

## Is Sharia Economic Law Effective? A Critical Study of Indonesia's Islamic Economic Legal Framework

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### Abstract

The development of law often lags behind the dynamics of economic activities, whereas legal certainty is essential to protect the economic and business rights of market participants. This study evaluates the effectiveness of Islamic economic law in Indonesia using Anthony Allott's theory of legal effectiveness, which emphasizes the preventive, curative, and facilitative functions of law. Employing a qualitative evaluative approach, the analysis draws on statutory laws, fatwas, judicial decisions, and institutional regulations from key authorities such as the Financial Services Authority (OJK), the National Sharia Board (DSN-MUI), and the National Committee for Sharia Economics and Finance (KNEKS), complemented by reputable peer-reviewed academic sources. The findings indicate that Islamic economic law remains partially effective: it has yet to improve public literacy and inclusion, its curative mechanisms are constrained by limited substantive law, and its facilitative role is weakened by regulatory inflexibility. The study contributes to the socio-legal evaluation of Islamic economic law, proposing a more integrated, adaptive, and innovation-oriented framework to enhance the responsiveness and sustainability of Indonesia's Sharia economic system.

**Keywords:** Islamic Economic, Legal effectiveness, Sharia economic law

## Introduction

The development of Islamic economics and Islamic economic law represents two interrelated but asymmetrically evolving domains within the broader Islamic economic system. While Islamic economics has demonstrated considerable flexibility and adaptability to modern financial innovations, Islamic economic law tends to remain rigid, emphasizing legal-formal compliance over socio-economic functionality.<sup>1</sup> This discrepancy raises concerns about the capacity of Islamic economic law to respond effectively to contemporary economic challenges.

In the Indonesian context, the gap between economic dynamism and legal adaptability is increasingly evident. Despite Indonesia's position as one of the world's largest Muslim-majority nations, the growth of its Islamic financial sector lags behind expectations. Recent reports from the Otoritas Jasa Keuangan (OJK) and Bank Indonesia show that public literacy and inclusion in Islamic finance remain relatively low compared to conventional finance. These social facts underscore the urgency of evaluating whether the existing legal framework governing Islamic economics has been effective in supporting financial inclusion and innovation.

Scholarly debates also reflect this tension. Previous studies have examined the evolution of Islamic economics from idealist to pragmatic orientations, emphasizing the need for greater adaptability and contextual responsiveness.<sup>2</sup> Comparative studies between Malaysia and Indonesia further demonstrate how legal origins shape the trajectory of Islamic finance. Malaysia's hybrid of common and Islamic law has facilitated faster institutional adaptation, whereas Indonesia's civil-Islamic hybrid system appears less flexible.<sup>3</sup>

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<sup>1</sup> Hasanudin Hasanudin, Jaih Mubarak, and Muhammad Al-Fayyad Maulana, "Progressiveness of Islamic Economic Law in Indonesia: The Murā'at Al-'Ilal Wa Al-Maṣāliḥ Approach," *Samarah: Journal of Family Law and Islamic Law* 7, no. 2 (June 20, 2023): 1267–92, <https://doi.org/10.22373/sjhl.v7i2.17601>.

<sup>2</sup>Abdullah Saeed, "Islamic Banking Moving Towards a Pragmatic Approach?," *ISIM Newsletter* 3, no. 1 (1999): 7–7; Abdullah Saeed, "Indonesian Islamic Banking in Historical and Legal Context. Dalam Tim Lindsey (Ed.), *Indonesia: Law and Society*," Sydney: Federation Press, 1999.

<sup>3</sup> Rihab Grassa and Kaouther Gazdar, "Law and Islamic Finance: How Legal Origins Affect Islamic Finance Development," *Borsa Istanbul Review* 14, no. 3 (September 1, 2014): 158–66, <https://doi.org/10.1016/j.bir.2014.05.001>; Rihab Grassa, "Legal Origin, Institutional Quality, and Islamic Finance Development: Does Shari'a Matter?" *Law and Development Review* 13, no. 2 (June 1, 2020): 345–69, <https://doi.org/10.1515/ldr-2020-0053>; Maeve B Dwyer, "Examining the Relationship Between Legal Origin and Levels of Economic Globalization," *Studen Publication* 888 (2020); Fancheng Wang, "The Role of Legal Origins in Countries Affected by the 2008 Great Financial Crisis," *Science of Law Journal* 2, no. 12 (2023), <https://doi.org/10.23977/law.2023.021208>.

Recent developments in the study of Islamic economic law in Indonesia also reveal a shift from normative-theological discussions toward more institutional and policy-oriented analyses.<sup>4</sup> Several studies emphasize that the growth of the national Islamic economy is not merely a result of increasing religiosity among the population but also of institutional interventions through state regulations and policies.<sup>5</sup> Within this context, the National Sharia Board–Indonesian Ulema Council (DSN-MUI) plays a pivotal role as a producer of normative standards through fatwas that serve as references for Islamic financial institutions. However, critical scholarship observes that DSN-MUI’s role tends to be reactive and legitimizing, issuing fatwas after financial products have already emerged in the market, thus limiting its normative function in guiding innovation and enhancing public literacy in Islamic economic law.<sup>6</sup>

The phenomenon of fatwa bureaucratization has become a significant trend in the evolution of Islamic economic law in Indonesia.<sup>7</sup> The transformation of DSN-MUI into an institution with structured administrative mechanisms has increased the credibility and consistency of fatwas but has also led to risks of formalization that may restrict contextual *ijtihad*. This bureaucratic shift illustrates how fatwas, originally moral-religious opinions, have evolved into instruments of public policy with a quasi-legislative character.<sup>8</sup> Nevertheless, the effectiveness of fatwas in ensuring legal certainty continues to depend on their recognition and harmonization within the national legal system, particularly in the adjudication of Islamic economic disputes.

A third trend is the positivization of Islamic business law, reflecting efforts to integrate Islamic legal principles into national legislation.<sup>9</sup> Since the

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<sup>4</sup> Saeed, “Indonesian Islamic Banking in Historical and Legal Context. Dalam Tim Lindsey (Ed.), *Indonesia*”; Hasanudin et al., “Progressiveness of Islamic Economic Law in Indonesia.”

<sup>5</sup> Grassa, “Legal Origin, Institutional Quality, and Islamic Finance Development.”

<sup>6</sup> Abdurrohman Kasdi, “Contribution of National Sharia Council Fatwa of Indonesian Council of Ulama (DSN-MUI) in The Islamic Economic Development in Indonesia,” *Iqtishadia: Jurnal Kajian Ekonomi Dan Bisnis Islam* 11, no. 1 (2018): 47–64, <https://doi.org/10.21043/iqtishadia.v11i1.3187>; Elsy Renie, “The Urgency of Fatwa in The Law of Sharia Economics in Indonesia,” *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (2021): 201–8, <https://doi.org/10.31958/juris.v20i2.4059>.

<sup>7</sup> Agus Fakhрина and Abdul Hamid, “Sacralizing the Market? The Role of DSN–MUI in the Legal-Economic Legitimacy of Islamic Banking in Indonesia,” *AHKAM: Jurnal Ilmu Syariah* 25, no. 1 (2025): 1; Nur Sillaturrohman Handayani et al., “The Strategic Role of DSN-MUI in Developing Islamic Economic Law,” *AL-IKTISAB: Journal of Islamic Economic Law* 7, no. 1 (2023): 1, <https://doi.org/10.21111/aliktisab.v7i1.9297>.

<sup>8</sup> Alfitri Alfitri, “Bureaucratizing Fatwā in Indonesia: The Council of Indonesian Ulama and Its Quasi-Legislative Power,” *Ulumuna* 24, no. 2 (2020): 2, <https://doi.org/10.20414/ujis.v24i2.412>.

<sup>9</sup> Mohammad Nur Yasin, *Politik Hukum Ekonomi Syariah Di Indonesia* (UIN-Maliki Press, 2018), [https://jdih.situbondokab.go.id/barang/buku/Politik%20Hukum%20Ekonomi%20Syariah%20di%20Indonesia%20\(Dr.%20H.%20Mohamad%20Nur%20Yasin,%20S.H.,%20M.Ag.\)%20\(z-](https://jdih.situbondokab.go.id/barang/buku/Politik%20Hukum%20Ekonomi%20Syariah%20di%20Indonesia%20(Dr.%20H.%20Mohamad%20Nur%20Yasin,%20S.H.,%20M.Ag.)%20(z-)

reform era, the government has introduced various regulatory instruments, such as the Compilation of Sharia Economic Law (KHES), the Islamic Banking Act, and Financial Services Authority (OJK) regulations adopting DSN-MUI fatwas. However, this positivization process remains partial and sectoral, often failing to address the substantive legal dimensions of Islamic economic activities.

While existing research has explored the institutional dynamics and political-legal aspects of Islamic lawmaking, few studies have systematically evaluated the effectiveness of Islamic economic law in performing its preventive, curative, and facilitative functions. This gap provides the conceptual foundation for the present study, which critically assesses the operational performance of Islamic economic law within Indonesia's hybrid legal system that merges Islamic and civil law traditions.

Accordingly, this article aims to analyze the effectiveness of Islamic economic law in Indonesia through the lens of Anthony Allott's theory of legal effectiveness, which conceptualizes law as a mechanism to achieve intended social objectives. By applying Allott's tripartite framework preventive, curative, and facilitative functions, this study seeks to reveal whether Islamic economic law in Indonesia effectively contributes to financial inclusion, dispute resolution, and innovation in Islamic economic activities.

According to Anthony Allot, the measurement of legal effectiveness can be approached through three distinct lenses: preventive, curative, and facilitative.<sup>10</sup> Within the domain of preventive law, the effectiveness of a given statute is determined by its capacity to deter the commission of prohibited acts. Moreover, in the event of a violation, the law is capable of resolving disputes (curative) between legal subjects. The effectiveness of this approach is evident in the extent to which justice is served in resolving the dispute. The effectiveness of the law is ultimately determined by its ability to address the needs of legal subjects in pursuing legal action for their actions. These three aspects confirm that legal effectiveness is nothing more than the ability of the law to realize its objectives.<sup>11</sup>

The significance of this study lies in its potential to bridge theoretical and empirical gaps in understanding the role of Islamic economic law in supporting sustainable economic development. The findings are expected to contribute not only to the academic discourse on the relationship between legal systems and Islamic finance but also to practical policy reform aimed at enhancing the responsiveness, inclusivity, and adaptability of Islamic economic law in Indonesia.

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lib.org).pdf; Yusdani, "Dinamika Pengembangan Hukum Ekonomi Syariah Di Indonesia," January 13, 2025.

<sup>10</sup>Anthony Allot, "The Effectiveness of Law," *Valparaiso University Law Review* 15, no. 2 (1981): 229.

<sup>11</sup>Antony Allott, "The Limits of Law: A Reply," *Journal of Legal Pluralism* 21 (1983): 147.

This study adopts a qualitative evaluative design to assess the effectiveness of Islamic economic law in Indonesia within its socio-legal and institutional framework. Rather than relying on empirical field data, this research employs an evaluative approach that systematically examines the extent to which Islamic economic law fulfills its preventive, curative, and facilitative objectives. This framework is grounded in Anthony Allott's theory of legal effectiveness, which views law as effective when it successfully achieves its intended social purposes within a given context.

The analysis relies on a combination of documentary and secondary data. Primary documentary sources include statutory laws, fatwas, judicial decisions, and institutional regulations issued by authoritative bodies such as the Financial Services Authority (OJK), the National Sharia Board (DSN-MUI) and the National Committee for Sharia Economics and Finance (KNEKS). To complement these materials, the study also incorporates a wide range of reputable and peer-reviewed academic sources. These works were purposively selected for their analytical relevance to the development and evaluation of Islamic economic law and finance in Indonesia.

Data were analyzed using qualitative content analysis, focusing on identifying and interpreting themes related to the law's preventive, curative, and facilitative functions. The analysis followed an iterative process of coding and thematic comparison guided by Allott's conceptual framework. This approach enabled the researcher to evaluate not only the textual content of laws and regulations but also their functional implications for the broader Islamic economic system.

To ensure academic rigor and validity, data triangulation was achieved through the cross-verification of legal texts, institutional policies, and findings from high-quality academic literature. Although no extensive empirical data collection was undertaken, the use of multiple authoritative and scholarly sources provides both depth and credibility to the evaluative findings. Consequently, this methodological design allows for a comprehensive and theoretically grounded assessment of the responsiveness and practical effectiveness of Indonesia's Islamic economic law.

## **Discussion**

### **Recent Developments of Sharia Economic Law**

The extent to which sharia economic law has developed can be identified through two stages. First, to capture the latest developments in sharia economic practices; then, second, what kind of legal products are produced to respond to these developments.

## Islamic Economy Development

Hafas Furqani explained that the development of Islamic economic systems or practices in Indonesia is supported by two important aspects, namely: institutions and regulations.<sup>12</sup> Although the existence of Islamic banks in Indonesia is slower than in other countries, the growth trend is increasing. The existence of regulatory certainty and the establishment of government institutions that focus on the development of Islamic economics, greatly determine the development. This includes the increasing number of universities that open study programs in economics and Islamic business, as well as the increasing number of scientific publications and research funding support from various institutions.

The initial phase of Islamic economic practice was characterized by the establishment of financial institutions and banking based on Sharia principles. In contrast, the present state is marked by the preeminence of the halal industry, which has emerged as the pivotal driver of the Islamic economy. *The State of Global Islamic Economy Report* explains that there are seven halal industry sectors currently developing, namely: halal cosmetics, Muslim fashion, halal food, halal pharmaceuticals, Muslim-friendly tourism, media and recreation

Currently, Indonesia is ranked as the third country with the largest growth in the halal industry. While Malaysia and Saudi Arabia occupy the first and second positions. The indicator score obtained by Indonesia is 80.1 while Malaysia is 193.2 and Saudi Arabia is 93.6.

**Table 1.** Global Islamic Economy Report Indicator Score

No.	Country	GIEI	Islamic Finance	Halal Food	Muslim-Friendly Travel	Modest Fashion	Media & Recreation	Halal Pharma & Cosmetics
1	Malaysia	193,5	408,7	128,0	99,4	73,6	74,4	73,9
2	Saudi Arabia	93,6	194,9	48,5	99,7	34,3	37,5	34,3
3	Indonesia	80,1	92,2	94,4	60,7	66,3	52,4	58,6

Source: SGEI 2023/24

The difference in scores obtained by Malaysia in the first rank and Indonesia in the third rank is basically not related to the population in the country. This means that the Muslim population is indeed a huge potential, but the main factor is highly dependent on the performance of each halal industry business sector and financial literacy, awareness and attitudes. Conversely, religiosity does

<sup>12</sup>Hafas Furqani, *The Current Situation of Islamic Economics in Indonesia*, IKAM Research Centre for Islamic Economics Istanbul Turkey, 2017, <https://repository.ar-raniry.ac.id/id/eprint/6447/>.

not significantly affect attitudes towards financial products in order to improve the performance of halal products in Indonesia.<sup>13</sup> In the aspect of life satisfaction, then religiosity has a linear and positive significant effect.<sup>14</sup> The research also proves that despite living in a neoliberal market environment, Muslim consumers strive to maintain Islamic shariah through the importance of the meaning of "halal" in their consumption activities.<sup>15</sup>

In addition, financial literacy is also an important factor that can increase the development of halal businesses.<sup>16</sup> While from the institutional aspect, socio-cultural factors, nepotism, moral hazard greatly affect the sustainability of financial institutions in Indonesia.<sup>17</sup> These findings confirm the importance of implementing *Good Corporate Governance* to improve financial performance and minimize risk in Islamic banks.<sup>18</sup>

Research indicates that the halal food industry in Indonesia will experience growth if three factors are addressed: the streamlining of the halal certification process, the augmentation of the number of halal auditors, and the enhancement of company awareness regarding halal certification.<sup>19</sup> The dearth of

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<sup>13</sup>Setiawan Budi Utomo et al., "Promoting Islamic Financial Ecosystem to Improve Halal Industry Performance in Indonesia: A Demand and Supply Analysis," *Journal of Islamic Marketing* 12, no. 5 (2020): 992–1011, world, <https://doi.org/10.1108/JIMA-12-2019-0259>.

<sup>14</sup>Muhammad Sholihin et al., "The Effect of Religiosity on Life Satisfaction: A Meta-Analysis," *HTS Teologiese Studies / Theological Studies* 78, no. 4 (2022), <https://doi.org/10.4102/hts.v78i4.7172>; Muhammad Sholihin et al., "The Scale of Muslims' Consumption Intelligence: A Maqāṣid Insight," *ISRA International Journal of Islamic Finance* 15, no. 2 (2023): 2, <https://doi.org/10.55188/ijif.v15i2.544>.

<sup>15</sup>Inaya Rakhmani, "What's the Matter?: The Meaning of Halal Culture for Indonesian Muslims," *Asian Journal of Communication* 34, no. 3 (2024): 319–32, <https://doi.org/10.1080/01292986.2024.2315586>.

<sup>16</sup>Masrizal et al., "The Effect of Islamic Financial Literacy on Business Performance with Emphasis on the Role of Islamic Financial Inclusion: Case Study in Indonesia," *Journal of Islamic Marketing* ahead-of-print, no. ahead-of-print (2024), world, <https://doi.org/10.1108/JIMA-07-2022-0197>.

<sup>17</sup>Tia Rahmania et al., "Sustainable Financial Institution in Indonesia: An Empirical Analysis of Social-Cultural Context, Nepotism, and Moral Hazard on the Shaping of Non-Performing Loans," *Sustainable Futures* 8 (December 2024): 100279, <https://doi.org/10.1016/j.sftr.2024.100279>.

<sup>18</sup>Ahmad Roziq and Zakiyyah Ilma Ahmad, "Enhancing Performance: Minimizing Risk in Islamic Banks in Indonesia," *Cogent Business & Management* 11, no. 1 (2024): 2294519, <https://doi.org/10.1080/23311975.2023.2294519>.

<sup>19</sup>Aries Susanty et al., "Prediction of the Performance of Halal Food Industry Using a System Dynamics Simulation Model," *Journal of Islamic Marketing* ahead-of-print, no. ahead-of-print (2024), world, <https://doi.org/10.1108/JIMA-02-2023-0039>.

halal-certified products has a deleterious effect on the efforts to accelerate the development of the halal pharmaceutical industry.<sup>20</sup>

The halal tourism sector in Indonesia received the lowest GIER score. A substantial body of research has demonstrated that the effectiveness of the halal tourism ecosystem is predominantly influenced by the government's role as the initiator and facilitator of this ecosystem. The halal tourism ecosystem is to be managed in accordance with universal Islamic norms, and exclusive rules are to be avoided.<sup>21</sup> The prevailing research indicates that the obligation of halal certification in the implementation of halal tourism is not consistent with Indonesia's commitment to liberalize the tourism sector through GATS.<sup>22</sup> Concurrently, research also indicates that the formulation and implementation of halal tourism policies necessitate a distinct approach to accommodate the diverse communities with their distinct norms and customs, as evidenced in West Nusa Tenggara, Aceh, and West Sumatra.<sup>23</sup> The data proves that the three provinces with the highest index in the *2023 Indonesian Muslim Travel Index (IMTI)* are supported by comprehensive and inclusive access, communication, environment and service factors.<sup>24</sup>

The achievement of *Islamic* economic performance in Indonesia, as measured by the *global Islamic economy report* index score, is also inseparable from the existence of the National Committee for Sharia Economics and Finance (KNEKS). The preparation of the Indonesian Sharia Economic *Master Plan* 2019-2024, followed by the Indonesian Halal Industry Master Plan 2023-2029, further emphasized the direction of Islamic economic development in Indonesia. This was then followed by the establishment of the Regional Committee for Sharia Economics and Finance (KDEKS) in each province. Although KDEKS activities and movements are still limited, according to Sutan Emir Hidayat<sup>25</sup> this is a strategic policy to make the Islamic economy more inclusive. The sectors of

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<sup>20</sup>Mohammad Iqbal Irfany et al., "Halal Procurement Strategy for the Halal Pharmaceutical Industry in Indonesia," *Journal of Islamic Marketing* ahead-of-print, no. ahead-of-print (2024), world, <https://doi.org/10.1108/JIMA-09-2023-0274>.

<sup>21</sup>Atie Rachmiate et al., "Halal Tourism Ecosystem: Networks, Institutions and Implementations in Indonesia," *Journal of Islamic Marketing* 15, no. 11 (2024): 3247–65, world, <https://doi.org/10.1108/JIMA-09-2023-0286>.

<sup>22</sup>Neni Ruhaeni et al., "Revisiting Indonesia Halal Tourism Policy in Light of GATS," *Journal of International Trade Law and Policy* 23, no. 2/3 (2024): 154–67, world, <https://doi.org/10.1108/JITLP-12-2023-0064>.

<sup>23</sup>Intan Purwandani and Mohamad Yusuf, "Localizing Indonesian Halal Tourism Policy within Local Customs, Qanun, and Marketing," *Journal of Policy Research in Tourism, Leisure and Events* 16, no. 2 (2024): 246–64, <https://doi.org/10.1080/19407963.2021.1996382>.

<sup>24</sup>"Indonesia Muslim Travel Index 2023," accessed December 8, 2024, <https://www.crescentrating.com/reports/indonesia-muslim-travel-index-2023.html>.

<sup>25</sup>Sutan Emir Hidayat, "Urgensi Perda Ekonomi Syariah Di Indonesia," Oktober 2021.

Islamic economic activity are thus not only in the aspect of Islamic banking, as happened at the beginning of the Islamic economic movement.

### Sharia Economic Law Development

The rapid development of Islamic economics through strengthening the Halal Value Chain is not directly proportional to the availability of regulations. Historically, this condition is closely related to legal politics in Indonesia. The politics of accommodation in the process of establishing Islamic banks in Indonesia,<sup>26</sup> became the entrance to the process of positivization of fiqh muamalah into the legal system in Indonesia. This process is different from the pre-independence condition where Islamic law has gone through the process of Islamization-acculturation during the Islamic kingdom period and secularization during the colonial period.<sup>27</sup>

The positivization of Islamic law in economic activities and Islamic social finance became a relatively early legal product formulated. Such as Law No. 38 Year 1999 jo. Law No. 23 Year 2011 on Zakat Management, and Law No. 41 Year 2004 on Waqf. According to Asep Saepudin Jahar, the existence of these laws is not a form of legal Islamization in Indonesia, but rather the bureaucratization of sharia.<sup>28</sup> This was also emphasized by the issuance of Law No. 3/2006 on Religious Courts as an amendment to Law No. 7/1989 on Religious Courts. Through this law, the authority of religious courts was expanded, especially in the settlement of sharia economic disputes. Likewise, Law No. 33 of 2014 concerning Halal Product Guarantee, then strengthened by Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation into Law. This regulation encourages several local governments to establish local regulations on halal products, halal tourism, and others.<sup>29</sup>

Research reveals that the politics of accommodation at the beginning of the establishment of Islamic banks, the implementation of the dual banking system through Law No. 10 of 1998 on Banking, until the enactment of Law No.

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<sup>26</sup>Noor Azmah Hidayati, "Politik Akomodasionis Orde Baru Terhadap (Umat) Islam: Telaah Historis Kelahiran Perbankan Syariah," *Millab: Journal of Religious Studies*, 2005, 47–62.

<sup>27</sup>Addiarrahman Addiarrahman and Illy Yanti, "Dari Idealisme Ke Pragmatisme: Pergeseran Paradigma Dalam Pengembangan Hukum Ekonomi Syariah Di Indonesia," *Al-Manabij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 191–210, <https://doi.org/10.24090/mnh.v14i2.3408>; Illy Yanti and Addirrahman, "Sustainability of the Development of Sharia Economic Law in Indonesia: A Social History Approach," Atlantis Press, March 8, 2021, 449–51, <https://doi.org/10.2991/aebmr.k.210305.085>.

<sup>28</sup>Asep Saepudin Jahar, "Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law," *Studia Islamika* 26, no. 2 (2019): 2, <https://doi.org/10.15408/sdi.v26i2.7797>.

<sup>29</sup>Addiarrahman and Illy Yanti, "Halal Industry in Javanese Culture: Yogyakarta Regional Government Policy in Obtaining Its Economic Values," *Inferensi* 16, no. 1 (2022): 151–74.

21 of 2008 on Islamic Banking, did not increase the *market share of* Indonesian Islamic banking.<sup>30</sup> Data shows that in the last five years, despite reaching 11.41%, the *market share of* Islamic finance has only increased by 2.5%.<sup>31</sup> Moreover, the implementation of *spin-offs* for banks with *dual banking systems*, as stipulated in the Islamic Banking Law, is not effective enough to improve the performance of Islamic banking. Meanwhile, the conversion strategy is better at generating profitability and efficiency than *spin-off*.<sup>32</sup> However, after the enactment of Law No. 4 of 2023 on Financial Sector Development and Strengthening, the rules on the obligation to conduct *spin-offs* have changed. Namely, that the obligation to transform an Islamic Business Unit into an Islamic Commercial Bank is determined by the OJK.

The political accommodation of the development of sharia economic law gives an important role to the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN MUI). Even though it is not included in the hierarchy of laws in Indonesia, the fact is that the DSN MUI fatwa is a reference in structuring Islamic financial institutions in Indonesia.<sup>33</sup> From 2000-2024, there are 160 fatwas that have been issued by DSN MUI.<sup>34</sup> The strong role of DSN MUI has transformed it into a quasi-legislative institution.<sup>35</sup> This then applies not only to fatwas on sharia economics, but also other issues of Islamic law.<sup>36</sup>

DSN MUI fatwas generally aim to answer questions on certain business activities or as a reaction to the latest phenomena that develop. Therefore, existing fatwas tend to use the principle of stages (*tadarruj*). For example, fatwas related to investment and trading in the money market. At first, the fatwa emphasizes the importance of the role of educated and experienced investment managers.

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<sup>30</sup>Ahmad Dahlan et al., "The Crucial History of Sharia Banking Law Development in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 27–40, <https://doi.org/10.24090/mnh.v17i1.7191>.

<sup>31</sup>Tim Penulis, *Indonesia Sharia Economic Outlook 2025*, Energi Baru Ekonomi Syariah: Menuju Transisi Dan Keberlanjutan (Pusat Ekonomi dan Bisnis Syariah FEB Universitas Indonesia, 2024).

<sup>32</sup>Irwan Trinugroho et al., "Is Spin-off Policy an Effective Way to Improve Performance of Islamic Banks? Evidence from Indonesia," *Research in International Business and Finance* 56 (April 2021): 101352, <https://doi.org/10.1016/j.ribaf.2020.101352>.

<sup>33</sup>Renic, "The Urgency of Fatwa in The Law of Sharia Economics in Indonesia."

<sup>34</sup>*Fatwa – DSN-MUI*, n.d., accessed January 13, 2025, <https://dsnmu.or.id/kategori/fatwa/>.

<sup>35</sup>Tim Lindsey, "Monopolising Islam: The Indonesian Ulama Council and State Regulation of the 'Islamic Economy,'" *Bulletin of Indonesian Economic Studies*, Taylor & Francis Group, August 1, 2012, world, <https://www.tandfonline.com/doi/abs/10.1080/00074918.2012.694157>.

<sup>36</sup>Alfitri Alfitri, "Bureaucratizing Fatwā in Indonesia: The Council of Indonesian Ulama and Its Quasi-Legislative Power," *Ulumuna* 24, no. 2 (December 31, 2020): 367–97, <https://doi.org/10.20414/ujis.v24i2.412>.

However, at a later stage the DSN MUI fatwa allows a person to invest and trade in the stock market using an online platform.<sup>37</sup>

In addition to the DSN MUI fatwa, the legal basis for sharia business and financial activities in Indonesia is also supported by Bank Indonesia Regulations and Financial Services Authority Regulations. During 2024, there were 8 POJK, 5 OJK Circular Letters, and 2 Bank Indonesia Regulations. Not only that, the existence of the Regional Committee for Sharia Economics and Finance (KDEKS), also encourages the issuance of regional regulations on the sharia economy, for example related to halal tourism, halal products, and so on.<sup>38</sup>

### **Effectiveness of Sharia Economic Law in Indonesia**

The development of sharia economic law in Indonesia shows that its existence is getting stronger in the national legal system. Research proves that it contributes significantly to the development of Islamic economics and finance in Indonesia. However, the extent of the effectiveness of Islamic economic law needs to be further examined from the preventive, curative, and facilitative dimensions.

#### **Preventive**

In this dimension, the law is considered effective if it is able to prevent individuals/groups of legal subjects from committing violations. This can be seen at two levels, namely institutional and individual. Institutionally, Islamic economic and financial activities are subject to existing rules. Islamic business and financial institutions are continuously encouraged to meet *sharia compliance* standards. Studies prove that in the long run, sharia compliance has a positive impact on a company's brand equity.<sup>39</sup> Institutions that do not meet the standards are sanctioned up to the revocation of operating licenses. This runs strictly and rigidly under the Financial Services Authority (OJK). In addition to the OJK, sharia compliance is also overseen by the Sharia Supervisory Board (DPS) established in each Islamic financial institution. The DPS, both actively and passively oversees the implementation of the National Sharia Council (DSN) fatwa.

Furthermore, at the individual level, the effectiveness of Islamic economic law can be seen from their literacy (understanding) and inclusion (involvement) in Islamic economic activities. Literacy is very influential on the increasing

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<sup>37</sup> Yuli Andriansyah, "Analysis of Fatwas by the National Sharia Board-Indonesian Council of Ulama on the Stock Market," *Millah: Journal of Religious Studies*, August 30, 2023, 525-52, <https://doi.org/10.20885/millah.vol22.iss2.art9>.

<sup>38</sup> Purwandani and Yusuf, "Localizing Indonesian Halal Tourism Policy within Local Customs, Qanun, and Marketing"; Addiarrahman and Yanti, "Halal Industry in Javanese Culture."

<sup>39</sup> Sri Rahayu Hijrah Hati, Muhammad Budi Prasetyo, and Nur Dhani Hendranastiti, "Sharia vs Non-Sharia Compliant: Which Gives Much Higher Financial-Based Brand Equity to the Companies Listed in the Indonesian Stock Market?" *Journal of Islamic Marketing* 14, no. 9 (August 16, 2022): 2167–87, <https://doi.org/10.1108/JIMA-08-2021-0251>.

involvement of the community in using Islamic financial products. In the next stage, it also affects the growth of micro, small and medium enterprises.<sup>40</sup> The survey revealed that the sharia literacy index in Indonesia in 2024 is 39.11%. This means that out of 100 people aged 15-79 years, only 39 people are well literate in Islamic finance. This index is much lower than the conventional literacy index of 65.8%. The low sharia literacy is also reflected in the low sharia inclusion index, which is 12.88%. This means that only 12 out of 100 people aged 15-79 years are included in sharia finance. Meanwhile, conventional financial inclusion reached 73.55%.<sup>41</sup> The data presented indicates that the implementation of Sharia economic law in Indonesia has not been associated with significant gains in public literacy or inclusivity regarding Sharia finance.<sup>42</sup> The reasons for easy access, urgent needs, business capital, and lifestyle are the dominant factors for the increase in users of loan sharks, including online loans.<sup>43</sup>

### Curative

The evolution of Islamic economic disputes has emerged as a significant issue, concomitant with the development of the Islamic business and financial system. For example, by establishing the National Sharia Arbitration Board established through Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In addition, the authority of religious courts was also expanded to resolve sharia economic disputes through Law No. 3 of 2006 concerning Religious Courts.

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<sup>40</sup> Ahmad Abbas et al., "Earnings Growth, Marketability and the Role of Islamic Financial Literacy and Inclusion in Indonesia," *Journal of Islamic Accounting and Business Research* 14, no. 7 (December 20, 2022): 1088-1105, <https://doi.org/10.1108/JIABR-12-2021-0322>; Masrizal, Sukmana, and Trianto, "The Effect of Islamic Financial Literacy on Business Performance with Emphasis on the Role of Islamic Financial Inclusion."

<sup>41</sup> Compilation Team, "National Survey on Financial Literacy and Inclusion (SNLIK) 2024" (Jakarta: Financial Services Authority & Central Bureau of Statistics, 2024).

<sup>42</sup> Safwan Kamal et al., "The Spirit of Islamic Economics versus Loan Sharks: Investigating Intentions to Use Loan Sharks in Aceh, Indonesia," *Journal of Islamic Marketing* 15, no. 11 (June 14, 2024): 3023-47, <https://doi.org/10.1108/JIMA-09-2022-0254>; Novita Rahayu Pratiwi, Nur Khusniyah Indrawati, and Risna Wijayanti, "Biased Behavior in Borrowing from Loan Sharks," *Journal of Islamic Economics & Finance*, January 5, 2023, 31-44, <https://doi.org/10.20885/JEKI.vol9.iss1.art3>.

<sup>43</sup> Safwan Kamal et al., "Is Loan Shark an Alternative? The Intentions to Take a Loan from Loan Sharks in Indonesia," *Shirkah: Journal of Economics and Business* 7, no. 2 (September 8, 2022): 167-86, <https://doi.org/10.22515/shirkah.v7i2.487>; Deri Rizal et al., "Model of Prevention If Loan Sharking Practices Through Pentahelix-Based Sharia Financing Regulation Literacy in Tanah Datar Regency Community," *EKONOMIKA SYARIAH: Journal of Economic Studies* 7, no. 1 (2023): 36-46; Rita Susanti, Zuliani Dalimunthe, and Rachmadi Agus Triono, "What Factors Affect the Intention to Borrow Through Peer to Peer Lending in Indonesia?" SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, April 2, 2020), <https://papers.ssrn.com/abstract=3787336>; Mohammad Yunies Edward et al., "Success Factors for Peer-to-Peer Lending for SMEs: Evidence from Indonesia," *Investment Management and Financial Innovations* 20, no. 2 (April 3, 2023): 16–25, [https://doi.org/10.21511/imfi.20\(2\).2023.02](https://doi.org/10.21511/imfi.20(2).2023.02).

In addition, dispute resolution can also be done through deliberation, or through the General Court as long as it is agreed in the contract by the parties, as stipulated in Article 55 of Law No. 21/2008 on Sharia Banking. This article causes legal uncertainty. The firmness of the authority of the religious courts became certain after the issuance of Constitutional Court Decision Number 93/PUU-X/2012, which emphasized that the General Courts are not authorized to hear sharia economic disputes, even if agreed in the contract.<sup>44</sup>

A review of the extant literature indicates that the resolution of Sharia economic disputes in the context of religious courts remains ineffective.<sup>45</sup> In addition, it was also found that the settlement of defaults and unlawful acts, in the judicial process, still refers to the Civil Code.<sup>46</sup> This finding confirms that curatively, sharia economic law in Indonesia is still not effective enough to ensure that people obtain justice when disputes occur.

### Facilitative

The effectiveness of the law can be determined by assessing its ability to cater to the needs of legal subjects and enable them to initiate legal action. Business and financial activities are currently growing rapidly. However, at the same time, the formulation of Islamic economic law that refers to economic transactions in the classical period is not sufficient to answer these needs.<sup>47</sup>

This situation indicates that there are still aspects of Islamic business and finance that have not fulfilled the aspects of legal certainty. For example, the issuance of Islamic regional bonds. Research reveals that the potential of regional bonds is very important to improve the quality of regional development in Indonesia. However, until now there is no specific regulation governing it. In addition, the existing regulations lack coherence and consistency.<sup>48</sup>

Another example is in the field of financial technology (fintech). The potential for its development in Indonesia is huge.<sup>49</sup> However, the absence of

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<sup>44</sup> Khotibul Umam, "Implications of the Constitutional Court Decision Number 93/PUU-X/2012 for the Resolution of Sharia Business and Finance Disputes," *Journal of the Constitution* 12, no. 4 (2015): 691-715.

<sup>45</sup> Nur Hidayah et al., "Sharia Banking Disputes Settlement: Analysis of Religious Court Decisions in Indonesia," *Al-Risalah: Forum for Legal and Social Studies* 23, no. 1 (June 27, 2023): 75-92, <https://doi.org/10.30631/alrisalah.v23i1.1347>.

<sup>46</sup> Muhammad Irkham Firdaus, May Shinta Retnowati, and M. Abdurrozaq, "Settlement of Sharia Economic Disputes: Efficiency of Implementation in Indonesian Religious Courts," *Justicia Islamica* 21, no. 2 (November 6, 2024): 335-56, <https://doi.org/10.21154/justicia.v21i2.9240>.

<sup>47</sup> Hasanudin, Mubarak, and Maulana, "Progressiveness of Islamic Economic Law in Indonesia."

<sup>48</sup> Benny Hutahayan et al., "Legal Uncertainty of Municipal Bond Issuance: A Case Study of Indonesia and Vietnam," *International Journal of Law and Management* 66, no. 6 (March 19, 2024): 752-73, <https://doi.org/10.1108/IJLMA-12-2023-0272>.

<sup>49</sup> Manggi Habir and Siwage Dharma Negara, "The Digital Transformation of Indonesia's Banking Sector: Current Trends and Future Prospects" 2023, no. No. 78 (October 2, 2023),

adequate regulations, the complexity of licensing procedures, the misuse of fintech to fund terrorism, the proliferation of illegal fintech businesses, and consumer disputes in the fintech sector are challenges that necessitate a comprehensive legal framework.<sup>50</sup> In addition to legal certainty, fintech development also requires sharia compliance and governance standards.<sup>51</sup>

### Critical Evaluation

The development of Islamic economic law in Indonesia reflects an ongoing tension between the formal expansion of regulatory institutions and the substantive realization of Islamic legal values.<sup>52</sup> While the state has established an impressive array of regulatory bodies such as the Financial Services Authority (OJK), the National Sharia Board (DSN-MUI), and the National Committee for Sharia Economics and Finance (KNEKS) these institutions often operate within a fragmented legal framework that prioritizes procedural compliance over substantive justice. Jahar observes that Indonesia's Islamic economic law tends to evolve as a bureaucratic system, where the codification of sharia principles through statutory and bureaucratic instruments overshadows their ethical and spiritual foundations. This bureaucratization of Islamic law contributes to a form of legal formalism that may secure institutional legitimacy but weakens the transformative power of Islamic economic principles in everyday practice.<sup>53</sup>

From a preventive perspective, Islamic economic law has not yet succeeded in cultivating a robust culture of compliance and awareness among economic actors. Studies show that public literacy in sharia financial instruments remains limited, especially outside urban centers.<sup>54</sup> The absence of continuous education and the complexity of legal texts contribute to a superficial understanding of Islamic finance, leading to compliance that is driven more by institutional obligation than by ethical conviction. In Allott's theoretical framework, this reflects a weakness in law's preventive function, as its capacity to

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<https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2023-78-the-digital-transformation-of-indonesias-banking-sector-current-trends-and-future-prospects-by-manggi-habir-and-siwage-dharma-negara/>.

<sup>50</sup> Yudho Taruno Muryanto, Dona Budi Kharisma, and Anjar Sri Ciptorukmi Nugraheni, "Prospects and Challenges of Islamic Fintech in Indonesia: A Legal Viewpoint," *International Journal of Law and Management* 64, no. 2 (October 18, 2021): 239–52, <https://doi.org/10.1108/IJLMA-07-2021-0162>.

<sup>51</sup> Yudho Taruno Muryanto, "The Urgency of Sharia Compliance Regulations for Islamic Fintechs: A Comparative Study of Indonesia, Malaysia and the United Kingdom," *Journal of Financial Crime* 30, no. 5 (June 7, 2022): 1264–78, <https://doi.org/10.1108/JFC-05-2022-0099>.

<sup>52</sup> Zainal Arifin Hoesein, "Transformation of Islamic Law on the National Legal System in Indonesia," *UUM Journal of Legal Studies* 3 (December 2012): 77–109.

<sup>53</sup> Jahar, "Bureaucratizing Sharia in Modern Indonesia"; Alfitri, "Bureaucratizing Fatwā in Indonesia."

<sup>54</sup> Masrizal et al., "The Effect of Islamic Financial Literacy on Business Performance with Emphasis on the Role of Islamic Financial Inclusion."

shape behavior depends not only on sanctions or regulations but also on normative internalization. Hence, the preventive ineffectiveness of Islamic economic law is both structural and cultural, rooted in the insufficient integration between state-led regulation and community-based dissemination of sharia economic principles.<sup>55</sup>

Curatively, the placement of Islamic economic disputes under the jurisdiction of religious courts formalized through Law No. 3 of 2006 and subsequent regulations, represents significant progress toward institutional specialization. However, this reform has not fully resolved issues of substantive justice. Judicial decisions in sharia economic cases often rely on general civil law principles rather than a comprehensive corpus of Islamic commercial jurisprudence.<sup>56</sup> This hybridization of legal sources has produced inconsistency in judicial reasoning and uncertainty for litigants, undermining the curative function of Islamic law. The limited incorporation of *fiqh muamalah* principles into statutory law means that judges frequently depend on DSN-MUI fatwas, which, while authoritative, are not always sufficiently detailed to address modern financial complexities such as sukuk defaults or fintech-based transactions.

The facilitative dimension of Islamic economic law also exhibits structural rigidity. Regulatory mechanisms have been largely reactive, responding to market developments rather than anticipating them. Hafas & Laldin highlights that while Indonesia's Islamic finance industry continues to expand, legal adaptability lags behind innovation, particularly in areas such as digital Islamic banking, peer-to-peer lending, and halal investment instruments.<sup>57</sup> The lack of flexible legal instruments that balance sharia compliance with market dynamism restricts the growth of new financial models. Consequently, the law's facilitative role, its capacity to promote innovation and inclusion, is weakened by the dominance of a bureaucratic regulatory paradigm that prioritizes control over creativity.

Critically, these patterns reflect a deeper epistemological issue in Indonesia's legal modernization process. The positivization and bureaucratization of Islamic law risk detaching it from its moral and social foundations, transforming what was once a value-based normative system into a technocratic apparatus of regulation. As Hafas and Laldin argues, a genuinely effective Islamic legal system must not only provide certainty and enforcement but also embody *maqasid al-shariah* the higher objectives of justice, welfare, and public benefit.<sup>58</sup>

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<sup>55</sup> Lindsey, "Monopolising Islam."

<sup>56</sup> Illy Yanti and Addiarrahman, "Quo Vadis Peradilan Agama Dalam Pengembangan Hukum Ekonomi Syariah Di Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 16, no. 02 (2016): 255–67, <https://doi.org/10.30631/alrisalah.v16i02.311>.

<sup>57</sup> Mohamad Akram Laldin and Hafas Furqani, "Innovation versus Replication: Some Notes on the Approaches in Defining Shariah Compliance in Islamic Finance," *Al-Jami'ah: Journal of Islamic Studies* 54, no. 2 (2016): 249–72.

<sup>58</sup> Laldin and Furqani, "Innovation versus Replication."

Therefore, the effectiveness of Indonesia's Islamic economic law must be re-evaluated not merely by its institutional presence or statutory quantity, but by its ability to produce ethical, equitable, and sustainable economic outcomes. This calls for a shift from a purely positivist orientation toward a *value-embedded legal reform* that harmonizes legal certainty with moral flexibility and social responsiveness.

## **Conclusion**

This study concludes that the development of Islamic economic law in Indonesia has shown notable progress, as reflected in the increasing number of legal instruments ranging from national legislation to sectoral regulations issued by competent authorities. However, when analyzed through Anthony Allott's theory of legal effectiveness, the current framework demonstrates varying degrees of effectiveness across its preventive, curative, and facilitative dimensions.

From a preventive perspective, Sharia economic law has proven effective in regulating institutional behavior, particularly among Islamic financial institutions but remains limited in fostering public literacy and voluntary participation in Sharia-based economic practices. At the curative level, the law has achieved institutional certainty by assigning authority for dispute resolution to religious courts and the National Sharia Arbitration Board (BASYARNAS). Nevertheless, the pursuit of justice in Sharia economic disputes is still constrained by the absence of a comprehensive corpus of substantive Islamic economic law, which often results in reliance on the Civil Code for resolving complex cases such as defaults and bankruptcies. Finally, in its facilitative function, Islamic economic law has yet to fully enable innovation and flexibility in business and financial transactions, particularly in accommodating new Sharia-compliant financial products.

This finding implies that while the institutional and procedural aspects of Indonesia's Sharia economic law are well established, its substantive and adaptive capacities remain underdeveloped. To enhance legal effectiveness, policymakers should prioritize the codification of Sharia economic material law, the harmonization of regulatory frameworks between Islamic and conventional sectors, and the promotion of public understanding of Sharia economic principles.

## **Limitation**

The study is limited by its qualitative scope and focus on Indonesia, which may not capture broader comparative dynamics in other jurisdictions. Future research should adopt a comparative socio-legal approach, incorporating quantitative indicators to measure the correlation between legal development, financial inclusion, and social welfare outcomes in Sharia-based economies. Strengthening these dimensions would not only enhance the effectiveness of

Islamic economic law but also advance its role in achieving the broader objectives of justice, welfare, and sustainable development in accordance with Islamic values.

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