

Sharia Fintech In The Digital Age: Human Rights in Sharia Fintech Through Criminal Law Safeguards

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Abstract

This research analyses the impact of Sharia fintech development on human rights in the Industrial Revolution 4.0 and Society 5.0. In this digital era, technological developments have brought a significant revolution in the financial sector, including within the scope of sharia finance. This study aims to analyze the impact of the expansion of sharia fintech on human rights in a broader context. This research uses a normative legal method by adopting a statutory, conceptual, comparative and futuristic approach. By using analytical content, this study explores the impact generated by implementing sharia fintech on aspects related to human rights, including financial inclusion, social justice, and economic opportunities. The analysis shows that sharia fintech, operating with Islamic economic principles emphasizing fairness, sustainability, and risk sharing, can contribute to fulfilling and protecting human rights. Along with the benefits offered, such as increasing access to financial services for the public, potential challenges and obstacles are also considered, including data privacy and cyber security issues. The results of this study Research shows that Islamic FinTech in Indonesia has great potential to improve financial inclusion and economic justice, especially for marginalised groups. However, challenges such as limited awareness, immature regulations, and security concerns need to be addressed through supportive regulations, public education, and collaboration with Islamic financial institutions. The importance of balancing technological innovation, sharia ethics, and legal protection is reflected in the implementation of various laws in Indonesia, such as the Criminal Code, ITE Law, and Personal Data Protection Law, to regulate electronic transactions, protect personal data, and prevent financial crimes.

Keywords

Sharia Fintech; Digital Era; Human Rights; Financial Inclusion; Social Justice.



Introduction

Humans have witnessed profound changes in the global financial landscape in the last decade, primarily driven by digitalization and the rise of financial technology or fintech.¹ This has affected almost every aspect of financial transactions, from how to shop to how to invest.² According to a report released by United Overseas Bank (UOB), PwC, and the Singapore Fintech Association (SFA), there has been consistent growth in the number of fintech companies in Indonesia, in line with the country's dynamic digital financial penetration.³ In 2017, Indonesia had around 440 fintech entities, but this figure increased by 32.5% to 583 entities in 2018. This increase continued, with the number of fintechs reaching 691 in 2019 and 758 in 2020. As of September 2021, this number has grown by 3.56%, to a total of 785 entities. In the Southeast Asia region, Indonesia is second in terms of the number of fintechs, with Singapore leading the way with 1,350 entities. Malaysia follows Indonesia with 549 entities, while the Philippines and Vietnam have 268 fintech entities each.⁴ Based on a summary of the AFTECH AMS 2022/2023 Report, as of the third quarter of 2022, Indonesia's fintech sector managed to account for around 33% of all fintech funding in the Southeast Asia region.⁵ This makes Indonesia the second largest recipient of funding in the region, with Singapore topping the list with 43% of total funding.⁶ Overall, the fintech industry in Indonesia has experienced significant growth in recent years. From having 440 fintech entities in 2017, Indonesia now has 785 entities as of September 2021. This growth shows the positive dynamics and capability of Indonesia in adapting to financial technology innovation. In Southeast Asia, Indonesia is second only to Singapore in terms of the number of fintech entities and funding. In

¹ Jadzil Baihaqi, "Financial Technology Peer-To-Peer Lending Berbasis Syariah Di Indonesia," *TAWAZUN: Journal of Sharia Economic Law* 1, no. 2 (2018): 116–32, <https://doi.org/10.21043/tawazun.v1i2.4979>.

² Wahid Wachyu Adi Winarto, "Peran Fintech dalam Usaha Mikro Kecil dan Menengah (UMKM)," *Jesya (Jurnal Ekonomi & Ekonomi Syariah)* 3, no. 1 (2020): 61–73, <https://doi.org/10.36778/jesya.v3i1.132>.

³ PWC, "Indonesia's Fintech Lending," www.pwc.com/, 2022.

⁴ Alif Karnadi, "Jumlah Fintech di Indonesia Terus Meningkatkan hingga 2021," dataindonesia.id/, 2021, <https://dataindonesia.id/digital/detail/jumlah-fintech-di-indonesia-terus-meningkat-hingga-2021>.

⁵ East Ventures, "Navigating the Fintech Landscape: Indonesia's Journey and Potential," east.vc/, 2023, <https://east.vc/insights/navigating-the-fintech-landscape-indonesias-journey-and-potential/>.

⁶ Databoks, "Fintech Indonesia Annual Members Survey 2022/2023," databoks.katadata.co.id/, 2023.

terms of funding, Indonesia managed to secure around 33% of total fintech funding in the region by the third quarter of 2022. This indicates investor confidence and huge market potential in Indonesia, although Singapore still dominates with 43% of total funding. Thus, this momentum of growth and investment needs to be harnessed so that Indonesia can maximize the potential and benefits of the fintech sector.⁷

Amidst this revolution, sharia fintech is a prominent phenomenon that integrates Islamic financial principles with modern technology. This fintech must comply with one of the main doctrines in *muamalah*, namely the principle of '*an taradhin*, or the principle of free agreement between the parties involved in the contract. This concept emphasizes the importance of providing equal opportunities to all related parties to express their statements of consent and *qabul*. The essential criteria that must be met in this process include the existence of an object ('*aqid*), a subject (*mu'qud 'alaihi*), and an explicit intention to hold aqad (*sighat*). Apart from that, there must be provisions regarding prices or wages and benefits stipulated in the agreement. The legal aspect also plays a crucial role, which may be a law, fatwa, or halal certification. The fundamental principle governing sharia fintech financing is consistency and conformity with sharia norms. This includes avoiding elements such as *riba* (usury interest), *gharar* (uncertainty), *maysir* (speculation), *tadlis* (deception), *dharar* (loss), *zhulm* (tyranny), and actions or transactions that are considered haram.⁸ It is essential to understand that the Islamic economy, the basis of sharia fintech, is built on principles that seek to ensure fairness, transparency and mutual prosperity in financial transactions. These principles, in turn, have deep resonance with the concept and goals of human rights, which include recognition of the dignity of every individual and protection against economic exploitation.⁹

According to the latest report from the United Nations Development Program (UNDP), many micro-entrepreneurs in Indonesia still depend heavily on funds from internal sources, such as family, to fund their

⁷ Rohmatun Nafiah dan Ahmad Faih, "Analisis Transaksi Financial Technology (Fintech) Syariah dalam Perspektif Maqashid Syariah," *IQTISHADIA Jurnal Ekonomi & Perbankan Syariah* 6, no. 2 (2019): 167–75, <https://doi.org/10.19105/iqtishadia.v6i2.2479>.

⁸ Darmawan Darmawan dan Muh. Taufiq Al-Hidayah, "Manajemen Risiko Fintech Dalam Pembiayaan Syariah," *Jurnal Bisnis dan Sosial* 05, no. 02 (2019): 17–32, <https://doi.org/https://doi.org/10.25124/businessjournal.v5i2.2150>.

⁹ "Pasal 1 Deklarasi Universal Hak Asasi Manusia (DUHAM) dan Kovenan Internasional tentang Hak-Hak Ekonomi, Sosial dan Budaya (ICESCR)".

businesses.¹⁰ The UNDP report notes that around 36.7% of the total micro-entrepreneurs in the country rely on financial support from their family members.¹¹ On the other hand, about a third, or 33.2%, of them utilize credit facilities from banking institutions to finance their operations.¹² In this context, sharia fintech can emerge as an alternative solution that has the potential to meet these funding needs. Based on statistics from the World Population Review, there is great potential that can be gathered, considering that the Muslim population in Indonesia in 2020 was around 229 million people, which represents 87.2% of the total population which reached 273.5 million people.¹³ This shows that Sharia Fintech has a huge opportunity to grow in Indonesia. Firstly, with the majority of Indonesia's population being Muslim, there is a solid consumer base that is likely to seek financial solutions that comply with sharia principles. Secondly, technology adoption in Indonesia is on the rise, and the combination of technology and sharia principles can provide innovative and relevant financial solutions for the community.

As sharia fintech is still in its early stages of development, it is important to conduct an in-depth evaluation of its impact on human rights. In the context of the rapid growth of the fintech sector, sharia fintech offers the potential to create a more inclusive and equitable economy by bringing together sharia principles and digital innovation.¹⁴ This analysis focuses on several crucial dimensions between sharia fintech and human rights. One of them is how sharia fintech can play a role in increasing access to financial services for people who previously had little or no access to them. The ability to access adequate financial services is a key element in the realization of economic and social rights, such as the right to work and earn an adequate

¹⁰ United Nations Development Programme, "Micro, Small and Medium Enterprises bear the brunt of the COVID-19 pandemic in Indonesia," www.undp.org/, 2021, <https://www.undp.org/asia-pacific/news/micro-small-and-medium-enterprises-bear-brunt-covid-19-pandemic-indonesia>.

¹¹ Aji Cakti, "UNDP: Usaha Mikro Masih Bergantung Pada Sumber Pendanaan Keluarga," www.antaraneews.com/, 2021.

¹² Yuddy Slamet Rasidi, Catur Setio Budi, dan Prasetyo Arie Hatmoko, "Fintech Syariah Alternatif Pendanaan UMKM Pada Masa Pandemi Covid-19 Di Indonesia," *Finansha-Journal of Sharia Financial Management* 2, no. 1 (2021): 1–10, <https://doi.org/10.15575/fjsfm.v2i1.12462>.

¹³ Kormen Barus, "Jumlah Penduduk Muslim Indonesia Meningkatkan, PowerCommerce Asia Tangkap Peluang, Luncurkan Halal Plaza," www.industry.co.id/, 2020.

¹⁴ Refi Agustina dan Fita Nurotul Faizah, "Sharia Fintech: Opportunities and Challenges in Indonesia," *Journal of Islamic Economics (JoIE)* 3, no. 1 (2023): 61–75, <https://doi.org/10.21154/joie.v3i1.6289>.

income. The digital transformation in the world of finance has shaken up the global economy and brought about a new paradigm in financial transactions.¹⁵ Indonesia, with its majority Muslim population and increasing technology penetration, finds itself at a unique intersection of tradition and innovation. The rapid growth of the fintech industry in the country demonstrates the adaptability and willingness of society to accept more modern financial solutions. However, the rise of sharia fintech emphasizes the importance of combining innovation with ethical and moral principles. Furthermore, an in-depth analysis of Sharia fintech and its implications for human rights is essential to ensuring that this development is not only economically beneficial but also contributes positively to the social welfare of society.

In various recent studies on sharia fintech, several aspects have been investigated, for example in the research conducted by Darmawan et al., the main focus is on the risk management associated with the use of fintech in Islamic financing. The results indicate the importance of developing effective risk management strategies to maintain the sustainability and integrity of Islamic financial institutions amidst fast-changing financial market dynamics.¹⁶ Meanwhile, a study conducted by Rinrin Puspita et al., explored public perceptions towards the use of fintech services in Islamic financial institutions. The results of this study reveal that there is an increasing acceptance from the public towards sharia fintech services, along with an increasing understanding of the benefits that this technology brings, including ease of access and greater transparency.¹⁷ On the other hand, research directed by Nurul Istifadhoh et al., identified the potential of sharia fintech as an important tool for national economic recovery amid the COVID-19 pandemic. They emphasized that sharia fintech, with its principles that emphasize fairness and inclusiveness, can serve as a catalyst in restoring the national economy by supporting micro, small, and medium enterprises (MSMEs) and promoting broader financial inclusion.¹⁸ In the research presented by Dani Setiawan et al., the focus is on the factors that

¹⁵ Nafis Alam, Lokesh Gupta, dan Abdolhossein Zamani, "Digitalization and Disruption in the Financial Sector," *Fintech and Islamic Finance*, 2019, 1–9, https://doi.org/10.1007/978-3-030-24666-2_1.

¹⁶ Darmawan dan Al-Hidayah, "Manajemen Risiko Fintech Dalam Pembiayaan Syariah."

¹⁷ Rinrin Yuspita, Silviana Pebruary, dan Aulia Zahra Husnil Kamala, "The Society's Perceptions on the Use of Fintech Services in Sharia Financial Institutions," *Jurnal Ekonomi & Keuangan Islam* 5, no. 2 (2019): 87–92, <https://doi.org/10.20885/jeki.vol5.iss2.art6>.

¹⁸ Nurul Istifadhoh, Inarotul A'yun, dan Hafidhotul Mufidhoh, "Sharia Fintech As An Instrument Of National Economic Recovery Amid The Covid-19 Pandemic," *Dinar : Jurnal Ekonomi dan Keuangan Islam* 8, no. 2 (2021): 66–77, <https://doi.org/10.21107/dinar.v8i2.11115>.

determine individual behavioral intentions to use Islamic financial technology. The study found that factors such as perceived ease of use, perceived benefits, and a positive attitude towards technology are some of the key elements that encourage individuals to adopt and use sharia fintech.¹⁹ The novelty of this research shows that Sharia fintech, as a unique blend of traditional Islamic values and modern financial technology, has been the center of attention in many previous studies.

However, what sets this research apart from others is the deep integration of principles from two key frameworks: ICESCR and UDHR. While previous research may have focused on technical aspects or sharia principles in fintech, this research emphasizes the importance of linking sharia fintech with international human rights norms. This signifies a more inclusive and universal approach, reflecting the important role of technology in creating a just and inclusive society. Furthermore, the depth of analysis regarding the Indonesian context, with the world's largest Muslim population, gives the research special nuance. Through an emphasis on local regulatory frameworks such as OJK and Fatwa DSN MUI, this research offers unprecedented insights into the unique challenges and opportunities faced by Indonesia in developing its sharia fintech sector. Moreover, by providing detailed recommendations such as the need for public education, consumer protection, and collaboration with Sharia financial institutions, this research proposes concrete solutions to overcome the existing challenges. Thus, this research not only enriches the existing literature with its in-depth analysis but also with its holistic approach and action-based solutions.

In contrast to this research, his study finds that sharia fintech shows significant potential for enriching the foundation of human rights and how it is protected under criminal law in the digital era. With an approach rooted in sharia principles such as justice, shared prosperity, and transparency, it paves the way for more inclusive and equitable financial innovation. Reflecting on the findings of this study, it is important to recognize the uniqueness and potential of sharia fintech in redefining the financial paradigm in the digital age and how it is protected by criminal law. Rather than simply being an alternative to conventional financial products, Islamic fintech demonstrates how technology and religious ethical values can go hand in hand to create fairer and more responsible financial solutions. In

¹⁹ Dani Setiawan, Darwanto Darwanto, dan Edy Yusuf Agung Gunanto, "Determinants of Behavioral Intentions to Use Sharia Financial Technology (Fintech)," *Signifikan: Jurnal Ilmu Ekonomi* 10, no. 2 (2021): 325–42, <https://doi.org/10.15408/sjie.v10i2.21451.a>

the context of human rights and criminal law, sharia fintech offers an insight into how technology can be integrated with ethical principles to ensure that economic progress goes hand in hand with social progress. Therefore, as we enter a new phase of digital innovation, it is important to continue to explore and support the growth of sharia fintech as a means to achieve a more inclusive and sustainable vision of finance.

Method

The research adopts a normative juridical approach methodology in its analysis structure.²⁰ It emphasizes in-depth textual exploration of various legal documents and literature, aiming to understand and evaluate the intrinsic impact of sharia fintech on Human Rights in today's digital era. In order to achieve clarity and accuracy of analysis, this research is based on a multi-dimensional approach, which includes legal, conceptual, comparative, and futuristic.²¹ This approach allows research to have a holistic view of the subject, considering various aspects of developments in Islamic finance technology and their impact on existing human rights norms and principles. Furthermore, this research was enriched by a wide range of legal materials, covering primary, secondary, and tertiary sources, all of which contributed to forming a comprehensive and insightful analysis.²² This method has a descriptive-prescriptive character, in which the findings and facts produced not only describe the current situation but also try to offer well-considered recommendations and solutions based on the analysis results.²³ This research seeks to map the current landscape and

²⁰ Anis Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (2022): 327–58, <https://doi.org/10.15294/lesrev.v6i2.58131>.

²¹ Panca Sarjana Putra et al., "Judicial Transformation: Integration of AI Judges in Innovating Indonesia's Criminal Justice System," *Kosmik Hukum* 23, no. 3 (2023): 233–47, <https://doi.org/10.30595/kosmikhukum.v23i3.18711>.

²² Zico Junius Fernando et al., "The Freedom of Expression in Indonesia," *Cogent Social Sciences* 8, no. 1 (2022): 1–11, <https://doi.org/10.1080/23311886.2022.2103944>.

²³ Erdianto Effendi et al., "Trading in Influence (Indonesia): A Critical Study," *Cogent Social Sciences* 9, no. 1 (31 Desember 2023): 1–13, <https://doi.org/10.1080/23311886.2023.2231621>.

influence and shape the direction of future developments. Content analysis techniques were adopted in this study to ensure that the interpretation of data from various legal sources is carried out accurately and consistently. It includes decomposition and critical evaluation of the information obtained, focusing on an in-depth understanding of the material.²⁴ This methodological approach seeks to present in-depth and comprehensive answers to the research questions, significantly contributing to understanding and navigating the complexities associated with sharia fintech and its impact on human rights in the digital era.

Result and Discussions

Leveraging Sharia Fintech to Expand Financial Inclusion and Fulfillment of Social Economic Rights

Sharia fintech is present as an innovation in the world of finance that combines Islamic values in every transaction.²⁵ In practice, this means avoiding elements of usury or interest considered unfair and following strict rules regarding the types of transactions permitted, including procedures for contracts or agreements that are fair and transparent.²⁶ The collection mechanism is also regulated by the principles of justice and humanity, ensuring that dispute resolution is carried out ethically and by Islamic principles. Furthermore, sharia fintech encourages the concept of benefit, where financial transactions must benefit all parties involved, building a more inclusive and fair financial ecosystem.²⁷ Encouraging this

²⁴ Zico Junius Fernando et al, "Revenge Porn: Digital Crimes and Implications for Victims," *Kosmik Hukum* 23, no. 2 (2023): 157–71, <https://doi.org/10.30595/kosmikhukum.v23i2.18542>.

²⁵ Istifadhoh, A'yun, dan Mufidhoh, "Sharia Fintech As An Instrument Of National Economic Recovery Amid The Covid-19 Pandemic."

²⁶ Indriani Indriana et al., "Fintech Equity Crowdfunding Syariah Sebagai Solusi Akses Permodalan UMKM," *BISNIS: Jurnal Bisnis dan Manajemen Islam* 10, no. 1 (2022): 1–32, <https://doi.org/10.21043/bisnis.v10i1.13142>.

²⁷ Lucky Ades Tiyan et al., "Analisis SWOT Financial Technology (Fintech) Perbankan Syariah Dalam Optimalisasi Penyaluran Pembiayaan Dan Kualitas Pelayanan Bank Syariah," *Al - Mashrof: Islamic Banking and Finance* 2, no. 1 (2021): 56–75, <https://doi.org/https://doi.org/10.24042/al-mashrof.v2i1.8799>.

development, the Indonesian Sharia Fintech Association (AFSI) was established as a forum that mobilizes various stakeholders in the Sharia fintech ecosystem.²⁸

In an increasingly dynamic global context, where financial technologies are rapidly evolving and redefining how we transact and interact, the importance of considering the social and ethical impacts of these innovations is becoming increasingly critical. The ICESCR, as one of the most fundamental human rights instruments, underscores the economic, social, and cultural rights that member states must respect, protect, and fulfill. The United Nations General Assembly, through the adoption of the "International Covenant on Economic, Social, and Cultural Rights" (ICESCR) on December 16, 1966, created an international legal framework that recognizes and protects the basic economic, social, and cultural rights of individuals.²⁹ The ICESCR emphasizes principles such as the right to an adequate standard of living, the right to education, the right to health, and the right to participate in cultural life. It prescribes the responsibility of member states to promote and protect these rights. Sharia fintech, with its core values centered on fairness, transparency, and social consideration, is in line with the principles emphasized by the ICESCR. Integrating ICESCR principles into sharia fintech practices will not only ensure that financial innovation remains inclusive and equitable, but will also affirm the industry's commitment to the promotion and protection of human rights. As an Author, recognizing the potential collaboration between ICESCR and sharia fintech can provide deep insights into how technology, ethics, and human rights can come together in creating a more responsible and sustainable financial ecosystem. Therefore, the inspiration to make ICESCR a central element in sharia fintech practices is a strategic and visionary step in ensuring that the development of financial technology truly benefits all levels of society. In fulfilling economic and social rights, sharia fintech plays a crucial role in financial inclusion, especially in areas underserved by conventional financial institutions.

Sharia fintech has the potential to play an essential role in achieving broader financial inclusion, which in turn can bring significant benefits in

²⁸ Trimulato, "Optimalisasi Fintech Syariah Sebagai Agen Investasi Sukuk Negara," *Jurnal BAABU AL-ILMI: Ekonomi dan Perbankan Syariah* 7, no. 1 (2022): 1–11, <https://doi.org/10.29300/ba.v6i2.5230>.

²⁹ Malcolm Langford dan Jeff A. King, "Committee on Economic, Social and Cultural Rights," *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, 1 Januari 2009, 477–516, <https://doi.org/10.1017/CBO9780511815485.025>.

fulfilling people's economic and social rights.³⁰ Through a more inclusive, fair and ethical approach, sharia fintech can help build a more just and prosperous society where every individual's economic and social rights are correctly fulfilled.³¹

Table. P2P Lending Statistics for July 2023

Tabel 1 Overview Penyelenggara Fintech Lending <i>Table 1 Fintech Lending Company Overview</i>				
Uraian Description	Jumlah Penyelenggara (Unit) Number of Companies (Units)	Total Aset (miliar Rp) Total Assets (IDR billion)	Total Liabilitas (miliar Rp) Total Liabilities (IDR billion)	Total Ekuitas (miliar Rp) Total Equities (IDR billion)
1. Conventional Organizer	95	6.927	3.557	3.371
2. Sharia Organizer	7	135	108	27
Total	102	7.062	3.664	3.398
Periode: Juli 2023 Period: July, 2023				

Source: www.ojk.go.id

From the data provided, there are significant differences between conventional organizers and Sharia organizers in terms of number of units, assets, liabilities, and equity. First, the conventional organizer has a much larger number of units, namely 95 units, compared to the Sharia organizer, which only has 7 units. Second, in terms of assets, conventional organizers have total assets of IDR 6,927 billion, while Sharia organizers have assets of IDR 135 billion. Although there is a large difference in the number of organizers, this difference in assets shows that conventional organizers have a much larger capacity and scale of operations. Third, in terms of liabilities, conventional organizers had total liabilities of IDR 3,557 billion, while Sharia organizers had liabilities of IDR 108 billion. The proportion of liabilities to assets for conventional organizers is around 51%, while for Sharia organizers, the proportion is higher, at around 80%. Fourth, for equity, conventional organizers have a total equity of Rp 3,371 billion, while

³⁰ Imama Zuchroh, "Sharia Fintech: Horizon of MSME Financing in Indonesia," *EKOMBIS REVIEW: Jurnal Ilmiah Ekonomi dan Bisnis* 10, no. 1 (2022): 443–51, <https://doi.org/10.37676/ekombis.v10i1.1622>.

³¹ Dahayu Bethari Widyandri dan Nisful Laila, "Analisis Pengaruh Mobile Banking Dan Keuangan Inklusif Terhadap Kinerja Keuangan Bank Syariah Di Indonesia Periode 2014-2019," *Jurnal Ekonomi Syariah Teori dan Terapan* 9, no. 1 (2022): 14–24, <https://doi.org/10.20473/vol9iss20221pp14-24>.

Sharia organizers only have Rp 27 billion. From the overall organizer data, both conventional and sharia, the total operating organizer units reached 102 units. In terms of assets, the total assets of both types of organizers are Rp 7,062 billion. Meanwhile, the total accumulated liabilities of both categories reached Rp 3,665 billion. In terms of equity, the combined equity of conventional and sharia providers amounted to IDR 3,398 billion.³² Some of these companies include PT Ammana Fintek Syariah, PT Dana Syariah Indonesia, and PT Investree Radhika Jaya, along with several other names such as PT Dhuha Madani Syariah and PT Berkah Fintech Syariah.³³ Even so, the Sharia fintech industry is still relatively young, with related research only just starting to pick up momentum. This situation shows there is still significant room for further exploration and development in this sector, especially considering the potential of sharia fintech to support greater financial inclusion in countries with a majority Muslim population, such as Indonesia. However, to ensure that the evolution of sharia fintech goes hand in hand with Islamic principles and values, there is an urgent need to make regulatory improvements and adjustments.³⁴ These improvements should include developing a legal framework that will eliminate or minimize elements contrary to Islamic principles, such as *usury*, *gharar*, *maysir*, and other prohibited transactions, thus creating a harmonious and beneficial ecosystem for all parties involved. In addition, the importance of an in-depth study of aspects of Islamic jurisprudence in the context of sharia fintech must be addressed. A critical and detailed examination of Islamic law will ensure that sharia fintech not only operates within a lawful legal framework but also aligns with the Muslim community's deeply held moral and ethical values.

Sharia fintech, with its principles of fairness, transparency and social responsibility, has the potential to be an innovative solution to fill this gap. For example, through sharia fintech, financial products that are more in line with people's needs and beliefs can be more easily accessed. This directly supports the government in fulfilling its obligations under the ICESCR and related General Comments, namely ensuring equitable and fair access to

³² Otoritas Jasa Keuangan, "Statistik Fintech," www.ojk.go.id/, 2023, <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Default.aspx>.

³³ Istifadhoh, A'yun, dan Mufidhoh, "Sharia Fintech As An Instrument Of National Economic Recovery Amid The Covid-19 Pandemic."

³⁴ Aldebaran Yudha Perwira, "Eksistensi Fintech Syariah di Indonesia," *Jurnal Hukum Ekonomi Islam* 3, no. 1 (2018): 61-73, <https://doi.org/https://jhei.appheisi.or.id/index.php/jhei/issue/view/3>.

financial services.³⁵ This data indicates significant gaps and vast opportunities to expand the reach and influence of sharia fintech in this country.

Sharia fintech and its principles rooted in concepts such as *inayah* (divinity), *al-adl* (justice), *al-nubuwwah* (prophethood), *al-khalifah* (governance), and *al-ma'ad* (results) have many points of convergence with the guidelines suggested by the General Comments of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Sharia fintech offers a financial model that emphasises social justice, transparency, and sustainability principles that fit well with the ICESCR's goal of promoting social justice and economic, social, and cultural rights. For example, the principles of *al-adl* (justice) and *al-nubuwwah* (prophethood) emphasise the need for transparency and a high level of ethics, which is in line with the General Comment on governance and accountability in providing public services. The principles of *al-khalifah* (governance) and *al-ma'ad* (results) are also relevant in the context of sustainability and responsible resource management, in line with the ICESCR mandate on the management of state resources for the public good. Therefore, the implementation of sharia fintech based on these principles can be viewed as a proactive step in complying with the guidelines suggested by the ICESCR General Comment, particularly in promoting a more inclusive, transparent, and sustainable financial system.³⁶

In this context, the development of sharia fintech based on clear and well-defined principles can be an essential catalyst in efforts to deepen financial inclusion in Indonesia.³⁷ Sharia fintech has the potential to reach communities that have not been served or are underserved by conventional financial institutions, opening access to financial products and services that comply with sharia values and principles.³⁸ This will increase financial literacy and inclusion and spur more inclusive economic growth and

³⁵ Rokhmat Subagiyo, "Era Fintech: Peluang Dan Tantangan Bagi Ekonomi Syariah," *el-Jizya : Jurnal Ekonomi Islam* 7, no. 2 (2019): 316–36, <https://doi.org/10.24090/ej.v7i2.3457>.

³⁶ Muhammad Alfarizi, Rastinia Kamila Hanum, dan Syaibatul Aslamiyah Hidayat, "Optimizing the Use of Sharia Digital Transactions To Support Indonesia ' S Economic Recovery" 6, no. 1 (2021): 122–32, <https://doi.org/10.20473/jiet.v6.i1.25977>.

³⁷ Ika Swasti Putri, Siti Hayati, dan Efi Friantini, "Dampak Fintech Syariah Dalam Meningkatkan Keuangan Inklusif Pada UMKM Di Indonesia," *Bhirawa: Journal of Marketing And Commerce* 6, no. 1 (2021): 47–52, <https://doi.org/https://e-journal.stie-aub.ac.id/index.php/bhirawa/article/view/895>.

³⁸ Setiawan, Darwanto, dan Gunanto, "Determinants of Behavioral Intentions to Use Sharia Financial Technology (Fintech)."

prosperity across countries.³⁹ Thus, further exploration and exploitation of the potential of Sharia fintech in Indonesia can be an essential strategic step in designing a more inclusive and sustainable financial future in the country.

Amidst the rapid advancement of technology, it emerges as an important agenda item in order to ensure fair and sustainable financial inclusion. In practice, this means integrating Shariah principles into the foundation of financial technology, thereby creating a transparent, ethical, and responsible platform. Digging deeper, this protection optimization encompasses several crucial dimensions.

1. First, consumer protection policies should be a top priority. This includes transparency in all transactions and reasonable notice to consumers of all potential risks and benefits. Consumers should also have access to efficient grievance mechanisms, affirming their right to justice and effective legal protection;
2. Second, the management and protection of consumer data should be improved, ensuring the security of their personal information and protecting them from data leakage and misuse. This is in line with Shariah principles that emphasize fairness and business ethics;
3. Third, Islamic financial education should be encouraged, providing individuals with the skills and knowledge they need to make smart and ethical financial decisions. It can also be a means to promote financial inclusion, especially among communities that are marginalized or do not have access to the traditional financial system;
4. Fourth, Sharia fintech should support sustainable development through initiatives that promote the social and economic well-being of communities. This could be through supporting micro, small, and medium enterprises (MSMEs) or through the integration of zakat, infaq, and sadaqah systems, which can help in distributing wealth more equitably and creating positive social impact.

The ratification of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) by the Government of Indonesia through Law No. 11 of 2005 establishes a strong legal basis to ensure that all initiatives, including those in the sharia fintech sector, respect and promote human rights. The Sharia fintech sector, which operates based on Islamic

³⁹ Sri Wahyu Ningsih dan Winda Fitri, "Aspek Penegakan Hukum Terhadap Kejahatan Fintech Syariah Pada Masa Pandemi di Indonesia: Perspektif Hukum Jinayah," *Justisi* 8, no. 1 (2022): 15–29, <https://doi.org/10.33506/js.v8i1.1552>.

principles, is closely aligned with several important elements of the Covenant, particularly in the context of promoting economic and social justice. In the context of Sharia fintech, adherence to Islamic ethical principles of fairness, transparency, and accountability is important. These principles are in line with articles of the Covenant that affirm that every individual has the right to work under fair and favorable conditions and to obtain adequate education, among others. Sharia fintech can play a key role in ensuring that financial services are accessible to all segments of society, including those who previously had no or limited access to traditional financial services, thereby supporting the fulfillment of broader economic and social rights.

The Government of Indonesia also emphasizes the Declaration or Statement to Article 1 of the Covenant, which affirms the commitment to uphold the nation's integrity and territorial unity. In this context, Sharia fintech can also contribute by promoting economic inclusiveness and social justice, thereby reducing potential conflicts and tensions that can arise from economic and social inequalities. In other words, the development and expansion of Sharia fintech should be done in a manner consistent with the principles outlined in the Covenant, ensuring that they not only comply with the norms of Islamic law but also contribute to the fulfillment of internationally recognized economic, social, and cultural rights. This creates an opportunity for Indonesia to become a leader in the development of ethical and inclusive fintech solutions, in line with its international commitment to the promotion of human rights.

Sharia Fintech, by the way it works, ensures that economic growth is not only enjoyed by a few people or large business entities. Instead, these platforms take proactive steps to ensure that the benefits of the economy are evenly distributed and felt by the wider community, especially those who are often marginalized in the conventional financial system. This creates harmony between economic growth and social justice, something that is much needed in the current era of globalization. Sharia Fintech not only fulfills financial needs but also helps people secure their ESCR rights, making it one of the key drivers of an inclusive economy in the future.

Navigating the Crossroads: Upholding Human Rights in Sharia Fintech Through Criminal Law Safeguards

A majority Muslim population and laws intended to ensure adherence to Sharia principles are driving the growth of Sharia Fintech in Indonesia. The Financial Services Authority (OJK) and Bank Indonesia have established a framework that not only regulates the financial and operational aspects of fintech but also monitors Sharia compliance. In this context, the protection of human rights is important, particularly regarding privacy and personal data protection, access to fair financial services, and consumer protection from fraudulent practices. Indonesia, as a state of law, has a strong foundation in the form of the Criminal Code (KUHP), which serves as the parent of positive criminal law regulations. The presence of this Criminal Code demonstrates Indonesia's commitment to adjudicating criminal cases in a systematic and structured manner. The KUHP aims to protect the public interest, encompassing security, tranquility, welfare, and public order. The Criminal Code plays a vital role in maintaining social order and ensuring fair and effective handling of crimes through its provisions.

1. Law Enforcement and Justice

The Criminal Code ensures that criminal acts are identified, investigated, and prosecuted in accordance with the law. It creates a fair and transparent law enforcement system, which is essential for maintaining public confidence in the justice system.

2. Protection of the Public Interest

By setting norms and penalties for offenses, the Penal Code helps maintain public safety and order. This includes the protection of individual and community rights as well as maintaining social and economic stability.

3. Prevention of Criminality

The Penal Code also serves as a preventive tool. Through the establishment of penalties for certain offenses, it aims to deter individuals and groups from committing criminal acts.

4. Order and Consistency

As the mother of criminal law regulations, the Penal Code provides a consistent framework for dealing with different types of crimes.

This allows for systematic handling of cases and reduces the possibility of unfairness or discrepancies in law enforcement.

In the context of a dynamic society, the KUHP needs to continuously update and adjust to address new legal challenges, such as technology-related crimes and other contemporary issues. Overall, Indonesia's Criminal Code is a fundamental pillar in the legal and judicial system, which plays an important role in maintaining social order and justice. Its presence not only ensures the effective handling of criminal cases but also contributes to the maintenance of social stability and harmony.

Criminal law plays a crucial role in regulating and enforcing these norms, particularly in preventing financial crimes such as fraud, money laundering, and terrorism financing, and covering aspects of data usage and privacy that are important in the digital age. The Indonesian Criminal Code, particularly in relation to aspects of fraud, money laundering, and terrorism financing, demonstrates the decisive steps taken by the state in dealing with financial crimes, as well as efforts to strengthen the legal framework to protect the public and the financial system.

Article 378 of the Indonesian Criminal Code defines the crime of fraud (*oplichting*) in considerable detail. This article states that a person who, with the intention of unlawfully benefiting himself or herself or another person, manages to induce another person to deliver goods, give debts, or cancel receivables through the use of a false name, false dignity, deceit, or a series of lies is subject to a maximum imprisonment of four years. Article 378 of the Criminal Code says that fraud includes using false identities, manipulation, or lies to get money by breaking the law and setting up a business with the goal of making money. The purpose of this article is to protect individuals or entities from fraudulent acts that can cause harm and create a fair and transparent legal environment where honesty and integrity are valued. It is important in Indonesia's legal system to address and prevent various forms of fraud, ensuring fair punishment for acts that harm others through dishonest means.

Article 492 of the New Penal Code, which will come into effect in 2026, stipulates a maximum prison sentence of 4 years or a category V fine for perpetrators of fraud, which defines fraud as the use of a false name, trickery, or a series of false words to induce a person to give up goods or

property.⁴⁰ This provision is particularly relevant in the context of Sharia Fintech, given the risk of digital fraud through false identities or misleading information for financial gain. The risk of digital fraud significantly increases in today's digital era, where financial transactions are increasingly conducted online. Sharia Fintech, like other digital financial platforms, is vulnerable to various forms of fraud, including the use of false identities and the dissemination of misleading information. Fraudsters commit such acts with the aim of obtaining unauthorized financial gain, either by defrauding individuals or institutions. Individuals or groups who engage in such fraud in the context of Islamic Fintech may be punished in accordance with the provisions of the law under Article 492 of the Penal Code. Fraudsters can be punished under Article 492 of the Penal Code for using a false name, creating fictitious identities, using unauthorized identities, or employing other deceptive tactics to trick people into giving away their assets or money. The imposition of these penalties is important to maintain integrity and trust in the Islamic Fintech system. Trust is a critical element in the financial system, and digital fraud can undermine that trust, causing harm not only to the direct victims of the fraud but also to the integrity of the financial system as a whole. In addition to the application of penalties, preventive measures are also important to reduce the risk of fraud in Sharia Fintech. These include the development of stronger information security technology, strict identity verification, and education for users about the risks of digital fraud and ways to avoid them. As such, the strict application of Article 492 of the Penal Code, along with preventive measures, are key aspects of maintaining security and trust within the Islamic Fintech space.

Articles 514 and 515 of the Indonesian Penal Code specifically regulate fraud against creditors, stipulating a maximum penalty of five years' imprisonment or a category VI fine for offenders.⁴¹ These provisions emphasize the importance of transparency and honesty in financial transactions, which are crucial in Sharia Fintech operations to maintain integrity and trust in transactions. In the context of Sharia Fintech, where transactions are based not only on formal legal rules but also on Sharia principles that demand fairness and sincerity, compliance with this article is particularly important. Articles 514 and 515 guarantee protection for creditors, including investors, financing institutions, or users of financial services, by ensuring that their rights are protected from fraudulent acts. This requires Sharia Fintech to implement procedures and systems that

⁴⁰ Article 492 of the New Criminal Code

⁴¹ Article 514 and 515 of the New Criminal Code

ensure total transparency regarding assets and liabilities, including accurate disclosure of financial information and effective risk management. Compliance with this article is not only important for the protection of creditors but also for maintaining the reputation and stability of the Islamic financial sector as a whole. Articles 514 and 515 therefore play a vital role in establishing a safe and reliable framework for Islamic Fintech, ensuring that economic activities are carried out in a fair and transparent manner, in line with Shariah principles.

Article 607 of the Indonesian Penal Code deals with money laundering, criminalizing the act of concealing or disguising the origin of the proceeds of crime. The penalties are quite severe, with a maximum of 15 years' imprisonment or a category VII fine.⁴² This provision requires fintech platforms, including Sharia Fintech, to have robust and transparent systems in place to track the origin of funds as a preventative measure against money laundering. As such, this article demonstrates Indonesia's serious commitment to fighting financial crime and ensuring that the fintech sector, including Sharia fintech, operates within a strict legal framework. This is important to protect consumers and maintain financial stability while complying with sharia principles. An analysis of these provisions shows that the Indonesian government recognizes the risks associated with fintech activities, especially in terms of money laundering, which is a serious crime with far-reaching impacts on the economy and national security. Therefore, this regulation not only protects consumers from financial crime but also affirms the integrity and credibility of the fintech sector. In practice, this means that fintech platforms must implement strict 'Know Your Customer' (KYC) procedures, implement effective transaction tracking systems, and cooperate with financial institutions and law enforcement authorities to report suspicious activity. Sharia Fintechs must align compliance with Shariah principles, adding another layer of complexity to the implementation and supervision of this regulation. Overall, Article 607 is an important part of Indonesia's efforts to build a safe, transparent, and responsible fintech sector in line with high legal and ethical standards.

Law No. 9/2013 on the criminal financing of terrorism highlights Indonesia's commitment to combating terrorism, particularly in the financial context. Chapter III of this law specifically targets acts of terrorism financing, prescribing prison sentences of up to 15 years and a maximum fine of one billion rupiah for those who intentionally provide, collect, give, or lend funds for criminal acts of terrorism, terrorist organisations, or

⁴² Article 607 of the New Criminal Code

individual terrorists. These provisions have significant implications for the Sharia Fintech sector, which is growing rapidly in Indonesia. In the context of Sharia Fintech, it is important for digital financial platforms and services to strictly comply with these regulations. This includes ensuring that all transactions and flows of funds passing through their platforms are carefully monitored to prevent possible terrorist financing. Given the digital and often transnational nature of fintech transactions, these platforms must have robust systems in place to monitor and report suspicious activity. This is not only important to comply with the law but also to maintain integrity and trust in the Islamic financial system.

Law No. 19/2016, which is an amendment to Law No. 11/2008 on Electronic Information and Transactions (UU ITE), also plays an important role in regulating data usage and privacy in the digital era in Indonesia, including in the Sharia Fintech sector. These changes respond to the urgent need to address the challenges posed by advances in digital technology, especially in terms of personal data protection and privacy. UU ITE provides a comprehensive legal framework for electronic transactions, covering aspects such as copyright, digital transactions, and most importantly, the protection of user data privacy. In the context of Sharia Fintech, ITE Law ensures that all digital financial transactions and services are conducted in a safe and secure manner, maintaining the integrity, confidentiality, and availability of users' personal data. This is particularly important given the nature of fintech services, which often require the collection, processing, and storage of large amounts of personal data. The ITE Law also sets standards for the processing and protection of personal data, which Sharia Fintech service providers must comply with. This includes the obligation to obtain consent from users before collecting their data, as well as providing assurance that the data will be used ethically and only for approved purposes. The changes in the ITE Law also reflect Indonesia's efforts to align its legal framework with international standards in data protection and privacy. This demonstrates the country's commitment to creating a safe and secure digital environment, which is crucial to nurturing user trust and encouraging further growth in the fintech sector, including Sharia Fintech. In conclusion, the ITE Law, with its focus on data protection and privacy, provides a strong legal basis for the operation of Sharia Fintech in Indonesia, ensuring that the sector develops within a solid framework of data security and user trust.

Law No. 27 of 2022 on Personal Data Protection presents an important step in safeguarding privacy and personal data in Indonesia, especially in a digital age that relies heavily on data processing. Chapter XIV of this law

sets out criminal provisions for violations of personal data protection, reflecting Indonesia's seriousness in addressing this issue. Article 67 provides for imprisonment of up to five years and/or a fine of up to five billion rupiah for those who unlawfully obtain or collect personal data. Article 68 adds imprisonment of up to six years and/or a fine of up to six billion rupiah for the creation of false personal data or falsification of personal data. Article 69 adds additional penalties, including forfeiture of profits or assets resulting from criminal acts and payment of compensation. Articles 70 and 71 specifically target the actions of corporations, with a fine of up to ten times the maximum fine and a substitute penalty of business suspension for up to five years if the fine is not paid. These provisions show that the law targets not only individuals but also corporations, which often collect and process large amounts of personal data, including in the Sharia Fintech sector. These criminal provisions in the Personal Data Protection Law are particularly important in the digital age, where misuse of personal data can have far-reaching and serious repercussions. For the Sharia Fintech sector, this means ensuring strict compliance with data protection standards to prevent breaches that could lead to severe legal consequences. As such, the law not only increases protection for data subjects but also raises the responsibility and standards for data processors, including companies in the Sharia Fintech industry, to manage personal data ethically and in compliance with the law.

Because Sharia Fintech is growing in Indonesia, this sector needs careful management to make sure that its growth is in line with Sharia principles, human rights, and criminal law rules. This sector does offer many economic and innovative opportunities, but it also needs to avoid any problems. The importance of striking a balance between technological innovation, Shariah integrity, and legal protection is fundamental to fostering the growth of Shariah Fintech that is not only economically viable but also socially and legally responsible and inclusive. This demands cooperation between regulators, fintech industry players, and the broader community to ensure that the Sharia fintech sector can thrive in a safe, ethical, and sustainable environment.

Conclusion

Sharia fintech, which combines Islamic principles with modern financial technology, aims to increase financial inclusion and economic

empowerment, especially for marginalised groups. Although still in its infancy in Indonesia, Sharia fintech promises ethical and Islamic-compliant economic growth. The industry requires research, proper regulation, and technology that is aligned with Islamic jurisprudence. Sharia fintech supports transparency, fairness, and social responsibility, in line with the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). Indonesia, with the world's largest Muslim population, plays an important role in the growth of this industry. Despite facing challenges such as limited awareness, immature regulations, and security, Sharia Fintech has the potential to overcome these barriers and grow with the right approach. A focus on supportive regulations, public education, collaboration with Islamic financial institutions, innovation, technology, and consumer protection will maximise the potential of Sharia fintech in Indonesia to improve financial inclusion and economic justice. Indeed, the development of Sharia Fintech in Indonesia means that this sector, while providing great economic opportunities, requires careful navigation to ensure compliance with Sharia principles, protection of human rights, and adherence to criminal law regulations. Through the Criminal Code, ITE Law, Personal Data Protection Law, and other regulations, Indonesia has built a solid legal framework to regulate electronic transactions, protect personal data, and prevent financial crimes such as fraud, money laundering, and terrorism financing. These initiatives, which reflect a balance between technological innovation and Shariah ethics and legal protection, are essential to ensuring the responsible and inclusive growth of the Shariah Fintech sector, promoting trust and safety for users, and maintaining the integrity of the financial system in Indonesia.

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