions rather than vesting it in the Shariah committee alone, the policy reduces the extent to which a single body's capacity determines the outcome. Whether it succeeds in doing so is an empirical question the document itself cannot answer.

6.4 Reporting, Regulatory Clarity, and Comparative Position

For *Hajah* Type 2, an institution must notify BNM and submit the prescribed report within fourteen working days after the Shariah committee's decision and the board's agreement. For *Darurah*, it must refer the matter to the SAC and write to BNM within the same period (Bank Negara Malaysia, 2024, paras. 12.13 to 12.17). Institutions were also required to submit an implementation plan by 30 April 2024, approved by the board and endorsed by the Shariah committee (paras. 13.1 to 13.3). These are ex ante transition requirements and do not establish industry-wide readiness.

The reporting channel gives BNM a supervisory information source it did not previously have in structured form, though whether patterns in submissions reveal sector-wide product gaps or emerging distress is a testable hypothesis rather than a demonstrated outcome. The arrangement is possible because Malaysia operates a centralised model in which a statutory SAC issues binding rulings, a structure differing from the decentralised board-level model prevalent in the Gulf (Grassa, 2013). A jurisdiction without a comparable central authority could not straightforwardly adopt the same framework, which qualifies any proposal to treat it as a regional model.

7. Discussion

7.1 Adherence and Commercial Feasibility

The policy directly addresses the risk of commercial convenience. Paragraph 8.3 requires certainty or a high probability of hardship, a necessary departure from an existing Shariah principle or ruling, the absence or impracticability of a Shariah-compliant alternative, and an assessment showing no equal or greater harm. Paragraph 8.4 prohibits reliance on hardship arising solely from profitability risk or weak governance and internal controls (Bank Negara Malaysia, 2024).

Disciplined use of concessions matters for the credibility of Islamic finance, and the criticism reviewed in Section 2.5 indicates that credibility has already been affected. Al-Nahari et al. (2022) treat the elevation of product demand to an essential interest as a conceptual error rather than a marginal one, and Aziz and Ahmad (2018) show that a product ruled impermissible at the level of the OIC Fiqh Academy continued in Malaysian practice on a *Darurah* argument. Whether the 2024 framework changes that pattern cannot be established from the policy text.

7.2 Prospective Applications and the Limits of Evidence

BNM's Annual Report 2025 records that the Greening Halal Businesses initiative, supported by eight institutions, helped more than 200 halal SMEs begin adopting greener practices (Bank

Negara Malaysia, 2025). Applications of the framework to green finance or new contracting technologies remain research propositions: an institution could not rely on innovation alone and would still need to satisfy the requirements on certainty, alternatives, impact, classification, governance, and approval (Bank Negara Malaysia, 2024, paras. 8.3 and 8.4). Likewise, Dalvi et al. (2025) find *Darurah* to be the principal basis in mortgage and insurance fatwas for non-Muslim-majority jurisdictions, but neither that finding nor BNM's regional engagement shows that the Malaysian framework has been adopted elsewhere.

7.3 The Limits of the Juristic Interpretation

The comparison in Section 5 supports a qualified conclusion. The policy expressly invokes the elevation maxim and proportionality, and its conditions on evidence, alternatives, and impact can be read alongside the juristic limits on concessions. Its categories combine the scope of hardship with the terms of SAC rulings and institutional procedures. The illustrations do not establish that all *Hajah* cases concern only prohibitions arising from external factors, and the temporariness of *Hajah* Type 2 does not prove that it has been reclassified as *Darurah*.

Two limitations apply. First, the classical positions used here are drawn principally from secondary scholarship and the authorities cited in the Policy Document; this is not a comprehensive independent examination of the Arabic primary sources, and scholars differ on several of the points involved, particularly on the scope of *Darurah* and on the elevation of a specific need. A different selection of authorities could support a different interpretation. Second, correspondence between a policy provision and a juristic position does not establish that the provision was drafted with that position in view. The policy cites classical authority at only a small number of points, and the inference of reception is drawn from structure rather than from stated intent.

The contribution is therefore an account of how selected Fiqh principles are reflected in the policy's requirements, together with questions for further doctrinal and practical examination. It does not establish how consistently institutions apply those principles or how the resulting decisions affect different stakeholders. Future empirical research may examine whether comparable hardship situations are assessed consistently across institutions, products, and affected stakeholder groups.

8. Conclusion and Future Recommendations

This preliminary study shows how BNM's framework translates *Hajah* and *Darurah* into differentiated regulatory categories, SAC ruling conditions, and governance and reporting requirements. The classification is based on more than the severity of hardship. It also considers the nature and scope of the hardship, the conditions attached to the SAC ruling, duration and proportionality, institutional responsibilities, the applicable approval and reporting route, and the relationship with recovery or resolution. *Hajah* Type 2 remains below the *Darurah* threshold, whereas *Darurah* requires a recovery-or-resolution trigger together with the other conditions specified in paragraph 9.7. The framework therefore accommodates genuine institutional needs without treating every qualifying *Hajah* as *Darurah*.

The juristic comparison indicates that the policy reflects the elevation of need, proportionality, removal and comparison of harm, and the withdrawal of relief when its underlying grounds cease. It also translates the general and specific dimensions of *Hajah* into requirements concerning SAC rulings and supervisory engagement. Nevertheless, a continuing permission relating to an established contract should be distinguished from a temporary, case-

specific institutional concession. The policy's illustrations also leave certain matters open to interpretation. The conventional resolution loan is the clearest *riba*-bearing example, but this does not establish the Shariah characterisation of every arrangement illustrated under *Hajah*. Similarly, the temporary treatment of *Hajah* Type 2 does not, by itself, establish that the elevation maxim is its sole juristic basis.

Further guidance could clarify how the relevant legal maxims inform classification, the treatment of particular prohibited arrangements, and the determination of appropriate duration and exit conditions. This would assist Shariah committees in connecting the policy's operational requirements with their underlying juristic reasoning. Training for Shariah committees, boards, senior management, and control functions should also integrate Fiqh analysis with impact assessment, documentation, monitoring, and exit planning. BNM could further consider periodic aggregated and anonymised reporting on the number, category, duration, and exit status of *Hajah* Type 2 and *Darurah* applications, subject to supervisory confidentiality. Such reporting would support evaluation of the framework without disclosing institution-specific information.

Future empirical research should examine institutional policies, Shariah committee deliberations and, where accessible, supervisory records, supported by stakeholder interviews, to evaluate consistency of application, implementation costs, timeliness, and outcomes. Comparative studies should take account of Malaysia's centralised SAC structure and avoid assuming that the framework can be transferred unchanged to jurisdictions with different Shariah governance arrangements. As the present study is confined to the policy's design and juristic interpretation, its implementation and practical effects remain to be empirically established.

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