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## SPECIAL CRIMINAL LAW AGAINST SHARIA ECONOMIC CRIMES

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### Abstract

The growth of the Islamic economy is reflected in the business lines of the financial sector, halal industry, investment, and Islamic social finance (*zakat, waqf, infaq, and sadaqah*). Public trust to carry out Islamic economic activities arises because of the Islamic principles upheld and the security of its management. However, Islamic economics has its own appeal because it is labeled according to religious teachings and is not profit-oriented. The state as an organ of power must be able to be present to supervise and carry out coercion if there is a criminal offense. Criminal offenses in Islamic Law are in the realm of *Fiqh Jinayah*, which regulates the punishment for a crime. The imposition of sanctions in Islam is indeed severe, but the more highlighted preventive efforts. Specific criminal law research on sharia economic crimes with normative juridical types, normative legal research is presented in a description for a comprehensive picture so that it has a major impact on Islamic economics. The results of this study obtained an overview that the impact of the existence of criminal specialization for those who commit crimes against sharia economic activities can give confidence to the public to use Islamic financial services and Islamic social social institutions that channel donor assets. The verdict on sharia economic crimes must be carried out by professionals who understand *fiqh* and sharia principles, the evidence must be materially clear to fulfill a sense of justice. The punishment given to those who misuse it must be more severe as a preventive effort.

**Keywords:** sharia, fiqh, law, economy, and criminal offense.

### A. INTRODUCTION

The growth of the Islamic economy in Indonesia has shown a positive trend in recent years. Indonesia has a large number of Islamic financial institutions, including Islamic banks, Islamic insurance, and Islamic microfinance institutions. A fundamental transformation in the structure and regulation of Islamic banking, along with the government's efforts to encourage financial inclusiveness and sustainable economic development. Islamic economics

in Indonesia incorporates Islamic economic principles in its banking activities.<sup>1</sup> The principles of Islamic economics as practiced contain the prohibited MAGHRIB elements of *Maysir, Gharar, Haram, Riba, and Bathil*. Aqidah, sharia, and morals are the three main teaching

<sup>1</sup> Fatimah Tuzzuhro, *et.all.*, "The Development of Islamic Banking in Indonesia," PeKA: Journal of

Accounting Economics Education, 11(2), 2023, p. 79.

pillars in Islamic law that serve as the basis and principles of Islamic finance.”<sup>2</sup>

Islamic banking in Indonesia has grown significantly, with an increase in assets and market share that continues to increase. For now, Islamic banking financing is growing quite high. In May 2024, it grew by 14.07 percent *year on year*; higher than conventional financing which grew by 12.15 percent *year on year*.<sup>3</sup> The high public interest in various sharia products must be supported by strong legal protection. Public trust must be maintained by making sharia economic activities free from criminal acts and *fraud* that can reduce the interest of its users.

Indonesia as the second largest Muslim country after Pakistan with 87.08% of the population is [Muslim](#), which amounts to 245,973,915 people in 2024.<sup>4</sup> Has demographic advantages for the growth of the Islamic economy. It should also be considered, that the Islamic economy is not limited to transactions through financial services alone, Islamic economics is closely related to the economy that is social and worship. Islamic economic activities that are social in nature such as: Hajj, waqf, zakat, infaq, and sadaqah. The potential for the development of social Islamic economics is supported by the generosity of the Indonesian people who are the first in the world based on The Word Giving Index

(WGI) 2023 published by the *Charities Aid Foundation* (CAF) with an index score of 68%.<sup>5</sup>

For now, the laws relating to Islamic economics certainly regulate criminal offenses and sanctions. However, it has not been specifically regulated, especially in terms of the formal law of sharia economic crimes discussed. The need for sharia economic crimes when they occur is investigated, investigated, and tried in a special institution. Because it requires the competence of law enforcement officials who understand the principles of sharia.

Islamic Criminal Law in Indonesia is not too much study and discussion. Criminal Law in Islam is in *fiqh jinayah*, part of the sharia of Allah SWT which regulates the provisions on criminal offenses or criminal acts committed by individuals who are mukallaf, namely those who have met the requirements to be burdened with obligations. This law is based on an in-depth understanding of the propositions from the *Al-Quran* and *Hadith*.<sup>6</sup> Basically, Islamic criminal law aims to provide benefits for human life, both in this world and in the hereafter. This Islamic Sharia contains a basic obligation for every individual to carry it out, by placing Allah SWT as the holder of all rights.<sup>7</sup> Humans are only executors who are tasked with fulfilling Allah SWT's orders,

<sup>2</sup> Adinda Dwi Ristiyono and Fauzatul Laily Nisa, “The Contribution of Islamic Economics in National Economic Development and Community Welfare,” *Kampus Akademik Publishing: Journal of Management and Economics*, 1(3), 2024, p. 233.

<sup>3</sup> Bayu Saputra, “BI: Islamic banking financing grows 14.07 percent in May 2024,” *Antara: Indonesia News Agency*, <https://www.antaranews.com/berita/4167012/bi-pembiayaan-perbankan-syariah-tumbuh-1407-persen-pada-mei-2024>, accessed September 10, 2024, at 14.02 WIB.

<sup>4</sup> Nabilah Muhammad, “The Majority of Indonesia's Population is Muslim in the First

Semester of 2024,” <https://databoks.katadata.co.id/datapublish/2024/08/08/mayoritas-penduduk-indonesia-beragama-islam-pada-semester-i-2024>, accessed 11 September 2024, at 05.04 WIB.

<sup>5</sup> Vinaka Andrean, “Cool! Indonesia is the Most Generous Country in the World,” *Indonesia Baik* <https://indonesiabaik.id/infografis/keren-indonesia-jadi-negara-paling-dermawan-di-dunia>, accessed September 9, 2024, at 18.24 WIB

<sup>6</sup> Dede Rosyada, *Hukum Islam dan Pranata Sosial*, Lembaga Studi Islam dan Kemasyarakatan, Jakarta, 1992, p. 86

<sup>7</sup> Zainuddin Ali, *Islamic Criminal Law*, Sinar Grafika, Jakarta, 2007, p. 1

which must be done for the benefit of themselves and others. This is different from positive criminal law which is man-made, because the law is the result of human thinking which certainly has flaws and gaps, allowing someone to easily commit an offense.<sup>8</sup>

The application of Islamic Sharia Economic Criminal Law basically does not change the criminal justice system, but there needs to be specific things that are regulated and also differences in liability if in sharia economic activities are not in accordance with sharia principles, but with a sharia label. Islamic law as one of the unwritten laws that live and develop in society provides an understanding of criminal liability, where a person is said to be able to be responsible if:<sup>9</sup>

1. Doing things that are prohibited and ignoring obligations that must be done.
2. The action is done by personal will, which means the perpetrator has the choice to do it or not.
3. The perpetrator realizes the consequences of his/her actions.

The criminalization of sharia economic offenses is more preventive in nature and serves to maintain public peace and order. Islamic law is more in favor of the peace of the people than providing protection to the perpetrators of crime.<sup>10</sup> In principle, the concept of sharia economic crime is based on the principle of "No Punishment Without Error". The error that

occurs must be an error in the form of intent (*dolus*) while the error committed due to *culpa* is an exception, on the basis of this thinking it can be said that the concept of Sharia Criminal law regarding criminal liability is relevant to the philosophy of Pancasila as a religion-based state philosophy.<sup>11</sup>

## B. RESEARCH METHODS

Special criminal law research on sharia economic crimes with normative juridical types, normative legal research as research with the aim of conducting research on legal principles, legal systematics, legal synchronization, legal theory, legal comparison and legal history itself.<sup>12</sup> The method of data analysis in this research is qualitative descriptive analysis,<sup>13</sup> the research is presented in a description for a comprehensive picture so that it has a big impact and is easy to understand. Presented qualitatively non-mathematically, the presentation is based on juridical analysis to obtain problem solving.

The first stage of research is secondary data collection in the form of laws and regulations and field facts. The second stage, data processing for the needs of research on the gap between legislation, legal facts, and legal needs for sharia economic law crimes. The third stage is to analyze the data based on the principles of Islamic law and legal principles. The fourth stage, documenting and trying to publish

<sup>8</sup> Lysa Angrayni, "Hukum Pidana Dalam Perspektif Islam Dan Perbandingannya Dengan Hukum Pidana Di Indonesia," *Hukum Islam*, XV(1), 2015, p. 8.

<sup>9</sup> A.Djazuli, *Fiqih Jinayah: Upaya Menanggulangi Kejahatan Dalam Hukum Islam*, PT. Bulan Bintang, Jakarta, 1967, p. 165.

<sup>10</sup> Sunarto, "Konsep Hukum Pidana Islam Dan Sanksinya dalam Perspektif Al-Quran," *Kordinat*, XIX(1), 2020, p. 107.

<sup>11</sup> Elfa Murdiana, "Pertanggungjawaban Pidana Dalam Prespektif Hukum Islam Dan

Relevansinya Terhadap Pembaharuan Hukum Pidana Indonesia," *Al-Mawarid*, XII(1), 2012, p. 15.

<sup>12</sup> Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, Alfabeta, Bandung, 2017, p. 45

<sup>13</sup> Rafan Darodjat and Aam Suryamah, "Pertanggungungan Jiwa Yang Optimal Bagi Jemaah Haji Berdasarkan Peraturan Perundang-undangan Dan Prinsip Masalah Mursalah," *Juris and Society: Jurnal Ilmiah Sosial dan Humaniora*, 3(1), p. 65.

findings that aim to benefit sharia economic law in Indonesia.

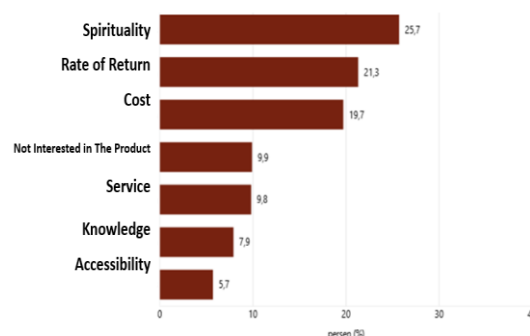
### C. RESULTS AND DISCUSSION

The growth of the Islamic economy in Indonesia shows an interesting trend, especially when compared to the conventional economy, especially banking. In recent years, Islamic banking has sought to increase its market share by offering products that are more in line with the principle of *amanah* (trust).<sup>14</sup> Islamic economics not only performs a profit function, but also a social function, financial institutions can be a distributor of charitable activities and channeling institutions can provide easy services to donors with the existence of Islamic banks.

Article 4 paragraph (2) of Law Number 21 of 2008 concerning Islamic Banking (hereinafter abbreviated: Islamic Banking Law), states that: “Islamic banks and UUS can carry out social functions in the form of *baitul-mal* institutions, which receive funds from zakat, infaq, sadaqah, grants, or other social funds and distribute them to zakat management organizations.”

The need to maintain trust in the prevention of *fraud* in Islamic economics with the existence of coercive nature through the regulation of special criminal offenses in Islamic economics. Because the majority of users of Islamic economic activities are dominated by aspects of spirituality. Based on this, it can be understood through the motivation data of Islamic financial product users as follows:

**Picture 1: percentage of motivation of Islamic financial product users**



**Source: Management of the Faculty of Economics and Business, University of Indonesia (LM FEB UI).<sup>15</sup>**

It can be noted from the table above that the biggest motivation for using Islamic financial products is spirituality, with a percentage of 25.7%. The second factor is the rate of return from the profit-sharing system, which increases as Islamic finance is used more. The third factor is the lower cost or burden of the ratio (interest rate) compared to conventional finance. Other motivational factors for using Islamic finance include a disinterest in using conventional banks, better service, greater knowledge, and better accessibility.

Although currently its contribution is still small in the total national financial system, the potential for growth is very large, given the increasing public awareness of the importance of Islamic economics. In addition, the integration between Islamic banking and economic growth also shows a significant reciprocal relationship, where good economic growth can encourage further development of the Islamic economy and vice versa, a strong Islamic economy can contribute to overall economic stability. With the support of

<sup>14</sup> Astriah and Muhammad Kamal Zubair, “Analisis Penerapan Jaminan Pada Pembiayaan mudharabah Dan Musyarakah Di Perbankan Syariah,” *Banco*, 3, 2021, p. 107. <https://doi.org/10.35905/banco.v3i2.2654>.

<sup>15</sup> Nabilah Muhammad, Aspek Spiritualitas Jadi Alasan Utama Masyarakat RI Menggunakan

Produk Keuangan Syariah, Kata Media Network, <https://databoks.katadata.co.id/datapublish/2023/09/21/aspek-spiritualitas-jadi-alasan-utama-masyarakat-ri-menggunakan-produk-keuangan-syariah>, accessed 11 September 2024, at 04.04 WIB.

better regulations and growing product innovation, it is expected that Islamic banking will be able to attract more customers, especially the younger generation who are increasingly concerned about ethical values in economic activities.

There are several problems of sharia economic activities that become the absolute competence of the Religious Court, for the Aceh Province, criminal offenses can be decided by the Sharia Court. The research intends with the existence of legislation that specifically regulates criminal offenses, sharia civil disputes, alternative dispute resolution (ADR), and arbitration related to sharia economics. All cases related to sharia must be in accordance with the fatwa of scholars. The current condition of sharia products that are “forced” to resemble conventional banking products certainly affects the concept of classical *fiqh*. Here the role of the DSN-MUI fatwa is to determine the law. The DSN-MUI fatwa will become positive law if it is adopted in regulations authorized by law, such as adopted as a judge's opinion in his decision, or adopted in Bank Indonesia Regulations, Financial Services Authority Regulations (hereinafter abbreviated: OJK) and others. Fatwa of DSN-MUI plays a significant role in the development of Islamic economics.<sup>16</sup>

Indonesian people, the majority of whom are Muslim, can be considered to know the products that are good to use. The existence of Islamic economics is not only for Muslims, because almost all products and services based on sharia can be consumed by non-Muslims, for example: halal food, medicine and cosmetics products; and Islamic banking services/products. For economic activities that are social in nature such as: zakat,

waqf, and alms, the beneficiaries can be non-Muslims. Only for the nature of entering into the pillars of Islam is not allowed, such as Hajj and Umrah. Zakat for non-Muslims is not obligatory, but if giving alms (*hibah*) is allowed.

The teachings of Islam which are *rahmatan lil'alam* for the benefits of waqf, for example there is a waqf bridge or water well, non-Muslims can take advantage of it. Likewise, for Muslims who give zakat or waqf to non-Muslims, it is allowed to be an act of worship because it *broadcasts* Islam. Moreover, halal products, which are also attractive to people of other religions because of the additional certification apart from the mandatory certificate that a product has.

Criminal provisions related to sharia economy have actually been regulated, it's just that there are some shortcomings that researchers criticize. Among others:

1. There is no specificity of the investigation process, because there is no special authority that should be handled by professionals in their fields;
2. There is no punishment yet, because based on research data, the drive of people who use sharia products is mainly spirituality;
3. There is no special “*lex specialist*” provision that regulates the formal law of sharia economic crimes;
4. There is no integration of criminal provisions with sharia principles elaborated through fatwas of scholars; and
5. It needs to be the absolute competence of the Religious Court to litigate sharia economic crimes.

Criminal regulation of Islamic economics can be categorized as a special

<sup>16</sup> Ichwan Ahnaz Alamudi dan Ahmadi Hasan, “Kedudukan Fatwa DSN dalam Tata Hukum Nasional,” Mitsaqan Ghalizan: Jurnal Hukum

Keluarga dan Pemikiran Hukum Islam, 3(2), 2023, p. 11.

crime.<sup>17</sup> Because in the reform of the *substantive* criminal law system (material) is contained in the positive criminal law in Indonesia, namely the Criminal Code and Special Laws outside the Criminal Code.<sup>18</sup> Some rules regarding Islamic economics already have criminal provisions in line with the legislation. The provisions that have been regulated in the law are as follows:

1. Article 67 of Law Number 41/2004 concerning Waqf regarding the transfer of waqf property is categorized as a criminal act;
2. Article 59 - 66 of Law Number 21 of 2008 concerning Sharia Banking, the criminal provisions are still incomplete to accommodate the possibility of *fraud* or actions that are not in accordance with sharia principles;
3. Article 39 - 42 of Law Number 23 Year 2011 on Zakat Management, the article regulates the punishment for improper distribution of zakat;
4. Article 56-57 of Law Number 33 of 2014 concerning Halal Product Guarantee, this provision is not yet complete; and
5. Article 112 of Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah, for the crime of conviction in the *First Travel* case<sup>19</sup> the judge's verdict was based on Article 378 of the Criminal Code, 372 of the Criminal Code in conjunction with Article 55 paragraph 1 and in

conjunction with Article 64, as well as Article 3 of Law Number 8 of 2010 concerning the Crime of Money Laundering (TPPU). Of course this is homework for all elements for the existence of sharia economic crime arrangements.

The nature of the purpose of punishment in Islam basically has two functions: first, the nature of *zawajir* means the interests of mankind in the world; second, the nature of *jawabir* which means the interests of humans who are *ukhrawi*.<sup>20</sup>

The first function of criminal law in Islam is to make the perpetrators of *jarimah* aware so that they do not repeat the criminal acts that have been committed. In addition, punishment also aims to provide lessons for others, so that they do not dare to commit criminal acts. It is also expected to make those who have committed a criminal offense but have not been caught think twice before repeating their actions. Thus, there will be peace in life in this world.<sup>21</sup>

The second function is to save the convict from punishment in the hereafter (because his guilt has been redeemed in the world), his sins of committing *jarimah* will be erased, and become a virtue for him because he has participated in the enforcement of religious law.<sup>22</sup> Therefore, Islamic criminal law basically contains more than all the objectives commonly known in the world of criminal law, namely for retribution, deterrence, and reformation.<sup>23</sup>

<sup>17</sup> Barda Nawawi Arief, *RUU KUHP Baru*, Badan Penerbit UNDIP, Semarang, 2012, p. 5.

<sup>18</sup> Reny Okpirianti, "Korupsi Sebagai Tindak Pidana Khusus Dalam Rancangan Undang-Undang KUHP," *Varia Hukum*, XL, 2019, p. 1814.

<sup>19</sup> Kezia Audreylia, et.al., "First Travel, Penipuan Berkedok Investasi Perjalanan Umrah," Seri Seminar Nasional Ke-III Universitas Tarumanagara, Jakarta, 2 December 2021, p. 2023.

<sup>20</sup> Ibrahim Hosen, "Jenis-jenis Hukuman dalam Hukum Pidana Islam dan Perbedaan Ijtihad Ulama dalam Penerapannya," *Mimbar Hukum*, Nomor 20 Tahun VI, Jakarta, 1999, p. 16

<sup>21</sup> Muhammad Tahmid Nur, "Urgensi Penerapan Hukum Pidana Islam (Tinjauan Filsafat Hukum)," *Maddika: Journal of Islamic Family Law*, 1(1), 2020, p. 2.

<sup>22</sup> *Ibid.*

<sup>23</sup> Topo santoso, "Membumikan Hukum Pidana Islam, Penegakan Syariat dalam Wacana dan

## Principles of Islamic Law (*Usul Fiqh*) in Sharia Economics

Islamic economics is one of the important aspects in the application of Islamic law. The principles of Islamic law or *usul fiqh* provide a strong foundation for the development of a sharia-compliant economy. The following are some of the main principles in *usul fiqh* that relate to Islamic economics:<sup>24</sup>

Justice (*'Adalah*): This concept is more like an ideal-'Adalah<sup>25</sup> al-Islahiyah (forgiveness) which has existed since the Quran was revealed. This principle emphasizes the importance of justice in every economic transaction. In Islamic economics, every individual must be treated fairly, without any act of harming others and benefiting one party only.

Islamic economics does not only focus on material gain, but also on social goals as an opportunity to get rewards in the afterlife. Economic activities should provide benefits to society and contribute to the general welfare, Allah SWT says:

وَأَنْفَقُوا مِنْ مَّا رَزَقَكُم مِّن قَبْلِ أَنْ يَأْتِيَ أَحَدَكُمُ الْمَوْتُ فَيَقُولَ رَبِّ لَوْلَا أَخَّرْتَنِي إِلَىٰ أَجَلٍ قَرِيبٍ فَأَصَّدَّقَ وَأَكُن مِّنَ الصَّالِحِينَ

“And spend some of the wealth We have given you, before death comes to any of you.” (QS. Al-Munafiqun: 10)

One of the pillars of Islamic economics is the obligation to pay zakat and give alms. This reflects the social concern and responsibility of the individual towards society because the poor have a right to our wealth. And waqf is an important pillar in the Islamic economy, reflecting social concern. Allah SWT says:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ

“Take zakat from some of their wealth, to cleanse and purify them.” (QS. At-Taubah: 103)

Islamic economics seeks to create a system that is not only financially beneficial, but also in accordance with Islamic values, in order to achieve a more just and prosperous society. By understanding these principles, we can build an economic system that is not only financially beneficial, but also in accordance with Islamic values. The implementation of Islamic economics is expected to create a more just and prosperous society.

Islamic economics is an economic system based on the principles of Islamic law, which aims to create prosperity for individuals and society as a whole. In Islamic economics, every transaction and economic activity must be in accordance with the values taught in the Qur'an and the Sunnah of the Prophet Muhammad SAW.

One of the main principles in Islamic economics is justice. Allah SWT says in the Qur'an:

وَلِمَا تَخَافَنَّ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَىٰ سَوَاءٍ ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ

“And Allah loves not those who betray.” (QS. Al-Anfal: 58)

This principle emphasizes the importance of justice in every economic transaction, where every individual must be treated fairly and there is no fraud. Islamic economics also has principles that prohibit these actions, namely: *MAGHRIB*<sup>26</sup> so that the principles of *sharia* have something to do and there are prohibited actions, prohibited actions with the following elements:

### 1. Maysir

Agenda,” Gema Insani Press, Jakarta, 2003, p. 140.

<sup>24</sup> Ibid.

<sup>25</sup> Andi B. Mutmainnah Sudarmin, *et.all.*, “Restorative Justice In Islamic Law: Solutions to

Improve Social Justice Towards a Golden Indonesia 2045,” *El-Rusyd*, 8(2), 2023, p. 98.

<sup>26</sup> Fatimah Tuzzuhro, *et.all.*, *loc.cit.*

*Maysir* is defined as "Impermissible games of chance."<sup>27</sup> *Maysir* means something that contains elements of gambling,<sup>28</sup> speculation or luck. The practice of *maysir* is strictly forbidden in Islam. This is emphasized by the word of Allah in Surah Al-Maidah verse 90 as follows:

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ

"O you who believe, drinking alcohol, gambling, (sacrificing to) idols, casting lots with arrows are abominable (and) among the deeds of the devil. So, avoid them so that you may prosper."

## 2. Gharar

In addition, Islamic economics also prohibits *gharar*, which is uncertainty in transactions. Through a hadith narrated by Muslim, the Prophet prohibited the act of buying and selling *gharar*: "The Messenger of Allah forbade buying and selling *Al-Hashah* and buying *gharar*." (HR. Muslim, *Kitab Al-Buyu*, Chapter: *Buthlaan Bai Al-Hashah wal Bai Alladzi Fihi Gharar* no. 1513).

Based on the explanation above, it can be concluded that *gharar* trading is trading that is uncertain, unclear, and contains gambling. *Gharar* buying and selling is forbidden because there is an element of eating other people's property in a way that is *unlawful* (not open and detrimental to one party).

This is also stated in the Qur'an in Surah An-Nisa [4] verse 29.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful."

## 3. Haram

Ownership in Islamic economics is considered a trust from Allah. In the Qur'an, Allah says: وَأَتُوا الْيَتَامَىٰ أَمْوَالَهُمْ وَلَا تَتَبَدَّلُوا الْخَبِيثَ بِالطَّيِّبِ وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ إِنَّهُ كَانَ كُثُوبًا

"And give them their property, and do not substitute good for bad." (QS. An-Nisa: 2)

This shows the responsibility of individuals in using their wealth for the good of society.

## 4. Usury (*Riba*)

The prohibition of usury is also one of the important pillars in Islamic economics. Allah SWT says: ذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ َ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

"Those who eat usury will not stand on the Day of Resurrection except as one possessed by a demon stands." (QS. Al-Baqarah: 275)

This shows that the practice of usury is strictly prohibited in Islam, and Islamic economics encourages a fair and ethical financing system.

## 5. Bathil

Allah SWT says:

<sup>27</sup> Zamir Iqbal and Abbas Mirakhor, *An Introduction to Islamic Finance Theory and Practice*, John Wiley & Sons (Asia) Pte Ltd, Singapore, 2007, p. xi.

<sup>28</sup> Dwi Suwiknyo, *Kamus Lengkap Ekonomi Islam*, Total Media, Yogyakarta, 2009, p. 163.



وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى  
الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ  
وَأَنتُمْ تَعْلَمُونَ

“And do not eat of the wealth between you by unlawful means.”  
(QS. Al-Baqarah: 188)

This principle invites Muslims to conduct clear and transparent transactions, thus avoiding harmful speculation practices.

Specifically in the matter of *jarimah* (criminal offense), there are two things that cannot be separated, namely crime and punishment. A form of command and prohibition is not enough to encourage someone to abandon an act or carry it out, for that sanction is needed in the form of punishment for anyone who violates it.<sup>29</sup> In economic crimes, two things must be considered with regard to this retributive as a description of *hadd* punishment, namely: the severity of the punishment, and the prohibition of any form of mediation in this regard, in other words, this punishment must be carried out if the crime is proven.<sup>30</sup> Severe punishment makes the culprit not try to do something wrong, moreover the Islamic economy arises because of the *trust* of its products that are *shar'i* and security because it is managed by professionals who understand Islamic teachings.

Some provisions of Islamic economics have partially been made into law, for now a Draft Law on Islamic Economics is being made which is expected to accommodate the needs of the community, especially in the field of law enforcement. The law that will be made is expected to specifically authorize special institutions in conducting investigations related to Islamic economics and the absolute competence of religious courts that

are authorized to decide the case. The law made is expected to be *Principle Based* which is supported by derivative regulations to avoid multi-interpretation.

#### D. CONCLUSION

Islamic economics in its development is not only of interest to people who are Muslims, Islamic financial services are the management of companies that fulfill sharia principles. Laws related to sharia economic activities, in their articles regulate criminal provisions, there are only shortcomings regarding the legal process in the event of a criminal offense. Crimes against sharia economic activities and the guise of sharia activities to commit a crime, it is time to have a differentiation in the legal process starting from the investigation, investigation, and court based on *ushul fiqh*. The impact of criminal specialization for those who commit crimes against sharia economic activities can provide confidence in the community to use Islamic financial services and Islamic social social institutions that channel donor assets. Religious Court. The authority of the Religious Court over sharia economic cases is confirmed in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, but this has not been able to accommodate when entering the realm of public law, so that in the planned Sharia Economy Bill it can be further regulated. The verdict on sharia economic crimes must be carried out by professionals who understand *fiqh* and sharia principles, the evidence must be materially clear to fulfill a sense of justice. The threat of punishment given to those who misuse it must be more severe as a preventive effort.

<sup>29</sup> Markhus Munajat, *Dekonstruksi Hukum Pidana Islam*, Logung Pustaka, Sleman, 2004, p. 40.

<sup>30</sup> Panji Adam, *Eksistensi Sanksi Pidana Penjara Dalam Jarimah Ta'zir*, TAHKIM: Jurnal Peradaban dan Hukum Islam, 2(2), 2019, p. 41.

## REFERENCES:

- [1] A.Djazuli, *Fiqih Jinayah: Upaya Menanggulangi Kejahatan Dalam Hukum Islam*, PT. Bulan Bintang, Jakarta, 1967.
- [2] Adinda Dwi Ristiyono and Fauzatul Laily Nisa, "The Contribution of Islamic Economics in National Economic Development and Community Welfare," *Kampus Akademik Publishing: Journal of Management and Economics*, 1(3), 2024.
- [3] Andi B. Mutmainnah Sudarmin, *et.all.*, "Restorative Justice In Islamic Law: Solutions to Improve Social Justice Towards a Golden Indonesia 2045," *El-Rusyd*, 8(2), 2023.
- [4] Astriah and Muhammad Kamal Zubair, "Analisis Penerapan Jaminan Pada Pembiayaan mudharabah Dan Musyarakah Di Perbankan Syariah," *Banco*, 3, 2021, p. 107. <https://doi.org/10.35905/banco.v3i2.2654>.
- [5] Barda Nawawi Arief, *RUU KUHP Baru*, Badan Penerbit UNDIP, Semarang, 2012.
- [6] Bayu Saputra, "BI: Islamic banking financing grows 14.07 percent in May 2024," *Antara: Indonesia News Agency*, <https://www.antaranews.com/berita/4167012/bi-pembiayaan-perbankan-syariah-tumbuh-1407-persen-pada-mei-2024>, accessed September 10, 2024, at 14.02 WIB.
- [7] Dede Rosyada, *Hukum Islam dan Pranata Sosial*, Lembaga Studi Islam dan Kemasyarakatan, Jakarta, 1992.
- [8] Dwi Suwiknyo, *Kamus Lengkap Ekonomi Islam*, Total Media, Yogyakarta, 2009.
- [9] Elfa Murdiana, "Pertanggungjawaban Pidana Dalam Prespektif Hukum Islam Dan Relevansinya Terhadap Pembaharuan Hukum Pidana Indonesia," *Al-Mawarid*, XII(1), 2012.
- [10] Fatimah Tuzzuhro, *et.all.*, "The Development of Islamic Banking in Indonesia," *PeKA: Journal of Accounting Economics Education*, 11(2), 2023.
- [11] Ibrahim Hosen, "Jenis-jenis Hukuman dalam Hukum Pidana Islam dan Perbedaan Ijtihad Ulama dalam Penerapannya", *Mimbar Hukum*, Nomor 20 Tahun VI, Jakarta, 1999.
- [12] Ichwan Ahnaz Alamudi dan Ahmadi Hasan, "Kedudukan Fatwa DSN dalam Tata Hukum Nasional," *Mitsaqan Ghalizan: Jurnal Hukum Keluarga dan Pemikiran Hukum Islam*, 3(2), 2023.
- [13] Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, Alfabeta, Bandung, 2017.
- [14] Kezia Audreylia, *et.all.*, "First Travel, Penipuan Berkedok Investasi Perjalanan Umrah," *Seri Seminar Nasional Ke-III Universitas Tarumanagara*, Jakarta, 2 December 2021.
- [15] Lysa Angrayni, "Hukum Pidana Dalam Perspektif Islam Dan Perbandingannya Dengan Hukum Pidana Di Indonesia," *Hukum Islam*, XV(1), 2015.
- [16] Markhus Munajat, *Dekonstruksi Hukum Pidana Islam*, Logung Pustaka, Sleman, 2004.
- [17] Muhammad Tahmid Nur, "Urgensi Penerapan Hukum Pidana Islam (Tinjauan Filsafat Hukum)," *Maddika: Journal of Islamic Family Law*, 1(1), 2020.
- [18] Nabilah Muhammad, "The Majority of Indonesia's Population is Muslim in the First Semester of 2024," <https://databoks.katadata.co.id/datapublish/2024/08/08/mayoritas-penduduk-indonesia-beragama-islam-pada-semester-i-2024>, accessed 11 September 2024, at 05.04 WIB.
- [19] Nabilah Muhammad, Aspek Spiritualitas Jadi Alasan Utama Masyarakat RI Menggunakan Produk Keuangan Syariah, *Kata Media Network*, <https://databoks.katadata.co.id/datapublish/2023/09/21/aspek-spiritualitas-jadi-alasan-utama-masyarakat-ri-menggunakan-produk-keuangan-syariah>, accessed 11 September 2024, at 04.04 WIB.
- [20] Panji Adam, *Eksistensi Sanksi Pidana Penjara Dalam Jarîmah Ta'zîr*, *TAHKIM: Jurnal Peradaban dan Hukum Islam*, 2(2), 2019.
- [21] Rafan Darodjat and Aam Suryamah, "Pertanggungan Jiwa Yang Optimal Bagi Jemaah

- Haji Berdasarkan Peraturan Perundang-undangan Dan Prinsip Maslahah Mursalah,” *Juris and Society: Jurnal Ilmiah Sosial dan Humaniora*, 3(1).
- [22] Reny Okpirianti, “Korupsi Sebagai Tindak Pidana Khusus Dalam Rancangan Undang-Undang KUHP,” *Varia Hukum*, XL, 2019.
  - [23] Sunarto, “Konsep Hukum Pidana Islam Dan Sanksinya dalam Perspektif Al-Quran,” *Kordinat*, XIX(1), 2020.
  - [24] Topo santoso, “Membumikan Hukum Pidana Islam, Penegakan Syariat dalam Wacana dan Agenda,” Gema Insani Press, Jakarta, 2003.
  - [25] Vinaka Andrean, “Cool! Indonesia is the Most Generous Country in the World,” *Indonesia Baik* <https://indonesiabaik.id/infografis/keren-indonesia-jadi-negara-paling-dermawan-di-dunia>, accessed September 9, 2024, at 18.24 WIB
  - [26] Zainuddin Ali, *Islamic Criminal Law*, Sinar Grafika, Jakarta, 2007.
  - [27] Zamir Iqbal and Abbas Mirakhor, *An Introduction to Islamic Finance Theory and Practice*, John Wiley & Sons (Asia) Pte Ltd, Singapore, 2007.