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State Sovereignty and Global Tax Governance: The Integration of Islamic Distributive Justice within International Economic Law

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ABSTRACT

The structural expansion of the digital economy precipitates a severe normative crisis within international economic law by eroding territorial fiscal sovereignty and entrenching base erosion and profit shifting. Current global tax governance spearheaded by the Organisation for Economic Co-operation and Development exhibits an acute distributive justice deficit, disproportionately subordinating market jurisdictions in the Global South under asymmetric soft law compromises while secular redistributive frameworks remain conceptually deadlocked. This study critically investigated the epistemic clash between state sovereignty and multilateral digital taxation, evaluating whether non-Western constitutional ethics can rectify these structural imbalances. Employing a doctrinal legal research methodology integrated with conceptual and statutory approaches, this research scrutinized contemporary multilateral treaty drafts alongside domestic responsive statutes through deductive syllogism. The analysis revealed that the Two-Pillar architecture systematically marginalizes developing economies by restricting reallocation to fractional residual profits and coercively invalidating legitimate unilateral digital levies. Furthermore, the findings established that Islamic constitutional jurisprudence—specifically through public fiscal governance doctrines and the overarching tenets of Islamic law—furnishes an imperative normative foundation to overcome this impasse. Rather than operating as private ritualistic philanthropy, principles forbidding wealth concentration and manipulative transactional ambiguities legally invalidate structural market exploitation. Consequently, this study definitively asserts that integrating Islamic distributive justice into binding multilateral conventions transforms global taxation from an instrument of neoliberal capital retention into an enforceable mechanism of equitable economic redistribution. Prescriptively, this epistemological integration establishes legitimate legal defenses for developing market states to preserve jurisdictional sovereignty, eradicate predatory tax competition, and guarantee universal welfare.

1. Introduction

The structural transformation of the digital economy across traditional jurisdictional boundaries poses a fundamental existential challenge to the paradigm of state sovereignty, particularly its fiscal dimension. Historically and theoretically, constitutional law and classical international law have been anchored in the Westphalian premise that taxing jurisdiction is inextricably tethered to physical presence and territoriality. However, contemporary digital business models enable Multinational Enterprises (MNEs) to extract economic value and reap substantial profits from market jurisdictions without establishing a physical nexus, thereby precipitating aggressive Base Erosion and Profit Shifting (BEPS). This regulatory lacuna and subsequent clash of norms have engendered a jurisdictional anomaly: market states—predominantly developing nations in the Global South—are deprived of their constitutionally sovereign taxing rights, while wealth becomes increasingly concentrated in a select few residence jurisdictions and tax havens.[1] As an institutional response to this sovereignty crisis, the Organisation for Economic Co-operation and Development (OECD), in conjunction with the G20, spearheaded global tax governance reform through the Inclusive Framework's Two-Pillar Solution, which encompasses the reallocation of taxing rights (Pillar One) and the establishment of a 15% global minimum corporate tax rate (Pillar Two).[2] While heralded as a revolutionary instrument of multilateral consensus, the implementation of this international economic law framework has provoked intense scholarly debate as to whether such global governance genuinely respects the sovereignty of developing states, or merely constitutes a novel form of asymmetric coercion legitimized by the neoliberal economic order.[3]

The scholarly discourse concerning the inherent tension between state sovereignty and the global tax governance architecture has generated a rich, albeit profoundly fragmented, body of literature. Charting the state of the art published over the past five years (through 2024) reveals three principal clusters of debate that dialectically endeavor to resolve this conundrum. First is the global political economy cluster, typified by the scholarship of Irma Mosquera Valderrama (2025).[4] Scholars within this cluster offer a trenchant critique, asserting that the OECD's global tax architecture remains fundamentally entrenched in Global North hegemony, wherein developing nations are relegated to mere *pro forma* inclusion, devoid of meaningful substantive representation in policy formulation. They contend that this regime constructs an illusion of "adaptive fiscal sovereignty," whereby developing states are compelled to relinquish their unilateral protectionist measures in exchange for a global compromise fraught with power asymmetries.[5] Second is the secular distributive justice cluster, advanced by scholars such as Amelia Cahyadini et al. (2025). This body of literature employs a Rawlsian distributive justice framework to empirically demonstrate that Pillar One reallocates only a marginal fraction of "residual profits," thereby failing to comprehensively redress structural inequities. Consequently, John Rawls's "difference principle" remains fundamentally unrealized within the realm of international tax allocation.[6] Third is the

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[1] Mariya Paskaleva and Ani Stoykova, "International Tax Reform in the Digital Economy: Theoretical Framework and Empirical Simulation of Multi-Factor Allocation Systems," *Journal of Tax Reform* 11, no. 3 (2025): 612–42, https://doi.org/10.15826/jtr.2025.11.3.219.

[2] Adeline Hilary Tambunan, "G20 Minta OECD Selesaikan Kerangka Pajak Minimum Global," Pajakku, 2022, https://pajakku.com/artikel/g20-minta-oecd-selesaikan-kerangka-pajak-minimum-global.

[3] Heriantonius Silalahi, "Reconfiguring Tax Sovereignty under the OECD Two-Pillar Framework: Legal and Institutional Readiness in a Developing Economy," *Jurnal Inovasi Pajak Indonesia* 1, no. 4 (January 10, 2025): 196–206, https://doi.org/10.69725/jipi.v1i4.297.

[4] Irma Mosquera Valderrama, "Global Tax Governance in International Tax Law-Making: In Search of Legitimacy and Inclusiveness," in *Taxing Income and Consumption* (Edward Elgar Publishing, 2025), Page, 170-194. https://doi.org/10.4337/9781035344598.00019.

[5] Silalahi, "Reconfiguring Tax Sovereignty under the OECD Two-Pillar Framework: Legal and Institutional Readiness in a Developing Economy."

[6] Amelia Cahyadini et al., "Adopting Pillar One: An Ideal Model for the Transformation of Indonesia's Tax Law to Realize SDGs Goal XVII and It's Challenges," *Cogent Social Sciences* 11, no. 1 (2025), https://doi.org/10.1080/23311886.2025.2459321.

Islamic constitutional law and Sharia economics cluster, exemplified by the scholarship of Muneer M. Alshater et al. (2022), and various other comparative analyses. This literature extensively explores the principles of Islamic distributive justice (*Siyasah Maliyah*) through juridical mechanisms such as *zakat*, *waqf*, and *fiqh muamalat* to alleviate poverty and redress disparities in wealth allocation.[7]

Through a thematic synthesis of these three literature clusters, this article cogently identifies a critical research gap within contemporary international economic law and constitutional law scholarship. Current debates surrounding global tax governance remain overwhelmingly dominated by secular epistemological critiques—such as Rawlsian institutional engineering. However, these critiques frequently culminate in a pragmatic impasse, as they fail to proffer an alternative, morally binding ethico-juridical framework derived from non-Western legal systems. Western legal scholarship tends to cast developing nations exclusively as structural victims, without articulating a comprehensive, countervailing legal doctrine. Conversely, Islamic constitutional law literature (*Siyasah Dusturiyah* and *Siyasah Maliyah*) suffers from a distinct blind spot. The majority of this scholarship remains confined to localized socio-economic policy analyses or micro-financial instruments rooted in *fiqh al-ibadat*. Consequently, it is rarely operationalized as a macro-structural analytical paradigm to deconstruct the inequities embedded within international tax treaties or the specific parameters of the OECD's BEPS framework.[8] Consequently, the contemporary international economic law architecture suffers from a profound normative deficit, lacking a framework capable of reconciling the fiscal sovereignty of developing states with the imperative demands of distributively equitable global governance.

Departing from prior scholarship—which predominantly centers on secular political-economy critiques of the OECD framework's deficiencies or remains cloistered in micro-institutional analyses of domestic *zakat* administration—this article proffers a novel approach. It elevates the principles of *Siyasah Maliyah* (Islamic constitutional fiscal policy) and Islamic distributive justice to serve as a macro-normative philosophical foundation, integrated directly into the global tax governance architecture. This conceptual novelty radically reconceptualizes constitutional law, shifting its paradigm from a rigid instrument of territorial sovereignty to a facilitator of transnational economic morality. This article demonstrates that the principles of anti-wealth monopolization (*tadawul al-mal*), the prohibition of speculative exploitation and information asymmetry (*gharar*), and the orientation toward supranational public welfare (*maslahah mursalah*) can be crystallized into binding hard law norms within multilateral tax governance. Ultimately, this framework bridges the chasm between market jurisdictions' imperative for fiscal autonomy and the inexorable reality of global economic integration.

Serving as the culminating argument of this introduction, the central thesis advanced by this article posits that the global tax governance architecture spearheaded by the OECD will never achieve universal legitimacy and long-term institutional stability as long as it rests solely on the pragmatism of residual profit allocation, unanchored from inclusive principles of distributive justice. Consequently, integrating the doctrine of *Siyasah Maliyah* into international economic law constitutes a constitutional imperative for the protection of market states. Legal academia and policymaking authorities must heed this paradigm, as it offers a vital escape from the rigid dichotomy between destructive protectionist unilateralism and oppressive asymmetric multilateralism. Ultimately, this study definitively postulates that embedding Islamic distributive justice principles into international treaty instruments—such as the Multilateral Convention to

[7] Muneer M. Alshater et al., "Fintech in Islamic Finance Literature: A Review," *Heliyon* 8, no. 9 (September 2022), https://doi.org/10.1016/j.heliyon.2022.e10385.

[8] Fakhruddin Fakhruddin et al., "From Fiqh Al-Ibadat to Muamalat: Repositioning Zakat Management in Indonesia in the Perspective of Maqāṣid Al-Sharī'ah," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (April 27, 2024): 495–517, https://doi.org/10.22373/sjhk.v8i1.19637.

Implement Amount A—and domestic regulatory frameworks can forge a tax governance mechanism that transcends mere technical collection efficiency. Rather, it becomes jurisprudentially bound to structural redistributive obligations, strategically designed to preempt base erosion and safeguard the sovereignty of market jurisdictions in the developing world.

2. Research Methods

This study employs a doctrinal legal research methodology, synergistically integrated with philosophical, conceptual, and statutory approaches. The adoption of the doctrinal method is predicated upon the ontological and epistemological imperative to prescriptively analyze, deconstruct, and reconstruct the normative architecture, foundational principles, and theoretical hierarchies that underpin state sovereignty and international tax treaties. Furthermore, the conceptual approach is explicitly deployed to critically juxtapose and foster a dialectic between the secular doctrine of fiscal sovereignty and the concept of *Siyasah Maliyah* within the broader discourse of Islamic constitutional law.

The primary legal sources examined in this study encompass contemporary international economic law instruments, specifically the draft Multilateral Convention to Implement Amount A of Pillar One (MLC) promulgated by the OECD. Furthermore, the analysis incorporates strategic domestic statutory frameworks enacted in response to global tax governance, such as the Republic of Indonesia's Law Number 7 of 2021 on the Harmonization of Tax Regulations (UU HPP), alongside its technical implementing regulations, most notably the Minister of Finance Regulation (PMK) No. 136/2024 concerning the imposition of the global minimum tax.[9] Concurrently, the secondary legal sources are predicated upon a rigorous synthesis of contemporary scholarship, primarily drawing from high-impact, peer-reviewed articles indexed within the Scopus database (strictly confined to a temporal parameter capping at 2024). This curated literature specifically interrogates the nexus of global tax governance, macro-distributive justice, and Islamic economic law.

The compilation of legal materials was executed via a comprehensive and systematic literature search across validated academic databases. Subsequently, the legal analysis is operationalized through deductive syllogism and systematic interpretation. Within this methodological framework, the major premise—comprising modern theories of state sovereignty and principles of Islamic distributive justice—is placed into critical dialogue with the minor premise, consisting of the empirical legal realities of the OECD's inequitable tax regime and prevalent BEPS practices. Furthermore, the analytical paradigm of *Maqasid al-Shari'ah* (the foundational objectives of Islamic law) is not relegated to a mere passive ethical standard. Rather, it is substantively operationalized as the *ratio legis* to scrutinize the normative validity underlying the global allocation of taxing rights. Through this critical and intertextual analysis, the synthesized legal materials are juxtaposed to construct a prescriptive resolution: the design of an international economic law governance model characterized by enhanced institutional dignity and robust distributive equilibrium.

3. Result and Discussion

3.1. Deconstructing Fiscal Sovereignty: Hegemony and Normative Tension within the OECD Global Tax Framework

Within constitutional law jurisprudence, the evolution of state sovereignty constitutes the indispensable bedrock for the legitimacy of exercising fiscal jurisdiction. Drawing upon the classical sovereignty paradigms espoused by Jean Bodin and Thomas Hobbes, fiscal sovereignty

[9] Fadlol Muhammad Fajar and Ferry Irawan, "Analysis Of The Implementation And Implications Of OECD/G20 Pillar One On The Taxation System In Indonesia," *Educoretax* 4, no. 5 (May 11, 2024): 597–619, https://doi.org/10.54957/educoretax.v4i5.815.

dictates that a sovereign state possesses the absolute, exclusive, and independent constitutional authority to levy taxes, establish rates, allocate resources, and formulate economic policies within its territorial boundaries, strictly unfettered by external coercive intervention.[10] Taxing sovereignty is regarded as the supreme manifestation of constitutional autonomy in the pursuit of public welfare. However, the relentless forces of globalization and the hyper-digitalization of the twenty-first-century economy have engendered a profound disconnect—an extreme demarcational rift—between the locus of actual value creation and the *de jure* jurisdiction of physical presence. Contemporary digital multinational enterprises (MNEs) wield the capacity to massively penetrate developing markets without crossing the threshold of a Permanent Establishment (PE), a legal nexus traditionally predicated upon a physical, "brick-and-mortar" footprint.[11] This regulatory lacuna induces a systemic paralysis of authority within market jurisdictions, effectively rendering them incapable of reaching taxable objects. Consequently, this state of fiscal impotence directly undermines the capacity of the sovereign to discharge its constitutional mandate regarding wealth redistribution and the provision of essential public services.

To rectify this pervasive international regulatory lacuna, the OECD and the G20 conceptualized an instrument known as the Two-Pillar Solution. Prescriptively, Pillar One is engineered to reallocate a portion of taxing rights back to market jurisdictions by apportioning a percentage of residual profits (Amount A) from multinational enterprises that surpass a designated profitability threshold, notwithstanding the absence of a physical nexus.[12] In parallel, Pillar Two establishes a robust regulatory backstop by mandating a 15% global minimum corporate tax rate through an intricate framework denoted as the Global Anti-Base Erosion (GloBE) rules. This architecture comprises the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR), which are strategically engineered to arrest the pernicious "race to the bottom" in international tax competition.[13] At the level of diplomatic and conceptual rhetoric, this initiative seemingly mirrors a resounding triumph of multilateralism in international economic law. Yet, when this regulatory framework is dissected through the lens of critical constitutional law, the OECD initiative unveils a brutal clash of norms. This regime imposes a radical paradigm shift from the doctrine of "absolute sovereignty" toward what contemporary scholarship terms "negotiated coordination"—a conceptual framework that frequently tilts in favor of the rule-makers themselves.[14]

This normative tension manifests explicitly within the operationalization of the multilateral convention's requirements. The draft Multilateral Convention to Implement Amount A (MLC) compels jurisdictions—particularly those situated within the Global South—to repeal their legitimately enacted unilateral Digital Services Taxes (DSTs) and to refrain from implementing analogous tax instruments in the future, enforced via a restrictive "standstill" clause.[15] Within the discourse of pure constitutional jurisprudence, this coerced revocation of domestic authority is not merely an act of harmonization; it constitutes an amputation of legislative sovereignty. Developing states are compelled, through the instrumentalities of economic diplomacy, to

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[10] David Doresta Wijaya and Nurul Mubin, "Teori Kedaulatan Negara," *WISSEN : Jurnal Ilmu Sosial Dan Humaniora* 2, no. 4 (August 20, 2024): 114–21, https://doi.org/10.62383/wissen.v2i4.332.

[11] Silalahi, "Reconfiguring Tax Sovereignty under the OECD Two-Pillar Framework: Legal and Institutional Readiness in a Developing Economy."

[12] Surono Surono and Vita Apriliasari, "Pengaruh Pillar 1 OECD (Unified Approach) Terhadap Pemajakan Digital Di Indonesia," *Jurnal Pajak Indonesia (Indonesian Tax Review)* 6, no. 2S (December 9, 2022): 462–71, https://doi.org/10.31092/jpi.v6i2S.1868.

[13] Kirana Cintyawati and Herlin Setijaningsih, "Bridging Global Tax Reform and Sustainable Development: A Bibliometric Overlay of International Taxation Literature," *JRAK* 18, no. 1: 29–47, https://doi.org/10.23969/jrak.v18i1.39831.

[14] Pat Devine, "Negotiated Coordination and Socialist Democracy," *Science & Society: A Journal of Marxist Thought and Analysis* 86, no. 2 (April 2022): 140–45, https://doi.org/10.1521/siso.2022.86.2.140.

[15] Fajar and Irawan, "Analysis of The Implementation and Implications of OECD/G20 Pillar One on The Taxation System in Indonesia."

conform to OECD "soft law"—a normative framework that frequently stands in direct hierarchical and substantive conflict with the "hard law" statutes enacted by their sovereign legislative bodies.[16] This scenario presents an acute conflict between the constitutional obligation to preserve national revenue sovereignty on the one hand, and the coercive pressures of international trade governance orchestrated by hegemonic powers on the other. This tension is further exacerbated by the threat of retaliatory investigations—exemplified by the United States' invocation of Section 301—against sovereign states that adamantly maintain their Digital Services Taxes (DSTs) as a critical means to finance their developmental objectives.[17]

For developing jurisdictions such as Indonesia, the response to this international normative tension is articulated as a legal strategy termed "adaptive fiscal sovereignty.[18] Through the enactment of Law Number 7 of 2021 on the Harmonization of Tax Regulations (UU HPP) and its subsequent implementing regulations, Indonesia has undertaken a calculated strategy to reposition its national sovereignty within the evolving global tax regime. Indonesia has formally codified the taxation of trade through electronic systems (*Perdagangan Melalui Sistem Elektronik*—PMSE), anchored in the concept of "Significant Economic Presence" (SEP). This represents a bold doctrinal innovation in the constitutional regulatory framework, one that fundamentally dismantles the traditional dogma of physical presence.[19] Furthermore, responding to the evolving dynamics of the GloBE Pillar Two framework, the Government of Indonesia promulgated Minister of Finance Regulation (PMK) No. 136 of 2024 concerning the imposition of the global minimum tax, effective as of 2025.[20] These constitutional measures exemplify a form of tactical resistance: while Indonesia ostensibly aligns with the OECD's global coordination architecture to avert the threat of economic isolation, it simultaneously anchors its taxing rights within its domestic positive law—a strategic maneuver designed to insulate its jurisdiction against the risks of structural erosion.[21] Nevertheless, the adherence of developing jurisdictions to this OECD regime exposes profound unresolved empirical inquiries. This tax governance framework is constructed with an extraordinarily high degree of administrative complexity and harbors an inherent structural bias favoring the legal systems of developed nations—where the parent entities of multinational technology giants are domiciled—ultimately serving only to exacerbate the institutional capacity divergence among nations.[22]

3.2. The Distributive Justice Deficit: A Blind Spot in Rawlsian Global Tax Governance

The legal reality that the OECD has successfully formulated and imposed a multilateral consensus does not *ipso facto* transform the tax regime into a distributively just framework. Within jurisprudential thought, distributive justice theory seeks to precisely delineate the extent to which

[16] Henry Aspan et al., "Legal Mechanisms for Business Accountability: A Comparison of Soft and Hard Law in Indonesia," *LAW REFORM* 20, no. 2 (October 16, 2024): 353–82, https://doi.org/10.14710/lr.v20i2.59273.
[17] Putri Aisyah and Rina DP, "Digital Services Tax (DST) and Global Trade Conflicts: Balancing Fairness and Trade Relations," *Formosa Journal of Multidisciplinary Research* 4 (March 26, 2025): 1365–84, https://doi.org/10.55927/fjmr.v4i3.122.
[18] Silalahi, "Reconfiguring Tax Sovereignty under the OECD Two-Pillar Framework: Legal and Institutional Readiness in a Developing Economy."
[19] Olumide Obayemi, "Country Note: Taxing The Income Of Digital Non-Resident Companies Under The 'Significant Economic Presence' (Sep) Rules In Nigeria," *Intertax* 49, no. Issue 5 (May 1, 2021): 449–65, https://doi.org/10.54648/TAXI2021043.
[20] Bella Noer Achaddiah, "Tax Governance in the Era of Pillar Two: Legal Certainty, Risk Management, and Strategic Responses in Indonesia," *Sinergi International Journal of Logistics* 3, no. 3 (2025): 168–79, https://doi.org/10.61194/sijl.v3i3.888.
[21] Radja S, "Implementasi Destination-Based Taxation Untuk Atasi BEPS Dan Kerugian Fiskal Melalui Pendekatan Yuridis Normatif-Komparatif," *Jurnal ISO: Jurnal Ilmu Sosial, Politik Dan Humaniora* 5, no. 1 (2025): 1–17, https://doi.org/10.53697/iso.v5i1.2546.
[22] Wouter Lips, "The EU Commission's Digital Tax Proposals and Its Cross-Platform Impact in the EU and the OECD," *Journal of European Integration* 42, no. 7 (October 2, 2020): 975–90, https://doi.org/10.1080/07036337.2019.1705800.

economic burdens and benefits are equitably and proportionally allocated among equal legal subjects.[23] Contemporary global tax governance, however, operates predominantly within a neoliberal economic paradigm that privileges collection efficiency, the liberalization of capital mobility, and the eradication of double taxation barriers, while neglecting the imperative of substantive global wealth redistribution. Mainstream international legal discourse frequently invokes Rawlsian distributive justice—specifically the difference principle—which posits that structural social and economic inequalities are legally justifiable only if they are arranged to maximally benefit the least advantaged members of society.[24]

When these Rawlsian parameters are rigorously operationalized as a normative test against the OECD's architectural foundation, a fundamental blind spot in contemporary literature and policymaking is revealed. Cutting-edge empirical research, through extensive simulations of multi-factor allocation models, demonstrates that the Pillar One (Amount A) mechanism severely constrains the tax base. This mechanism has been politically engineered to capture only a fractional slice of 'residual profit' for reallocation to market jurisdictions.[25] Meanwhile, 'routine profit'—which paradoxically constitutes the overwhelming bulk of multinational corporate wealth—remains securely entrenched within residence jurisdictions (developed nations) whose legal frameworks are structurally conducive to capital accumulation. Furthermore, the stringently exclusive global revenue thresholds ensure that only a negligible fraction of corporate behemoths fall within this regulatory dragnet. The juridical consequence of this architectural design is the de jure legitimation of perpetual capital accumulation in the Global North, dispensing mere fiscal crumbs to the Global South as a political pacifier.

Table 1. Comparative Impact of Digital Tax Policies: Developed versus Developing Jurisdictions

Legal Analytical Dimension	Residence Jurisdictions / Developed Nations (Global North)	Market Jurisdictions / Developing Nations (Global South)	Impact on Rawlsian Distributive Justice
Allocation of Profits (Pillar One)	Retains the dominant share of routine profits and wealth derived from intellectual property (intangibless).	Receives only a marginal percentage of the residual profits of multinational enterprises (MNEs).	Failure: Exacerbates structural inequality; fails to provide maximum benefit to the least advantaged jurisdictions.
Legislative Sovereignty	Acts as the primary architect (rule-maker), dictating legal substance and guiding "soft law" regimes.	Positioned as subordinates (rule-takers) forced to repeal legitimate domestic positive laws (e.g., DSTs).	Failure: The "original position" of equality within the international social contract remains unachievable.
Institutional Compliance Burden	Possesses established tax infrastructure and	Bears an asymmetric administrative burden due	Failure: Highly complex procedures (e.g., GloBE rules)

[23] Zakki Adlhiyati and Achmad Achmad, "Melacak Keadilan Dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, Dan John Rawls," *Undang: Jurnal Hukum* 2, no. 2 (March 24, 2020): 409–31, https://doi.org/10.22437/ujh.2.2.409-431.
[24] Sunaryo Sunaryo, "Konsep Fairness John Rawls, Kritik Dan Relevansinya," *Jurnal Konstitusi* 19, no. 1 (March 28, 2022): 1–22, https://doi.org/10.31078/jk1911.
[25] Vita Apriliasari, "OECD/G20 Two-Pillar Solution: Does It Promote Inter-Nation Equity?," *JURNAL PAJAK INDONESIA (Indonesian Tax Review)* 6, no. 2 (November 30, 2022): 342–56, https://doi.org/10.31092/jpi.v6i2.1826.

	sophisticated dispute resolution (arbitration) mechanisms.	to limited human resources and technological audit capabilities.	disproportionately weaken the capacity of developing states.
Impact of Abolishing Unilateral DSTs	Eliminates double taxation barriers for MNEs headquartered within their own jurisdictions.	Strips the state of a vital fiscal sovereignty instrument that provided immediate and reliable national revenue.	Failure: Cripples the state's capacity to fund essential social safety nets and public redistributive functions.

Drawing upon the preceding analytical dissection, it becomes evident that, within the parameters of procedural justice and political representation, policy formulation at the OECD empirically operates upon a "cartelistic club model" of governance.[26] The most critical theoretical deficit within contemporary international economic law discourse is its exclusive reliance on secular Rawlsian frameworks to critique global institutions. This approach ultimately stagnates in structural pessimism, failing to articulate any binding cross-border normative duty. Consequently, secular paradigms relegate wealth redistribution to a mere political concession—contingent upon the "political will" of developed nations and subject to negotiation via trade coercion—rather than elevating it to a non-derogable fundamental legal principle akin to *jus cogens*. It is precisely this paradigm that reproduces and institutionalizes a perpetual tension: state sovereignty is persistently viewed through a Hobbesian lens as a defensive bulwark for mutually predatory entities, wherein jurisdictions aggressively compete to exploit regulatory lacunae through tax competition (such as tax holidays) and preferential treatments.[27] Absent the intervention of a moral framework rooted in an alternative constitutional epistemology, international economic law will inevitably devolve into a formalistic juridical apparatus that rationalizes systemic exploitation and global wealth disparity under the veneer of regulatory harmonization.

3.3. *Siyasah Maliyah* and Islamic Distributive Justice: A Repositioning from *Fiqh Ibadat* to Constitutional Jurisprudence

To address the normative impasse and the distributive justice deficit inherent within the aforementioned neoliberal framework, the paradigm of Islamic constitutional jurisprudence—articulated through the doctrines of *Siyasah Maliyah* (public fiscal policy law) and *Siyasah Dusturiyah* (constitutional and administrative law)—offers a transformative philosophical and jurisprudential framework. To date, mainstream scholarly analysis within Islamic economics has predominantly remained confined to a highly microscopic locus, situating Islamic financial obligations (particularly the instruments of *zakat*, *infaq*, and *sadaqah*) exclusively within the dogmatic strictures of *fiqh al-ibadat* (individual ritual jurisprudence). This approach focuses solely on philanthropy and personal piety, entirely devoid of broader constitutional ramifications. This academic reductionism significantly distorts the inherently social and structural essence of the *Sharia* itself. The conception of wealth redistribution must be repositioned and elevated into the discursive realm of *fiqh muamalat* (macro socio-economic jurisprudence) and operationalized as the foundational premise of *Siyasah Maliyah* to dictate the formulation of global economic governance norms.[28]

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[26] Fajar and Irawan, "Analysis of The Implementation and Implications of OECD/G20 Pillar One on The Taxation System in Indonesia."

[27] Ratri Bening Pitaloka and Kuwat Slamet, "Influence of Tax Competition on Corporate Income Tax Rates and Tax Holidays in ASEAN-6," *Scientax* 7, no. 1 (2025): 16–28, https://doi.org/10.52869/st.v7i1.993.

[28] Fakhruddin et al., "From Fiqh Al-Ibadat to Muamalat: Repositioning Zakat Management in Indonesia in the Perspective of Maqāṣid Al-Sharī'ah."

Within the ontological framework of Islamic constitutionalism, sovereignty (*siyadah*) is fundamentally not an instrument of despotic authority wielded by an insular territorial entity to exploit the resources of external jurisdictions. Rather, sovereignty is conceptualized as a divine fiduciary duty (*amanah*) that must be administered and accounted for in strict accordance with the parameters of *Maqasid al-Shari'ah* (the foundational objectives of Islamic law). The cardinal pillars of these objectives encompass the preservation of human life (*hifdz al-nafs*) and the preservation of wealth and economic stability (*hifdz al-mal*). Analyzed through this jurisprudential lens, the preservation of wealth fundamentally repudiates the unfettered accumulation of capital; instead, it mandates proactive state intervention to guarantee the equitable circulation of wealth throughout every stratum of the social fabric.[29] Islamic distributive justice is precisely anchored in a fundamental axiom textually enshrined within the supreme constitution of Islamic jurisprudence (the Qur'an, Surah Al-Hashr [59:7]), which establishes a definitive juridical imperative: wealth must be governed "...so that it may not merely circulate exclusively among the wealthy among you." This anti-monopolistic and anti-capital concentration doctrine—conceptually identified as *tadawul al-mal* (the equitable circulation of wealth)—constitutes a direct conceptual rebuttal to the architectural foundations of global neoliberalism. It systematically delegitimizes a regime that legally permits multinational enterprises (MNEs) to sequester their profits within tax havens through Base Erosion and Profit Shifting (BEPS) practices.[30]

Derived from this foundational axiom, Islamic distributive justice within the framework of *Siyasah Maliyah* establishes three cardinal postulates that bear direct implications for both the critique and the structural formulation of international tax governance.[31] First, the doctrinal framework governing the distribution and exploitation of resources—encompassing user data and cross-border digital markets—must be constructed upon the premise of mutual partnership. The unilateral exploitation of digital markets within developing nations, absent proportional tax compensation, is classified under Islamic economic jurisprudence as *ghubn* (structural inequity or systemic deception) and is consequently rendered legally void.

Second, wealth redistribution is conceptualized as a collective obligation (joint responsibility) intended to restitute the rights of structurally marginalized classes (*mustad'afin*). Transposed onto the contemporary geopolitical and global economic legal landscape, these "marginalized entities" represent developing jurisdictions afflicted by chronic fiscal deficits directly resulting from asymmetric international legal instruments. Consequently, the transfer of wealth allocations—whether operationalized through Amount A or alternative tax instrumentation—to market jurisdictions does not constitute a negotiated political concession or an act of benevolence by developed nations; rather, it is the absolute restitution of a fundamental legal right whose execution has been structurally deferred.

Third, the pivotal role of state sovereignty in validating international agreements is articulated through the supreme maxim of Islamic constitutional jurisprudence: "*Tasharruf al-imam 'ala al-ra'iyyah manutun bi al-maslahah*" (the juridical and policy actions of the sovereign authority concerning its citizenry are inextricably bound to, and entirely contingent upon, the parameters of

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[29] Angga Syahputra, Asmuni Asmuni, and Tuti Anggraini, "Urgensi Maqashid Syariah Dalam Pengelolaan Harta," *Jurnal Iqtisaduna* 9, no. 1 (June 7, 2023): 14–27, https://doi.org/10.24252/iqtisaduna.v9i1.36636.

[30] Kurniawan Maspul and Islahuddin Mubarak, "The Imperative of Zakat on Financial Instruments in a Globalized Economy," *Journal of Waqf and Islamic Economic Philanthropy* 2, no. 3 (April 14, 2025): 1–23, https://doi.org/10.47134/wiep.v2i3.648.

[31] Anggi Luthfiah Pane, Nurlaila Rachman, and Triana Triana, "Keadilan Distributif Dalam Perspektif Ekonomi Islam : Implikasi Filosofis Dan Praktis," *Karakter : Jurnal Riset Ilmu Pendidikan Islam* 2, no. 2 (December 27, 2024): 134–43, https://doi.org/10.61132/karakter.v2i2.547.

public welfare).[32] The adoption of global tax treaties that coercively compel states to abrogate their constitutional prerogative to tax multinational digital behemoths—without the provision of commensurate allocative compensation for public financing—is rendered philosophically and juridically void under *siyasah* doctrine. Such compliance constitutes a manifest betrayal of the fiduciary mandate of public welfare (*maslahah*) owed to the signatory state's populace.

Furthermore, the conceptual integration of these instruments radically redefines the paradigm of tax burdens within international economic law. Western jurisprudential models tend to justify taxation merely as a pragmatic exaction paid by society in exchange for the infrastructure of civilization (encapsulated in the maxim, "taxes are the price we pay for a civilized society"), resting entirely upon a purely transactional benefit theory. Conversely, *Siyasah Maliyah* positions state taxation (terminologically conceptualized as *dharibah*, denoting supplementary state-mandated levies beyond the dogmatic obligation of *zakat*) as an exigent constitutional intervention designed to restore distributive equilibrium whenever free-market mechanisms systemically fail to allocate wealth equitably.[33] Viewed through this conceptual paradigm, the juridical resistance against Base Erosion and Profit Shifting (BEPS) and tax evasion can no longer be relegated to a mere infraction of administrative rationality. Rather, such practices constitute a profound transgression against the core tenets of distributive justice—acts that threaten to dismantle the fundamental equilibrium of the global social order.[34] Moreover, tax governance is further governed by a categorical prohibition against manipulative speculation (*maysir*) and the deliberate informational ambiguity inherent in artificially contrived tax transactions (*gharar*).[35] The practice of profit shifting, operationalized through the deployment of shell entities that obscure genuine economic substance, constitutes a contemporary manifestation of structural *gharar*—an artifice that fundamentally delegitimizes the international economic legal order.

3.4. Reconstructing International Economic Law: Integrating Islamic Principles of Justice into Multilateral Conventions

Synthesizing the incisive critique of the OECD's neoliberal hegemony with the macro-doctrinal postulates of *Siyasah Maliyah* necessitates the articulation of a prescriptive model for the reconstruction of international economic law. In this section, this study explicitly brings its conceptual findings into dialogue with contemporary legal discourse to clearly delineate its doctrinal novelty. This paradigm stands in diametrical opposition to the scholarship of Ozai (2024), which predicates structural overhaul upon the Rawlsian ethical consciousness of Western jurisdictions—a theoretical reliance that frequently culminates in academic pessimism [36] Instead, this treatise shifts the epistemological pendulum toward the moral legitimacy of Islamic constitutional jurisprudence. It positions this paradigm as a robust architectural bedrock capable of transmuting non-binding 'soft law' into a coercive 'hard law' regime, contingent upon its adoption by a strategic coalition of the Global South.

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[32] Achmad Musyahid Idrus, "Kebijakan Pemimpin Negara Dalam Perspektif Kaidah Fikih: Tasarruf Al-Imam Manutun Bil Maslahah," *Al Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan* 1, no. 1 (December 29, 2021): 123–37, https://doi.org/10.24252/ad.v1i1.26278.

[33] Ibtisan Ibtisan, Beni Ahmad Saebani, and Bobang Noorisnan Pelita, "Eksistensi Zakat Dan Pajak Dalam Mewujudkan Kesejahteraan Masyarakat Di Indonesia Perspektif Siyasah Maliyah," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 5 (July 27, 2024): 1693–1702, https://doi.org/10.38035/jihhp.v4i5.2514.

[34] Awang Samudra and Ani Purwati, "Pajak, Transparansi, Dan Tindak Pidana Ekonomi Lintas Negara: Implikasi Penggelapan Pajak Bagi Kedaulatan Fiskal Negara Berkembang," *SENTRI: Jurnal Riset Ilmiah* 4, no. 8 (2025): 1376–85, https://doi.org/10.55681/sentri.v4i8.4451.

[35] Dina Ilham Nurjanah et al., "Konsep Gharar Dan Maisir Dalam Transaksi Ekonomi Fikih Mu'amalah," *Al-Fiqh* 2, no. 3 (December 31, 2024): 159–66, https://doi.org/10.59996/al-fiqh.v2i3.368.

[36] Noni Setyorini and Dwirani Fauzi Lestari, "International Taxation in the Digital Era: Toward Fair and Sustainable Regulatory Frameworks," *Summa : Journal of Accounting and Tax* 2, no. 1 (January 31, 2024): 16–27, https://doi.org/10.61978/summa.v2i1.978.

Table 2. A Comparative Dialogical Synthesis of Global Tax Governance Paradigms

Constitutional & Legal Parameters	Neoliberal Paradigm (OECD Two-Pillar Framework)	Distributive Justice Paradigm (Rawlsian Analysis)	***Siyasah Maliyah*** **Paradigm (Islamic Constitutional Jurisprudence)**
Jurisprudential Foundations	Free-market capital mobility efficiency, minimization of double taxation, and asymmetric compromises predicated on economic hegemony.	Social justice as fairness; minimizing structural inequality through institutional engineering.	Prevention of absolute wealth concentration (*tadawul al-mal*), preservation of social equilibrium, and strict orientation toward the foundational objectives of Islamic law (*Maqasid al-Shari'ah*).
Conceptualization of State Sovereignty	Pragmatically viewed as an impediment to trade regimes, to be subjugated through negotiated coordination.	Bears the responsibility of protecting the least advantaged citizens through justice-driven interventions at the territorial level.	Constitutes a cross-border public divine trust (*amanah*); the execution of state power is unconditionally subordinated to the axiom of public welfare (*maslahah mursalah*).
Rationales for Profit Allocation & Taxing Rights	Allocated based on the protection of intellectual property and historical capital ownership; profit dominance heavily skewed toward residence jurisdictions.	Wealth redistribution must benefit the vulnerable (the difference principle), demanding proportional compensation for market jurisdictions.	Allocation predicated on genuine transactional value; absolute prohibition of fictitious/speculative value extraction (*gharar*); imperative prioritization of the rights of the structurally marginalized (*mustad'afin* / deficit-market states).
Prescriptive Nature of Taxation Interventions	Inter-state contractual arrangements driven by negotiations within an exclusive, cartelistic club model.	Mandates that international legal institutional structures guarantee both procedural equity and distributive outcomes.	Constitutes a binding moral and juridical obligation (*fardhu kifayah*); designed to preempt the tyranny of capital accumulation and ensure the equitable cross-border circulation of wealth.

Predicated upon the preceding paradigmatic comparison, this study articulates an actionable reconstructive framework for the systemic overhaul of international economic law. First, at the level of international institutional design, draft convention instruments—such as the Multilateral Convention to Implement Amount A (MLC)—must be fundamentally amended to integrate categorical "developmental safeguards" for market jurisdictions. Drawing upon the doctrine of *maslahah mursalah*—defined as public welfare imperatives not explicitly mandated by absolute textual dogma but entirely consonant with the underlying rationale and equitable spirit of the *Sharia*—market jurisdictions possess a universally legitimate constitutional basis to demand compensatory justice. If the OECD leverages the coercive apparatus of multilateral diplomacy to demand that developing nations repeal their Digital Services Taxes (DSTs)—which constitute a pure expression of jurisdictional sovereignty—then the MLC framework must legally guarantee a proportional profit redistribution threshold for all consumer jurisdictions, rather than merely dispensing fractional concessions relegated to artificially capped residual profit segments.[37] The deployment of the *maslahah mursalah* ethical-legal framework confers legal legitimacy upon market jurisdictions to unilaterally reinstate protective tax measures, in the event that international treaties ultimately fail to deliver the promised structural distributive justice.

Second, at the level of domestic statutory formulation as a shield of state sovereignty, the principle of *Siyasah Maliyah* (Islamic public fiscal governance) provides a robust jurisprudential grounding for progressive legislative construction, such as the codification of Indonesia's Global Minimum Tax (GloBE) regime via Ministry of Finance Regulation (PMK) No. 136/2024. This regulatory measure, which decisively institutes a 15% minimum tax floor to counteract a highly destructive tax competition—or 'race to the bottom'—,[38] is fundamentally the operational embodiment of the Islamic constitutional doctrine of Sadd al-Dzari'ah (the preventive preclusion of avenues leading to systemic harm). The malfeasance of multinational tax evasion, which exploits and manipulates inter-jurisdictional disparities in state legal regimes, is deemed functionally analogous to the economic offenses of speculative manipulation (maysir and gharar). Consequently, the constitutional law tradition in nations such as Indonesia is compelled to eschew a purely reactive posture. It must continually elevate its domestic statutory instruments—refusing to complacently subordinate itself as a compliant legal subject dictated by OECD guidelines. Instead, it must assert agency and function as a strategic counterweight by politically and cohesively driving the consolidation of a Global South bloc (for instance, alongside member states of the Organization of Islamic Cooperation, or OIC).

By internalizing and mobilizing the universal moral framework of Siyasah Maliyah, Indonesia, alongside other sovereign nations, commands an unassailable and robust foundation of legal rationality. They possess the legitimate right to demand a global tax architecture that transcends the mere administrative optimization of wealth efficiency; instead, it must radically function to redistribute the global economic landscape in an equitable, proportional, and humanizing manner toward market jurisdictions. Ultimately, it is this intellectual courage to juxtapose and dialogue the rich heritage of Islamic constitutional ethics within the contested, secular arena of international economic law that will restore the ontological dignity of fiscal sovereignty—a sovereignty that has hitherto been reduced, marginalized, and degraded by the brutal hegemony of unfettered, borderless capital.

4. Conclusion

The normative and jurisdictional friction between the fiscal sovereignty of developing nations and the OECD's global tax governance architecture is fundamentally rooted in the neoliberal design of international economic law—a system suffering from an acute distributive justice deficit. In practice, this regime reduces state sovereignty to a mere instrument of asymmetrical compromise, thereby perpetuating the historical dominance of capital-exporting states in the Global North. To dismantle this normative and institutional deadlock, the doctrinal integration of Siyasah Maliyah (Islamic constitutional fiscal policy) into the core of the international economic legal framework is an absolute constitutional imperative. It must not be relegated to mere theological ornamentation, but rather operationalized as a hard-law paradigm that legitimizes resistance against monopolistic wealth concentration (in contravention of tadawul al-mal) and manipulative exploitation via tax havens (gharar). The reconstruction of multilateral treaty instruments, as reflected in the draft Multilateral Convention to Implement Amount A, must be substantially overhauled by adopting the imperative of supranational public interest (maslahah mursalah). This entails a binding commitment to the proportional and dignified redistribution of global wealth toward market

[37] Aisyah and DP, "Digital Services Tax (DST) and Global Trade Conflicts: Balancing Fairness and Trade Relations."
[38] Dedy Sidarta, "Pajak Minimum Global 15 Persen Di Indonesia 2025 Dan Dampaknya," klikpajak, 2024, https://klikpajak.id/blog/pajak-minimum-global-15-persen/.

jurisdictions (mustad'afin). Ultimately, the affirmation of this Islamic distributive justice philosophy provides an unassailable ethico-juridical foundation for sovereign states to reclaim their fiscal authority. By transcending passive subordination to free-market mechanisms, these states can evolve into primary agents capable of ensuring structural justice and securing the highest equilibrium for the global societal order.

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