Asy-Syir'ah
Jurnal Ilmu Syari'ah dan Hukum

P-ISSN 0854-8722 | E-ISSN 2443-0757
Vol. 60, No. 1, 2026, pp. 124–155
https://doi.org/10.14421/ajish.v60i1.1682

The Future of Islamic Economic Law in Indonesia: Reconstructing Legal Authority and Regulatory Adaptability

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Abstract

The rapid advancement of Islamic economics in Indonesia necessitates a robust legal framework that guarantees legal certainty while remaining adaptable to the ongoing evolution of Islamic financial products. The Compilation of Islamic Economic Law (KHES), promulgated through Supreme Court Regulation (PERMA) No. 2 of 2008, currently functions as the primary substantive legal reference for resolving disputes in Islamic economics. However, its status as a judicial regulation and its product-specific substantive design raise concerns regarding its normative legitimacy and regulatory flexibility. This study investigates the adequacy of PERMA as a legal instrument for KHES and explores how its substantive provisions might be restructured through a principle-based regulatory approach. Utilizing normative legal research with statutory, conceptual, and comparative methodologies, the study applies Kelsen's Legal Hierarchy Theory—operationalized through three criteria: formal status, functional role, and legitimacy contestation—to evaluate KHES's juridical adequacy. Additionally, it employs principle-based regulation to assess its substantive framework. The findings suggest that reinforcing KHES necessitates the establishment of a dedicated statutory instrument rather than continued reliance solely on PERMA. Furthermore, its substantive reconstruction should be founded on universal *'aqd* principles instead of product-specific regulations. The originality of this study resides in its integration of legal hierarchy theory and principle-based regulation within a unified analytical framework, an approach not previously undertaken in KHES scholarship. This integration offers a model that enhances legal certainty, accommodates financial innovation, and supports the long-term sustainability of Indonesia's Islamic economic legal system.

Keywords

The Compilation of Islamic Economic Law (KHES); DSN-MUI; Legal Authority; Judicial Regulation; Regulatory Adaptability

Introduction

The relationship between law and economics is fundamental to the development of modern states.[1] Law serves not only as an instrument of social control but also as a mechanism for promoting economic stability, legal certainty, and sustainable development. In the context of Islamic economics, this relationship assumes an additional normative dimension, as economic activities must adhere not only to the principles of market efficiency but also to Sharia principles

[1] Trismilyan Trismilyan, Sugeng Suprayitno, and Junaidi Junaidi, "Hubungan Hukum dengan Ekonomi dan Hubungan Hukum dengan Pembangunan Ekonomi," *Desanta Indonesian of Interdisciplinary Journal* 4, no. 1 (2023): 198–206; Ah Shibghatullah Mujaddidi, "Hubungan Hukum dan Ekonomi dalam Islam: Tinjauan Atas Kaidah Hukum Bidang Perekonomian," *Ahkam: Jurnal Hukum Islam* 8, no. 1 (2020): 165–186.

that emphasize justice (*'aqd*), public welfare (*maṣlaḥah*), and the achievement of human flourishing (*falāḥ*).[2] Therefore, the advancement of the Islamic economic sector necessitates a legal framework that can concurrently ensure legal certainty, regulatory adaptability, and compliance with Sharia law.[3] Indonesia has witnessed rapid growth in Islamic banking, Islamic financial institutions, halal industries, and Sharia-based financing. This expansion has considerably increased the complexity of Islamic economic transactions, thereby intensifying the demand for a coherent legal framework that ensures legal certainty and effective dispute resolution. In response to this need, the legislature conferred exclusive jurisdiction over Islamic economic disputes to the Religious Courts through amendments to the Religious Courts Law, a position subsequently affirmed by Constitutional Court Decision No. 93/PUU-X/2012. Nevertheless, despite the enhancement of judicial authority, no comprehensive statutory body of substantive Islamic economic law has been enacted to guide judicial decision-making.[4]

To address this normative gap, the Supreme Court issued Supreme Court Regulation No. 2 of 2008 concerning the Compilation of Islamic Economic Law (KHES).[5] Since its promulgation, KHES has served as the primary substantive legal reference for judges adjudicating Islamic economic disputes. While its enactment marked a significant milestone in the codification of Islamic economic law, subsequent developments have revealed notable deficiencies. Several provisions within KHES have become inconsistent with later fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and have failed to accommodate the rapid emergence of contemporary Islamic financial products. These issues have raised concerns regarding both the institutional legitimacy and substantive relevance of KHES.[6] Consequently, two interrelated regulatory debates have emerged. The first debate questions whether KHES, enacted through a Supreme Court Regulation (PERMA), constitutes an adequate legal instrument within Indonesia's legislative hierarchy to serve as the principal source of substantive Islamic economic law. The second debate considers whether KHES should continue to regulate individual Islamic financial products or instead adopt a principle-based framework capable of accommodating future innovations. Collectively, these debates underscore the broader challenge of ensuring both the institutional legitimacy and regulatory adaptability of Islamic economic law.

Contemporary legal scholarship continues to engage in a substantive debate concerning the most effective institutional mechanism for integrating Sharia regulation within national legal systems. One perspective asserts that formal statutory codification[7]— enacted by constitutionally

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2 Haithem Kader, "Human Well-Being, Morality and the Economy: An Islamic Perspective," *Islamic Economic Studies* 28, no. 2 (2021): 102–23; Samir Alamad, "The Essence of Faith-Based Economics: The Islamic Economic Thought," in *Beyond Profit*, ed. Samir Alamad (Cham: Springer Nature Switzerland, 2024), 155–81.

3 Adib Khusnul Rois et al., "Filsafat Ilmu Ekonomi Syariah Sebagai Landasan Sistem Ekonomi Syariah Bagi Pendidikan Umat Islam," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi dan Perbankan Syariah* 8, no. 2 (2023): 982–94.

4 Apri Yeni Asni Bawamenewi and Bhim Prakoso, "Peran Mahkamah Agung dalam Meningkatkan Iklim Investasi di Indonesia," *Hukum Dinamika Ekselensia* 6, no. 2 (2023): 96–102; Adi Sulistiyono, "Pembaharuan Hukum Yang Mendukung Kondusifitas Iklim Usaha," *Yustisia Jurnal Hukum* 5, no. 1 (2016): 165–182.

5 Ika Atikah, "Eksistensi Kompilasi Hukum Ekonomi Syariah (KHES) Sebagai Pedoman Hakim dalam Menyelesaikan Perkara Ekonomi Syariah di Pengadilan Agama," *Muamalatuna* 9, no. 2 (2017): 143–162.

6 Ah Azharuddin Latif, "Harmonisasi KHES, Fatwa DSN-MUI dan Kodifikasi Produk Perbankan Syariah Sebagai Sumber Hukum Material Sengketa Keuangan Syariah" (UIN Syarif Hidayatullah Jakarta, 2017).

7 Lukman Santoso, Agus Triyanta, and Jawahir Thontowi, "Halal Tourism Regulations in Indonesia: Trends and Dynamics in the Digital Era," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (2022): 73–94; Beibit Shangirbayeva, "Theoretical Background and Legislative Framework for Implementation of the International Covenant on Civil and Political Rights in Kazakhstan," *Central Asian Yearbook of International Law and International Relations* 1, no. 1 (2022): 178–197; Simon Hoffman and Rebecca Thorburn Stern,

mandated legislative institutions[8]—is essential to ensure legal certainty and democratic legitimacy. This position is empirically supported by Malaysia's enactment of the Islamic Financial Services Act 2013 and the development of statutory frameworks for Sharia compliance in Indonesia, Malaysia, and the United Kingdom.[9] Conversely, another perspective highlights the historically interpretive and uncodified nature of Islamic jurisprudence, warning that overly rigid statutory Islamization may provoke jurisdictional conflicts and authoritarian legal outcomes. This concern is evidenced by the tensions between Syariah and Civil Courts in Malaysia[10] and the generally minimalist regulatory approaches of most Gulf Cooperation Council (GCC) states, where the absence of comprehensive codification[11] has nonetheless exposed Islamic financial systems to Sharia arbitrage resulting from divergent scholarly interpretations.[12] These comparative experiences illustrate that jurisdictions adopt distinct institutional arrangements to reconcile Islamic law with state regulation. Rather than advocating a universally superior model, this comparison underscores that the institutionalization of Islamic economic law is contingent upon each jurisdiction's constitutional framework, legal tradition, and regulatory architecture. Consequently, comparative analysis functions not as a prescriptive blueprint for legal transplantation but as an analytical tool for assessing institutional choices within diverse national contexts.

In this comparative context, Indonesia constitutes a distinctive case. Unlike Malaysia, which governs Islamic finance primarily through statutory legislation, or the United Kingdom, which regulates Islamic finance via sector-specific laws within a conventional common law framework, Indonesia delegates the principal substantive regulation of Islamic economic disputes to the KHES, established through PERMA. This institutional arrangement prompts a critical inquiry into whether a judicial regulatory instrument possesses adequate normative legitimacy to serve as the primary source of substantive Islamic economic law. Consequently, the Indonesian experience contributes not only to domestic legal reform debates but also to broader comparative discussions regarding the institutional frameworks best suited to ensure legal certainty, democratic legitimacy, and regulatory adaptability in Islamic economic governance.[13] Beyond institutional design, contemporary scholarship also engages with the foundational philosophy underpinning Islamic economic regulation. The central debate concerns whether regulatory frameworks should remain organized around specific Islamic financial products or be restructured based on broader Sharia

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"Incorporation of the UN Convention on the Rights of the Child in National Law," *The International Journal of Children's Rights* 28, no. 1 (2020): 133–156.

8 Prosper Kandabongee Yeng et al., "Assessing the Legal Aspects of Information Security Requirements for Health Care in 3 Countries: Scoping Review and Framework Development," *JMIR Human Factors* 9, no. 2 (2022): 1–25.

9 Fadziani Yaakub et al., "A Preliminary Insight on Collateral Hibah in Malaysia," *International Journal of Academic Research in Business and Social Sciences* 14, no. 7 (2024): 1550–1561.

10 Marina Abu Bakar et al., "Issues on Intellectual Property as a Jointly Acquired Property: A Critical Analysis from Shariah and Law Perspectives," *Linguistics and Culture Review* 5, no. S4 (2021): 2299–2317; Abdalmuttaleb M.A.Musleh Al-Sartawi, "Shariah Disclosure and the Performance of Islamic Financial Institutions," *Asian Journal of Business and Accounting* 13, no. 1 (2020): 133–160.

11 Khurram Baig et al., "An Analysis of the Legal System: A Comparative Study in the Context of Pakistan and the UK," *Bulletin of Business and Economics* 13, no. 1 (2024): 378–384.

12 Al Sentot Sudarwanto, Dona Budi Kharisma, and Diana Tantri Cahyaningsih, "Islamic Crowdfunding and Shariah Compliance Regulation: Problems and Oversight," *Journal of Financial Crime* 31, no. 4 (2024): 1022–1036.

13 Fathul Mu'in et al., "The Urgency of Reforming Marriage Laws and Compilation of Islamic Law Entering the 5.0 Era," *KnE Social Sciences* 9, no. 3 (2024): 294–301; Hannani, "Revisiting Islamic Law in Indonesia's Legal System Discourse: A Critical Analysis of the Legal and Social Implications," *International Journal of Law and Politics Studies* 5, no. 3 (2023): 13–17; Rizanizarli Rizanizarli, "Kriminalisasi di Luar KUHP dan Implikasinya Terhadap Hukum Acara Pidana," *Kanun Jurnal Ilmu Hukum* 16, no. 2 (2014): 277–302.

principles capable of accommodating future financial innovations. International standard-setting bodies, notably the Islamic Financial Services Board (IFSB) and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), have consistently endorsed a principle-based regulatory approach grounded in *maqāṣid al-sharī'ah*. Nonetheless, many jurisdictions continue to regulate individual financial products rather than overarching Sharia principles, resulting in regulatory fragmentation, frequent legal amendments, and heightened risks of regulatory obsolescence and Sharia arbitrage.

Collectively, these two debates—pertaining to the institutional basis of Islamic economic law and the appropriate philosophical framework for its substantive regulation—are most prominently exemplified in Indonesia's KHES. As a legal instrument promulgated through a PERMA, KHES occupies a distinct institutional position: although it is hierarchically subordinate to statutory legislation, it effectively serves as the primary source of substantive law for adjudicating Islamic economic disputes within the Religious Courts. Concurrently, its substantive framework remains predominantly product-based, a regulatory approach that has become increasingly challenging to reconcile with the rapid development of contemporary Islamic financial products. Accordingly, KHES prompts two interrelated inquiries concerning both the sufficiency of its normative legal foundation and the viability of its substantive regulatory design.[14]

The reconstruction of KHES should advance through two interrelated agendas. The first involves developing an appropriate legal instrument to assess whether PERMA continues to serve as an adequate regulatory basis or if a higher-level statutory framework is necessary. The second entails reconstructing the substantive content of KHES in accordance with Islamic contractual principles, thereby minimizing the need for frequent regulatory revisions in response to the evolution of Islamic financial products.[15] Accordingly, this study addresses the following research questions: (1) whether the regulation of KHES via PERMA sufficiently ensures legal certainty within Islamic economic law, or if a superior regulatory instrument is warranted; and (2) how an optimal principle-based substantive framework for KHES can be formulated to sustain regulatory stability without impeding innovation in Islamic economics. Although the literature on KHES has expanded, prior research has predominantly focused on either its juridical status or its substantive alignment with Islamic financial development. This study addresses this gap by integrating Legal Hierarchy Theory and Principle-Based Regulation into a cohesive analytical framework aimed at reconstructing KHES both institutionally and substantively. By bridging these dimensions, the study provides a more comprehensive account of how legal certainty and regulatory adaptability can be concurrently achieved within Indonesia's Islamic economic legal system.

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14 Zaka Firma Aditya, Abdul Basid Fuadi, and Rizkisyabana Yulistyaputri, "The Role of Islamic Law in Enriching the Decisions of the Indonesian Constitutional Court," *Frontiers in Law* 2 (2023): 24–29; Paul Mitchell, Halim Rane, and Adis Duderija, "Views on Political Islam among Australian Converts to Islam: Findings of a National Survey," *Politics and Religion* 16, no. 3 (2023): 492–515; Nurul Hikmah, Syahid Akhmad Faisol, and Mohd Aderi Che Noh, "The Existence of Marriage Post The Constitutional Court Decision: As A Right or A Prerequisite?," *Justicia Islamica* 21, no. 1 (2024): 111–136; Haris Maiza Putra and Hisam Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2020): 68–90; Ja'far Baehaqi, "Symbiosis of Mutualism in the Transformation of Islamic Law into National Law in Indonesia," *Walisongo Law Review* 3, no. 2 (2021): 243–262; Edian Fahmy and Inas Afifah Zahra, "Islamic Securities Crowdfunding Based on Indonesia's Islamic and Positive Law Perspective," *International Journal of Economics, Management, Business, and Social Science* 3, no. 3 (2023): 726–738; Firdaus Arifin, "Reform and Simplification of Legislative Regulations in Indonesia," *Journal of Law and Sustainable Development* 11, no. 11 (2023): e2262.

15 Khoirul Anwar, Nurul Huda, and Ernida Basry, *Penyempurnaan Kompilasi Hukum Ekonomi Syariah (KHES)* (Jakarta: Prenada, 2024).

Literature Review

The institutionalization of Islamic economic law has evolved through various constitutional and regulatory frameworks across different jurisdictions, each reflecting distinct approaches to granting legal authority to Sharia norms within national legal systems. Comparative scholarship consistently indicates that the primary challenge is not simply whether the state should recognize Islamic economic law, but rather which legal instrument holds adequate constitutional legitimacy to establish binding substantive norms. Therefore, variations among jurisdictions should be interpreted not as competing regulatory preferences but as alternative institutional strategies aimed at achieving legal certainty while maintaining compliance with Sharia principles. Malaysia exemplifies the most comprehensive statutory framework for Islamic finance through the Islamic Financial Services Act 2013 and the Shariah Governance Framework, both administered by Bank Negara Malaysia. The statutory codification enhances legal certainty by embedding Sharia governance within the formal legislative hierarchy.[16] However, this model has also introduced jurisdictional complexities between civil and Sharia institutions, suggesting that legislative codification alone does not fully resolve institutional tensions.

In contrast, most Gulf Cooperation Council (GCC) jurisdictions primarily rely on decentralized Sharia supervisory structures rather than comprehensive statutory regulation. Although this approach allows for greater interpretative flexibility, it also heightens the risk of regulatory fragmentation and Sharia arbitrage resulting from divergent scholarly opinions. The United Kingdom employs a different institutional arrangement by regulating Islamic finance through sector-specific legislation within a conventional common-law framework, illustrating that Islamic finance can develop successfully without establishing an autonomous system of Islamic legislation.[17] Across various jurisdictions, scholars have consistently emphasized that legal certainty constitutes a fundamental prerequisite for the sustainable development of the Islamic finance industry. They highlight that legal, regulatory, judicial, and legislative frameworks form the institutional foundation upon which prudent Shariah governance must be established.[18] Without a clear regulatory framework, Islamic financial institutions encounter significant challenges in ensuring Shariah compliance.[19]

Indonesia occupies a distinctive position within this comparative context. Although it possesses statutory instruments such as Law No. 21 of 2008 on Islamic Banking[20] and has developed institutional mechanisms including the National Shariah Board and Shariah Supervisory Boards,[21]

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16 Ssonko Muhammedi, Mohammadtahir Cheumar, and Yusuf Haji-Othman, "Conceptual Analysis of Shariah Advisory Board in the Corporate Governance of Islamic Financial Institutions in Minority Muslim Country: The Case of Uganda," *International Journal of Academic Research in Business and Social Sciences* 13, no. 10 (2023): 2306–2318; Sudarwanto, Kharisma, and Cahyaningsih, "Islamic Crowdfunding and Shariah Compliance Regulation: Problems and Oversight."

17 Andrea Delle Foglie et al., "The Regulators' Dilemma and the Global Banking Regulation: The Case of the Dual Financial Systems," *Journal of Banking Regulation* 24, no. 3 (2023): 249–63.

18 Cheryl Patriana Yuswar, Insan Budi Maulana Runtung, and T. Keizerina Devi Azwar, "An Overview of Intellectual Property Rights as Waqf in Indonesia and Malaysia," *Ultimate Journal of Legal Studies* 1, no. 2 (2023): 83–92.

19 Admir Meskovic, Emira Kozarevic, and Alija Avdukic, "The Influence of National and Individual Islamic Governance on Islamic Banks' Social Performance," *Journal of Islamic Accounting and Business Research* 15, no. 6 (2024): 911–941.

20 Faaza Fakhrunnas and Lak Lak Nazhat El Hasanah, "The Determinants of Islamic Banks' Non-Performing Financing in the Small-Medium Enterprises (SMEs) Sector," *Jurnal Ekonomi & Studi Pembangunan* 23, no. 2 (2022): 220–230.

21 Delina Herdian Septiani et al., "Good Corporate Governance in Islamic Banking during Fourth Industrial Revolution Era," *Jurnal Kajian Peradaban Islam* 5, no. 1 (2022): 98–107.

the country uniquely relies on PERMA as a critical regulatory instrument for resolving Islamic economic disputes. PERMA represents a judicial regulatory mechanism that is neither purely statutory legislation nor conventional case law, thereby raising an underexplored academic question concerning the adequacy and legitimacy of such judicial regulation in providing the legal certainty required by the Islamic finance industry. Legal harmonization refers to the alignment of legislation, judicial regulations, and religious norms within a unified legal framework. In the context of Indonesia, this process holds particular importance due to the diverse origins of Islamic economic norms, which include legislation, Supreme Court regulations, and fatwas issued by the DSN-MUI.[22] However, harmonization alone does not address the substantive limitations inherent in Islamic economic regulation.[23] Therefore, international standard-setting organizations, such as the Islamic Financial Services Board (IFSB) and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), advocate for a principle-based regulatory model grounded in *maqāṣid al-sharīʿah*. Compared to product-based regulation, this approach provides greater flexibility to accommodate financial innovation while ensuring consistency with fundamental Sharia principles.[24]

A persistent tension exists between principle-based aspirations and the practical realities of national legal systems, particularly concerning the relationship between state positive law and religious normative instruments such as fatwas. In Indonesia, the National Shariah Board (DSN-MUI) issues fatwas that guide Islamic financial practices; however, these fatwas do not inherently possess binding legal authority within the hierarchy of positive law and require formal incorporation through regulatory instruments to attain enforceability.[25] Scholars have identified this tension as a fundamental challenge to legal certainty in Islamic economic governance.[26] Although existing literature has extensively examined harmonization efforts in discrete areas—such as statutory codification,[27] judicial interpretation,[28] and institutional governance frameworks[29]—a notable gap remains. To date, no study has proposed an integrative reconstruction of Indonesia's Compilation of Shariah Economic Law (Kompilasi Hukum Ekonomi Syariah, KHES) that simultaneously addresses both the vertical dimension of legal harmonization between fatwas and positive law and the horizontal dimension of transitioning from a rule-based to a principle-based regulatory framework.

22 Orien Effendi, "State-Religion Relationship from the Perspective of Islamic-Based State Policy," *Al-Daulah Jurnal Hukum dan Perundangan Islam* 12, no. 2 (2022): 196–215.

23 Siti Rohmah, "The Pattern of Absorption of Islamic Law into National Law: Study of the Halal Product Guarantee Law in the Perspective of Maqashid Shari'ah," *Jurisdictie* 12, no. 1 (2021): 20–47.

24 Meskovic, Kozarevic, and Avdukic, "The Influence of National and Individual Islamic Governance on Islamic Banks' Social Performance."

25 Septiani et al., "Good Corporate Governance in Islamic Banking during Fourth Industrial Revolution Era"; Muhammedi, Cheumar, and Haji-Othman, "Conceptual Analysis of Shariah Advisory Board in the Corporate Governance of Islamic Financial Institutions in Minority Muslim Country: The Case of Uganda."

26 Hayathu Mohamed Ahamed Hilmy et al., "Legal Aspects of Shariah Governance Practices in Sri Lankan Islamic Financial Institutions: A Literature Review," *Journal of Enterprise and Development* 4, no. 1 (2022): 99–113; Yuswar, Runtung, and Azwar, "An Overview of Intellectual Property Rights as Waqf in Indonesia and Malaysia."

27 Efa Rodiah Nur and Fathul Mu'in, "Integration of Religious and Social Values in the Development of the Indonesian Constitution Era 5.0," *KnE Social Sciences*, 2024; Mu'in et al., "The Urgency of Reforming Marriage Laws and Compilation of Islamic Law Entering the 5.0 Era."

28 Bakar et al., "Issues on Intellectual Property as a Jointly Acquired Property: A Critical Analysis from Shariah and Law Perspectives"; Al-Sartawi, "Shariah Disclosure and the Performance of Islamic Financial Institutions."

29 Meskovic, Kozarevic, and Avdukic, "The Influence of National and Individual Islamic Governance on Islamic Banks' Social Performance"; Sudarwanto, Kharisma, and Cahyaningsih, "Islamic Crowdfunding and Shariah Compliance Regulation: Problems and Oversight."

Nevertheless, existing scholarship indicates that the integration of these two theoretical perspectives remains inadequate. Studies on harmonization predominantly focus on resolving conflicts between positive law and Islamic legal norms, while principle-based research primarily aims to enhance substantive regulatory adaptability. As a result, limited attention has been given to exploring the interaction between institutional legitimacy and substantive regulatory philosophy within a unified regulatory framework. Research addressing KHES from the standpoint of institutional legitimacy mainly examines its application by Religious Courts and its relationship with Indonesia's legal system. These studies typically acknowledge KHES as an effective legal instrument and consider its role in the development of Islamic economic law. However, they seldom critically assess whether a Supreme Court Regulation is the appropriate legislative instrument for governing substantive Islamic economic law or evaluate KHES in the context of Indonesia's legislative hierarchy. The KHES, promulgated through PERMA No. 2 of 2008, has garnered increasing scholarly attention from a variety of analytical perspectives. However, the existing literature remains fragmented and predominantly focused on isolated aspects of its application.

Several studies have explored KHES as a doctrinal source for specific contractual arrangements (*'aqd*). For example, Anwar and Noor employed a statutory and historical approach to analyze KHES provisions concerning charitable endowments (*waqf*) alongside classical jurisprudential opinions.[30] They treated KHES as a primary legal source but limited their inquiry to the internal coherence of testamentary trust provisions, without examining the broader regulatory status of the compilation itself. Similarly, Barus et al.[31] examined the pillars and conditions of contracts (*arkān* and *shurūṭ 'aqd*) as codified in Book II, Chapter III of KHES—particularly Article 22—in the context of digitalization challenges confronting Islamic banking financing transactions. Nonetheless, their analysis was restricted to the substantive adequacy of specific contractual provisions rather than addressing the systemic design of the regulatory instrument. Hardianti referenced KHES as one of several statutory sources—including the MSME Law, Bank Indonesia Regulations, and DSN-MUI fatwas—in analyzing restructuring policies for problematic *murābaḥah* financing during the COVID-19 pandemic.[32] In doing so, KHES was treated as an operative legal instrument without interrogating its hierarchical status within the Indonesian legal system. Hidayat contextualized KHES within the broader evolution of Indonesian Islamic legal reform, highlighting that the country's pluralistic legal framework has facilitated new developments in Islamic law, such as the issuance of Supreme Court Regulations and the Compilation of Sharia Economic Law.[33] Meanwhile, Faizi and Shuib noted that Indonesia's regulatory framework for Sharia governance is more decentralized and fragmented compared to Malaysia's, with relevant regulations dispersed across various laws, statutes, guidelines, and circulars.[34]

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30 Maulana Anwar and Afif Noor, "Maximizing Charitable Endowments for Healthcare: Maqasid Shariah Perspectives from Wahbah Zuhaili and Shariah Economic Laws Compilation," *Journal of Law, Politic and Humanities* 4, no. 4 (2024): 538–545.

31 Utary Maharany Barus et al., "Legal Readiness of Agreements Facing the Digitalization Era Banking in Islamic Banking Financing Transactions," *Journal of Social Science (JoSS* 2, no. 12 (2024): 1088–1096.

32 Vera Hardianti, "Restructuring Policy for Problematic Murabahah Financing for Msme Customers Due to the 2019 Coronavirus Disease (Covid-19) Pandemic," *Cashflow: Current Advanced Research on Sharia Finance and Economic Worldwide* 1, no. 4 (2022): 21–28.

33 Enang Hidayat, "Induction and Its Relevance to the Transformation of Sharia Economic Law in Indonesia: A Study of Four Madhhabs," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam2* 7, no. 1 (2024): 71–87.

34 Faizi Faizi and Mohd Sollehudin Bin Shuib, "Sharia Governance in Islamic Financial Institutions: A Comparative Review of Malaysia and Indonesia," *El Dinar: Jurnal Keuangan Dan Perbankan Syariah* 12, no. 1 (2024): 89–107.

Collectively, existing scholarship has significantly advanced the understanding of KHES by examining either its institutional legitimacy or its substantive regulatory development. However, these two analytical dimensions remain largely unintegrated. Research on legal hierarchy seldom considers the implications of substantive regulatory design, while doctrinal analyses rarely address how the institutional status of KHES affects its regulatory effectiveness. As a result, no prior study has proposed a comprehensive reconstruction of KHES that simultaneously enhances its vertical legitimacy within Indonesia's legislative hierarchy and reorients its horizontal regulatory framework toward a principle-based approach. This article seeks to fill this gap by developing a unified analytical framework that integrates institutional legal reform with substantive regulatory reconstruction, thereby contributing to both comparative scholarship and the advancement of Islamic economic law in Indonesia.

Research Methodology

This study utilizes normative juridical legal research, integrating statutory, conceptual, comparative, and analytical methods. Its principal aim is to assess the institutional legitimacy and substantive regulatory framework of Indonesia's Compilation of Sharia Economic Law (KHES). Beyond merely describing existing legal norms, the research critically evaluates whether the current regulatory framework offers a sufficient legal basis for Islamic economic governance and proposes an integrated model for its reconstruction. The comparative approach is employed not to identify a universally superior regulatory model but to situate Indonesia's institutional arrangement within the context of international regulatory experiences. This study exclusively utilizes qualitative legal materials, encompassing primary, secondary, and tertiary sources. The primary legal materials comprise the Constitution of Indonesia; Law Number 12 of 2011 concerning the Formation of Legislation (as amended); Law Number 21 of 2008 concerning Islamic Banking; Supreme Court Regulation Number 2 of 2008 regarding KHES; Constitutional Court Decision Number 93/PUU-X/2012; relevant DSN-MUI Fatwas; and international standards issued by the Islamic Financial Services Board (IFSB) and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). Secondary legal materials include journal articles, books, comparative legal studies, and institutional reports addressing Islamic economic regulation, legal harmonization, and Sharia governance. Tertiary materials consist of legal dictionaries and official explanatory documents employed to elucidate legal terminology.

Hans Kelsen's Stufenbau Theory is operationalized through three analytical criteria. The first criterion is formal legal status, which pertains to the hierarchical position of a legal instrument within Indonesia's legislative framework, as established by Law Number 12 of 2011. The second criterion is functional role, which concerns the practical function that the legal instrument performs in governing Islamic economic disputes and providing substantive legal norms for judicial decision-making. The third criterion is legitimacy contestation, which addresses the extent to which the formal hierarchical status of a legal instrument aligns with its practical regulatory function. These three criteria are utilized to assess whether the KHES, as a Supreme Court Regulation (PERMA), possesses sufficient institutional legitimacy to serve as the principal source of substantive Islamic economic law. The substantive regulatory framework of KHES is analyzed by distinguishing between product-based regulation and principle-based regulation. A provision is categorized as product-based when it governs specific Islamic financial products or contractual forms (*'aqd*) through detailed technical rules tailored to particular transactions. In contrast, a provision is considered principle-based when it establishes general Sharia principles that can govern various forms of Islamic economic activities without reliance on specific contractual structures. This operational distinction facilitates an assessment of KHES's adaptability in responding to ongoing innovation within the Islamic finance industry.

Table 1 was developed through qualitative document analysis employing consistent comparative variables across the three jurisdictional models previously identified. These variables comprise: (1) legal instrument, (2) regulatory authority, (3) position within the legal hierarchy, (4) substantive regulatory approach, (5) Sharia governance mechanism, and (6) implications for legal certainty. The application of uniform analytical variables ensures a systematic comparison and facilitates the identification of institutional similarities and differences among the jurisdictions. In contrast, Tables 2 and 3 were generated using a distinct methodology, specifically a textual comparison between individual KHES provisions and the corresponding DSN-MUI fatwa addressing the same subject matter. Provisions were included in Table 2 when their content directly contradicted an applicable fatwa, whereas Table 3 comprised provisions rendered obsolete by a fatwa issued subsequent to the enactment of KHES without constituting direct contradiction. This differentiation enables the study to distinguish between outright normative discord and provisions that have merely failed to keep pace with regulatory developments.

A comparative analysis was conducted employing purposive jurisdictional selection. Malaysia, the GCC jurisdictions, and the United Kingdom were chosen because they exemplify three distinct regulatory models of Islamic economic law. Malaysia represents a statutory codification model; the GCC jurisdictions exemplify a decentralized Sharia governance model; and the United Kingdom illustrates a sector-specific regulatory model functioning within a conventional common-law framework. Additionally, Indonesia is examined as a unique hybrid model, wherein substantive Islamic economic law is predominantly governed through judicial regulation (PERMA). To enhance analytical reliability and interpretive rigor, this study employs source triangulation by comparing primary legislation, judicial regulations, Constitutional Court decisions, DSN-MUI fatwas, international standards (including those of the IFSB and AAOIFI), and contemporary academic scholarship. Interpretations derived from this comparative analysis are continuously validated against Indonesia's constitutional framework to prevent inappropriate legal transplantation and to ensure contextual consistency. Additionally, cross-verification between primary legal materials and secondary scholarly analyses is utilized to reinforce the credibility of legal interpretations and normative conclusions.

Results

The findings pertain to three dimensions of regulatory deficiencies in KHES: the adequacy of its regulatory instruments, the substantive inconsistencies between its provisions and current DSN-MUI fatwas, and the comprehensiveness of its normative coverage in relation to contemporary Islamic financial practices.

The Regulatory Inadequacy of KHES Under PERMA

The first research question addresses whether the regulation of KHES through PERMA constitutes an adequate legal instrument for ensuring legal certainty within Islamic economic law. An analysis of the relevant legislative framework yields three principal findings. First, under Indonesia's national legislative hierarchy, as established by Law Number 12 of 2011 concerning the Formation of Legislation, PERMA is categorized as an internal judicial regulation—an instrument intended to govern the technical administration of court proceedings rather than to establish substantive law binding on the general public.[35] Second, notwithstanding this limited formal status, KHES has, in practice, assumed the role of national substantive law, serving as the primary normative foundation upon which Religious Court judges assess the validity of *'aqd*, the obligations of contracting parties, and the legal consequences of Islamic economic transactions. This functional expansion has resulted in a structural incongruity between the formal status of KHES and its operative role in legal practice.[36] Third, the absence of a higher-level statutory basis for KHES engenders conditions conducive to legitimacy contestation, particularly as Islamic economic disputes increasingly involve high-value transactions with significant implications for the stability of the Islamic financial industry. Based on these findings, three regulatory framework models are identified as potential instruments for enhancing the legal standing of KHES, as delineated in Table 1.

Table 1. Comparative analysis of regulatory reform models for KHES.

Model	Legal Instrument	Binding Force	Strengths	Limitations
Model 1	Dedicated Islamic economic law statute	General binding upon all parties involved	Possesses the highest normative legitimacy, demonstrates applicability across multiple sectors, and is enacted through democratic processes	The process necessitates an extensive legislative procedure, with its success contingent upon the prevailing political will
Model 2	Integration of KHES principles into existing sector-specific legislation	Sectoral binding within respective regulatory domains	Achieves harmonization without the introduction of new codification, relying instead on the existing legal framework	Coverage remains partial, with a potential risk of fragmentation across multiple statutes
Model 3	Retention of KHES within the current PERMA framework	Internal binding exclusively within the Religious Court system.	The status quo is maintained; no legislative process is required	It sustains a deficit in normative legitimacy and demonstrates limited binding authority beyond the judicial context

Source: Authors' elaboration, 2026.

Normative Disharmony Between KHES and DSN-MUI Fatwas

This study delineates the specific evidentiary foundation for reform by examining existing disharmonies and regulatory gaps. An analysis of KHES provisions in relation to current DSN-MUI fatwas reveals substantive inconsistencies across multiple *'aqd* categories,[37] as detailed in Table 2.

35 Rizanizarli, "Kriminalisasi di Luar KUHP dan Implikasinya Terhadap Hukum Acara Pidana."
36 Anwar, Huda, and Basry, *Penyempurnaan Kompilasi Hukum Ekonomi Syariah (KHES).*
37 Latif, "Harmonisasi KHES, Fatwa DSN-MUI dan Kodifikasi Produk Perbankan Syariah Sebagai Sumber Hukum Material Sengketa Keuangan Syariah."

Table 2. Normative discrepancies between KHES and DSN-MUI fatwas.

No.	KHES Provision	DSN-MUI Fatwa Provision
1	Article 20(9) defines *ijārah* as the lease of goods for a specified period in exchange for payment	Fatwa No. 09/DSN-MUI/IV/2000 states that *ijārah* includes the leasing of both goods and services
2	Article 103 stipulates that payment in *bai' salam* shall be made at the time and place mutually agreed upon by the parties involved	Fatwa No. 5/DSN-MUI/IV/2000 stipulates that payment must be made at the time the contract is concluded.
3	Article 238(2) stipulates that the *muḍārib* functions as the agent (wakil) of the *ṣāḥib al-māl*	Fatwa No. 7/DSN-MUI/IV/2000 states that the *muḍārib* is considered a partner (mitra) of *the ṣāḥib al-māl*, rather than an agent operating under *wakālah*
4	Article 300 stipulates that the *ijārah* contract terminates upon the transfer of ownership of the *ma'jūr* to the *musta'jir*	Fatwa No. 73/DSN-MUI/XI/2008 states that under m*ushārakah mutanāqiṣah*, the lessee may assume the status of a co-owner of the partnership asset
5	Article 548 stipulates that the permissible contracts for *ta'mīn* include *wakālah bi al-ujrah, muḍārabah, and tabarru'*	Fatwa No. 51/DSN-MUI/III/2006 states that investment arrangements may also utilize *muḍārabah mushtarakah*

Source: Authors' elaboration, 2026.

Not all the disharmonies identified above possess equivalent normative significance. In Table 2, items 1 through 4—pertaining to the scope of *ijārah*, the timing of payment in *bai' salam*, the legal status of the *muḍārib*, and the termination mechanism for *ijārah* under *mushārakah mutanāqisṣah*—represent fundamental contradictions. This is because applying the KHES provision as it stands would yield a legal outcome explicitly prohibited by the governing fatwa. Item 5, which concerns the permissible *'aqd* for *ta'mīn*, is comparatively technical, as the fatwa merely introduces an additional permissible arrangement without invalidating those already recognized by KHES.

In Table 3, items 1 and 2 are primarily terminological, involving unspecified or inconsistent nomenclature rather than substantive conflict. Conversely, items 3 and 4—relating to permissible sources of *qarḍ* funds and the regulation of Islamic pension funds—constitute fundamental omissions, the absence of which leaves entire categories of contemporary practice without any basis in KHES. Furthermore, research conducted by the Supreme Court's Centre for Strategy and Policy (Pustrajak) identifies at least 87 normative areas currently absent from KHES, encompassing contemporary Islamic financial instruments such as Sharia credit cards, musyarakah current account financing, letters of credit under *kafālah bi al-ujrah, ḥawālah bi al-ujrah*, Islamic fintech, *mushārakah mutanāqiṣah*, Government Sharia Securities (SBSN), *rahn tasjīlī*, and Sharia guarantees, among others.[38]

Collectively, these findings suggest that the challenge facing KHES extends beyond mere normative incompleteness. The fundamental issue lies in a product-based regulatory framework, wherein KHES is confined to specific Islamic financial product forms rather than grounded in the foundational *'aqd* principles from which all products originate. As Islamic financial products

[38] Anwar, Huda, and Basry, *Penyempurnaan Kompilasi Hukum Ekonomi Syariah (KHES).*

continue to evolve in response to industry innovation and technological advancements, this framework renders KHES structurally susceptible to rapid obsolescence.

Table 3. Inconsistencies between KHES norms and current DSN-MUI fatwas.

No.	KHES Provision	DSN-MUI Fatwa Provision
1	Article 373(2) of the *rahn* contract encompasses three concurrent *'aqd*: *qarḍ*, *rahn*, and *ijārah*. However, the source from which the murtahin is to receive the return remains unspecified	Fatwa No. 92/DSN-MUI/IV/2014 states that when rahn arises from *qarḍ*, the *murtahin*'s income is derived exclusively from *mu'nah* (maintenance fees) as stipulated in the contract
2	Article 561 stipulates that a non-savings contract is used as a substitute term for *tabarru'* in *ta'mīn* arrangements	Fatwas No. 53, 81, and 155/DSN-MUI assert that the term *tabarru'* is exclusively used in all pertinent fatwas, and there is no recognized equivalent for non-savings contracts
3	Article 611 specifies that the sources of *qarḍ* funds are limited to the capital of the LKS, allocated profits, and *infāq* from third parties	Fatwa No. 79/DSN-MUI/III/2011 stipulates that customer deposits (*dana pihak ketiga*) are considered a permissible source, provided that their use is restricted to non-commercial purposes
4	Chapter XXIX governs the regulation of Islamic Pension Funds	Fatwa No. 88/DSN-MUI/XI/2013 has not yet been harmonized with the fatwa regarding the General Guidelines for Sharia-Based Pension Program Administration

Source: Authors' elaboration, 2026.

A detailed analysis of these eighty-seven gaps reveals that they are not randomly distributed throughout the Islamic financial industry; rather, they cluster into three distinct categories. The first category includes collateral and guarantee-based instruments, such as *rahn tasjīlī* and various Sharia guarantee arrangements, whose omission from KHES reflects the compilation's original emphasis on classical *'aqd* rather than on security interests. The second category encompasses fee-based service contracts, including *kafālah bi al-ujrah* and *ḥawālah bi al-ujrah*, which have become integral to contemporary Islamic banking practices but were not present in comparable forms at the time KHES was drafted. The third category consists of technologically mediated instruments, such as Islamic fintech products and Sharia credit cards, which emerged entirely after the completion of KHES. This pattern of clustering substantiates the study's principal argument: the identified gaps are not isolated oversights amendable through incremental revisions but rather represent a systemic consequence of anchoring KHES to specific product forms instead of the underlying *'aqd* principles—such as *kafālah, ḥawālah*, and *rahn*—that would have allowed each new instrument to be incorporated as a variation of an existing principle rather than as an entirely unregulated category.

Discussion

The Adequacy of KHES Regulation and the Need for a Higher-Level Legal Instrument

The development of Islamic economics in Indonesia has experienced significant transformation over the past two decades. The Islamic economic system is no longer regarded solely as a religiously based alternative; rather, it has become an integral part of the national economic framework, encompassing sectors such as banking, financing, investment, the halal industry, and digital transactions grounded in Islamic contractual principles (*mabādi' 'aqd*). This evolution necessitates a legal system capable of ensuring certainty, stability, and normative legitimacy throughout the entire spectrum of Islamic economic activities.[39] According to contemporary economic law development theory, law serves as a mechanism of predictability, providing economic actors with the assurance needed to plan their business operations effectively. In the absence of legal certainty, economic activities face increased transactional risks, which in turn hinder investment growth and market stability.[40] Within the context of Islamic economics, the requirement for legal certainty is further complicated by the need for regulations to comply not only with the standards of positive state law but also with Sharia principles, as interpreted and developed through DSN-MUI fatwas and practices within the Islamic financial industry.[41]

The need for a comprehensive body of Islamic economic law became increasingly urgent following the extension of absolute jurisdiction to the Religious Courts over Islamic economic disputes, as established by amendments to the Religious Court Law. This jurisdictional expansion institutionally designated the Religious Courts as the principal authority responsible for enforcing national Islamic economic law.[42] However, this grant of judicial authority was not accompanied by the enactment of specific legislation that comprehensively regulates Islamic economic obligations. Consequently, judges faced a discrepancy between their adjudicative authority and the absence of substantive legal norms. To address this legal lacuna, the Supreme Court took a progressive measure by issuing Supreme Court Regulation Number 2 of 2008 concerning the KHES. The introduction of KHES offered a practical framework by providing normative guidelines for judges resolving Islamic economic disputes. Historically, KHES can be regarded as an example of judicial law-making, wherein a judicial institution creates law to facilitate the effective exercise of judicial power.[43]

Over time, KHES has evolved from being merely a technical judicial reference to becoming the principal framework for resolving disputes in Islamic economic law. Judges utilize KHES as the foundational legal basis for assessing the validity of *'aqd*, the obligations of contracting parties, and the legal consequences arising from Islamic economic transactions. In practice, KHES operates as a de facto national codification of Islamic economic private law.[44] This issue can be examined through the lens of the hierarchical theory of legal norms (Stufenbau Theory), which posits that the validity of any legal norm is contingent upon a higher-order norm. Within this theoretical framework, substantive law governing civil relations among members of society should ideally be established through legislative instruments endowed with democratic legitimacy and

39 Trismilyan, Suprayitno, and Junaidi, "Hubungan Hukum dengan Ekonomi dan Hubungan Hukum dengan Pembangunan Ekonomi."

40 Syahril Sidiq, "Interseksi Hukum dan Ekonomi: Analisis Komprehensif Terhadap Dinamika Regulasi dan Dampaknya Terhadap Pertumbuhan Ekonomi," *Muhammadiyah Law Review* 7, no. 2 (2023): 39–59.

41 Kader, "Human Well-Being, Morality and the Economy: An Islamic Perspective."

42 Ahmad Baihaki and M.Rizhan Budi Prasetya, "Kewenangan Absolut Pengadilan Agama dalam Penyelesaian Sengketa Ekonomi Syariah Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012," *Krtha Bhayangkara* 15, no. 2 (2021): 289–308.

43 Fahadil Amin Al Hasan, "Peran Pengadilan Agama dalam Mendukung Perkembangan Industri Keuangan Syariah di Indonesia," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 4, no. 1 (2019): 31–43.

44 Atikah, "Eksistensi Kompilasi Hukum Ekonomi Syariah (KHES) Sebagai Pedoman Hakim dalam Menyelesaikan Perkara Ekonomi Syariah di Pengadilan Agama."

general binding authority. When substantive norms rely exclusively on regulations issued by the judiciary, the potential for conflicts regarding legitimacy becomes inevitable.[45]

The first implication pertains to legal certainty. Participants in the Islamic economic sector are fundamentally governed by sector-specific financial legislation, regulations issued by the Financial Services Authority, and government policies. When KHES is employed as the foundation for dispute resolution but lacks a definitive status within the national legislative hierarchy, questions emerge regarding its binding authority beyond the judicial context.[46] The second implication relates to legal harmonization. Scholarly assessments reveal that certain provisions of KHES are not fully consistent with DSN-MUI fatwas or with contemporary developments in Islamic financial products.[47] This lack of alignment is not merely a substantive issue but reflects a structural deficiency in the regulatory framework, which lacks an adaptive national legislative mechanism. The third implication concerns economic development. Regulations perceived as having limited legitimacy tend to undermine investor confidence, as they are viewed as insufficient to guarantee long-term stability. In modern economies, legal certainty is a crucial indicator of a country's investment climate.[48] Consequently, the establishment of substantive Islamic economic law at a higher regulatory level emerges as a strategic imperative.

From the standpoint of national legal harmonization, the selection of regulatory instruments must consider the long-term stability of the legal system. Legislative harmonization seeks to establish inter-normative coherence to prevent regulatory conflicts and uncertainties in legal application. Therefore, the reform of KHES should be regarded as part of a broader agenda for national Islamic economic law reform, rather than merely a technical amendment of contractual norms. Given the increasing complexity of the Islamic economic industry, the expanded substantive legal role of KHES, and the necessity for robust regulatory legitimacy, regulating KHES through PERMA may be conceptually insufficient. Enhancing KHES via a higher-level legal instrument represents a strategic measure to ensure legal certainty, bolster industry confidence, and sustain the development of Indonesia's Islamic economic legal framework.[49]

Addressing Counterarguments Pertaining to the Case for Reconstruction

The argument for reconstruction presented above invites at least three plausible objections, each of which warrants direct consideration rather than dismissal. The first objection asserts that PERMA is functionally sufficient: given the Supreme Court's well-established authority to issue judicial regulations that fill legislative gaps, and considering that KHES itself originated as an instance of judicial law-making addressing a genuine normative vacuum, its judicial origin should not be regarded as a defect. While this objection correctly recognizes judicial law-making as a legitimate function of the Supreme Court, it fails to address the structural incongruity identified in this study. Specifically, an instrument designed to guide judges in resolving disputes before them is not equivalent to one intended to bind an entire regulated industry, including licensed financial institutions and supervisory authorities that do not appear before the Religious Courts and for

45 Rizanizarli, "Kriminalisasi di Luar KUHP dan Implikasinya Terhadap Hukum Acara Pidana."

46 Eldbert Marbun, "Mengkaji Kepastian Hukum dan Perlindungan Hukum Terhadap Investasi di Indonesia Melalui Lembaga Perizinan Online Single Submission (OSS)," *Dharmasisya: Jurnal Program Magister Hukum FHUI* 1, no. 4 (2022): 1749–60.

47 Latif, "Harmonisasi KHES, Fatwa DSN-MUI dan Kodifikasi Produk Perbankan Syariah Sebagai Sumber Hukum Material Sengketa Keuangan Syariah."

48 Sulistiyono, "Pembaharuan Hukum Yang Mendukung Kondusifitas Iklim Usaha."

49 Anwar, Huda, and Basry, *Penyempurnaan Kompilasi Hukum Ekonomi Syariah (KHES).*

whom a PERMA carries no direct legal force. Judicial law-making appropriately fills interpretive gaps for adjudication; however, it does not, without additional justification, confer the general and democratically derived legitimacy that a hierarchical theory of legal norms associates with binding an entire industry.

A second objection cautions that elevating KHES to statutory status may result in the ossification of contemporary interpretations of Islamic contractual principles within a legal text that becomes increasingly difficult to amend as circumstances evolve. This concern is not without precedent, as evidenced by the experiences of other jurisdictions that have codified religiously derived laws. The present study contends that this risk is inherent to product-based codification rather than to codification per se. Rigidity emerges when a code specifies individual financial instruments, as each new product then falls outside the code's scope until it is formally incorporated. Conversely, this rigidity is less pronounced when a code articulates general *'aqd* principles capable of governing instruments that have yet to be developed. Accordingly, a principle-based statute is less susceptible to obsolescence than the current product-based PERMA, as the proposed reconstruction addresses the underlying source of rigidity rather than merely transferring it to a higher-level instrument.

The third and most significant objection pertains to principle-based regulation itself. Broadly formulated principles are inherently susceptible to divergent interpretations, and in the absence of a single authoritative interpreter, this interpretive flexibility may replicate, at the level of substantive design, the very legitimacy disputes that the reform aims to resolve at the instrumental level. This concern reflects a well-established paradox in regulatory theory: principles that offer flexibility often do so at the expense of the predictability necessary for legal certainty. Consequently, actors tasked with interpreting these principles independently may apply them inconsistently or, alternatively, adopt excessively cautious interpretations that undermine the flexibility the principles are intended to provide.[50]

The reform proposed herein addresses this paradox not by replacing principles with rules, but by anchoring interpretation to three operational criteria developed in the Methodology—formal status, functional role, and legitimacy contestation—alongside the designation of an authoritative interpreter, DSN-MUI. This body would operate through its existing fatwa mechanism, with its rulings carrying statutory, rather than merely persuasive, authority under the restructured instrument. Thus, interpretive discretion is constrained by institutional design rather than left to unguided judicial or industry discretion.

Islamic Philosophical Foundations of the KHES Reform

Islamic economics constitutes an economic system aimed at promoting societal welfare through principles derived from Islamic teachings.[51] As one of the fastest-growing economic systems worldwide, its philosophical foundations are crucial for comprehending its operational mechanisms and practical applications. In an increasingly complex global environment, Islamic economics provides a distinctive and comprehensive framework that addresses not only material needs but also spiritual, social, and ethical considerations.[52] The philosophical underpinnings of

[50] Julia Black, "Forms and Paradoxes of Principles-Based Regulation," *Capital Markets Law Journal* 3, no. 4 (2008): 425–457.
[51] Alamad, "The Essence of Faith-Based Economics: The Islamic Economic Thought."
[52] Kader, "Human Well-Being, Morality and the Economy: An Islamic Perspective."

Islamic economics are grounded in the Qur'an, the Hadith, and the practices of the Prophet Muhammad (peace be upon him).[53] These foundations transcend the spiritual realm to incorporate integrated social, economic, and legal dimensions. Consequently, it is imperative to understand how each principle interacts within and contributes to a holistic framework that fosters an ethical and just economic order.[54] The principal foundations of Islamic economics include *tawḥīd* (monotheism), *'adl* (justice), *tawāzun* (balance), and *ḥurriyah* (freedom of economic activity).

Tawḥīd —the oneness of God—constitutes the foundational principle underlying Islamic economics. This concept extends beyond mere religious belief, encompassing significant implications for all aspects of life, including economic behavior. *Tawḥīd* asserts that every human action, whether individual or collective, must be rooted in the acknowledgment of Allah as the Creator and Sustainer of the universe.[55] Consequently, in every transaction, business decision, and economic activity, individuals and institutions are required to act with sincere intention to draw nearer to Allah and to adhere to His commands and prohibitions. Within the economic sphere, *tawḥīd* emphasizes that wealth and resources are a trust (*amānah*) bestowed by Allah, to be managed with responsibility and equity.[56] Economic activity is therefore not solely directed toward material gain but must also conform to the moral and ethical standards prescribed by Islamic law. *Tawḥīd* guides economic agents to harmonize their business objectives with spiritual values, thereby achieving a balance between worldly benefit and divine blessing. By steadfastly adhering to *tawḥīd*, Islamic economics promotes a market structure oriented not merely toward profit maximization but toward the establishment of a society that is both materially and spiritually prosperous.[57] This aim encourages all economic participants to engage in beneficial and meritorious activities, ultimately fostering positive social development and collective welfare.

The principle of justice (*al-'adālah*) constitutes a fundamental pillar of Islamic economics, ensuring that wealth distribution within society is conducted equitably and fairly. An economic system founded on justice guarantees that all individuals have equal access to resources and economic opportunities,[58] thereby preventing the concentration of wealth or opportunities in the hands of a single party and enabling all societal segments to participate in and benefit from economic activities. In practice, the concept of justice in Islamic economics is institutionalized through the practice of zakat. As a mandatory obligation for Muslims, zakat requires individuals to allocate a portion of their wealth to those in need. This mechanism serves to reduce the disparity between affluent and disadvantaged groups, promoting a more equitable distribution of wealth.[59] Beyond its material impact, zakat reinforces social solidarity, cultivates a sense of mutual responsibility, and mitigates economic inequality.[60] Consequently, the principle of justice pertains not only to material

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[53] Rois et al., "Filsafat Ilmu Ekonomi Syariah Sebagai Landasan Sistem Ekonomi Syariah Bagi Pendidikan Umat Islam."

[54] Kader, "Human Well-Being, Morality and the Economy: An Islamic Perspective."

[55] Mujahidin Mujahidin, "The Principle of Tauhid and Ownership in Islamic Economic," *Al-Kharaj: Journal of Islamic Economic and Business* 3, no. 2 (2021): 174–87.

[56] Abdillah Mundir and Tomiyadi, "Penerapan Etika Bisnis Islam Pada Usaha Kecil dan Menengah Mikro (UMKM) di Kabupaten Pasuruan," *Alkasb: Journal of Islamic Economics* 2, no. 2 (2023): 154–165.

[57] Telsy Fratama Dewi Samad and Anggoro Sugeng, "The Role of the Islamic Economic System in Achieving Fallah," *Adzkiya: Jurnal Hukum dan Ekonomi Syariah* 10, no. 02 (2022): 175–86.

[58] Aris Munandar and Ahmad Hasan Ridwan, "Keadilan Sebagai Prinsip dalam Ekonomi Syariah Serta Aplikasinya Pada Mudharabah," *Maqdis: Jurnal Kajian Ekonomi Islam* 7, no. 1 (2023): 89–102.

[59] Fadlan Fikri, Hikam Fauzan Arifin, and Moh Zuhud, "Pemberdayaan Zakat Produktif dalam Mengentaskan Kemiskinan," *Konferensi Nasional Mitra FISIP* 2, no. 1 (2024): 374–82.

[60] Nur Amelia et al., "Urgensi Ziswaf dalam Pengembangan Perekonomian di Indonesia," *Sharing: Journal of Islamic Economics, Management and Business* 2, no. 2 (2023): 157–168.

welfare but also to the strengthening of social bonds within the community, thereby fostering sustainable collective well-being.

Tawāzun represents a fundamental principle within Islamic economics, underscoring the necessity of maintaining equilibrium between the material and spiritual aspects of life.[61] This concept mandates that individuals assume responsibility not only for achieving worldly gains but also for ensuring spiritual and moral well-being. In this framework, balance encompasses a broader accountability toward the environment, human welfare, and individual rights within economic activities. The principle advocates for equitable and sustainable business practices, wherein decisions are assessed not solely on financial returns but also on long-term sustainability and societal impact. Practically, *tawāzun* is manifested in enterprises that adopt sustainable business practices consistent with Sharia values, including responsible waste management, efficient utilization of natural resources, and the integration of social welfare considerations into corporate policies. Organizations adhering to this principle endeavor not only to maximize profits but also to implement proactive measures aimed at environmental protection and social welfare support. Consequently, the principle of balance fosters harmony among economic development, social responsibility, and environmental sustainability, thereby reinforcing the ethical integrity and enduring viability of the Islamic economic system.

The principle of *ḥurriyah*—freedom of enterprise accompanied by responsibility—is a foundational concept in Islamic economics that acknowledges the right of every individual to engage in economic activities freely. This principle underscores the importance of personal initiative and entrepreneurial innovation as key drivers of economic growth and creativity. Nevertheless, this freedom is not absolute; all economic actions must be firmly rooted in moral and ethical responsibility. In business decision-making, entrepreneurs are required to ensure that their actions are not only financially sound but also aligned with the principles of justice, honesty, and respect for the rights of others. In practice, *ḥurriyah* implies that freedom of enterprise should not be exercised to the detriment of social welfare or environmental sustainability. Entrepreneurs who adhere to this principle prioritize safe and ethical production processes, safeguard workers' rights, and comply with relevant Sharia legal standards. Moreover, freedom of enterprise entails a commitment to conducting business transparently, fairly, and in ways that contribute positively to society. Thus, the principle affirms that economic freedom extends beyond the pursuit of personal gain to encompass the generation of constructive and sustainable outcomes for both the community and the environment.

Collectively, the four principles of *tawḥīd, 'adālah, tawāzun*, and *ḥurriyah* extend beyond providing Islamic economics with a moral lexicon; they constitute the doctrinal foundation justifying a principle-based rather than a product-based regulatory framework. *Tawḥīd*, by situating every transaction within a unified moral order rather than a discrete list of permissible forms, and these principles, by orienting regulation toward their shared welfare objectives, suggest that regulatory designs anchored to specific product forms represent a more limited instrument than the comprehensive philosophy they aim to embody. Scholarly analyses of the philosophical underpinnings of Sharia economics similarly indicate that a *tawḥīd*-centered approach directs regulation toward the entirety of economic activity rather than isolated components, thereby

61 Shafa Diah Shafa Shafira et al., "Problematika Sistem Ekonomi Islam di Indonesia," *Al-Idarah: Jurnal Manajemen dan Bisnis Islam* 5, no. 1 (2024): 34–53.

offering interpretive flexibility that a product-by-product regulatory model inherently restricts.[62] On this basis, a robust legal framework is essential for resolving disputes arising within Islamic economic activity; such a framework, grounded in principle-based design, ensures that *tawḥīd*, *'adālah, tawāzun*, and *ḥurriyah* are preserved and internalized within Islamic economic practice as the industry evolves, obviating the need for continual statutory amendments with the emergence of new product forms. Consequently, reform of the KHES, as a primary legal source for Islamic economic dispute resolution, must be pursued not merely as an institutional modification but as a substantive reorientation toward the foundational principles that confer coherence upon the underlying philosophy.

Sociological Foundations of the KHES Reform

Islamic economics in Indonesia is founded on a robust basis, both philosophically—rooted in divine principles—and sociologically, through the prevailing conditions that support its implementation. The sociological aspect is particularly significant in elucidating the rapid growth of Islamic economics and its considerable potential for integration into Indonesia's economic and social frameworks. The primary sociological foundations underpinning the prominence of Islamic economics in Indonesia include the country's status as home to the world's largest Muslim population, with over 87% of its citizens identifying as Muslim.[63] This demographic reality establishes a strong sociological foundation for the application of Islamic economics, as the majority of the population tends to organize their lives in accordance with religious precepts.[64] Islamic values that emphasize justice, transparency, and equity in economic transactions render Islamic economics both culturally and spiritually pertinent, grounded in societal norms and traditions that have long embraced Sharia-compliant practices such as *zakāh* (almsgiving), *ṣadāqah* (charitable donations), and the prohibition of *ribā* (interest). This Muslim-majority composition generates substantial demand for Islamic financial products and services. Consequently, society exhibits greater trust in, and comfort with, an economic system that aligns with their religious beliefs, thereby facilitating the adoption and expansion of Islamic economics in Indonesia.

The demand for secure, equitable, and Sharia-compliant financial transactions continues to increase. Enhanced financial literacy concerning Islamic finance has further propelled the development of Sharia-based financial products and services, such as Islamic banking, Islamic insurance (*takāful*), and Islamic bonds (*sukuk*).[65] Empirical research demonstrates that Indonesian society shows a pronounced preference for financial products characterized by transparency, ethical standards, and justice—an inclination reinforced by educational and financial literacy programs implemented by Islamic financial institutions and religious communities.[66] This

62 Nurul Hilmiyah, Bayu Taufiq Possumah, and Muhammad Hakimi Mohd Shafiai, "Tawhid and Shariah Economics: Positioning Tauhid as Philosophical Foundation of Shariah Economics," *Al-Falah: Journal of Islamic Economics* 4, no. 2 (2019): 145–162.

63 Badan Pusat Statistik Indonesia, "Religion in Indonesia, 2024," 2024, https://samarindakota.bps.go.id/.

64 Syafiq Mahmadah Hanafi and Achmad Sobirin, "Relevansi Ajaran Agama dalam Aktivitas Ekonomi," *Iqtisad* 3, no. 1 (2009): 169–134; Usnan Usnan, "Pengaruh Religiusitas Terhadap Minat Masyarakat Menggunakan Produk Perbankan Syariah di Kota Pekanbaru," *Money: Journal of Financial And Islamic Banking* 2, no. 1 (2024): 106–111.

65 Lya Amailiya, Moch Edman, and Sumiyati Sumiyati, "The Influence of Sharia Financial Literacy and Sharia Financial Inclusion on the Sustainability of Small and Medium Enterprises in the Bandung Raya Region," *Indonesian Interdisciplinary Journal of Sharia Economics* 7, no. 3 (2024): 5034–5048.

66 Abdul Rachman et al., "Strategies for Improving the Sharia Financial Literacy Index in the Millennial Generation in Indonesia," *I-Finance: A Research Journal on Islamic Finance* 8, no. 2 (2023): 152–169.

widespread public endorsement reflects the existence of robust social capital, which is crucial for facilitating interactions and collaborations among individuals and institutions in establishing a stable economic system. The solidarity fostered through shared religious values and aligned economic objectives creates a favorable environment for the sustained growth of Islamic economics.

Government support through favorable policies and regulatory frameworks represents a critical sociological foundation for the growth of Islamic economics. The establishment of the National Committee for Islamic Economy and Finance (Komite Nasional Ekonomi dan Keuangan Syariah, KNEKS) exemplifies the government's dedication to advancing and integrating Islamic economics within the national economic system.[67] KNEKS serves as a coordinating entity that fosters synergy among government agencies, financial institutions, and the private sector to support the Islamic economic ecosystem. Such government backing generates social legitimacy, thereby enhancing public acceptance of and confidence in Islamic economics. Through the implementation of supportive policies—including regulations that promote Islamic financial inclusion and facilitate Sharia-compliant financing—society's engagement in Islamic economic activities is progressively increasing.

Based on these sociological foundations, the regulation of economic activity—including the resolution of disputes—must be clearly defined. At present, both the substantive and procedural laws governing Islamic economic dispute resolution are limited. Among the existing instruments, the KHES has served as a primary reference; however, due to the rapid pace of economic development, the substantive content of KHES is no longer fully aligned with contemporary Islamic economic practices. Therefore, reforming the KHES is essential to ensure legal certainty in the resolution of Islamic economic disputes.

Juridical Foundations of the KHES Reform

The juridical foundations underpinning the KHES reform are grounded in at least three principal pillars. First, Constitutional Guarantees: Pancasila and the 1945 Constitution, as Indonesia's foundational ideology and supreme legal framework, embody a steadfast commitment to preserving diversity and tolerance across all facets of national life, including the economic domain. The first principle of Pancasila—Ketuhanan Yang Maha Esa (Belief in the One and Only God)—asserts that the state recognizes religion and encourages its citizens to worship in accordance with their respective beliefs. This principle implies the state's respect for economic practices rooted in religious teachings, including Islamic economics. Furthermore, Article 29(2) of the 1945 Constitution guarantees the freedom of every resident to embrace their religion and to worship in accordance with its tenets. Within the economic context, "worship" extends beyond the spiritual dimension to encompass the manner in which individuals conduct their daily economic activities in conformity with religious precepts. For Muslim citizens, engaging in economic activities that comply with Sharia principles constitutes an expression of their faith, encompassing fair trade, transparent transactions, and the avoidance of prohibited practices. Accordingly, KHES is regarded as a juridical instrument that not only regulates Islamic economic activity but also upholds the constitutional right of Muslim citizens to practice their religion through their economic conduct.

[67] Abdul Sumarlin et al., "Pembiayaan Layanan Jasa Keuangan Industri Halal," *Economics and Digital Business Review* 5, no. 2 (2024): 665–682.

Second, the fragmentation of applicable legislation presents significant challenges within the domain of Islamic economics and finance in Indonesia. Regulatory provisions are dispersed across a diverse array of legal instruments, including statutes, government regulations, and directives issued by the Financial Services Authority (OJK) and Bank Indonesia (BI). Specifically, Islamic banking is governed by Law Number 21 of 2008 on Islamic Banking, whereas the Islamic capital market falls under the jurisdiction of the Capital Market Law and OJK regulations. Additionally, Islamic financial products—such as *sukuk*, Islamic insurance, and various investment instruments—are regulated independently within their respective frameworks. This regulatory fragmentation complicates the coherent understanding and consistent application of Sharia principles by Islamic economic actors. In the absence of an integrated legal framework, efforts to ensure Sharia compliance are frequently hindered by divergent interpretations arising from multiple regulatory sources. To address these issues, the reform of the KHES is intended to harmonize all regulations related to Islamic economics and finance in Indonesia. An integrated KHES would provide a more accessible and comprehensible legal reference for practitioners within the Islamic finance industry, government agencies, academics, and the general public. Such harmonization is crucial for reducing legal ambiguity, enhancing legal certainty, and facilitating dispute resolution within the Islamic economic sector. Furthermore, a comprehensive KHES would mitigate the risk of regulatory overlap or inconsistency in the application of Sharia principles across various governmental institutions, thereby establishing a stronger, more stable, and more consistent legal foundation for all Islamic economic activities in Indonesia.

Third, Sharia principles derived from DSN-MUI Fatwas. The formulation of the KHES was significantly guided by DSN-MUI fatwas, which served as the primary normative framework for the application of Sharia principles in economic and financial transactions. At the time of KHES's initial compilation, DSN-MUI had issued 73 fatwas, primarily addressing foundational regulations for Islamic banking, insurance, financing, and basic financial instruments—catering to the fundamental requirements of the Islamic financial industry when its products and services were relatively limited. As the field of Islamic economics advanced, the number of DSN-MUI fatwas increased to 151, encompassing more complex topics such as Islamic financial technology, digital banking, sukuk, and various investment instruments. The divergence between KHES and the content of more recent DSN-MUI fatwas has resulted in considerable legal inconsistencies. KHES, still grounded in its original fatwa base, no longer covers the full spectrum of contemporary Islamic economic activities addressed in the newer fatwas. This discrepancy has created legal gaps that hinder KHES from accurately reflecting current industry practices, thereby generating uncertainty for Islamic economic actors who depend on KHES as their legal reference and limiting the development of innovative Islamic products and services. In instances where KHES is misaligned with current DSN-MUI fatwas, certain Islamic economic activities may lack an adequate legal foundation, thereby undermining the legal certainty of the involved parties. Consequently, reforming KHES to incorporate the most recent DSN-MUI fatwas is essential.

Comparative Lessons from Malaysia, the United Kingdom, and the GCC

The institutional options confronting KHES reform are not unique to Indonesia. A systematic comparison of the three regulatory models presented in the Introduction—Malaysia's statutory codification, the United Kingdom's sector-specific regulation, and the GCC's decentralized Sharia governance—illuminates both the potential benefits and limitations of each approach. This comparison situates Indonesia's proposed reconstruction within a broader comparative framework rather than viewing it as an isolated domestic reform.[68]

Malaysia's Islamic Financial Services Act 2013, implemented through Bank Negara Malaysia's Shariah Governance Framework, constitutes the most institutionally comprehensive model among the three examined. It situates Sharia governance within the formal legislative hierarchy and grants Bank Negara's Shariah Advisory Council binding interpretive authority over Islamic financial institutions. This structural design directly addresses the vertical legitimacy issue identified in KHES, as a standard established by statute cannot be challenged on the basis of lacking legislative authority. However, Malaysia's experience demonstrates that statutory codification alone does not resolve all tensions; jurisdictional conflicts between the civil courts and the Syariah court system continue to exist, indicating that legitimacy at the level of the legal instrument does not necessarily ensure coherence in institutional coordination.

The United Kingdom exemplifies an alternative approach. Instead of implementing legislation specifically tailored to Sharia law, it governs Islamic finance by modifying existing sector-specific financial regulations to accommodate Sharia-compliant structures, relying on conventional regulatory authorities rather than establishing a dedicated Sharia governance framework. This model illustrates that a jurisdiction lacking a Muslim-majority constitutional identity can attain regulatory certainty for Islamic finance without creating a parallel legal system. Although this approach is less directly applicable to Indonesia—where Islamic economic law is institutionally distinct through the Religious Courts—it is instructive in demonstrating that legal certainty and religious specificity can, in principle, be separated.

The GCC states, in contrast, have typically refrained from implementing comprehensive statutory codification, opting instead to rely on decentralized Sharia supervisory boards functioning within individual financial institutions. This approach maintains significant interpretive flexibility and adherence to classical fiqh methodology; however, it results in the empirically observed consequence of divergent rulings across institutions on materially similar transactions. Such discrepancies give rise to Sharia arbitrage, which this study links to the insufficient development of harmonization.

When considered collectively, these three experiences do not indicate a single definitive model; rather, they illustrate a trade-off among legitimacy, institutional coordination, and interpretive flexibility that any jurisdiction pursuing reform must navigate with deliberate consideration. Indonesia's proposed reconstruction, embodied in a dedicated statutory instrument that articulates principle-based *'aqd* standards, aligns most closely with Malaysia's approach but diverges in one key aspect: whereas Malaysia assigns final interpretive authority to a central bank entity, the proposal examined in this study preserves the fatwa mechanism of DSN-MUI as the substantive interpretive authority. This distinction reflects Indonesia's unique institutional history, wherein religious authority over Islamic economic norms evolved independently from the banking regulator. This hybrid arrangement—statutory in form yet religiously autonomous in interpretive authority—constitutes Indonesia's distinctive contribution to the comparative discourse introduced at the outset of this study.

[68] Z Hasan, "Regulatory Framework of Shari'ah Governance System in Malaysia, GCC Countries and the United Kingdom," *Kyoto Bulletin of Islamic Area Studies* 3, no. 2 (2010): 82–115.

Steps Toward Reforming KHES to Achieve Legal Certainty

The reform of KHES seeks to develop a more comprehensive and adaptive legal framework that effectively responds to the evolving dynamics of Islamic economics in Indonesia. The initial phase of this initiative involves the harmonization of existing regulations, with particular emphasis on the alignment with DSN-MUI fatwas. The term "harmonization" originates from the English word "harmonize," the French "harmonie," and the Greek "harmonia," all of which denote the alignment of feelings, actions, ideas, and interests.[69] The concept of legal harmonization was first introduced in German legal scholarship in 1992 as a response to the increasing proliferation of government policies that risked creating regulatory inconsistencies. Within this context, legal harmonization can be understood as the process of aligning legal principles and systems to promote simplicity, legal certainty, and justice. It represents a legislative process aimed at resolving contradictions and irregularities among existing legal norms, thereby producing legislation that is harmonious, coherent, balanced, integrated, consistent, and principled.[70]

According to L.M. Gandhi, legal harmonization involves the alignment of legislation, governmental decisions, judicial rulings, legal systems, and legal principles with the aims of promoting legal unity, certainty, justice, equity, utility, and clarity, while preserving legal pluralism.[71] Through this process, a legal system is established that simultaneously addresses the need for legal certainty and the realization of justice. In the context of law enforcement, legal harmonization serves to prevent jurisdictional overlaps among courts exercising judicial authority and other governmental bodies endowed with adjudicative functions under relevant legislation. From this standpoint, legal certainty is a requirement that can only be fulfilled through the harmonization of the legal system.[72] Kusnu Goesniadhie outlines the procedural steps for achieving legal harmonization as follows:[73] (a) identifying the loci of legal disharmony in the application of legislation; (b) determining the causes of such disharmony; (c) engaging in legal discovery through interpretive and constructive methods to transform disharmony into harmony; (d) employing legal reasoning to ensure that interpretive and constructive outcomes are rational and logically coherent; and (e) formulating reasoned legal arguments grounded in principles of good governance to support and elucidate the results of interpretation, construction, and reasoning.

Conceptually, Henry Merryman delineates three models of law reform, characterized as "law reform: tinkering, following, and leading." When applied to legal harmonization, these models correspond to three distinct frameworks: "tinkering harmonization," "following harmonization," and "leading harmonization,"[74] each directly derived from Merryman's typology of law reform. "Tinkering harmonization" denotes the process of harmonization through the optimized application of existing laws with targeted modifications. "Following harmonization" involves adapting existing laws to align with developments within a particular field. "Leading

69 Inche Sayuna, "Harmonisasi dan Sinkronisasi Hukum Surat Kuasa Membebankan Hak Tanggungan (SKMHT) Ditinjau dari Otentisitas Akta Menurut Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris" (Surakarta: Universitas Sebelas Maret, 2016).

70 Suhartono, "Harmonisasi Peraturan Perundang-Undangan Dalam Pelaksanaan Anggaran Pendapatan dan Belanja Negara" (Fakultas Hukum Universitas Indonesia, 2011).

71 Bimo Tresnadipangga, Fokky Fuad, and Suartini Suartini, "Harmonisasi Peraturan Perundang-Undangan dalam Pelaksanaan Bantuan Sosial di Republik Indonesia," *Binamulia Hukum* 12, no. 1 (2023): 213–226.

72 Kusnu Goesniadhie, *Harmonisasi Hukum dalam Perspektif Perundang-Undangan: Lex Specialis Suatu Masalah* (Surabaya: JP Books, 2006).

73 Goesniadhie.

74 Rizanizarli Rizanirarli, "Kriminalisasi di Luar KUHP dan Implikasinya Terhadap Hukum Acara Pidana," *Kanun Jurnal Ilmu Hukum* 16, no. 2 (n.d.): 277–302.

harmonization" entails the proactive utilization of law as a mechanism to instigate change.[75] In the context of Islamic economic dispute resolution, the preferred approach to reforming KHES necessitates a substantive reconstruction of existing norms, given that the current form of KHES is inadequately suited to address the diverse array of products within the Islamic financial industry.[76]

Legal harmonization achieved through such restructuring is therefore of critical importance. This process may be undertaken via incremental harmonization, responsive harmonization, or proactive harmonization, depending on the prevailing circumstances. Central to this endeavor is the continuous prioritization of collaboration among stakeholders in the Islamic economic sector. In this context, the Supreme Court—through its Centre for Strategy and Policy (Pustrajak) and the Directorate General of Religious Courts (Ditjen Badilag)—should engage in partnership with the National Sharia Board–Indonesian Council of Ulama (DSN-MUI), the Financial Services Authority (OJK), academic institutions, and civil society organizations dedicated to the advancement of Islamic economic development, including the Indonesian Islamic Economics Experts Association (Ikatan Ahli Ekonomi Islam, IAEI) and the Islamic Economics Society (Masyarakat Ekonomi Syariah, MES). Such collaboration among the Supreme Court, DSN-MUI, and Islamic economic stakeholders is expected to result in regulations that are both operationally feasible and capable of ensuring legal certainty for the public. Moreover, it is anticipated that this cooperative effort will produce not merely a compilation but a codification—and, where feasible, the proposal of a dedicated statute governing the implementation of Islamic economics in Indonesia.

Beyond the harmonization of existing legal frameworks, the reform of KHES may be advanced through the integration of new norms. This integration aims either to address provisions rendered obsolete by contemporary Islamic financial practices or to regulate issues that have not yet been considered. The introduction of new norms seeks to ensure that KHES remains pertinent within the continuously evolving domain of Islamic economics. According to Merryman's typology of law reform, the incorporation of new norms into KHES aligns most closely with the concept of following harmonization—namely, the adaptation of existing law to reflect changes that have already occurred in industry practice and normative instruments, such as DSN-MUI fatwas. In instances where new Islamic financial instruments have emerged and received fatwa-based normative recognition, the failure to incorporate them into KHES results in regulatory lag, thereby generating legal uncertainty for both practitioners and adjudicators. In more transformative scenarios—particularly when KHES reform aims not only to align with existing practices but also to proactively establish normative parameters for emerging instruments, such as Islamic fintech and sustainability-linked Islamic investments—the incorporation of new norms may appropriately correspond to leading harmonization. In this mode, the law functions as a mechanism to guide the trajectory of Islamic economic development rather than merely reflecting it. The selection between these two modalities of norm incorporation is not solely a technical matter; it embodies a broader policy decision regarding the role KHES should assume within Indonesia's Islamic economic legal framework—whether as a reactive codification tool or as a proactive normative framework capable of steering industry innovation within Sharia-compliant boundaries.

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75 Sapto Budoyo, "Konsep Langkah Sistemik Harmonisasi Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *Civis : Jurnal Ilmiah Ilmu Sosial Dan Pendidikan* 4, no. 2 (2014): 607–622.

76 M. Fauzan, "Kepastian Hukum Sebagai Upaya Menjamin Perlindungan Konsumen Perbankan Syariah" (UIN Syarif Hidayatullah Jakarta, 2017).

Ensuring Regulatory Stability within the Framework of Islamic Economics

One of the fundamental challenges in regulating the Compilation of Islamic Economic Law (KHES) pertains not only to its regulatory authority but also to the underlying paradigm guiding the formulation of its substantive legal content. Since its promulgation through Supreme Court Regulation Number 2 of 2008, KHES has been established as the primary substantive legal reference for adjudicating Islamic economic disputes within the Religious Court system. However, in practice, the regulatory framework of KHES has tended to focus on specific Islamic financial products rather than limiting itself to the foundational *'aqd* principles that form the legal basis of *mu'āmalah* transactions. This product-based regulatory approach presents inherent conceptual difficulties within a dynamic economic legal system. Islamic financial products evolve rapidly in response to industry innovation, financial technology advancements, transaction digitalization, and global market integration. Consequently, when regulation is detailed and tied to particular product forms, it risks becoming obsolete relative to actual economic practices.[77]

Contemporary regulatory theory advocates for the construction of economic law through a principle-based approach, as opposed to the technical specification of individual products. This principle-based regulatory framework enables the law to maintain its relevance amid evolving business models and transactional innovations. Legal principles offer a stable normative foundation, while technical implementations can adapt flexibly to meet industry requirements.[78] This approach has been extensively adopted in international financial sector regulation to balance legal certainty with economic innovation. From the perspective of Islamic economics, the principles of *'aqd* hold a more fundamental position than any specific financial product. All Islamic financial products fundamentally derive from core *'aqd* structures, such as *murābaḥah*, *muḍārabah*, *mushārakah*, *ijārah*, and *wakālah*.[79] These products represent operational manifestations of *'aqd* tailored to market demands, whereas *'aqd* constitutes the legal framework that determines the Sharia compliance of transactions. Therefore, legal regulation should prioritize the validity of *'aqd* principles rather than the variations of products that emerge from them.

If KHES continues to adhere to a product-based regulatory framework, each industry innovation would require corresponding regulatory amendments. This approach risks engendering a cycle of continual revisions that may compromise legal stability. Frequent changes in regulation create uncertainty among industry participants and hinder judges' ability to ensure consistency in their rulings.[80] Normative stability is a critical factor in promoting predictability in the resolution of economic disputes. Moreover, a product-based regulatory model may lead to inconsistencies with DSN-MUI fatwas. While DSN-MUI fatwas evolve responsively in accordance with innovations in Islamic economics, KHES, as a formal regulatory instrument, undergoes amendments at a considerably slower pace. Consequently, rigid product-based regulation by KHES significantly increases the potential for divergence between positive legal norms and Sharia compliance standards.[81]

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77 Sidiq, "Interseksi Hukum dan Ekonomi: Analisis Komprehensif Terhadap Dinamika Regulasi dan Dampaknya Terhadap Pertumbuhan Ekonomi."

78 Sulistiyono, "Pembaharuan Hukum yang Mendukung Kondusifitas Iklim Usaha."

79 Mujahidin, "The Principle of Tauhid and Ownership in Islamic Economic."

80 Marbun, "Mengkaji Kepastian Hukum dan Perlindungan Hukum Terhadap Investasi di Indonesia Melalui Lembaga Perizinan Online Single Submission (OSS)."

81 Latif, "Harmonisasi KHES, Fatwa DSN-MUI dan Kodifikasi Produk Perbankan Syariah Sebagai Sumber Hukum Material Sengketa Keuangan Syariah."

From the perspective of national legal harmonization, the issue with KHES extends beyond a mere normative deficiency to a fundamental flaw in regulatory design. Effective legal harmonization necessitates the establishment of regulations grounded in stable and universal norms that can accommodate development without engendering regulatory conflicts.[82] Consequently, the reconstruction of KHES should focus on reinforcing the principles and foundations of *'aqd* as cross-product primary norms. A principle-based approach to *'aqd* also carries significant implications for the judiciary. Judges do not require an exhaustive catalogue of Islamic financial products; rather, they need legal parameters to assess the validity of an *'aqd*. By emphasizing *'aqd* principles—such as justice, balance, mutual consent (*tarāḍī*), transparency, and the prohibition of *ribā*, *gharar*, and *maisir*—judges maintain the capacity to adjudicate disputes involving new products, even when such products are not explicitly addressed in existing regulations.[83] Furthermore, principle-based regulation reflects the adaptive nature of Islamic law itself—*ṣāliḥ li kulli zamān wa makān* (valid for all times and places). Since its inception, Islamic jurisprudence on mu'āmalah has not restricted permissible transaction forms but has prioritized principles of justice and public interest (*maṣlaḥah*) as the foundational bases of economic legitimacy.[84] Therefore, reconstructing KHES on the basis of *'aqd* principles aligns with the epistemology of Islamic law.

From the perspective of national legal development, a principle-based regulatory model enhances the integration of Islamic economics within Indonesia's legal framework. Stable regulation fosters the confidence of business actors and investors by ensuring that product innovation is not constrained by the limitations of existing legal norms[85]—an especially critical consideration given that Islamic economics constitutes a key element of Indonesia's national economic development strategy. Consequently, the reform of KHES should aim for a paradigm shift in regulatory design, moving from product-based regulation toward *'aqd* principle-based regulation. This reformulation would allow KHES to serve as a long-term legal framework that remains adaptable to economic innovation while maintaining legal certainty. Such a model simultaneously diminishes the necessity for frequent regulatory revisions and strengthens KHES's role as a sustainable foundation for the national Islamic economic legal system.[86]

Conclusion

The reform of the Compilation of Islamic Economic Law (KHES) necessitates addressing two fundamental and interrelated dimensions, rather than simply incorporating additional substantive norms. First, its institutional status must be enhanced by elevating it from a Supreme Court Regulation (PERMA) to a higher-level statutory instrument, thereby ensuring greater legal certainty, normative coherence, and alignment with recent DSN-MUI fatwas. Second, its substantive framework requires a paradigm shift from detailed, product-specific technical regulations toward a principle-based approach grounded in the foundational principles of *'aqd* in *mu'āmalah* transactions. This shift would enable the KHES to remain adaptable to ongoing financial innovations without frequent amendments, while providing judges with stable criteria for

82 Budoyo, "Konsep Langkah Sistemik Harmonisasi Hukum dalam Pembentukan Peraturan Perundang-Undangan."
83 Budoyo.
84 Kader, "Human Well-Being, Morality and the Economy: An Islamic Perspective."
85 Bawamenewi and Prakoso, "Peran Mahkamah Agung dalam Meningkatkan Iklim Investasi di Indonesia."
86 Anwar, Huda, and Basry, *Penyempurnaan Kompilasi Hukum Ekonomi Syariah (KHES).*

evaluating the validity of transactions. These two dimensions are mutually reinforcing rather than independent. Elevation to statutory status without adopting a principle-based design would merely entrench the existing product-based model, rendering it even less amenable to modification. Conversely, a principle-based design without statutory elevation would remain susceptible to legitimacy challenges, as judicial regulations lack the broad, democratically derived authority necessary to govern the entire industry. Only by pursuing both reforms concurrently can their respective weaknesses be mitigated: statutory elevation confers legitimacy, while a principle-based design ensures adaptability.

Regarding policy implications, the study advocates for a phased approach. In the short term, the Supreme Court and the Directorate General of Religious Courts should undertake a systematic empirical analysis of the application of KHES in court decisions to build upon the existing identification of gaps. In the medium term, a bill to elevate KHES should be incorporated into the Prolegnas, jointly drafted by the Supreme Court, DSN-MUI, and OJK, adopting the proposed principle-based framework and the three-criteria operational model. In the long term, a periodic legislative review mechanism—such as a mandatory review every five years—should be established to ensure the instrument remains responsive to evolving DSN-MUI fatwas, thereby avoiding the ad hoc amendment cycle observed since 2008.

This study acknowledges several limitations. As a normative-doctrinal inquiry, it primarily relies on legal texts and secondary literature, without incorporating empirical data derived from judicial practice, such as court decisions or interviews with judges and practitioners. The comparative analysis of Malaysia, the United Kingdom, and GCC states is based exclusively on secondary sources rather than primary fieldwork. Furthermore, the study does not consider the political feasibility of statutory elevation, particularly the process of securing inclusion in Indonesia's National Legislation Program (Prolegnas), which depends on legislative capacity and political will beyond the scope of doctrinal analysis. Additionally, an inherent tension exists between principle-based regulation and judges' practical need for specific guidance; although the proposed operational criteria and interpretive authority partially address this issue, they do not fully resolve it and would benefit from empirical evaluation. Finally, future research should seek to overcome these limitations by employing complementary empirical methodologies, including systematic analyses of Religious Court decisions citing KHES, surveys and structured interviews with DSN-MUI members, judges, and practitioners to assess the proposed classification criteria, as well as scholarly investigation into the legislative history of comparable statutory elevations within Indonesian law to better understand the procedural and political pathways involved.

Acknowledgement

The authors wish to extend their sincere gratitude to the leadership of the Supreme Court of the Republic of Indonesia, as well as to the Board of Strategy, Policy, and Legal and Judicial Education and Training of the Supreme Court of the Republic of Indonesia (Badan Strategi Kebijakan dan Pendidikan dan Pelatihan Hukum dan Peradilan Mahkamah Agung Republik Indonesia), for their institutional support and facilitation of this research.

Disclosure Statement

The authors declare that there are no conflicts of interest. This research did not receive any specific funding from public, commercial, or not-for-profit organizations. The views and opinions expressed herein are solely those of the authors and do not reflect the official stance of the Supreme Court of the Republic of Indonesia or any of its affiliated institutions.

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