

# The Dynamics of Politics in the Development of Sharia Economic Law in Indonesia

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**Abstract** The Islamization of knowledge has catalyzed a concrete shift in various academic disciplines, with Islamic economics, or Sharia economics, serving as a significant case study. This field has prompted extensive discussions, both philosophically and practically. While Sharia economics exhibits promise as a model for communal economic development, questions linger regarding its ability to meet the challenges posed by globalization and free-market capitalism. This article delves into the nexus of Sharia economic law development in Indonesia. It navigates the dichotomy of secularization and Islamization, which has culminated in a unique hybrid – religious secularism. This setting has laid the foundation for the development of Sharia economic law, particularly in the realm of Muamalah (Sharia economic law). The study utilizes Abdullah Saeed's classification system to analyze Sharia economic law, focusing on the textual, semi-contextual, and contextual dimensions. Ultimately, it explores the political dynamics underpinning Sharia economic law development, emphasizing interactions between academic traditions, governmental influences, societal dynamics, and global capitalist forces.

**Keywords:** Political Dynamics, Sharia Economic Law, Secularization, Religious Secularism, Free-Market Capitalism.

## 1 Introduction

The discourse of integrating knowledge with Islamicization (Islamization of knowledge) has propelled the development of knowledge in specific disciplines towards greater concreteness.[1] Islamic economics or Sharia economics represents the most prominent example and has sparked numerous discussions and actions or movements in the development of Sharia economics, both at the philosophical-theoretical and practical-implementation levels.[2] To be precise, the growth of Sharia economics shows a positive trend, with the hope that it can be considered a model for the economic development of the Muslim community to achieve collective prosperity.

Whether Sharia economics can address the challenges of economic development amidst the backdrop of globalization based on a free market is still awaiting an answer.[3] Many criticisms are directed at efforts to develop Sharia economics, viewed as a form of anomaly within the paradigm or epistemology of Sharia economics itself.[4] The imagination about Sharia economics is confined to pragmatic ideas and movements, as dictated by the global capitalist system. Ultimately, the ideas and practices of Sharia economics are trapped within a popular imagination that only emphasizes religious symbols, without demonstrating its substance. On a theoretical level, Asad Zaman firmly states that "...most Muslim economists have accepted too

many of the ideas of Western economists uncritically." Therefore, as Umer Chapra writes, "Islamic economics has been unable to come to grips with... the problems faced by Muslim countries." [5]

Despite these criticisms, the development of Sharia economics is fundamentally closely linked to the discourse of Islamic law development in Indonesia, particularly in the field of muamalah (Sharia economic law). The mimetic adoption of Western secular modernity ideas and classical fiqh thinking from the Middle East, which is considered incompatible with contemporary development, has turned Indonesia into a stage of conflict and tension, giving birth to a new synthesis: religious secularism. [6] At this point, a new arena for the development of Sharia economic law (Hukum Ekonomi Syariah, HES) has emerged. Unlike Islamic law in criminal and family law, the development of Sharia economic law (muamalah) progresses in line with the actual implementation of Sharia economics in financial and banking institutions, such as Islamic banks, Sharia-based pawnshops, Sharia cooperatives, Sharia capital markets, Sharia insurance, and so on. [7]

The establishment of Sharia-based financial and banking institutions in Indonesia cannot be separated from the politics of accommodation during the New Order regime. [8] This was done to gain support from the Muslim groups who were actively developing the Sharia economic system. Hefner refers to this mega project of Sharia-based banking as "the Islamization of capitalism." [9] The establishment of Bank Muamalat Indonesia in 1992 marked the beginning of Sharia financial and banking practices, although at the time, there was no legal basis specifically regulating it. The 1992 Banking Law (UU No. 7 Tahun 1992) did not explicitly mention the term 'Sharia banking' but used the term "banks with interest-free operational systems." The Sharia Banking Law (UU Perbankan Syariah) was only enacted in 2008, approximately seventeen years after the first Islamic bank was inaugurated. On the other hand, the Zakat and Waqf Law (UU Zakat dan Wakaf) was enacted much earlier, in 1999. Therefore, the political accommodation thesis in the development of Sharia economic law appears to be less relevant in explaining the politics of Sharia economic law development. This is due to the social, economic, and especially political dynamics that are intertwined in this decision-making process. For instance, why the Sharia Banking Law was not enacted until 2008 and what political dynamics were behind it remain important unanswered questions. Furthermore, there are also issues related to the rationality of Sharia economic law development, which is considered more acceptable even though it still refers to classical fiqh traditions. Therefore, this article aims to elucidate the political dynamics behind the efforts to develop Sharia economic law.

This study employs the classification of Islamic law application, as developed by Abdullah Saeed. According to his classification, there are three variants in interpreting and applying Islamic law in contemporary contexts, namely textual, semi-contextual, and contextual. [10] Based on this classification, the development of Sharia economic law in Indonesia can be categorized into these three variants. However, it is not precluding the possibility of other patterns beyond these.

It is crucial to emphasize that this research aims to uncover the dynamics behind the efforts to develop Sharia economic law, whether they are textual, semi-contextual, or contextual. Therefore, to unravel the political dynamics of Sharia economic law development, this study attempts to elaborate on the interaction between and within the intellectual tradition that

promotes Islamic economics discourse and the political power or authority. This is done by focusing on the interactions between intellectual traditions (academia), the government (authority), society, and the market (global capitalism) in the process of shaping Sharia economic law.

## **2 Method**

This research employs a qualitative research paradigm. Data collection techniques involve in-depth interviews with key informants, including academics, practitioners, politicians, and community leaders. Documentary data and decisions are also used to complement and strengthen the analytical material on the examined theme. The collected data are analyzed using a descriptive-critical method. This method is supported by the use of a historical-philosophical hermeneutic approach, commonly referred to as an interpretative approach. This approach was developed by the Frankfurt School as a successor to the sociology of science. It is manifested in a hermeneutic circle, where to understand the parts, one must first have an understanding of the whole, and to comprehend the whole, one must first understand the parts. The whole and parts referred to in this research are the dynamics of the Sharia economic law development process.[11]

## **3 Result and Discussion**

### **3.1 Contemporary Dynamics of Sharia Economics in Indonesia**

Research on Sharia economics has garnered considerable attention, albeit primarily focused on the field of Islamic finance and banking. In Indonesia, this theme has consistently been a preferred topic for seminars, workshops, symposiums, academic conferences, and even academic programs at various universities, with a strong emphasis on these two areas. However, the same level of attention does not seem to extend to the field of Sharia economic law. Perhaps this is due to the assumption that the scope of this theme is very narrow. Nevertheless, classical Islamic jurisprudence (fikih muamalah) encompasses numerous topics and chapters. Given the increasingly complex modern context, research on Sharia economic law should ideally receive more attention.[12]

Nafis conducted a study on the formation of the DSN-MUI fatwa, which serves as the primary reference for financial authorities (BI, OJK, and others) in making operational policies for the Islamic financial and banking system. This study makes a significant contribution, especially in elaborating the legal reasoning methods used by DSN-MUI.[13] However, the study has yet to delve into the political dynamics, the dialogic process of Sharia economic law formation, and, more importantly, its role in the socio-economic development of Indonesian society. In contrast to Nafis, Atang Abdul Hakim's study has made a substantial contribution by elaborating the process of positivizing fikih muamalah into the positive legal norms applicable in Indonesia. For example, Atang concludes that Law No. 21 of 2008 has met the standards of justice by prioritizing the principle of *neminem laedere*, which is the principle to avoid actions that cause suffering, loss, and pain to others.[14] While it is limited to the expression of Sharia values in the Sharia Banking Law, this study has become a significant reference in the field of Sharia economic law.

Several other studies on Sharia economic law have not addressed the focus of this research, as evident from the results of studies by N. Eva Fauziah, Muhammad, and Bismar Nasution.[15] Eva (dkk) menegaskan bahwa kontribusi hukum ekonomi syariah baru dimulai setelah reformasi. Eva and her colleagues assert that the contribution of Sharia economic law only began after the reform era, specifically after the amendment of Law No. 7 of 1992 by Law No. 10 of 1998, and subsequently with the enactment of Law No. 21 of 2008. However, this assertion does not explain the dynamics that evolved behind the adoption of Sharia economic law. Nevertheless, Eva's study further confirms Muhammad's findings that, although the dynamics of Islamic law in Indonesia are diverse, its existence cannot be ignored. Moreover, the weaknesses of conventional economic law provide ample room for the development of Sharia economic law, in line with the development of the Islamic economic system, as evident in Bismar Nasution's findings.

### **3.2 Principles of Sharia Economics**

At present, Islamic economics in Indonesia is experiencing rapid development, in parallel with the growth of Sharia-compliant financial institutions and efforts to expedite economic progress within society. One distinguishing characteristic of the Islamic economic system is its strong emphasis on the legal and ethical aspects of Islamic business. These Sharia principles and business ethics serve as the fundamental guidelines within this economic model.[16]

From a philosophical standpoint, these principles encompass significant aspects: First, the Tawhid Principle (Al-Tauhid) reflects a profound awareness of humanity's complete dependence on Allah. It motivates individuals and institutions to conduct themselves with integrity, refrain from activities prohibited by Sharia, and ensure that every economic transaction is undertaken with virtuous intentions. Second, the Equality Principle (Al-Musawat) underscores that all individuals, regardless of their social or economic status, possess equal rights within Islamic economics. This establishes a robust foundation for wealth redistribution and poverty alleviation.

Third, the Freedom Principle (Al-Hurriyat) advocates individual freedom for trade and investment, provided that it is carefully managed to prevent harm to society and the creation of excessive inequalities. Fourth, the Justice Principle (Al-'Adl) plays a pivotal role in Islamic economics, encompassing fair wealth distribution, protection of individual rights, and penalties for economically detrimental practices. Fifth, the Cooperation Principle (Al-Ta'awun) emphasizes the significance of collaboration and cooperation among individuals, institutions, and communities in achieving shared economic goals. Sixth, the Tolerance Principle (Al-Tasamuh) encourages tolerance for diversity and differences, including in economic transactions, fostering an inclusive economic environment.[17]

Within the context of Indonesia, Islamic economic policies have yielded positive impacts on the acceleration of economic development. One significant approach involves partnerships between Sharia-compliant financial institutions and small and medium-sized enterprises (SMEs), resulting in several key benefits: Empowerment of SMEs enables them to develop real-sector business activities in areas such as agriculture, industry, trade, and services. With the support of capital and guidance from Sharia-compliant financial institutions, SMEs can thrive and make more substantial contributions to the national economy. Moreover, Sharia-compliant financial institutions have extended access to financial services to segments of the population that were

previously underserved, enabling individuals and SMEs to secure financing in accordance with Sharia principles.

Through the implementation of Islamic economic policies, Indonesian society has experienced improved welfare, characterized by a fairer distribution of wealth and sustainable economic growth. With a continued commitment to applying Sharia principles and Islamic business ethics, the development of Sharia economics in Indonesia has the potential to continue growing and delivering even more substantial benefits to the nation and its people.

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### **3.3 Development of Sharia Economic Law**

From the era of the nation's founding to the reform period, the development of Sharia economic law witnessed significant growth. During the presidencies of those three leaders, both the legal framework and institutions for Sharia-compliant economics experienced rapid expansion, to create a balance between the real sector and the monetary sector within the national economic system.[19]

1. The post-reform period in Sharia economic law development can be divided into two conditions. The first is the *ius constitutum*, which includes Sharia economic legal products that have been enacted and are in effect. The second is the legal politics that are of an *ius constituent* nature, meaning legal products that are either currently in the process of being enacted or are slated for enactment. To comprehend the development of Sharia economic law politics, we can categorize it into several development phases, which aids in mapping the legal products and policies that emerged during each period:[8]
2. Phase One (1991-1999): During this period, Sharia economics began to take shape with the establishment of Bank Muamalat Indonesia (BMI) in 1991. Even though it was not recognized as a Sharia bank at that time, BMI operated on a profit-sharing basis. The legal foundation used was Law No. 7 of 1992 concerning Banking. Nevertheless, the development of the Sharia economic sector in Indonesia was relatively slow due to the lack of robust regulatory support.
3. Phase Two (2000-2004): The development of Sharia economics remained limited during this phase because the focus of the parliament was on amending the 1945 Constitution. The significant legal product during this phase was Law No. 41 of 2004 concerning Waqf.
4. Phase Three (2005-2009): In this period, significant legal products included Law No. 3 of 2006 concerning Religious Court, which granted additional authority to handle Sharia economic matters. Furthermore, Law No. 19 of 2008 concerning State Sharia Securities (SBSN) assisted in financing the State Budget and projects through Sharia

financial instruments.

5. Phase Four (2010-2014): Important legal products included Law No. 23 of 2011 concerning Zakat Management, which replaced the Zakat Law of 1999, and Law No. 22 of 2014 concerning the Guarantee of Halal Products. Additionally, Law No. 34 of 2014 concerning Hajj Financial Management was enacted.
6. Phase Five (2015-2019): This phase was marked by the improved growth of Sharia financial institutions. The government introduced the Masterplan of Indonesia's Sharia Financial Architecture (MAKSI) and merged three Sharia banks into Bank Syariah Indonesia (BSI).
7. Phase Six (2020-2024): During this phase, several bills related to the Sharia economic industry were included in the 2020-2024 national legislative program, demonstrating the government's strong commitment to developing the Sharia economy. In the face of the challenges posed by the development of the Sharia economy, there is a need for an integrated legal political design through supportive regulations, institutional expansion, and the internalization of Sharia economic values into business and industrial practices. This will help achieve the goal of inclusive community welfare, aligning with Indonesia's constitutional principles that recognize Sharia economic fundamentals as one of the pillars of national development. Additionally, in the realm of Sharia economic law political thought, it is crucial to observe the role of the government and regulations in shaping a legal framework that supports the development of the Sharia economy. The regulations and laws issued by the government have a significant impact on shaping a healthy Sharia economic ecosystem.

### **3.4 Syariah Political Configuration of Sharia Economic Law Development**

The institutionalization of Sharia Economic Law in Indonesia over the past decade has become an urgent necessity, driven by several compelling reasons. First, we have witnessed an increase in Islamic awareness among the Muslim community, leading to a growing popularity and widespread acceptance of Sharia principles in daily life. Second, the rapid growth of Sharia financial institutions, including Sharia banks and various non-banking economic entities, has provided significant impetus for the institutionalization of Sharia Economic Law. This reflects the remarkable growth of the Sharia economy in Indonesia. Additionally, Sharia local regulations (Perda) have begun to emerge in various regions, indicating the interest and need for stronger regulations related to Islamic law. However, it must be acknowledged that the idea of Islamic legislation has always sparked debates between its supporters and opponents, particularly regarding differences in fiqh.

As articulated by legal scholars such as Ali Yafie and Bustanul Arifin, there are logical reasons for giving more serious attention to Islamic law in Indonesia. This is not an attempt to establish the state as an Islamic state but rather to meet the genuine needs of the majority of the Indonesian population, which is also a part of national interests. This can be realized within the framework of Pancasila and the 1945 Constitution.

Moreover, the integration of Islamic law and legal science is necessary to bridge existing

language and comprehension gaps. The dichotomy between Islamic law and civil law that emerged due to colonial influences needs to be rectified for Indonesian law to become more cohesive. Nonetheless, the institutionalization of Islamic law also faces certain political challenges, especially due to the political trauma associated with Islamic movements. Events such as the DI/TII rebellion, debates during the Constituent Assembly sessions regarding the state's foundation (Islam vs. Pancasila), and the efforts of certain groups to enforce the Jakarta Charter have engendered distrust regarding the agenda of institutionalizing Islamic law. Resolving these tensions will be a crucial step in integrating Sharia Economic Law in Indonesia, which should not be perceived merely as an implementation of a specific agenda but as part of an effort to create a more inclusive and just legal system.

During the Old Order era, Islamic law became a part of the political landscape in Indonesia, with the government accommodating some aspects of Islamic law in legislation. This occurred primarily during the early days of independence when Islamic figures like Moh. Natsir and Burhanuddin Harahap held key positions in the government. However, many legislative efforts related to Islamic law were not successfully enacted due to political changes and shifts in the state system.

During the New Order era, the government opened up more political space for Islamic interest groups, including the development of Sharia Economic Law. This was primarily motivated by efforts to gain political support from Islamic groups and maintain political stability in the country. Several laws and regulations related to Sharia economics were enacted during this period, including the establishment of Bank Muamalat Indonesia.

Towards the end of the New Order and the beginning of the reform period, Islamic political forces began to reemerge with the formation of various Islamic-based political parties. The institutionalization of Islamic law, particularly in the context of Sharia Economic Law, experienced rapid growth. This encompassed various laws and regulations related to Sharia banking, zakat management, and more.

This development was propelled by various factors, including political changes that brought about the competition for popular votes, political policies supporting the development of Islamic law, and changes in the global economic landscape that made Islamic economics increasingly appealing. The institutionalization of Sharia Economic Law became a critical political issue that involved various stakeholders, including political parties, the government, and radical Islamic groups. It also contributed to efforts to alleviate pressure from radical groups by presenting an economic alternative aligned with Islamic principles.

## **4 Conclusion**

In this research, the complex relationship between the development of Sharia Economic Law (HES) in Indonesia and political dynamics is highlighted, with a focus on the field of muamalah (Sharia economic law). Broadly, the surge in Sharia economic development occurs within the context of scholarly integration with the concept of Islamization of knowledge, which has driven more concrete scholarly advancements in specific disciplines, with Sharia economics being the most prominent example. While this movement signifies positive trends and hopes for developing a Sharia-based economy to achieve shared prosperity, significant challenges remain.

These challenges include questioning whether Sharia economics can address the economic development needs in the midst of a globalization tide dominated by free markets. Some criticisms point to the practices of Sharia economic development as anomalies within the paradigm or epistemology of Sharia economics itself, where many concepts are uncritically borrowed from Western economics. Alongside this, numerous debates revolve around the importance of conveying Sharia economic concepts with stronger substance than mere religious symbols.

In the context of Sharia economic law development, conflicts arise between the concepts of secularization and Islamization. As an effort to bridge these differences, the term "religious secularism" has emerged as a new synthesis. The development of HES is closely related to the formation of Islamic law in Indonesia, particularly in the field of muamalah. However, Sharia economic law has evolved separately from Islamic law in criminal and family matters. This is reflected in the Sharia economic practices implemented in financial institutions such as Sharia banks, Sharia pawnshops, Sharia cooperatives, and the Sharia capital market sector. Initially, the establishment of Sharia financial institutions in Indonesia occurred as part of the accommodation politics of the New Order regime with the aim of gaining support from Muslim groups interested in developing the Sharia economic system.

Of course, the process of Sharia economic law development is not detached from the social, economic, and especially political dynamics that play a role in the formulation of related laws. Despite criticisms of this pattern, the development of HES still refers to the classical fiqh tradition. Therefore, this research seeks to uncover the political dynamics behind efforts to develop Sharia economic law by examining the interaction between intellectual traditions, the government, society, and the global capitalist market in the formation of HES. Thus, this research attempts to analyze various approaches in HES development, from textual to more contextual, with an emphasis on the political factors that influence it.

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