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Harmonization of Commercial Law: Patterns of Positivization and the Formulation of DSN-MUI Fatwas in Realizing Legal Certainty for Islamic Banking in Indonesia

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Abstract

The rapid development of the Islamic banking industry in Indonesia requires commercial legal instruments that not only ensure sharia compliance but also provide positive legal certainty for business actors. This article analyses the harmonization of Islamic commercial law into the national legal system through the mechanism of positivizing the fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) into Law No. 21 of 2008 on Islamic Banking and the Compilation of Sharia Economic Law (KHES). Through normative legal research methods employing statutory, conceptual, and comparative approaches, this study elaborates the ontological transformation of fatwas—from cultural authority (i'laniyah) into imperative legal norms (mulzim). The findings indicate that harmonization is carried out through institutional integration (the Islamic Banking Committee) and normative integration (adoption, adaptation, and expansion) into the regulations of Bank Indonesia and the Financial Services Authority. The formulation of commercial contracts incorporates the principle of freedom of contract (mabda' hurriyah al-ta'aqud) as well as classical fiqh doctrines through the instruments of maslahah mursalah, takhayyur, and talfiq. This material legal certainty is reinforced by the readiness of formal law through the expansion of the absolute jurisdiction of the Religious Courts and the National Sharia Arbitration Board (Basyarnas) following Constitutional Court Decision No. 93/PUU-X/2012. In conclusion, the positivization of DSN-MUI fatwas has successfully eliminated the operational ambiguity of sharia contracts and created a sustainable business ecosystem. This transformation directly contributes to achieving the Sustainable Development Goals (SDGs), particularly SDG 8 (Inclusive Economic Growth) and SDG 16 (Strong Judicial Institutions and Access to Justice), by providing consumer protection and absolute certainty in the enforcement of proprietary rights within Indonesia.

Keywords
Civil Procedure Law, Commercial Law, Legal Certainty, Positivization of Fatwas,Sustainable Development Goals

A. Introduction

The legal architecture in Indonesia is rooted in the Civil Law system (Continental European Law) inherited from Dutch colonial rule. The fundamental characteristic of this legal order is the supremacy of statutory law (written legislation) as the primary source of law, ensuring legal certainty and social order. Joseph Dainow and Peter Mahmud Marzuki emphasize that the civil law system requires formal legal sources that are codified and systematically organized rigidly.[1] From the perspective of institutional economics, Vincy Fon and Francesco Parisi emphasize that statutory law serves as a rational basis for business actors to predict risks. In contrast, court decisions are merely secondary.[2] However, Indonesia's socio-legal reality is not entirely monolithic. The country operates within a landscape of legal pluralism, in which Islamic Law, Customary Law, and Western Law (Continental European Law)

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[1] Joseph Dainow, "Civil Law and Common Law: Some Points of Comparison," The American Journal of Comparative Law 15, no. 3 (1966): 419–35; Peter Mahmud Marzuki, Legal Research, Revised Edition (Jakarta: Kencana Prenada Media Group, 2011), 93–95

[2] Vincy Fon and Francesco Parisi, "Judicial Precedents in Civil Law Systems: A Dynamic Analysis," International Review of Law and Economics 26, no. 4 (2006): 519–35

interact, conflict, and ultimately integrate as the foundational elements in the formation of national law.[3]

In the sphere of private and commercial law, the exponential growth of the Islamic banking industry since the early 1990s created an urgent need for the establishment of special regulations (lex specialis). Historically, national banking regulations underwent an ambivalent transitional phase. Before the enactment of a comprehensive legal framework, Islamic banking operations were forced to comply with the conventional banking regime under Law Number 7 of 1992, in which the term "sharia" was merely reduced to a "profit-sharing system." This regulation was partially reformed by Law Number 10 of 1998, which recognized the dual banking system, yet it still left ambiguities regarding the legal protection of business actors.[4] This ambiguity reached its peak because the fundamental principles of sharia contracts—such as the prohibition of riba (interest), the prohibition of manipulative speculation (maysir), and the prohibition of uncertainty (gharar)—conflict with the characteristics of conventional banking law.[5]

The validity of every sharia business transaction is driven by a single crucial factor: sharia compliance. The authority that monopolizes such validity in Indonesia is the Indonesian Ulema Council through the National Sharia Council. The problem is that, from the perspective of legislative legal theory, this situation gives rise to a juridical anomaly. Ontologically, a fatwa is a formal legal opinion that is i'laniyah (informational) in nature and has historically always been ghoiru mulzim (lacking coercive binding force from the state).[6] Relying solely on syndicated commercial contracts worth trillions of rupiah, based on fatwas that lack state-enforceable binding force under Law Number 12 of 2011, would create massive systemic risks to macroeconomic stability.[7]

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[3] A. Qodri Azizy, National Legal Eclecticism: Competence Between Islamic Law and Common Law, 2nd ed. (Yogyakarta: Gama Media Offset, 2004), 45–48; M. B. Hooker, Islamic Law in Southeast Asia (Singapore: Oxford University Press, 1984), 248

[4] Government of the Republic of Indonesia, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia 1998 Number 182).

[5] Umer Chapra, The Future of Economics: An Islamic Perspective (Leicester: The Islamic Foundation, 2000), 253

[6] Joseph Schacht, An Introduction to Islamic Law (Oxford: Clarendon Press, 1982), 73; see also Abdul Latif and Hasbi Ali, Politik Hukum (Jakarta: Sinar Grafika, 2010), 112.

[7] Jimly Asshiddiqie, Criminal and Civil Law Reform in Indonesia (Jakarta: Secretariat General of the Constitutional Court of the Republic of Indonesia, 2006), 45.

This absence of prescriptive instruments gave rise to a strategic imperative: the "positivization of Islamic law." Positivization is a project of legal eclecticism aimed at transforming, codifying, and subordinating classical fiqh doctrines into the hierarchy of the national positive legal system. According to Wael B. Hallaq, in the modern era the nation-state monopolizes the authority to create law, so Islamic law can survive only if it is "absorbed" into state law.[8] Muhammad Syahrur also emphasized that the state possesses absolute authority to engineer the positivization of law to guarantee the order of civil society, thereby transforming religious moral values into the rule of law.[9]

The creation of commercial legal certainty through this positivization process has direct relevance to the global commitment of the Sustainable Development Goals. First, the availability of highly certain Islamic banking instruments contributes to SDG 8 (Decent Work and Economic Growth). This harmonization facilitates financial inclusion for Muslim populations that were previously unbanked due to their reluctance to engage with interest-based systems, thereby promoting inclusive economic growth.[10] Second, the codification of commercial contract law and the institutionalization of dispute resolution mechanisms constitute an essential manifestation of SDG 16 (Peace, Justice, and Strong Institutions). Targets 16.3 and 16.6 of the Sustainable Development Goals require the existence of transparent and strong judicial institutions that guarantee equal access to economic justice for all business entities.[11]

Previous studies (State of the Art) indicate that state intervention in sacralizing the market through fatwas is a global phenomenon. Iskandar et al. (2026) describe the role of the National Sharia Council of the Indonesian Ulema Council as an instrument of "Sacralizing the Market," in which fatwas legitimize financial capitalism through

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[8] Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 163–70; Wael B. Hallaq thoroughly explains how the modern nation-state has taken over all regulatory instruments that were previously controlled by independent fuqaha.

[9] Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 150–55.

[10] Ascarya, "Sustainibility of Islamic Banking in Indonesia: An Analysis of Sharia Compliance and Economic Growth," *Journal of Islamic Finance* 3, no. 1 (2014): 12–28.

[11] United Nations, "Goal 16: Promote Just, Peaceful and Inclusive Societies," Sustainable Development Goals, diakses April 17, 2026, https://sdgs.un.org/goals/goal16.

theological justification.[12] In the Gulf Cooperation Council (GCC) region, such as the United Arab Emirates, and in Malaysia, the centralization of fatwas is carried out directly by state institutions, such as the Shariah Advisory Council at Bank Negara Malaysia, whose decisions are final and binding on civil court judges.[13] Indonesia adopts a more democratic yet complex "quasi-state" approach, in which fatwas issued by an independent institution, namely the Indonesian Ulema Council, are incorporated into positive law through intermediaries such as Bank Indonesia and the Financial Services Authority. Constitutional Court Decision No. 65/PUU-XIX/2021 affirmed the constitutionality of this approach, dismissing doubts that the delegation of authority to MUI contradicts the principle of the rule of law.[14]

Although constitutional law studies on the authority of the Indonesian Ulema Council are abundant, there remains a gap in the literature regarding a dogmatic analysis of how institutional formulation patterns and the grammatical-juridical engineering of fatwa texts are rigidly transformed into provisions of civil contract law. This article seeks to fill that gap by examining the mechanism for positivizing DSN-MUI fatwas into Law No. 21 of 2008 on Islamic Banking and the Compilation of Sharia Economic Law, while also evaluating their significance in establishing legal certainty in commercial contracts within the framework of the Sustainable Development Goals.

This study applies normative legal research methods by employing statutory, conceptual, and comparative approaches. Furthermore, this study elaborates the ontological transformation of fatwas—from cultural authority (i'laniyah) into imperative legal norms (mulzim).

B. Results and Discussion

1. Ontological Transformation: From Cultural Authority to Commercial Legal Norms

The fundamental basis of legal certainty in the Civil Law system is absolute adherence to written codification. In contrast, within the epistemological discourse of Islamic law, a fatwa, as elaborated by Abu

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[12] Iskandar, et al., "Sacralizing the Market? The Role of DSN–MUI in the Legal-Economic Legitimacy," *Ahkam: Jurnal Ilmu Syariah* 26, no. 1 (2026): 45–60.

[13] Hakimah Yaacob and Sanep Ahmad, "Shariah Advisory Council of Bank Negara Malaysia: The Constitutional and Legal Set-Up," *Journal of Islamic Banking and Finance* 30, no. 1 (2013): 21–34; Engku Rabiah Adawiah Engku Ali, "Constraints and Opportunities in Islamic Banking," *Malayan Law Journal* 4 (2005): xc.

[14] Tarina, et al., "Kepastian Hukum Atas Fatwa DSN-MUI Pasca Putusan MK No. 65/PUU-XIX/2021," *Jurnal Sasana* 12, no. 2 (2023): 110–25.

Ishaq Al-Syatibi in Al-Muwafaqat, is defined as al-ifta'—an explanation of sharia law issued by a mufti in response to a question (istifta') from a mustafti (the person requesting the fatwa). The inherent nature of a fatwa is moralistic, facultative, and ghoiru mulzim (non-binding).[15] M. Hashim Kamali further explains that a fatwa is a responsive instrument that changes according to time and place, unlike statutory law (qanun), which is static and imperative.[16]

The diametrical tension between the dynamic nature of fatwas and the rigidity of commercial banking contracts requires a mechanism of harmonization. Max Weber, in the sociology of law, describes this process as "formal legal rationalization," in which customs or religious norms must be formalized so that capitalism and markets can operate with a high degree of risk calculation.[17] This is consistent with the theory of governmental social control proposed by Donald Black, which holds that as the structure of commercial society becomes increasingly complex, religious morality must be codified as positive law to maintain economic order.[18]

The genealogy of this ontological transformation in Indonesia did not occur through top-down coercion, but rather evolved through a strong cultural pathway. Its initial momentum came from the workshop held by the Indonesian Ulema Council in August 1990, which discussed the dilemma of bank interest and ultimately recommended the establishment of an interest-free bank, which led to the creation of Bank Muamalat. The dynamics of financial innovation, including the emergence of Islamic mutual funds, encouraged MUI to organize another Ulama Workshop in 1997. Through an agreement reached on 14 October 1997, the National Sharia Council was established and officially began operating in 1998 under the leadership of H. A. Malik Fadjar as a manifestation of the unification of "the voice of the ulama" in the field of economics.[19]

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15 Abu Ishaq Al-Syāṭibi, *Al-Muwafaqat fi Ushul al-Shari'ah*, Vol. 4 (Kairo: Dar al-Fikr, t.t.), 244.

16 Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2008), 267.

17 Max Weber, Economy and Society: An Outline of Interpretive Sociology, ed. Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978), 656–57. Weberian analysis puts forward calculability as a prerequisite for capital investment.

18 Donald Black, *The Behavior of Law* (New York: Academic Press, 1976), 34–38.

19 The historical dynamics of the track record of the DSN MUI and the Ulama Workshops in 1990 and 1997 are adapted from tracing the genealogy of the MUI institution as outlined in research on the history of Islamic banking in Indonesia. See

The culmination of this cultural transformation was legislative intervention through the enactment of Law Number 21 of 2008 concerning Islamic Banking. Article 1, paragraph 12 formulates the key phrase: "Sharia Principles are principles of Islamic law in banking activities based on fatwas issued by institutions that possess the authority..." This provision created a "paradigm shift." Fatwas, which originally existed within the orbit of moral and social authority, were drawn into the epicenter of constitutional law and transformed into substantive material within statutory regulations. Yeni Salma Barlinti notes that this delegation of authority has functionally transformed DSN-MUI into a semi-governmental institution.[20] This ontological transformation strengthens the foundation for sustainable economic development under SDG 8 by providing legal certainty through instruments that protect the flow of capital within the Muslim community.

2. Patterns of the Positivization of DSN-MUI Fatwas in the Architecture of Business Regulation

Converting fiqh texts written in classical Arabic—laden with khilafiyah dialectics (differences among schools of thought)—into the language of banking contracts and accounting requires a complex institutional mechanism. To mitigate this anomaly, the state established a filtering instrument known as the Islamic Banking Committee (KPS). KPS is a tripartite institution consisting of Bank Indonesia/Financial Services Authority, the Ministry of Religious Affairs, and the National Sharia Council of the Indonesian Ulema Council, which functions as a clearinghouse and a "legal drafting kitchen." When OJK initiates new regulations or banking products, KPS is tasked with eliminating theological elements that are too abstract from MUI fatwas, extracting the core sharia principles, and formulating them into measurable positive legal drafting.[21]

Based on an examination of the regulations issued by Bank Indonesia and the Financial Services Authority, this article identifies three main patterns (modus operandi) in the positivization of Islamic economic fatwas:

Jaih Mubarok, The Development of Islamic Economic Law in Indonesia (Bandung: Refika Aditama, 2012), 85.

[20] Yeni Salma Barlinti, "The Position of DSN Fatwas in the National Legal System," Mimbar Hukum 22, no. 2 (2010): 258–73.

[21] N. S. Imaniyati et al., "The Fatwa Position of DSN-MUI in The National Banking System," *Jurnal Hukum Bisnis Islam* 8, no. 1 (2025): 88–104.

1. **Total Adoption Pattern (Implicit and Explicit Positivization):** This pattern directly copies the fundamental principles of fatwas into state regulations. For example, the fatwa prohibiting interest is reproduced in full in Article 2 of Law Number 21 of 2008 concerning Islamic Banking, which prohibits activities involving riba, gharar, and maysir. This copy-paste pattern is smoothly implemented because the provision constitutes a qath'i (definitive) prohibition that, philosophically, reinforces the principle of good faith contained in Article 1338 of the Indonesian Civil Code.[22]
2. **Contractual Adaptation Pattern:** Fatwa texts often employ fiqh-based arguments derived from multiple schools of thought. When positivized, the Islamic Banking Committee (KPS) adapts its terminology to align with the national civil law regime. For example, DSN-MUI Fatwa No. 08/DSN-MUI/IV/2000 concerning Musyarakah Financing adapts the classical fiqh concept of syirkah into the nomenclature of "Musyarakah Financing." State law then imposes additional covenants, such as requiring corporate partners to possess the legal status of a limited liability company (PT), a requirement unknown in premodern fiqh.[23]
3. **Expansion Pattern (Operational Expansion):** This occurs when a highly specific fatwa is extensively developed by the Financial Services Authority to provide a legal framework for modern derivative products. The main example is DSN-MUI Fatwa No. 42/DSN-MUI/V/2004 concerning Sharia Charge Cards. The substance of this fatwa was later expanded to regulate the entire ecosystem of e-money, Islamic mobile banking, and eventually became the foundation for regulations on sharia-based peer-to-peer lending (fintech). POJK Number 77/POJK.01/2016 and its amendments absorb the spirit of this fatwa to ensure that the digital lending ecosystem remains free from predatory lending practices.[24]

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[22] Government of the Republic of Indonesia, Civil Code (Burgerlijk Wetboek), Article 1338 which guarantees the principle of good faith (te goeder trouw) and freedom of contract.

[23] The elaboration of the fatwa adaptation is strongly reflected in the formulation of Bank Indonesia Regulation No. 7/46/PBI/2005 concerning Fund Collection and Distribution Agreements for Banks Carrying Out Business Activities Based on Sharia Principles.

[24] Financial Services Authority Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Lending Services. The OJK combines the substance of the DSN and MUI in mitigating cyber finance risks.

These three patterns demonstrate the flexibility of Indonesia's state legal system in bridging religious law with the rationality of modern capitalism.

3. Commercial Contract Formulation: Mabda' Hurriyah al-Ta'aqud, Takhayyur, and Talfiq

The reliability of a commercial legal system is measured by its ability to guarantee the fulfillment of proprietary rights, certainty of execution, and the distribution of risk. The construction of Islamic banking legislation in Indonesia is founded upon one major philosophical principle: the principle of freedom of contract (mabda' hurriyah al-ta'aqud). This progressive principle grants the parties broad autonomy to design, negotiate, and create new forms of commercial agreements (innominate contracts), provided that they do not involve matters prohibited under Sharia law.[25]

The juridical-theological justification for the principle of mabda' hurriyah al-ta'aqud is derived from the prescriptions of the Qur'an, such as the command to fulfill agreements in QS. Al-Maidah [5]: 1 ("O you who believe, fulfill your contracts...") and the prohibition against exploitation in QS. An-Nisa' [4]: 29 ("...except through trade conducted by mutual consent..."). The saying of Prophet Muhammad further confirms this maxim: "Muslims are bound by the conditions they make, except a condition that makes the lawful unlawful or the unlawful lawful" (Narrated by Tirmidhi).[26] Armed with this legitimacy, classical texts do not confine the National Sharia Council of the Indonesian Ulema Council and lawmakers; instead, they engage in legal engineering (rechtvinding) through the methods of maslahah mursalah, takhayyur, and talfiq.

Maslahah Mursalah is a method of ijtihad used to establish legal rulings that lack explicit textual support but remain consistent with the maqashid al-shariah (the objectives of Islamic law). Al-Ghazali argued that maslahah must protect religion, life, intellect, lineage, and property (hifdz al-mal). Abdul Wahab Khallaf further emphasized that this method is valid only if the benefit is real, rational, and intended for

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[25] Syamsul Anwar, Sharia Contract Law: A Study of Contract Theory in Muamalat Fiqh (Jakarta: Rajawali Pers, 2007), 114–16.

[26] Sunan at-Tirmidzi, Kitab Al-Ahkam, Hadith Hasan Sahih; Ministry of Religion of the Republic of Indonesia, Al-Qur'an and its Translation (Jakarta: Holy Book Procurement Project, 2000), QS. Al-Maidah [5]: 1 and QS. An-Nisa [4]: 29.

public interest (amaliyah maliyah).[27] Meanwhile, takhayyur is a method of selecting and adopting minority scholarly opinions or views from different schools of thought that are most relevant to the demands of the time. Talfiq, on the other hand, is a more radical innovation that hybridizes elements from various schools of thought within a single contract.[28]

The reliability of this methodology is clearly reflected in the formulation of the following innovative commercial contracts:

1. **The Hybridization of Murabahah bil Wakalah Contracts:** Classical fiqh, particularly within the majority Shafi'i school, requires the bank, as the seller, to physically possess the goods (qabdh) in its warehouse before selling them to the customer under a murabahah (installment sale) arrangement. This requirement would amount to commercial suicide for modern banks, which function purely as financial intermediaries rather than distributors of goods. Through the instruments of maslahah and takhayyur, the National Sharia Council of the Indonesian Ulema Council adopted the views of Ibn Qayyim and the rationalist schools of thought, leading to the legal construction of murabahah bil wakalah. Under this mechanism, the bank authorizes the customer to purchase the goods directly on its behalf. This scheme is formulated in the Explanation of Article 19 paragraph (1) letter d of Law Number 21 of 2008 concerning Islamic Banking: "A murabahah contract is a financing contract for goods in which the purchase price is disclosed to the buyer, and the buyer pays a higher price as an agreed profit margin." The use of the term "financing" in this context resolves the accounting and governance obstacles faced by modern banking institutions.[29]
2. **Flexibility in the Valuation of Mudharabah and Musyarakah Capital:** In classical literature, orthodox scholars prohibited profit-sharing capital contributions in the form of physical assets or goods ('urudh). Capital had to be in the form of cash (naqdain) to prevent

[27] Abdul Wahhab Khallaf, *Ilmu Ushul Al-Fiqh* (Kairo: Maktabah al-Da'wah al-Islamiyah, 1990), Al-Ghazali's thoughts on maslahah and the hierarchy of maqashid play a crucial role as an analytical framework in modern ushul al-fiqh.

[28] Rahmani and Komaruddin, "Harmonisasi Fatwa Dan Regulasi Perbankan Syariah Di Indonesia," *At-Tasyri* 15, no. 2 (2025): 200–215. talfiq is no longer viewed as a form of legal opportunism (tatabbu' ar-rukhas), but rather as a methodological necessity for formulating legal solutions..

[29] Pemerintah Republik Indonesia, *Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah* (State Gazette of the Republic of Indonesia of 2008 Number 94), Explanation of Article 19 paragraph (1) letter d.

disputes over valuation during profit distribution (gharar). However, in modern corporations, venture capital is often invested in technology, heavy equipment, or property. By applying the principle of takhayyur, the National Sharia Council of the Indonesian Ulema Council adopted the Hanafi view, allowing in-kind assets to be used as capital contributions on the condition that they be subject to monetary valuation by an independent appraiser at the time the contract is signed. This formulation protects corporate contracts against invalidity.[30]

3. **The Revolutionary Innovation of Musyarakah Mutanaqisah (MMQ) and Ijarah Maushufah:** The highest sophistication of talfiq can be seen in Islamic mortgage financing products (Musyarakah Mutanaqisah) and infrastructure financing for toll roads or power plants through Sukuk Ijarah Maushufah fi al-Dzimmah. In MMQ-based home financing under DSN-MUI Fatwa No. 73/2008, the National Sharia Council combines three contractual relationships: (a) musyarakah, involving joint capital participation between the bank and the customer; (b) ijarah, under which the customer rents the bank's ownership portion; and (c) bai', through which the customer gradually purchases the bank's share. This complex hybridization has no precedent in classical fiqh literature. Yet, it is legitimized to ensure inclusive access to housing for society, thereby supporting the achievement of the Sustainable Development Goals.[31] Similarly, financing for assets that do not yet exist at the time the contract is signed, such as toll road projects, is facilitated through the Ijarah Maushufah fi al-Dzimmah (leasing of future benefits) contract, which has become the backbone of sovereign sukuk issuance.[32]

At the operational level, Article 32 of Law Number 21 of 2008 concerning Islamic Banking mandates the establishment of a Sharia

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[30] The adaptation of this flexible valuation method is prescriptively incorporated into banking operations based on DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000 concerning Mudharabah Financing. The valuation of in-kind assets constitutes one of the greatest fiqh breakthroughs of the twentieth century.

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[31]. Habib Ahmed, "Islamic Law, Adaptability and Financial Development," *Islamic Economic Studies* 13, no. 2 (2006): 79–101. Ahmed examines how sharia principles are adapted to meet housing needs.

[32] M. Kabir Hassan and Mervyn K. Lewis, *Handbook of Islamic Banking* (Cheltenham: Edward Elgar Publishing, 2007), 160. *Ijarah Maushufah fi al-Dzimmah* constitutes the backbone of the securitization of state financing through Bappenas sukuk instruments.

Supervisory Board (DPS) as a micro-level filter within the internal corporate structure. According to the 2025 edition of Jurnal Maliyah, the synergy between regulation and internal compliance represents the highest manifestation of hifdz al-mal (the protection of customers' wealth).[33]

4. Legal Implications of Basyarnas, Religious Courts, and KHES within the Framework of SDG 16

The positivization of substantive law, including contract provisions and fatwa formulations, will not create a healthy investment climate without credible formal legal infrastructure, such as procedural law. The characteristics of syndicated financing contracts require judicial institutions capable of enforcing security rights (conservatoir beslag) and resolving complex bankruptcy proceedings fairly and efficiently. This institutional certainty constitutes a key indicator in achieving SDG 16, namely ensuring the availability of transparent, strong, and non-discriminatory justice institutions.[34]

Historically, the jurisdiction of sharia courts in Indonesia was limited to family law matters, such as marriage, inheritance, and waqf, as regulated by Law Number 7 of 1989. However, this landscape changed drastically with the enactment of Law Number 3 of 2006 concerning Religious Courts. This amendment expanded the authority of the Religious Courts by granting them absolute competence to examine, adjudicate, and resolve all disputes in the field of sharia economics, including insurance, mutual funds, and the Islamic capital market.[35]

Nevertheless, this harmonization encountered a serious anomaly due to the insertion of a Choice of Forum clause in the Explanation of Article 55, paragraph (2), of Law Number 21 of 2008 concerning Islamic Banking. This clause created a legal loophole that allowed disputing parties to choose the District Court (General Court) as the forum for resolving their disputes. This dualism produced serious consequences: judges in the District Courts, educated within the Dutch

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[33]. Maliyah Journal, "Harmonization of Sharia and Conventional Banking Regulations: The Perspective of Maqāṣid sharī'ah," Maliyah Journal 9, no. 1 (2025): 45–60

[34] Nadirsyah Hosen, "The Shari'a and the Indonesian Constitution: Human Rights and the Protection of the Public Interest," *Journal of Islamic Studies* 15, no. 2 (2004): 200–21.

[35] A. Mukti, "Religious Courts in the Indonesian Constitutional System: Developments After Law Number 7 of 1989," (Jakarta: Ditbinbapera, 1989); Its existence was further strengthened by Law Number 3 of 2006, which disrupted the traditional paradigm that had limited the authority of the Religious Courts

Burgerlijk Wetboek civil law system, often annulled profit-sharing agreements as inconsistent with conventional civil law and refused to base their ratio decidendi on DSN-MUI fatwas. This situation created investment insecurity and legal uncertainty, threatening the stability of the banking system.

This jurisdictional disorder was conclusively resolved through one of the most important jurisprudential landmarks in Indonesia, namely Constitutional Court Decision No. 93/PUU-X/2012. The Constitutional Court declared the explanation of Article 55 paragraph (2) unconstitutional because it created legal uncertainty in violation of the 1945 Constitution. This final and binding decision completely closed the door to the District Courts and established the Religious Courts as the sole authority possessing absolute competence in Sharia economic disputes.[36] Tarina et al. (2023), in their empirical study, affirm that this Constitutional Court decision indirectly sealed the status of DSN-MUI fatwas as unquestionable parameters of legality before the courts.[37]

To address concerns regarding the absence of codified written law, given that the fiqh tradition is not structured like the Civil Code, the Supreme Court introduced a historic breakthrough by promulgating Supreme Court Regulation Number 2 of 2008 concerning the Compilation of Sharia Economic Law. KHES constitutes the magnum opus of positivization within the judicial sphere. This guidebook contains hundreds of provisions whose substance is directly transcribed from the DSN-MUI fatwa compendium. The existence of KHES has removed the doubts of both foreign and domestic investors, as judges now possess a definitive, measurable, and uniform material guidebook for adjudicating breaches of Islamic business contracts.[38]

In the non-litigation sphere of Alternative Dispute Resolution (ADR), business actors show a strong preference for arbitration. The National Sharia Arbitration Board facilitates dispute resolution. Large-scale commercial contracts depend heavily on Basyarnas because its proceedings are confidential, faster, and decided by arbitrators who

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[36] Constitutional Court Decision No. 93/PUU-X/2012 annulled the option of choosing alternative litigation forums through a decision spanning hundreds of pages.
[37]. Tarina, et al. "Legal Certainty Regarding the DSN-MUI Fatwa Following the Constitutional Court's Decision." Sasana Journal, 2023
[38] Ahyar A. Gayo, "Law on the Position of the MUI Fatwa in Efforts to Encourage the Implementation of Sharia Economics," 2011; Supreme Court of the Republic of Indonesia, Supreme Court Regulation Number 2 of 2008 concerning the Compilation of Sharia Economic Law

combine expertise in fiqh muamalah with experience in global finance.[39] Referring to Law Number 30 of 1999 concerning Arbitration, decisions issued by the National Sharia Arbitration Board are final. The synergy of formal law operates effectively: if the losing party in arbitration refuses to comply with the award, an execution order (fiat eksekusi) authorizing forced enforcement through state authorities is issued and carried out by the Chief Judge of the local Religious Court.[40]

The symmetrical synergy between DSN-MUI fatwas as substantive law, the codification of the Compilation of Sharia Economic Law as substantive legal guidance, and the absolute competence of the Religious Courts and National Sharia Arbitration Board as formal executory law creates an almost flawless system of dispute protection. Empirically, this institutional architecture fulfills the objectives of SDG 16 by demonstrating to the international community that Indonesia's Civil Law system is capable of providing justice, coercive power, and certainty of execution equal to, or even more adaptive than, any secular commercial court in the world.[41]

C. Conclusion

The harmonization of Islamic commercial law into Indonesia's positive civil legal system represents an extraordinary, moderate, and highly responsive architecture of legal eclecticism in responding to the acceleration of global financial capitalism. The extensive positivization of a series of DSN-MUI fatwas into the body of Law Number 21 of 2008 concerning Islamic Banking, together with the derivative regulations issued by monetary authorities such as Bank Indonesia and the Financial Services Authority, has drastically transformed the ontological status of fatwas. Fatwas are no longer alienated as cultural advice (i'laniyah) of a voluntary nature, but have metamorphosed into normative-imperative rules that bind all commercial transactions within the realm of civil law.

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[39] R. Y. Al-Misri, "Amal Al-Fuqaha' lada Rijal Al-Amwal," *Journal of Research in Islamic Economics* 21, no. 1 (2004). Discusses the dual competence (hybrid expertise) required of arbitrators.

[40] Government of the Republic of Indonesia, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (State Gazette of the Republic of Indonesia of 1999 Number 138).

[41] This SDG target was adopted as a benchmark for the success of Indonesian jurisprudence, which ensures equal opportunities for sharia corporate protection at the global level.

This integration is not a form of blind assimilation. Through the analytical filter of the Islamic Banking Committee (KPS), the state carries out adoption, terminological adaptation, and regulatory expansion with precision. In formulating the texts of commercial contracts, the authorities rely on the principle of freedom of contract (mabda' hurriyah al-ta'aqud). By exploiting the flexibility of contemporary legal discovery methodologies—from the rationality of maslahah mursalah, the selective openness of takhayyur, to the sophistication of talfiq hybridization—the state has successfully injected legal certainty into modern derivative instruments. This is evident from the success of legal engineering in contracts such as Murabahah bil Wakalah, in-kind Mudharabah investment valuation, and integrated financing structures such as Musyarakah Mutanaqisah (Islamic home financing) and Ijarah Maushufah (sukuk).

Ultimately, the synergy of this positivization of substantive law is perfected by the certainty of a highly robust system of formal legal enforcement. The monopoly of absolute jurisdiction held by the Religious Courts and the recognition of execution orders for decisions of the National Sharia Arbitration Board following Constitutional Court Decision No. 93/PUU-X/2012, supported by the central guidance of the Compilation of Sharia Economic Law, demonstrate the state's absolute commitment to legal protection. This blueprint for harmonizing and enforcing Islamic banking law in Indonesia is not merely a matter of internal banking regulation but a tangible contribution to achieving the Sustainable Development Goals. Contractual certainty promotes financial inclusion, accelerating inclusive economic growth (SDG 8). At the same time, the resilience of the commercial dispute resolution system reflects the existence of strong, transparent, and just law enforcement institutions (SDG 16) on the global stage.

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