



Samarah: Jurnal Hukum Keluarga dan Hukum Islam
Volume 9 No. 3. November 2025
ISSN: 2549 – 3132; E-ISSN: 2549 – 3167
DOI: 10.22373/sjhc.v9.i3.8324

Transformation of Ijtihad of Nusantara Ulama in the Formulation of A Compilation of Sharia Economic Law from A *Maslahah* Perspective

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Abstract: This study discusses the transformation of ijtihad of Indonesian scholars in the formulation of the Compilation of Sharia Economic Law (KHES) *using the* *maslahah* perspective as the basis of analysis. KHES is the result of the codification of Islamic economic law in Indonesia that seeks to address the dynamics of the modern economy through a contextual approach to classical Islamic legal sources. Indonesian scholars have an important role in the ijtihad process by adapting sharia values to align with the social, cultural, and economic realities of Indonesian society. Through the *maslahah mursalah approach*, the transformation of ijtihad not only maintains the principles of justice and *maslahah*, but also reflects the flexibility of Islamic law in responding to developments in the era. This study found that KHES is the result of synergy between classical fiqh texts and the needs of contemporary economic practice, where *maslahah* becomes the main instrument to maintain the relevance and acceptability of Islamic law in the national economic realm. Thus, KHES reflects a concrete form of moderate, contextual, and oriented Nusantara Islam to the welfare of the people in the economic field.

Keywords: Ijtihad of Indonesian scholars, Compilation of Sharia Economic Law, *maslahah*, Islamic law, sharia economics

|| Submitted: December 04, 2020 || Accepted: December 31, 2025 || Published: December 31, 2025

<http://jurnal.ar-raniry.ac.id/index.php/samarah>

Abstrak: Penelitian ini membahas transformasi ijtihad ulama Indonesia dalam perumusan Kompilasi Hukum Ekonomi Syariah (KHES) dengan menggunakan perspektif masalah sebagai dasar analisis. KHES merupakan hasil kodifikasi hukum ekonomi Islam di Indonesia yang berupaya menjawab dinamika ekonomi modern melalui pendekatan kontekstual terhadap sumber-sumber hukum Islam klasik. Ulama Indonesia memiliki peran penting dalam proses ijtihad dengan mengadaptasi nilai-nilai syariah agar selaras dengan realitas sosial, budaya, dan ekonomi masyarakat Indonesia. Melalui pendekatan masalah mursalah, transformasi ijtihad tidak hanya mempertahankan prinsip keadilan dan kemaslahatan, tetapi juga mencerminkan fleksibilitas hukum Islam dalam merespons perkembangan zaman. Penelitian ini menemukan bahwa KHES merupakan hasil sinergi antara teks-teks fikih klasik dan kebutuhan praktik ekonomi kontemporer, di mana masalah menjadi instrumen utama untuk menjaga relevansi dan penerimaan hukum Islam dalam ranah ekonomi nasional. Dengan demikian, KHES mencerminkan bentuk konkret Islam Nusantara yang moderat, kontekstual, dan berorientasi pada kesejahteraan umat di bidang ekonomi.

Kata Kunci: Ijtihad ulama Indonesia, Kompilasi Hukum Ekonomi Syariah, masalah, hukum Islam, ekonomi syariah

Introduction

The development of Islamic law in Indonesia is the result of a long dialectic between religious values, local culture, and the nation's socio-political dynamics. As the country with the largest Muslim population in the world, Indonesia possesses a unique wealth of Islamic traditions, where Islamic teachings are not presented in a textual and rigid manner, but rather through a process of acculturation and contextualization with local values.¹ This process gave rise to a distinctive Islamic character, historically known as Islam Nusantara. In the context of Islamic law, this character is clearly visible in the ijtihad practices of Nusantara scholars who strive to interpret Islamic legal texts to align with the social realities and needs of Indonesian society. Their ijtihad is not only oriented towards normative aspects, but also considers the public interest (masalah) as a primary principle in establishing law.²

¹Reza Fahmi, et.al., "The Correlation Study About Prejudice and Social Conflicts on Islam Nusantara in Padang," *Islam Futura* 20, No. 1 (2020). Mohamad Iwan Fitriani, "The Oneness of God behind the Local Tradition of Nusantara Islam: Theo-Anthropological Perspective with Interpretive Paradigm on Nusantara Islam Sasak Lombok," *Ulumuna* 19, No. 2 (2015). Khabibi Muhammad Luthfi, "Islam Nusantara: Relasi Islam dan Budaya Lokal," *SHAHIH: Journal of Islamicate Multidisciplinary* 1, No. 1 (2016), p. 2

²Ajidar Matsyah, et.al., "Cultural Continuity and Legal Adaptation: The Evolution of Suluh in Aceh's Conflict Resolution System," *JURIS (Jurnal Ilmiah Syariah)* 24, No. 1 (2025),

One concrete manifestation of the transformation of the ijtihad of Indonesian ulama is the birth of the Compilation of Sharia Economic Law (KHES). KHES is a legal product designed to provide legal guidelines for the implementation of sharia-based economic activities in Indonesia.³ This document was compiled by Islamic legal experts, academics, and practitioners of sharia economics in Indonesia with the support of official institutions such as the Supreme Court and the National Sharia Council-Indonesian Ulema Council (DSN-MUI).⁴ KHES not only serves as a guide for religious courts in handling sharia economic disputes, but also serves as a normative reference in the development of sharia financial products in the country.⁵ In its preparation process, KHES does not simply adopt classical fiqh law from a particular school of thought, but rather carries out a process of selection, adaptation, and reconstruction of law based on the principle of benefit and the socio-economic context of Indonesian society.⁶

The transformation of the ijtihad of Indonesian scholars in the formulation of the KHES demonstrates that Islamic law is dynamic and able to respond to changing times.⁷ Ijtihad is not merely a rational effort to interpret religious texts, but rather a creative process to bridge the gap between the ideals of sharia and the realities of society.⁸ Throughout history, Indonesian scholars have demonstrated adaptive capabilities in developing Islamic law in accordance with local values without sacrificing the substance of Islamic teachings. For example, in the field of muamalah, they often use the principles of *urf* (local customs) and *maslahah mursalah* (public benefit) as the basis for legal determination.⁹ This approach was later institutionalized in various national legal products, including the KHES, which represents a contemporary form of collective ijtihad of Indonesian scholars.

p. 101–110. Al-Syathibi, *al-Muwafaqat fi Usul al-Syari'ah*, Beirut: Dar al-Kutub al-'Ilmiyyah, (2005), Volume III, 119

³Gatot Suhirman, "Fiqh Madzhab Indonesia," *al-Mawarid* Vol. XI Nomor 1, Feb-Agust, (2010), p.112

⁴Mudzhar, M. A. Synergy or Conflict Of Laws? (Comparison Between The Compilation of Rules on Shari'ah Economy (KHES) and The National Shari'ah Board's (DSN) Fatwas). *Al-'Adalah*, 12(2) 2015

⁵Kasim, A. Sharia Economic Law: Its Existence in Indonesia. *Al-'Aqdu: Journal of Islamic Economics Law* 1, No. 2 (2021), p. 116.

⁶Zaini Rahman, *Fiqh Nusantara dan Sistem Hukum Nasional Perspektif Kemaslahatan kebangsaan*, Yogyakarta: Pustaka Pelajar, (2016).p. 16

⁷Muhammad Umar Farooq, et.al., "Family, Business and Inheritance Issues: In the Context of Islamic Shariah Solution.," *Ilkogretim Online*20, no. 4 (July 2021): 20

⁸Isman Isman and Yahya Yahya, "Istiqlah Al-Manwi; Multicultural Judicial Reasoning," *Ijtihad: Journal of Islamic and Humanitarian Legal Discourse* 22, no. 1 (2022), p. 95–116

⁹Abdul Wahhab Khallaf, *Ilmu Ushuli al-Fiqhi*, Beirut: Dar al-kotob Al-Ilmiyah, (2008), p. 9.

The concept of *maslahah* itself is the main key in understanding the dynamics of the transformation of *ijtihad*. In the theory of *ushul fiqh*, *maslahah* is the main objective of Islamic law (*maqashid al-syariah*) which is oriented towards maintaining five basic aspects of human life: religion (*din*), life (*nafs*), reason (*'aql*), descendants (*nasl*), and wealth (*mal*).¹⁰ In the context of economic law, *maslahah* occupies a strategic position because economic activities are directly related to the management of assets and the welfare of society.¹¹ Therefore, every product of sharia economic law should ideally not only be based on textual evidence, but must also pay attention to aspects of benefit and social justice. This principle serves as a methodological basis for the compilers of KHES in formulating economic laws that are relevant, applicable, and beneficial for modern society.¹²

Furthermore, the KHES represents a concrete implementation of collective *ijtihad* in Indonesia. In its preparation, Islamic scholars, judges, academics, and Islamic economic experts gathered to examine various sources of Islamic law, both classical and contemporary, and compare them with the national legal system. This process reflects the spirit of integration between Islamic jurisprudence and positive law, between religious authorities and state institutions.¹³ This aligns with the spirit of Islamic legal reform in Indonesia, which has sought from the outset to make Islamic law not a separate system but an integral part of the national legal system. Thus, the KHES has not only a religious dimension, but also a juridical and social one.¹⁴

The transformation of the *ijtihad* of Indonesian ulama in the formulation of the Islamic Law Enforcement System (KHES) can be seen as an evolutionary process in the application of Islamic law in Indonesia. While in the early days of Islamization, Islamic law was characterized by Sufi and moral approaches, in the modern era, there has been a shift toward institutional and rational approaches.¹⁵ Ulama no longer act solely as religious authorities but also as legal policy

¹⁰Mohamed Gad, "Al-Tufi's Concept of Maslahah. An Attempt to Apply on the Woman's Inheritance in the Islamic Inheritance Jurisprudence," vol. 1. Auflage (München: GRIN Verlag, 2021)

¹¹Zainil Anwar, "Pemikiran Ushul Fikih Al-Ghazâlî Tentang Al-Maslahah Al-Mursalah," *Fitrah* 1, No. 1 (2015), p. 48

¹²Asrianty, "Penerapan Mashlahah Mursalah Dalam Isu-Isu Kontemporer," *MADANIA Jurnal Hukum* 19, no. 1 (2015), p. 125.

¹³Nuraeni, N., and M. Abdullah, "Qiyas Method of the National Sharia Board Fatwas and the Contemporary Islamic Economic Problems," *Journal of Islamic Law*, 22 2 (2024), p. 281–312.

¹⁴Abdul Mughits, *Kompilasi Hukum Ekonomi Syari'ah (KHES) dalam Tinjauan Hukum Islam. Al-Mawarid* 18, (2008), p. 141–159.

¹⁵Ahmad Musadad, et al., "Korelasi Hukum Dan Ekonomi Dalam Perspektif Hukum Ekonomi Syariah: Studi Konsepsi Dan Kontribusi," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 6, no. 2 (2024), p. 174–200

formulators that consider economic, social, and political aspects. Their ijtihad adapts to the demands of economic globalization and the development of the Islamic financial industry, which demand legal clarity, flexibility, and innovation. In this context, *maslahah* serves as a methodological bridge between text and context, between normativity and reality.¹⁶

Furthermore, *maslahah*, from the perspective of Indonesian scholars, is not understood narrowly as merely economic benefit, but rather as holistic well-being encompassing spiritual, social, and ecological aspects. This paradigm reflects the inclusive, humanistic, and balance-oriented worldview of Indonesian Islam. In many cases, Indonesian scholars position the principle of *maslahah* as the basis for reinterpreting classical Islamic jurisprudence provisions deemed less relevant to the modern context. This approach is also characteristic of KHES, which attempts to accommodate contemporary economic practices such as Islamic banking, insurance, and capital markets without neglecting ethical values and the principle of justice in Islam.¹⁷

From the perspective of Islamic legal epistemology, the transformation of ijtihad in the KHES also demonstrates a paradigm shift from the *taqlid approach* to *istinbathi ijtihad* and *tathbiqi ijtihad*. Scholars and legal experts do not simply cite the opinions of certain schools of thought, but also explore the rational and philosophical foundations behind these legal provisions and then apply them to the needs of Indonesian society. In other words, the ijtihad carried out is contextual and progressive, in accordance with the spirit of *maqasid al-sharia*. This process demonstrates that Islamic law in Indonesia is not static, but continues to evolve through a dialogue between tradition and modernity.¹⁸

Furthermore, it is important to note that the formulation of the KHES is not only intended to meet practical legal needs, but also to strengthen the position of Islamic law within the national legal system. Since the enactment of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, the authority of religious courts has been expanded to include Islamic economic cases. This requires clear and comprehensive legal guidelines for judges in deciding cases. The KHES addresses this need while strengthening the legitimacy of Islamic law within the context of a Pancasila state based on the

¹⁶ Rahmad Lubis et al., "Peran Fatwa DSN MUI Dalam Penyesuaian Praktik Akad Murabahah Pada Bank Syariah: Perspektif Hukum Ekonomi Islam," *An Nawawi* 4, no. 2 (2024), p. 227–40

¹⁷ Halima Tus Sa'diyah, et. al., "Sejarah Dan Kedudukan Kompilasi Hukum Ekonomi Syariah Dalam Peraturan Mahkamah Agung Nomor 2 Tahun 2008 Di Indonesia," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 3, no. 1 (2021), p. 96–118

¹⁸ Ahmad Badrut Tamam, "Kedudukan Fatwa Majelis Ulama Indonesia (MUI) Dan Fatwa Dewan Syariah Nasional (DSN) Dalam Sistem Hukum Indonesia," *Al-Musthofa: Journal of Sharia Economics* 04 no. 01 (2021), p. 1–25

rule of law. In this position, the KHES is a concrete form of integration between Islamic law and national law, based on the principle of public welfare.¹⁹

Thus, the study of the transformation of the ijtihad of Indonesian ulama in the formulation of KHES from a masalah perspective is highly urgent. This study not only contributes to the development of Islamic legal science but also to strengthening the Islamic economic legal system in Indonesia.²⁰ Through the masalah approach, Islamic economic law becomes not merely a normative instrument but also a means to achieve social justice and the welfare of the people. This approach also emphasizes the crucial role of ijtihad of Indonesian ulama in maintaining the relevance of Islamic law amidst the dynamics of global social and economic change.²¹

From the above description, it can be seen that the transformation of the ijtihad of Indonesian scholars in the formulation of KHES reflects the ability of Islamic law to adapt, innovate, and provide solutions to modern economic problems while adhering to the principle of benefit. Through KHES, Islamic values are not only maintained at the normative level but also implemented practically in national economic life.²² Therefore, this study is important to reveal how benefit becomes the epistemological and methodological foundation in the process of ijtihad transformation, and to what extent the ijtihad of Indonesian scholars contributes to the development of just, inclusive, and contextual sharia economic law in Indonesia.²³

Understanding Ijtihad and Masalah

furu'syara' laws from their arguments. What is meant by these arguments are the Al-Qur'an and hadith as sources of Islamic law. Ijtihad, according to some contemporary thinkers, such as Fazlur Rahman, is also a source of Islamic law, because truth does not only come from revelation, but also from the results of human rational reasoning.²⁴

A religious jurist will conduct ijtihad when faced with a problem not found in the Qur'an or the Sunnah of the Prophet Muhammad (peace be upon him).

¹⁹Rudy Habibie, "Kedudukan Hukum Ekonomi Syariah Dalam Tata Hukum Di Indonesia," *Wasaka Hukum* 10, no. 02 (2022), p. 50.

²⁰Nurlaila Sari and Rita Aryani, "Analisis Kedudukan KHES Dalam Hukum Perdata Indonesia," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 2, no. 6 (2024), p. 429–3

²¹Ichwan Ahnaz Alamudi and Ahmadi Hasan, "Kedudukan Fatwa DSN Dalam Tata Hukum Nasional," *Mitsaqan Ghalizan* 3, no. 2 (2023), p. 11–31.

²²Muslimin Muslimin et al., "Efektivitas KHES Dan Fatwa DSN-MUI Terhadap Penegakan Hukum Ekonomi Syariah Di Indonesia," *Jurnal Pendidikan Tambusai* 6, no. 2 (2022), p. 86

²³Atmo Prawiro, "Kelemahan Fatwa Dan Kompilasi Hukum Ekonomi Syariah Dalam Kebijakan Legislasi Ekonomi Di Indonesia," *Jurnal Al-Ashriyyah* 2, no. 1 (2016): 151

²⁴Fazlur Rahman, *Islam*. London: Chicago Press, (2002), p. 68.

Otherwise, Islam will lose its existence as a religion that is always appropriate to the place and time.²⁵ Therefore, to contemporary problems, Islam must be able to provide answers by conducting ijtihad, interpreting the texts with a new perspective, according to the demands of the times, conditions, situations, and the surrounding place. Meanwhile, *masalah* is etymologically the plural form of *al-masālih*, which means "bringing goodness." When it is said that "in business there is benefit," it means that the work contains benefits and goodness.²⁶ This word can also be interpreted as the opposite of harm. According to the Great Dictionary of the Indonesian Language, the word "maslahat" means something that brings goodness, benefit, and usefulness. Meanwhile, *manfaat* means usefulness, goodness, benefit, and interest. *Manfaat* can also be interpreted as the antonym of *mudārat*, which means loss, danger, or futility.

Based on the meaning contained in the word *masalah* above, it can be formulated that *masalah* is the opposite of *mafsadah*. The words *masalah* and *mafsadah* are words that have opposite meanings, just as *manfa'ah* is the opposite of *darar*, which means danger, or things that are destructive and detrimental.

The Process of the Birth of the Compilation of Sharia Economic Law and Its Sources

The birth of the Compilation of Sharia Economic Law (KHES) in Indonesia is inseparable from the development of Islamic law in Indonesia and the urgent need for legal guidelines that can serve as a reference for religious courts in resolving Sharia-based economic disputes. KHES is a significant milestone in the development of modern Islamic law in Indonesia, as it provides concrete evidence of how Islamic law has been formally incorporated into the national legal system, particularly in the rapidly growing field of Islamic economics and finance in the early 21st century.²⁷

The emergence of KHES stems from the increasing practice of sharia economics and finance in Indonesia. Since the establishment of Bank Muamalat Indonesia in 1991, the first bank to operate based on sharia principles, the sharia financial sector has begun to show significant growth. Subsequently, various sharia-based financial institutions have emerged, including sharia insurance, sharia pawnshops, sharia mutual funds, and sharia microfinance institutions.

²⁵ Haifaa Jawad, In *Women Who Embraced Islam: Gender and Conversion in the West*. New York: *University of Texas Press*, (2006), p. 151–71.

²⁶ Muhaimin, "The Relationship between Islamic Law and Regional Regulations in Jember (Examining Reasoning Based on Maqāṣid Al-Sharī'at in Istinbāt Al-Ahkām)," *AHKAM: Journal of Sharia Science* 20, no. 2 (2020), p. 299–330.

²⁷ Achmad Dirga and Thamrin Azlan, "Anomali Fatwa Majelis Ulama Indonesia dalam Sistem Hukum Indonesia: Telaah Hukum Responsif," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 22, no. 1 (2024), p. 23

²⁸This development has legal consequences, as disputes frequently arise between parties involved in sharia economic activities. ²⁹Meanwhile, religious courts, authorized to resolve sharia economic disputes under Law Number 3 of 2006, still face obstacles due to the lack of comprehensive and standardized substantive legal guidelines to serve as the basis for their decisions.³⁰

Before the KHES, religious court judges only referred to muamalah fiqh sourced from various classical books (kitab kuning) with various schools of thought, particularly the Shafi'i school of thought widely followed in Indonesia. However, these references were not always sufficient to address the increasingly complex issues of modern Islamic economics, such as murabahah, mudharabah, musyarakah, istishna', ijarah muntahiyah bit tamlik, and so on. ³¹Therefore, the need arose for a legal compilation that could bridge the gap between classical fiqh principles and contemporary Islamic economic practices regulated by the Indonesian positive legal system.³²

The process of drafting the KHES began at the initiative of the Supreme Court of the Republic of Indonesia through the Directorate General of the Religious Courts (Badilag). In 2006, the Supreme Court formed a drafting team consisting of Islamic legal experts, sharia economic practitioners, academics, and representatives from sharia financial institutions. This process involved collaboration with various agencies such as the Ministry of Religious Affairs (now the Ministry of Religious Affairs), Bank Indonesia, the National Sharia Council–Indonesian Ulema Council (DSN-MUI), and Islamic universities. The formation of the KHES was intended to provide a uniform understanding and application of sharia economic law within religious courts throughout Indonesia.³³

One of the key factors in the birth of the KHES was the impetus from Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. Article 49 of the law stipulates that Religious Courts have the authority to examine, decide, and resolve cases in the field of Islamic economics.

²⁸ Miftakhul Huda and Hisyam Ahyani, "Normative Justice and Implementation Related to Sharia Economic Law Disputes in Realizing Legal Certainty and Justice in Indonesia. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, No. 1 (2024), p. 103–119.

²⁹ Ja'far Bachaqi, "Paradoks Fatwa Dewan Syariah Majelis Ulama Indonesia Dalam Regulasi Hukum Perbankan Syariah," *Al-Ahkam* 27, no. 1 (2017).

³⁰ Atikah, "Eksistensi Kompilasi Hukum Ekonomi Syariah (KHES) Sebagai Pedoman Hakim Dalam Menyelesaikan Perkara Ekonomi Syariah Di Pengadilan Agama," *Muamalatuna: Jurnal Hukum Ekonomi Syariah* 9, no. 2 (2017), p. 143–62.

³¹ Muaidi, "Penyelesaian Sengketa dalam Hukum Ekonomi Syariah", Tafaqquh: *Jurnal Hukum Ekonomi Syariah dan Ahwall as-Syahsiyah*, Vol. 3 No. 2, (2018), p. 1-23

³² AE Fitriani and R Pangestu, "Pengaruh Konfigurasi Politik Terhadap Produk Hukum Perbankan Syariah Di Indonesia," *Ijtihad* 38, no. 1 (2022), p. 66

³³ Pusat Pengkajian Hukum Islam dan Masyarakat Madani, *Kompilasi Hukum Ekonomi Syariah* (Edisi Revisi) Jakarta: Kencana, (2017), p. 253-25

This authority encompasses various transactions based on Islamic principles, such as Islamic banking, Islamic insurance, Islamic mutual funds, Islamic financing institutions, and Islamic pawnshops.³⁴ However, the material legal regulations that serve as the basis for dispute resolution are not yet fully available. This situation prompted the Supreme Court to immediately compile legal guidelines to eliminate difficulties for judges in deciding Islamic economic cases.³⁵

After a series of seminars, workshops, and academic discussions, the KHES draft was finally ratified by the Supreme Court of the Republic of Indonesia through the Decree of the Chief Justice of the Supreme Court Number KMA/123/2008 on September 10, 2008. This KHES then began to be used as a guideline for religious court judges in deciding Islamic economic cases in Indonesia. The contents of the KHES consist of four main books. Book I regulates Legal Subjects and Property, Book II on Contracts, Book III on Zakat and Grants, and Book IV on Islamic Economics which covers Islamic banking, Islamic insurance, Islamic mutual funds, Islamic pawnshops, and various other forms of Islamic-based economic activities. The structure of this KHES reflects a systematic effort to integrate the concept of classical muamalah fiqh with the reality of modern economics.³⁶

From a methodological perspective, the KHES was prepared using a fiqh (Islamic jurisprudence) approach, positive law, and practical needs. The fiqh approach was used to ensure that the entire substance of the KHES complies with sharia principles.³⁷ The positive law approach was necessary to ensure that the KHES could be integrated with the national legal system and not conflict with applicable laws and regulations. Meanwhile, the practical needs approach was used to ensure that the provisions in the KHES were relevant and applicable to real-world situations faced by Islamic financial institutions and the public.³⁸

The legal sources used in the preparation of the KHES can be categorized into three: primary sources of Islamic law, national legal sources, and contemporary legal sources. The primary sources of Islamic law include the Qur'an, hadith, ijma', and qiyas. The Qur'an and hadith serve as the primary

³⁴Renie, E. The Urgency of Fatwa in the Law of Sharia Economics in Indonesia. *JURIS (Jurnal Ilmiah Syariah)*, 20, No. 2 (2021), p. 201.

³⁵Muh. Sholihuddin, *Hukum Ekonomi & Bisnis Islam II (Akad Tabarru' dalam Hukum Islam)* (Surabaya: UIN SA Press, 2014), p. 160-161.

³⁶Yasardin Yasardin and Syuhud B. Kooria, "Revisiting the Compilation of Islamic Economic Law in Indonesia: Legal Challenges and Pathways to Harmonization, *JURIS Jurnal Ilmiah Syariah* 24, No. 1 (2025).

³⁷E. Hidayat, "The Concept of Taghyir in Al-Bazdawi's Usul al-Fiqh and Its Relevance to Contract Law in the Compilation of Islamic Economic Law in Indonesia. *International Journal of Fiqh and Usul Al-Fiqh Studies*, 9, No. 1 (2025), p. 91-104.

³⁸Arman Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Penemuan Dan Kaidah Hukum*, Jakarta: Prenadamedia Grup (2018). p 113.

foundation for establishing Islamic economic principles such as the prohibition of usury, justice in transactions, honesty, and social responsibility. Ijma' and qiyas are used to address new issues not explicitly mentioned in the texts, for example in the case of modern financial contracts or contemporary financing mechanisms.³⁹

National legal sources include laws and regulations in force in Indonesia, such as Law Number 21 of 2008 concerning Sharia Banking, Law Number 19 of 2008 concerning State Sharia Securities (SBSN), and Supreme Court regulations concerning sharia economic procedural law.⁴⁰ Furthermore, fatwas from the National Sharia Council–Indonesian Ulema Council are also important legal sources, providing specific sharia guidelines for the products and practices of sharia financial institutions. These DSN-MUI fatwas are often used as direct references by judges in deciding sharia economic cases.⁴¹

Contemporary legal sources derive from the thoughts of modern Islamic scholars and international Islamic economic practices. The KHES adopts several concepts developed by international institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB). This is crucial to ensure that Islamic economic law in Indonesia is not isolated but adapts to global Islamic economic standards. The thinking of modern scholars such as Wahbah al-Zuhaili, Yusuf al-Qaradawi, and Muhammad Taqi Usmani also significantly influenced the development of the KHES, particularly in adapting sharia principles to contemporary economic needs.⁴²

The role of the Islamic Law Enforcement System (KHES) in the Indonesian legal system is highly strategic. It serves not only as a guideline for judges but also as a reference for Islamic economics practitioners, academics, and the wider community. Through the KHES, Islamic economic law gains formal legitimacy within the national legal framework. This demonstrates that Islamic law can adapt to modern legal systems without losing its fundamental principles. Furthermore, the KHES strengthens the position of religious courts as institutions

³⁹Rahmani Timorita Yulianti, "Pola Ijtihad Fatwa Dewan Syari'ah Nasional MUI Tentang Produk Perbankan Syari'ah," *Jurnal Ekonomi Islam* 1, No.1, (2007), p. 72.

⁴⁰Hasanudin Hasanuddin, et.al., "Progressiveness of Islamic Economic Law in Indonesia: The Murā'at Al-'Ilal wa Al-Mašāliḥ Approach," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, No. 2 (2023), p. 1267

⁴¹Asjmun Abdurrachman. "Prosedur Penetapan Keputusan Fatwa Dewan Syariah Nasional." *Al-Mawarid Journal of Islamic Law* 18, No. 1 (2015)

⁴²Wahbah al-Zuhaili. *Al-Mu'amalat al-Maliyah al-Mu'ashirah*. Dimasyq: Dar al-Fikr. 2006. 40. Amir Mu'allim and M. Roem Syibly. "The Urgency of Economic Ijtihad in the Era of Globalization." *Jurnal Unisia* 75 (2016), p. 227-23.

that handle not only family matters such as marriage, inheritance, and waqf but also play a role in maintaining economic justice based on sharia values.⁴³

However, the KHES has not escaped criticism. Some believe it still has weaknesses, particularly in terms of the depth of its fiqh analysis and its relevance to the ever-changing global economy. Some of the KHES's content is also deemed in need of updating to accommodate the increasingly complex innovations of modern Islamic financial products, such as Islamic fintech, Sharia-based cryptocurrencies, and digital payment systems.⁴⁴ Nevertheless, the KHES remains a crucial foundation for the development of Islamic economic law in Indonesia.⁴⁵

Thus, the creation of the Compilation of Sharia Economic Law is the result of a long process involving various elements of society, state institutions, and religious scholars. It arose from the need for legal certainty amidst the rapid growth of the sharia economy, while also serving as a form of harmonization between Islamic law and national law.⁴⁶ The Compilation of Sharia Economic Law demonstrates that sharia values can be systematically and legally implemented in Indonesia's modern economic life, making it a symbol of the progress and adaptability of Islamic law in the era of globalization.⁴⁷

The Direction of Ijtihad of Indonesian Ulama in Formulating a Compilation of Sharia Economic Law from a Maslahah Perspective

The Compilation of Sharia Economic Law (KHES) is a significant milestone in the development of Islamic law in Indonesia, particularly in the fields of economics and finance.⁴⁸ KHES was compiled in response to the growing public demand for an economic system based on sharia principles. As the world's most populous Muslim country, Indonesia faces the challenge of aligning Islamic legal principles with the pluralistic social, economic, and legal realities of the nation.⁴⁹ In this context, the ijtihad of Indonesian scholars plays a central role, as

⁴³Republic of Indonesia Supreme Court. Compilation of Sharia Economic Law PERMA No. 2 of 2008, p. 279 -289

⁴⁴Nur Ahmad Fadhil Lubis. "Financial activism among Indonesian Muslims." *Islamic Perspectives on the New Millennium*, Singapore: ISEAS (2004), p. 91-112.

⁴⁵Erie Hariyanto, et.al., "In Search of Ummah Welfare Model: The Revitalization of Sharia Economic Law in Indonesia," *Sriwijaya Law Review*, 7 2 (2023), p. 244–261.

⁴⁶Erie Hariyanto, "Public Trust in the Religious Court to Handle Disputes of Sharia Economy." *AHKAM: Jurnal Ilmu Syariah* 22, No. 1 (2022).

⁴⁷Miftakhul Huda and Hisyam Ahyani, "Normative Justice and Implementation Related to Sharia Economic Law Disputes in Realizing Legal Certainty and Justice in Indonesia. *Al Risalah: Forum Kajian Hukum Dan Kemasyarakatan* 24, No. 1 (2024), p. 103.

⁴⁸Burhanudin Harahap, et.al., "Islamic Law, Islamic Finance, and Sustainable Development Goals: A Systematic Literature Review." *Sustainability*, 15, No. 8 (2023), p. 6626.

⁴⁹Mardani, *Hukum Islam: Pengantar Hukum Islam di Indonesia*, Yogyakarta: *Pustaka Pelajar*, (2010) p. 14

it fosters relevant, adaptive, and beneficial interpretations and adjustments to Islamic law.⁵⁰

Ijtihad, in the Islamic legal tradition, is an intellectual effort to extract sharia law from its primary sources, namely the Qur'an and Sunnah, through various methods such as qiyas (analogy), istihsan (legal preference), istishlah (consideration of benefit), and so on.⁵¹ In the Indonesian archipelago, the tradition of ijtihad has undergone a unique transformation due to its interaction with local contexts, cultures, and national legal systems. Indonesian scholars did not simply copy laws from the Middle East, but also adapted them to the reality of Indonesia's diverse society. Therefore, the direction of ijtihad by Indonesian scholars in the formulation of KHES did not merely uphold classical fiqh norms, but also sought to present Islamic economic law that was contextual, humanistic, and welfare-oriented.⁵²

In the perspective of *maslahah*, the main aim of ijtihad is to realize benefits and prevent harm to the people. This principle is in line with *maqāsid al-syarī'ah* (goals of Islamic law), which include the protection of religion (*hifz al-din*), soul (*hifz al-nafs*), reason (*hifz al-'aql*), descendants (*hifz al-nasl*), and property (*hifz al-mal*). In the context of sharia economic law, the *hifz al-mal* aspect occupies an important position, because the main objective of the Islamic economic system is to safeguard assets and utilize them in a halal and fair manner KHES then functions as a normative guide in realizing these goals amidst modern economic dynamics.

The direction of ijtihad of Indonesian scholars in formulating the KHES can be seen from several important dimensions. First, in terms of methodology, the KHES uses an integrative approach between classical fiqh and contemporary realities. The scholars and legal experts involved in its preparation not only refer to the dominant Shafi'i school of thought in Indonesia, but also open space for opinions from other schools of thought deemed more relevant to the modern context. For example, in the case of contemporary *muamalah* contracts such as *murabahah*, *ijarah muntahiya bittamlik*, and *musyarakah mutanaqisah*, the KHES compilers did not hesitate to adopt the views of the Hanafi or Maliki schools, which are more flexible in dealing with modern financial transactions.⁵³

⁵⁰H. Fitriansyah and Komaruddin, K. The Dynamics of Politics in the Development of Sharia Economic Law in Indonesia. *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah* 9, No. 2 (2024), p. 236–250.

⁵¹Ibnu Hadjar. "Syari'at Islam Dan Hukum Positif Di Indonesia." *Al-Mawarid Journal of Islamic Law* 16, No. 1 (2015)

⁵²Gemala Dewi, et.al., *Hukum Perikatan Islam di Indonesia*, Jakarta, *Fakultas Hukum Universitas Indonesia*, (2013), p. 3.

⁵³Hasneni, "Kompilasi Hukum Ekonomi Syariah (Analisa Terhadap Kekuatan Hukum dan Materinya)", *Alhurriyah: Jurnal Hukum Islam* 1, No. 2, (2016), p. 181-193.

Second, the ijtihad of Indonesian scholars in the KHES emphasizes the importance of *maslahah mursalah*, namely benefits not explicitly mentioned in the texts, but their existence is recognized because they align with the objectives of sharia.⁵⁴ This approach is crucial considering that many modern economic issues are not found equivalents in classical fiqh books. For example, in the issues of Islamic banking, insurance, Islamic capital markets, and Islamic fintech, Indonesian scholars conduct ijtihad by considering public welfare values such as justice, transparency, and economic sustainability. This principle of *maslahah* serves as an ethical and rational foundation for the legalization of modern economic practices that remain rooted in Islamic values.⁵⁵

Third, the direction of ijtihad also demonstrates the spirit of moderation and adaptability of Islamic law. In the process of formulating the KHES, the ulama did not adopt an exclusive stance towards differences of opinion, but rather were open to dialogue across schools of thought and even within the national legal system.⁵⁶ The KHES attempted to align sharia principles with Indonesia's positive legal system, which is rooted in Continental European legal traditions. Therefore, in its formulation, the KHES uses legal language that is systematic, consistent, and compatible with judicial practice within the Religious Courts. Thus, the ijtihad of Indonesian ulama in the KHES is not only theological but also juridical and practical.

Fourth, the ijtihad of Indonesian scholars in the KHES demonstrates a strong social and economic dimension. Within the framework of *maslahah* (community welfare), Islamic economics is seen not only as a system of financial transactions but also as an instrument for realizing social justice. The KHES emphasizes the importance of Islamic business ethics, prohibiting usury (*riba*), *gharar* (uncertainty), and *maisir* (speculation).⁵⁷ All of this is aimed at creating a just economic system oriented towards the welfare of the people.⁵⁸ Furthermore, the KHES also emphasizes the economic empowerment of the people through the principles of mutual assistance (*ta'āwun*) and distributive justice, which are characteristic of the thinking of Indonesian scholars.

In the context of *maslahah*, KHES also reflects the principle of balance between individual and collective interests. Indonesian scholars recognize that in

⁵⁴Firdaus, MI, et.al., Settlement of Sharia Economic Disputes: Efficiency of Implementation in Indonesian Religious Courts. *Justicia Islamica* 21, No. 2 (2024), p. 335–356

⁵⁵Eka Sakti Habibullah, "Hukum Ekonomi Syariah Dalam Tatanan Hukum Nasional", *Al Maslahah: Jurnal Hukum Islam dan Pranata Sosial Islam* 5, No. 9, (2017), p. 691-710

⁵⁶Nashihul Ibad Elhas, "Kompilasi Hukum Ekonomi Syariah (KHES) Dalam Tinjauan Umum Hukum Islam", *Jurnal Al-Tsaman* 2, No. 1, (2020), p. 62-71.

⁵⁷Bagus Ahmadi, "Akad Bay', Ijarah dan Wadi'ah Perspektif Kompilasi Hukum Ekonomi Syariah (KHES)", *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 7, No. 2, (2012).

⁵⁸Ridwan, *Hukum Ekonomi Syariah di Indonesia*. Purwokerto: STAIN Press, (2016), p. 81.

modern economic practices, individual interests often dominate and potentially harm the public interest. Therefore, KHES provides legal boundaries aimed at maintaining economic stability and preventing exploitation.⁵⁹ For example, provisions regarding sales contracts, profit sharing, and financing are designed to prevent inequality and economic oppression.⁶⁰ All of this aligns with the spirit of *maslahah*, which places social welfare as the primary orientation of Islamic law.⁶¹

Furthermore, the direction of *ijtihad* by Indonesian scholars also demonstrates a reconstructive tendency towards classical Islamic legal concepts. In the KHES, several traditional *fiqh* terms and concepts are reinterpreted to suit the needs of contemporary society.⁶² For example, the concept of *rahn* (pawn) is expanded into *rahn tasjīlī* (modern collateral), which can be applied in the Islamic banking system. Similarly, the *wakalah* (representative) contract is developed in the context of modern financial institutions. This approach demonstrates that the *ijtihad* of Indonesian scholars is not stagnant, but dynamic and progressive, while maintaining the spirit of *sharia* as a guideline.

From the perspective of Islamic legal epistemology, *ijtihad* in KHES reflects a combination of *naqli* (textual) and *'aqli* (rational) arguments. Nusantara scholars not only adhere to textual texts but also consider the social and economic context of society. This legal rationality is combined with local Nusantara values such as mutual cooperation, social justice, and balance in life, all of which are forms of implementing *maslahah* (benefit for the benefit of the Indonesian people).⁶³ Thus, KHES is a manifestation of *Islam rahmatan lil 'alamin* (blessing for the universe) in the realm of economic law, capable of responding to global challenges without losing local identity.⁶⁴

Overall, the direction of the *ijtihad* of Indonesian scholars in formulating the Compilation of Sharia Economic Law demonstrates three main characteristics. First, it is contextual, as the Compilation of Sharia Economic Law is based on Indonesia's pluralistic social, economic, and legal realities. Second, it

⁵⁹Fariana, A. Legal politics as a catalyst in forming a sharia economic legal system in Indonesia's new order and reform era. *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 21, No. 2 (2021), p. 197–212.

⁶⁰Abdur Rahman Adi Saputera, et.al., “Analisis Konsikwensi Terhadap Kelemahan Konsep Akad dalam Kompilasi Hukum Ekonomi Syariah”, *Jurnal Nizham* 8, No. 2, (2020), p. 217-233.

⁶¹Kudrat Abdillah and Yenny Susilawati, “Sejarah Kodifikasi Hukum Ekonomi Syariah di Indonesia”, *Al-Huquq: Journal of Indonesian Islamic Economic Law* 2, No. 1, (2020). p. 115-132

⁶²Filsafat Hukum Islam Akad Kompilasi Hukum Ekonomi Syariah (Analisis Maqashid Syariah Buku II Tentang Akad), *Jurnal Al-Amwal* 6, No. 2, (2017), p. 30-45.

⁶³Pratiwi and Ahmad Rifai, “Urgensi Pembentukan Kitab Undang-Undang Hukum Ekonomi Syariah Indonesia”, *Journal of Islamic Law studies* 1, No. 2, (2018), p. 77-97.

⁶⁴Apriantoro, MS, et.al., “Comparing KHI and KHES in Marital Property Grant Disputes: An Analysis of Judges' Views.” *Al-Istinbath: Jurnal Hukum Islam* 8, No. 1 (2023), p. 3.

is inclusive, as it allows for diverse school of thought and the results of contemporary ijtihad.⁶⁵ Third, it is oriented toward the benefit of others, as it places benefit and justice as the primary objectives of law. With these three characteristics, the Compilation of Sharia Economic Law not only serves as a guideline for economic law for Indonesian Muslims but also serves as a concrete example of how Islamic law can be implemented moderately and adaptively in a modern state.

Ultimately, the ijtihad of Indonesian scholars in the KHES is not merely a legal product, but also the result of lengthy intellectual and spiritual reflection.⁶⁶ KHES reflects the awareness that Islamic law must be present as a solution to the problems of the people, not a burden.⁶⁷ By emphasizing *maslahah* (community welfare) as its primary perspective, KHES demonstrates that Islamic law can make a real contribution to building a just, balanced, and civilized economic order. This is the true direction of the ijtihad of Indonesian scholars: to present Islamic law that is alive, down-to-earth, and brings benefits to all humanity.

Conclusion

The transformation of the ijtihad of Indonesian scholars in the formulation of the Compilation of Sharia Economic Law (KHES) demonstrates the dynamics of Islamic legal thought that is adaptive to the social, economic, and cultural context of Indonesia. Indonesian scholars did not simply copy Islamic economic law from the Middle East, but reinterpreted and contextualized it by considering local values, principles of justice, and the benefit (*maslahah*). The *maslahah* approach became the main foundation in the preparation of KHES because it was able to bridge the gap between normative texts (*nash*) and the practical needs of modern society. Through collective and moderate ijtihad, KHES succeeded in presenting sharia economic law that is relevant to the national legal system and in line with the principles of *maqasid al-syariah*, namely safeguarding religion, life, intellect, descendants, and property. Thus, the transformation of the ijtihad of Indonesian scholars not only enriches the treasury of Islamic law in *muamalah* but also confirms Indonesia's position as a model for the application of inclusive, contextual, and oriented Islamic law for the benefit of the people. KHES is concrete evidence of the synergy between classical Islamic scientific traditions

⁶⁵Basir, C., et.al., "Reconstruction of Sharia Economic Procedural Law in Indonesia and Comparison of Sharia Economic Cases in Malaysia and Indonesia." *Nurani: Jurnal Kajian Syariah dan Kemasyarakatan*, 24(1) 2024, p. 17–36.

⁶⁶Muhammad Izazi Nurjaman and Doli Witro, "Penyelesaian Sengketa Ekonomi Syariah Menurut Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI)", *Al-Huquq: Journal of Indonesian Islamic Economic Law* 4, No. 1, (2022), p. 36-62.

⁶⁷Ansori, MAZ, et.al., "Axiological Harmonization of Sharia Economic Law Supremacy and DSN-MUI Fatwa in Indonesia. *Al Mashalih-Journal of Islamic Law* 4, No. 2 (2023), p. 95–110.

and the needs of modern law based on the values of social justice and the economic welfare of society.

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