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LEGAL HARMONIZATION OF INTERNATIONAL TRADE CONTRACTS IN THE FRAMEWORK OF ISLAMIC TRANSACTION LAW

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Abstrak: Kontrak penjualan adalah yang paling penting dalam hukum Islam**.** Tulisan ini mencoba mengidentifikasi isu hukum yang timbul akibat penerapan CISG sebagai instrumen dalam kontrak perdagangan internasional dalam kerangka hukum syariah. Terdapat urgensi untuk melihat norma hukum penjualan dalam CISG karena potensi penerapan CISG dalam lalu lintas perdagangan internasional sangat besar dan upaya harmonisasi antara CISG dan hukum syariah. Jenis penelitian dalam artikel ini adalah penelitian hukum normative dengan pendekatan perbandingan hukum. Pendekatan ini dilakukan dengan cara mengidentifikasi norma-norma hukum yang terdapat dalam CISG dan hukum syariah yang bersifat normatif-preskriptif dan kemudian mencari upaya harmonisasinya dengan sudut pandang hermeneutika hukum dan perbandingan hukum. Temuan dari penelitian ini adalah adanya sejumlah isu hukum dalam CISG yang perlu dilakukan upaya harmonisasi dalam kerangka hukum syariah dimana ada 4 (empat) Isu hukum yang muncul yaitu: pertama: keabsahan kontrak, kedua: keberadaan objek (benda), ketiga: ketidakpastian harga; keempat: kontrak yang melibatkan pihak ketiga. Hasil penelitian ini diharapkan dapat memberikan informasi sebagai dasar pertimbangan perlunya dilakukan upaya pembaruan hukum kontrak nasional melalui perumusan Undang-undang Perdagangan internasional dengan mengakomodir hukum syariah.
Kata Kunci: *Kontrak Penjualan Jual-Beli, Hukum Kontrak, Perdagangan Internasional, CISG*

Abstract: Sales contracts are the most important part of Sharia law. This paper tries to identify legal issues arising from applying the Vienna Convention on Contracts for the International Sale and Goods - CISG as an instrument in international trade contracts from the perspective of Sharia contract law. There is an urgency to look at the legal norms of sales in the CISG because the potential application of the CISG in international trade traffic is extensive, and efforts to harmonies between the CISG and Sharia law. This article's research type is normative legal research with a comparative legal approach. This approach is carried out by identifying legal norms contained in the CISG and Sharia law, which are normative-prescriptive, and then looking for harmonization efforts from the perspective of legal hermeneutics and comparative law. The findings of this research are that several legal issues in CISG need to be harmonized within the framework of sharia law where there are 4 (four) legal issues that arise, namely: first: the validity of the contract, second: the existence of the object (object), third: price uncertainty; fourth: contracts involving third parties. The results of this research are expected to provide information as a basis for consideration of the need for efforts to update national contract law by formulating international trade laws by accommodating Sharia law.
Key words: Sales Contracts, Contract Law, International Trade, CISG.

INTRODUCTION

International trade includes more cross-border trade associated with more economic activity.[1] Economic globalisation directly affects financial openness, where there are no more dimensions of space and time, so there is a global economy- one marketplace. Sharia law provides a positive appreciation for trade. It is no exception to international trade, as long as it is still in the control of ethical or moral values and legal aspects. Its purpose is to achieve the material and spiritual well-being of society. According to Yasin, doing so is not inevitable in the interaction between law and economics.[2]

Sales contracts are the most important part of Islamic law[3]. They are an essential legal aspect in the era of globalisation, especially in supporting activities in the trade sector and international business transactions. A country's legal system determines its international trade relationship. According to Powell et al., new studies have demonstrated the importance of domestic legal traditions.[4] CSG (The United Nations Convention on International Sale of Goods) is an international trade contract instrument that specifically regulates international trade and succeeds in regulating international buying and selling contracts.[5] According to Taufiqurrahman, the potential for applying CISG in international trade traffic is very large,[6] and CISG's membership comprises 97 countries.[7]

The CISG entered into force against 11 countries on 1 January 1988 and has since grown to 97 countries. These countries include Argentina, Australia, Austria, Belarus, Bosnia Herzegovina, Bulgaria, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Egypt, Finland, France, Guinea, the German Democratic Republic, the Federal Republic of Germany, Hungary, Iraq, Italy, Lesotho, Mexico, Netherlands, Norway, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Uganda, Ukraine, United States of America, Yugoslavia, and Zambia. Of these 97 countries, only a few have signed.[8]

There is an urgent need to harmonise International Trade Contract law within the framework of Sharia Transaction Law in the field of Sales contracts. There are at least two reasons: first, trade cooperation between Islamic countries has not been running optimally, and most Islamic countries have more trade cooperation with Western countries based on Western law. According to the Organization of Islamic Cooperation (OKI) records, trade activities among Muslim countries account for only 12% of the total trade of Islamic countries. Second, the absence of standardised judicial procedures in Islamic law causes

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[1] Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmis and Others in the Empire of Law*, Oxford Islamic Legal Studies (Oxford, New York: Oxford University Press, 2012).

[2] Mohamad Nur Yasin, "The Pluralism Of Islamic Economic Law: Dialectic of Moslem and Non-Moslem in the Development of Sharia Banking in Indonesia," *JOURNAL OF INDONESIAN ISLAM* 10, no. 1 (7 Juni 2016): 113–38, https://doi.org/10.15642/JIIS.2016.10.1.113-138.

[3] Chibli Mallat, "Commercial Law in the Middle East: Between Classical Transactions and Modern Business," *The American Journal of Comparative Law* 48, no. 1 (1 Januari 2000): 81–141, https://doi.org/10.2307/841034.

[4] Emilia Justyna Powell dan Stephanie J. Rickard, "International Trade and Domestic Legal Systems: Examining the Impact of Islamic Law," *International Interactions* 36, no. 4 (30 November 2010): 335–62, https://doi.org/10.1080/03050629.2010.523668.

[5] Sang Man Kim dan Jongho Kim, "Can a Change of Circumstances Qualify as an Impediment under Article 79 of the CISG?," *Chinese Journal of International Law* 18, no. 1 (1 Maret 2019): 129–63, https://doi.org/10.1093/chinesejil/jmy035.

[6] Roy Goode dkk., *Transnational Commercial Law: International Instruments and Commentary*, Second Edition, Second Edition (Oxford, New York: Oxford University Press, 2012).

[7] "CISG-online | CISG-online.org," diakses 6 Januari 2025, https://cisg-online.org/home.

[8] Hamza Abed Al-Karim Hammad, "Artificial Intimacy and Islamic Jurisprudence: Legal and Ethical Perspectives on Sex Robots," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (7 Februari 2025): 29–38, https://doi.org/10.31958/juris.v24i1.11432.

uncertainty about enforcing sales contracts. Uncertainty about the enforcement of international sales contracts where, according to Glenn Companies, wishing to litigate in Islamic law, countries often find that there is no standardised procedure for doing so.[9]

The need for legal harmonisation of International Trade Contracts in the Framework of Sharia Transaction Law in the field of Sales contracts is urgent because trade cooperation between Islamic countries is not running optimally. Even most Islamic countries have more trade cooperation with Western countries based on Western law. According to the Organization of Islamic Cooperation (OKI) records, trade activities among Muslim countries account for only 12% of the total trade of Islamic countries.[10]

This phenomenon can be seen in the following data:[11]

1. Lebanon and Turkey export butter to Belgium, the United Kingdom, and other Western European countries, while Iran, Malaysia, Pakistan, and Syria import butter from Western Europe.
2. Algeria exports indigenous gas to France, while France exports it to the Maghreb.
3. Egypt is the 10th largest exporter of *tela* cloth globally, but Algeria, Indonesia, and Iran get their cloth (imports) from Western Europe.
4. Algeria, Egypt, and Malaysia import tobacco from Columbia, Greece, India, the Philippines, and the United States. Turkey and Indonesia are major tobacco exporters to America and Europe.

Many studies related to CISG have been conducted, including by Sang Man Kim[12], Sang Man Kim and Jongho Kim,[13] Ndubuisi Nwafor, Collins Ajibo, Chidi Lloyd,[14] Ulrich Magnus,[15] and Franco Ferrari[16]. Several studies, such as Akaddaf, Fatima,[17] Twibell, T. S.,[18] and Chua[19] discuss CISG concerning Sharia law. These studies emphasise the application of CISG in Islamic countries and how the direct and indirect impacts of Sharia law result

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[9] H. Patrick Glenn, *Legal Traditions of the World: Sustainable diversity in law*, Fifth Edition, Fifth Edition (Oxford, New York: Oxford University Press, 2014).

[10] Hisam Ahyani, Haris Maiza Putra, dan Aji Sofanudin, "Birrul Walidain in Political Preferences: Harmonizing Family Values and Employment Law in Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (31 Desember 2024): 923–45, https://doi.org/10.22373/ujhk.v7i2.22982.

[11] Naufal Cholily dkk., "Bridging Fiqh and Religious Practice: Actualizing the Function of Ḥāshiyah as a Form of Worship in the Scribal Traditions of Madurese Pesantren Literature," *Journal of Islamic Law* 6, no. 1 (2 Februari 2025): 21–45, https://doi.org/10.24260/jil.v6i1.3749.

[12] Sang Man Kim, "A comparative study of the CISG and the North Korean contract law as to formation of a contract," *Journal of International Trade Law and Policy* 19, no. 1 (1 Januari 2020): 36–50, https://doi.org/10.1108/JITLP-07-2019-0046.

[13] Kim dan Kim, "Can a Change of Circumstances Qualify as an Impediment under Article 79 of the CISG?"

[14] Ndubuisi Nwafor, Collins Ajibo, dan Chidi Lloyd, "Reimagining transnational validity under the CISG," *Journal of International Trade Law and Policy* 17, no. 3 (1 Januari 2018): 156–68, https://doi.org/10.1108/JITLP-06-2017-0021.

[15] Ulrich Magnus, "Interpretation and gap-filling in the CISG and in the CESL," ed. oleh Larry A. Dimatteo, *Journal of International Trade Law and Policy* 11, no. 3 (1 Januari 2012): 266–80, https://doi.org/10.1108/14770021211267379.

[16] Franco Ferrari, *The CISG and Its Impact on National Legal Systems* (Berlin, New York: Otto Schmidt/De Gruyter european law pub, 2008), https://doi.org/10.1515/9783866537293.

[17] Fatima Akaddaf, "Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG Compatible with Islamic Law Principles?," *Pace International Law Review* 13, no. 1 (1 April 2001): 1, https://doi.org/10.58948/2331-3536.1203.

[18] T.S. Twibell, "Implementation of the United Nations Convention on Contracts for the International Sale of Goods (CISG) under Shari'a Law: Will article 78 of the CISG be enforced when the forum is an Islamic state?," *International Legal Perspectives* IX (1997): 25–95.

[19] Jason Chuah, "Impact of Islamic Law on Commercial Sale Contracts – A Private International Law Dimension in Europe," *European Journal of Commercial Contract Law* 2, no. 4 (1 Oktober 2010): 191–204, https://doi.org/10.7590/EJCCL_2010_04_01.

from the implementation of the CISG; even Twibell specifically highlights article 78 regarding the element of interest, though many Islamic countries such as Egypt, have made a clear distinction between civil and commercial matters, and have permitted to some extent foreign commercial and financial and gharar.[20] None of the above studies focus on legal norms in the CISG and Sharia law by directing the discussion on harmonisation efforts.[21]

None of the above studies focus on comparing CISG with Sharia law. This study attempts to identify the legal issues arising from applying the CISG as an instrument in international trade contracts from the perspective of Sharia contract law. Commercial transactions are essential for wealth creation and productivity prospects in contemporary Muslim countries.[22] One of the fundamental aspects of many countries that bind to the CISG is the international character inherent in the CISG while still considering all existing legal systems.[23]

METHODS

This article's research type is normative legal research or literature, commonly referred to as doctrinal research instead of empirical or non-doctrinal research. The approach used is a comparative law approach. This approach compares legal norms between CISG and Sharia law related to the Sales contracts of goods. This research identifies the legal norms of the CISG and Sharia law about buying and selling. By the type of normative research that focuses on written legal materials, the procedure for collecting legal materials is carried out through literature studies with document study techniques. Primary legal materials used are The United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG), fiqh literature such as *Mabda ar-Ridā Fī al-Uqūd Dirāsah Muqāranah Fī al-Fiqh al-Islamī wa al-Qanūn al-Madāni (ar-Rumāni wa al-Faransi wa al-Injilījiy wa al-Mishriy wa al-'Irāqy)*, *Nazhariyyah Al-Mashlahah Fi al-Fiqh al- Islami* and *Bidāyat Al-Mujtahid Wa Nihāyat al-Muqtaṣid.* Secondary legal materials are used as supporting materials, such as research results, scientific journals, seminar results, legal dictionaries, and encyclopaedias of Islamic law. The search for legal materials begins with searching and collecting literature related to the topic under study and then inventorying the legal norms in the CISG and Sharia law. Normative research methods are intended to solve clinical problems and explore legal principles and doctrines. Legal research is based on comparative law by identifying legal norms in the CISG and normative-prescriptive Sharia law and then looking for harmonisation efforts. This normative-prescriptive aspect in the context of legal science development is needed to find legal rules that become the basis for the formulation of further regulations related to national law in this case. The need to find legal rules is understood based on the 'legal hermeneutic point of view' and comparative law. The hermeneutic point of view is a method of understanding a normative text through interpretation and understanding directed at identifying what happens to the legal norms contained in the CISG and Sharia law.[24] Meanwhile, the comparative law

[20] H. S. Shaaban, "Commercial Transactions in the Middle East: What Law Governs," *Law and Policy in International Business* 31 (2000 1999): 157.

[21] Cholily dkk., "Bridging Fiqh and Religious Practice."

[22] Mohammad Hashim Kamali, "Islamic Commercial Law: An Analysis of Futures," *American Journal of Islam and Society* 13, no. 2 (1 Juli 1996): 197–212, https://doi.org/10.35632/ajis.v13i2.2330.

[23] Taufiqurrahman, "Karakter Pilihan Hukum Di Bidang Kontrak Jual-Beli Barang Internasional Dalam Kerangka Pembaharuan Hukum Nasional" (Dissertation, Malang, Doctor of Law Program, Faculty of Law, Universitas Brawijaya, 2008).

[24] Oleksandr Merezhko, "Legal Hermeneutics and Methodology of Law," *European Political and Law Discourse* 1, no. 2 (2014): 4–10, https://doi.org/10.46340/eppd.

approach compares the legal issues between the legal norms in the CISG and Sharia Law regarding sales contracts.[25]

RESULT AND DISCUSSION

Buying and Selling in the Perspective of Islamic Transaction Law (*mu'amalat*)

Sales contracts in fiqh terms are called *al-bai',* which in Arabic sometimes means the opposite word, *ash-syira* (buy). Thus, the word *al-ba'i'* means Sales contracts. Sales contracts are "*muqābalatu asy-syai'i bi asy-syai'i*" - exchanging something for something else, based on pleasure. Regarding terminology, several definitions of sale and purchase have been proposed by fiqh scholars. Still, the essence and purpose of each definition are the same, namely exchanging goods in a certain way or exchanging something equivalent according to a reasonable method.[26]

In the perspective of Islamic law of transactions (*mu'amalat*), the delivery of the object that has been designated by the buyer in the Sales contracts contract is an agreement addressed to the seller directly, so here, there is no agreement whose responsibility for implementation lies with the buyer in the future. This is because, in Sharia law, the Sales contracts and all ownership contracts (*'and at-talk*) transfer property rights to an item from the seller to the buyer without needing another legal action called leverage, as in the Civil Code.[27] Related to the object of the contract in buying and selling, the object of the contract can be in the form of objects, benefits of objects, services or work, or an 'in that is not contrary to sharia. The Compilation of Sharia Economic Law (KHES) Article 24 states, "The object of the contract is amwal or services that each party permits. The object of the contract (maḥallul 'aqd) is one of the principles of the contract. The object of the agreement is one of the four legal conditions of the agreement in the Civil Code, as stated in Article 1320 of the Civil Code. The four legal conditions of the agreement are (1) an agreement between the two parties, (2) an agreement of the ability to perform legal acts, (3) the existence of objects, and (4) the existence of halal causes.[28]

In addition to the object at the time of the contract, the object can also be handed over (the object must be deliverable). The contract is only valid if the seller can deliver the goods sold at the time of the contract. The existence of the object at the time of the contract, in the view of classical fiqh scholars, is a condition for the validity of a contract. Buying and selling without an object (non-existent objects/*bai' al-ma'dum*) is invalid. This is in line with the view of Mohammad Hashim Kamali, who states: "In a Sales contracts contract, the word gharar often refers to uncertainty and the ignorance of one or both parties regarding the timing of the contract."[29]

Sales contracts agreements that fall under the category of gharar are (i) uncertainty of the object, (ii) unclear contracts, (iii) in terms of price, (iv) in terms of goods, (v) in terms of size (qadr); (vi) in terms of time; (vii) in terms of the absence of objects; (viii) in terms

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[25] Arbanur Rasyid, Rayendriani Fahmei Lubis, dan Idris Saleh, "Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective," *Al-Ahkam* 34, no. 2 (31 Oktober 2024): 419–48, https://doi.org/10.21580/ahkam.2024.34.2.20843.

[26] Franklin Oniemba Mundala dkk., "Enhancing Water Cooperation in Africa: The Role and Challenges of International Law in Managing Transboundary Resources," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 2 (2024): 333–58, https://doi.org/10.18592/sjhp.v24i2.13640.

[27] Syamsul Anwar, *Studi Hukum Islam Kontemporer* (Jakarta: RM Books, 2007).

[28] Iim Fahimah dkk., "Interfaith Inheritance in Muslim Families in Indonesia: Practices, Philosophy, and the Direction of National Inheritance Law Development," *AHKAM : Jurnal Ilmu Syariah* 24, no. 2 (31 Desember 2024): 379–96.

[29] Kamali, "Islamic Commercial Law."

of delivery; (ix) in terms of security of goods. [30] In addition to gharar, what is also avoided in buying and selling is jahala, an element that needs to be clarified, either the quality, quantity, or price of an item. An example of a transaction that includes jahala is trading through debt, which is paid later with an increasingly large amount. It also includes when the estimated quantity determines the object of sale and purchase.[31]

Legal Norms of International Sales Contracts

Sales contracts in international trade, such as the CISG, are legal rules that regulate the legal aspects of contracts specifically for trade in goods and an attempt to provide uniformity of law governing international contracts of sale and purchase. The CISG consists of four parts, namely: (1) scope of application and general provisions; (2) contract formation; (3) sale of goods; (4) final provisions (Winship, Peter). The first part, the scope of application and general provisions, consists of 2 (two) chapters. Chapter I (one) covers the scope of application consisting of 6 articles (articles 1-6), while Chapter II (two) on general provisions consists of 7 articles (articles 7-13). Within the scope of application of the CISG, it regulates the binding of this convention (Article 1). It also stipulates the items not applicable in trade regulations following the CISG (Article 2). The CISG only regulates the making of contracts and the rights and obligations of sellers and buyers (Article 4). It does not apply to the seller's liability for death or injury (Article 5). Parties may also waive the CISG (Article 6).[32]

The Convention also contains a general provision on the need to consider the 'international character' in interpreting the Convention (Article 7(1)). Disputes are resolved following the general principles of the CISG or, in its absence, following the general principles of international civil law (Article 7(2)). Contracts do not need to be in writing; verification can be done by any means, including testimony (Article 11). An offer of contract must be made to a person clearly describing the goods, quantity, and price (Article 14). The CISG does not recognise unilateral contracts. Thus, a proposal that needs to be addressed to a specific person is only an invitation to bid (Article 14(2)). The price must be clearly stated in the offer (Article 14(1)), but if the price is not expressly stated, the parties are deemed to have agreed to refer to the price that is generally charged at the time of contract closing (Article 55).[33]

An offer is valid when accepted by the offeree (Article 15(1)). An offer may be withdrawn if the offeree receives the withdrawal before or simultaneously with the offer (Article 15 (2)). Some offers are irrevocable, for example, when the offer states the impossibility of being able to cancel the offer (Article 16(2)(a)). Acceptance of an offer that contains additions, restrictions, or other changes constitutes a rejection (counteroffer) unless the changes do not materially alter the offer (Article 18(1)). Material changes that arise in additions or conditions, among others, relate to price, payment, quality, quantity

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[30] Ibn Rusyd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Beirut: Dar al-Kitāb al-'Ulumiyah, 1996).

[31] Muhammad Fauzinudin Faiz dkk., "Living Ihya and Harmonizing the Spiritual Essence: Sheikh Washil's Fiqh-Sufistic as the Bedrock of Spiritual-Based Islamic Law in Nusantara," *El-Mashlahah* 14, no. 2 (31 Desember 2024): 431–50, https://doi.org/10.23971/el-mashlahah.v14i2.8551.

[32] Henky Fernando dkk., "The Controversy of Democracy in Indonesia Presidential Election 2024," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 2 (30 Desember 2024): 159–77, https://doi.org/10.30631/alrisalah.v24i2.1594.

[33] Abdul Jalil Salam dkk., "The Urgency of Ammending Jinayat Qanun in Eradicating Cyber Sexual Crime in Aceh, Indonesia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 2 (2024), https://doi.org/10.19105/al-lhkam.v19i2.15118.

of goods, place and time of delivery, scope of responsibility to other parties, or dispute resolution (Article 19).[34]

Part III (three) of the CISG contains the obligations of the seller, obligations of the buyer, delegation of risk, and general provisions regarding the obligations of the seller and buyer. The seller's obligations are to deliver the goods, provide any documents relating to the goods, and transfer ownership of the goods (Article 30). The buyer must pay the price of the goods and take delivery of the goods (Article 53). Provisions regarding the buyer's obligation to pay the price are set out in Articles 53 to 59, while the obligation to accept delivery of the goods is set out in Article 60. Generally, the goods must be of the quality, quantity, and description required by the contract (Article 35). The seller must provide goods not subject to third-party claims (Articles 41.42). The buyer is obliged to inspect the goods immediately (Article 38 (1)) and is obliged to notify the seller of any non-conformity of the goods within a reasonable time and, at the latest, within two years after receipt of the goods (Article 39).[35]

Articles 66, 67, 68, 69, and 70 are convention rules regarding the transfer of risk when the risk passes from the seller to the buyer. Loss of or damage to the goods after the risk has been transferred to the buyer does not eliminate the obligation to pay the price unless the loss or damage is caused by the seller's act or omission (Article 66). If the sales contract involves the transportation of goods and the seller is not bound to deliver them at a particular place, the risk is transferred to the buyer at the time the goods are handed over to the first carrier for delivery to the buyer. However, the risk remains the same if the seller is bound to deliver the goods to the transportation company at a particular place (Article 67).[36]

The risk of goods in transit passes to the buyer after the contract. The risk may also pass to the buyer when the goods are handed over to the transportation company that issued the document containing the contract of carriage. If, after the agreement, the seller knew or ought to have known that the goods were lost or damaged and failed to notify the buyer of this, it is at the seller's risk (Article 68). Articles 71 to 73 of the CISG set out the general obligations of the buyer and seller. Either party may suspend the performance of its obligations if, after the contract's expiration, the other party does not perform its obligations (Article 71).[37]

Compensation is regulated in Articles 74 through 77. Compensation for default committed by one party may be in the form of money equal to the loss, including the loss of profit experienced by the other party due to the breach. Compensation shall not exceed the estimated loss or be reasonably estimated after the contract. The CISG also provides for interest, and in its terms, if one party fails to pay the price or any other sum of money, the other party shall be entitled to interest, but without prejudice to the right to claim damages under Article 74 of the CISG (Article 74). 78).

A party is not liable for negligence in the performance of an obligation if it can prove that the negligence resulted from an obstacle beyond its control and that it was not naturally possible to overcome or cope with its consequences. If the failure is proven to

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[34] Nurlaelah Abbas dkk., "Theological Impact of Marriage for Religious Minority Families in Bali and Makassar," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (8 Februari 2025): 130–47, https://doi.org/10.22373/sjhk.v9i1.21130.

[35] Abbas dkk.

[36] Muhammad Amrullah Drs Nasrul dkk., "Unraveling Legal Complexities: Muslim and Non-Muslim Estate Administration Process in Malaysia and Brunei," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (30 Desember 2024): 531–54, https://doi.org/10.18860/j-fsh.v16i2.29827.

[37] Yulianti Muthmainnah dkk., "Zakat Initiatives for Supporting Victims of Violence against Women and Children in Indonesia," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 (28 Desember 2024): 331–57, https://doi.org/10.18326/ijtihad.v24i2.331-357.

have been caused by a third party, the party who failed to perform the contract is released from its obligations (Article 79).

The Intersection of Legal Norms in the CISG and Islamic Transaction Law Theough Legal Harmonization Approach

Principle of Law

The position of legal principles in the legal system that regulates the system of legal norms has an important role. Legal principles are the foundation that supports the strength of a legal norm. Legal principles are the heart of legal norms (legal regulations).[38] The principles underlying contract law are the principle of consensualism, the principle of freedom of contract (contractsvrijheid), and the principle of the binding force of the agreement (verbindende kracht der overeenkomst).

Islamic transaction law is consensual. This can be seen from the placement of ijab qabul in a very high position so that it can be said that, in principle, Islamic transaction law applies the principle of mutual consent in a contract, which states that rights and obligations arise if there is an agreement and the absence of an agreement. Here, the good faith of the parties is essential. According to sharia law, good faith in commercial transactions is a primary obligation.[39] Does not require the delivery of merchandise as a condition for the validity of a Sales contracts contract. Consensualism is also adopted in international sales contracts such as the CISG. The CISG also embodies the notion of good faith as found in article 7(1), which aligns with sharia law.[40] Applying the principle of consensualism as the basic principle of international agreements can be understood because, in international business transactions, the parties involved do not meet physically but use various means of telecommunications.

The principle of consensual contains the will of the parties to bind each other and creates the trust (*vertrouwen*) between the parties to fulfil the agreement. The emphasis in this principle lies on the meeting of minds as the core of contract law. The principle of consensualism has the most essential meaning. To agree, it is sufficient to reach an agreement on the subject matter of the agreement, and the agreement has been created at the time of consensus or agreement. In other words, an agreement is valid if the points have been agreed upon and no formalities are required.[41] The concept of transfer of ownership in Islamic transaction law occurs since the contract is made. This concept aligns with the Civil Code of Francis system, where the property right has been passed when closing the sales contracts agreement ("La propriete est acquis, des guests de la Choose et du prix"). The CISG also has the same concept as in Article 30: the buyer must deliver the goods and documents and transfer the title. This is in contrast to the Dutch and Indonesian Civil Code, where the transfer of title occurs at the time of the lever. This is also the case with customary

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[38] Baker Ahmad Alserhan, *The Principles of Islamic Marketing* (London: Routledge, 2017), https://doi.org/10.4324/9781351145688.

[39] Mohd Ma'Sum Billah, "Actuarial Valuation (Pricing) of Takaful Products. A Malaysian Experience," *Journal of Islamic Finance* 12, no. 2 (31 Desember 2023): 149–61, https://doi.org/10.31436/jif.v12i2.831.

[40] Glenn, *Legal Traditions of the World*.

[41] R. Subekti, *Aneka Perjanjian* (Bandung: PT. Citra Aditya Bakti, 1995).

law, where the agreement alone does not transfer rights because the agreement only occurs after the delivery of the objects that are the object of the agreement.

The delivery of the object that has been designated by the buyer in the Sales contracts contract, for example, in Islamic transaction law, is addressed to the Sales contract object directly so that, in this case, there is no obligation that be responsible for its implementation at a later date. This is because in Islamic transaction law agreements and all other property rights agreements (*'aqd at-tamlik*), property rights are transferred in an item from the seller to the buyer without needing another legal action called leverage as in the Indonesian Civil Code. In this context, the principle is the same as that contained in CISG.

Consensualism is closely related to the principle of freedom of contract. According to Hasan, the two main principles (although not the only ones) are commutative justice and liberality.[42] The principle of freedom of contract began in medieval Europe, and the classical laissez-faire economic theory emerged as a reaction to the mercantile system. Then, the peak of the development of freedom of contract was reached after the French Revolution with the motto: Liberte, egalite, et fraternity (liberty, equality, and fraternity), which was a reaction to state interference encompassing social life.[43]

Freedom of contract in Islamic transaction law is a legal principle that states that everyone is free to make contracts according to their wishes as long as they are not contrary to Sharia. The scope of sharia restrictions on freedom of contract in the sharia legal system is broader than the rules provided in the Western legal system, including in the Indonesian Civil Code. However, Sharia law is much more restrictive of the parties' freedom to contract than Western law.[44] The restrictions on freedom of contract in Islamic transaction law include the prohibition of *ribā'* (interest), *gharar* (fraud) and *ash-syuruṭ al-muqtarinah bi al-'aqd al-fasd* (conditions accompanying fascist agreements). Religious (Sharia) restrictions on the principle of freedom of contract in Sharia contract law show that free will is not absolute but given a relative meaning, always associated with religious restrictions. The aim is to prevent persecution between people through contracts and the conditions they make.

Validity of Contract

The validity of an agreement is determined by the consent of the parties who bind themselves, the ability to agree, specific subject matter, and a cause that is not prohibited. If a contract does not meet the legal requirements, it will have the following consequences: none, vernietigbaar, nietig.[45] Islamic transaction law views the validity of a contract in general: (a) does not violate the agreed Sharia law; (b) must be equally happy and have a choice; (c) must be clear, which is classified into legal contracts, invalid contracts, and fasid contracts.[46] The validity of contracts in international trade contracts such as the CISG is not regulated, as found in Article 4, which states that the convention does not regulate

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[42] Hussein Hassan, "Contracts in Islamic Law: The Principles of Commutative Justice and Liberality," *Journal of Islamic Studies* 13, no. 3 (1 September 2002): 257–97, https://doi.org/10.1093/jis/13.3.257.

[43] Dasim Budimansyah, "Kekuasaan Yang Terpusat Pada Sekelompok Kecil Elit Dan Munculnya Kebencian Sosial Budaya Terselubung Pada Masyarakat Indonesia Pasca Reformasi," *Jurnal Moral Kemasyarakatan* 1, no. 1 (16 Juni 2016): 1–14, https://doi.org/10.21067/jmk.v1i1.1183.

[44] Peter Sloane, "The Status of Islamic Law in the Modern Commercial World," *The International Lawyer* 22, no. 3 (1 Januari 1988): 743–66.

[45] Agus Yudha Hermoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial* (Jakarta: Kencana, 2014).

[46] Chairuman Pasaribu, *Hukum Perjanjian dalam Islam* (Jakarta: Sinar Grafika, 2004).

matters relating to the requirements of contract law or custom concerning it; the consequences of the contract, and the consequences contained in the goods sold. This is due to the great diversity of the laws of each country regarding the validity of a contract. Therefore, a contract's validity is left to each country's laws. The CISG does not regulate the legal relationship between treaty law and its implications, as matters relating to the validity of a contract and the effects of a contract are subject to the respective national laws.

Islamic transaction law is stringent on the validity of contracts, especially those relating to the object of the contract. In the case of a Sales contracts contract, for example, the merchandise must be delivered. The prohibition of trading goods not in one's possession is based on the consideration that the seller will still determine whether the goods will be delivered. In the view of classical fiqh scholars, the existence of the object of trade at the time of the contract is a condition for the validity of a contract. Buying and selling without an object (non-existent objects/*bai' al-ma'dum*) is invalid. The sale is invalid if the item does not exist at the time of the contract or is available but cannot be delivered. This view is based on the Prophet's hadith, which includes the prohibition of buying and selling gharar and the hadith that reads, "Do not sell what you do not have."

The existence of goods at the time of the contract, according to fiqh scholars, is one of the conditions for the validity of a contract. This is to avoid what is called *bai' al-ma'dum*. Based on the Prophet's hadith prohibits buying and selling *gharar* (*bai' al-garar*), which is likened to selling fish in the water and selling birds that are still in the air. Later in the Hadith, it is stated: "Do not sell something that you do not have." If the goods are not available at the time of the contract or are available but cannot be delivered, then the sale is invalid.

The existence of the object of this contract is related to the concept of trade in Sharia law, whose property rights have been transferred at the time of the contract. Therefore, the existence of the object being traded is a must because it is related to the transfer of property rights. Then, if the goods have not been delivered, the seller bears the risk of the goods. In addition, because it has not been delivered (*al-qabḍu*), the buyer may not sell goods that have not been received. The Prophet (may Allah's peace and blessings be upon him) forbade profitable trades so long as they do not carry the risk of the seller's guarantee that if damage occurs, it is the seller's responsibility. Suppose the buyer sells the goods in this condition and makes a profit. In that case, the profit is the profit of the goods without the risk of damage by the principle: "The risk is in line with the benefit (i.e. the one who benefits from something must also be willing to sacrifice) (*al-ghunm bi al- ghurm*)."

The formulation of the prohibition of selling goods that did not yet exist at the time of the contract is interpreted too narrowly by classical fiqh scholars. Hence, Sharia law needs to be revised to meet the demands of the times—the needs of modern society. In line with the above view, Ibn Qoyyim states: "There is nothing in the Book of Allah, in the teachings of the Prophet, or the words of any of his companions, which states that the sale of something that does not exist is forbidden, either specifically or generally. The Sunnah prohibits the sale of non-existent goods, just as it prohibits the sale of existing goods. Therefore, the prohibition's effective cause ('illah) is not presence or absence but uncertainty and gharar. This is when something cannot be delivered, whether it exists or not. The essential element in a sale is the delivery of the item sold, and if the seller cannot deliver it, it is called gharar, gambling, and risk."[47]

Offer and Acceptance

[47]Mohammad Hashim 1944- Kamali, *Islamic Commercial Law: an Analysis of Futures and Options*, Reprinted (Cambridge: Islamic Texts Society, 2002).

The offer (ijᾱb) is a statement of intention containing a proposal to agree, while the acceptance (qabῡl) is a statement of agreement from the other party offered. Offer and acceptance are called *sighah*.[48] The clarity and firmness of the offer (ijᾱb) in al ba'i is that the expression used to express ijab indicates the type of contract desired and is not accompanied by things that indicate inconsistency in entering into a contract. This is in line with contracts in the CISG, where an invitation to enter into a contract is not considered a contract. The declaration of will represented by ijab and qabῡl can be through speech, messenger, sign, taciturnity, and silence. If in the CISG, silence is not interpreted as acceptance, then in Sharia law, silence can be accepted as qabῡl.

Regarding acceptance or *qabῡl* accompanied by additional conditions, in principle, Islamic transaction law and international trade contracts such as CISG have similarities. The difference is that in CISG, further conditions are placed in the context of the supply and demand section, while in al-bai, additional conditions are placed in the context of the validity of a contract. These two differences imply that if the additional terms of the CISG do not have implications for the validity of a contract, then they only have implications for unqualified acceptance that is conditional as a form of acceptance. Whereas in Sharia contract law, additional conditions, if associated with a fasid condition, cause the contract to become invalid.

Additional conditions called *ash-syuruṭ al-muqtarinah bi al-'aqd* (conditions accompanying the contract) are qualified into two: valid additional conditions and invalid additional conditions. Additional invalid conditions are conditions where a contract causes fraud (*gharar*) or conditions contrary to sharia. For example, a seller requires the buyer in his offer that any defects in the goods are not his responsibility. This condition contradicts the legal effect of the contract in that the seller bears defects in the Sales contracts contract. Additional conditions permitted in Sharia law are 1. conditions that strengthen the contract; 2. conditions that are consistent with the contract; 3. conditions that have been applied in custom; 4. conditions that contain benefits for one or both parties.

Meeting Point Between CISG and Islamic Transaction Law Through Legal Harmonization Approach

Some differences that can be harmonized are as follows:

*Firs*t is contract validity, where the CISG does not regulate the legal relationship between the contract's validity and its implications. This is different from sharia law, which governs the validity of a contract. The non-regulation of contract validity in the CISG does not mean that the validity of a contract is not essential in the CISG, but merely considers the diversity of laws used by a country. Therefore, a contract's validity is left to each country's laws. The CISG does not regulate the legal relationship between treaty law and its implications because matters relating to the validity of contracts and the consequences of a contract are subject to their respective national laws. Thus, a contract's validity is left to each country's legal system. Therefore, the CISG still accommodates the validity of contracts through each country's contract law rules.

An example is the application of the principle of consensualism. The principle of consensualism (mabda' ar-raḍa'iyyah) is important in sales contracts. According to al-Qardhagi, in contemporary Islamic law there is no discussion of *ridᾱ*. However, when referring to the French dictionary (*al-muᾱjamu al-lugowiyyatu al-faransiyatu*), it is found that

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[48] Ibraheng Saleh dkk., "Justice (Al-Adl) In Buying And Selling From Syeikh Daud Al-Fatanis Perspective," *INTERNATIONAL JOURNAL OF MANAGEMENT (IJM)* 11, no. 6 (1 Juli 2020): 489–95.

the meaning of rida is good will and permission (*al-irādatu at- ṭayyibatu wa at-tarkhiṣ*).[49] Egypt is a Muslim-majority country member of the CISG and one of the Arab Islamic countries that adopted the Continental European pattern, particularly the French system[50]. The element of voluntariness occupies a fundamental position in the Egyptian Civil Code and is a basic pillar of the law.[51] Related to the principle of consensualism, Egyptian law differs from the CISG where the CISG in regulating contracts is solely seen from the principle of consensualism. Article 29 (1) states, "*A contract may be modified or terminated by the mere agreement of the parties*."[52] Buying and selling in Egyptian civil law contains the transfer of property rights, where buying and selling transfer ownership rights from the seller to the buyer. Article 418 of the Egyptian Civil Code states that sale and purchase is a contract that enables the seller to transfer ownership to the buyer in exchange for a price. This is also found in Article 235 Article 300, that sale and purchase is a contract between two parties to transfer ownership to the other party, which obliges the buyer to pay a price.[53] As for delivery is only a mere transfer of power over goods whose ownership rights have already passed when the Sales contract agreement is closed. If the seller has not delivered the goods while the buyer has fulfilled his obligation to pay the price by the agreement, then the seller has committed a mistake by not giving the goods he sold to the buyer. The mistake made by the seller by not delivering the goods is an unlawful act (*al-'amalu gairu masyrū'i*).

Second: The existence of the object. The existence of the object at the time of the contract, in the view of classical fiqh scholars, is a condition for the validity of a contract. A trade with no object (an object that does not exist / *bai' al-ma'dum*) is invalid. If the merchandise is not available at the time of the contract or is available but cannot be delivered, then the sale is invalid. This contract involves risk or uncertainty; however, some Islamic countries, such as Egypt[54] and Kuwait[55], explicitly permit it in their Civil Code, allowing sales contracts for goods that do not yet exist[56]. For legal harmonization, it is necessary to find the substantive nature of these norms by conducting a legal study (causa legis) on the prohibition of entering into a contract if the merchandise is unavailable at the time of the contract. The legal reason (*illat*, causa legis) for the ban is not the absence of goods when closing the contract. However, what is stated in the Prophet's hadith is the prohibition of trading in gharar objects (speculative). These objects cannot be delivered to the buyer, whether or not they exist. This is because the existence of the object of the contract is related to the concept of trade in Sharia law, where the property rights have passed at the time of the contract. Thus, in essence, the issue is not whether or not the goods exist because they are not legal entities, but the legal issue is whether or not the

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[49] See in Mu'jam Lorus and dictionary of legal terms. See also in Antoun Fahmy: LE: Consentement De La Victime, Paris, 1971, pp. 32. Ridā is not something tangible, and ridā in a contract is the conformity of the parties' wishes or the parties' acceptance. Quoted from Ali Muhyiddin Ali al-Qurrah Dagiy, *Mabda' al-rida fi al-'uqud : dirasah muqaranah fi al-fiqh al-Islami wa-al-qanun al-madani: (al-Rumani wa al-Faransi wa al-Injilizi wa al-Mesri wa-al-'Iraqi)*, vol. 1 (Beirut: Dar al-Basyair al Islamiyah, 2002), 239.

[50] Glenn, *Legal Traditions of the World*.

[51] Dagiy, 1:258 ,*مبدأ الرضا في العقود*.

[52] United Nations Commission on International Trade Law, *United Nations Convention on Contracts for the International Sale of Goods*, 1st ed (Bloomfield: United Nations Publications, 2011).

[53]The article text reads

النصوص القانونية : نصت المادة 418 من القانون المدني على الآتي ": البيع عقد يلتزم به البائع أن ينقل للمشتري ملكية شيء او حقا مالية أخر في مقابل ثمن نقدي . " التقنين المدني السابق :- المادة 235/ 300 ": البيع عقد يلتزم به احد المتعاقدين نقل ملكية شيء للأخر في مقابل التزام ذلك الآخر بدفع ثمنه المتفق عليه بينهما

[54]Arts. 131 ("things that may happen in the future may be the object of an obligation"), arts. 265 (a conditional obligation that depends on an uncertain event in the future is generally valid).

[55]Arts.130 ("allows: the sale of property that does not yet exist'); art. 121 ("the sale of goods even where a risk exists that they may perish before delivery')

[56] Sloane, "The Status of Islamic Law in the Modern Commercial World."

delivery of the goods is permissible. The legal effect is that if the parties intend to agree on an object that already exists so that if later the object does not exist, the agreement is null and void. However, suppose the parties intend to enter into a contract for an object that does not have to exist when the contract is made but can be delivered later. In that case, the object does not have to exist when closing the contract but can certainly be offered at a specified date. This is also in line with the norm in UNIDROIT that a contract is valid, even if the asset that is the object of the contract does not exist when the contract is made. This means the impossibility of performing a contract from the outset can be considered valid.

Third: The permissibility of price uncertainty in contracts. Although the CISG requires an agreement on price, the contract is valid without a fixed price. Suppose a contract is validly made without 'explicitly or implicitly stipulating and regulating price fixing.' In that case, the applicable price is generally fixed for the goods in question. In Islamic transaction law, a Sales contract is declared perfect and valid when the goods and the selling price are established in the Sales contracts contract. A sales contract is ideal if the price is determined at the time of the contract. However, in Sharia law, even if the price is not explicitly mentioned, but the parties have agreed, and the element of willingness is fulfilled, the contract is still valid. This is also adhered to in the Egyptian and Kuwait civil codes. Article 418 of the Egyptian Civil Code states that buying and selling contains 4 (four) things: transfer of property rights, compensation, legal consequences, willingness, and clarity of price.[57] Article 124,125 of the Egyptian Civil Code states, "a contract lacking a price term if the intent is to use market price or a price fixed by a third party."[58]

Regarding price clarity, it is stated that a Sales contracts contract is valid if there is mutual giving, where the seller gives the goods. The buyer provides the money at an agreed price, even though the price is not explicitly mentioned when closing the contract. It is assumed that it has been decided to reference the price generally charged when closing the contract. Making a valid contract without a fixed price and using a 'customary' price is not inherently contrary to Sharia law. Making a valid contract without a fixed price and using the "customary" price is not against Sharia law. Custom plays an essential role in Islamic law, especially about trade, and is even considered decisive by Kasani. Several texts, as quoted by Mallat, mention a systematic reference to trade customs, including *'adat al-tujjar* - the use of merchants and their practice -; *ta'amul al-nas*, i.e., the way people deal amongst themselves; t*a'aruf bayn al-nas*, the interaction between people; as well as the notion of *wajh al-tijara* or the direction of commerce.[59] This is because, in addition to sharia as a guideline, the customs prevailing in the community can also be used as a reference. Some rules that can be used as evidence (legal reasons) include: (1) "*Al'âdatu muhakkamatun*"; (2) "*Qullu hukmin murattabi 'alâ 'urfin aw 'âdatin yabthulu 'inda zawâli tilka al 'âdati fa idzâ taghayyaro al hukm*"; (3) "*Anna al ahkâma al mutarattabata 'alâ al 'awâidi tadûru ma'aha kaifamâ dârat wa tabthulu ma'ahâ idzâ yathalat kâ an nuqûdi fî al mu'âmalâti*"; (4) "*Anna al ahkâma al mutarattabata 'alâ al 'awâidi tadûru ma'aha kaifamâ dârat wa tabthulu ma'ahâ idzâ yathalat kâ an nuqûdi fî al mu'âmalâti*"; (5) "*Qullu hukmin murattabi 'alâ 'urfin aw 'âdatin yabthulu 'inda zawâli tilka al 'âdati fa idzâ taghayyaro al hukm* "; (5) "*alma'rūf baina attujâri kal masyrūth bainahum"; (6) "isti'mal an-nas hujjatun yajibu al-'amalu biha*."[60]

Table 1. Comparison of buying and selling contracts between Egypt and CISG

	the Egyptian Civil Code	CISG

[57] Hassan, "Contracts in Islamic Law."

[58] Sloane, "The Status of Islamic Law in the Modern Commercial World."

[59] Mallat, "Commercial Law in the Middle East."

[60] Husain Hamid Hasan, *Nazhariyyah Al-Mashlahah Fi al-Fiqh al- Islami* (Kairo: Dar Nahdah al-Arabiyah, 1971).

Seller's responsibility	Transfer of Property	Delivering goods, delivering documents and transferring ownership of goods
Obligations of the parties	Compensation	Compensation
principles of buying and selling	Consensualism	Consensualism
terms of offer	The price must be clear, but it is open to the option of the price not being explicitly mentioned	Prices may be explicitly or implicitly stated.

Fourth: Contracts involving third parties. The existence of complete control over the object of the Sales contracts contract is a condition for the validity of the law. Thus, the parties have full ownership of the object, and the object has nothing to do with a third party. Even so, selling someone else's property without permission is allowed in sharia law, but the contract cannot be executed and must wait for the owner's consent. Meanwhile, in the CISG, the traded goods are free from all rights and claims of third parties unless the buyer is willing to accept the goods subject to these rights and claims. In Islamic transaction law, the legal effect of trading goods that do not belong to the owner or where there is a third-party claim must await the third party's consent; in the CISG, if the buyer agrees, the third party's permission is not required. Substantively, the two norms can be harmonized because the buyer's consent to the goods, rights, and claims of third parties is based on an agreement to be subject to the rights and claims of third parties. This means that the legal effect of applying the contract in the CISG is still pending the consent of the third party to which the buyer is subject to its rights and demands.

CONCLUSIONS

This article's research type is normative legal research or literature, commonly referred to as doctrinal research instead of empirical or non-doctrinal research. The approach used is a comparative law approach. This approach compares legal norms between CISG and Sharia law related to the Sales contracts contract of goods. This research identifies the legal norms of the CISG and Sharia law about buying and selling. By the type of normative research that focuses on written legal materials, the procedure for collecting legal materials is carried out through literature studies with document study techniques. The search for legal materials begins with searching and collecting literature related to the topic under study and then inventorying the legal norms in the CISG and Sharia law. Normative research methods are intended to solve clinical problems and explore legal principles and doctrines. Legal research is based on comparative law by identifying legal norms in the CISG and normative-prescriptive Sharia law and then looking for harmonization efforts. This normative-prescriptive aspect in the context of legal science development is needed to find legal rules that become the basis for the formulation of further regulations, in this case, related to national law. The need to find legal rules is understood based on the 'legal hermeneutic point of view' and comparative law. The hermeneutic point of view is a method of understanding a normative text. Meanwhile, the comparative law perspective is directed at comparing the legal issues. For recommendation, there is still a need for further studies, particularly other international trade law norms associated with sharia law norms.

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