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Research Paper

Operationalising Uṣūl al-Fiqh in Islamic Finance: Venture Capital and Private Equity as a Case Study

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Abstract

This paper proposes a methodological framework that operationalises uṣūl al-fiqh (Islamic legal theory) not merely as a source of substantive law but as a systematic method for analysing contemporary Islamic finance. Although existing scholarship has examined maqāṣid, legal maxims, Sharīʿah governance, and particular Islamic financial structures, comparatively limited attention has been given to consolidating these strands into a sequential protocol for assessing integrated institutions. This matters commercially because GP management fees and preferred-return hurdles may be assessed as individual contractual features while their combined operation changes the risk-sharing economics presented to LPs and entrepreneurs. Using Islamic venture capital (VC) and private equity (PE) in Malaysia as an illustrative case study, the paper shows how distinct juristic resources can perform different analytical functions: the hierarchy of evidence (adillah) establishes normative baselines; legal maxims (qawāʿid fiqhiyyah) test structural coherence; and the higher objectives (maqāṣid al-Sharīʿah) support disciplined assessment of purposes and consequences. The application shows how the framework can identify matters requiring further Sharīʿah analysis when contractual relationships, remuneration mechanisms, governance arrangements, and risk allocations interact at the institutional level. The paper therefore offers a nine-step Uṣūlī Structural Analysis Framework (USAF) that moves from factual conceptualisation and institutional mapping to legal characterisation, substantive analysis, and whole-institution coherence. USAF is presented as a transparent and auditable synthesis for researchers rather than as a substitute for qualified juristic determination.

Keywords: *Uṣūl al-fiqh, Islamic finance methodology, Venture capital, Private equity, Maqāṣid al-Sharīʿah, Qawāʿid fiqhiyyah, Malaysia*

INTRODUCTION

Background and Context

The global Islamic financial services industry reached approximately USD 4.4 trillion in total assets in 2025 (Islamic Financial Services Board [IFSB], 2026). This growth has been accompanied by increasingly complex products, structures, and governance arrangements. It has also sustained debate about the relationship between formal legal compliance and substantive economic effect. Regulatory and standard-setting bodies such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the IFSB provide important compliance and prudential frameworks. Academic analysis, however, continues to draw substantially on conventional approaches—including agency theory, transaction-cost economics, and portfolio analysis—alongside Sharīʿah-based concepts. The methodological question is how those concepts can be organised into an explicit process for examining a contemporary financial institution.

Uṣūl al-fiqh (Islamic legal theory) is traditionally understood as the science concerned with the general proofs of fiqh, the methods for deriving from them, and the qualifications of the person performing that derivation. Egypt's Dar al-Ifta describes it as "an investigation into the methodology of research" that asks how knowledge should be approached and which methods and tools are relevant (Dar al-Ifta, 2017). Al-Bayḍāwī's definition similarly refers to general knowledge of the proofs of fiqh, the method of derivation, and the standing of the jurist who derives (Dar al-

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Ifta, 2017). These definitions establish the discipline's methodological character. The present paper examines whether that character can be made explicit for doctrinal and institutional research in contemporary Islamic finance.

Problem Statement

The central problem addressed by this paper is a deficit of methodological integration in contemporary Islamic-finance research. Contemporary Islamic-finance research draws on conventional financial analysis alongside Sharīʿah screening, maqāṣid-based approaches, and governance scholarship. These strands illuminate different dimensions of financial institutions but are not ordinarily consolidated with legal characterisation, substantive fiqh, maxims, and institutional mapping into a single, sequential protocol. The problem can be stated concretely. Suppose a Malaysian Islamic VC fund characterizes a fixed GP management fee as wakālah bi al-ujrah and an 8% preferred return as a waterfall that allocates realised profits to LPs before the GP participates. Each feature might receive contract-level approval. However, if the fee is payable irrespective of performance, the preferred return is treated as an entitlement even when profits are not realised, and capital-protection or clawback provisions shift downside risk to entrepreneurs, the integrated structure may no longer operate as the risk-sharing arrangement its contractual labels suggest. This hypothetical does not establish impermissibility; it identifies the institutional-coherence question that a sound methodology must make visible. The resulting need is not for an exclusively "native" lens that excludes interdisciplinary methods. It is for a transparent uṣūlī framework that can be used alongside appropriate legal, institutional, and financial analysis.

Research Objectives

This paper seeks to achieve three primary objectives:

1. To conceptualise uṣūl al-fiqh as a systematic analytical methodology applicable to modern financial structures, distinct from its traditional role in legal derivation (istinbāṭ).
2. To develop a systematic, nine-step analytical framework—the Uṣūlī Structural Analysis Framework (USAF)—based on classical uṣūlī principles.
3. To illustrate the application and analytical utility of this framework through Islamic venture capital (VC) and private equity (PE) structures in Malaysia.

Significance of Study

This study contributes to the emerging discourse on a more unified Islamic legal methodology in finance, as identified by Alkhan et al. (2025). By shifting the focus from substantive rulings (fiqh) alone to explicit methodological principles (uṣūl), the paper provides researchers, regulators, and Sharīʿah committees with a structured analytical tool. The application to Islamic VC and PE is significant because these are contemporary forms of equity-based, risk-sharing finance that are frequently compared with the classical muḍārabah and mushārakah models (Çizakça, 2011), yet they remain less extensively examined than Islamic banking and capital-market products. The paper's contribution lies in showing how uṣūl al-fiqh can inform a transparent and auditable method of institutional analysis and in specifying that method through the named, nine-step USAF.

LITERATURE REVIEW

The Evolution of Uṣūl al-Fiqh in Modern Finance

The application of uṣūl al-fiqh in contemporary Islamic finance has primarily taken place through Sharīʿah scholars' derivation and evaluation of rulings on product compliance. The discipline's foundational concerns—knowledge of the general proofs of fiqh, the method of deriving from them, and the qualifications of the person entrusted with derivation (ijtihād)—have therefore usually been directed toward legal determination rather than articulated as a research protocol for institutional analysis (Dar al-Ifta, 2017). Recent scholarship, however, supports a broader methodological engagement with the discipline.

Alkhan et al. (2025) argue that contemporary Islamic financial institutions have contributed to the officialization of a distinct Islamic legal methodology within the financial services sector. Their account of the movement from diversified jurisprudential traditions toward a more unified financial legal theory invites closer attention to the methods used to study those institutions. AAOIFI's Sharīʿah Standard No. 29 similarly formalizes procedural and evidentiary controls for institutional fatwā, including detailed factual inquiry and disciplined engagement with juristic authorities (AAOIFI, 2015). These developments indicate that methodological innovation need not be detached from classical juristic resources.

The relationship between juristic means and the purposes of Islamic finance has also become a central concern. Laldin and Furqani (2013) distinguish the ends identified through maqāṣid al-Sharīʿah from the contractual instruments and operational forms used as means to attain them. Their analysis cautions against allowing instruments to become ends in themselves. Monawer et al. (2022) advance the discussion toward operationalization by proposing a conceptual framework for actualizing maqāṣid in Islamic-finance product development. Together, these studies show that normative principles can be translated into structured evaluative frameworks. However, their principal focus remains the relationship between maqāṣid and product development rather than a sequential method for analyzing a multi-contract financial institution as an integrated legal structure.

The methodological challenge is therefore not the absence of relevant uṣūlī, maqāṣidī, or governance scholarship. It is the need to specify how distinct juristic resources should be ordered and applied within an auditable research process. USAF addresses that need by assigning distinct analytical functions to factual conceptualisation, legal characterisation, substantive evidence, legal maxims, maqāṣid, collective ijtihād, regulatory context, and whole-institution evaluation.

Conventional Financial-Economic Literature on VC/PE Contracts

The conventional literature serves as an important comparator for USAF, not a methodological foil. Agency theory explains how the separation of ownership and control creates monitoring, bonding, and residual-loss problems when one party manages another's capital (Jensen & Meckling, 1976). Transaction-cost economics adds the problem of incomplete and long-term contracts: because parties cannot specify every future contingency, governance arrangements and ex post adaptation mechanisms become part of the analysis (Williamson, 1979). These perspectives therefore raise substantive questions about who bears risk, who controls decisions, how monitoring is organised, and how compensation affects behaviour.

VC and PE contract research makes those questions concrete. Kaplan and Strömberg (2003) show that venture-capital contracts can allocate cash-flow rights, board rights, voting rights, liquidation rights, and other control rights separately and adjust them across financing rounds. Metrick and Yasuda (2010) model the revenue generated by private-equity investor contracts and find that a substantial share of expected manager revenue comes from fixed components rather than performance-sensitive ones. In the fund setting, management fees, carried interest, preferred-return hurdles, GP commitments, and governance rights are consequently not peripheral drafting details; they are mechanisms through which monitoring, incentives, and risk allocation are structured.

Empirical work further cautions against reducing conventional analysis to formal regulatory compliance. Robinson and Sensoy (2013), using data on 837 funds, examine how management contracts, ownership, cash flows, and performance interact and find evidence consistent with agency conflict around contractual fee triggers. Phalippou et al. (2018) examine fees paid by portfolio companies to GPs whose representatives control their boards and discuss both optimal-contracting and tax-arbitrage explanations. Portfolio theory addresses a different level of the problem by analyzing diversification and the risk–return trade-off in portfolio selection (Markowitz, 1952). Taking together, these literatures already provide granular analysis of economic substance and incentive effects. USAF is therefore complementary: it adds a sequential juristic inquiry into whether the documented GP/LP economics and governance arrangements remain coherent with the fund's characterised contractual roles and maqāṣid-based purposes.

The relevant contrast is not "conventional economics" versus "substance." Conventional economics provides tools for analyzing incentives, governance, incomplete contracting, and portfolio outcomes. USAF offers an additional normative and juristic framework for characterizing those facts, applying qawāʿid and maqāṣid within their proper limits, and assessing the coherence of the institution as a whole.

Qawāʿid Fiqhiyyah as Analytical Tools

The qawāʿid fiqhiyyah (legal maxims) can be valuable resources for financial analysis. Bamgbose (2023) offers a contemporary Islamic-finance introduction to the methodological use of legal maxims. Drawing more broadly on classical qawāʿid literature, including al-Suyūṭī (1990), the following six maxims are especially useful for the present framework:

1. Al-ʿibrah fī al-ʿuqūd li-l-maqāṣid wa-l-maʿānī lā li-l-alfāẓ wa-l-mabānī — In contracts, effect is given to purposes and meanings, not words and forms.
2. Lā ḍarar wa-lā ḍirār — Harm shall neither be inflicted nor reciprocated.
3. Al-ʿādah muḥakkamah — Custom is authoritative.
4. Al-aṣl fī al-ashyāʾ al-ibāḥah — Permissibility is the default rule in commercial matters.
5. Al-kharāj bi-l-ḍamān — Entitlement to gain accompanies liability.
6. Al-yaqīn lā yazūlu bi-l-shakk — Certainty is not displaced by doubt.

These maxims, including formulations compiled by al-Suyūṭī (1990), offer cross-cutting criteria for assessing whether institutional arrangements remain consistent with their stated legal character and purposes. They do not replace the detailed rules governing particular contracts. Their methodological value lies in testing the coherence of conclusions drawn from contract-specific analysis.

Islamic Venture Capital and Private Equity

Islamic venture capital and private equity constitute a small but conceptually important segment of the Islamic-finance industry. Çizakça (2011) compares venture capital to the classical muḍārabah partnership because capital and entrepreneurial expertise are combined through profit-and-loss sharing rather than interest-bearing debt. This comparison makes VC and PE useful test cases for assessing whether modern fund architecture preserves the risk allocation associated with its asserted juristic character.

In Malaysia, Abdullah and Zainalabiddin (2014) document the legal and regulatory framework applicable to Islamic venture capital, including the Capital Markets and Services Act

2007 (2007) and guidance issued by the Securities Commission Malaysia (SC). Anwer et al. (2019) examine the structures, underlying contracts, operations, risk-management questions, and exit strategies associated with Islamic venture capital. These studies establish the field's contractual and regulatory foundations. Their descriptive, product-focused approaches also leave room for a methodology that evaluates how the components of a fund operate together.

Existing Malaysian research has separately examined Sharīʿah governance in Islamic fund-management companies. Hasan et al. (2020) find that governance processes at the companies examined involve organizational functions, including Sharīʿah risk management, review, and audit. This supports treating governance as a distinct institutional layer alongside contract-level analysis. Governance-practice research, however, does not itself provide a jurisprudential sequence for testing how contractual roles, remuneration, risk allocation, and oversight mechanisms interact within a VC/PE institution. USAF addresses that different, though complementary, analytical task.

The Form-versus-Substance Debate

A recurring theme in contemporary Islamic-finance scholarship is the tension between formal Sharīʿah compliance (ṣūrah) and substantive economic reality (ḥaqīqah). Classical jurists distinguished a transaction's outward language from its operative purpose. Article 3 of the Majallat al-Aḥkām al-ʿAdliyyah states that, in contracts, effect is given to intention and meaning rather than to words and form (Majallat al-Aḥkām al-ʿAdliyyah, 2001). The modern debate accordingly concerns whether compliance with the formal elements of a nominate contract is sufficient when the integrated economic outcome may diverge from the contract's juristic rationale.

Rosly (2010) argues for an expanded conception of Sharīʿah parameters that assesses an Islamic financial instrument not only by its underlying contract but also by maqāṣid, financial reporting, and legal documentation. This approach supports scrutiny of the legal and economic operation of the complete arrangement rather than reliance on contractual nomenclature. USAF builds on that concern by specifying the order in which the facts, legal character, contract interactions, maxims, objectives, and institutional context should be examined.

The tension is especially relevant to VC and PE. A structure may be described as muḍārabah or mushārakah and satisfy the formal requirements applied by a regulator or Sharīʿah adviser. Yet capital-protection arrangements, preferred-return mechanisms, and fixed fees can alter the allocation of risk or the juristic capacity in which a fund manager is remunerated. The relevant question is not whether these features are categorically impermissible. It is whether their documented operation remains consistent with the legal character and risk allocation of the integrated arrangement.

The Methodological Gap

The literature already addresses key constituent dimensions of the problem. Work on maqāṣid links the ends of Islamic finance to the means used to realize them and has begun developing operational frameworks for product design (Laldin & Furqani, 2013; Monawer et al., 2022). Research on Islamic VC identifies relevant contracts, operational issues, and regulatory constraints (Abdullah & Zainalabiddin, 2014; Anwer et al., 2019). Fund-management scholarship examines the organizational practice of Sharīʿah governance (Hasan et al., 2020), while form-and-substance analysis calls for legal documentation, reporting, and objectives to be assessed alongside the nominated contract (Rosly, 2010).

Institutional-governance scholarship further demonstrates that authority, expertise, and legitimacy are integral to contemporary Islamic finance. Alam (2021) develops a legitimacy-theory account of the Sharīʿah supervisory board as a distinctive institutional actor within Islamic financial institutions. In the context of Indonesian digital Islamic banking, Moeljadi et al. (2022) examine the relationship between Sharīʿah governance and organizational expertise. These studies show that a modern Islamic financial institution cannot be evaluated solely as a set of bilateral contracts: its governance arrangements and institutional capacities also shape how Sharīʿah norms are interpreted and implemented.

The gap is therefore one of methodological consolidation and sequencing, not an absence of research on the component issues. The literature reviewed does not appear to provide a single, transparent, and auditable protocol that begins with factual conceptualization; maps institutional relationships; performs legal characterisation; applies substantive evidence and cross-cutting maxims; evaluates maqāṣid, consequences, collective ijtihād, and regulatory context; and concludes with an assessment of whole-institution coherence. USAF brings these otherwise separate strands together into a single research methodology for analyzing an integrated financial institution. Its claimed novelty is thus a synthesis contribution: it makes the order, function, and relationships of the analytical stages explicit and open to scholarly scrutiny, while recognizing that contested juristic interpretation may produce reasoned disagreement.

RESEARCH METHOD

The Uṣūlī Structural Analysis Framework (USAF)

1. **Conceptual Foundation**

   The proposed methodology adapts selected uṣūlī resources from their established role in legal reasoning to organize the structural analysis of contemporary financial institutions. This adaptation is grounded in the discipline's methodological concerns. Dar al-Ifta presents uṣūl al-fiqh as an inquiry into how knowledge should be approached and which methods and tools are relevant (Dar al-Ifta, 2017). The framework does not use that description to claim authority to derive new rulings. Instead, it uses established uṣūlī concepts to organize the analysis of existing institutional structures.

   The framework draws on three categories of juristic resource, each occupying a distinct methodological position within the Islamic legal sciences, and translates them from their traditional functions into analytical metrics for institutional evaluation. The separation of ends from means discussed by Laldin and Furqani (2013), and the movement toward operational maqāṣid frameworks illustrated by Monawer et al. (2022), support the need to distinguish the function performed by each analytical resource rather than treating all Sharīʿah concepts as interchangeable criteria.

Table 1. Translation of Uṣūlī Components into Analytical Metrics

Classical Component	Traditional Function	USAF Analytical Function
Adillah (Juristic Proofs)	Establishing the evidentiary basis of a ruling through Qurʾān, Sunnah, ijmāʿ, qiyās, and other recognised proofs as applicable within the relevant juristic methodology (al-Ghazālī, 1993; AAOIFI, 2015)	Establishing the normative and evidentiary baseline for analysing the characterised financial relationships
Qawāʿid Fiqhiyyah (Legal Maxims)	Guiding the application of rulings across recurring factual patterns (al-Suyūṭī, 1990)	Evaluating operational reality against principled benchmarks
Maqāṣid al-Sharīʿah (Objectives)	Ensuring that legal reasoning remains directed toward higher purposes (al-Ghazālī, 1993; al-Shāṭibī, 1997)	Measuring substantive outcomes against ultimate objectives

Source: Prepared by the author from al-Ghazālī (1993), al-Suyūṭī (1990), al-Shāṭibī (1997), and

AAOIFI (2015).

2. The Nine-Step Analytical Process

To operationalise these components without conflating distinct disciplines, the paper proposes a nine-step methodological process, illustrated in Figure 1. Traditional product-level analysis can establish that Contracts A, B, and C are permissible. However, this does not necessarily establish that A + B + C, operating simultaneously within Institution X, produces a coherent Sharīʿah structure. USAF provides a transparent protocol for moving from individual contractual validity to integrated institutional analysis.

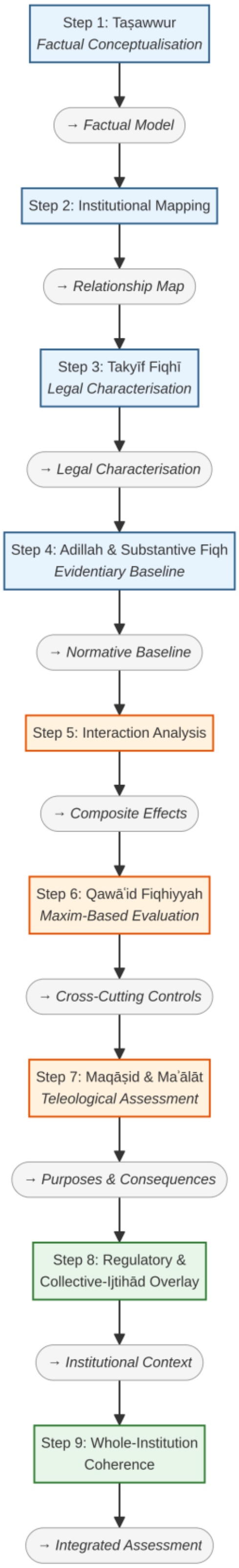

Figure 1. The Nine-Step Uṣūlī Structural Analysis Framework (USAF)

Step 1: **Factual Conceptualization (Taṣawwur).** The first step is to understand the institution factually. The researcher must gather term sheets, prospectuses, and operational data to determine exactly how the financial product functions in practice, independent of its Islamic labels.

Step 2: **Institutional Mapping.** The researcher identifies all relationships and economic functions within the structure. This includes mapping the flow of funds, the allocation of risk, the distribution of profits, and the governance rights among all parties (e.g., General Partners, Limited Partners, portfolio companies).

Step 3: **Legal Characterisation (Takyīf Fiqhī).** Each identified relationship is characterised under classical fiqh. Is the relationship between the GP and LP muḍārabah (partnership), wakālah bi al-ujrah (agency for a fee), or a hybrid? Accurate takyīf is essential before any normative judgment can be made.

Step 4: **Evidentiary and Substantive Baseline (Adillah and Substantive Fiqh)**. After characterizing the relationships, the researcher first establishes the evidentiary basis of the relevant ruling by drawing on the Qurʾān, Sunnah, ijmāʿ, qiyās, and other recognised proofs, as applicable within the relevant juristic methodology. The researcher then identifies the authoritative substantive fiqh rules and relevant madhhab positions governing the characterised contract, consulting classical compilations such as the works of al-Kāsānī (1986) and Ibn Qudāmah (1968). This distinction prevents a fiqh compilation from being treated as a substitute for the uṣūlī analysis of why a rule applies.

Step 5: **Interaction Analysis**. This critical step examines how individually characterised contracts interact as a composite institution. A modern fund manager may simultaneously occupy multiple legal capacities. The researcher must analyze whether the combination produces effects or risk allocations that are not visible when each contract is considered in isolation, and then identify the legal and economic consequences that require further juristic evaluation.

Step 6: **Maxim-Based Evaluation (Taṭbīq al-Qawāʿid).** Relevant cross-cutting legal maxims (qawāʿid fiqhiyyah) are applied to the composite structure. For example, al-kharāj bi-l-ḍamān (entitlement to gain accompanies liability) helps the researcher assess whether remuneration, capital protection, and downside-risk allocations remain consistent with the characterised contractual capacities (al-Suyūṭī, 1990).

Step 7: **Teleological Assessment (Maqāṣid and Maʾālāt).** The structure is evaluated against the maqāṣid al-Sharīʿah (objectives) and maʾālāt al-afʿāl (consideration of consequences) within disciplined methodological boundaries. For this paper, the maqāṣid serve as a complementary evaluative layer; they do not function as an independent device to displace established textual rules or substantive fiqh (Laldin & Furqani, 2013; al-Shāṭibī, 1997). The analysis therefore assesses whether institutional outcomes align with the purposes attributed to the relevant legal structure, without treating teleological assessment as a substitute for legal characterisation or evidentiary analysis.

Step 8: **Regulatory and Collective-Ijtihād Overlay**. The analysis must account for the institutional context by incorporating decisions from bodies such as AAOIFI, the SC Malaysia Sharīʿah Advisory Council, and other collective ijtihād forums. This step recognizes that financial structures operate within specific regulatory environments that may require certain adaptations.

Step 9: **Whole-Institution Coherence**. The final step assesses whether the integrated structure remains internally coherent from a Sharīʿah perspective. Does the combination of contracts, operational stipulations, and regulatory adaptations produce an institution that is substantively Islamic, or merely a conventional structure retrofitted with Islamic terminology?

3. Methodological Justification

The selection of Islamic VC and PE as the illustrative case study is deliberate. These structures are often presented as contemporary analogues to the classical muḍārabah partnership (Çizakça, 2011), making them a rigorous test of the USAF. If the methodology can identify questions of structural alignment in a sector closely associated with classical risk-sharing principles, its utility can later be tested in more complex structures, such as ṣukūk or Islamic derivatives.

The study employs doctrinal legal research as its primary method, supplemented by analysis of regulatory and standard-setting materials. The framework recognizes the Qurʾān and authenticated Sunnah as primary evidentiary sources; the illustrative application draws primarily on classical fiqh texts, AAOIFI Sharīʿah Standards, and Malaysian regulatory materials. The Malaysian materials include the Capital Markets and Services Act 2007 (2007), the Securities Commission Malaysia's current Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporations, its Guidelines on Islamic Capital Market Products and Services, and its Practical Guide on Venture Capital and Private Equity in Malaysia (Securities Commission Malaysia, 2026a, 2026b, 2025). The approach is qualitative and interpretive. Because the application is illustrative rather than an empirical study of particular funds, the analysis identifies questions and points of potential incompatibility that require examination against actual governing documents.

Illustrative Application: Islamic VC and PE Structures

To demonstrate how the USAF operates, this section examines several structural features that may arise in contemporary VC/PE fund architecture—including management fees, preferred-return mechanisms, capital-protection arrangements, and distribution waterfalls. The analysis is illustrative and does not assert that these features characterize Malaysian Islamic VC/PE funds generally. Figure 2 illustrates the institutional architecture of a typical VC/PE fund and the bilateral relationships analyzed by the USAF.

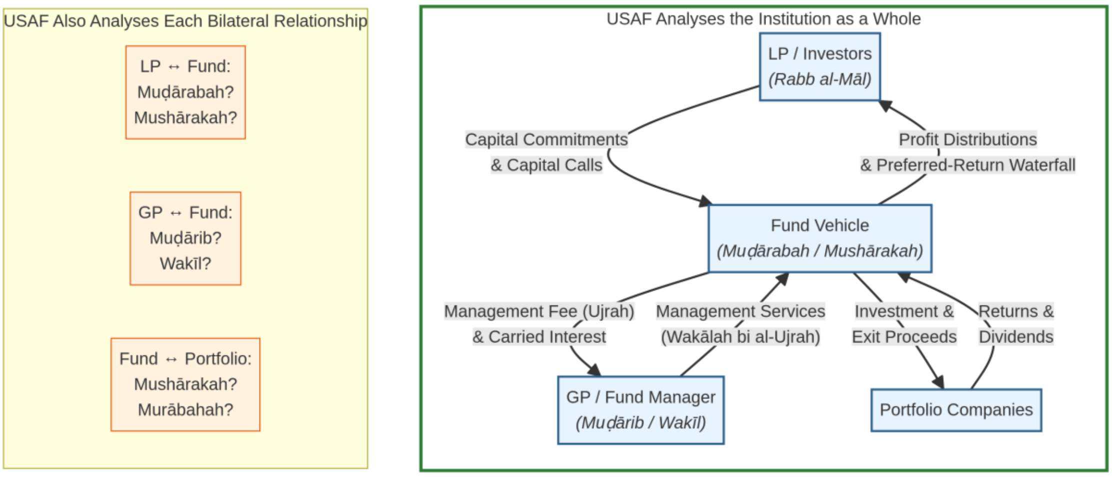

Figure 2. Illustrative VC/PE Institutional Architecture

1. **Factual Conceptualisation and Institutional Mapping (Steps 1-2)**
   In a typical contemporary VC/PE structure, the fund is managed by a General Partner (GP) who raises capital from Limited Partners (LPs). The GP identifies investments, manages the portfolio, and executes exits. The economic arrangement typically includes a management fee and carried interest, often subject to a preferred return or hurdle mechanism under which available distributable profits or proceeds are allocated to LPs up to the hurdle before the GP participates in carried interest. These terms are central to the GP/LP incentive and revenue structure documented in the conventional private-equity literature (Metrick & Yasuda, 2010; Robinson & Sensoy, 2013). In the present paper, they are treated as illustrative features for testing institutional coherence, not as findings about Malaysian Islamic funds generally.
2. **Legal Characterisation and Evidentiary Baseline (Steps 3–4)**
   The foundational contract often invoked for Islamic VC is muḍārabah. In its classical formulation, the rabb al-māl (capital provider) supplies capital, while the muḍārib (manager) provides expertise and labour. The Majallat al-Aḥkām al-ʿAdliyyah requires that profits be allocated as a specified undivided share and ordinarily places non-fault capital losses on the capital provider; the muḍārib is liable where loss results from negligence, misconduct, or breach of mandate (Majallat al-Aḥkām al-ʿAdliyyah, 2001). A guarantee of capital or a fixed return by the muḍārib would therefore require separate juristic justification and careful legal characterisation.
3. **Interaction Analysis and Structural Mapping (Step 5)**
   When mapping the illustrative contemporary structure against this baseline, the interplay of multiple capacities becomes apparent. If the GP is characterised solely as a muḍārib, the fixed management fee poses a jurisprudential challenge. However, if the GP acts under wakālah bi al-ujrah (agency for a fee) for management tasks and muḍārabah for investment returns, the interplay of these contracts must be analyzed. Preferred-return waterfalls, liquidation preferences, clawback provisions, and any express or functional capital-protection undertakings must therefore be mapped separately because their legal and economic effects differ. These mechanisms may include:
   a. **Capital protection clauses**: Arrangements designed to protect the return of invested capital.
   b. **Preferred return hurdles**: Mechanisms determining how realised profits are distributed, often prioritising LPs.
   c. **Management fee structures**: Fixed percentage fees based on assets under management.
   d. **Clawback limitations**: Restrictions on recovering previously distributed profits.
4. **Maxim-Based Evaluation (Step 6)**
   The sixth step applies the qawāʿid fiqhiyyah to assess the substantive implications of these interactions:
   Al-kharāj bi-l-ḍamān (Entitlement to gain accompanies liability): The maxim links entitlement to gain with exposure to liability. In the illustrative VC structure, the GP receives a management fee. If the GP's remuneration as muḍārib takes the form of a fixed fee independent of realised profit, this raises a jurisprudential question about the classical remuneration structure of muḍārabah. By contrast, where the GP separately acts as a wakīl for identifiable management services, an agreed ujrah should be analyzed under the applicable wakālah rules. AAOIFI Standard 13 expressly permits a separate, independent agreement for a fee for work not customarily part of the muḍārabah, while Standard 46 recognizes that an investment agent's fee may be a fixed amount or a percentage (AAOIFI, n.d.-a; AAOIFI, n.d.-b). USAF therefore requires researchers to

distinguish muḍārabah profit-sharing from wakālah bi al-ujrah compensation rather than categorically treating every fixed fee as incompatible with risk-sharing.

Al-ʿibrah fī al-ʿuqūd li-l-maqāṣid wa-l-maʿānī lā li-l-alfāẓ wa-l-mabānī (Purposes and meanings prevail over words and forms): The substance of capital-protection mechanisms must be evaluated. If a preferred return operates merely as a profit-allocation waterfall—determining how realised profits are distributed—it should be analyzed under the applicable muḍārabah and profit-distribution rules rather than treated automatically as a guaranteed return (AAOIFI, n.d.-a; Majallat al-Aḥkām al-ʿAdliyyah, 2001). If it constitutes a guaranteed entitlement independent of actual profit, the arrangement may acquire debt-like characteristics. The maxim requires legal characterisation to follow the documented operation of the hurdle rate rather than its nomenclature.

Lā ḍarar wa-lā ḍirār (No harm): A preferred-return hurdle structured as a guaranteed entitlement may create a risk of harm (ḍarar) within the entrepreneurial ecosystem. It could alter incentives and direct Islamic VC funds toward safer or later-stage investments rather than early-stage ventures. Whether that effect occurs is an empirical question. Within USAF, the maxim therefore identifies a potential harm that must be investigated through evidence; it does not permit systemic harm to be presumed from the contractual label alone.

The following table summarises the illustrative maxim-based evaluation:

Table 2. Illustrative Maxim-Based Evaluation Summary

Maxim	Classical Requirement	Illustrative Contemporary Feature	Analytical Question
Al-kharāj bi-l-ḍamān	Entitlement to gain accompanies liability.	GP receives fixed management fee	Is the fee valid ujrah for separately identified wakālah services, or remuneration attributable to the GP's muḍārib capacity?
Substance over form	Legal characterisation follows economic reality	Preferred return hurdle	Is it a profit-allocation waterfall or a guaranteed debt-like entitlement?
Lā ḍarar wa-lā ḍirār	Harm shall neither be inflicted nor reciprocated.	Capital protection mechanisms	Do these mechanisms systemically disincentivize early-stage risk-taking?
Al-ʿādah muḥakkamah	Custom is authoritative where not contrary to texts	Industry custom of 2/20 fee structures (Robinson & Sensoy, 2013)	Does the custom contradict definitive textual prohibitions?

Source: Prepared by the author from the juristic authorities cited in the table and Robinson and Sensoy (2013).

5. **Teleological Assessment and Institutional Coherence (Steps 7–9)**
The protection of wealth (ḥifẓ al-māl), its circulation, and justice in financial dealings are recurring maqāṣid in the juristic and Islamic-finance literature (al-Ghazālī, 1993; Laldin & Furqani, 2013). The illustrative structural features identified above therefore warrant assessment through questions such as the following:
    a. **Wealth circulation**: Do capital protection clauses concentrate risk on entrepreneurs while insulating capital providers, thereby replicating conventional debt dynamics?
    b. **Genuine economic activity**: Do fixed management fees incentivise asset gathering over value creation, decoupling the GP's income from investment performance?
    c. **Equitable risk-sharing**: Does the integrated allocation of remuneration, control and downside risk remain consistent with the Sharīʿah contractual character attributed to the fund?

The USAF analysis shows how these questions can be systematically addressed. It highlights that although individual contracts within a VC/PE fund may achieve formal Sharīʿah compliance at the contractual level (ṣūrah), their interaction at the institutional level requires rigorous evaluation to ensure they realize the substantive objectives (maqāṣid) that justify their Islamic characterisation.

FINDINGS AND DISCUSSION

Findings: Six Methodological Principles for Uṣūlī Research

The USAF comprises nine sequential analytical steps. From these steps, the paper derives six overarching methodological principles that should guide future research in Islamic finance. These principles do not reject conventional financial analysis, which already addresses incentives, governance, contracting frictions, and portfolio outcomes. Instead, they identify the additional juristic work required when those economic arrangements are evaluated as part of an institution claiming an Islamic contractual character. Table 3 therefore compares analytical emphases rather than setting up a conventional straw man against a superior alternative.

Table 3. Methodological Distinctions of the USAF

Principle	Conventional Approach	Uṣūlī Approach (USAF)
1. Epistemological Primacy of Conceptualisation (Taṣawwur)	Models principal–agent incentives, monitoring, and control rights; treats legal and financial clauses as contract features to be analyzed.	Adds a juristic inquiry into whether the documented economic substance accords with the relationship's characterised function.
2. Dynamic Legal Characterisation (Takyīf)	Decomposes the allocation of cashflow, control, voting, liquidation, and governance rights across financing rounds.	Characterizes each relationship and then tests the cumulative effect of operational clauses on the contractual archetype.
3. Systemic Maxim Application (Taṭbīq al-Qawāʿid)	Examines incentive effects, contracting frictions, and possible harms; regulatory compliance is one constraint, not the whole method.	Applies qawāʿid fiqhiyyah holistically to evaluate economic substance and the allocation of risk and benefit.

4. Contextual Verification (Taḥqīq al-Manāṭ)	Assesses how legal and regulatory context changes feasible governance, enforcement, and contracting arrangements.	Contextualizes the juristic analysis within the specific Malaysian regulatory and institutional environment.
5. Integration of Maqāṣid	Evaluates risk, return, diversification, and portfolio outcomes; it does not by itself answer whether the institution's means accord with maqāṣid.	Measures alignment with maqāṣid al-Sharīʿah without displacing established textual rules or substantive fiqh.
6. Methodological Transparency	Can document assumptions, data, and contractual terms for analytical review, without implying identical conclusions across interpreters.	Provides a structured, auditable progression through nine analytical steps so that disagreements can be located at factual, characterisation, evidentiary, or evaluative stages.

Source: Prepared by the author from the USAF analysis and the conventional literature reviewed

1. **Principle 1: Epistemological Primacy of Conceptualization (Taṣawwur)**
   Research must begin with a granular deconstruction of the financial structure, distinguishing its economic substance from its legal form. The classical maxim al-ḥukm ʿalā al-shayʾ farʿ ʿan taṣawwurihi (judgement upon a thing is a branch of its conceptualisation) requires researchers to look beyond practitioners' nomenclature (Ibn al-Najjār, 1997). In the context of VC, this means analyzing the term sheet, the distribution waterfall, and the governance rights, rather than merely accepting the label of muḍārabah or mushārakah. A flawed taṣawwur inevitably leads to a flawed takyīf.
2. **Principle 2: Dynamic Legal Characterisation (Takyīf)**
   The characterisation of a contract must be dynamic, accounting for how operational clauses (e.g., preferred returns, liquidation preferences) alter the fundamental nature of the underlying nominate contract. Classical fiqh does not permit the muḍārib to guarantee the capital in the absence of misconduct, negligence, or breach. Such a stipulation conflicts with the trust-based character of muḍārabah (Majallat al-Aḥkām al-ʿAdliyyah, 2001; AAOIFI, n.d.-a). Researchers must assess the cumulative effect of modern financial engineering on the classical contractual archetype.
3. **Principle 3: Systemic Maxim Application (Taṭbīq al-Qawāʿid)**
   Legal maxims (qawāʿid fiqhiyyah) must be applied systematically to the entire structure, not selectively to individual clauses. A methodological risk arises when permissibility maxims are invoked selectively without equivalent consideration of maxims governing liability, harm, and contractual substance. The USAF requires a holistic application of maxims to ensure internal consistency.
4. **Principle 4: Contextual Verification (Taḥqīq al-Manāṭ)**
   The evaluation of Sharīʿah compliance must be contextualized within the specific economic and regulatory environment. Taḥqīq al-manāṭ requires verifying that the legally relevant determinant (manāṭ)—including the operative ʿillah, where applicable—is present in the concrete contemporary case (al-Shāṭibī, 1997, Jabatan Mufti Wilayah Persekutuan, 2016). In Malaysia's VC ecosystem, this entails understanding how the Capital Markets and Services Act 2007 (2007) (CMSA), the current SC VC/PE Registration

Guidelines, and the SC's Islamic Capital Market Products and Services Guidelines interact with Sharīʿah requirements (Securities Commission Malaysia, 2026a, 2026b). The analysis should assess whether regulatory constraints materially affect the available Sharīʿah-compliant structuring alternatives. Within USAF, any invocation of ḍarūrah, ḥājah, or maṣlaḥah must be tested against the applicable jurisprudential conditions and cannot be presumed merely from the existence of regulatory or commercial constraints (al-Shāṭibī, 1997).

5. **Principle 5: Integration of Maqāṣid**
   Maqāṣid al-Sharīʿah provide a structured evaluative framework for assessing the broader purposes and consequences of a financial structure without displacing established textual rules or substantive fiqh. Consistent with Laldin and Furqani's (2013) distinction between ends and means, a contractual instrument should remain directed toward, rather than become detached from, the objective it is intended to serve. Monawer et al. (2022) demonstrate that maqāṣid can be operationalised as a framework for Islamic-finance product development. USAF extends that concern to the analysis of an integrated institution. A technically compliant structure that appears to concentrate wealth or neutralize genuine risk-sharing therefore warrants further scrutiny, but maqāṣid remain a complementary evaluative layer rather than an independent source capable of overriding established Sharīʿah rulings.
6. **Principle 6: Methodological Transparency**
   Researchers must explicitly articulate their methodological framework to ensure that their evaluations are transparent, auditable, and subject to scholarly critique. The relevant standard is not empirical replicability in the sense of producing identical results from repeated measurements. It is an inspectable analytical trail: a reader should be able to identify the factual inputs, document versions, juristic authorities, legal characterisations, counterarguments, and decision points that link the initial conceptualization to the final assessment. A second researcher working from the same disclosed record should be able to reconstruct that sequence and pinpoint where a different interpretation enters, even if contested juristic questions do not yield identical conclusions. Opaque "Sharīʿah board approvals" or proprietary fatwas cannot, by themselves, satisfy that academic requirement.

Discussion: Addressing Methodological Objections

The proposal to operationalise uṣūl al-fiqh as a systematic analytical methodology may encounter several objections that must be addressed to establish its academic validity.

1. Objection 1: Uṣūl al-Fiqh Is a Discipline of Legal Derivation, Not Institutional Analysis
   A common objection is that uṣūl al-fiqh is a discipline of legal derivation rather than a methodology for institutional financial analysis. The objection correctly marks a boundary: USAF cannot convert a research protocol into an exercise of ijtihād by an unqualified analyst. It does not attempt to do so. Dar al-Ifta (2017) expressly describes the discipline as concerned with research methods and tools, while Alkhan et al. (2025) identify the emergence of a more unified legal methodology in contemporary Islamic finance. USAF draws on that methodological dimension to organize analysis of existing structures; substantive juristic determinations remain subject to the relevant evidentiary rules and qualified scholarly authority.
2. Objection 2: Subjectivity of Maqāṣid and Qawāʿid
   Critics may argue that applying maqāṣid and qawāʿid is inherently subjective. USAF cannot eliminate interpretive disagreement, but it can discipline and expose the

reasoning process. First, the researcher must identify the juristic authority and scope of each maxim or objective relied upon, rather than treating a general maxim as a free-standing rule. Second, evaluative judgments follow factual conceptualization, legal characterisation, and contract-specific analysis; they do not precede them. Third, the researcher must state the evidence, counterarguments, and limits of the conclusion. These safeguards make disagreement traceable and auditable. A second researcher can reconstruct the sequence from the disclosed factual record and sources, but the framework does not claim that contested juristic questions will yield a single, mechanically reproducible answer.

3. Objection 3: Redundancy with Existing Frameworks
   Some may question the need for a new methodology given that AAOIFI standards, Malaysian regulation, and institutional Sharīʿah-governance arrangements already exist. These frameworks perform indispensable standard-setting, supervisory, and product-review functions. Governance scholarship also shows that Sharīʿah risk management, review, audit, and supervisory authority contribute to institutional compliance and legitimacy (Alam, 2021; Hasan et al., 2020). USAF addresses a different research problem: it provides an explicit sequence for evaluating how otherwise valid components interact and whether the resulting institution remains coherent in form, operation, and purpose. It is therefore supplementary to, not a replacement for, existing standards and governance bodies.
4. Objection 4: Lack of Empirical Specificity
   A reviewer might object that the case study remains at the regulatory level rather than analyzing specific fund documents. This is a deliberate methodological choice for the present paper, which aims to establish the framework's conceptual validity. The regulatory-level analysis demonstrates the USAF's capacity to identify structural patterns across the sector. Future research—applying the USAF to specific fund term sheets, limited partnership agreements (LPAs), and operational data—will provide the empirical specificity that complements this conceptual foundation. The framework is designed to be scalable: it can be applied at the macro level to regulatory regimes or at the micro level to individual transactions.
5. Objection 5: The Framework May Be Obvious
   It might be argued that any competent Sharīʿah scholar would naturally consider these factors without a formal framework. This is partially true: experienced scholars do apply uṣūlī reasoning intuitively. However, making the methodology explicit serves three critical functions: (a) it ensures consistency across researchers with varying levels of expertise; (b) it enables scholarly scrutiny and structured comparison of reasoning; and (c) it provides a pedagogical tool for training new researchers in Islamic finance. The value of USAF lies not in discovering new principles but in systematising their application for structural analysis. The transition from implicit scholarly intuition to an explicit analytical trail is a necessary step in the maturation of Islamic finance as an academic discipline.
6. Objection 6: Tension with Industry Pragmatism
   A final objection may come from industry practitioners who argue that the USAF's rigorous application of qawāʿid and maqāṣid is overly idealistic and overlooks the pragmatic realities of modern finance. They may contend that capital protection and fixed fees are necessary to attract investors in a competitive global market. The USAF does not deny these commercial realities; rather, it provides a mechanism for evaluating them transparently. If a deviation from classical principles is justified by necessity

(ḍarūrah) or public interest (maṣlaḥah), the USAF requires that this justification be explicitly articulated and weighed against the resulting harm (ḍarar). It also requires that any reliance on commercially pragmatic or conventionally derived mechanisms be explicitly identified and evaluated under the applicable juristic criteria.

CONCLUSIONS

This paper has developed and illustrated a method for using uṣūlī resources to analyze contemporary Islamic financial structures. The Uṣūlī Structural Analysis Framework (USAF) does not replace substantive fiqh or the judgment of qualified scholars. It makes the research sequence explicit by linking factual conceptualization, legal characterisation, contract interaction, maxim-based analysis, maqāṣid, regulatory context, and whole-institution coherence.

The illustrative application shows how the USAF can identify points at which contemporary VC/PE structures require further Sharīʿah analysis, particularly where multiple contractual relationships, remuneration mechanisms, risk allocations, and governance arrangements interact. The paper does not conclude that Malaysian Islamic VC/PE funds as a class are substantively non-compliant; rather, it demonstrates why institutional-level analysis is necessary alongside contract-level review. The application of qawāʿid fiqhiyyah—particularly al-kharāj bi-l-ḍamān (entitlement to gain accompanies liability) and the principle of substance over form—reveals that capital protection mechanisms and fixed-fee structures must be carefully evaluated to ensure they do not transform risk-sharing partnerships into quasi-debt instruments.

The methodological principles derived from the analysis provide a blueprint for future research. USAF responds to the development of a more unified legal methodology in Islamic finance identified by Alkhan et al. (2025) and to AAOIFI's (2015) institutionalisation of procedural and evidentiary controls for fatwā. Its contribution is not the discovery of new juristic principles. It is the transparent ordering of established and contemporary analytical resources so that claims about institutional Sharīʿah coherence can be explained, audited, and criticized.

LIMITATION & FURTHER RESEARCH

This study is conceptual and framework-building in nature. It does not analyze specific fund documents or conduct empirical fieldwork with fund managers. The case study operates at the regulatory and structural levels rather than the transactional level. Additionally, the framework has been demonstrated through a single case study (Malaysian Islamic VC/PE); its applicability to other sectors and jurisdictions, while theoretically sound, requires further empirical validation.

Future research should apply the USAF to specific empirical case studies of individual Islamic VC and PE funds, moving beyond regulatory analysis to evaluate actual term sheets, limited partnership agreements, and operational outcomes. Comparative studies applying the USAF across multiple jurisdictions (Malaysia, the GCC, the United Kingdom) would test its generalizability. Additionally, the framework's application to other Islamic finance sectors—such as ṣukūk, takāful, and Islamic fintech—would further demonstrate its versatility. Ultimately, integrating uṣūlī analysis into contemporary Islamic finance research is essential to ensure that the Islamic finance industry remains true to its foundational principles and higher objectives.

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