

# THE DEVELOPMENT OF ISLAMIC ECONOMIC LAW IN INDONESIA

Tulus Januardi Tua Panjaitan<sup>1</sup>

<sup>1</sup>Universitas Muhammadiyah Sumatera Utara  
(e-mail: [tuluspanjaitansh@gmail.com](mailto:tuluspanjaitansh@gmail.com))

---

**Abstract:** The ideals of economic law are in line with the ideals of Islamic law contained in the maqāṣid asy-shari'ah with the focus on building and creating the benefit of the world and the hereafter for mankind. The ideals of Islamic law in the economic field can be seen in its concept of economic activity seen as a vehicle for society to lead to, at least, the implementation of the two teachings of the Qur'an. The development of Islamic economic law is basically parallel to other conventional economic law. With regard to an economy based on Islam, it is obligatory for Muslims in particular and is an alternative solution for non-Muslims. The existence of Islamic economics in general in Indonesian society is conceptually in accordance with the demands of the times. The Islamic finance industry in Indonesia has been recognized and implemented by the public. The existence of the Islamic economy is marked by the proliferation of Islamic-based financial institutions, one of which is sharia fintech.

**Keywords:** *Economic Law, Islam.*

---

## Introduction

As an economic constitution, the 1945 Constitution also regulates how the national economic system should be structured and developed. The main provisions of the 1945 Constitution concerning the national economic system are contained in Chapter XIV Article 33. The provisions regarding the national economic system are only contained in one article consisting of five paragraphs. However, these provisions must be elaborated consistently with the ideals and foundations of the state based on the basic concepts desired by the founders of the nation. In addition, the national economic system must be developed in relation to human rights which also include economic rights, as well as provisions for people's welfare (Asshiddiqie, 2005).

Philosophically, the ideals of Indonesian economic law are to initiate and prepare a legal concept of economic life. The desired economic life is the life of the nation and state whose people have social welfare and justice, as aspired by Pancasila. Starting from these ideals, in the future economic law must show an accommodative nature towards: 1) the realization of a just and prosperous society; 2) proportional justice in society; 3) there is no discrimination against economic actors; 4) unhealthy competition (Hartono, 2007).

The ideals of this economic law are in line with the ideals of Islamic law contained in the maqāṣid asy-shari'ah with the focus on building and creating the benefit of the world and the hereafter for mankind. The ideals of Islamic law in the economic field can be seen in its concept of economic activity seen as a vehicle for society to bring to the at least the implementation of the two teachings of the Qur'an, namely the ideals of economic law are in

line with the ideals of Islamic law contained in maqāṣid asy-syari'ah with the focus on building and creating the benefit of the world and the hereafter for mankind. The ideals of Islamic law in the economic field can be seen in its concept of economic activity seen as a vehicle for the community to bring to, at least the implementation of the two teachings of the Qur'an, namely the principle of mutual at-ta'awwun (helping and cooperating between members of the community to kindness) and the principle of avoiding garar (business transactions in which an element of fraud occurs which ultimately harms one of the parties).

## **Literature Review**

### **1. Economic Law in Indonesia**

The concept of economic law is a legal arrangement in the field of economics and not law in the sense of economic determination that arises in economic activity (economics). These two things have almost the same meaning when we first hear the term economic law. Economic law develops against the background of the increasingly rapid growth and development of economic activity in almost all parts of the world. The presence of economic law primarily aims to regulate and limit all economic activities so that the implementation of economic activities and economic development is always appropriate and does not ignore the rights and interests of the wider community (Suhardi, 2002). According to Jeremy Bentham, rights are children of law. From real laws arise real rights. On the other hand, from imaginary laws, namely natural laws, imaginary rights arise. Natural rights simply don't make sense. Prior to Bentham, David Hume also argued that natural law and natural rights were metaphysical and unreal. Therefore Bentham argues that real law is not natural law, but law made by the legislature (Marzuki, 2016).

The presence of economic law as part of the essence of things is a guarantee or mandate from the constitution. According to Jimly Asshiddiqie, constitutional rights are rights that are guaranteed in and by the 1945 Constitution of the Republic of Indonesia. Guarantees for these rights are expressed either explicitly or implicitly. For this reason, it is necessary to construct economic law in guaranteeing human interests based on the concept of justice. According to Theo Huijbers, law must be closely intertwined with justice. Laws can only become law if they fulfill the principles of justice. Fair is a constitutional element of all understanding of law (Huijbers, 1990).

## **Method**

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

## **Result and Discussion**

### **1. Application of Economic Law in Indonesia**

In legal theory, the term "Economic Law" is a translation of *Economisch Recht* (Dutch) or Economic Law (American). However, the meaning or connotation of *Economisch Recht* in the Netherlands is different from the meaning of Economic Law in the United States. The definition of *Economisch Recht* (Dutch) actually comes from the term *Droit Économique* (French) and after the second world war developed into *Droit de l'Économie* which means the legal rules of state administration (especially those originating from executive power which began around the 1930s). held to limit market freedom in France, for the sake of economic justice for the poor, so that not only those who have money can meet their food needs, but so that the peasants and workers will not starve to death. The world economic crisis known as the "malaise" it was in the 1930s that resulted in a correction to the notion of the free market, because the French government felt obliged to issue a State Administrative Law regulation which determined maximum and minimum prices for basic commodities and determined the government permits required for various businesses in the economic sector, such as to open a company, determine the amount of planting capital, line of business where investment is capital, importing or exporting goods, purpose, quantity, quality, and so on (Lubis, 1991).

Such state administrative law regulations are covered under the name *Droit Économique* (economic law in a narrow sense). Then, after the second world war, which was around 1945, European countries had to rebuild their countries with the help of the International Bank for Reconstruction, the United Nations was required to prepare a Five Year Development Plan at that time, which was the basis for the International Bank for Reconstruction's decision to provide assistance to the country. concerned. The international agreement between the IBR and the recipient country is set forth in the policies and legal regulations of the recipient country to be implemented, as has been the case in Indonesia since the New Order era. All legal policies and regulations that are not limited to State Administrative Law, but also regulate matters that include the substance of Criminal Law, Civil Law, Commercial Law, Private International Law, even Civil and Criminal Procedure Law, are covered under the name *Droit de l'Économie* or economic law in a broad sense (Juwana, 2002).

Economic law is the whole of the norms made by the government or authorities as a personification of society that regulates economic life in which individual interests and the interests of society face each other. In these norms, the government tries to include provisions that put more emphasis on the interests of society, even if it is necessary to limit the interests and rights of individuals. Economic law is a causal relationship or linkage of economic events that are interconnected with each other in everyday economic life in society or the birth of economic law due to the increasing growth and development of the community's economy. There are two models of economic law in Indonesia, development economic law and social economic law. Development economic law is a regulation regarding law which includes regulation and legal thinking regarding ways to improve and develop economic life in Indonesia nationally or as a whole, while social economic law is a regulation on how the results of national economic development can be divided fairly and evenly according to the values humanity (Wibisono, 1998). There are various case studies on economic law, including the following: if the price of basic necessities goes up, the price of other goods usually creeps up too; if in a certain location there is a large hypermarket shopping center with very low prices, then it is certain that the small retailers or shops in the vicinity will lose their turnover or go out of business; if the US Dollar exchange rate rises sharply then many companies whose capital comes from foreign loans will go bankrupt; the decline in the price of LPG will increase the sales of gas stoves both domestically and abroad; the higher the savings bank interest, the money supply will decrease and there will be a decrease in the amount of demand for goods and services in general; and others.

## **2. Position of Islamic Economic Law in Indonesia**

Along with the development of global culture and advances in science and information technology, it has an impact on various parts of everyday life. One of the impacts of global culture is also marked by the existence of an economic concept, namely the concept of Islamic economics and law is needed to realize people's welfare. Sharia Economics is the science of humans who believe in Islamic values. Sharia Economics which not only studies social individuals but also humans with the obligation to worship Allah SWT. Islamic Economics is controlled by basic Islamic values in its application, based on the commands of the Al-Qur'an and Hadith. Sharia economic law is sourced from Islamic law, so that Islamic law is a source of national law along with western law and customary law, does not mean that it has to become a formal law with its own exclusive form, except for its nature to serve (not impose imperatively) on what is already in effect. as consciousness in everyday life. Here the source of law must be interpreted as a source of material law in the sense of being content material for formal sources of law (Hasbullah, 2017).

As Muslims agree that Islam regulates all aspects of social life with a set of norms, including legal norms. The Qur'an contains many general provisions to guide human behavior. The existence of an Islamic economic system in society is based on an understanding of Islam which is a concept or living system in an integrated and comprehensive manner. Islam in economic activity provides a set of systems in the form of personal guidance, interactions and systems, principles of application, and space for developing the economy with all policy instruments, institutions and legal aspects of development, control and supervision. Of course, for these devices to produce quality, intensity and benefits of the system, it all depends on the humans who develop, control and supervise the functions of the economic system (Sakti, 2004)..

The position of Islamic law in the Republic of Indonesia is very strong constitutionally juridically which is stated in Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In this article there are fundamental principles, namely: (Samniah, 2017)

1. In the State of Indonesia, there may not be or may not apply laws that conflict with religious principles that apply to adherents of religions in our homeland;
2. The state is obliged to carry out the sharia of all religions that apply in Indonesia, if in order to carry out the sharia it requires the assistance of state power, this means that the state is obliged to regulate and implement laws originating from religious teachings for the benefit of the Indonesian nation if its implementation requires assistance in administering the state.
3. Shari'a does not require state power to implement it because each adherent of the religion concerned can carry it out independently..

In the politics of national law, the position of Islamic law is clear, it is one of the components of the Indonesian legal system, it is one of the raw materials for the formation of Indonesian national law, which in Islamic law there are two areas, namely worship and mu'amalah. The legal arrangements relating to the field of worship are detailed in nature, while the legal arrangements concerning mu'amalah only regulate the principles. The development and application of these principles is fully left to the administrators of the state and government, namely the ulil amri. Thus, sharia economic law originating from Islamic law indicates the existence of a new legal system in the Indonesian economy. The formation of national law which originates from the teachings of shari'ah cannot be separated from the

political context of national law, but in the framework of implementing Islamic teachings in a kaffah (perfect) manner, Islamic law legislation is placed within the context of the needs of the Muslim community itself. Therefore, the law is really implemented consistently, because it is considered as a form of practicing Islamic teachings that are true even in the form of statutory regulations.

Indonesia has an ideology of Pancasila whose goal is to provide welfare for the Indonesian people so that all rules must not conflict with Pancasila. In addition to Pancasila ideology, there is the 1945 Constitution of the Republic of Indonesia as a constitution which always maintains its dignity and dignity. If one looks at the Islamic Economic Law System in the Indonesian Islamic economy, it is not at all contradictory, let alone violates Pancasila, especially the "Precepts of Belief in One and Only God," and is not at all contradictory, let alone against the Constitution of the Republic of Indonesia, both in the Preamble, which includes the sentence: " By realizing social justice for all Indonesian people," as well as with parts of its contents, especially those stated in CHAPTER XI (Religion) Article 29 paragraphs (1) and (2), as well as CHAPTER XIV Articles 33 and 34 which regulate matters of the national economy and social welfare. Indonesia. As a form of positivization and unification of sharia economic law in Indonesia, there is KHES. If KHES is not compiled, religious court judges decide on sharia economic cases by referring to fiqh books spread across various schools of thought, because there are no positive legal references that are unifying, resulting in disparities in decisions between one court and another, between judges. one with another judge. The expression different judge really applies.

The study of economics in general actually concerns the attitude of human behavior towards the problems of production, distribution, consumption of commodities and services. The study of Islamic economics from this point of view is no different from secular economics, but from another point of view it is bound by Islamic values, or in everyday terms, is bound by the provisions of halal-haram.

### **Conclusion**

The development of Islamic economic law is basically parallel to other conventional economic law. With regard to an economy based on Islam, it is obligatory for Muslims in particular and is an alternative solution for non-Muslims. The existence of Islamic economics in general in Indonesian society is conceptually in accordance with the demands of the times. The Islamic finance industry in Indonesia has been recognized and implemented by the public. The existence of the Islamic economy is marked by the proliferation of Islamic-based financial institutions, one of which is sharia fintech.

### **References**

- Asshiddiqie, J. (2005). *Implikasi Perubahan UUD 1945 Terhadap Pembangunan Hukum Nasional*. Jakarta: Konstitusi Press.
- Hartono, S. R. (2007). *Hukum Ekonomi Indonesia*. Malang: Bayumedia Publishing.
- Habibullah, E. S. (2017). Hukum Ekonomi Syariah dalam Tatana Hukum Nasional. *Al Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam*, Vol.5, Nomor 9
- Habibullah, E.S. (2017). Hukum Ekonomi Syariah dalam Tatanan Hukum Nasional. *Al Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam*, Vol.5, No. 9
- Huijbers, T. (1990). *Filsafat Hukum Dalam Lintas Sejarah*, Yogyakarta, Kanisius

- Koto, I. (2021). Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme, *Proceeding Seminar Nasional Kewirausahaan*, 2 (1).
- Koto, I. (2020). "Review Of Criminal Law On The Consumption Of Food And Drug Containing Narcotics And Psychotropics (Analysis Of Decision NO. 17 K/MIL/2016), *International Proceeding Of Law & Economics*.
- Koto, I. (2022). Kebijakan Hukum Terhadap Perbuatan Penggunaan Merek Yang Sama Pada Pokoknya, *SANKSI: Seminar Nasional Hukum, Sosial dan Ekonomi*.
- Juwana, H. (2002). *Bunga Rampai Hukum Ekonomi dan Hukum Internasional*, Jakarta: Lentera Hati
- Lubis, M. T. (1991). *Hukum dan Ekonomi : Beberapa Pilihan Masalah*, Jakarta: Pustaka Sinar Harapan.
- Marzuki, P. M. (2016). *Pengantar Ilmu Hukum*, Jakarta, Kencana
- Rahimah & Koto, I. (2022). Implications of Parenting Patterns in the Development of Early Childhood Social Attitudes. *IJRS: International Journal Reglement & Society*, 3 (2).
- Sakti, A. (2004). *Ekonomi Islam: Jawaban Atas Kekacauan Ekonomi Modern*. Yogyakarta: Pustaka Pelajar
- Samniah, R & Khisni, A. (2017). Kedudukan Dan Kontribusi Hukum Islam Terhadap Hukum Nasional Dalam Bidang Mu'amalat. *Jurnal Hukum Khaira Ummah*, Vol. 12, Nomor 3
- Suhardi, G. (2002). *Peranan Hukum Dalam Pembangunan Ekonomi*, Yogyakarta, Universitas Atma Jaya.
- Wibisono, C. (1998). *Menelusuri Akar Krisis Indonesia*, Jakarta, PT. Gramedia Pustaka Utama.