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NAVIGATING FINTECH SHARIA REGULATION IN INDONESIA: LESSONS LEARNED FROM MALAYSIA

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ABSTRACT

The purpose of this study is to analyze the regulation of Sharia financial technology (fintech) in Indonesia and conduct a comparative analysis of Sharia fintech regulations in Malaysia. The importance of studying Sharia fintech lies in Indonesia's status as a Muslim-majority country. Establishing a legal framework to govern Sharia fintech is essential for ensuring compliance with Islamic law while encouraging innovation and economic growth. The research employs normative juridical with statutory approaches and comparative studies. Secondary data, including primary and secondary legal materials, forms the basis of the analysis. This research is significant as it addresses the protection of Sharia fintech users in Indonesia, with a focus on key aspects such as business activities, management, and dispute resolution. These research questions are crucial, as they delve into fundamental areas that define the operational integrity and user trust in Sharia-compliant financial technologies. Currently, the regulation of Islamic fintech in Indonesia lacks dedicated legal instruments. Sharia fintech regulations are often intertwined with those governing conventional fintech, resulting in ambiguity for both non-bank financial services institutions and consumers. Notably, one of the instruments of Sharia law, namely the Fatwa issued by the Indonesian Ulema Council (Majelis Ulema Indonesia, MUI) serves as a basis for the application of Sharia principles in fintech, it lacks binding legal force under the hierarchy of Indonesian laws and regulations. Consequently, it cannot effectively govern Sharia principles regulations within the fintech sector. In contrast, Malaysia's Sharia fintech regulations provide a well-structured framework covering both companies and users. These regulations encompass supervision, implementation, and protection of Sharia principles in fintech. Therefore, drawing insights from Malaysia's regulatory framework, there is a pressing need to reform Sharia fintech regulations in Indonesia. Such reforms, would establish comprehensive legal instruments to ensure clarity and enforceability for both fintech service providers and users.

Introduction

Information technology has entered all aspects of people's lives (Kusumawardani, 2019). It continues to innovate, transform, and become increasingly sophisticated, providing significant convenience in daily life (Dwivedi et al., 2020). Globally, nations are preparing for the era of Society 5.0, where humans are expected to coexist with technology in an eintegrated manner (Deguchi et al., 2020). One area profoundly impacted by the era of Society 5.0 is the economy. Economics and information technology are converging to create greater convenience for society. Even today, economic growth is inseparable from information technology. developing a robust digital economy unlocks significant opportunities for business creation and development, contributing to increased investment flows, human resource accumulation, and global finance. In Indonesia, the adoption of economic digitalization has yielded a positive domino effect on economic growth. This is evidenced by the e-Conomy SEA 2020 report released by Google, Temasek, and Bain, which reveals that Indonesia's digital economy contributed US$44 billion or approximately Rp619 trillion (Setyowati, 2020).

One of the key drivers of digital economic growth in Indonesia is the financial technology sector (hereinafter fintech) (Republika.co.id, 2019). Fintech currently provides convenience for its users by providing easy access to payment, lending, and other financial services (Sitompul, 2018; Pati et al., 2021; Muhammad et al., 2024). Based on the Fintech in ASEAN 2021 report, as of September 30, 2021, the number of fintech companies in Indonesia, had reached 785 (Pahlevi, 2021). The regulation of fintech in Indonesia is outlined in the Financial Services Authority Regulation (POJK), specifically POJK Number 4/POJK.05/2021 Year 2021 on Implementing Risk Management in the Use of Information Technology by Non-Bank Financial Services Institutions ("POJK 4/2021") and POJK Number 10/POJK.05/2022 Year 2022 on Information Technology Based Crowd Funding Services ("POJK 5/2022"). In Indonesia, fintech is categiorised into two types, namely conventional fintech and Sharia fintech. This research focuses on Sharia fintech due to the increasing demand from both customers and corporations, driven by an emphasis on Sharia principles. Based on the data from the Indonesian Sharia Fintech Association (AFSI), as of 2021, 17 Sharia fintech companies were registered and licensed to operate in Indonesia (Ramli & Jatmiko, 2021). Additionally, the growth of Sharia fintech is expected to accelerate, given that the majority of Indonesia's population are Muslims.

However, Sharia fintech still requires specific regulations in Indonesia. The POJK 4/2021 primarily governs fintech under a conventional system and does not address Sharia fintech. Additionally, Sharia fintech must adhere to the Fatwa of the National Sharia Council of the Indonesian Ulema Council (Majelis Ulema Indonesia, MUI), specifically MUI Number 117/DSN- MUI/II/2018 ("MUI Fatwa Number 117 of 2018"). However, the MUI Fatwa is not recognised within the formal hierarchy of laws and regulations, and thus lacks binding legal authority (Sarip et al., 2019; Tamam, 2021)Furthermore, existing regulations related to Sharia fintech have not comprehensively addressed the supervision of Sharia fintech.

Several studies on Sharia fintech have been conducted, including: Sri Wahyu Ningsih and Winda Fitri's research titled "Aspects of Law Enforcement Against Sharia Fintech Crimes during the Pandemic in Indonesia: The Perspective of Jinayah Law" (Ningsih & Fitri, 2022), which analysed fintech crimes based on *jinayah* law (Islamic criminal law) in dispute resolution. Moreover, Irham Virdi's study, titled "Legal Studies on the Development of Sharia Fintech in Indonesia" (Virdi, 2022), examined the regulation of Sharia fintech in Indonesia and the challenges it faces. Moreover, Evan Hamzah Muchtar and Ahmad Zubairin in their research titled "Sharia Fintech in the Perspective of Islamic Law" (Muchtar & Zubairin, 2022) explored Sharia fintech arrangements within the context of existing Islamic law in Indonesia.

Building on previous research, this study shares a similar theme, specifically addressing Sharia fintech within the legal domain. However, this study introduces a legal novelty—namely, the reformation of Sharia fintech regulations by examining the application and legal framework of Islamic fintech in Malaysia. Given the existing body of research on Sharia fintech in Indonesia, this study aims to create state-of-the-art research by analysing three key legal constructs by mapping the problematics of Sharia fintech regulations in Indonesia, conducting a comparative analysis of Sharia fintech regulations in Malaysia, and proposing legal updates to strengthen Sharia fintech regulations in Indonesia. This approach aligns with the growth momentum of Sharia fintech growth, underscoring the importance of establishing an appropriate legal framework to support its development.

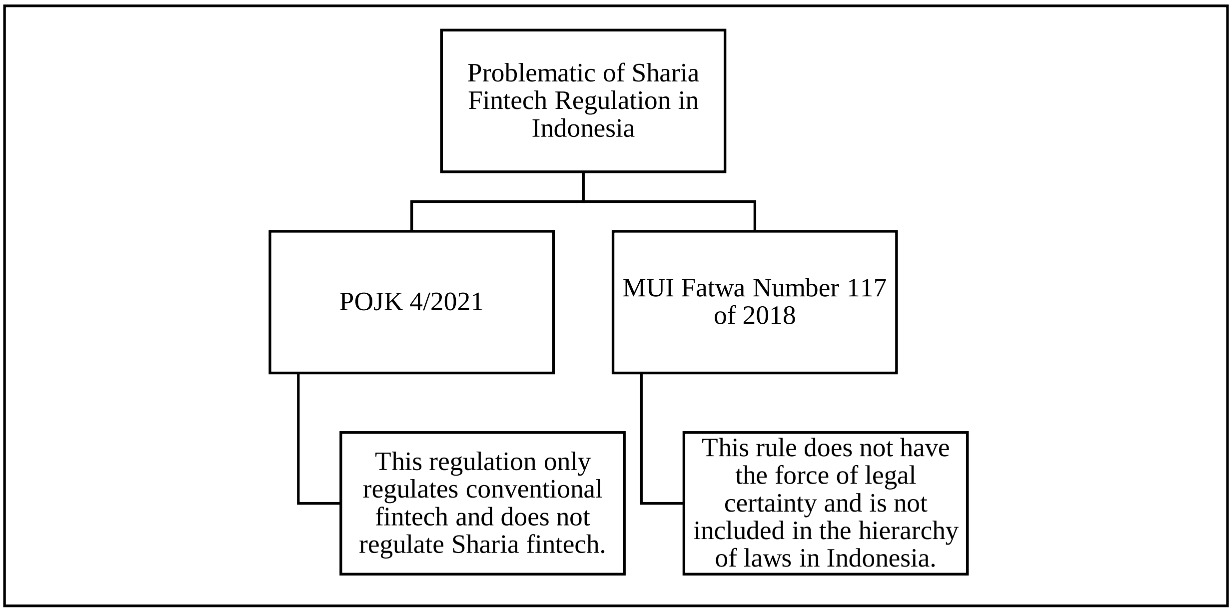

Figure 1. Issues in the Arrangement of Sharia Fintech

In this paper, there are two problems that will be examined: First, what are the challenges in regulating Sharia fintech in Indonesia; and second, what legal reforms are relevant to the development of Sharia fintech in Indonesia?

Methodology

The research method employed is normative juridical, incorporating statutory approaches and comparative studies (Soekanto & Mahmudji, 2003). The legislative approach is utilised to analyse Sharia fintech regulations in Indonesia, while the comparative study approach examines Malaysia's Sharia fintech regulations and policies. Thi study relies on secondary data, comprising primary and secondary legal materials. Primary legal materials include applicable laws and regulations, whereas secondary legal materials consist of books, scientific journals, policy briefs, and other relevant resources to support the research. To process secondary data, this research uses literature study techniques and applies deductive reasoning patterns to analyse the problems under investigation.

Findings and Discussion

Regulation of Sharia Fintech in Indonesia

Conventional and Sharia Fintechs

Technology-based innovation in the financial industry or known as fintech, experienced rapid growth in recent years in Indonesia. Fintech refers to financial service providers that offer various innovative business services by integrating finance with technology (Safitri, 2020). The development of fintech or technology-based companies in Indonesia began to rise around the 2010s (Mar'atushsholihah & Karyani, 2021). This growth was driven by advancements in information and communication technology-based infrastructure, which increased the usage of digital media and devices during that decade (Mar'atushsholihah & Karyani, 2021). Several well-known examples of fintech include crowdfunding, peer-to-peer (P2P) lending, mobile commerce, cryptocurrency and digital wallets (Sharma et al., 2024). The ongoing development of information systems and technology in the financial sector has resulted in numerous innovations, particularly in technology, aimed at meeting vatious community needs such as transaction processing and improving accessibility to financial services.

In 2016, which marked the early adoption of conventional fintech in Indonesia, the total P2P lending facilitated by fintech companies was recorded at IDR 284 billion. This figure increased consistently, reaching IDR 74.4 trillion by 2020 (Walfajri, 2020). However, the opposite trend was observed in the Net Interest Margin (NIM) of conventional commercial banks in Indonesia. While fintech experienced a significant increase in loan volume, the NIM of conventional banks declined significantly between 2016 and 2020. In 2016, the NIM of conventional commercial banks stood at 5.63%, but it dropped to 4.45% by 2020.

In banking literature, NIM is a measure of a bank's efficiency (Saputra et al., 2023). Based on the declining NIM figures, conventional Banks in Indonesia exhibited a decrease in efficiency levels during this period. Additionally, the Return On Asset of conventional commercial banks in Indonesia decreased from 2.55% in 2018 to 1.59% in 2020. At the same time, credit disbursed by fintech companies surged significantly, from IDR 58.83 trillion in 2019 to IDR 74.4 trillion in 2020 (Saputra et al., 2023). This trend reflects the growing enthusiasm and interest among Indonesians in utilising conventional fintech.

Conventional fintech, in its implementation, operates through mechanisms that are not signifantly different from conventional banks. Credit provided to consumers is structured as a loan contract, requiring customers to repay the principal amount along with interest. Additionally, customers bear full responsibility for the risks in cases where they are unable to meet their installment obligations. with the growth of fintech, a development has emerged in the form of Sharia fintech, which focuses on providing financial services similar to conventional fintech but adheres to Sharia principles in alignment with the teachings of Islam.

Sharia fintech represents the application of Sharia economics, emphasising the provision of financial services through modern technology. Sharia economics is an essential component of Islam, derived as a science that adheres to its principles and tenets. Islam, as a comprehensive way of life, provides a holistic set of guidelines for living, including those related to economic practices (Ilyas, 2017). While every human being seeks to achieve welfare, the interpretations of welfare vary among individuals.

It can be argued, based on various traditional economics literature, that individuals satisfy their needs for goods and services as a means to achieve welfare (Sanawiah & Ariyadi, 2021). People strive for happiness and well-being in life, and they continually pursue actions aimed at attaining these goals. In this context, the Qur'an's perspective on human welfare connects this pursuit to the pleasure and suffering that await in the hereafter. Objective standards for human welfare encompass both material and intangible needs, such as food, shelter, education, and other essential goods and services, as well as comfort, love, and affection shared between spouses. This concept encourages individuals to utulise their human and monetary resources to fulfil societal needs, reject unwholesome desires, and prioritise the satisfaction of healthy desires (Sanawiah & Ariyadi, 2021).

The principles of Islamic economics are based on five universal values, namely: *Adl* (Justice); *Khilafah* (Government); *Nubuwwah* (Prophecy); *Tauhid* (Faith); and *Ma'ad* (Outcomes) (AF et al., 2023). Islamic economic theories are inspired by these values, yet transforming Islamic economics into a purely scientific discipline—unaffected by real-world economic conditions—requires a robust and sound theoretical framework to operationalise these principles (AF et al., 2023). From these universal values, three derived principles principles have been developed to serve as the hallmarks and foundations of the Islamic economic system which are social fairness, freedom of action, and multitype ownership (AF et al., 2023). The concept of morality, which underpins all the aforementioned values and principles, serves as the foundation of Islamic teachings. Since perfection of human morals is the main goal of Islam and the teachings of the Prophet, morality is paramount. Islamic economics is based on this morality, which directs economic and commercial actors in their operations. In order to comply with Sharia principles, this concept must be integrated into the framework of Sharia Fintech.

In Sharia entities, adherence to Sharia principles is essential and must not be overlooked. Sharia compliance generally refers to adhering or alignment of operational activities within various Sharia-based organizations with the principles of Sharia. It is imperative that indicators for Sharia fintech compliance be established, ensuring that Sharia principles are effectively applied in Sharia fintech operations. Moreover, the concept of Sharia compliance plays a critical role in the oversight of Sharia fintech's operational activities, ensuring that there are no violations of Sharia standards.

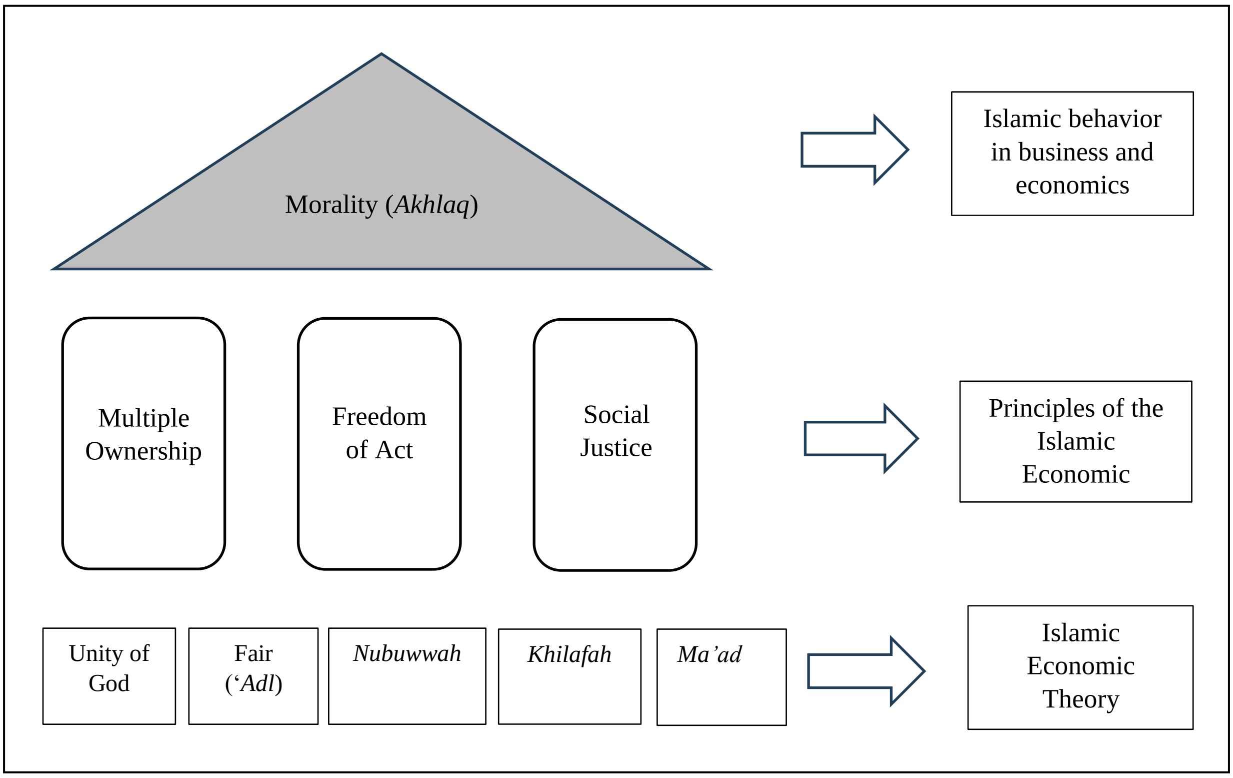

Figure 2. Illustration of Sharia Economic Principles (Handayani, 2018)

Economy and information technology collaborate to bring greater convenience to people’s live. Even today, economic growth is not possible without the use of information technology (Škare & Hasić, 2016). One of the factors supporting the growth of Indonesia’s digital economy is the fintech sector, which currently provides users with convenient services such as easy payment, lending, and other financial services. The rapid development of technology has significanly impacted financial services which are experiencing equally rapid growth. Consequently, fintech has evolved beyond conventional , expanding into Sharia fintech. As a Muslim-majority country with 236 million people, accounting for approximately 84.35% of Indonesia’s population in 2024 (Antaranews, 2024), Indonesia has witnessed the substantial growth of Sharia fintech. The emergence of Sharia fintecht in Indonesia is a response to the development of conventional fintech companies, which utilise interest-based instruments in their operations —contrary to Sharia principles, which prohibit interest-based transactions (Rohman et al., 2023).

Sharia fintech allows customers to access their accounts, transfer funds, pay bills, and manage other financial transactions through mobile devices or computers. This innovations makes it easy and convenient for customers to manage their finances in compliance with Sharia principles without the need to visit a physical branch. Additionally, Sharia fintech plays a pivotal role in the digital transformation of Sharia banking. It provides innovative platforms and solutions, such as peer-to-peer lending, crowdfunding, and Sharia-compliant e-wallets, which enable financing and transactions that complies with Sharia principles (Rohman et al., 2023). This advancements opens new opportunities for customers and Micro, Small and Medium Enterprises entities to access Sharia financial services that were previously difficult to reach. In addition, technologies like blockchain and smart contracts are being utilised in Sharia banking to improve transparency, security and efficiency in financial transactions. These technologies enable transparent and verifiable record-keeping and transaction verification, which aligns with Sharia principles that emphasise fairness and integrity.

Table 1. Comparison of Conventional Fintech and Sharia Fintech (Nurfitriyani, 2019)

Differences	Conventional Fintech	Sharia Fintech
Interest Rate	Consumer credit is offered as a loan agreement, requiring repayment along with accrued interest.	Conventional financing does not recognize what aligns with Sharia principles. In Sharia financing, credit is not issued as a loan contract; instead, it is provided through contracts such as *murabahah*, *ijarah wa iqtina*, and *musyarakah mutanaqishah*.
Risks and Installments	If the consumer fails to make the installment payments, they will be solely responsible for the risk.	Fintech and its customers are willing to take the risk.
Availability of Loan	Financing is conventional.	Sharia financing uses product offerings for specific purposes.

The distinction lies in the preference of individuals who adhere to Islamic law, and opt to use Sharia fintech to avoid *riba*. In Arabic, *Riba* is referred to *az-ziyadah*, which means addition or excess. In a general context, this excess refers to an increament in wealth or the principal amount. Quoting MUI Fatwa Number 1 of 2004 which explains the definition of *riba* is as follows:

> *Riba* is an addition (*ziyadah*) without reward that occurs due to deferral in previously agreed payments And this is what is called *Riba Nasi'ah*.
>
> (MUI Fatwa Number 1, 2004, p. 434)

The recommendation to avoid *riba* which is prevalent in non-Sharia financial institutions, is explained in the following verse of the Qur'an:

> Translation: O believers! Do not consume interest, multiplying it many times over. And be mindful of Allah, so you may prosper.
>
> (Surah Al-Imran, 3:130)

> Translation: Whatever loans you give, "only" seeking interest at the expense of people's wealth will not increase with Allah. But whatever charity you give, "only" seeking the pleasure of Allah—it is they whose reward will be multiplied.
>
> (Surah Al-Rum, 30:39)

> Translation: We forbade the Jews certain foods that had been lawful to them for their wrongdoing, and for hindering many from the Way of Allah, taking interest despite its prohibition, and consuming people's wealth unjustly. We have prepared for the disbelievers among them a painful punishment.
>
> (Surah An-Nisa, 4:160-161)

> Translation: O believers! Fear Allah, and give up outstanding interest if you are "true" believers. If you do not, then beware of a war with Allah and His Messenger! But if you repent, you may retain your principal—neither inflicting nor suffering harm. If it is difficult for someone to repay a debt, postpone it until a time of ease. And if you waive it as an act of charity, it will be better for you, if only you knew.
>
> (Surah Al-Baqarah, 2:278-280)

Legal Problems of Sharia Fintech in Indonesia

Fintech's cost-effectiveness, process efficiency, and financial inclusion have the potential to significantly change the Sharia finance sector (Setiawati et al., 2024). In Indonesia, Sharia fintech experienced a financing growth of over 130 percent from 2020 to 2021 (Alamsyah, 2022). This remarkable growth highlights the rapid development of Sharia fintech in the country serves as a crucial signal for regulators to support and facilitate its progression.

In Indonesia, Sharia fintech is currently regulated by various regulations based on the specific type of fintech, whether focusing on financing or funding. For financing activities, Article 1, Point 1 of POJK 4/2021 defines nonbank financial services institutions as entities such as pension funds, insurance companies, financing companies, and other organisations engaged in related operations. Furthermore, Sharia fintech is further regulated in Article 2 letter c, which states:

> "c. financing institutions, consisting of:
>
> 1. finance company;
> 2. Sharia Finance Company;
> 3. venture capital companies;
> 4. Sharia venture capital companies; and
> 5. infrastructure financing company".

Furthermore, an analysis of the funding type of Sharia fintech can be conducted based on POJK 10/2022. Article 1, Number 1 of POJK 10/2022 states:

> Information Technology-Based Joint Funding Services, hereinafter abbreviated as LPBBTI, is the provision of financial services to bring together funders and fund recipients in conducting conventional funding or based on Sharia principles directly through an electronic system using the internet.

Article 1, Point 4 of POJK 10/2022 specifies that the Sharia principles referenced are the provisions of Islamic law, based on fatwas and / or statements of Sharia compliance issued by the National Sharia Board of the MUI. Additionally, to ensure compliance, a Sharia Supervisory Board is formed for each provider. This Board is tasked with overseeing and advising the Board of Directors on the adherence of the Provider's activities to Sharia Principles. One of the key fatwas that regulates Sharia fintech is MUI Fatwa Number 117 of 2018, which states that the operations of Sharia fintech must not contradict Sharia principles. The General Provisions of MUI Fatwa Number 117 of 2018 define Sharia fintech as follows:

> Information Technology Based Financing Services Based on Sharia Principles is the implementation of financial services based on Sharia principles that bring together or connect Financiers with Financing Recipients in order to conduct financing contracts through electronic systems using the internet network.
>
> (MUI Fatwa Number 117, 2018, p. 6)

Based on these provisions, according to MUI as an organisation of Muslim scholars tasked with empowering the Muslim community, can issue a fatwas to guide the government and the wider public (Tamam, 2021). Sharia fintech must be implemented in accordance with Islamic rules, ensuring that all contracts used in transactions comply with Islamic law. The contract concepts applied to all Sharia fintech transactions include *Akad Mudharabah* and *Akad Musyarakah*, both of which are ideal choices for Sharia fintech users (Winarsih, 2022). The *Akad Mudharabah* contract represents a form of cooperation between capital owners (investors) and fund managers (Winarsih, 2022). In this arrangement, both parties meet face-to-face to determine the amount of profit that will be shared fairly. Meanwhile, the *Akad Musyarakah* contract refers to a partnership between two or more individuals, based on an equal sharing system, where the owner of capital (investor) and the fund manager share profits fairly, as outlined in the agreement established at the beginning of the transaction (Winarsih, 2022).

Based on the above provisions and analysed through legal construction, two key regulatory problems arise: First, the current regulatory framework for Sharia fintech does not distinguish between Sharia fintech and conventional fintech, leading to legal ambiguity in its regulation. Since Sharia fintech must operate based on Sharia principles, this ambiguity indirectly contradicts the principle of *lex certa*, where "*legal regulations must be formulated clearly and clearly so as not to cause confusion or multiple interpretations*". Second, the POJK provisions regulating Sharia principles rely on the MUI Fatwa Number 117 of 2018. However, when examined within the hierarchy of laws and regulations —as outlined in Article 7, Paragraph (1) of Law Number 12/2011 on the Formation of Laws and Regulations—the MUI Fatwa does not constitute a formal regulation and therefore lacks binding legal authority. Mahfud MD, in his article "Fatwa MUI and Our Living Law", states that Fatwa is nothing more than a legal opinion that can be followed (MD, 2016). Based on the abstract regulation point of view, MUI Fatwa can only be binding when an authorised institution, such as the House of Representatives, grants it binding legal force (Pofrizal et al., 2021).

On the other hand, there are challenges in the implementation of Sharia fintech in Indonesia, including, First, the ease with which technology may be used for donations and investment activities; yet, the objective of fintech, which is to use technological innovation to help community, is inversely proportionate to the state of affairs in rural communities, where there is still a dearth of information regarding Sharia fintech. This is supported by the remarks made by the chairman of the Indonesian Sharia Fintech Association, or AFSI, who stated that one of the community's largest problems is the lack of education; a large number of people are still unaware of the fintech sector. By collaborating with the government or regulator—in this case, the OJK—and Sharia fintech users, the challenge of educating those who are still ignorant about and low on fintech will actually present an opportunity for Sharia fintech players. Workshops and visits to explain fintech to rural communities or those who are still ignorant about it can be organized to create a form of education (Hiyanti et al., 2020). Second, the instances and occurrences related to conventional fintech in society that have recently created a bad reputation. Sharia fintech has an opportunity to persuade people that it is different from conventional fintech by pointing to rough billing methods, various forms and media, and even the number of suicides in Indonesia caused by online loans via conventional fintech issued by unethical fintech. Simultaneously, the public assumed that Sharia fintech and conventional fintech are the same due to the phenomenon's introduction and unfavourable reputation (Virdi, 2022).

Malaysian Regulation on the Fintech Sharia

Malaysia's Sharia fintech sector is experiencing rapid growth, driven by the increasing demand from its majority Muslim population. This can be seen from the size of the Sharia fintech market in Malaysia, which reached approximately US$11.1 billion, reflecting a growth of US$6 billion from the previous year. The value of Sharia fintech in Malaysia is expected to grow to US$12.1 billion by 2026 (Statista, 2024). According to the Global Sharia Fintech Report 2022, compiled jointly by Islamic economic consulting firm Dinar Standard and digital ethical investment and financial advisory firm Ellipses, the size of the Sharia fintech market is expected to reach US$179 billion (RM839.51 billion) by 2026, with a compound annual growth rate (CAGR) of 17.9%. This growth surpasses the overall global fintech industry, which is expected to expand at a CAGR of 13.5% over the same period (Hisham, 2023).

The rise of Sharia fintech activities in Malaysia has led to comprehensive regulation of the sector. Malaysia's fintech regulation received an award that recognised the country as the leading Islamic economy in the World, as published in the Global Islamic Economy in 2020/2021 (Shafaki, 2022). Malaysia is well deserving of the accolade, as it has embraced a more approachable revolutionary strategy to digitise the economy and develop into one of Asia's leading fintech hubs, particularly in Sharia fintech. Furthermore, Malaysia has a strong regulatory framework, with multiple regulatory bodies overseeing Sharia-compliant fintech activities. These include Bank Negara Malaysia (BNM), the Malaysian Securities Commission (SC), and the Malaysia Digital Economy Corporation (MDEC). These institutions have successfully balanced fintech innovation with the preservation of the country's financial stability.

In addition to having compliant institutions, Sharia fintech regulations in Malaysia are comprehensively regulated in Malaysia. The development of Islamic finance in Malaysia began with the introduction of The Islamic Banking Act of 1983 (Act 276) (IBA 1983), which was the first regulation requiring Islamic banks to obtain a full license and permit to conduct Sharia-compliant business. Additionally, the IBA 1983 mandated the establishment of a Sharia Advisory Board to provide advice on bank operations (Laldin & Furqani, 2018). This is regulated in Part II Article 13a, which states that:

> An Islamic bank may seek the advice of the Syariah Advisory Board on Syariah matters relating to its banking business and the Islamic bank shall comply with the advice of the Syariah Advisory Board.
>
> (Islamic Banking Act, 1983, p. 10)

Every Islamic bank is required by the IBA 1983 to set up a Sharia Advisory Board in order to guarantee that the bank adheres to Sharia laws. Additionally, a National Sharia Advisory Board advises BNM in order to standardise the recommendations of the Sharia Advisory Board. Under the IBA 1983, Islamic banks are permitted to consult the National Sharia Advisory Board for advice or guidance on Sharia compliance in banking operations.

Another key regulation complementing the IBA 1983 is the Takaful Act 1984 (Act 312), which governs the takaful sector. Takaful which was first introduced in Malaysia in 1984 when Syarikat Takaful Malaysia Berhad, the country's first takaful operator, was founded to satisfy the public's demand for protection based on Sharia principles. In Islamic commercial law (*muamalah*), takaful is defined as a system in which individuals assume mutual risks, ensuring that one party serves as the insurer for other (Ramadhani, 2022). The Takaful Act 1984 (Act 312) serves a a foudational guideline to eliminate the elements of *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling) and modify them to comply with Sharia principles.

The Banking and Financial Institutions Act of 1989 (Act 372) (BAFIA 1989), which permits conventional banks and other financial institutions to grant licenses to perform Islamic banking or Islamic banking financial activities, also regulates the Sharia financial industry. Once BNM has given its clearance, conventional banks licensed under BAFIA 1989 may engage in Sharia banking (Syarif, 2019). The definition of Sharia banking under BAFIA 1989 aligns with that of the IBA 1983. Financial institutions governed by BAFIA 1989 send such matters to the National Sharia Advisory Board, which determines if any Islamic Sharia principles have been violated(Kunhibava, 2012). Established by BNM in 1997, the Sharia National Advisory Board holds the responsibility to oversee Sharia banking in Malaysia. Its key objectives include assessing new programs and products, providing regulatory guidance and offering oversight for BNM in matters of Islamic banking and Islamic insurance (Kitamura, 2021).

The Islamic Capital Center, also known as the Sharia Capital Market, is another integral part of the Sharia financial system. Established under the Securities Commission Act 1993 (Act 498), the SC is a self-governing statutory authority under the Ministry of Finance since 1995. Under the Capital Markets and Services Act of 2007 (Act 671), the SC is responsible for monitoring the operations of licensed capital market institutions. Additionally, the SC plays a pivotal role in establishing and promoting Malaysia's capital market (Hassan & Hussain, 2013). Furthermore, the Islamic Capital Market Unit, comprising experts in *fiqh mu'amalat* and capital market practices, conducts extensive research on Islamic capital market products and operations. As of November 20, 2023, there are 808 Sharia-compliant securities listed on the Exchange of Malaysia, all of which have been approved by the Sharia Advisory Board of the SC (Securities Commission Malaysia, 2023).

The Securities Commission Act 1993 (Act 498) established the Sharia Advisory Board of the SC, which is responsible for ensuring compliance with Sharia standards in Islamic capital market operations. Any rules or regulations established by the Sharia Advisory Board of the SC will be binding on proceedings that have an impact on Islamic capital market transactions, and courts or arbitrators may impose such rules or regulations, in accordance with the Capital Markets and Services Act of 2007 (Act 671). In cases where regulations issued by the Sharia Advisory Board of the SC conflict with those issued by a Sharia advisor registered in the capital market, the regulations issued by the Sharia Advisory Board of the SC take precedence (Syarif, 2019).

The first systematic effort to develop a Sharia Governance Framework (SGF)—essential for maintaining the stability of the Islamic financial system—was initiated in 2005 when BNM released the Sharia Governance Committee Guidelines for Islamic Financial Institutions. The establishment of a robust Sharia Governance Framework enhances public trust in the ethics, administration, and commercial activities of Malaysia's Islamic financial institutions. Three key factors define the development of the SGF namely: the guidelines and processes for establishing a Sharia Committee within each Islamic Financial Institution (IFI); the functions and scope of the committee's responsibilities; and the working relationship and protocols between the BNM Sharia Advisory Board and the Sharia Committee (Laldin & Furqani, 2018).

The Islamic Financial Services Act 2013 (Act 759) (IFSA 2013) is the latest regulation that replaces both the Takaful Act 1984 (Act 312) and the IBA 1983. The IFSA 2013 serves as an important exstension of the Islamic Governance framework developed by BNM. The enactment of IFSA 2013 aims to strengthen Sharia compliance within the Islamic financial services sector. Its primary objectives can be seen in Part II, Section 6 of the IFSA 2013 which states that:

> The principal regulatory objectives of this Act are to promote financial stability and compliance with Sharia.

The adherence of IFIs to the prescribed Sharia principles for various contracts ensures the sanctity, honesty, and validity of Islamic financial transactions. The IFSA 2013 stipulates that one of the key obligations of IFIs is to ensure that the purpose and operation of business affairs and activities shall be carried out with the Islamic financial system. This is further explained in Section 28(2) which states that:

> For the purposes of this Act, a compliance with any ruling of the Sharia Advisory Board in respect of any particular aim and operation, business, affair or activity shall be deemed to be a compliance with Sharia in respect of that aims and operations, business, affair or activity.

According to the above provision, adherence to the Sharia Advisory Board's decision regarding the goals and conduct of business, affairs, or activities must be done in accordance with Sharia principles. Therefore, it can be concluded that, IFIs must comply with all operations, business, affairs and activities based on Sharia, and ensure that internal policies and procedures must be adjusted accordingly to Sharia requirements, along with the development of a Sharia audit function (Fatmawati et al., 2022).

The regulation of Sharia fintech in Malaysia has not been explicitly regulated in a particular law; however, the broader Islamic financial sector in Malaysia is highly structured and comprehensive. This can be seen from the establishment of the National Sharia Advisory Board, which oversees Islamic banking activities, Islamic financial institutions, and entities engaged in Sharia-compliant financial transactions, so that they are still in accordance with Sharia principles. Additionally, the concept of takaful, which serves as a foundational guideline to eliminate elements of *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling)—and modify them to be in accordance with Sharia—is the main thing that makes Malaysia's comprehensive regulatory framework for the the Sharia financial sector.

The regulation of Sharia fintech in Malaysia has not been specifically regulated in a specific law, but the regulation of the Islamic financial sector has been comprehensively regulated in IFSA 2013 in Malaysia is very capable and comprehensive. This can be seen from the establishment of the National Sharia Advisory Board as a supervisor of Islamic banking activities, Islamic financial institutions, and parties conducting financial transactions in Sharia so that they are still in accordance with Sharia principles. In addition, the concept of takaful which is used as a basic guideline to eliminate the elements of *riba* (usury), *gharar* (excessive uncertainty), and *maysir* (gambling) and modify them to be in accordance with Sharia is the main thing that makes Malaysia have comprehensive regulations on the Islamic financial sector. Although Malaysia has not specifically regulated Sharia fintech in its legislation, the country has responded effectively to technological developments, including the emergence of Sharia fintech. BNM has actively supported infrastructure development in various sectors, such as when BNM launched the Investment Account Platform (IAP) and crowdfunding Sharia platform for Small, Medium Enterprises involving six Sharia banks in 2016 (Bank Negara Malaysia, 2016). Additionally, Malaysia is home to seven Sharia fintech startups (Susilawati et al., 2021), further makes it a global leader in Islamic finance (Susilawati et al., 2021).

Sharia Fintech Law Reform in Indonesia

The rapid growth of Sharia fintech in Indonesia has provided convenience, especially from the financial aspect based on Sharia principles. This include seamless payment options, convenience in borrowing money, and other financial needs. The presence of Sharia fintech is also motivated by a wide customer segmentation, given that the majority of the population in Indonesia is Muslim. Currently, there are two types of Sharia fintech in Indonesia, namely crowdfunding (Aprilia & Wibowo, 2017) and peer-to-peer lending (Setiadi Saputra, 2019).

Despite its positive potential in advancing the Islamic economy, Sharia fintech in Indonesia continues to face regulatory challenges. while it offers significant benefits, it also presents high vulnerabilities, such as information asymmetry (Fadzlurrahman et al., 2020). Moreover, if examined in the Indonesian Sharia Economic Master Plan 2019-2024, there are four strategies to encourage the development of the Islamic economy in Indonesia, one of which is strengthening the digital economy (Suci Marlina & Fatwa, 2021). Therefore, by looking at the momentum and urgency at this time, it is necessary to reform the law on Sharia fintech.

Currently, Sharia fintech regulations are based on POJK 4/2021 and POJK 5/2022, which fail to differentiate between Sharia fintech and conventional fintech. This ambiguity affects both financial service institutions and consumers, creating uncertainty in regulatory implementation. Furthermore, MUI Fatwa Number 117 of 2018—which serves as a guideline for Sharia principles in Sharia fintech—is not binding, further complicating regulatory enforcement. Given these developments and the legal ambiguity surrounding Sharia fintech, establishing a clear, structured regulatory framework is necessary to ensure compliance and sustainability within Indonesia's Islamic financial sector.

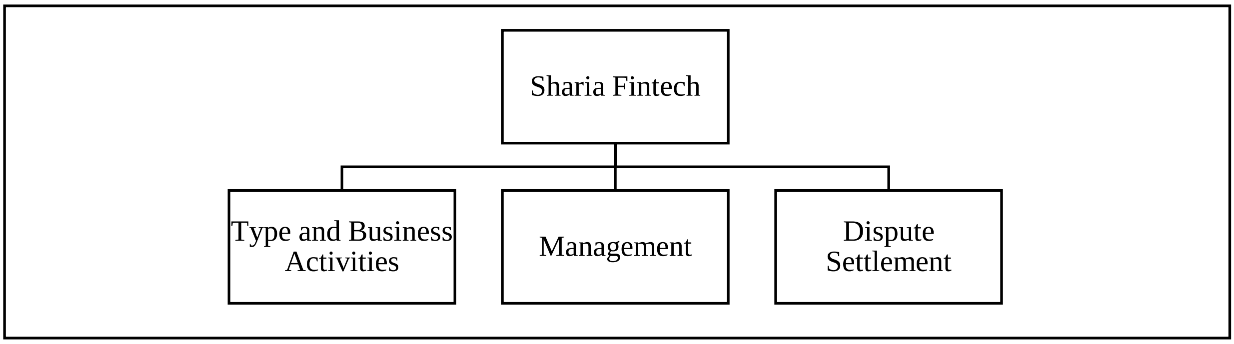

Figure 3. Direction of Sharia Fintech Regulation as *Ius Constituendum* in Indonesia from authors' analysis

There are three key areas that must be further regulated in the context of Sharia fintech, namely: First Type and Business Activities. The business activities of Sharia fintech must adhere to Sharia principles, leading to a diverse range of contract variations and product variations. There are at least six types of business models that must be regulated, namely factoring, purchase order, financing procurement of goods selling online, financing procurement of goods through payment gateway, employee, and community-based financing. Second, Management. In carrying out its business activities, Sharia fintech must adhere to good governance, prudential principles, and risk management. Maintaining prudential standards is crucial for Sharia fintech companies, so that the Sharia Supervisory Board that has been formed based on POJK 5/2022 can carry out its supervisory role in this issue (Fadzlurrahman et al., 2020). Third, Dispute Resolution. The dispute resolution mechanism for Sharia fintech remains unclearl under POJK regulations. Given that Sharia fintech falls within the scope of Sharia economics, disputes should be settled in the Religious Court, in accordance with Law Number 50 of 2009 on the Second Amendment to Law Number 7 of 1989 on Religious Courts ("Law 50/2009"). However, to further clarify the Sharia fintech dispute resolution process, it is necessary to issue a Circular Letter to the Court of Justice.

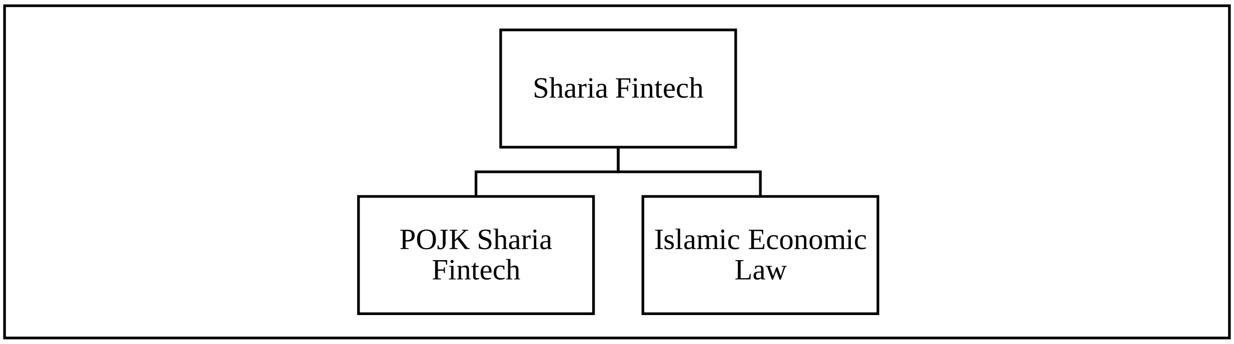

Figure 4. Design of Sharia Fintech Regulation in Indonesia from authors' analysis

To create an adequate legal framework, further regulation of Sharia fintech will be divided into two parts, namely short-term and long-term. The short-term regulation of Sharia fintech will be further regulated through POJK, with the formation of POJK Fintech Sharia, a regulation designed specifically for Sharia fintech, separate from conventional fintech. This distinction will enchance legal certainty for both financial services institutions and consumers. Furthermore, in the long term, it is necessary to establish an Islamic Economic Law that regulates *lex specialis* provisions specifically governing the Islamic economy in Indonesia. This initiative is driven by the increasing number of users and investors in Islamic financial services institutions in the country.

Conclusion

Sharia fintech is experiencing rapid growth in Indonesia, highlighting the urgent need for regulations to ensure protection and legal certainty. However, until now, significant challenges remain, particularly regarding the unclear regulatory framework for Sharia fintech, as existingregulations combine provisions for Sharia and conventional fintech. Furthermore, the MUI Fatwa serves as the basis for Sharia fintech operations, promoting adherence to Sharia principles. However, its legal standing is not binding, which creates limitations in enforcing compliance. In comparison, the regulation of Islamic fintech in Malaysia is far more organized and comprehensive in terms of both regulation and supervision. To address, these issues, efforts are needed to update the laws governing Islamic fintech, such as POJK Fintech Sharia and Islamic Economic Law, are essemtial to establish legal certainty within the Islamic financial system. There are at least three things that must be further regulated in Sharia fintech, namely type and business activities, management, and dispute settlement. By addressing these aspects, it is expected that Sharia fintech in Indonesia will be able to safeguard the interests of Sharia fintech service institutions and consumers.

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