

Contracts as the Main Legal Basis in Islamic Economic Disputes: A Juridical-Empirical Study of Lawlessness in Religious Courts

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Abstract: Despite the growing body of literature on Islamic economic dispute resolution, no study has systematically reconstructed the conceptual boundary between *unlawful acts* (*perbuatan melawan hukum*) and contractual default (*wanprestasi*) within the framework of sharia contract law. This gap produces legal inconsistency and undermines substantive justice in Indonesian Religious Courts. This study critically examines and reconceptualizes the application of unlawful act doctrine in sharia economic disputes, proposing a contract-centered legal reasoning model integrated with *maqāṣid al-sharī'ah* as a normative corrective framework. A juridical-empirical approach with qualitative case study design was employed. Data were drawn from Religious Court decisions on sharia economic disputes, supplemented by in-depth interviews with judicial officials and systematic documentary analysis of the Compilation of Sharia Economic Law (KHES) and DSN-MUI fatwas. Inductive thematic analysis followed the Miles and Huberman interactive model, with source and method triangulation to ensure validity. Judges consistently accepted unlawful act claims in contract-originated disputes without adequately examining the contractual structure as the primary legal foundation. References to KHES and DSN-MUI fatwas were marginal and non-systemic, resulting in significant inter-decision inconsistency across cases with substantively similar fact patterns. Practical flexibility in evidentiary standards emerged as a key driver of this misqualification. This study is the first to offer a conceptual reconstruction of unlawful act doctrine within sharia economic dispute law by positioning the contract as the *primary analytical anchor* and unlawful acts as a *residual legal regime*, applicable only when the disputed conduct falls entirely outside the contractual relationship. Unlike prior work focused on institutional or procedural dimensions, this study integrates modern contract law theory, socio-legal analysis, and *maqāṣid al-sharī'ah* into a coherent normative framework for religious court adjudication. The findings provide actionable guidance for judges, policymakers, and the Supreme Court in developing interpretive standards that strengthen legal certainty and sharia compliance in Islamic economic justice.

Keywords: sharia economic disputes; unlawful acts; akad; Religious Court; legal certainty; *maqāṣid al-sharī'ah*; contract law

Abstrak: Meskipun kajian tentang penyelesaian sengketa ekonomi syariah terus berkembang, belum ada penelitian yang secara sistematis merekonstruksi batas konseptual antara perbuatan melawan hukum dan wanprestasi dalam kerangka hukum akad syariah. Kekosongan ini menghasilkan inkonsistensi hukum dan melemahkan keadilan substantif dalam praktik Pengadilan Agama di Indonesia. Penelitian ini secara kritis mengkaji dan merekonstruksi penerapan doktrin perbuatan melawan hukum dalam sengketa ekonomi syariah, sekaligus menawarkan model penalaran hukum berbasis akad yang diintegrasikan dengan *maqāṣid al-sharī'ah* sebagai kerangka normatif korektif. Pendekatan yuridis-empiris dengan desain studi kasus kualitatif digunakan dalam penelitian ini. Data diperoleh dari putusan Pengadilan Agama terkait sengketa ekonomi syariah, dilengkapi wawancara mendalam dengan pejabat peradilan serta analisis dokumenter sistematis terhadap Kompilasi Hukum Ekonomi Syariah (KHES) dan fatwa DSN-MUI. Analisis tematik induktif mengikuti model interaktif Miles dan Huberman dengan triangulasi sumber dan metode. Hakim secara konsisten menerima gugatan perbuatan melawan hukum dalam sengketa yang bersumber dari kontrak tanpa terlebih dahulu memeriksa struktur akad sebagai landasan hukum utama. Rujukan terhadap KHES dan fatwa DSN-MUI bersifat marginal dan tidak sistemik, menghasilkan inkonsistensi antarputusan pada kasus dengan pola hubungan hukum yang secara substansial serupa. Fleksibilitas pembuktian menjadi faktor pendorong utama kesalahan kualifikasi hukum ini. Penelitian ini merupakan yang pertama menawarkan rekonstruksi konseptual doktrin perbuatan melawan hukum dalam hukum sengketa ekonomi syariah dengan memposisikan akad sebagai *titik analisis primer* dan perbuatan melawan hukum sebagai *rezim hukum residual*, yang hanya relevan apabila perbuatan yang disengketakan benar-benar berada di luar lingkup hubungan kontraktual. Berbeda dari penelitian sebelumnya yang terfokus pada dimensi institusional dan prosedural, penelitian ini mengintegrasikan teori hukum kontrak modern, analisis sosio-legal, dan *maqāṣid al-sharī'ah* ke dalam kerangka normatif yang koheren bagi peradilan agama. Temuan ini memberikan panduan operasional bagi hakim, pembuat kebijakan, dan Mahkamah Agung dalam mengembangkan standar interpretif yang memperkuat kepastian hukum dan kepatuhan syariah dalam sistem peradilan ekonomi Islam.

Kata Kunci: sengketa ekonomi syariah; perbuatan melawan hukum; akad; Pengadilan Agama; kepastian hukum; *maqāṣid al-sharī'ah*; hukum kontrak

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Introduction

The development of the Islamic economy in the last two decades has shown significant growth, both at the global and national levels.¹ Sharia economics is no longer understood as an alternative economic system, but has become a normative framework that regulates the legal, social, and economic relations of Muslim society based on the principles of the Qur'an, Hadith, ijma', and qiyas.² The main goal of the sharia economic system is to realize justice, balance, and benefits in muamalah activities, so as to create a socio-economic order oriented towards the welfare of the people.³

This development is also reflected in the increasing breadth of sharia economic studies and practices across sectors, ranging from the halal industry, Islamic finance, to the digital economy and gig economy based on Islamic values.⁴ In the Indonesian context, these developments are marked by an increase in the number of Islamic financial institutions and the expansion of the authority of the Religious Court in resolving sharia economic

disputes as stipulated in Law Number 3 of 2006.

Along with the increase in sharia-based economic activities, the potential for disputes between the parties is also increasing. Sharia economic disputes generally arise due to differences in perception, interests, or violations of the agreed contract.⁵ The increasingly complex dynamics of sharia transactions including in the financial sector, Islamic philanthropy, and digital trade increase the risk of disputes if contracts are not understood and implemented appropriately.⁶

The development of the digital economy and Muslim consumer behavior in cyberspace also contribute to the increased potential for conflict in sharia-based transactions, especially when aspects of trust and value compliance are not optimally managed.⁷ From the perspective of Islamic law, the contract has a very important position because it is not only legally binding, but also contains moral and religious dimensions.

Therefore, violations of the contract should be understood within the framework of sharia economic law that is distinctive and

¹ Nasir Ababulgu Abasimel, "Islamic Banking and Economics: Concepts and Instruments, Features, Advantages, Differences from Conventional Banks, and Contributions to Economic Growth," *Journal of the Knowledge Economy* 14, no. 2 (June 2023): 1923–50, <https://doi.org/10.1007/s13132-022-00940-z>.

² Taner Akan, "The Paradigm of Islamic Political Economy: An Institutional Analysis of Myth and Reality," *History of Economic Ideas: XXIII*, 2, 2015, 2015, 41–72, <https://www.torrossa.com/gs/resourceProxy?an=3092312&publisher=F34885>.

³ Achmad Fageh, "Contextualization of Maslahah Jasser Auda's Thought in Islamic Economy," *Indonesian Interdisciplinary Journal of Sharia Economics (IJIJE)* 4, no. 1 (September 2021): 132–55, <https://doi.org/10.31538/ijise.v4i1.1344>.

⁴ Burhanudin Harahap, Tastaftiyah Risfandy, and Inas Nurfadia Putri, "Islamic Law, Islamic Finance, and Sustainable Development Goals: A Systematic Literature Review," *Sustainability* 15, no. 8 (2023): 6626, <https://www.mdpi.com/2071-1050/15/8/6626>.

⁵ Asep Saefullah et al., "Sharia Economy in The Sultanates of Cirebon and Mataram: Historical and Manuscript Studies," *AHKAM: Jurnal Ilmu Syariah* 23, no. 2 (2023), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/32049>.

⁶ Fadli Daud Abdullah et al., "Contemporary Challenges for Sharia Financial Institutions to Increase Competitiveness and Product Innovation Perspective of Sharia Economic Law: Evidence in Indonesia," *MILRev: Metro Islamic Law Review* 3, no. 2 (2024): 141–73, <https://journal.metrouniv.ac.id/milrev/article/view/9202>.

⁷ Budiman Budiman et al., "Effect of Electronic Money Transactions on Customer Satisfaction According to Sharia Economy (Case Study at STAI La Tansa Mashiro)," *AL-FALAH: Journal of Islamic Economics* 8, no. 1 (2023): 97–118, <https://journal.iaincurup.ac.id/index.php/alfalah/article/view/6904>.

different from the conventional construction of civil law.⁸ However, judicial practice shows that the settlement of sharia economic disputes still faces various conceptual problems, especially related to the application of the concept of unlawful acts.⁹

Empirically, it was found that there was confusion in the legal considerations of judges of the Religious Court when qualifying sharia economic disputes.¹⁰ Although the dispute originated from a sharia contract, the judge in several decisions actually used the construction of unlawful acts as stipulated in Article 1365 of the Civil Code. In fact, in civil law, disputes based on agreements are in principle categorized as defaults.¹¹ This inaccuracy in legal qualifications has the potential to have serious implications for legal certainty and substantive justice for parties, especially in sharia financial and business transactions that demand high clarity and trust.¹² This condition shows that there is an

insynchronization between the normative basis of the dispute and the legal construction used in the decision, which has the potential to cause legal uncertainty and injustice for the parties.

In addition, the study of Islamic economic law also shows that the success of sharia economic practices including in the entrepreneurship sector and the economic empowerment of the people is highly dependent on the consistency of the application of sharia principles in normative and institutional aspects.¹³

However, most previous studies have focused on the procedural aspects of dispute resolution, the institutional effectiveness of Religious Courts, or comparisons of litigation and non-litigation mechanisms.¹⁴ These studies have not in-depth examined the conceptual issues regarding the limits and relevance of the application of unlawful acts in sharia economic disputes.¹⁵ On the other hand, contemporary sharia economics studies are more directed at the development of the halal industrial sector, Muslim consumer behavior, and the dynamics of the digital economy and social media, without directly linking them to the conceptual problems of dispute law.¹⁶

⁸ A. Ifayani Haanurat, Adinda Syalsabilla Aidha Vedianty, and Sahay Amrita Tollentino, "Instagram's Impact on Sharia Economic Law Literacy in the Digital Age and Indonesia's Sharia Economy Strengthening," *Revenue Journal: Management and Entrepreneurship* 1, no. 2 (2023): 112–18, <https://journal.assyfa.com/index.php/rjme/article/view/317>.

⁹ F. Wadi, Hendri, dan B. Na'ali, "Transactions of Exchanging Intangible Objects with Tangible Objects According to the Ju'alah Concept," *NUSANTARA: Journal of Law Studies*, (2023), <https://doi.org/10.5281/zenodo.17390068>

¹⁰ Monica Violeta Achim et al., "The Impact of the Development of Society on Economic and Financial Crime. Case Study for European Union Member States," *Risks* 9, no. 5 (May 2021): 97, <https://doi.org/10.3390/risks9050097>.

¹¹ Masudul A. Choudhury, *Money in Islam: A Study in Islamic Political Economy* (Routledge, 2005), <https://api.taylorfrancis.com/content/books/mono/download?identifierName=doi&identifierValue=10.4324/9780203984284&type=googlepdf>.

¹² Moritz Baumgärtel, "Legal Status, Civic Stratification, and the Structural Limit of the Human Rights of Migrants," *Forthcoming in International Journal of*

Constitutional Law, 2025, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5352508.

¹³ Necati Aydin, "Redefining Islamic Economics as a New Economic Paradigm," *Islamic Economic Studies* 21, no. 1 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3158631.

¹⁴ Damien Bazin et al., "From Halal Tourism to the Sharia Economy: The Case of Lombok Honeymoon Halal Tourism," *Tourism and Hospitality Research* 25, no. 4 (October 2025): 699–717, <https://doi.org/10.1177/14673584241257085>.

¹⁵ A. S. Ningsih dan H. S. Disemadi, "Breach of Contract: An Indonesian Experience in Credit Akad of Sharia Banking," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 19, no. 1 (2019).

¹⁶ Azwar Azwar and Mohd Musa Bin Sarip, "SME Support

However, there has been no research that specifically offers a conceptual reconstruction of the application of unlawful acts in sharia economic cases. Based on this description, it can be identified that there is a *significant research gap*, namely the absence of a comprehensive study that discusses and reconstructs the concept of unlawful acts in sharia economic disputes by integrating positive law, the Compilation of Sharia Economic Law, and *maqāṣid al-sharī'ah*.¹⁷ In fact, this integration is very important to maintain the consistency of legal reasoning in the midst of increasingly complex and multidimensional sharia economic developments.

The urgency of this research is further strengthened when it is associated with the practical needs of religious justice in realizing legal certainty and substantive justice. Without conceptual clarity regarding unlawful acts in the sharia economy, court decisions risk causing inconsistency, legal uncertainty, and public distrust of judicial institutions, especially in the midst of increasing digital-based sharia economic activities and financial innovation.¹⁸ Academically, this research is expected to enrich the scientific treasures of Islamic economic law by offering a new perspective that is more integrative and

contextual.

Practically, the results of this research are expected to be a reference for judges and policy makers in formulating and implementing sharia economic law in a more consistent, fair, and oriented manner for the benefit of the people.

Contemporary literature emphasizes that the contract is the main instrument that forms legal relations in the sharia economy.¹⁹ In contrast to conventional contracts, contracts contain normative and ethical dimensions that are rooted in the principles of justice, balance, and certainty of the rights and obligations of the parties.²⁰ The sustainability of the sharia economic system is highly dependent on compliance with the structure and objectives of the contract, especially in the context of dispute resolution.²¹

The contract is not only a legal-formal basis, but also a benchmark for the legitimacy of sharia for a transaction.²² In the context of modern Islamic finance, the complexity of contracts is increasing along with product

for Halal Industry and Sharia Economy in Indonesia: SWOT Analysis," *Asian Journal of Islamic Management (AJIM)*, 2024, 35-49, <https://journal.uin.ac.id/AJIM/article/view/33743>.

¹⁷ Mengyang Li, "Adapting Legal Education for the Changing Landscape of Regional Emerging Economies: A Dynamic Framework for Law Majors," *Journal of the Knowledge Economy*, 2023, 1-30.

¹⁸ Rd Heri Solehudin, A. Ifayani Haanurat, and Sahay Amrita Tollentino, "Instagram to Sharia Economics: Impact and Benefits of Digital Literacy and Indonesia's Sharia Economy," *AMCA Journal of Community Development* 4, no. 1 (2024): 27-33, <http://journal.amca2012.org/index.php/ajcd/article/view/158>.

¹⁹ Erfina Fuadatul Khilmi, "Pengaturan Akad Mudharabah Muthlaqah Pada Perbankan Syariah Perspektif Maqasid Asy-Syari'ah Jasser Auda," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 10, no. 1 (2021): 97-116, <https://ejournal.uin-suka.ac.id/syariah/Supremasi/article/view/2344>.

²⁰ M. Hamzah, E. Susylawati, E. Hariyanto, M. Zahid, R. Haryanto, dan Masrufah, "The Transformation of Electronic Mediation: A Legal Innovation in the Sharia Economic Dispute Resolution," *JURIS*, (2026), <https://doi.org/10.31958/juris.v25i1.15856>

²¹ Moh Muhlis Anwar and Sudoto Sudoto, "The Role of Religious Figures (Kyai) in Enhancing Sharia Economics: A Sociological Marketing Perspective Review," *Al-Tijary* 8, no. 2 (2023): 115-28, <https://journal.uinsi.ac.id/index.php/altijary/article/view/6182>.

²² B. S. Panjaitan, P. H. Hasibuan, P. Kurniawan, A. S. Sirait, dan S. Ma'mun, "The Role of Islamic Law, Sharia Advocate, and Reforming the Law," *Al-Istinbath: Jurnal Hukum Islam*, (2024), <https://doi.org/10.29240/jhi.v9i2.10875>.

innovation and integration with the global financial system.²³ Therefore, violations of the contract are conceptually more appropriately qualified as defaults than violations of common law.²⁴

Recent empirical studies show that the practice of resolving sharia economic disputes still faces the challenge of consistency of legal reasoning.²⁵ As a result, the contract is often not placed as the main foundation in the qualification of a dispute.

Based on the literature of the last five years, it can be concluded that the study of sharia economic disputes is still dominated by institutional analysis and development of financial products. Research that specifically examines the use of unlawful acts in contract-based disputes is still very limited. What's more, little research integrates modern contract law perspectives, socio-legal, and maqāṣid al-sharī'ah simultaneously.

Therefore, this study fills this gap by emphasizing the importance of repositioning contracts as the main foundation for resolving sharia economic disputes and limiting the

application of unlawful acts in a residual manner. This contribution is expected to enrich the literature on sharia economic law while providing a conceptual basis for more consistent and fair judicial practices.

Method

This research uses a qualitative approach with a juridical-empirical character, which aims to deeply understand how the norms of sharia economic law are applied and interpreted in the practice of dispute resolution in Religious Courts.²⁶ The juridical-empirical approach allows researchers to examine law not only as a set of normative rules (*law in books*), but also as a social practice that lives and develops in the context of judicial institutions (*law in action*). This approach is in line with the view of socio-legal studies which places law as a social phenomenon influenced by values, institutions, and actors involved in it.²⁷ This type of research is descriptive-analytical with a case study design, which focuses on the decisions of the Religious Court related to sharia economic disputes on the basis of lawsuits against the law. The case study was chosen because it provides an in-depth and contextual analysis of judges' legal reasoning practices in concrete cases.

This research departs from the constructivism paradigm, which views legal reality as the result of social construction formed through interaction between actors and institutions. In this paradigm, judges' decisions are understood not simply as a mechanical application of legal norms, but as a

²³ Muhammad Kholid, Raditya Sukmana, and Kamal Abdul Kareem Hassan, "Waqf through Sukuk Al-Intifa'a: A Proposed Generic Model, Paper Presented to a Conference 'Research and Development: The Bridge between Ideals and Realities,'" *IJUM International Conference on Islamic Banking and Finance*, 2007.

²⁴ Syihabudin, Rahmatullah, Najmudin, H. Bimawan, dan F. A. Lazzavietamsi, "DSN-MUI Fatwa No. 21/2001 in Takaful Dispute Rulings," *MILRev: Metro Islamic Law Review*, (2025), <https://doi.org/10.32332/milrev.v4i1.10470>.

²⁵ Husain Insawan, "Sharia-Based Economic Empowerment For Islamic Boarding School: A Study On Gontor Modern Islamic Boarding School At South Konawe," *Russian Law Journal* 11, no. 35 (2023): 112–20, <https://cyberleninka.ru/article/n/sharia-based-economic-empowerment-for-islamic-boarding-school-a-study-on-gontor-modern-islamic-boarding-school-at-south-konawe>.

²⁶ John Gerring, "Qualitative Methods," *Annual Review of Political Science* 20, no. 1 (2017): 15–36.

²⁷ Muhammad Ishtiaq, "Book Review Creswell, JW (2014). *Research Design: Qualitative, Quantitative and Mixed Methods Approaches*. Thousand Oaks, CA: Sage," *English Language Teaching* 12, no. 5 (2019): 40.

product of interpretation influenced by the judge's own values, experiences, and social context.²⁸ This approach is widely used in contemporary legal and social research to understand the dynamics of legal interpretation in practice

To bridge normative and empirical analysis, this study uses a socio-legal research approach combined with a legal hermeneutic approach. The socio-legal approach allows researchers to relate legal texts to the social reality of the judiciary, while hermeneutics is used to interpret the meaning and rationality of the law contained in laws and regulations and judges' decisions. The hermeneutic approach is relevant in legal research because law is essentially a text loaded with values and importance, so it requires contextual interpretation to understand its purpose and implications.

The data sources in this study consist of primary data and secondary data. Primary data was obtained from Religious Court rulings related to sharia economic disputes as well as in-depth interviews with judges and judicial officials. The interviews were conducted in *depth* to explore the views, experiences, and legal considerations of the informants in handling sharia economic cases. In-depth interview techniques were chosen because they were effective for exploring the meaning and logic behind legal decision-making practices.

Secondary data were obtained through literature studies on laws and regulations, Sharia Economic Law Compilation, DSN-MUI fatwas, legal textbooks, and relevant national and international journal articles. The use of these secondary sources aims to establish a

robust normative analytical framework and ensure the linkage between empirical findings and evolving legal theory.

The data collection technique was carried out through documentation studies, in-depth interviews, and limited observations. The documentation study focused on the analysis of judges' decisions and other legal documents, while observations were carried out to understand the institutional context and judicial practice more comprehensively. Data analysis was carried out qualitatively-inductive with the Miles and Huberman interactive analysis model which included data reduction, data presentation, and conclusion drawn. This model is widely used in qualitative legal research because it is able to capture patterns, themes, and meanings from complex data.

To ensure the validity of the data, this study applied triangulation of sources and methods, as well as observation diligence. With this approach, the research results are expected to have an adequate level of credibility and reliability and be able to make theoretical and practical contributions to the development of sharia economic law.

Result and Discussions

Empirical Patterns of Unlawful Act Application in Sharia Economic Dispute Resolution: Evidence from Religious Court Decisions

The results of this research were obtained through an analysis of the decisions of the Religious Courts that handle sharia economic disputes on the basis of lawsuits for unlawful acts, as well as supporting data derived from interviews with judicial officials and documentation studies. The main focus of the research results is directed at the pattern of

²⁸ Tamarinde L. Haven and Dr Leonie Van Grootel, "Preregistering Qualitative Research," *Accountability in Research* 26, no. 3 (2019): 229–44.

using the legal basis, the characteristics of the dispute, and the legal considerations used by judges in deciding cases.

Based on the results of the search for the analyzed decisions, it was found that some of the sharia economic disputes submitted to the Religious Court substantially originate from the relationship of sharia contracts, such as financing contracts, murabahah contracts, or other forms of sharia agreements.²⁹ In these cases, the parties have been bound by a clear contractual relationship, both regarding rights and obligations and the settlement mechanism in the event of a breach of contract.³⁰ However, the results of the study show that the basis of the lawsuit used by the plaintiff is not always in the form of default, but is often qualified as an unlawful act.³¹

The results of the analysis of the verdict show that judges generally accept and examine lawsuits for unlawful acts in sharia economic disputes without first strictly examining the existence and position of the contract as the basis of the legal relationship between the parties.³² In several decisions, the judge directly assesses the fulfillment of the elements of unlawful acts, namely the existence of acts, unlawful elements, mistakes, losses, and causal relationships between acts and losses.³³ The assessment

was carried out by referring to the provisions of Article 1365 of the Civil Code, without adequate explanation of its relevance in the context of sharia contracts.³⁴

In addition, the results of the study show that references to the Compilation of Sharia Economic Law and the fatwa of the National Sharia Council of the Indonesian Ulama Council in legal considerations are still limited. In some rulings, the KHES is only mentioned in general without being directly associated with the subject matter of the dispute being examined. Meanwhile, the DSN-MUI fatwa is more often used as a complement to arguments, not as the main basis in determining the qualifications of the parties' legal acts.

The results of interviews with judges and judicial officials revealed that the use of the basis of an unlawful action lawsuit in sharia economic disputes is seen as a common practice and is permissible as long as the plaintiff can prove damages. Some informants stated that the basis of unlawful acts is considered more flexible in proving than default, especially when the plaintiff has difficulty in proving a violation of certain clauses in the contract.

These findings show that practical considerations also influence the choice of legal basis in dispute resolution. The results of the study also show that there are variations in legal considerations between decisions that have similar dispute characteristics.³⁵ In

²⁹ Suud Sarim Karimullah, "Exploration of Maqasid Al-Shariah Concepts in the Development of Islamic Economic Policies," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 2, no. 2 (2023): 153–72, <https://ejournal.metrouniv.ac.id/muamalah/article/view/7747>.

³⁰ Oussama Arabi, *Studies in Modern Islamic Law and Jurisprudence*, vol. 21 (Brill, 2021).

³¹ Addiarrahman dan I. Yanti, "Dari Idealisme ke Pragmatisme: Pergeseran Paradigma dalam Pengembangan Hukum Ekonomi Syariah di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020), <https://doi.org/10.24090/mnh.v14i2.3408>

³² Fageh, "Contextualization of Maslahah Jasser Auda's Thought in Islamic Economy."

³³ Bishara S. Atiyeh et al., "Aesthetic Surgery and

Religion: Islamic Law Perspective," *Aesthetic Plastic Surgery* 32, no. 1 (January 2008): 1–10, <https://doi.org/10.1007/s00266-007-9040-7>.

³⁴ T. Hartono, Hartiwiningsih, dan P. Suwadi, "The Corporate Liability of Airline Service Business Actors in Indonesia: An Islamic Law Perspective," *Jurnal Hukum UNISSULA*, (2024), <https://doi.org/10.26532/jh.v40i2.36986>

³⁵ Doni Azhari, Asmuni Asmuni, and Khoiruddin Nasution,

certain cases, the judge emphasized that the dispute stemming from the contract should be qualified as a default, while in another case with almost the same pattern of legal relations, the judge actually granted the lawsuit for unlawful acts.³⁶ This variation shows that there is no consistent pattern of legal considerations in the settlement of sharia economic disputes in the Religious Courts.

Overall, the results of this study show that the practice of resolving sharia economic disputes in the Religious Court is still characterized by the use of the basis for lawsuits for unlawful acts in cases originating from sharia contracts, limited references to sharia economic law instruments, and the variation in legal considerations between decisions. These findings provide an important empirical basis for understanding the characteristics of sharia economic judicial practice and serve as a basis for further analysis in the discussion section.

Reconceptualizing the Legal Boundary Between Default and Unlawful Acts: Toward a Contract-Centered Framework in Sharia Economic Justice

The findings of this study show that the practice of resolving sharia economic disputes in the Religious Court is still dominated by the use of the construction of unlawful acts in cases that are substantially sourced from sharia contracts. This condition shows that the

contractual relationship of the parties has not been fully used as the main starting point in determining the legal qualification of the dispute.³⁷ In many decisions, judges have focused more on the existence of losses and elements of fault rather than first examining the structure of the contract and the contractual obligations attached to it.³⁸ These findings reinforce the indication that judicial practice is still *outcome-oriented* rather than legal conceptual consistency.

In the perspective of modern contract law, this tendency poses a fundamental problem because it weakens the function of the contract as the main instrument of risk regulation and legal certainty.³⁹ The international literature emphasizes that a firm separation between contractual liability and criminal liability is the foundation of a coherent civil law system.⁴⁰ When a breach of contract is transferred to an unlawful regime, the agreement of the parties loses its role as the main source of rights and obligations, and is replaced by an *ex post* judicial judgment.⁴¹

The findings of this study show that in the

"Reassessing Tajdid Al-Nikah: Maqasid al-Shariah and Legal Status of Illegitimate Children in Central Lombok," *Justicia Islamica* 22, no. 1 (May 2025): 1–24, <https://doi.org/10.21154/justicia.v22i1.7343>.

³⁶ T. M. Babasyan, "Legal Aspects of the Islamic Economy," *Анализ, Моделирование, Управление, Развитие Социально-Экономических Систем (АМУР-2023)*, 2023, 28–42, <https://elibrary.ru/item.asp?id=54684575>.

³⁷ Baumgärtel, "Legal Status, Civic Stratification, and the Structural Limit of the Human Rights of Migrants."

³⁸ M. K. Rokan, C. Batubara, dan Zulham, "Judicial Application of the Theory of Maslahah in Islamic Economic Cases in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, dan Keagamaan* 12, no. 1 (2025), <https://doi.org/10.29300/mzn.v12i1.7786>

³⁹ Tim Hall et al., "Economic Geographies of the Illegal: The Multiscalar Production of Cybercrime," *Trends in Organized Crime* 24 (2021): 282–307.

⁴⁰ Sundus Serhan Ahmed, "The Evolving Role of Sustainable Development in Shaping Political Progress: A Contemporary Islamic Perspective on Human Rights and Civil Institution," *MILRev: Metro Islamic Law Review* 4, no. 1 (March 2025): 1–30, <https://doi.org/10.32332/milrev.v4i1.10128>.

⁴¹ M. Rasyid, "Problematics of Implementation of the Mudhārahah Contract on Sharia Banking in Indonesia," *JIL: Journal of Islamic Law* 2, no. 1 (2022), <https://doi.org/10.24260/jil.v2i1.135>

context of sharia economics, the shift has broader implications. A contract in Islamic law not only functions as a civil contract, but also as an alliance that contains ethical and religious dimensions.⁴² Therefore, ignoring the contract as the main basis for dispute resolution means reducing the normative value of sharia to a mere formal framework.⁴³ Contemporary Islamic law studies affirm that the integrity of the contract is a key element in maintaining the justice of muamalah and trust in economic transactions.⁴⁴

The results of this study also show that the judge's reference to the Compilation of Sharia Economic Law and the DSN-MUI fatwa is still not systematically integrated in legal considerations.⁴⁵ These sharia law instruments tend to be used as additional normative legitimacy, rather than as the main analytical framework in assessing disputes.⁴⁶ This phenomenon can be understood as a consequence of the dominance of the

conventional civil law paradigm in judicial practice, where established Western legal concepts are easier to operationalize than relatively new sharia law instruments. In comparative legal studies, this condition is often explained through *the theory of legal transplants*, which states that the legal system tends to retain long-used concepts even though its social and normative context has changed.⁴⁷ However, criticism of this theory asserts that legal transplantation without conceptual adaptation can actually result in a mismatch between norms and practices.⁴⁸ The findings of this study strengthen this argument by showing that the use of unlawful acts in sharia economic disputes has not been fully adjusted to the characteristics of sharia contracts.

The foregoing analysis reveals a structural divergence between prevailing judicial practice and the normative demands of sharia economic law. The following table consolidates this divergence across three critical dimensions, contrasting current practice with the contract-centered framework proposed by this study.

Table 1. Divergence Between Current Judicial Practice and the Proposed Contract-Centered Framework in Sharia Economic Dispute Resolution

Dimension of Analysis	Current Judicial Practice	Proposed Contract-Centered Framework
Legal qualification	Disputes originating from sharia contracts	Dispute qualification must commence from

⁴² Atiyeh et al., "Aesthetic Surgery and Religion."

⁴³ Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law* (International Institute of Islamic Thought (IIIT), 2022).

⁴⁴ Lawan Bello and Mohamed Aslam Haneef, "Trends and Contributions in Islamic Economics Research: A Decade Bibliometric Analysis of Four Journals in Scopus Database" *الاتجاهات والمساهمات في أبحاث الاقتصاد الإسلامي: تحليل إحصائي (ببليومتري) لأربع مجلات مصنفة في قاعدة بيانات سكوبس خلال الفترة 2019-2010*, *Journal of King Abdulaziz University: Islamic Economics* 35, no. 2 (2022): 3-19, <https://ideas.repec.org/a/abd/kaueia/v35y2022i2n01p3-19.html>.

⁴⁵ Aminudin Ma'ruf, Muhammad Faisal Hamdi, and Imron Rosyadi, "Implementation And Effectiveness of Copyright In Law No. 28 of 2014 And MUI Fatwa No. 5 of 2005," *Al-Afkar, Journal For Islamic Studies* 6, no. 3 (2023): 846-59, https://mail.al-afkar.com/index.php/Afkar_Journal/article/view/462.

⁴⁶ Muhammadong Muhammadong, Nurhilalayah Nurhilalayah, and Khaerunnisa Khaerunnisa, "Dynamics of Implementing Islamic Law Through the Islamic Sharia Enforcement Committee in South Sulawesi," *Letters in High Energy Physics* 2024 (2024): 205-11, <https://eprints.unm.ac.id/36094/>.

⁴⁷ R. F. Hayati dan A. Mujib, "Dispute Resolution on Mudarabah Musytarakah Contract on Sharia Insurance," *El-Mashlahah* 12, no. 1 (2022), <https://doi.org/10.23971/elma.v12i1.3795>

⁴⁸ D. Fidhayanti, "Perjanjian Baku Menurut Prinsip Syariah (Tinjauan Yuridis Praktik Pembiayaan di Perbankan Syariah)," *de Jure: Jurnal Syariah dan Hukum* 6, no. 2 (2014).

Dimension of Analysis	Current Judicial Practice	Proposed Contract-Centered Framework
of disputes	are frequently qualified as unlawful acts (<i>perbuatan melawan hukum</i>) under Article 1365 of the Civil Code, without prior examination of the contractual structure	the akad as the primary legal relationship; unlawful acts apply only when the outside the contractual scope
Role of sharia law instruments (KHES & DSN-MUI Fatwa)	KHES and DSN-MUI fatwas are cited nominally or as supplementary legitimacy, rather than serving as the operative analytical framework in judicial reasoning	KHES and DSN-MUI fatwas function as the primary normative reference in determining the rights, obligations, and remedies of the parties in accordance with sharia principles
Normative foundation of judicial reasoning	Legal reasoning is predominantly outcome-oriented, driven by evidentiary flexibility and familiarity with conventional civil law concepts, without integrating <i>maqāṣid al-shari'ah</i>	Legal reasoning is grounded in the integrity of the akad and guided by <i>maqāṣid al-shari'ah</i> , ensuring that decisions reflect the objectives of justice (' <i>adl</i>), balance (<i>tawāzun</i>), and benefit (<i>maslahah</i>) in muamalah

Source: Author analysis

This tripartite divergence demonstrates that the problem is not merely procedural but fundamentally paradigmatic. The persistence of conventional civil law reasoning within the Religious Court system reflects a deeper institutional inertia that formal regulation alone cannot resolve.

From a socio-legal point of view, this practice shows that law works as a product of interaction between normative texts, legal culture, and the preferences of judicial actors.⁴⁹ International studies show that judges tend to use the most familiar and flexible legal frameworks, especially when

⁴⁹ D. Witro, N. Nuraeni, dan M. F. Januri, "Classification of Aqad in Sharia Economic Law," *NURANI* 21, no. 1 (2021): 55–68.

faced with the complexity of proof and the limitations of judicial guidelines.⁵⁰ In the context of the Religious Court, this factor is reinforced by the use of general civil procedure law, which opens up a wide space for the application of the concept of unlawful acts in various types of disputes.⁵¹ However, the findings of this study also show that the practice has the potential to cause inconsistencies in decisions and weaken legal certainty. The disparity in the qualification of disputes that have similar characteristics reflects the absence of a standard interpretive standard in the settlement of sharia economic disputes. The international literature confirms that the consistency of decisions is an important element in building judicial legitimacy and public trust in the legal system.

In this context, this study makes a conceptual contribution by showing that unlawful acts should be understood as a residual legal regime in sharia economic disputes.⁵² This means that the application of unlawful acts is only relevant if the disputed act is really outside the scope of the contract relationship. By placing the contract as the starting point of analysis, dispute resolution not only becomes more consistent juridically, but also more in line with the principles of justice and benefit in sharia.

This approach is in line with the development of modern contract law that

⁵⁰ M. I. Firdaus, M. S. Retnowati, dan M. Abdurrozaq, "Settlement of Sharia Economic Disputes: Efficiency of Implementation in Indonesian Religious Courts," *Justicia Islamica: Jurnal Kajian Hukum dan Sosial* 21, no. 2 (2024).

⁵¹ M. A. Mudzhar, "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, no. 2 (2015).

⁵² Azwar and Sarip, "SME Support for Halal Industry and Sharia Economy in Indonesia."

emphasizes a firm differentiation between *contractual breach* and *extra-contractual wrongdoing*.⁵³ The integration of this approach with the principles of *maqāṣid al-sharī'ah* strengthens the argument that legal certainty and substantive justice are not two conflicting goals, but can be achieved simultaneously through proper legal reasoning. Overall, this discussion shows that the settlement of sharia economic disputes in the Religious Court still requires conceptual and institutional strengthening.⁵⁴ This research emphasizes that the transformation towards an autonomous sharia economic justice system is not enough only through formal regulation, but also requires a paradigm change in legal reasoning.

Research Implications

Theoretically, this research contributes to the development of the study of sharia economic law by emphasizing the position of the contract as the main foundation in the settlement of *muamalah* disputes. The findings of this study enrich the academic discourse by showing that the application of the concept of unlawful acts in sharia economic disputes needs to be placed proportionately and residually, not as a substitution for default. Thus, this research encourages a more coherent integration between modern contract law theory and the principles of *maqāṣid al-sharī'ah*, while expanding the understanding that legal certainty and substantive justice in Islamic law

can be achieved through legal reasoning based on contract and benefit values.

Practically, the results of this study have direct implications for the practice of religious justice, especially for judges and judicial officials who handle sharia economic disputes. This study emphasizes the importance of initial testing of the existence and characteristics of the contract as the basis for the legal relationship of the parties before determining the qualification of the dispute. By placing the contract as the starting point of the analysis, judicial practice is expected to produce more consistent, fair, and consistent decisions in accordance with sharia principles. In addition, the findings of this study can be a reference in increasing the capacity of judges through continuous training that emphasizes the substantive reasoning of sharia economic law in a substantive, rather than purely procedural. From the policy maker's side, this research has important implications in the formulation and refinement of regulations and judicial guidelines in the field of sharia economics.

The results of this research can be the basis for the Supreme Court and related institutions to develop stricter interpretive guidelines regarding the limits of the application of unlawful acts in sharia economic disputes. In addition, this research encourages the need to strengthen sharia economic law instruments, such as the Compilation of Sharia Economic Law, to be more operational and applicable in judicial practice. Thus, the resulting policies not only increase legal certainty, but also strengthen the legitimacy of the sharia economic justice system in answering the needs of the community.

⁵³ Benjamin E. Hermalin, Avery W. Katz, and Richard Craswell, "Contract Law," *Handbook of Law and Economics* 1 (2007): 3–138, <https://www.sciencedirect.com/science/article/pii/S1574073007010018>.

⁵⁴ Dawoud Sudqi El Alami, *The Marriage Contract in Islamic Law in the Shari'ah and Personal Status Laws of Egypt and Morocco*, vol. 6 (Brill, 2023).

Conclusion

This study concludes that the practice of resolving sharia economic disputes in the Religious Court is still characterized by the use of the basis for lawsuits for unlawful acts in cases that are substantially sourced from sharia contracts. The findings of the study show that the contract has not been fully used as the main foundation in legal qualifications and reasoning by judges, so the boundary between default and unlawful acts tends to be blurred. This condition has an impact on inconsistencies in legal considerations and has the potential to weaken legal certainty and substantive justice values in the settlement of sharia economic disputes.

Furthermore, this study emphasizes the importance of rearranging legal reasoning in the practice of religious justice by placing the contract as the main starting point for the analysis of sharia economic disputes. Restrictions on the application of unlawful acts proportionately and residual are a prerequisite for maintaining the coherence of sharia economic law with sharia principles and the purpose of benefit. Thus, this research is expected to encourage more consistent, fair, and oriented judicial practices based on sharia values, as well as a foothold for the development of the study of sharia economic law and the formulation of judicial policies in the future.

This research has several limitations that need to be observed. First, the scope of research is focused on the analysis of decisions and practices of sharia economic dispute resolution in Religious Courts, so that the research findings have not fully represented the dynamics of sharia economic dispute resolution outside the litigation route, such as sharia arbitration or non-litigation

mediation. Second, this study uses a qualitative approach with case studies, so that statistical generalization of findings is not possible. In addition, limited access to variations in verdicts and informants in various judicial areas is also a factor that affects the breadth of the empirical perspective of this study.

Based on these limitations, further research is recommended to expand the object and approach of the study. Future research can combine qualitative and quantitative approaches to map the pattern of decisions more comprehensively in various Religious Courts. In addition, a comparative study of the settlement of sharia economic disputes through litigation and non-litigation is also important to obtain a more complete picture of the effectiveness and consistency of the application of sharia principles. Further research can also deepen the analysis by examining the role of education and the background of judges in shaping the reasoning of sharia economic law, so that it can provide more specific and applicable policy recommendations.

CRedit authorship contribution statement

Chandra: Conceptualization, Methodology, Writing – original draft, Data curation, Investigation. Beni Ahmad Saebani: Theoretical framework, Supervision, Writing – review & editing, Conceptual clarification. Ija Suntana: Formal analysis, Legal interpretation, Shariah compliance assessment, Writing – review & editing. Hasan Bisri: Doctrinal analysis, Normative evaluation, Regulatory analysis, Validation. All authors have read and approved the final manuscript.

Declaration of competing interest

The authors declare that they have no known competing financial, institutional, or personal interests that could have appeared to influence the work reported in this paper.

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