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TOWARDS LEGAL CERTAINTY FOR SHARIAH ECONOMICS THROUGH REGULATORY HARMONIZATION IN INDONESIA: THE INTERSECTION OF LAW AND FIQH

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ABSTRACT

Fiqh, as a body of Islamic legal norms, is often ijtihādi and mukhtalaf fīh in nature. Many fiqh rulings are derived through juristic reasoning and remain open to scholarly disagreement. This condition creates diversity, variation, and non-uniformity in legal interpretation. In contrast, qānūn or codified legal regulations have binding force and apply generally within the formal legal system. The

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plurality of fiqh opinions may create legal uncertainty in law enforcement, especially in Shariah-based economic activities that require clear and enforceable rules. This study aims to examine the legislative transformation of fiqh-based legal norms into formal legal rules and the significance of this transformation in strengthening legal certainty and justice in economic activities. This study employs a normative juridical approach, analyzing statutory regulations, Islamic legal principles, fiqh literature, and relevant legal doctrines. The study finds that the legislative transformation of fiqh-based norms has contributed to the formalization of Shariah economic law. However, regulatory overlap remains a significant issue. Therefore, legal harmonization among related laws is necessary to ensure consistency, legal certainty, and justice for parties engaged in Shariah economic activities.

Keywords: *Legal Harmonization, Fiqh, Shariah Economics, Legal Norms*

INTRODUCTION

Fiqh and *qānūn* (statutory law) have distinct characteristics, particularly in their legal authority and implementation. Fiqh is generally *ijtihādī* (juristic-reasoning-based) in nature. It is derived through juristic reasoning, remains non-binding unless adopted by a competent authority, and reflects diverse scholarly opinions across different *madhāhib* (schools of Islamic law).[1]

This diversity arises because jurists employ different methodologies, legal maxims, evidentiary preferences, and

[1] M. I. Asaria, "Understanding Shariah: Islamic Law in a Globalised World," *Arab Law Quarterly* 34, (2020): 205-208, https://doi.org/10.1163/15730255-bja10004.

interpretive approaches in deriving rulings.[2] By contrast, *qānūn* has formal legal authority. It is binding, enforceable, and generally applicable within a state's legal system.[3] The process of *taqnīn* (legal codification) has generated differing scholarly responses.[4]

Some scholars support it as a means of ensuring legal certainty and uniform application, while others express concern that it may restrict the plurality and flexibility of *fiqh*. In the contemporary context, however, the transformation of *fiqh*, particularly the normative principles of Islamic economic law, into *qānūn* through legislation is essential. Codification can reduce disparities in judicial decisions on similar cases, especially when such disparities result from judges relying on different *fiqh* opinions. In this sense, *taqnīn* plays an important role in strengthening legal certainty, consistency, and public confidence in the administration of Islamic economic law.[5]

The Islamic economy has continued to expand and develop rapidly.[6] However, its development is not determined solely by the increasing number of Islamic economic actors or by growing public awareness of *shariah*-based economic activities. It also depends on the strength and clarity of the legal instruments that regulate such activities. This is because law and the economy have a close and

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[2] A.K. Moussavi, H. Mavani, *Islamic Legal Methodology: A New Perspective on Uṣūl al-Fiqh* (Washington: The International Institute of Islamic Thought [IIIT], 2023), 9.

[3] H. Sartika, E. Purnama, and I. Ismail, "Standard Patterns of Considerations in Law, District Regulation and Qanun Based on Legal Rules in Indonesia," *Pancasila and Law Review* 2, no. 2 (2021): 121, https://doi.org/10.25041/plr.v2i2.2446.

[4] A. Zayyadi, A. Hidayat, and M. A. Masuwd, "Understanding of Legal Reform on Sociology of Islamic Law: Its Relevance to Islamic Family Law in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023): 249, https://doi.org/10.24090/mnh.v17i2.7584.

[5] H. Hasanudin, J. Mubarok, and M. A. F. Maulana, "Progressiveness of Islamic Economic Law in Indonesia: The Murāʿat Al-ʿIlal wa Al-Maṣāliḥ Approach," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023): 1267-1292, https://doi.org/10.22373/sjhk.v7i2.17601.

[6] R. El Maza et al., "Shariah Economic Law Regulation on the Development of Shariah Financial Institutions in Indonesia," *Journal of Social Work and Science Education* 3, no. 2 (2022): 154-167, https://doi.org/10.52690/jswse.v3i2.290.

reciprocal relationship. Law provides the regulatory framework needed to support economic activity, while economic development often requires legal reform to ensure certainty, fairness, and effective governance. Therefore, legal instruments play an important role in supporting the sustainable growth of the Islamic economy.[7]

Legal certainty must therefore remain a central concern for all relevant stakeholders.[8] In this context, legal certainty refers to regulatory consistency and predictable enforcement of the law in the implementation of Islamic economic activities.[9] Such consistency requires legal instruments that do not contradict one another, provide clear guidance for resolving disputes, and remain stable over time.[10]

The transformation of *fiqh* into *qānūn* is not merely a formal legal process. It also reflects the epistemological dynamics of Islamic law as it interacts with the modern state legal system. *Fiqh*, as a product of scholarly *ijtihād*, develops within specific social, cultural, and historical contexts. This makes it flexible and adaptable.[11] However, such flexibility does not always correspond to the needs of a national legal system, which requires certainty,

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[7] Lukman Raimi, and Nurudeen Babatunde Bamiro, "Role of Islamic Sustainable Finance in Promoting Green Entrepreneurship and Sustainable Development Goals in Emerging Muslim Economies," *International Journal of Social Economics* 53 (2): 181–196, https://doi.org/10.1108/ijse-05-2024-0408.

[8] S. K. Park, "Legal Strategy Disrupted: Managing Climate Change and Regulatory Transformation," *American Business Law Journal* 58, no. 4 (2021): 711–749, https://doi.org/10.1111/ablj.12194.

[9] A. Fariana, & P. S. Nadya, "Elevating Investment Confidence: The Imperative of Legal Certainty in Islamic Economic Framework" In *Digitalization of Islamic Finance* (Hershey: IGI Global Scientific Publishing: 2025), 151-164.

[10] Mads Dahl, Vignesh Magesh, Mustafa Suzgun, and Daniel E. Ho., "Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models," *Journal of Legal Analysis* 16, no. 1 (2024): 64–93, https://doi.org/10.1093/jla/laae003.

[11] Nadiyah Mu'adzah, "Ushul Fiqh, Qaidah Fiqhiyyah, and Islamic Jurisprudence: A Review," *Journal of Islamic Economics Literatures* 3, no. 2 (2022), https://doi.org/10.58968/jiel.v3i2.130.

uniformity, and predictability.[12] For this reason, the codification of Islamic economic law is essential. It enables the normative values of *fiqh* to be translated into positive legal rules that are operational, enforceable, and consistently applied by legal authorities.

This transformation also enables harmonization between *shariah* principles and the practical needs of contemporary economic activities, including their integration with modern financial sectors, financial technology, and global market dynamics.[13] Thus, *taqnīn* is not merely a legislative process. It is also a strategic effort to strengthen the national legal system so that it can respond effectively to the growing complexity of Islamic economic development.

The existence of numerous *shariah* economic legal norms scattered across various *fiqh* texts, yet not incorporated into formal legislation, may create legal uncertainty for actors in *shariah* economic activities. In addition, a 2017 study conducted by the Study Team of the Shariah Economic Community (MES) [14] identified several forms of disharmony among existing regulations. Therefore, the general norms of Shariah economic law need to be transformed into formal legal regulations as part of a broader effort to harmonize the implementation of *shariah* economic activities and ensure legal certainty for the parties involved.[15] This effort should also include revising regulations that remain inconsistent with other legal instruments, such as the Compilation of Shariah Economic

[12] Samina Gul, Rashid Ahmad, and Shafiq Ur Rahman, "Constitutional Dualities: Reconciling Islamic Normativity with Common Law Principles in Hybrid Legal Systems," *Indus Journal of Social Sciences* 3, no. 2 (2025): 674–693, https://doi.org/10.59075/ijss.v3i2.1501.

[13] Asyiqin, Izzatul Zukhruf, Indra Mareto, and Maria B. Genovés, "The Role of Regulation in the Development of Shariah Fintech: A Review of Contemporary Islamic Economic Law," *Shariah Oikonomia Law Journal* 2, no. 4 (2024): 255–270, https://doi.org/10.70177/solj.v2i4.1241.

[14] Masyarakat Ekonomi Syariah (MES), translated as *the Shariah Economic Community (MES)*, refers to an Indonesian organization concerned with the development of *shariah* economics and finance.

[15] M. Huda, and U. Sumbulah, "Normative Justice and Implementation of Shariah Economic Law Disputes: Questioning Law Certainty and Justice," *Petita* 9 (2024): 340-360, https://doi.org/10.22373/petita.v9i1.279.

Law (KHES)[16], as an interim legal reference before the enactment of a specific law on *shariah* economic dispute resolution.

This study adopts a normative juridical approach, focusing on the doctrinal analysis of legal norms. It examines primary and secondary legal materials, including classical and contemporary *fiqh* texts, DSN-MUI *fatwas*, statutory regulations, and formal legal instruments governing *shariah* economic practices in Indonesia. This approach is used to analyze the conceptual foundations, internal coherence, and hierarchical relationships among these legal norms, particularly regarding the transformation of *fiqh* principles into codified legislation. By situating *fiqh*-based norms within the national legal system, this study assesses the extent to which existing regulations reflect Islamic legal reasoning and provide legal certainty. The normative juridical method also provides a systematic basis for identifying normative conflicts, regulatory inconsistencies, and areas requiring harmonization to strengthen the legal framework of *shariah* economic law.

TRANSFORMATION OF FIQH INTO POSITIVE LEGAL RULES

The transformation of *fiqh* into positive legal rules in Indonesia represents a crucial bridge between classical Islamic jurisprudence and the modern regulatory framework governing *shariah*-based economic activities.[17] In this process, National *Sharia* Board-Indonesian Council of Ulama (DSN-MUI)[18] *fatwas* play a pivotal role as the primary normative reference, translating *fiqh* principles

[16] Kompilasi Hukum Ekonomi Syariah (KHES) refers to the *Compilation of Shariah Economic Law*, which provides legal guidance for *shariah* economic transactions and dispute resolution in Indonesia.

[17] Adi Nur Rohman, "The Existence of Maslahah Mursalah as the Basis of Islamic Law Development in Indonesia," *Krtha Bhayangkara* 13, no. 2 (2019): 251–260, https://doi.org/10.31599/krtha.v13i2.9.

[18] Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI), translated in this article as the National Shariah Board-Indonesian Council of Ulama, is an Indonesian body under the Indonesian Council of Ulama that issues fatwas and guidelines on Shariah economic and financial activities.

into operational guidelines that support contemporary financial and commercial practices.

The council comprises leading scholars, experts in Islamic finance, economists, and practitioners who collectively deliberate and issue fatwas that serve as normative references for the shariah economy. Beyond issuing fatwas, DSN–MUI collaborates with government regulators, including Bank Indonesia, the Financial Services Authority (OJK), and ministries, to integrate shariah principles into binding regulations.[19] Through these functions, DSN–MUI provides the foundational religious-legal legitimacy essential for the development, harmonization, and governance of Indonesia's *shariah* economic system.

In this context, the *fatwas* issued by DSN-MUI play a pivotal role in bridging classical *fiqh* discourse with the practical demands of modern *shariah* economic regulation. These *fatwas* serve as authoritative interpretations that provide clarity, standardization, and uniformity across diverse *fiqh* opinions, particularly in areas where scholars differ, thus forming a coherent doctrinal foundation for *shariah* economic governance.

The adoption mechanism of *fiqh* into regulation follows a structured pathway, beginning with the issuance of DSN-MUI fatwas, which are then incorporated into various layers of state regulations. This includes their transformation into statutory law through legislation; regulatory frameworks such as the Financial Services Authority Regulations (POJK) and[20] Bank Indonesia Regulations (PBI) [21] ; ministerial decrees; and technical

[19] Dadin Olihin and Tubagus Akbar, "DSN-MUI Fatwa as a Regulatory Pillar for the Growth of Shariah Exchange-Traded Funds in Islamic Finance," *Jurnal Syarikah: Jurnal Ekonomi Islam* 11, no. 1 (2025): 97–109, https://doi.org/10.30997/jsei.v11i1.19685.

[20] POJK stands for Peraturan Otoritas Jasa Keuangan, which refers to regulations issued by the Indonesian Financial Services Authority.

[21] PBI stands for Peraturan Bank Indonesia, which refers to regulations issued by Bank Indonesia.

implementing instruments such as the Decree of the Minister of Religious Affairs (KMA)[22] and circular letters.[23]

Through this multi-level integration, *fiqh* values gain binding force within the national legal system, ensuring that *shariah* economic activities operate not merely under moral or doctrinal guidance but under enforceable legal norms. [24] Ultimately, this harmonized adoption process strengthens legal certainty, aligns religious principles with state law, and enhances the credibility and stability of Indonesia's *shariah* economic ecosystem.

FIQH MU'AMALAH AND ISLAMIC ECONOMIC LEGISLATION IN INDONESIA

The development of the term *fiqh al-muʿāmalah* begins with the definition of *fiqh* proposed by Imam Abu Hanifah (80-150 H) in the second year of *Hijrah*. Imam Abu Hanifah used the term *fiqh* in a broad sense, referring to knowledge of what benefits and harms the self, or what is due to and owed by the self. This broad understanding includes matters of belief, ethics, and practical legal rulings. Within this framework, theological matters are referred to as *al-fiqh al-akbar*, while practical legal rulings are commonly described as *al-fiqh al-asghar*.[25] Based on this opinion, it can be understood that the *fiqh* referred to by him includes *iʿtiqādiyyah* laws, such as the obligation to believe in Allah SWT,

[22] KMA stands for Keputusan Menteri Agama, which refers to a decree issued by the Minister of Religious Affairs of the Republic of Indonesia

[23] Circular letters are known in Indonesian as surat edaran, which are administrative instruments issued by government bodies or institutions to provide technical guidance or clarification on the implementation of regulations.

[24] Yasardin Yasardin and Syuhood B. Kooria, "Revisiting the Compilation of Islamic Economic Law in Indonesia: Legal Challenges and Pathways to Harmonization," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (2025): 127–36, https://doi.org/10.31958/juris.v24i1.13736.

[25] Ahmad Sa'id Hawwa, *Al-Madkhal ilā Madhhab al-Imām Abī Ḥanīfah al-Nuʿmān* (Jeddah: Dar al-Andalus al-Khadra', 2002), 77. See also Ahmad bin Muhammad Nasiruddin al-Naqib, *al-Madhhab al-Ḥanafī: al-Mujallad al-Awwal* (Riyadh: Maktabah al-Rusyd, 2001), 69.

the law of feelings or morals, such as the obligation to be honest, the law of practice relating to worship issues, and the law of practice relating to *muʿāmalah* such as the obligation to do good and the permissibility of buying and selling.[26]

After going through its formative period of development in the second century *Hijrah*, the term fiqh underwent a shift toward a narrower focus on legal issues. Since then, the term *fiqh* has evolved under the influence of *uṣūl al-fiqh* scholars and *fiqh* scholars (*fuqahāʾ*). Thus, the term *fiqh* can be summarized as having two meanings. Firstly, *fiqh* is the knowledge of practical matters of *shariah* law (relating to actions) taken from the Qur'an and *Sunnah*, as well as those deduced from both. Second, *fiqh* is a specific body of *shariah* law with distinct methods of its own.[27]

Although the terminology of *fiqh* may vary, al-Jurjānī[28] explains that fiqh is the result of legal analysis or *ijtihād* carried out by *mujtahid* jurists through different methods of legal reasoning. Each product of *ijtihād*, including rulings in *fiqh al-muʿāmalah*, has its own characteristics.[29] This can be seen in the diversity of legal opinions within the *Ḥanafiyyah, Mālikiyyah, Shāfiʿiyyah, Ḥanābilah,* and *Ẓāhiriyyah* schools, as well as among contemporary scholars. In this context, the term *ijtihādī* refers to fiqh rulings produced through juristic reasoning rather than definitive, uniform textual rulings. Therefore, fiqh, including *fiqh al-muʿāmalah*, is often characterized by diversity, variation, non-uniformity, and scholarly disagreement, even when addressing the same legal issue.[30] Such rulings are also often *mukhtalaf fīh* (matter under

[26] D. Supriyadi, *History of Islamic Law (from the Arabian Peninsula to Indonesia)* (Bandung: Pustaka Setia, 2010), 24.
[27] *Ibid.,* 26.
[28] al-Sayyid al-Sharīf ʿAlī ibn Muḥammad ibn ʿAlī al-Ḥusaynī al-Jurjānī, commonly known as al-Jurjānī, was a prominent Muslim theologian and scholar. He is widely known for al-Taʿrīfāt, a classical work that defines key terms in Islamic theology, law, logic, and philosophy.
[29] N. Maulana, "Contemporary Ijtihād Method in Determining Shariah Business Law: Addressing Legal Needs in an Era of Economic and Technological Change," *al-Mawarid: Jurnal Syariah dan Hukum (JSYH)* 7, no. 1 (2025): 160-176, https://doi.org/10.20885/mawarid.vol7.iss1.art9.
[30] Muhammad Lutfi Hakim, and Khoiruddin Nasution, "Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic

disagreement), meaning that they are subject to juristic disagreement and are not necessarily based on *ijmāʿ* (scholarly consensus).

However, several concepts of *muʿāmalah* have undergone significant changes in both form and legal position. These concepts are no longer found only in classical *fiqh* literature but have also been incorporated into state statutory law, as seen in the Indonesian legal system. This transformation affects the nature and character of *fiqh al-muʿāmalah*. Once codified into formal law, these norms are no longer merely *ijtihādī, mukhtalaf fīh*, and non-binding. Instead, they acquire binding and coercive legal force within the formal legal system. This change occurs through the transformation of *fiqh al-muʿāmalah* into *qānūn*, or codified law, after passing through the legislative process.[31]

Among the contracts that have been transformed from *fiqh* concepts into statutory law are *istiṣnāʿ* and *murābaḥah*. In classical *fiqh al-muʿāmalah*, both are categorized as sale and purchase contracts. However, in Indonesian statutory regulations, they are often treated as financing contracts.[32] The legal concept of financing appears broader than the concept of sale and purchase in *fiqh al-muʿāmalah*. Financing may include the provision of funds or equivalent claims through profit-sharing transactions, such as *muḍārabah* (profit-sharing), and *mushārakah* (joint venture); leasing transactions, such as *ijārah* (hire of services/use) and *ijārah muntahiyah bi al-tamlīk* (lease ending with ownership); lending transactions in the form of *qarḍ* receivables; and sale and purchase transactions in the form of *murābaḥah* (cost-plus sale)*, salam* (advance payment sale), and *istiṣnāʿ* (manufacturing/construction contract) receivables.

Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era," *Oxford Journal of Law and Religion* 11, no. 2–3 (2022): 288–313, https://doi.org/10.1093/ojlr/rwad004.

[31] A. A. Hakim, *Fiqh of Islamic Banking* (Bandung: PT Refika Aditama, 2011), 8.

[32] Z. Asmawi, "Exploring the Philosophy of Salam, Murabahah, and Istishna Agreements in Shariah Economic Law: Producer Protection and Economic Growth," *Jurnal Ilmu Hukum Tambun Bungai* 8, no. 2 (2023): 356-370, https://doi.org/10.61394/jihtb.v8i2.268.

Although several concepts of *fiqh al-muʿāmalah* have been transformed into statutory law, similarities remain between the two frameworks.[33] In *fiqh al-muʿāmalah* and relevant *shariah fatwas*, *istiṣnāʿ* is recognized as a sale and purchase contract. Its incorporation into statutory law shows that legislation does not necessarily eliminate the contract's original *fiqh* character. Rather, it provides a formal legal basis for its application in *shariah* economic activities. One important benefit of transforming *fiqh* into law is that it strengthens legal certainty and justice for actors in *shariah* economic activities, especially when disputes arise, and the parties require a clear legal mechanism for resolution.

PORTRAIT OF DISHARMONY BETWEEN NATIONAL REGULATIONS AND SHARIAH ECONOMIC FATWAS IN INDONESIA

In Indonesia, the government began to support Islamic economics through its policies, including the legislative process of a provision in Article 6 of Law Number 7 of 1992 concerning Banking, namely by allowing banks to carry out their activities through a profit-sharing system. This law was later amended by Law Number 10 of 1998, which explicitly mentioned the term "*bank based on shariah principles"*.[34] After nearly a decade, Indonesia enacted Law No. 21 of 2008 on Islamic Banking, which specifically regulates Islamic banking activities. This law was subsequently complemented by several implementing regulations issued by Bank Indonesia and the Financial Services Authority, including Bank Indonesia Regulations (PBI) and Financial Services Authority Regulations (POJK).[35]

In general, the process of drafting legislation on Islamic economics in Indonesia, both material and formal law, originates from *fiqh al- muʿāmalah*. This process was initiated by MUI through the issuance of various fatwas on Islamic economics, whose existence is often legitimized through legislation by government

[33] Siti Nur Shoimah, "Freedom of Contract in the Digital Age: Perspectives on the Indonesian Civil Code and Fiqh Muamalah," *Trunojoyo Law Review* 8, no. 1 (2026): 59-94, https://doi.org/10.21107/tlr.v8i1.32568.
[34] M. Amin, *Fatwa in the Islamic Legal System* (Jakarta: Elsas Publisher, 2008), 75.
[35] A.A. Hakim, *Fiqh of Islamic Banking*, 9.

agencies. Among the forms of legitimization are article 109 of Law Number 40 concerning Limited Liability Companies, article 25 of Law Number 19 of 2008 concerning Government Shariah Securities, and article 26 of Law Number 21 of 2008 concerning Islamic Banking. Thus, bank and non-bank Islamic financial institutions have an attachment by the *fatwa* issued by the DSN-MUI.[36]

Although the *fatwas* issued by DSN-MUI have gained legitimacy in several laws applicable in Indonesia, their provisions are not expressly included in the hierarchy of legislation recognized under Law No. 12 of 2011 on the Formation of Laws and Regulations. Therefore, the legal force of DSN-MUI *fatwas* still needs to be strengthened by formalizing them as legal rules to ensure legal certainty and justice.[37] Moreover, some provisions in DSN-MUI *fatwas* remain inconsistent with or overlap with existing formal legal instruments, including the Compilation of Shariah Economic Law (KHES), issued under Supreme Court Regulation No. 2 of 2008.

From a legal-theory perspective, the disharmony between statutory regulations and DSN-MUI *fatwas* reflects the tension between legal positivism, which prioritizes written, hierarchical legislation, and legal pluralism, which recognizes multiple normative sources that coexist within a single legal system.

Indonesia's shariah economic framework operates within a pluralistic environment in which *fiqh, fatwas*, and state law interact simultaneously. When these normative orders are not systematically harmonized, the result is normative fragmentation that undermines the predictability and enforceability of legal rules.

The practical impact is evident in cases such as *murābaḥah* financing. DSN-MUI *fatwas* require an actual transfer of ownership

[36] Hasbi Hasan, and Cecep Mustafa, "The Politics of Law of Sharia Economics in Indonesia," *Lex Publica* 9, no. 1 (2022): 30–57, https://doi.org/10.2139/ssrn.4986227.
[37] M. K. M. Salleh, A. Bahor, and M. A. Yahya, "Position of Fatwa in the Constitution: A Legal Analysis," *Pertanika Journal of Social Sciences & Humanities* 29, no. 4 (2021), https://doi.org/10.47836/pjssh.29.4.04.

and prohibit fictitious sale transactions. However, some banking regulations allow simplified documentation mechanisms that do not fully reflect the requirements of *fiqh*. This inconsistency creates compliance dilemmas for Islamic financial institutions, exposes them to potential legal disputes, and may reduce public trust in the integrity of *shariah* financial products. A similar issue arises in *wakālah bi al-ujrah* arrangements, where differences between *fatwa* provisions and OJK regulatory standards regarding fee structures may lead to differing interpretations during audits and dispute resolution. These examples show that, without systematic harmonization through legislative formulation and inter-institutional coordination, *shariah* economic governance may continue to face legal uncertainty, conflicting obligations, and inconsistent application across sectors.

Based on the study conducted by the MES, inconsistencies remain between these legal instruments, as shown in the following table:

Table 1.0: Some Disharmonization of Provisions in KHES and Fatwa DSN-MUI

No.	Provisions in KHES	Provisions in Fatwa DSN-MUI
1	**Article 20 paragraph 9** *Ijārah.*	**Fatwa Number: 09/DSN-MUI/IV/2000** The definition of *ijārah* should not be limited to the lease of goods, but should also include the hiring of services.
2	**Article 103** Payment for goods in *baiʿ al-salam* may be made at an agreed time and place.	**Fatwa Number: 5/DSN-MUI/IV/2000** "Payment must be made at the time the contract is concluded."
3	**Article 236** The division of profits between the *ṣāḥib al-māl* and the *muḍārib* must be stated clearly and definitively.	**Fatwa Number: 7/DSN-MUI/IV/2000** It should be added that the profit-sharing arrangement must be stated at the time of the contract in the form of a

		percentage or *nisbah* of the profit as agreed by the parties.
4	**Article 238 paragraph 2** The *muḍārib* acts as the representative of the *ṣāḥib al-māl* in managing the capital received.	**Fatwa Number: 7/DSN-MUI/IV/2000:** The *muḍārib* is a business partner of the *ṣāḥib al-māl*, not a representative in the sense of a *wakālah* contract.
5	**Article 242** The *muḍārib* is entitled to profit in return for his work, as agreed in the contract.	**Fatwa Number: 7/DSN-MUI/IV/2000** The profit generated in *muḍārabah* is jointly owned by the parties. It is not a wage or reward granted by the *ṣāḥib al-māl* to the *muḍārib*.
6	**Article 244** The *muḍārib* should not mix his own assets with the partnership assets in a *muḍārabah* contract, except where such practice is customary among business actors.	**Fatwa Number: 7/DSN-MUI/IV/2000** In a *muḍārabah* contract, the mixing of assets may be permitted under certain conditions.
7	**Article 247** Travel expenses incurred by the *muḍārib* in carrying out the partnership business are charged to the capital of the *ṣāḥib al-māl*.	**Fatwa Number: 7/DSN-MUI/IV/2000** The *muḍārabah* fatwa states that operational costs are borne by the *muḍārib*.
8	**Article 300** If the *mustaʾjir* becomes the owner of the *maʾjūr*, the *ijārah* contract automatically ends.	**Fatwa Number: 73/DSN-MUI/ XI/2008** In a *mushārakah mutanāqiṣah* (MMQ) contract, the lessee (*mustaʾjir*) may become the owner of the *shirkah* object.

9	**Article 312** Maintenance of the *maʾjūr* is the responsibility of the *mustaʾjir*, unless otherwise specified in the contract.	**Fatwa Number: 9/DSN-MUI/IV/2000** Maintenance is the obligation of the *muʾjir*, namely the Islamic financial institution.
10	**Article 338** The *makfūl bih*, or object of guarantee, must meet certain requirements. **Article 339** 1. The guarantee applies in accordance with the agreed terms and time limits. 2. The guarantee remains valid until it is rejected by the debtor.	**Fatwa Number: 11/DSN-MUI/IV/2000** he term used in this article should be understood as part of *kafālah*. Therefore, *makfūl bih* should be translated as "object of guarantee," not "object of collateral," because "collateral" may create confusion with security-based contracts. The guarantee referred to in this provision is the translation of *kafālah*. The more accurate translation of *kafālah* is "guarantee," not "collateral."
11	**Article 365** *Ḥawālah*, or transfer of debt, does not require the transferor to receive anything from the party accepting the transfer, whether as a gift or compensation.	**Fatwa Number: 58/DSN-MUI/ V/2007** In *ḥawālah bi al-ujrah*, the party may receive an *ujrah*, or fee, for the willingness and commitment to pay the debt of the *muḥīl*.
12	**Article 375** A *rahn* contract is completed when the *marhūn* has been received by the *murtahin*.	**Fatwa Number: 68/DSN-MUI/III/2008** The phrase "has been received" requires further clarification. In the *fatwa*, acceptance, or *qabḍ*, may occur in two forms: actual possession and constructive legal possession, or *qabḍ ḥukmī*. This distinction is relevant to *rahn tasjīlī*, also

		known as *rahn taʾmīnī, rahn rasmī,* or *rahn ḥukmī*.
13	**Article 469** If a fee is stipulated for the agent in a power of attorney transaction, the agent is entitled to the fee after fulfilling his duties.	**Fatwa Number: 52/ DSN-MUI /III/2006** The *ujrah* is given at the beginning of the contract. According to Wahbah al-Zuḥaylī, *wakālah* with compensation follows the legal rules of *ijārah*.
14	**Article 548** The contracts used in *taʾmīn* and *iʿādat al-taʾmīn* are: a. *wakālah bi al-ujrah;* *b. muḍārabah; and* *c. tabarruʿ*.	**Fatwa Number: 51/ DSN-MUI/III/2006** The investment contract may also use a *muḍārabah mushtarakah* contract.
15	**Article 597** The contract used for the Bank Indonesia Shariah Certificate instrument is a *juʿālah* contract.	**Fatwa Number: 63/ DSN-MUI/XII/2007** The contracts that may be used for the issuance of SBIS instruments are not limited to *juʿālah*. They may also include *muḍārabah* or *muqāraḍah/qirāḍ, mushārakah, juʿālah, wadīʿah, qarḍ, and wakālah.*

Source: Shariah Economic Society (MES) Study Processed)[38]

The comparison between the provisions of the KHES and various DSN-MUI *fatwas* reveals several conceptual,

[38] Study Team of the Central Board of the Shariah Economic Community (MES), "Mapping Perbandingan KHES–Fatwa DSN-MUI," 2017. The table was processed by the authors based on this study.

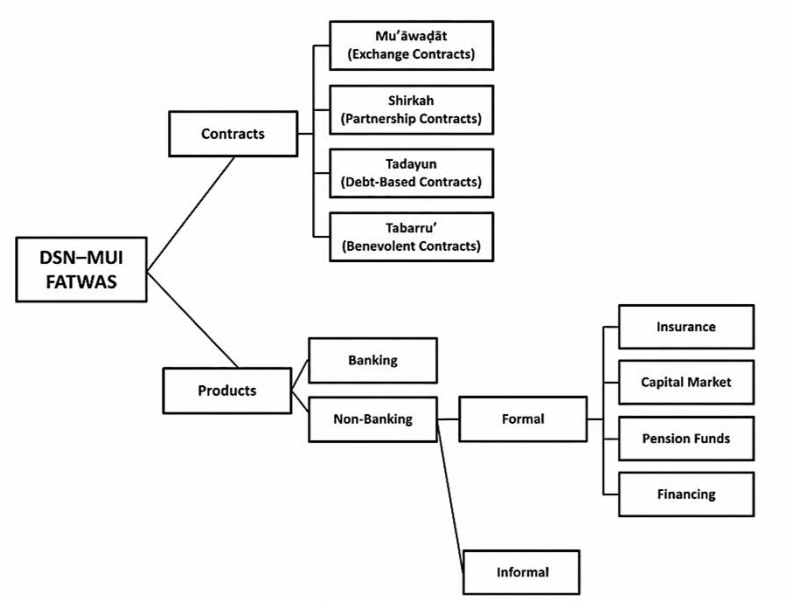
terminological, and doctrinal inconsistencies with significant implications for the harmonization of Islamic economic law in Indonesia. These inconsistencies arise from differences in methodological foundations. The KHES is a codified legal document that adopts a formal, simplified approach to Islamic economic principles, whereas DSN-MUI *fatwas* are grounded in classical *fiqh* reasoning and respond more dynamically to contemporary financial practices. Several important points can be drawn from Table 1.0.

Until the end of 2020, DSN-MUI has issued 138 fatwas related to the implementation of Islamic economic activities in Indonesia. Of course, not all MUI *fatwas* or legal norms of Islamic economics (*fiqh al-muʿāmalah*) can be included in the legislative process to become formal rules. *Fatwas* and legal norms related to the contractual provisions only need to be confirmed into formal rules, while fatwas related to products or more technical *fatwas* only take general provisions.[39] This is because the formal rules are intended to be enforced for longer, and this is more evident in general fatwas and legal norms than in more technical ones, such as those related to Islamic financial products.

Based on the author's searches from various reading sources, if you look at the fatwas issued by DSN-MUI, there are the following fatwa styles:

[39] A. Shabana, "Islamic Normative Principles Underlying Fatwas on Assisted Reproductive Technologies: Al-Azhar Fatwa on Artificial Insemination," *The Muslim World* 111, no. 3 (2021): 533, https://doi.org/10.1111/muwo.12406.

Figure 1.0: Fatwa style of DSN-MUI



The process of harmonizing Islamic economic law from legal norms (*Fiqh*), fatwas, as well as from existing formal rules must be carried out by involving relevant stakeholders,[40] such as DSN-MUI, economic actors, academics, BI / OJK (government), and the Supreme Court as a justiciary when there is a dispute between Islamic economic actors, so that the resulting product can truly guarantee legal certainty and justice which will be directly proportional to the increasing growth of Islamic economics in Indonesia.

Ideally, the legislative process is carried out by the House of Representatives of the Republic of Indonesia (DPR)[41] or through

[40] Karimatul Khasanah et al., "The Pursuit of Legal Harmony in the Integration of Sharia Economic Law Compilation, OJK Regulations, and DSN-MUI Fatwas," *Hikmatuna: Journal for Integrative Islamic Studies* 10, no. 1 (2024): 121–139, https://doi.org/10.28918/hikmatuna.v10i1.7342.

[41] Dewan Perwakilan Rakyat (DPR), translated in this article as the House of Representatives of the Republic of Indonesia, is the national legislative

a Government Regulation rather than a Law.[42] However, for now, the process is likely to take quite a long time. Therefore, the most likely action at this time, of course, is to reconstruct the KHES to ensure legal certainty in *shariah*-based economic dispute resolution.

Conceptually, as Henry Merryman states, there are three frameworks for law reform: "law reform: tinkering, following, and leading" leading."[43] If the law reform model proposed by Merryman is applied as a framework for legal harmonization, then, theoretically, there will be three models of harmonization: tinkering, following, and leading.

Tinkering harmonization refers to incremental adjustments made within the existing legal framework to optimize its application without altering its fundamental structure. In practice, this form of harmonization seeks to resolve technical inconsistencies, clarify ambiguous provisions, and ensure that existing rules can function effectively in rapidly evolving shariah economic activities. Meanwhile, following harmonization describes an approach in which the legal system is adaptively aligned with ongoing developments in the socio-economic or regulatory environment.[44] This model acknowledges that *fiqh*-based norms and positive law cannot remain static; they must adapt to new market practices, financial innovations, and institutional demands to remain relevant. In contrast, leading harmonization denotes a more transformative and proactive legal approach, whereby the law is intentionally used as an instrument to direct, shape, or even redefine economic behaviour. This

body that has authority to deliberate and enact laws together with the President.

[42] A. Safik, "Law-Making Process in Indonesia: An Analysis on the National Legislation Program (Prolegnas)," *Jurnal Magister Ilmu Hukum: Hukum dan Kesejahteraan* 1, no. 1 (2021): 20–33, https://doi.org/10.36722/jmih.v1i1.728.

[43] John Henry Merryman, "Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement," *The American Journal of Comparative Law* (1977): 457–491, https://doi.org/10.2307/839690.

[44] Smidt, Samuel J., et al., "Integrating Policy to Achieve a Harmonized Sustainability Model: A Multidisciplinary Synthesis and Conceptual Framework," *Journal of Environmental Management* 317 (2022): 115314, https://doi.org/10.1016/j.jenvman.2022.115314.

reflects the use of legal authority to introduce structural changes, anticipate future developments, and set normative standards for the industry.

When applied to the restructuring of the KHES, these three modalities of harmonization reveal the dynamic interaction between *fiqh* doctrines, DSN-MUI fatwas, and formal state regulations. Tinkering harmonization enables the correction of conceptual divergences, such as clarifying definitions of *ijārah, muḍārabah, kafālah,* and *rahn*, where KHES provisions diverge from authoritative DSN-MUI interpretations. Following harmonization is essential to ensuring that KHES evolves with Indonesia's expanding *shariah* economic ecosystem, particularly in light of innovations such as *mushārakah mutanāqiṣah*, *sukuk* structures, and shariah insurance mechanisms that continue to develop faster than legislation. [45] Leading harmonization, however, is critically needed when overlapping norms generate legal uncertainty, such as when KHES provisions contradict DSN-MUI *fatwas* or differ from OJK and Bank Indonesia regulations, requiring a deliberate reform that not only eliminates inconsistency but establishes a coherent, future-oriented regulatory architecture.

Ultimately, the KHES restructuring process must prioritize collaboration among all Islamic economic stakeholders, including DSN-MUI, the judiciary, OJK, Bank Indonesia, financial institutions, and academic experts. Such collaboration ensures that harmonization is not merely a technical exercise but a comprehensive effort that integrates doctrinal accuracy, regulatory clarity, and practical applicability.[46] This participatory model of harmonization is crucial for achieving legal certainty, enhancing public trust, and strengthening Indonesia's position as a leader in global Islamic finance.

[45] Yasardin and Kooria, "Revisiting the Compilation," 127-136.
[46] *Ibid.,* 128.

STRENGTHENING LEGAL HARMONIZATION THROUGH MULTI-STAKEHOLDER COLLABORATION IN SHARIAH ECONOMIC LAW

The process of harmonizing *shariah* economic law must be carried out through the active involvement of all relevant stakeholders, particularly DSN-MUI, *shariah* economic actors, academics, Bank Indonesia (BI), and the Financial Services Authority (OJK) as regulators, and the Supreme Court as the final interpreter of the law when disputes arise. Only through this multi-stakeholder engagement can the resulting legal framework genuinely ensure both legal certainty and substantive justice for parties operating within the shariah economic system.

In this context, DSN-MUI plays a foundational normative role by issuing authoritative fatwas that articulate substantive *fiqh* rules on various shariah financial contracts (*ʿaqd*). These fatwas serve as doctrinal guidelines for regulators and practitioners and form the initial raw material for transforming Islamic legal norms into state-recognized regulations. However, because DSN-MUI *fatwas* lack formal legal status under Law No. 12/2011 on Lawmaking, their integration into positive law requires further institutional validation through legislation, Supreme Court regulations, and administrative regulatory instruments.[47]

The Supreme Court carries a decisive function in this harmonization ecosystem. As a judicial authority, it not only settles disputes involving shariah economic transactions but also creates binding precedents and issues Supreme Court Regulations (PERMA) that operationalize shariah principles within procedural and substantive judicial practice. PERMA No. 2/2008 on the (KHES), for instance, represents a concrete attempt by the Court to codify key aspects of shariah commercial jurisprudence. Nevertheless, inconsistencies between KHES and DSN-MUI fatwas have shown that the Court's codification effort must be

[47] Karimuddin Abdullah Lawang et al., "The Binding Authority of DSN-MUI Fatwas in the National Legal System: An Analysis from the Perspective of Islamic Law and Legislative Theory," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 24, no.1 (2025): 6870-6884, https://doi.org/10.31941/pj.v24i2.6633.

continuously synchronized with evolving fatwas and regulatory developments.

Thus, the Supreme Court's role extends beyond adjudication; it serves as a harmonizing authority, reconciling *fiqh* doctrinal rules with positive legal norms and ensuring that judges across Indonesia uniformly interpret and apply shariah economic law.

This multi-layered process reflects Henry Merryman's three models of legal reasoning: bounded-rationality harmonization occurs when DSN-MUI fatwas are selectively adjusted or interpreted by judges to fit existing KHES or statutory frameworks. Following harmonization, regulators, such as OJK, incorporate DSN-MUI fatwas into new regulations to address developments in the *shariah* finance industry.

Meanwhile, leading harmonization is evident when the Supreme Court or legislators introduce new legal rules, such as updated PERMA or revisions to KHES, to lead systemic change in response to emerging needs in the shariah economic sector. For this reason, the restructuring of KHES and the broader harmonization effort must prioritize continuous, institutionalized collaboration among DSN-MUI, the Supreme Court, regulators, and industry actors, ensuring that the legal system remains coherent, responsive, and faithful to shariah principles while maintaining legal certainty and fairness.

CONCLUSION

The legislation of Islamic economic legal norms in Indonesia has developed gradually, beginning with the recognition of the profit-sharing system under Law No. 7 of 1992 on Banking, followed by the explicit recognition of banks based on *shariah* principles under Law No. 10 of 1998, and later strengthened through Law No. 21 of 2008 on Islamic Banking. This framework is also supported by Law No. 19 of 2008 on State Shariah Securities, BI and OJK regulations, the KHES, and DSN-MUI *fatwas*, all of which have gained legitimacy through formal legal instruments.

Despite this progress, the codification of Islamic economic law remains fragmented. Regulatory overlap persists among statutory provisions, the KHES, DSN-MUI *fatwas*, and uncodified Islamic economic norms in various fiqh texts. Therefore, legal harmonization is necessary to ensure consistency, legal certainty, and justice for *shariah* economic actors, particularly in dispute resolution.

The harmonization process should involve relevant stakeholders, including DSN-MUI, economic actors, academics, Bank Indonesia, OJK, the government, and the Supreme Court as the judicial authority in Shariah economic disputes. Using Henry Merryman's framework, harmonization may be pursued through tinkering, following, and leading harmonization. A coordinated approach will help establish Islamic economic law as a coherent, enforceable, and responsive legal framework.

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