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## Maqasid-Based Comparative Jurisprudence: Synthesis of Capitalism, Socialism, and Islamic Economics in Indonesia's Dual Economic System<sup>\*</sup>

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### Abstrak

The purpose of this article is to compare legal systems in the concept of ownership (al-Milliyyah) and examine the integration of Positive Law and Islamic Law in Strengthening Sharia financial institutions in Indonesia. Using a juridical-philosophical approach, this study examines the ontological, epistemological, and axiological aspects of each economic legal system. Ontologically, capitalism is rooted in individual freedom and private property rights; socialism in collectivity and structural equality; while Islam emphasizes the balance between private ownership, social responsibility, and distributive justice. Epistemologically, Western economic law is based on secular rationality and empiricism, while Islamic economic law is derived from revelation and *maqāṣid al-syārī'ah*. From an axiological perspective, Islamic economic law prioritizes the values of justice and welfare over material utility. The main findings of this study indicate that the Indonesian dual economic system model represents an epistemological synthesis between Western legal rationality and Islamic legal spirituality. National legal pluralism allows for the coexistence of two complementary economic systems, conventional and sharia, within the framework of equitable economic development. The theoretical implication is the need for a comparative model of economic law based on *maqāṣid* (maqāṣid-based comparative jurisprudence), while the practical implication is the importance of harmonizing positive legal regulations with sharia principles to achieve an efficient, ethical, and equitable national economic legal system.

**Keywords:** Economic Law; Capitalism; Socialism; Islamic Economics; Dual Economic System; *Maqāṣid al-Syārī'ah*

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## A. INTRODUCTION

Comparing economic legal systems is crucial in the era of globalization because each system has a different paradigm in interpreting justice, ownership, and wealth distribution. Global economic inequality remains a major problem: the World Inequality Database (2023) report shows that the richest 10% of the population controls more than 52% of global income, while the bottom 50% receives only 8% of global income (Chancel et al., 2023). In Indonesia, despite economic growth reaching 5.05% in 2023, the Gini ratio stagnated at 0.388, indicating the persistence of wide social inequality. (Fandeli & Mukhlison, 2000) In this context, the study of economic law goes beyond analyzing norms to highlight the structure of justice in economic distribution. Capitalism, with its orientation toward market freedom, is often criticized for generating wealth accumulation, while socialism, with its principle of collectivism, is considered to hinder efficiency. Islam, on the other hand, presents an economic legal paradigm that emphasizes the balance between individual rights and social responsibilities through the principles of justice and *maqasid al-syari'ah* (the objectives of Islamic law) (Umer Chapra, 2000). This condition emphasizes the need for a comprehensive comparative study between the three systems.

Studies of global economic law reveal four main trends. First, the neoliberal institutionalism paradigm, emphasizing market efficiency and the supremacy of contracts, as proposed by Acemoglu and Robinson (2019), who view the free market as an instrument of innovation but risk strengthening economic oligarchy (Acemoglu, 2019). Second, the egalitarian socialism approach, redeveloped by Wright (2021), highlights the need for economic reconstruction based on distributive justice but has been criticized for reducing productivity incentives (Wright, 2018). Third, the Islamic moral economy approach, as formulated by Asutay (2015) and Chapra (2016), emphasizes the balance between growth and equity within the ethical principles of sharia (Umer Chapra, 2000). Fourth, the comparative hybrid system trend developed by Bedner and Hooker (2020), demonstrates the plurality of economic laws in countries with dual systems such as Indonesia (Bedner, A., & Hooker, n.d.).

These four trends demonstrate the lack of a comprehensive synthesis that maps the ontological and axiological comparisons between capitalism, socialism, and Islamic economics in the context of national legal pluralism. The lack of a conceptual synthesis between economic legal systems has led to academic debates tending toward a normative-descriptive nature without developing an integrative analytical framework. Previous research has focused more on doctrinal aspects or fiscal policy without examining the philosophical and epistemological constructions of each legal system. In the Indonesian context, where conventional and sharia economic legal systems operate in parallel (a dual economic system), comparative studies are increasingly urgent to address the issue of regulatory inconsistency and the fragmentation of the principle of justice (Bedner, A., & Hooker, n.d.).

A comparative approach based on law and development and Islamic jurisprudence is needed to find a model of economic law that can accommodate the values of market efficiency and social justice. Therefore, this research aims to fill the

research gap in the discourse on economic law by comprehensively examining the principles, ownership, and normative structures of capitalism, socialism, and Islam.

This study aims to comparatively analyze the economic legal systems of capitalism, socialism, and Islam, focusing on the concepts of justice, ownership (*al-milkiyyah*), and economic distribution within the framework of legal pluralism in Indonesia. The main thesis of this study is that Islamic economic law offers an integrative paradigm capable of bridging the dichotomy between capitalist market freedom and socialist collectivist equality through the principle of *maqāṣid al-sharī'ah*. Thus, this study seeks to prove that the application of Islamic economic legal principles can be an alternative model for sustainable economic justice. Two main questions are asked: How do the principles, values, and structures of economic law compare in capitalism, socialism, and Islam? How can the Islamic economic legal model be integrated into Indonesia's dual economic system to achieve social justice and prosperity?

## B. METHODS

This research methodology uses a juridical-philosophical approach with a comparative method to analyze the economic legal systems of capitalism, socialism, and Islam within the framework of Indonesian legal pluralism. The juridical-philosophical approach was chosen because this study not only examines positive legal norms, but also examines the ontological, epistemological, and axiological dimensions of each economic legal system. The analysis was carried out through a literature study of primary sources (the Qur'an, Sunnah, Laws, DSN-MUI fatwas) and secondary sources (books, journals, official reports), which were then interpreted using the *maqāṣid al-syarī'ah* framework to assess the relevance of the values of justice and benefit in the modern economic context. (Jasser Auda, 2017)

The comparative method is applied by comparing the principles of ownership, distribution, and objectives of economic law in the three systems, and examining their integration in the dual economic system model in Indonesia. The analysis was conducted descriptively and analytically, describing the characteristics of each economic legal system and then critiquing them from the perspective of Islamic law as an integrative paradigm. The data were analyzed using content analysis techniques to identify patterns of epistemological synthesis between Western legal rationality and Islamic legal spirituality. Thus, this methodology allows the research to produce a theoretical framework that is not only normative but also applicable in harmonizing positive legal regulations and sharia principles.

## C. RESULTS AND DISCUSSION

### 1. Theoretical Review and Conceptual Framework

#### a. Ontology of Economic Law

The ontology of economic law is concerned with the nature of law's existence in regulating human economic activity. In a capitalist system, economic law is rooted in

individual liberty and private property rights as the primary ontological elements. Adam Smith, in *The Wealth of Nations*, asserted that individual freedom to pursue personal interests will automatically generate social prosperity through free market mechanisms (the invisible hand) (Smith, 2005). The ontology of law in capitalism is anthropocentric—humans are the center of orientation and the measure of normative truth. Justice is measured based on efficiency and freedom of transactions.

In contrast, in socialism, the ontology of economic law is based on the concepts of collectivity and structural equality. Karl Marx and Friedrich Engels, in *The Communist Manifesto* (1848), rejected private ownership of the means of production as a source of social inequality (Marx, 2023b). Socialist economic law is aimed at protecting collective interests through state intervention. Thus, law functions not as a market facilitator, but as an instrument for controlling the distribution of wealth. However, from an ontological perspective, socialism tends to deny individual freedom, which is the basis for the morality of economic action.

In Islam, the ontology of economic law is rooted in the concepts of monotheism and trust. Wealth is not the absolute property of humans, but rather a trust from Allah SWT, which must be used according to sharia law. The Quran affirms:

وَآتُوهُم مِّن مَّا لِلَّهِ الْحِلُّ يَآتَكُمْ

*"Give them some of Allah's treasures that He has given you."* (Q.S. An-Nūr [24]: 33).

This verse emphasizes that ownership in Islam is relative and bound by social responsibility. The ontology of Islamic economic law does not separate norms from morality, or between law and values. Thus, Islamic economic law rejects both capitalist anthropocentrism and total socialist collectivism, and upholds the principle of balance (tawazun) between individual and societal interests.

## b. Comparative Epistemology of Economic Law

The epistemology of economic law reflects the method of acquiring knowledge about normative truth in economic activity. In capitalism, knowledge of economic law is based on rational choice theory and utilitarianism. Jeremy Bentham (1789) defined law as a tool to achieve "the greatest happiness for the greatest number" (Betham, 2017). The epistemological sources of capitalist economic law are human reason and market experience (empiricism). Thus, economic rationality is secular and value-free. In contrast, the epistemology of socialism rests on historical materialism—the view that law is a product of economic structures and class struggle. Law is not an independent entity, but rather a reflection of dominant economic interests (ENGELS, 1904). Therefore, economic law in socialism has no moral legitimacy outside its material context.

In Islam, the epistemology of economic law is rooted in revelation (the Qur'an and Sunnah), which is interpreted through the legal *istinbāt* method, such as *qiyās*, *istiṣlāh*, and *maqāṣid al-syarī'ah*. Wael B. Hallaq asserts that the classical Islamic legal system is a morally integrated legal order, where law and ethics are intertwined (W. B. Hallaq, 2013). Legal knowledge is not only empirical or rational, but also transcendent-

normative, because it originates from Divine will. The *maqāṣid* methodology, as formulated by al-Ghazālī and updated by Jasser Auda (2008), allows Islamic economic law to adapt to social change without losing its moral basis (Jasser Auda, 2017). Thus, Islamic epistemology is rational-teleological—combining reason ('aql) and the goals of sharia (*maqāṣid*).

### c. Axiology of Economic Law and Social Goals

The axiology of economic law relates to the values and objectives of law in the context of social welfare. In capitalism, the highest values are freedom and efficiency. The utilitarian principle places material benefit as the measure of economic justice. However, this approach ignores the moral and spiritual aspects of humankind. Thomas Piketty (2014) shows that modern capitalism produces structural inequality due to the accumulation of capital without equitable distribution (Piketty, Goldhammer, 2014).

In socialism, the primary value of economic law is equality. Laws are aimed at eliminating class inequality through state control of the means of production. However, when the state monopolizes the economy, inefficiencies and restrictions on civil liberties emerge. This criticism was long raised by Hayek (1944) in *The Road to Serfdom*, stating that socialism risks creating economic authoritarianism (Hayek, 2018).

Islam views the values of justice ('adl) and welfare (*maṣlahah*) as the goals of economic law. Justice is not merely the equal distribution of material goods, but rather a balance between rights and obligations. The Qur'an affirms:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ

*"Indeed, Allah commands (you) to act justly and do good deeds."* (Q.S. al-Nahl [16]: 90).

In an axiological context, Islamic economic law aims to safeguard the five main objectives of sharia (al-ḍarūriyyāt al-khams): religion, life, reason, progeny, and property (hifẓ al-māl). Muhammad Umer Chapra asserts that the Islamic economic system aims to achieve prosperity through fair distribution, social stability, and the elimination of exploitation (Umer Chapra, 2000). Thus, the axiology of Islamic economic law is humanistic-transcendental: economic law not only regulates market mechanisms, but also shapes the economic morality of society.

Aspect	Kapitalisme	Capitalism	Islam
Ontology	Individual freedom	Kolektivitas	Monotheism & Trust
Epistemology	Secular rationality	Historical materialism	Revelation + Maqāṣid
Axiology	Efficiency & freedom	Equality	Justice and welfare

Aspect	Kapitalisme	Capitalism	Islam
Ownership	Absolute personality	Collective/State	Personal + social + state
Distribution	Market mechanisms	The state regulates	Zakat, waqf, prohibition of usury
Positive	Innovation, growth	Equality, social security	Ethics, stability, justice
Negative	Inequality, exploitation	Inefficiency, authoritarianism	Implementation challenges, misuse of labels

#### **d. A brief history of Capitalism and Socialism**

Capitalism emerged from the transition from the feudal system in Europe to a trade-based economy in the late Middle Ages, developed rapidly through the 16th-century Commercial Revolution driven by global expansion and mercantilism, and then underwent a major transformation in the 18th-century Industrial Revolution with mass production and private ownership of the means of production. Entering the 20th century (Braudel, 1983), capitalism became the dominant economic system in the world, evolving into financial and digital forms, with the main characteristics of private ownership, free markets, and profit orientation. (David S. Landes, 1969)

Meanwhile, socialism was born in the 18th century as a reaction to the social inequality that arose as a result of capitalism and the Industrial Revolution, when workers experienced exploitation and the economic gap widened. (Eric Hobsbawm, 1968) Early thinkers such as Saint-Simon, Fourier, and Owen proposed a fairer system of cooperation (utopian socialism), (Löwy, 2017) then Karl Marx and Friedrich Engels developed scientific socialism through the theory of class struggle and the abolition of private ownership of the means of production. (Marx, 2023b) Entering the 20th century, socialism developed in the form of democratic socialism that combines the principles of welfare with democracy, as well as authoritarian communism in countries such as the Soviet Union, with the main goal of economic equality and social welfare. (Donald Sassoon, 2014)

#### **e. Capitalism and Socialism in Western Economies**

In Western economics, capitalism is understood not as a single system, but rather as a spectrum that changes according to political, cultural, and institutional contexts. Its development is influenced by the role of the state, market mechanisms, and the social dynamics that shape economic practices. Liberal Market Economies (LMEs) such as those in the United States and the United Kingdom place a dominant position on market mechanisms in economic coordination, including wage determination, innovation, and

corporate financing through highly liquid capital markets. (Peter Hall and David Soskice, 2004)

Labor market flexibility and minimal state intervention have accelerated innovation, but have also led to increased income inequality and economic volatility. (Piketty, Goldhammer, 2014) This phenomenon is evident in the consistent Gini coefficients of LME countries, which are above the OECD average, as well as the dominance of large technology companies, creating a winner-takes-all pattern. (Kenneth Cukier and Viktor Mayer-Schönberger, 2020)

In both countries, industrial relations are flexible, allowing companies to easily hire or lay off workers, wages are determined by competitive labor markets, and company ownership is largely publicly traded on stock exchanges. Liquid and deep capital markets enable companies to raise funds through stock or bond issues, while education and vocational training systems rely more on general programs and certification than on company-specific training. Government intervention focuses on establishing legal frameworks, antitrust policies, and macroeconomic policies such as interest rates and fiscal policies, rather than on identifying leading sectors or negotiating industrial coordination. As a result, innovation spreads rapidly through labor turnover and company acquisitions, but wage inequality and unemployment tend to be higher than in a coordinative model.

In contrast, Coordinated Market Economies (CMEs) such as Germany and Japan rely on institutional coordination between unions, industry associations, and banks with long-term stakes to collectively set wages, training, and even technological research, thus creating a stable labor market, low unemployment, and maintaining wage inequality. Research shows that this deliberative process slows down the emergence of radical innovation because any change must be agreed upon by many parties. (Wolfgang Streeck, 2009)

While Socialism in the Western economy does not exist as a single system that completely replaces capitalism, but rather as a corrective model that functions to balance market failures. The tradition of European socialism was born from a critique of labor exploitation and structural inequality that emerged in 19th-century industrial capitalism. (Karl Marx, 1867) A Critique of Political Economy From Marx to modern democratic socialism, the main ideas of Western socialism focus on the redistribution of wealth, the provision of strong public services, and the limitation of capital power through state institutions. In the contemporary context, socialism is no longer understood as the complete nationalization of the means of production, but as an effort to uphold social welfare and justice through fiscal mechanisms and social policies.

In their modern development, Western countries such as Sweden, Norway, and Denmark have adopted a social democratic model that combines the efficiency of capitalism with extensive social protection. (O'Connell & Esping-Anderson, 1991) These countries implement high progressive taxes, comprehensive social security, free education and health care, and active employment policies to reduce unemployment. This model demonstrates that Western socialism can coexist with competitive markets, as long as the state continues to play its role as a regulator and distributor of welfare.

(Collins et al., 2021) This approach strongly argues that socialism is not the antithesis of capitalism, but rather an institutional mechanism to balance inequality and maintain socioeconomic stability.

On the other hand, Western socialism faces various criticisms, particularly regarding its high fiscal costs and the potential decline in individual incentives. However, modern economic research shows that social-democratic countries have the lowest levels of inequality, high labor productivity, and greater political stability than many liberal capitalist economies. (Jonas Pontusson, 2005) Therefore, socialism in Western economies should be understood not as an authoritarian centralized system, but as “capitalism with a social face”—a model that emphasizes that markets must be complemented by state intervention for the sake of collective well-being and equality.

Economists distinguish forms of modern capitalism based on the role of entrepreneurship and the intensity of state intervention: (i) State-guided capitalism such as the practice of China where Beijing through “Made in China 2025” injected trillions of yuan into the robotics, semiconductor, and electric car sectors to quickly catch up with developed countries; (ii) Oligarchic capitalism that still haunts Russia and several post-Soviet countries, where a handful of conglomerates close to the Kremlin control natural resources and media to extract rents solely without encouraging innovation-based growth; (iii) Big-firm capitalism typical of Japan or South Korea—Samsung, Hyundai, Toyota become mass production efficiency machines whose capital supply is guaranteed by major banks; and (iv) Entrepreneurial capitalism such as in the United States and Israel, where two-person startups in a garage (Google, Mobileye) can become unicorns thanks to the venture ecosystem, liquid stock markets, and strong intellectual property laws. (Baumol et al., 2009) The combination of these four patterns shows that capitalism is no longer just “LME vs CME”, but rather a mixed spectrum that is constantly forced to adapt by technology, geopolitics, and social pressures.

Indonesia, Constitutionally does not adhere to pure capitalism, but rather the Pancasila economic system, namely a mixed economic model that seeks to balance market mechanisms with the role of the state as the controller of production branches that are important for the people's livelihoods according to Article 33 of the 1945 Constitution. (Jimly Asshiddiqie, 2010) However, since the era of deregulation and liberalization of the 1980s–1990s, Indonesian economic practices have increasingly shown a capitalist character—seen from the privatization of state-owned enterprises, the integration of capital markets, and the increasing role of foreign investment. (Hal Hill, 2015) While the state continues to maintain intervention through subsidies, protection of MSMEs, and regulation of strategic sectors, the majority of daily economic activities are still determined by market mechanisms. (Mari Eka Pangestu, 2008) Thus, Indonesia cannot be categorized as capitalist or socialist in absolute terms, but as a mixed economy with capitalist tendencies that are still framed by the values of equality and social justice. (Mubyarto, 1997)

**Countries that have failed because of the capitalist economic system:**

Country	The Year of Crisis	The main cause	Socio-Economic Impact
USA	1929–1939	Stock speculation, unregulated markets (Great Depression)	Unemployment at 25%, mass poverty, bank collapse
Japan	1990s	Property and stock bubble, high debt	Stagnant growth (Lost Decade), deflation
Thailand	1997	Asian financial crisis, currency speculation	Bankruptcies, mass layoffs, IMF bailouts
Venezuela	2018	Oil dependence, neoliberal policies, extreme inflation	Hyperinflation >65,000%, food shortages
Zimbabwe	2008	Currency speculation, failed agrarian reform	Hyperinflation of 79.6 billion%, extreme poverty
Tiongkok	2023	Real estate bubble, high corporate debt	Declining property sales, risk of recession

**Countries that have failed because of the socialist economic system:**

Country	Crisis Period	The main cause	Socio-Economic Impact
Soviet Union	1970–1991	Economic stagnation, bureaucracy, lack of incentives, full state control	Scarcity of goods, decline in output, disintegration of the state
East Germany	1980s	Industrial inefficiency, state control, lack of innovation	Economic stagnation, mass migration, collapse after 1989
Maoist China	1958–1962	The Great Leap Forward failed, the collectivization policy	Mass starvation, millions of casualties
Cuba	1960–Now	Embargo + centrally planned economy, lack of incentives	Poverty, food scarcity, aid dependency
North Korea	1990s	Closed economy, full state control, failure to adapt	Hunger, extreme poverty, international isolation

Country	Crisis Period	The main cause	Socio-Economic Impact
Venezuela	1999–2020	Socialist populism, nationalization, mismanagement of resources	Hyperinflation, shortages of goods, migration of millions of people

Countries that have integrated Islamic economics, either partially or significantly, have demonstrated strong economic resilience. Malaysia has the second-largest Islamic financial system in the world, serving as a pillar of economic stability. Saudi Arabia, the United Arab Emirates, and Qatar utilize Islamic financial principles, particularly in the banking and capital markets sectors. Indonesia, with its Islamic financial industry growing above the national average, has not disrupted fiscal stability. Singapore, although not an Islamic country, has implemented Islamic finance significantly as part of its strategy to become a global financial hub. Its economic system remains free-market capitalism. Similarly, the United Kingdom has implemented Islamic finance, although its economy remains liberal-capitalist, so that Sharia is only a subsystem within the financial industry.

## 2. Comparative Law in the Concept of Ownership (al-Milkiyyah)

The concept of ownership (al-milkiyyah) is the most fundamental ontological aspect in the economic legal system, as it determines how property is recognized, protected, and distributed. In a capitalist system, ownership is understood as an individual's absolute right to an object (absolute private ownership). John Locke's thinking in *Two Treatises of Government* asserts that property rights arise from labor (labor theory of property), and therefore the state may not interfere with private property rights. (John Locke, 1960) This principle gave rise to a legal conception that positions ownership as a source of freedom and economic power. In modern capitalist law, ownership is codified through the concept of a bundle of rights, namely a series of rights to use, enjoy the results, and transfer objects. (Hills & Schleicher, 2023)

Under common law and civil law systems, ownership serves as the basis for legitimizing economic transactions and investments. However, this view is often criticized for creating structural inequality and asset monopolies. Thomas Piketty has shown that capital accumulation without social regulation causes wealth to circulate only among the economic elite. (Piketty, 2020)

Meanwhile, socialism rejects private ownership of the means of production. In Marx's view, private ownership is the root of class oppression and human exploitation. (Marx, 2023a) Therefore, socialism transfers ownership to the collective or state, assuming that distribution will be more equitable. However, from a legal perspective, this concept often raises problems: when property rights are abolished, economic responsibility and incentives are also reduced. In practice, socialism results in economic bureaucracy and weak efficiency because all assets are centrally managed by the state.

Islam takes a middle position between these two extremes. The Quran recognizes the right to private property but limits its use within moral and social boundaries. Allah says:

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا

*"And do not hand over (your) wealth to people whose intelligence is not yet perfect, which Allah has made the basis of your life." (Q.S. an-Nisā' [4]: 5).*

This verse emphasizes two things: first, wealth is recognized as an instrument of life (qiyām), and second, wealth has a social function that should not be misused. Ownership in Islam is not absolute, but rather a trust that must be managed for the common good (isti'mār al-māl fī al-maṣlaḥah). Legally, al-milkiyyah is divided into three: individual ownership (al-milkiyyah al-fārdiyyah), public ownership (al-milkiyyah al-'āmmah), and state ownership (al-milkiyyah al-dawlah). All three demonstrate a balance between personal rights and public interests (M. Nejatullah Siddiqi, 1996). (Umer Chapra, 2000) This differs from the capitalist system that emphasizes individual exclusivity, or the socialist system that eliminates private rights. The principle of justice in Islamic ownership is realized through the obligation of zakat, infaq, sedekah, and the prohibition of usury. The zakat mechanism is a redistribution system based on divine ethics, not merely economic policy.

In modern legal practice, the Islamic principle of al-milkiyyah is also relevant to positive legal instruments such as usufruct, collective property rights, and waqf. The concept of waqf, for example, demonstrates that assets can be transferred for social purposes without losing their productive value. In the context of contemporary economic law, waqf has inspired Islamic social finance models such as sukuk waqf and cash waqf-linked deposits. (Monzer Kahf, 2008)

From this comparison, it is apparent that Islamic economic law occupies an integrative middle path position: it does not reject private ownership, but subjects it to social responsibility; it does not reject wealth, but directs it towards distributive justice; and it does not ignore efficiency, but balances it with ethical values. Thus, al-milkiyyah in Islam has a more comprehensive ontological (tawhid), epistemological (revelation and reason), and axiological (benefit and justice) foundation than other economic legal systems (Zubair, 1996).

### **3. The Dual Economic System Model in Indonesia: Integration of Positive and Sharia Law**

The dialectic between muamalah jurisprudence and Western law is a manifestation of the meeting of two legal traditions with different epistemologies: normative-transcendental on the one hand, and positivistic-secular on the other. Muamalah jurisprudence is built on the principles of sharia (based on revelation) and akhlaqiyah (moral orientation), while modern Western law is based on legal positivism, where legal validity is measured by formal procedures, not moral values (Herbert Lionel Adolphus Hart, 2012). In the Western legal system, economic law is an

instrument regulating transactions to ensure the efficiency and certainty of contracts. The theory of contract law in the common law tradition is based on the principles of freedom of contract and *pacta sunt servanda*—every legally made agreement applies as law for the parties (Treitel, 2007). Moral values are considered irrelevant as long as the contract is agreed to voluntarily. This view is criticized by the Critical Legal Studies school for ignoring the dimensions of social justice and unequal economic power. (Kennedy, 2021) Conversely, *muamalah* jurisprudence rejects the separation between morality and legality. A contract in Islam is not simply an agreement, but also a moral commitment that is subject to the principles of justice, honesty, and consent. The Prophet Muhammad (peace be upon him) said:

الْمُسْلِمُونَ عَلَى شُرُوطِهِنَّ إِلَّا شَرْطًا حَرَمَ حَلَالًا أَوْ أَحْلَلَ حَرَامًا

*"Muslims are bound by their conditions, except conditions that prohibit what is halal or make lawful what is haram." (HR. Tirmižī).*

This hadith emphasizes that agreements in contracts must be in accordance with sharia principles, not merely a matter of consensus between the parties (Sunan Al-Tirmidhi, No. 1352, n.d.). This dialectic is evident in the practice of Indonesian economic law, which adheres to a dual economic system. On the one hand, economic contracts are subject to the secular Civil Code (KUHPer), while on the other hand, sharia financial transactions are subject to the fatwas of the National Sharia Council (DSN-MUI) and the Financial Services Authority Regulation (POJK), which uphold sharia principles (OJK, 2024).

This creates a dynamic interaction between two sources of law: positive norms and sharia norms. From a legal philosophy perspective, this encounter reflects an attempt at reconciliation between two paradigms: positivism and normativism. In Lon L. Fuller's terms, law is not only a system of regulations, but also a moral order with ethical objectives (Tucker, 1965). Therefore, Islamic economic law in the Indonesian context can be understood as an effort to integrate the rationality of Western law with the spirituality of Islamic law. Examples are evident in the regulations of Islamic banking and insurance. Contracts such as *murābahah*, *mudārabah*, and *musyārakah* have functional equivalents to contracts in civil law such as sale and purchase, profit sharing, and capital partnerships, but with certain moral restrictions: the prohibition of usury, *gharar*, and *maisir* (Ascsrya, 2008). Thus, Islamic economic law is not anti-legal modernity, but rather provides an ethical corrective mechanism to address the moral vacuum of positive law.

At the epistemological level, this dialectic produces a two-way interaction pattern: (1) the transplantation of Western law into the Islamic system (through codification and legislation), and (2) the Islamization of positive law (through fatwas and regulations that adopt the values of *maqāṣid al-syārī'ah*) (M. B. Hooker, 2008). This synergy is what gives birth to the unique character of Indonesian economic law, namely a pluralistic legal system that balances the rationality of modern law with Islamic spirituality.

Thus, Islamic jurisprudence is not a system closed to developments in Western law, but rather a dialogue partner capable of reconstruction through integration. The principles of mutual assistance and justice form the ethical basis for adapting Islamic economic law to modernity. As Wael B. Hallaq argues, the future of Islamic law lies not in rejecting modernity, but in the ability to Islamize modernity itself. (W. B. Hallaq, 2001)

The Indonesian economic legal system displays a unique pluralistic face, where positive law and Islamic law coexist in the practice of economic regulation. This model is called a dual economic system, namely a system that allows the coexistence of two legal and economic frameworks: conventional (capitalist) and sharia (Islamic legal economy). Both have different epistemological characteristics: the conventional system is based on legal positivism and market rationality, while the sharia system is based on moral-transcendental principles and *maqāṣid al-syarī'ah*. (W. Hallaq, 2009) Since the post-1998 reform of the Islamic financial sector, various regulations have strengthened the foundation of this dual system. Law Number 21 of 2008 concerning Sharia Banking, followed by Law Number 40 of 2014 concerning Insurance, as well as POJK Number 8/POJK.05/2024 concerning the Implementation of Sharia Insurance Business, become a positive legal basis for sharia-based economic operations (Republic of Indonesia, 2008).

Meanwhile, the National Sharia Council-Indonesian Ulema Council (DSN-MUI) establishes normative legitimacy through fatwas on contracts, such as *murābahah*, *wakālah*, and *tabarru'*, which are then legally adopted by regulators (National Sharia Council-MUI, 2020). Following the enactment of Law No. 21/2008 concerning Islamic Banking and Law No. 23/2011 concerning Zakat Management, Indonesia officially has a "parallel track" in the financial sector. In the conventional track, capitalist law applies: floating interest rates, short selling, and derivatives are permitted. In the sharia track, fatwas from the National Sharia Council-Indonesian Ulema Council (DSN-MUI) force banks to replace interest with profit-sharing ratios (DSN-MUI, 2022). A similar phenomenon emerged in the capital market: the Jakarta Islamic Index (JII) was established in 2000, and then in 2023, the Sharia Stock Exchange (BES) was officially launched as a separate sub-exchange. This meant investors could choose between capitalist and Islamic rulebooks within the Indonesia Stock Exchange ecosystem. (A. Santoso, 2022)

This dual economic system model reflects the reality of Indonesia's pluralistic law as stated by M.B. Hooker: legal pluralism is a structural characteristic of Indonesian legal society, where Islamic, customary, and Western legal systems do not exclude each other, but interact functionally (Hooker, 2011). In an economic context, this pluralism allows for the integration of two legal logics: market efficiency and moral equity.

However, the pluralism of economic law also raises normative challenges. First, the occurrence of jurisdictional overlap between general civil law and Islamic economic law. For example, Islamic banking disputes can enter the realm of Religious Courts (based on Article 55 of Law No. 21 of 2008) or General Courts if the parties do not include a choice of law clause (Law No. 21 of 2008, Article 55 Paragraph (1)). Second, the challenge of epistemic legitimacy: Islamic law is often seen as merely a subsystem of positive law, not a legal system with its own epistemology. Third, the weak literacy of

Islamic economics among business actors, which results in an asymmetrical understanding of Islamic contracts. From a theoretical perspective, the Indonesian dual economic system model can be understood through two broad frameworks. First, comparative legal functionalism, which assesses the effectiveness of the legal system based on its social function.

In this context, the sharia system serves to fill the moral void of the capitalist system. Second, *maqāṣid*-based jurisprudence, which assesses the success of law based on the achievement of sharia goals: justice, welfare, and social stability. (Jasser Auda, n.d.) These two approaches demonstrate that the Indonesian economic legal system is not a contradiction, but rather a dynamic synthesis between economic rationality and spiritual values.

From an axiological perspective, the dual economic system (conventional-sharia) enables the birth of "moral capitalism," namely a market that remains both efficient and fair. The principle of profit-sharing (*mudārabah/musyārakah*) instills distributive justice into modern economic practices, so that Islamic law is not merely a religious label, but a concrete solution for building a more just economic law. (Adiwarman Karim, 2019) The dual economic system model in Indonesia represents an attempt at epistemological dialogue between two legal traditions. It is not simply a form of compromise, but a "normative synthesis" that leads to a socially just economic legal system based on divine moral values. In the long term, this model can become a prototype for other countries facing the tension between legal secularism and social spirituality.

Indonesia is not merely "half-capitalist" or "half-Islamist," but has reorganized its legal infrastructure so that three economic legal systems can coexist. Capitalism provides dynamism, socialism ensures the availability of public goods, and Islam offers an ethic of redistribution. The dual economic system model is not a fragile middle ground, but rather a triangular bridge that, if managed with data and good governance, can simultaneously address the demands of efficiency, justice, and spirituality. The challenge going forward is to ensure that legal harmonization continues, rather than becoming a pick-and-choose arena that ultimately weakens all pillars.

## D. CONCLUSION

A comparative study of economic legal systems shows that each system has a unique ontological, epistemological, and axiological basis. Capitalism rests on individual freedom and market efficiency; socialism on collective equality and state control; while Islam on a balance between individual ownership, social responsibility, and distributive justice. From an ontological perspective, Islam emphasizes that wealth is a divine trust (*amānah rabbāniyyah*), not an absolute human right. From an epistemological perspective, Islamic economic law is based on revelation and reason, while Western systems rely on empiricism and secular rationality. From an axiological perspective, Islamic economic law prioritizes justice ('adl) and welfare (*maṣlahah*), not merely material benefit.

A comparison of the concept of al-milkiyyah shows that Islam presents a humanistic and moral model of ownership: recognizing private property rights but limiting their use for the sake of social welfare. Meanwhile, the dialectic between muamalah jurisprudence and Western law in the context of Indonesian economic law demonstrates a process of epistemological integration that has given rise to a dual economic system. This system allows Islamic law to become an active component in national economic development without eliminating the existence of positive law. Thus, this research demonstrates that Islamic economic law is not an alternative system rejecting modernity, but rather a corrective system that offers morality to the modern economy. It is not only normatively relevant but also institutionally effective, as evidenced by Islamic financial regulations and banking and insurance practices in Indonesia.

From a theoretical perspective, this research contributes to the development of comparative legal studies by adding a theological-philosophical dimension to the analysis of economic law. This approach shifts the paradigm of comparative law from merely functional to integrative—meeting the rationality of modern law with the spirituality of Islamic law. The *maqāṣid*-based comparative jurisprudence approach can be used as a new analytical model in the study of contemporary Islamic economic law. (Kamali, 2008) From a practical perspective, the results of this study have direct implications for strengthening the national economic legal system. First, harmonization between positive regulations and sharia fatwas is needed to prevent overlapping jurisdictions. Second, the capacity of judges and regulators is needed to understand sharia contracts as independent legal entities. Third, the integration of Islamic economics and legal education into the national academic system is important to strengthen the public's legal consciousness regarding the values of Islamic economic justice. Finally, Indonesia's dual economic system model can serve as a legal laboratory for countries with similar legal pluralities. Through the synthesis of Western and Islamic law, Indonesia has the potential to lead a new direction in the development of global economic law that is not only efficient, but also moral and just.

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