

## Transformation of Shariah Economic Justice: Ethical and Utility Perspectives in the framework of *Maqashid Shariah*

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**Abstract:** In Indonesia, sharia economic law is implemented through Religious Courts which have an important role in resolving disputes involving sharia financial entities such as banks, microfinance institutions, and insurance. Law Number 3 of 2006 replaces Law Number 7 of 1989 which significantly expands the authority of the Religious Courts in supervising and enforcing sharia economic principles. This research examines how ethical perspectives and practical considerations contribute to achieving legal certainty and justice in resolving sharia economic disputes, especially in the Surabaya Religious Court. This research uses a normative juridical approach using legal utility theory to analyze the challenges faced and propose strategies to increase the effectiveness of implementing simple, efficient, and cost-effective principles in Sharia economic protection at the Surabaya High Religious Court. The research results consider the principles of maqasid al-syariah to simplify the process, lighten the burden on the parties involved, and uphold justice in every decision-making. This study emphasizes the need for better integration between Islamic Sharia principles and Sharia banking practices in

Indonesia, as well as encouraging reforms to ensure that legal outcomes provide fair justice and maximum social benefits, in line with the ethical and utilitarian aims of the law.

**Keywords:** Ethics and Utility; Sharia Economic Disputes; Legal Justice, *Maqashid Shariah*

**Abstrak:** Di Indonesia, hukum ekonomi syariah diterapkan melalui Pengadilan Agama yang mempunyai peran penting dalam menyelesaikan perselisihan yang melibatkan entitas keuangan syariah seperti bank, lembaga keuangan mikro, dan asuransi. Undang-Undang Nomor 3 Tahun 2006 menggantikan Undang-Undang Nomor 7 Tahun 1989 yang secara signifikan memperluas kewenangan Peradilan Agama dalam mengawasi dan menegakkan prinsip ekonomi syariah. Penelitian ini mengkaji bagaimana perspektif etika dan pertimbangan praktis berkontribusi terhadap tercapainya kepastian hukum dan keadilan dalam penyelesaian sengketa ekonomi syariah khususnya di Pengadilan Agama Surabaya. Penelitian ini menggunakan pendekatan yuridis normatif dengan menggunakan teori kegunaan hukum untuk menganalisis tantangan yang dihadapi dan mengusulkan strategi untuk meningkatkan efektivitas penerapan prinsip sederhana, efisien, dan hemat biaya dalam perlindungan ekonomi syariah di Pengadilan Tinggi Agama Surabaya. Hasil penelitian mempertimbangkan prinsip maqasid al-syariah untuk menyederhanakan proses, meringankan beban pihak-pihak yang terlibat, dan menjunjung keadilan dalam setiap pengambilan keputusan. Studi ini menekankan perlunya integrasi yang lebih baik antara prinsip-prinsip Syariah Islam dan praktik perbankan Syariah di Indonesia, serta mendorong reformasi untuk memastikan bahwa hasil hukum memberikan keadilan yang adil dan manfaat sosial yang maksimal, sejalan dengan tujuan etika dan utilitarian hukum.

**Kata Kunci :** Etika dan Utilities; Sengketa Ekonomi Syariah; Keadilan Hukum; *Maqashid Syariah*

## Introduction

In Indonesia, Sharia economic law is administered through the Religious Courts, which have jurisdiction over cases involving Sharia financial entities such as Sharia banks,<sup>1</sup> Sharia microfinance institutions, Sharia insurance, and other Sharia financial

products.<sup>2</sup> The amendment of Law Number 7 of 1989 to Law Number 3 of 2006 expanded the authority of the Religious Courts to handle dispute resolution within the realm of Sharia economics.<sup>3</sup> Sharia economics refers to an economic and financial system based on Islamic principles such as justice,<sup>4</sup> honesty, and legal certainty.<sup>5</sup> However, achieving

<sup>1</sup> Nur Hidayah et al., "Sharia Banking Disputes Settlement: Analysis of Religious Court Decisions in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (June 27, 2023): 75–92, <https://doi.org/10.30631/alrisalah.v23i1.1347>.

<sup>2</sup> Muhammad Anas Ibrahim et al., "The View of Zakat Practitioners on Micro Financing from Zakat Funds as Productive Zakat for Asnaf Entrepreneurs," *International Journal of Academic Research in Business and Social Sciences* 11, no. 4 (April 29, 2021): 1083–97.

<sup>3</sup> Yani, Teuku Ahmad, Abdurrahman Abdurrahman, and Ida Mulyana. "Aceh as a Model of Halal Trade in Financial Goods and Services Regulation based on Pancasila within the Framework of National Law in Indonesia." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8.1 (2024): 361-385.

<sup>4</sup> Nurul Ilyana Muhd Adnan et al., "The Potential for Implementing Microfinancing from the Zakat Fund in Malaysia," *Humanities & Social Sciences Reviews* 7, no. 5 (2019).

<sup>5</sup> Pauzi M, Darul Hipni, and Anwar M. Radiamoda, "The Importance of the Ijtihad Jama'i Method in

justice and legal certainty in resolving Sharia economic disputes remains challenging in Indonesia.<sup>6</sup> This process involves efforts by judicial panels to balance ethical and practical considerations in legal decision-making, by procedural law applicable in the Religious Courts. It is important to examine how ethical perspectives and practical utility contribute to achieving legal certainty and justice in resolving Sharia economic disputes in Indonesia. This understanding is crucial to comprehend how the Religious Courts, especially in specific regions like Surabaya, address and resolve complex challenges involving Sharia economic practices.<sup>7</sup>

This approach underlines the need to explore Ethics and Usefulness in Sharia Economic Dispute Resolution to realize Legal Certainty and Justice, as well as legal benefits for the parties to the dispute. Historically, the word or name Sharia Economics is a specific term for the Indonesian context, although globally it is known as Islamic economics or banking, which originated from the Islamic political movement in the 1990s. This context emphasizes the importance of ethical and practical considerations in establishing a sharia economic system within the Indonesian legal framework.<sup>8</sup>

The primary academic issues involve the resolution of Sharia economic disputes at the Religious Courts under the jurisdiction of

PTA Surabaya, focusing on achieving justice and legal certainty. The first issue pertains to delays and inconsistencies in decisions by judicial panels handling Sharia economic disputes.<sup>9</sup> The second issue concerns discrepancies between normative legal certainty (based on legislation) and implementation legal certainty (based on practical application in cases), impacting the effectiveness of Sharia economic dispute resolution.<sup>10</sup> The third issue highlights the inadequacy of using the Civil Code as a reference in Sharia economic dispute resolutions at the Religious Courts of Surabaya PTA, as it does not fully adhere to Sharia principles derived from the KHES (Compilation of Sharia Economic Law), which is based on the Quran and Sunnah.<sup>11</sup> In Indonesia, the Religious Courts are authorized to handle disputes related to Islamic banking and Sharia economics. Since the amendment of Law No. 7 of 1989 by Law No. 3 of 2006, the Religious Courts have been empowered to adjudicate cases beyond personal matters like inheritance and marriage to include Sharia economic disputes.<sup>12</sup> Sharia economics refers to business activities conducted by Sharia principles. The procedural law applied in the Religious Courts is largely civil procedural law, with specific adaptations (Article 54 of Law No. 7 of 1989). Sharia economic law

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Contemporary Fiqh Formulations," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 1 (June 16, 2023): 13–20.

<sup>6</sup> Hisam Ahyani and Memet Slamet, "Building the Values of Rahmatan Lil'Alamin for Indonesian Economic Development at 4.0 Era from the Perspective of Philosophy and Islamic Economic Law," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 16, no. 1 (2021): 111–36.

<sup>7</sup> Arsadani, Qosim, et al. "The Progressiveness of Sharia Economic Fatwas: Direction of Islamic Legal Thoughts within NU and Muhammadiyah." *AHKAM: Jurnal Ilmu Syariah* 24.1 (2024).

<sup>8</sup> Ending Solehudin and Hisam Ahyani, "Legal Compliance on Sharia Economics in Halal Tourism Regulations," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (April 1, 2024): 58–79.

<sup>9</sup> Building the Values of Rahmatan Lil 'Alamin for Indonesian Economic Development at 4.0 Era from the Perspective of Philosophy and Islamic Economic Law.

<sup>10</sup> Al-Hakim, Sofyan. "Perkembangan regulasi perbankan syariah di Indonesia." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 13.1 (2013): 15-31.

<sup>11</sup> Kusumaningtyas, Reza Octavia, et al. "Reduction of Digitalization Policy in Indonesian MSMEs and Implications for Sharia Economic Development." *JURIS (Jurnal Ilmiah Syariah)* 21.2 (2022): 157-171.

<sup>12</sup> Muamar, Afif, et al. "Family and Creative Economy in Sunan Gunung Djati Religious Tourism Area, Cirebon, Indonesia." *El-Ushrah: Jurnal Hukum Keluarga* 7.1 (2024): 1-18.

integrates Islamic principles with conventional economic law and *fiqh muamalat*, reflecting Islamic traditions.<sup>13</sup> The Religious Courts have the responsibility and authority to adjudicate cases involving various Sharia economic activities such as Sharia banking, microfinance, insurance, reinsurance, mutual funds, Islamic bonds, securities, financing, pawnshops, pension funds, and business operations.<sup>14</sup>

In Indonesia, the Religious Courts are authorized to handle disputes related to Islamic banking and Sharia economics. Since the amendment of Law No. 7 of 1989 by Law No. 3 of 2006, the Religious Courts have been empowered to adjudicate cases beyond personal matters like inheritance and

marriage to include Sharia economic disputes.<sup>15</sup> Sharia economics refers to business activities conducted by Sharia principles. The procedural law applied in the Religious Courts is largely civil procedural law, with specific adaptations (Article 54 of Law No. 7 of 1989).<sup>16</sup> Sharia economic law integrates Islamic principles with conventional economic law and *fiqh muamalat*, reflecting Islamic traditions.<sup>17</sup> The Religious Courts have the responsibility and authority to adjudicate cases involving various Sharia economic activities such as Sharia banking,<sup>18</sup> microfinance,<sup>19</sup> insurance,<sup>20</sup> reinsurance,<sup>21</sup> mutual funds,<sup>22</sup> Islamic bonds,<sup>23</sup> securities, financing,<sup>24</sup> pawnshops,<sup>25</sup> pension funds,<sup>26</sup> and business operations.<sup>27</sup>

<sup>13</sup> Octaviani, R., P. I. Pamesti, and B. Heradhyaksa. "Review of Equity Crowdfunding Practices through Santara. id in the Perspective of Islamic Economic Law. *Al-Ahkam*, 31 (2), 161–182." (2021).

<sup>14</sup> Mohd Izhar Ariff Mohd Kashim et al., "The Legality of Using Ketum Leaves According to Shariah Perspective," *International journal of civil engineering and technology (IJCIET)* 10, no. 2 (February 26, 2019): 2270–79.

<sup>15</sup> Sukma, Fajar, and Zulheldi Zulheldi. "Government Policies in Economic Empowerment of Muslim Communities in the Digital Economy Era." *El-Mashlahah* 11.2 (2021): 146–163.

<sup>16</sup> Seff, Syaugi, and Muhammad Syarif Hidayatullah. "Urgency Of The Application Of Sharia Guarantee In Islamic Banking In Indonesia." *Syariah: Jurnal Hukum dan Pemikiran* 20.2 (2020): 201–216.

<sup>17</sup> Madina Kalimullina, "Islamic Finance in Russia: A Market Review and the Legal Environment," *Global Finance Journal* 46 (November 1, 2020): 100534, <https://doi.org/10.1016/j.gfj.2020.100534>.

<sup>18</sup> Abderazak Bakhouch, Teheni El Ghak, and Mohammad Alshiab, "Does Islamicity Matter for the Stability of Islamic Banks in Dual Banking Systems?," *Heliyon* 8, no. 4 (April 1, 2022): e09245, <https://doi.org/10.1016/j.heliyon.2022.e09245>.

<sup>19</sup> Edib Smolo, "Asymmetric Impact of Microfinance on Economic Growth: Evidence from Bosnia and Herzegovina," *Heliyon* 9, no. 12 (December 1, 2023).

<sup>20</sup> Huiwan Wu, "How Does Enforcement of Social Insurance Law Minimize Income Gaps within Firms: From a Perspective of Worker Bargaining Power," *Finance Research Letters* 62 (April 1, 2024): 105198, <https://doi.org/10.1016/j.frl.2024.105198>.

<sup>21</sup> Ghassen Bouslama and Younes Lahrichi, "Uncertainty and Risk Management from Islamic Perspective," *Research in International Business and*

*Finance*, Special Issue articles on Finance Reconsidered edited by Dr. Thomas Lagoarde-Segot and Dr. Bernard Pararque, Special issue articles on Recent trends and challenges in financial and commodity markets Edited by Prof. Fredj Jawadi and Prof. Benoît Sevi & Special Issue articles on Recent Topics in Banking and Finance: New Findings and Implications Edited by Prof. Fredj Jawadi and Prof. Wael Louhichi, 39 (January 1, 2017): 718–26.

<sup>22</sup> Omneya Abdelsalam et al., "On the Comparative Performance of Socially Responsible and Islamic Mutual Funds," *Journal of Economic Behavior & Organization*, Special issue on Islamic Finance, 103 (July 1, 2014): S108–28.

<sup>23</sup> Ending Solehudin, Hisam Ahyani, and Haris Maiza Putra, "Study on Sharia Compliance Principles in Halal Tourism Business in Bandung Regency: An Implementation of Islamic Business Ethics Principles (Professional Ethics)," *Millah: Journal of Religious Studies*, February 29, 2024, 39–66.

<sup>24</sup> Ali Haruna et al., "Can Islamic Finance Enhance the Innovation Capacity of Cameroonian SMEs? Empirical Evidence Based on a Multivariate Probit Approach," *Borsa Istanbul Review* 24, no. 1 (January 1, 2024): 187–200.

<sup>25</sup> Rahmat Ilyas, "Pawnshops in the Perspective of Islamic Law," *Al-'Adalah* 16, no. 1 (July 18, 2019): 1–16.

<sup>26</sup> Salim Bouzekouk and Fadillah Mansor, "The Factors Influencing the Selection of Fund Management Companies by Malaysian Retail Investors in the Context of Islamic Unit Trust Funds," *Borsa Istanbul Review*, June 18, 2024.

<sup>27</sup> Maha Alandejani, "Does Issuing Islamic Bonds through Banks Increase Banking Efficiency?," *Heliyon* 8, no. 8 (August 1, 2022).

In addressing the resolution of Sharia economic disputes within the jurisdiction of the Religious Courts under PTA Surabaya in seeking justice and legal certainty, the Civil Code is employed as the legal framework. However, in practice, the outcomes of these decisions often diverge from the principles of legal certainty and justice, and may not consistently adhere to the principles of simplicity, expediency, and affordability sought by seekers of justice in court.<sup>28</sup>

From this problem, the researcher aims to explore and deepen this problem through scientific research entitled Ethics and Practical Use in Sharia Economic Disputes in Realizing Legal Certainty and Justice, as well as Benefits for the Parties Involved.<sup>29</sup> How do ethical perspectives and practical uses contribute to achieving legal certainty and justice in resolving Sharia economic disputes in Indonesia, especially in the religious court environment in Surabaya, where the process is carried out by judges in religious courts to produce fair decisions to provide legal certainty and the benefit of the parties involved in the dispute.

## Methods

The method used in this research, the author uses a normative juridical approach.<sup>30</sup> Where the author carries out an in-depth study of various main legal material sources such as 1) the Second Amendment to Law Number 7 of 1989 concerning Religious Courts; 2) Jurisprudence; 3) the Compilation of Islamic

Law; 4) the Compilation of Sharia economic law, and 5) Results of the Judge's Decision at the High Religious Court (PTA) Surabaya regarding Sharia Economics. Next, the author reviews theories, concepts, legal principles, and statutory regulations related to research on Justice and Legal Certainty for Parties in Sharia Economic Dispute Resolution, Case Study in the PTA Surabaya Legal Area.<sup>31</sup>

Furthermore, things studied in normative legal research include legal principles, legal systematics, legal inventory, clinical law, levels of legal synchronization, legal comparison, and legal history.<sup>32</sup>

**Legal Principles:** This approach identifies and analyzes legal principles that are relevant in resolving Sharia economic disputes at the Surabaya High Religious Court (PTA). The principles of Islamic law such as *maqasid al-syariah* are used to evaluate judges' decisions and their consistency with the principles of justice. **Legal Systematics:** This research examines the legal structure and systematization used in Sharia courts to resolve economic disputes. Analysis of existing procedures, stages, and mechanisms is carried out to understand how legal certainty and justice are implemented in practice. **Legal Inventory:** This approach involves collecting relevant legal data, including court decisions and laws and regulations relating to Sharia economic dispute resolution in PTA Surabaya. This data is used to support analysis and research findings.

<sup>28</sup> Paolo Pietro Biancone and Maha Radwan, "Sharia-Compliant Financing for Public Utility Infrastructure," *Utilities Policy* 52 (June 1, 2018): 88–94.

<sup>29</sup> Usman, Moh. "Sinkronisasi Regulasi Tentang Hak Ekonomi Anak Di Indonesia Dengan Convention on The Rights of Child/Synchronization Of Regulation on Children's Economic Rights in Indonesia With The Convention on The Rights of The Child." *De Jure: Jurnal Hukum Dan Syariah* 12 (2020): 214–26.

<sup>30</sup> Daniel García San José, "The Juridical Conceptualization of the Human Embryo in the Law of the European Union. A Well-Aimed Step in

the Wrong Direction," *Anuario Mexicano de Derecho Internacional* 13 (January 1, 2013): 517–48.

<sup>31</sup> Hidayatullah, Muhammad Syarif, and Rahmat Fadillah. "Economic and Legal Dimensions of Collateral Existence in Modern Mudhârabah Contracts: Understanding the Relationship between Risk Management, National Law, and Contemporary Fiqh." *Al-Manahij: Jurnal Kajian Hukum Islam* (2022): 223–238.

<sup>32</sup> Lea Sophia Cavelius, Joel Micha Goebelbecker, and Gertrud Elisabeth Morlock, "Legal and Normative Requirements for Food Safety Culture - a Consolidated Overview for Food Companies within the EU," *Trends in Food Science & Technology* 142 (December 1, 2023): 104222.



**Clinical Law:** This method studies concrete cases from courts to evaluate the application of the principles of fairness, efficiency, and costs in dispute resolution. Case studies help illustrate the real challenges faced by parties seeking justice in court. **Level of Legal Synchronization:** This research considers the level of harmonization between Islamic legal principles and sharia justice practices in Indonesia. Focus on the extent to which the implementation of law in PTA Surabaya achieves conformity with the objectives of Islamic law and the requirements of justice.

**Comparative Law:** This approach compares the Islamic legal system with other legal systems, especially Indonesian positive law, to identify strengths and weaknesses in resolving sharia economic disputes. This comparison supports recommendations to improve the sharia justice system. **Legal History:** Historical analysis is used to understand the development and transformation of the Sharia justice system in Indonesia, as well as its influence on the resolution of economic disputes. Understanding history helps with historical context in evaluating the challenges and opportunities in current legal reform.

It is hoped that these methods can provide comprehensive insight into research on the implementation of legal certainty and justice in resolving sharia economic disputes in PTA Surabaya.

## Results and Discussion

### 1. *Harmonizing Maqasid Sharia: Resolving Sharia Economic Disputes in Surabaya's PTA Religious Courts*

Efforts to resolve Sharia Economic Disputes in the Religious Courts of the Surabaya PTA Legal Area in the Search for Justice and Legal Certainty need to be studied from the theory of Maqasid Syariah, where Al-Ghazali stated that Maqasid Syariah is reflected in five main things,<sup>33</sup> namely protecting religion, soul, mind, heredity, and treasure.<sup>34</sup> Every law or rule that contains these five principles is called *maslahah*.<sup>35</sup> Any legal decision that ignores or even rejects these five principles is *mafsadah*. Therefore, efforts to resolve Sharia economic disputes in the Religious Courts under the jurisdiction of PTA Surabaya in seeking justice and legal certainty must be carried out by referring to Sharia principles, including 1) not making things difficult (*'Adam al-Haraj*), 2) reducing the burden (*Taqlil al-Taklif*), 3) regular law enforcement, 4) in line with universal benefits, as well as equality and justice (*al-Musawah wa al-Adalah*).

The discussion on resolving Sharia economic disputes in the Surabaya PTA Religious Courts, particularly through the application of Sharia principles and legal frameworks like KHES and fiqh books, underscores a significant shift in judicial practices. These courts have adapted to the new regulations stemming from Law Number 3 of 2006, which mandated Religious Courts to handle Sharia economic cases effectively. This legal reform prompted comprehensive training for judges to ensure competence in Sharia economic dispute resolution.<sup>36</sup>

Efforts to harmonize Maqasid Sharia (objectives of Islamic law), as articulated by scholars like Al-Ghazali and Al-Syatibi,

<sup>33</sup> Wan Kamal Mujani et al., "Infectious Diseases Epidemics (Hawar / The Plague) In Islamic History in The Middle Ages and Its Effects on Socioeconomic Aspects," *International Journal of Religion* 5, no. 11 (June 12, 2024): 636–44.

<sup>34</sup> Aasim I. Padela, Mansur Ali, and Asim Yusuf, "Aligning Medical and Muslim Morality: An Islamic Bioethical Approach to Applying and Rationing Life Sustaining Ventilators in the COVID-19 Pandemic Era," *Journal of Islamic Ethics* 7, no. 1–2 (December 22, 2023): 129–64.

<sup>35</sup> Mohd Izhar Ariff Mohd Kashim et al., "Scientific and Islamic Perspectives in Relation to the Halal Status of Cultured Meat," *Saudi Journal of Biological Sciences* 30, no. 1 (January 1, 2023): 103501.

<sup>36</sup> Erlan Wijatmoko, Armaidy Armawi, and Teuku Faisal Fathani, "Legal Effectiveness in Promoting Development Policies: A Case Study of North Aceh Indonesia," *Heliyon* 9, no. 11 (November 1, 2023): e21280.

emphasize the principles of justice, equality, and benefit (*maslahah*).<sup>37</sup> These principles guide the Religious Courts in their pursuit of legal certainty and justice, aiming to safeguard essential human interests such as religion, life, property, intellect, and lineage.<sup>38</sup> Moreover, the concept of *al-shulhu* (peaceful settlement) plays a pivotal role in resolving disputes outside of litigation, aligning with Islamic principles that promote reconciliation and avoidance of unnecessary litigation burdens. This approach reflects a broader application of Sharia beyond traditional legal proceedings, extending to mediation and non-litigation channels.<sup>39</sup>

In conclusion, the efforts to resolve Sharia economic disputes at the PTA Surabaya Religious Courts highlight the integration of Maqasid Sharia principles into legal practice, ensuring that judicial decisions uphold justice, reduce burdens, and promote societal benefit.<sup>40</sup> This approach not only aims to resolve disputes effectively but also to align with the ethical and moral imperatives of Islamic jurisprudence.<sup>41</sup> Discusses the resolution of Sharia economic disputes in the Religious Courts under the jurisdiction of PTA Surabaya, emphasizing the application of Sharia principles and the theory of Maqasid Sharia. Here's how it connects to the concept of harmonizing Maqasid Sharia and material law:

Maqasid Sharia and Resolution of Disputes: Maqasid Sharia, as outlined by scholars like Al-Ghazali,<sup>42</sup> focuses on preserving five main principles: religion, life, intellect, lineage, and property.<sup>43</sup> These principles guide legal decisions to ensure *maslahah* (public interest) and prevent *mafsadah* (harm). In the context of Sharia economic disputes, judges are encouraged to resolve cases in a manner that upholds these principles, promoting justice and legal certainty.

Legal Framework and Practices: The discussion highlights the legal framework governing Sharia economic disputes, starting with Law Number 3 of 2006, which mandated Religious Courts to handle such cases. Despite initial challenges, judges received training to address the new legal requirements, though there were gaps in certification for handling Sharia economic disputes specifically. This underscores the ongoing need for specialized training and capacity building among judges.

Application of *Al-Shulhu* (Peace Making): In Islamic law, *al-shulhu* refers to peace-making efforts among disputing parties. It can involve mediation or negotiation to achieve reconciliation outside the formal litigation process. The article mentions the importance of prioritizing *al-shulhu* even if a case enters litigation, aligning with Sharia principles of resolving conflicts amicably and promoting social harmony.<sup>44</sup>

<sup>37</sup> Hisam Ahyani, Imron Hamzah, and Miftakhul Huda, *Maqashid Syariah Pariwisata Halal* (Bandung: Widina Media Utama, 2023).

<sup>38</sup> Azman Mohd Noor, Ainatul Aqilah Kamarudin, and Muhamad Nasir Haron, "The Importance of Understanding the Maqasid of Shari'ah in the Development of Islamic Banking and the Financial System," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 21, no. 3 (December 18, 2016).

<sup>39</sup> Gabriele Lattanzio, "Beyond Religion and Culture: The Economic Consequences of the Institutionalization of Sharia Law," *Emerging Markets Review* 52 (September 1, 2022): 100918.

<sup>40</sup> Zuliza Mohd Kusrin et al., "Standard Operating Procedure for the Arrests and Detentions of Individuals with Autism in Four Countries,"

*Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (February 7, 2024): 216–35.

<sup>41</sup> Noor Leena Haniffah, Mohammed Sharaf Shaiban, and Pervaiz Ahmed, "Development and Validation of a Performance Measurement System Based on Islamic Principles," *Heliyon* 9, no. 5 (May 1, 2023): e16095.

<sup>42</sup> Zuliza Mohd Kusrin et al., "People with Autism and the Propensity for Law-Breaking: A Special Education Teachers' Perspective," *UUM Journal of Legal Studies* 14, no. 2 (July 31, 2023): 509–33.

<sup>43</sup> Nasruddin Yusuf et al., "Examining the Basis of Maqashid Syariah in Renewal of Islamic Law in Indonesia," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (April 1, 2024): 357–75.

<sup>44</sup> Thahir Jamal Kiliyamannil, "Neither Global nor Local: Reorienting the Study of Islam in South

Integration of Maqasid Sharia in Legal Practice: Efforts to resolve Sharia economic disputes must adhere to Sharia principles such as '*adam al-haram* (not making things difficult), *taqlid al-taklif* (reducing burdens), and ensuring laws are periodically enforced and aligned with universal benefits, equality, and justice. This integration aims to provide just outcomes that benefit both parties and uphold societal welfare.<sup>45</sup> Challenges and Progress: The article also acknowledges challenges faced by Religious Courts in initially handling Sharia economic disputes due to lack of prior legal basis and training. Over time, with the implementation of Law Number 3 of 2006 and subsequent training, courts have become better equipped to handle these cases, although community awareness and participation in Sharia economic dispute resolution remain areas of improvement.<sup>46</sup> In summary, the effort to harmonize Maqasid Sharia with material law in resolving Sharia economic disputes reflects a broader commitment to justice, legal certainty, and societal welfare within the framework of Islamic legal principles. This approach not only guides judicial decisions but also informs the ongoing development of legal practices within the Religious Courts of PTA Surabaya.

## ***2. Harmonizing Legal Sources and Judicial Decisions: Implementing Justice and Legal Certainty in Sharia Economic Dispute Resolution at the Religious Courts of PTA Surabaya***

In Sharia economic dispute resolution at the Religious Courts of PTA Surabaya, judicial

decisions are grounded in a comprehensive array of legal sources including Islamic Fiqh, KHES, KHI, and UU/PP (government laws/regulations). These sources ensure that ethical principles derived from Islamic jurisprudence, such as fairness (*adala*), impartiality, and adherence to Islamic legal norms, are integrated into every decision-making process. The courts emphasize maintaining legal certainty (*rechsecherheit*) by consistently referring to established legal frameworks and principles, aiming to provide predictable and consistent outcomes for disputing parties.<sup>47</sup>

Justice (*gerechtigheit*) remains central, with judges striving to uphold fairness and equity by considering the rights and obligations of all parties involved. This commitment to justice is reinforced through the effective application of ethical standards and legal principles, promoting trust in the judicial system. The harmonization of diverse legal sources allows judges to navigate complex economic disputes while ensuring coherence and consistency in their rulings. Despite the challenges posed by societal changes, the courts continually develop their legal practices to adapt to evolving needs and technological advancements. This adaptive approach ensures that Sharia economic dispute resolution remains effective, trusted, and aligned with both Islamic ethical norms and contemporary legal requirements.<sup>48</sup>

In the intricate landscape of resolving Sharia economic disputes at the PTA Surabaya Religious Court, judicial decisions draw from a rich tapestry of legal sources, each playing a crucial role in ensuring the integrity of the

Asia," *Asian Journal of Social Science* 51, no. 4 (December 1, 2023): 244–51.

<sup>45</sup> Rindawati Maulina, Wawan Dhewanto, and Taufik Fatur Rahman, "The Integration of Islamic Social and Commercial Finance (IISCF): Systematic Literature Review, Bibliometric Analysis, Conceptual Framework, and Future Research Opportunities," *Heliyon* 9, no. 11 (November 1, 2023): e21612.

<sup>46</sup> Dyah Margani Utami et al., "The Role of the 30% Threshold for Islamic Parties: A Fast-Growing Middle Class and Religion-Based Political

Preferences in Indonesia," *Heliyon* 10, no. 4 (February 29, 2024): e25700.

<sup>47</sup> Michele Grassi, "A (Not Always) Difficult Balance between Legal Certainty and Legality: The Effects of Cjeu and ECtHR Case Law on National Res Judicata," *The Italian Review of International and Comparative Law* 3, no. 1 (May 5, 2023): 145–56.

<sup>48</sup> Mohammad Naqib Hamdan et al., "A Review of the Discussions on Cultivated Meat from the Islamic Perspective," *Heliyon* 10, no. 7 (April 15, 2024): e28491.



process and outcomes. These sources encompass Islamic Fiqh (jurisprudence), the Compilation of Islamic Law (KHES), Islamic Economic Law (KHI), and government laws and regulations (UU/PP). This comprehensive approach not only guarantees adherence to ethical principles rooted in Islamic jurisprudence, such as justice (adul), impartiality, and fidelity to Islamic legal norms but also intricately weaves these values into the fabric of decision-making.<sup>49</sup> The application of these legal sources serves to maintain legal certainty (rechtsicherheit), a cornerstone of judicial practice that fosters confidence in the fairness and predictability of outcomes. By consistently referencing established legal frameworks, judges at the Religious Court strive to deliver equitable resolutions that align with societal expectations and promote trust in the judicial system. This adherence to legal principles not only upholds the sanctity of Islamic law but also ensures that all parties involved in Sharia economic disputes receive fair treatment under the law.<sup>50</sup> Furthermore, this systematic approach underscores the evolution and adaptation of Sharia economic jurisprudence within the Indonesian legal context. Since the amendment of Law Number 3 of 2006, which expanded the jurisdiction of Religious Courts to encompass Sharia economic matters, there has been a concerted effort to harmonize traditional Islamic legal principles with contemporary legal requirements. This ongoing development reflects the courts' commitment to navigating complex economic

disputes while upholding the principles of justice and legal certainty.<sup>51</sup>

In essence, the integration of these diverse legal sources in resolving Sharia economic disputes at the PTA Surabaya Religious Court not only reflects a deep-rooted commitment to Islamic ethics and jurisprudence but also highlights the courts' role in ensuring consistency and fairness in the application of law. This holistic approach not only strengthens the judicial process but also contributes to the broader objective of fostering social cohesion and stability through just and equitable legal resolutions.<sup>52</sup> In addition, the aspect of justice (gerechtigheit) plays a central role in the court's approach. Judges not only aim to balance the rights and obligations of all disputing parties but also to uphold the principles of justice and equality.<sup>53</sup> This is reflected in the effective application of ethical standards and legal principles, which not only ensure fairness in decisions but also increase public confidence in the justice system.<sup>54</sup> By carefully considering the social and economic implications of each decision, the courts at PTA Surabaya are committed to upholding Islamic ethical norms in the context of economic law.

Harmonization of various legal sources, such as Islamic Fiqh, KHES, KHI, and UU/PP, allows judges to overcome complex problems in sharia economic disputes. This approach not only ensures continuity in decision-making but also brings coherence and consistency in legal interpretation. Despite

<sup>49</sup> Md Kausar Alam and Muhammad Shahin Miah, "Do Islamic Banks Use Institutional Theory in the Light of Shariah Governance? Empirical Evidence from a Muslim Dominant Country," *Heliyon* 10, no. 2 (January 30, 2024): e24252.

<sup>50</sup> Robert Kaestner and Xufei Wang, "Ban-the-Box Laws: Fair and Effective?," *International Review of Law and Economics* 78 (June 1, 2024): 106192.

<sup>51</sup> Ninuk Hariyani et al., "Demographic and Economic Correlates of Health Security in West Sumatra Province - Indonesia," *Heliyon* 9, no. 11 (November 1, 2023): e21142.

<sup>52</sup> Iim Halimatusa'diyah and Windy Triana, "Sexism and Women's Access to Justice: Feminist Judging in

Indonesian Islamic Judiciary," *Women's Studies International Forum* 103 (March 1, 2024): 102883.

<sup>53</sup> Mateus Humberto, "How to Translate Justice Theory into Urban Transport Metrics? Synchronic Assessment of Latin American Cities Based on Equality, Priority and Sufficiency," *Journal of Transport Geography* 110 (June 1, 2023): 103630.

<sup>54</sup> Ellen Ernst Kossek et al., "Introduction to the Special Issue: Allyship, Advocacy, and Social Justice to Support Equality for Marginalized Groups in the Workplace," *Organizational Behavior and Human Decision Processes* 183 (July 1, 2024): 104336.

facing challenges from changes in society, the courts continue to evolve their legal practices to adapt to evolving needs and technological advances. This reflects the adaptive approach needed to ensure that Sharia economic dispute resolution remains relevant, effective, and trustworthy to society.<sup>55</sup>

Overall, the holistic approach to resolving Sharia economic disputes at the PTA Surabaya Religious Court shows how ethical values, legal certainty, and justice interact with each other in the context of Islamic law. By paying attention to Islamic ethical principles, harmonizing diverse sources of law, and facing the challenges of ever-changing times, the courts ensure that dispute resolution is not only fair but also by current legal standards.

### ***3. Towards Justice and Legal Certainty: Resolving Sharia Economic Disputes in the Religious Courts of Surabaya PTA***

The resolution of Sharia economic disputes within the Religious Courts of Surabaya PTA aims to establish justice and ensure legal certainty, adhering to principles outlined in Article 1244 of the Civil Code. Normative legal certainty entails clear and logical regulations, a fundamental objective of law that aligns with the pursuit of justice. This normative framework is reflected in 112 judicial decisions drawing from Islamic fiqh, KHES, KHI, and UU/PP, underscoring the application of Islamic legal sources.

Implementation of these norms manifests through policy decisions and judicial rulings, crucial in Sharia economic dispute settlements. Decisions based on Istanbul ahkam from the Compilation of Islamic Law illustrate how justice and legal certainty are maintained in practice. Maslahah theory, championed by scholars like al-Ghazali and

al-Syatibi, further supports this approach by integrating societal welfare considerations into legal rulings. The Civil Code's provisions on Compensation for Costs, Losses, and Interest (Articles 1243 and 1244) reinforce normative legal certainty, stipulating penalties for non-fulfillment of agreements unless justified otherwise. This legal framework ensures accountability and fairness in economic transactions.

Non-litigious resolution methods in Sharia economic conflicts, aligning with al-Syaitibi's maslahah theory.<sup>56</sup> While the Law on Religious Courts mandates Sharia economic matters to be adjudicated within the courts, Islamic tradition encourages peaceful conflict resolution outside the courtroom, promoting cost-efficiency and societal harmony. In Indonesia, moral integrity in law enforcement is pivotal for community trust and social cohesion. Building legal awareness among enforcement officials is essential for upholding ethical standards and adapting to evolving societal norms.<sup>57</sup>

Judicial strategies include revisiting community customs in asset distribution and prioritizing maslahah principles in legal decision-making. This approach ensures consistent application of Islamic principles in resolving Sharia economic disputes, requiring judges to exercise *ijtihad* in complex property cases. The dominance of KHI-derived legal sources in PTA Surabaya's decisions underscores adherence to Islamic jurisprudence in adjudicating Sharia economic matters, maintaining the integrity of legal rulings within religious contexts.

Thus, it can be concluded that in implementing Sharia economic dispute resolution at the Surabaya High Religious Court, judges need to refer to the principles of ethics, utility, legal certainty, and justice

<sup>55</sup> Natalia Díaz-Rodríguez et al., "Connecting the Dots in Trustworthy Artificial Intelligence: From AI Principles, Ethics, and Key Requirements to Responsible AI Systems and Regulation," *Information Fusion* 99 (November 1, 2023): 101896.

<sup>56</sup> Mohamad Syarhan, "Socio-Cultural and Legal Changes in Indonesia," *Jurnal Hukum Progresif* 9, no. 2 (October 30, 2021): 135-45.

<sup>57</sup> David S. Smith, "When Two Tribes Go to Law: The Moral Foundations Theory and the Brexit Negotiations," *Forensic Science International: Mind and Law* 2 (November 1, 2021): 100055.

based on Maqashid Syariah. Ethics in this context emphasizes the importance of upholding moral values such as honesty and equality in conflict resolution. Utility demands that legal decisions provide the greatest benefit to individuals and society as a whole, by minimizing harm and restoring the rights of those wronged. Legal certainty is a vital basis for ensuring that every decision can be predicted and clearly understood by all parties, while Maqashid Syariah-based justice ensures that dispute resolution does not only comply with the formal aspects of Islamic law but also achieves the general benefit goals desired by the Shari'a. By implementing these principles, the High Religious Court can play a role in providing justice based on Islamic values, maintaining legal certainty, and providing maximum legal benefits for all parties involved in the judicial process of sharia economic disputes.

### Conclusion

In exploring the resolution of Sharia economic disputes within Indonesia's Religious Courts, particularly at the PTA Surabaya, this study delves into the critical intersections of ethics, legal certainty, and justice. Sharia economics, grounded in Islamic principles like justice and honesty, faces persistent challenges in achieving these ideals. The research highlights how judges balance ethical perspectives with practical utility, leveraging principles such as maqasid al-shariah to streamline legal processes and ensure fairness. Despite initial hurdles stemming from legal reforms and procedural adaptations under Law Number 3 of 2006, the Religious Courts have evolved mechanisms to harmonize diverse legal sources including Islamic fiqh and KHES. This integration aims not only to uphold Sharia principles but also to foster legal certainty and social benefit, underscoring ongoing efforts towards effective and equitable dispute resolution in Sharia economics within Indonesia's judicial framework.

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