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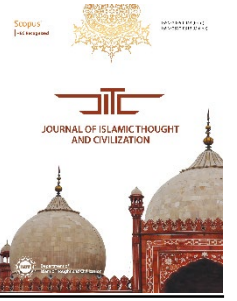

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Impact of Islamic Jurisprudential on Traditional Financial Customs and Legal Integration in Indonesia

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Abstract

The current research presented an insightful analysis of the dynamic relationship between Islamic Jurisprudence and customary financial practices within the jurisdiction of Indonesia. The objective of this study was to investigate the extent to which the broader Indonesian society embraces Sharī'a-compliant customary practices; subsequently, being acknowledged within the secular legal framework. This exploration was particularly pertinent due to Indonesia's nuanced approach to Islamic law integration, as it neither fully adopted nor entirely dismissed Sharī'a principles. This study deployed a standard doctrinal approach, which involves a meticulous examination of legislative provisions and a thorough examination of practical cases, involving indigenous financial customs, such as *ijon, tebasan, sewa* and *gadai.* By doing so, this research seeks to ascertain whether the influence of Sharī'a on customary practices can harmoniously coexist within the Indonesian legal system. The findings of this study challenged the traditional notions of legal centralism, emphasizing the importance of integrating local religious traditions into the state legal system. In particular, the study argued that Sharī'a-endorsed commercial practices can independently occur alongside traditional practices in society, even in the absence of explicit Sharī'a principles or interest-based restrictions. This study significantly contributed to our understanding of legal pluralism within Indonesian context and introduced a novel approach that acknowledged the interplay between Sharī'a and Secular law, while fostering social cohesion and legal harmony.

***Keywords*:** finance, Islamic Jurisprudence, legal laws, *Sharī'a,* secular, traditions, secular

Introduction

In countries where the prevalent populace follows Islam, such as Indonesia, an interest-free system for the financial transactions was developed; even before the official financial system was established.[1] The concept of a system without interest aimed to promote fairer financing, which served as a basis for incorporating the ethical and moral aspects of economic markets.[2]

Indonesia is considered a home of the world's largest Muslim population, with 99% of Indonesian Muslims who are *Sunni* and mostly follow Imam al-Shafi'i (*madhhab)*.[3] Although

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[1]Sri Widayanti, and Eka Cahya Maulidiyah, "Religious Tolerance in Indonesia" (paper presented at the *Proceedings of the 2nd International Conference on Education Innovation* (ICEI 2018), Jakarta, 2018), 47.

[2]Ryan Calder, "Sharīʿah-Compliant or Sharīʿah-Based? The Changing Ethical Discourse of Islamic Finance," *Arab Law Quarterly* 35, no. 1-2 (2020). https://doi.org/10.1163/15730255-bja10008.

[3]Toni Johnson, and Lauren Vriens, "Islam: Governing under Sharia," *Council on Foreign Relations* 25 (2014): 25.

Indonesia is the largest Muslim country, the state is not bound by Islamic law and is not anti-Islamic. Instead, Indonesia accommodates Sharī'a in other contexts for Indonesian Muslim society.[4]

Islamic finance and business are guided by principles derived from Sharī'a (Islamic law). This framework is rooted in religious doctrine that aims to promote ethical and equitable economic practices. Esteemed scholars like Chapra and Siddiqui expound on Islamic principles, which include the prohibition of *riba* (usury/interest), *gharar* (excessive uncertainty), and adherence to profit-and-loss sharing.[5] The juxtaposition of local customary practices and Islamic principles revealed intriguing differences and convergences. As elucidated by Yamamah, both systems share a common emphasis on ethical conduct and social justice, yet they diverge in specific applications.[6] Customary practices may permit interest-based transactions and engage in speculative activities, which Islamic principles vehemently oppose. Furthermore, Sahalessy pointed out that local customary practices often operate within informal or traditional legal frameworks, while Islamic finance adheres to formalized structures.[7]

The interaction between local customary practices and Islamic principles presented challenges and opportunities. In a likewise manner, El-Gamal highlighted potential conflicts arising when local customs and Islamic finance intersect, necessitating careful consideration of Sharī'a compliance.[8] However, some scholars have argued for synergies; similarly, Sofyan et al. emphasized the potential for incorporating elements of local customs within Islamic finance to bolster financial inclusion.[9]

Despite all the differences, this article contends that embedded *Sharī'a*-compliant commercial practices that independently occur in a society; are a forerunner for the progressive development of Islamic finance in Indonesia. These practices are driven by a fundamental understanding of profit-sharing, which existed long before the modern banking system emerged. This understanding was not necessarily grounded in explicit knowledge of Sharī'a or prohibition of interest.[10]

While a significant body of extant scholarly research has been dedicated to the examination of the governance of Islamic financial institutions founded upon Sharī'a or state law, a notable research

[4]Tim Lindsey, "Between Piety and Prudence: State Syariah and the Regulation of Islamic Banking in Indonesia," *The Sydney Law Review* 34, no. 1 (March 2012 2012): 107.

[5]Umer M Chapra, *Islam and the Economic Challenge*, 1 ed., vol. 17, 330.12 (Saudi Arabia: International Islamic Publishing House, 1995), 267; Anjum Siddiqui, "Financial Contracts, Risk and Performance of Islamic Banking," *Managerial Finance* 34, no. 10 (2008): 683. https://doi.org/doi:10.1108/03074350810891001.

[6]Ansari Yamamah, "The Existence of Al-Urf (Social Tradition) in Islamic Law Theory," *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 21, no. 12 (2016): 44.

[7]Jacoba Sahalessy, "Peran Latupati Sebagai Lembaga Hukum Adat Dalam Penylesaian Konflik Antar Negeri Di Kecamatan Leihitu Provinsi Maluku [the Role of Customary Law Latupati as Institutions; Conflict Resolution and Inter-State District Leihitu]," *Jurnal Sasi* 17, no. 3 (2011): 45. https://doi.org/https://doi.org/10.47268/sasi.v17i3.364.

[8]Mahmoud A El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge University Press, 2006), 101.

[9]A Syathir Sofyan et al., "Local Economic Practices in Developing Islamic Financial Products in Indonesia," *Jurnal Ekonomi dan Bisnis Islam* 6, no. 2 (2021). https://doi.org/http://dx.doi.org/10.21093/at.v6i2.2946.

[10]Rida Hesti Ratnasari, "Understanding the Islamic Banking System in Indonesian Modern Economics Practices," *International Journal of Business, Economics and Management* 3, no. 1 (2021): 212. https://doi.org/https://doi.org/10.31295/ijbem.v3n1.197.

gap exists concerning the genesis of modern Islamic finance arising from indigenous customs.[11] The investigation into the origins of contemporary Islamic finance derived from local customs has regrettably garnered limited scholarly attention. This gap becomes particularly relevant when considering countries like Indonesia, where a rich tapestry of indigenous customs, including but not limited to *ijon* informal forward selling), *tebasan* (profit-sharing arrangements), *sewa* (rental agreements), and *gadai* (pawn transactions). (with several of these traditions embracing forward selling mechanism), coexists with Islamic principles. Thereby, this paper aims to examine the dynamism and flexibility of *Sharīʿa* in accommodating the local commercial customs. Moreover, it also investigates how the government can use this local custom as a foundation for constructing the national legal system and to foster the development of a Sharīʿa-compliant Islamic financial system in Indonesia.

This article emphasized that flexible legal systems are imperative to the development of regulatory frameworks within financial establishments operating in a secular but strongly religious country like Indonesia, where the quest for legal theory rests in between legal centralism and legal pluralism. This holds particular significance when financial establishments are faced with intricate matters related to Sharīʿa, as Sharīʿa-compliant economic activities may increase a conflict regarding the plural laws and as the concept of legal centralism can lead to conflicts between national law on the one hand and the religious and, or customary law, on the other. Thus, this paper emphasise the origins of Islamic commercial law in Indonesia, highlighting the significance of traditional financial customs in the formulation of regulations. Additionally, it explores the instances where Islamic law has been adopted into Indonesian custom, illustrating a reverse influence. Hence, understanding the role of indigenous customs in shaping modern Islamic finance holds implications for both academia and practitioners. Uncovering these origins can provide insights into the compatibility of Islamic financial practices with local cultures, potentially leading to more effective strategies for financial inclusion and fostering sustainable economic development.

2. Methodology

The current study adopted a standard doctrinal approach for this research follows, which involves an in-depth examination of legislative texts, regulations, and legal precedents to investigate the dynamic relationship between Islamic jurisprudence and customary financial practices within the secular jurisdiction of Indonesia. The nuanced nature of Indonesia's approach to integrating Islamic law, neither fully adopting nor entirely dismissing Sharīʿa principles, underscores the significance of this exploration.

2.1. Data Collection

The study relies on primary sources encompassing legislative documents, official reports, court judgments, and archival records, including *the 1945 Indonesia constitution, Law No. 21 of 2008 on Islamic Banking, and Supreme Court Rules No. 2 of 2008 on the Compilation of Islamic Economic Law*. These primary sources provided insights into the legal landscape governing customary financial practices and their alignment with Sharīʿa principles. Similarly, secondary sources consist of academic literature, scholarly articles, books, and reputable reports, which were used to view the adequate amount of sources and relevant material to address the existing gap in research. These

[11]See for example, a research by Simon Archer and Rifaat Ahmed Abdel Karim, "Profit-Sharing Investment Accounts in Islamic Banks: Regulatory Problems and Possible Solutions," *Journal of Banking Regulation* 10, no. 4 (2009). https://doi.org/https://doi.org/10.1057/jbr.2009.9; Abd Hakim Abd Razak, "Centralisation of Corporate Governance Framework for Islamic Financial Institutions: Is It a Worthy Cause?," *ISRA International Journal of Islamic Finance* 10, no. 1 (2018). https://doi.org/10.1108/IJIF-08-2017-0020; Karim Ginena, *Foundations of Shari'ah Governance of Islamic Banks*, ed. Azhar Hamid (Chichester, West Sussex : Wiley, 2015., 2015).

sources offer contextual background, historical perspectives, and theoretical frameworks relevant to Islamic Jurisprudence, customary financial practices, and legal pluralism within Indonesia.

2.2. Data Analysis and Practical Case studies

In addition to conducting data analysis using a standard doctrinal approach in the field of legal studies, this research undertakes a comprehensive examination of practical case studies; encompassing indigenous financial customs, including *ijon* (informal forward selling), *tebasan* (profit-sharing arrangements), *sewa* (rental agreements), and *gadai* (pawn transactions). Through a judicious legal lens, these case studies were subjected to a rigorous examination to determine their adherence to Sharī'a principles and their compatibility with the secular legal framework.

3. Results and Discussion

3.1. Islamic Jurisprudence and Customary Practices in Indonesia

Indonesia's legal landscape is characterized by a unique approach, which is characterized by a delicate balance between embracing and accommodating Sharī'a principles within its broader legal framework. Several scholars have noted that Indonesia neither unequivocally adopted nor outrightly dismissed Sharī'a precepts; however, it navigated a nuanced path that permits a dynamic interplay between religious and secular legal systems.[12] As Mohamad et al and Fealy and Bush aptly described, this approach is attributed to the nation's historical, cultural, and political considerations, which have culminated in a legal environment characterized by legal pluralism and a harmonious coexistence of diverse legal traditions.[13]

In the intricate milieu of Indonesian jurisprudence, where adherence to the Shafi'i school predominantly prevails, a distinctive approach is witnessed in the manner legal insights are drawn from diverse jurisprudential traditions. This tendency gains prominence, particularly on particular issues that may not find explicit resolution within the confined standards of a single school of thought.[14] For this reason, Indonesian legal scholars employed ijtihād and rely on this juridical procedure to extract a legal judgment concerning a specific matter.[15] The overarching aim of this approach is to engender a jurisprudential interpretation that resonates with the collective acceptance of the juristic community.

The process of legal deduction elucidated through the prism of ijtihād, is underpinned by an assortment of methodological tools, each of which serves as a springboard for extracting reasoned legal postulates. Among these methodological modalities are consensus (*ijma'*), analogy (*qiyas*), preference (*istihsan*), and the pursuit of public interest (*istislah*, or *maslahah mursalah*).[16] Through the deployment of these juridical instruments, Indonesian scholars undertake the intricate task of

[12]Lindsey; Greg Fealy and Robin Bush, "The Political Decline of Traditional Ulama in Indonesia: The State, Umma and Nahdlatul Ulama," *Asian Journal of Social Science* 42, no. 5 (2014).

[13]Mohammad Taqiuddin Mohamad et al., "The Historical Development of Modern Islamic Banking: A Study in South-East Asia Countries," *African Journal of Business Management* 1, no. 1 (2013): 1; Fealy and Bush.

[14]John R. Bowen, "Qurʾān, Justice, Gender: Internal Debates in Indonesian Islamic Jurisprudence," *History of Religions* 38, no. 1 (1998): 53.

[15]Romi Adetio Setiawan, *The Future of Islamic Banking and Finance in Indonesia: Performance, Risk and Regulation* (London: Routledge, 2023), 13.

[16]Maimun Maimun, "*Rekonstruksi Konsep Ijmak Dalam Berijtihad Di Era Modern* [Reconstructing the Concept of Consensus in Legal Reasoning at the Modern Period]," *Journal of Law and Economics, ASAS* 10, no. 2 (2018): 2.

harmonizing legal rulings with the broader ethical and communal objectives of Islamic jurisprudence.[17]

It is imperative to underscore that the realm of benefit, as conceptualized within the Islamic legal framework, extended beyond the mere legal precepts or religious imperatives. Rather, the notion of benefit assumes a rational, all-encompassing construct that finds its application across multifarious domains encompassing customary, social, political, economic, and cultural affairs.[18] This perspective is evident in the treatment of customary financial practices. Traditional financial customs in Indonesia, such as *ijon*, *tebasan*, *sewa*, and *gadai*, reflect the country's rich cultural and social heritage. These practices, although rooted in local customs, are subject to legal scrutiny and evaluation through the lens of Sharī‘a compliance.

Notably, scholars such as Hosen, Fealy, and Bush have highlighted the absence of overt religious requirements in the legal treatment of these customary financial practices, underscoring the nation's pragmatic and accommodating approach to harmonizing Sharī‘a principles with indigenous traditions.[19] Moreover, researchers have emphasized the role of legal pluralism in cultivating a sense of legal legitimacy and societal acceptance. By allowing customary financial practices to operate within the legal framework, albeit with consideration of Sharī‘a principles, Indonesia's legal system nurtures a sense of ownership and participation among citizens, thereby, augmenting the legitimacy of both religious and secular legal norms.[20]

3.2. The Intersection of Religious-legal Traditions in Classical and Contemporary Indonesia

The fundamental tenet of *Indonesia’s 1945 Constitution*, encapsulated that "every citizen must respect individual’s right," in which every citizen must obey the state and has the right to choose and practice their idiosyncratic religion and beliefs.[21] This concept is also relevant to the Muslim practices of Islamic banking in the context of socio-religious context, where the society should be free to do their business based on their faith.[22] Although some may see its antithesis to the secular concept of Indonesia as Islamic Banking operations should entirely follow Islamic law rather than national law, the state decided to incorporate the Islamic banking system and rectify specific laws for

[17]Nurhadi Nurhadi, "*Bunga Bank Antara Halal Dan Haram* [the Bank Interest Rates; between *Halal* and *Haram*], " *Journal of Education and Social Religious Study, Nur El-Islam* 4, no. 2 (2017): 49.

[18]Mohammad Hashim Kamali, ""Maqasid Al-Sharī'ah": The Objectives of Islamic Law," *Islamic Studies* 38, no. 2 (1999): 194.

[19]Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975-1998)," *Journal of Islamic Studies* 15, no. 2 (2004). https://doi.org/DOI: 10.1093/jis/15.2.147; Fealy and Bush.

[20]Keebet von Benda-Beckmann and Bertram Turner, "Legal Pluralism, Social Theory, and the State," *Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018). https://doi.org/https://doi.org/10.1080/07329113.2018.1532674; Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism* (Edinburgh, UK: Edinburgh University Press, 2015), 23.

[21]*See* ch 28, art 1 *Undang-Undang Dasar Republik Indonesia 1945 [Constitution of the Republic of Indonesia 1945]*.

[22]*See* As'ad, D.I. Ansusa Putra, and Arfan, "Being Al-Wasatiyah Agents: The Role of Azharite Organization in the Moderation of Indonesian Religious Constellation," *Journal of Islamic Thought and Civilization* 11, no. 2 (2021): 127. https://doi.org/https://doi.org/10.32350/jitc.112.07.

managing Islamic banks.[23] This assertion finds validation within the provisions of *Law No. 21 of 2008 on Islamic Banking,* which bring the synergy between religious precepts and state regulations.[24]

Islamic business etiquette, such as, *riba* has been widely known by Indonesian Muslims, even though their commercial practices have some distinct differences in the way it is followed daily by Muslims in the Middle East.[25] Since Islamic law could be adaptive according to the need and circumstances, the local traditions can be categorized as Islamic as long as it is still applicable to the principles of Islam based on legal reasoning. This is also the reason why not all customary practices can be accepted by state law in Indonesia, as such in Islamic law, only those customary practices that are categorized as *'urf sahih* (rightful custom) can be legitimately accepted in Sharī'a.[26] The alignment of *'urf sahih* with Islamic principles ensures the integration of customs that uphold the values of Islam. This interplay between local practices, Islamic norms, and state law illuminates the intricate interweaving of cultural, religious, and legal dimensions within Indonesia's legal landscape.

3.3. Sharī'a Evolution in Commercial Customs: Complexities and Implications

In the Indonesian context, the notion of legal pluralism, wherein distinct legal orders operate alongside each other within a single jurisdiction, underscores the complexity of legal dynamics and their implications for societal harmony. Indicatively, several scholars have documented the multifaceted nature of legal pluralism in Indonesia, wherein state law, customary law, and religious law intersect, sometimes harmoniously and sometimes in tension. Markedly, Anggraeni highlighted that legal traditions (*ādat*), can coexist with the Sharī'a principle, each holding significance in distinct social contexts and spheres of life.[27]

This study revealed that within this intricate legal landscape, the interplay between Islamic Jurisprudence and customary financial practices is characterized by intriguing overlaps and tensions. The examination of indigenous financial customs, such as *ijon*, *tebasan*, *sewa*, and *gadai*, unveiled instances where Islamic principles of fairness, ethical conduct, and risk-sharing converge with customary norms of reciprocity and communal solidarity. This convergence is manifested in the use of *'urf sahih* as a reference in Islamic jurisprudence upon which judgment can be based is accepted. What defines the customary practices as Islamic is that they should comply with the Islamic legal maxim *Al-'adah Muhakkamah* (Custom is Authoritative).[28] The traditional customs related to trade and financial dealings may be authorized as long as they adhere to the following stipulations. Firstly, the custom must be a current phenomenon and represent common as well as a large number of people.[29] For example, in *gadai*, it is common for the pawnbroker to refrain from taking physical possession of the pledged item, such as a motorbike. Instead, the vehicle's ownership certificate serves as collateral for the loan. This approach, known as an instalment loan within a fiduciary system, enables the borrower to maintain the use of the motorbike. The framework of *gadai* on the

[23]JM Muslimin, "Islamic Law in the Pancasila State," *Journal Ahkam* 12, no. 1 (2012): 24.

[24]*Undang-Undang Republik Indonesia No 21 Tahun 2008 Tentang Perbankan Syariah [Law No 21 of 2008 on Islamic Banking]*.

[25]Euis Nurlaelawati, *Modernization, Tradition and Identity : The Compilation of Islamic Law and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 77.

[26]Nadirsyah Hosen, *Sharia and Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007), 33.

[27]Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 25. https://doi.org/https://doi.org/10.15408/ajis.v23i1.32549.

[28]Hosen, *Sharia and Constitutional Reform in Indonesia,* 76.

[29]Yamamah, "The Existence of Al-Urf (Social Tradition) in Islamic Law Theory," 44.

fiducia system has evolved the interpretation of Sharī'a principles within the context of contemporary financial practices.

Secondly, the prevailing custom with the greatest influence is regarded as authoritative, such as *sewa* and *tebasan* frequently dominate forward-selling transactions.[30] As such, these customary traditions hold significant influence *('urf).* Thirdly, the custom must be in practice at the time of transaction and recognised by law. [31] An example of this is seen among Indonesian farmers who engage in forward contracts referred to as *ijon*, for agricultural commodities. Under this agreement, the price is set at the time the contract is made and the farmer commits to deliver the commodities to *ijon* at a future date set with the mutual agreement. This practice of *'urf* is acceptable at large and has become the standard of the indigenous people.

Nonetheless, it is notable that local customary financial practices can emerge independently out of banking or other financial institutions, presumably without any understanding of *Sharī'a* law or even the interest prohibition. The traditional practice of credit instruments in rural areas at Malang, East-Java, such as *tebasan, ijon, sewa,* and *gadai,* is similar to the credit system in the modern banking.[32] The farmer generally could borrow the money through borrowing/lending arrangements, such as leasing the land for a given time in return for cash rent.[33] This tradition can be used to support ordinary people in explaining the modern banking system, particularly in rural areas where the indigenous people are not familiar with formal banking institutions.

Tebasan is akin to forward contract agreement agricultural commodities; it usually implies an estimated trading system in its calculation; whereby a farmer sells a standing crop that is almost ready (typically 1-2 weeks before harvest time) for harvest to a middleman *(penebas),* with prices estimated based on land area, quality of the crop, and several rice stems.[34] The farmer/seller receives advance cash as a down payment from *penebas;* the rest (total amount) will be paid after the harvest. *Penebas* as a middleman, sells the produced crop to retailers in the market.[35] In finance, the contract of *tebasan* perhaps could be similar to forwarding contracts. The seller delivers an underlying asset to the buyer of the forwarding contract at a predetermined date and a specified price. The value of the asset is calculated using the estimation method.[36]

Ijon is another discrete example on a continuum similar to credit instruments that could be classified as *'urf sahih* and have been entrenched in rural communities for generations. *Ijon* is derived from the Javanese word, which means green. It is named so because; usually, the 'lender' *(pengijon)* buys the crop or other agricultural products that are still green and cannot be harvested.[37]

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[30]Hosen, *Sharia and Constitutional Reform in Indonesia,* 76.

[31]Ibid., 47.

[32]Neil H Sturgess, Hesti Wijaya, and N Dow, "Usufruct and Usury: an Analysis of Land Leasing in East Java," *Australian Journal of Agricultural Economics* 28, no. 1 (1984): 15.

[33]Ibid., 18.

[34]Neal P. Gillen and Walter H.E. Jaeger, "Forward Contracting in Agricultural Commodities: A Case History Analysis of the Cotton Industry," *UIC Law Review* 12, no. 2 (1979): 253.

[35]Nurul Fathiyah Fauzi, Yuli Hariyati, and Joni Murti Mulyo Ajin, "Sistem Tebasan Pada Usahatani Padi Dan Dampaknya Terhadap Kondisi Sosial Ekonomi Petani Di Kabupaten Jember [*the System of Tebasan and Its Impact on the Farmer's Social Economic Condition at Jember Distric*]," *Jurnal Ilmiah Inovasi* 14, no. 1 (2016): 28. https://doi.org/10.25047/jii.v14i1.86.

[36]Pauline M Barrieu, and Luitgard AM Veraart, "Pricing Q-Forward Contracts: An Evaluation of Estimation Window and Pricing Method under Different Mortality Models," *Scandinavian Actuarial Journal* 2016, no. 2 (2016): 146.

[37]Sturgess, Wijaya, and Dow, "Usufruct and Usury: An Analysis of Land Leasing in East Java," 15.

The farmer (borrower) needs cash urgently, thus, borrowing the money by transferring the right in a green crop (typically six months before harvest) to the *pengijon* is the easiest way. Since *pengijon* has bought the green crops, the farming of the crop is continued by *pengijon* and sold after the harvest.[38]

Sewa is also a customary transaction in Indonesia society, which is similar to leasing land for cash.[39] Under a *sewa,* the landowner leases his land or a rice field to the moneylender, and the entire rent is paid in a lump sum at the time of negotiation.[40] In this period, the lender can start working on the land and planting seeds subject to an existing rental agreement.[41] *Gadai* is another type of financial tradition that can be traced to land pawning/pledged property, and the borrower relinquishes the right of his land to use it to the lender/creditor in exchange for a cash loan.[42] The period for the lender/tenant to work on the land is indefinite until the borrower repays the full amount plus interest in cash.[43]

Although the informal financial traditional system in Indonesian society, such as *tebasan, ijon, sewa,* and *gadai* have been tolerated by Muslim jurists and considered Sharī'a-compliant, there are some 'middlemen' who violate business norms and take advantage of these practices.[44] Furthermore, these agreements typically disregard regulations and are often formulated in a manner that grants the money lender the right to seize the borrower's assets upon the contract termination.[45]

Even though it continued to be an active participant in poverty alleviation and helped farmers smooth the marketing of products since the farmers have limited access to the market, this informal financial tradition system only relies on close ties and trust between lenders and borrowers.[46] This practice has been defined as deemed Sharī'a-compliant if the practice can bring benefit and bring some of greater public interests of society.[47] For instance, helping small farmers to gain credit, which is primarily used to cover necessities or occasionally durable goods.

Despite all the facts, there are many critics and Islamic scholars' who have allowed these customary commercial practices, making this trend common as the prime source of living law to solve various life-related problems in the rural areas. Thus, the findings of this study not only

[38]Fitra Haris, *Memahami Praktik Ijon Dan Dampak Buruknya Bagi Djp* [the Practice of Ijon and Its Implication for Government Incom] (Jakarta: Direktorat Jendral Pajak, 2019), 11.

[39]*See* Cecile Lapenu, "Indonesia's Rural Financial System: The Role of the State and Private Institutions," in *Case Studies in Microfinance, Sustainable Banking with the Poor, Asia Series.* (Washington, DC: World Bank, 1998), 1-3.

[40]Sturgess, Wijaya, and Dow, "Usufruct and Usury: An Analysis of Land Leasing in East Java," 29.

[41]Ibid., 25.

[42]Fabienne Mary and Geneviève Michon, "When Agroforests Drive Back Natural Forests: A Socio-Economic Analysis of a Rice-Agroforest System in Sumatra," *Agroforestry Systems* 5 (1987): 47. https://doi.org/https://doi.org/10.1007/BF00046412.

[43]Lapenu, "Indonesia's Rural Financial System: The Role of the State and Private Institutions," 25.

[44]Asian Development Bank, "Strategic Vision for Agriculture and Rural Development," (Philippines: Asian Development Bank, 2006), Appendix 6.

[45]Japan International Cooperation Agency, "The Study on the Improvement of Farmers' Income: Agricultural Processing and Rural Microfinance in Indonesia," (Jakarta: Nippon KOEI Co., LTD., 2007), 11.

[46]"Strategic Vision for Agriculture and Rural Development," 141.

[47]Lapenu, "Indonesia's Rural Financial System: The Role of the State and Private Institutions," 16.

underlined the potential advantages of cultivating such harmonious coexistence within Indonesia but also emphasized the significance of acknowledging the dynamic interplay between Sharī'a and customary practices, thereby, enriching the inclusivity of the legal framework. Moreover, the viewpoints of existing scholars supported this idea by proposing to accommodate flexibility in the legal system, as it can contribute to social cohesion and stability, allowing communities to navigate complex legal terrains, while preserving their cultural and religious identities.[48]

Realizing that these practices, such as *ijon, gadai, sewa,* and *tebasan* are acceptable by Muslims and are still beneficial to the farmers in rural areas to obtain a loan; and given that there are inadequacies of the service of financial institutions to reach out to the rural area.[49] To solve this matter, the government facilitates the institution of customary law *(institusi adat latupati)* to solve the conflicts in rural areas. *Institusi adat latupati* is an alternative in settling cases, including the traditional community punishments if there is a violation of business norms in lending money by 'middlemen' to the peasants.[50]

However, the use of *institusi adat latupati* may not be helpful if implemented in a more comprehensive or cross-regional community, as it can cause a cultural contradiction with each region having its tradition and way of doing commercial activities. As Mariyani-Squire notes:

One type of critique of mainstream economics is that it falsely presumes its theories and policies to be universally applicable irrespective of the cultural, religious, and societal contexts of people. Arguing that Muslim-majority societies produce people who have silently different values, motivations, and institutions, some Muslim economists have sought to modify the tools of mainstream economics to take into account these differences.[51]

In the case of customary commercial practices in Indonesia, the government's rejection to allow inherited commercial practices in rural areas may potentially give rise to a legal conflict between national legislation and Sharī'a-compliant endorsed customary practices.

Sharī'a permitted the practice of *ijon* in Indonesian society, provided the rice grains were almost ready for harvest and were visible. It is strictly forbidden if the grain of rice is still not visible because this is tantamount to selling empty.[52] The down payment is charged if there is an unexpected natural disaster, the one who carries the risk is the buyer/lender since the seller has transferred his right to the buyer.[53] The contract of *ijon* can be void in *Sharī'a* if the middlemen violate business norms, such as in case of fraud and give prices to farmers with a value that is not following the actual market price.[54] Muslim legal scholars view the current tradition as a viable option for attaining a more

[48]Anggraeni; Jonathan G. Ercanbrack, "The Law of Islamic Finance in the United Kingdom: Legal Pluralism and Financial Competition" (PhD Thesis, University of London, 2011).

[49]Japan International Cooperation Agency, "The Study on the Improvement of Farmers' Income: Agricultural Processing and Rural Microfinance in Indonesia," 19.

[50]Sahalessy, "Peran Latupati Sebagai Lembaga Hukum Adat Dalam Penylesaian Konflik Antar Negeri Di Kecamatan Leihitu Provinsi Maluku [the Role of Customary Law Latupati as Institutions; Conflict Resolution and Inter-State District Leihitu]," *Jurnal Sasi* 17, no. 3 (2011): 46.

[51]Edward Mariyani-Squire, "Tensions in Islamic Economics," *Trikonomika* 12, no. 1 (2013): 2. https://doi.org/10.23969/trikonomika.v12i1.452.

[52]Mashur Malaka, "*Praktek Monopoli Dan Persaingan Usaha* [the Monopoly Market and Business Competition]," *Jurnal Al-'Adl* 7, no. 2 (2014): 43.

[53]Fajar Cahyani, "Praktek Jual Beli Tebasan Dalam Perspektif Hukum Ekonomi Syariah/ *the Practice of Tebasan in Islamic Law*," *Jurnal Justisia Ekonomika* 1, no. 1 (2017): 9. https://doi.org/http://dx.doi.org/10.30651/justeko.v1i01.1020.

[54]Malaka, "*Praktek Monopoli Dan Persaingan Usaha* [the Monopoly Market and Business Competition]," 43.

rational resolution in societal progress. Additionally, it unlocks avenues for imaginative thinking and originality among Muslims, enabling them to foster their economy guided by Islamic principles. In this way, Muslims can effectively and broadly fulfill their responsibilities.

Based on this flexibility, it is recommended that the Indonesian government take steps to establish necessary regulations and policies for overseeing inherited commercial customary instruments, which have been deemed Sharī'a-compliant by Muslim jurists. One actionable step could involve the incorporation of these Sharī'a-compliant financial customary practices into the *Compilation of Islamic Economic Law.* Encouragingly, this integration has already been achieved for two of these customary financial practices, namely *sewa* (leasing) and *gadai* (pawnbroking), which have been formally incorporated into the *Compilation of Islamic Economic Law*.[55] Notably, the *gadai* system has undergone institutionalization through the establishment of PT Pegadaian by the Indonesian government, thus, manifesting a formal financial institution. This initiative has garnered substantial traction among rural communities, attaining considerable acceptance and yielding notable economic outcomes; by July 2023, PT Pegadaian's assets have accrued to 77.6 Trillion Rupiah or approximately US$ 5.07 billion.[56] Similarly, *sewa* system has successfully integrated into the structured framework of the Indonesian financial industry, garnering extensive recognition within the country and enjoying notable community acceptance.[57]

In contradistinction, the two remaining financial customary practices, *tebasan* and *ijon*, continue to lack formal legal acknowledgement or integration within the legislative frameworks of Indonesia. Paradoxically, these specific practices have exhibited substantial traction and utility within socioeconomically marginalized communities, significantly augmenting the economic dynamism of rural contexts that often remain beyond the reach of traditional banking and established financial institutions. Scrutinizing these practices from an academic standpoint; emphasizing the latent advantages associated with their formal institutionalization within the legal fabric. This perspective posited that such formal recognition could fortify regulatory supervision over *tebasan* and *ijon*, thereby, enhancing the efficacy of oversight mechanisms and ultimately ameliorating the quality of life for rural inhabitants.[58]

Such a strategic inclusion holds the potential to enhance the comprehensiveness and inclusivity of the prevailing legal framework. Thus, rather than just rejecting the Muslim local commercial customary practices, the government is responsible for laying the foundations of harmoniszng the complex and contradictory national law with religious and customary law in society. In doing so, providing stable clarity regulation and the law of enforcement to solve the issue that arises from the widespread Sharī'a-compliant customary practices can be helpful to minimize the conflicts.[59]

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[55]See chapter xiv art. 373 and chapter xi art 295 on *Peraturan Mahkamah Agung Republik Indonesia No. 02 Tahun 2008 Tentang Kompilasi Hukum Ekonomi Syariah [Supreme Court Rules No. 02 of 2008 on Compilation of Islamic Economic Law]*.

[56]PT Pegadaian, "Kinerja Pegadaian Semester I 2023 Semakin Berkilau," (2023).

[57]Abdul Rachman, "Dasar Hukum Kontrak (Akad) Dan Implementasinya Pada Perbankan Syariah Di Indonesia," [Legal Basis of Contracts (Akad) and Their Implementation in Sharia Banking in Indonesia], *Jurnal Ilmiah Ekonomi Islam* 8, no. 1 (2022): 47. https://doi.org/http://dx.doi.org/10.29040/jiei.v8i1.3616.

[58]Nurul Fathiyah Fauzi, Yuli Hariyati, and Joni Murti Mulyo Ajin, "Sistem Tebasan Pada Usaha Tani Padi Dan Dampaknya Terhadap Kondisi Sosial Ekonomi Petani Di Kabupaten Jember," [The Slashing system in RiceFarming and its Impact on the Socio-Economic Conditions of Farmers in Jember Regency], *Jurnal Ilmiah Inovasi* 14, no. 1 (2016): 26. https://doi.org/https://doi.org/10.25047/jii.v14i1.86.

[59]*See* Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Washington International Law Journal* 19, no. 2 (2010): 280-83.; Rihab Grassa and Kouthar Gazdar, "Law and

Furthermore, Islamically accepted commercial customary practices become no longer just a legal abstraction but play an important role in promoting financial stability and economic growth for the overall development.

4. Conclusion

The current study provided an insightful analysis of the of impact of islamic jurisprudential Indonesia's legal sphere, which demonstrated a complex coexistence of various legal systems, where state law, customary financial practices, and religious principles interact, occasionally leading to harmony or tension.

The primary objective of this study was to ascertain the extent to which Sharī'a-endorsed customary practices, which are embraced within Indonesian society and recognized within the secular legal framework. The amalgamation of indigenous financial customs like *ijon*, *tebasan*, *sewa*, and *gadai* with Islamic principles revealed interesting intersections. These practices, rooted in historical and cultural contexts, often bridge Islamic ethics, such as fairness and risk-sharing with communal norms of reciprocity. At the same time, these practices offer practical solutions, challenges arise, including misconduct by intermediaries and potential discord with *institusi adat latupati*, an alternative dispute resolution system. Recognizing the socioeconomic importance of these practices, formal integration into the legal system emerges as a viable solution.

The integration of *sewa* and *gadai* into the *Compilation of Islamic Economic Law* serves as a promising precedent, while the prospects for *tebasan* and *ijon* remain uncharted: however, potentially transformative. Thus, by incorporating these practices into the legal framework not only enhances regulatory control but also expands the comprehensiveness and inclusivity of the overarching legal system. By doing so, Indonesia can harness the unique strengths of its legal pluralism, creating a more resilient and equitable environment that accommodates cultural, religious, and economic diversity.

The findings of this study contributed significantly to the discourse on legal pluralism, fostering an equitable environment that offer a fresh perspective, which emphasized a coherent legal framework that balances tradition and innovation; ultimately, promoting social harmony, economic growth, and cultural preservation. This study also encouraged further exploration of innovative approaches that reconcile tradition with progress; thereby, enriching both the legal system and broader societal dynamics as a whole.

Conflict of Interest

Author(s) declare that they have no conflicts of interest.

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