

# CHAPTER I

## INTRODUCTION

### A. Background of Study

Currently, the assets of the Islamic finance industry have increased significantly,<sup>1</sup> the increase does not only occur in a few financial sectors<sup>2</sup>, but almost all Islamic financial institutions, such as Islamic banking, Islamic insurance, Islamic pawnshops, Islamic bonds, Islamic capital markets, Islamic mutual funds, and *Baitul Maal wat Tamwil* (BMT). This increase also occurs in the entire halal industry, both from tourism, food, fashion, and medicine.<sup>3</sup>

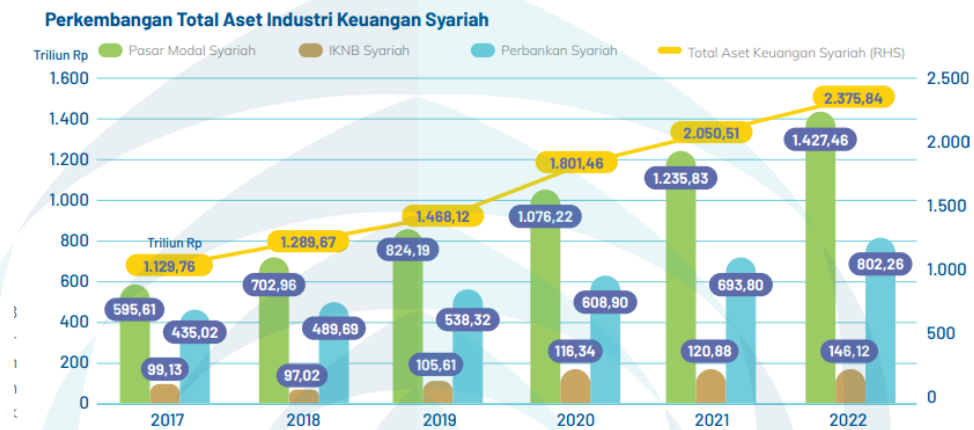
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<sup>1</sup> Otoritas Jasa Keuangan (OJK), *Laporan Perkembangan Keuangan Syariah Indonesia 2022*, Departemen Perbankan Syariah Otoritas Jasa Keuangan (Jakarta Pusat: Otoritas Jasa Keuangan, 2022), p.14.

<sup>2</sup> Widi Abdul, Dewi, Siti, "Tantangan Perkembangan Perbankan Syariah Di Indonesia," *Jurnal Tabarru': Islamic Banking and Finance* 5, no. 2 (2022): 352–55.

<sup>3</sup> Bahtiar Adamsah, Dan Ganjar, and Eka Subakti, "Perkembangan Industri Halal Terhadap Pertumbuhan Ekonomi Manusia," *Indonesia Journal of Halal* 5, no. 1 (2022): 71, <https://ejournal2.undip.ac.id/index.php/ijh/article/view/14416>.

*Figure 1 Development of Total Assets of the Islamic Finance Industry*



This increase is emphasized by a report from the Financial Services Authority (*OJK*) which shows that the total sharia financial assets in 2017 amounted to 1,129.76 trillion, in 2018 amounted to 1,289.67 trillion, in 2019 Rp. 1,468.12 trillion, in 2020 Rp. 1,801 trillion, in 2021 Rp. 2,050 trillion, and in 2022 Rp. 2375 trillion.<sup>4</sup>

However, in its rapid development, the sharia economy is also accompanied by an increase in the number of disputes every year. Sharia economic disputes are disputes or conflicts between parties related to valuable rights, whether in the form of money or goods, in the field of sharia economics.<sup>5</sup> These disputes can occur between Islamic financing institutions and customers, Islamic banks, Islamic

<sup>4</sup> (*OJK*), *Laporan Perkembangan Keuangan Syariah Indonesia* 2022, 15. p.15

<sup>5</sup> Nur Fitriyanti, "Pertimbangan Hakim Dalam Penetapan Ta'zir Terhadap Nasabah Wanprestasi Pada Sengketa Ekonomi Syariah," *UIN Syarif Hidayatullah* (UIN Syarif Hidayatullah Jakarta, 2023), p.12.

microfinance institutions, Islamic insurance, Islamic reinsurance, Islamic mutual funds, Islamic bonds, Islamic futures, and Islamic securities.<sup>6</sup>

When a sharia economic dispute occurs, dispute resolution can be carried out through two channels, it is litigation and non-litigation.<sup>7</sup> The litigation route is carried out through the court by the judge's decision, and in the non-litigation route, through the arbitration.<sup>8</sup> In the litigation route, the settlement of sharia economic disputes will be carried out in the Religious Court, this is in accordance with the manifestation of the authority of the Religious Court regulated in the Indonesian Law Number 3 of 2006.<sup>9</sup> With the addition of authority in religious courts, the judges of the Religious Court must automatically be ready and able to examine, decide, and

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<sup>6</sup> Rivany Rida Aliya Putri Fitria Nuryanti, Asyila Putri Wibowo Alfitri, Nurviya Firdaus, "Hambatan Penyelesaian Sengketa Ekonomi Syariah Melalui Mediasi Pada Masa Pandemi Covid-19," *Jurnal Ekonomi Syariah* 1, no. 1 (2022): 49–58, <https://jurnal.penerbitwidina.com/index.php/TIJARAH/article/download/114/116%0A>.

<sup>7</sup> Rosita, "Alternatif Dalam Penyelesaian Sengketa (Litigasi Dan Non Litigasi)," *Al-Bayyinah: Journal of Islamic Law* VI, no. 2 (2017).

<sup>8</sup> Juwita Tarochi Boboy Boboy, Budi Santoso, and Irawati Irawati, "Penyelesaian Sengketa Pertanahan Melalui Mediasi Berdasarkan Teori Dean G.Pruitt Dan Jeffrey Z.Rubin," *Notarius* 13, no. 2 (2020): 803–18, <https://doi.org/10.14710/nts.v13i2.31168>.

<sup>9</sup> Akhmad Nuzul Arifin, "Kewenangan Peradilan Agama Terhadap Penyelesaian Sengketa Ekonomi Syariah," *Artikel Ilmiah Hasil Penelitian Mahasiswa* 2013, 2013, 10, <http://jurnal.uin-antasari.ac.id/index.php/al-banjari/article/view/965>.

adjudicate sharia economic dispute cases.<sup>10</sup> With this authority, the Supreme Court has made a guideline for Religious Court judges in the form of a Compilation of Sharia Economic Law (*KHES*) to assist in resolving sharia economic dispute cases.<sup>11</sup>

***Table 1. Number of Sharia Economic Dispute Decisions***

No.	Year	Total Items
1	2024	474
2	2023	461
3	2022	404
4	2021	472
5	2020	543
6	2019	393
7	2018	326
8	2017	207
9	2016	160
10	2015	40

<sup>10</sup> Shofiyun Nahidloh, "Kesiapan Hakim Pengadilan Agama Di Madura Dalam Menyelesaikan Sengketa Ekonomi Syari'ah," 2019, p. 53–54.

<sup>11</sup> Kania Rachman, "Analisis Kedudukan Fatwa DSN-MUI Dan *KHES* Dalam Pertimbangan Putusan Hakim Pada Sengketa Ekonomi Syariah Di Pengadilan Agama Jakarta Selatan," *UIN Syarif Hidayatullah*, 2022, p. 56.

The table shows the number of sharia economic dispute decisions taken from the Directory of Decisions of the Supreme Court of the Republic of Indonesia, this number shows a significant increase in sharia economic disputes that have occurred in the last 10 years.<sup>12</sup>

The large number of sharia economic disputes requires judges to continue to follow legal and economic developments so that they can make decisions that are not only fair but also beneficial to the development of the sharia economy in Indonesia and avoid legal disparities. Various kinds of regulations currently exist are a guide for judges.<sup>13</sup> Compilation of Sharia Economic Law which should be a guide for judges currently has a weakness, namely the inconsistency of regulations with the dynamics of the current sharia economy.

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<sup>12</sup> Mahkamah Agung, "Direktori Putusan," Direktori Putusan Mahkamah Agung Republik Indonesia, 2024, <https://putusan3.mahkamahagung.go.id/>. accessed on 7 July 2024

<sup>13</sup> Nashihul Ibad Elhas, "Kompilasi Hukum Ekonomi Syariah (KHES) Dalam Tinjauan Umum Hukum Islam," *Al- Tsamansaman* 122 (2019): 25–27.

Legal disharmony is a form of inconsistency or overlap between existing regulations both vertically and horizontally.<sup>14</sup> If explained simply, legal disharmony is a condition where there are two or more regulations that regulate the same thing but each of these regulations has a different substance content and is not the same.<sup>15</sup> In Indonesia, regulations on the sharia economy lie in the Compilation of Sharia Economic Law (*KHES*), Fatwa National Sharia Board-Indonesian Council of Ulama (DSN-MUI), and Financial Services Authority (*OJK*) Regulations.<sup>16</sup>

The development of Islamic finance in Indonesia also affects the business of financial institutions, which should comply with sharia principles. This influence also impacts regulations that function as a legal umbrella in carrying out their activities. So far, the existing sharia economic law in Indonesia lies in 3 laws and

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<sup>14</sup> Bagas Novantyo Wibowo, Lita Tyesta A.L.W, and Untung Sri Hardjanto, "Kewenangan Executive Review Oleh Badan Pembinaan Hukum Nasional Dalam Penataan Regulasi," *Diponegoro Law Journal* 10, no. 44 (2021): 69–82.

<sup>15</sup> Zaenal Arifin and Adhi Putra Satria, "Disharmonisasi Peraturan Perundang-Undangan Di Indonesia: Antara Bentuk, Penyebab Dan Solusi," *Jurnal Pro Hukum : Jurnal Penelitian Bidang Hukum Universitas Gresik* 9, no. 1 (2020), <https://doi.org/10.55129/jph.v9i1.1016>.

<sup>16</sup> Dery Ariswanto, "Analisis Fatwa DSN Nomor 123/DSN-MUI/XI/2018 Tentang Dana TBDSF Dalam Perspektif Sosiologi Hukum," *SAUJANA: Jurnal Perbankan Syariah Dan Ekonomi Syariah* 3, no. 01 (2021): 1–19, <https://doi.org/10.59636/saujana.v3i01.29>.

regulations, it is the Compilation of Sharia Economic Law (*KHES*) whose enforcement is based on Supreme Court regulation No. 2 of 2008 concerning the Compilation of Sharia Economic Law (*KHES*), the DSN-MUI Fatwa whose enforcement is based on Law No. 21 of 2008 concerning Sharia Banking, and various OJK regulations related to sharia whose enforcement is based on Law No. 21 of 2011 concerning Service Authorities Finance.<sup>17</sup>

The position of *KHES* can be seen from the position of the Supreme Court Regulation (PERMA) in the hierarchy of laws and regulations. This can be seen from Law No. 12 of 2011 concerning the Establishment of Laws and Regulations that govern the Supreme Court, namely Law No. 14 of 1985, which changed to Law No. 3 of 2009. In Law No. 12 of 2011, the Supreme Court Regulation is not included in the hierarchy of laws and regulations, but its position is equated with regulations made by the People's Consultative

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<sup>17</sup> 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): 96–118, <https://doi.org/10.19105/alhuquq.v3i1.3460>.

Assembly (MPR), the Regional Representative Council (DPD), the Constitutional Court (MK), and other state institutions.<sup>18</sup>

The Compilation of Sharia Economic Law (*KHES*) which was born in 2008 and is the basis of material law used by judges in deciding sharia economic dispute cases,<sup>19</sup> until now there has been no improvement so it is no longer by the current dynamics of the sharia economy. In contrast to the fatwa of DSN-MUI and POJK, the sharia sector is dynamically updated and simultaneously follows the development of sharia business patterns. The gap between these three regulations will more or less affect the legal disparity, and in turn will cause the existing legal system, among others, to be ineffectively created by sharia economic actors.<sup>20</sup>

Therefore, the harmonization of regulations in the field of sharia economics is important to realize a strong and effective sharia

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<sup>18</sup> Alfarisi Hamdani Saleh Seff, "Harmonisasi Antara Kompilasi Hukum Ekonomi Syariah (*KHES*) Dengan Peraturan Ketua Badan Pengawas Pasar Modal Dan Lembaga Keuangan (BAPEPAM-LK)" (Universitas Islam Negeri Syarif Hidayatullah, 2020).

<sup>19</sup> Elhas, "Kompilasi Hukum Ekonomi Syariah (*KHES*) Dalam Tinjauan Umum Hukum Islam."

<sup>20</sup> Rachman, "Analisis Kedudukan Fatwa DSN-MUI Dan *KHES* Dalam Pertimbangan Putusan Hakim Pada Sengketa Ekonomi Syariah Di Pengadilan Agama Jakarta Selatan."



economic legal system to provide legal certainty for judges and judicial apparatus within the Religious Court.<sup>21</sup>

Several forms of disharmony that occurred between the Compilation of Sharia Economic Law (*KHES*) and the DSN-MUI Fatwa,<sup>22</sup> due to the rapid growth of the sharia economy, made some of the things that have been listed in the Compilation of Sharia Economic Law (*KHES*) no longer following the current economic concept, while the DSN-MUI Fatwa is always updated to adjust to the dynamics of the sharia economy in Indonesia today.<sup>23</sup>

As affirmed, it can be understood that the Compilation of Sharia Economic Law (*KHES*) is essential because it is a material legal basis for judges in making decisions on sharia economic disputes.<sup>24</sup> Therefore, this researcher will identify the disharmony that occurs in the Compilation of Sharia Economic Law (*KHES*) so that it can

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<sup>21</sup> Diana Rahmi, "Ruang Lingkup Kewenangan Peradilan Agama Dalam Mengadili Sengketa Ekonomi Syariah," *Syariah Jurnal Hukum Dan Pemikiran* 13, no. 2 (2014): 3, <https://doi.org/10.18592/syariah.v13i2.174>.

<sup>22</sup> Muslimin Muslimin et al., "Efektivitas *KHES* Dan Fatwa DSN-MUI Terhadap Penegakan Hukum Ekonomi Syariah Di Indonesia," *Jurnal Pendidikan Tambusai* 6, no. 2 (2022): 8617–31, <https://www.jptam.org/index.php/jptam/article/view/3723/3149>.

<sup>23</sup> Muslimin et al. "Efektivitas *KHES* dan Fatwa DSN- MUI ..." (2022)

<sup>24</sup> Boyi Well Djon, "Kompilasi Hukum Ekonomi Syariah (*KHES*) Sebagai Pedoman Hakim Dalam Penyelesaian Sengketa Ekonomi Syariah" (Universitas Islam Negeri Sunan Kalijaga, 2023).p.56

become a material basis for judges in examining, deciding, and adjudicating sharia economic cases in the Religious Courts.

### **B. Problem Formulation**

Based on the explanation in the background above, the researcher will analyze:

1. How is the disharmony between the Compilation of Sharia Economic Law (*KHES*) and the DSN-MUI Fatwa?
2. What are the solutions to this disharmony?

### **C. Research Objectives**

In line with the formulation of the problem above, the research objectives consist of two objectives, namely:

1. To find out how the disharmony between *KHES* and the DSN-MUI Fatwa occurred.
2. To find solutions to harmonize the Compilation of Sharia Economic Law (*KHES*) and the DSN-MUI Fatwa in resolving sharia economic disputes.

### **D. Research Benefits**

The value of this research is usefulness or axiological aspect is divided into practical and theoretical benefits. The practical benefit

of this research is that it meets the requirements to obtain a Master's degree in Sharia Economic Law. The benefits of this research include the following:

1. Theoretical benefits

- a) The results of this study can contribute to the harmonization of sharia economic law.
- b) This study can be a reference and literature for another researchers, lecturers, and students conducting more in-depth research on the harmonization of sharia economic law.

2. Practical benefits

- a) The results of this study can be used as a reference for practitioners in resolving sharia economic disputes.
- b) The researcher hopes that the results of this study can be used as a consideration for the Supreme Court to harmonize the articles in the Compilation of Sharia Economic Law (*KHES*) with the DSN-MUI Fatwa.

**E. Systematics of Writing**

In order for readers to easily understand this scientific work, the researcher designed the structure of writing the thesis into five chapters, which are as follows:

1. The first chapter is titled Introduction: Its function as an introduction. This chapter contains the background of the problem, the formulation of masala, the purpose of the research, the benefits of the research, and the systematics of writing.
2. The second chapter is entitled Compilation of Sharia Economic Law (*KHES*) and DSN-MUI Fatwa. This chapter serves as the basis of literature or theoretical framework. It contains relevant previous research, differences and novelty values, a theoretical review, based on literature sourced from print and online materials, and an explanation of the conceptual framework of the research.
3. The third chapter is titled Research Methodology. This chapter functions as an epistemology, namely how to apply research theories and methods (paths that must be taken) to achieve the formulated research objectives. This chapter describes the types of research, research methods, research approaches, data sources and types, data collection instruments, and data analysis techniques.
4. The fourth chapter is Results and Analysis. This chapter contains an explanation of the description of the results of the literature

research, data analysis, and the relationship model between research variables.

5. The fifth chapter is the Closing. This chapter contains conclusions and suggestions related to matters relevant to the research results.

