

COMPARATIVE STUDY ON THE REGULATION OF SHARIA FINANCIAL TECHNOLOGY IN INDONESIA AND MALAYSIA

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Abstract

Financial technology is a part of digital ecosystem which development is rapid and massive, so does the sharia fintech. However, conventional and sharia fintech are two different systems and should have each regulation. The problem is if sharia fintech regulations in Indonesia is appropriate. Then what about Malaysia which are considered successful in developing the sharia fintech. This study compares sharia fintech regulations in Indonesia and Malaysia. The aim is to find out the readiness of Indonesia and Malaysia in supporting the sharia fintech trend realized in the regulations. This is a qualitative research using books and academic articles as an addition to the literature and regulations as the analytical method. The results indicate that Indonesia and Malaysia try to accommodate sharia fintech regulations. Indonesia still uses The Financial Services Authority Regulation (POJK) and Bank Indonesia regulations, both of which do not meet the sharia principles. Meanwhile, Malaysia uses the 2013 Islamic Financial Services Act (IFSA), a law to regulate sharia compliance of the Islamic financial services sector, including the Sharia Fintech. In addition, Malaysia also has a Sharia Advisory Council as a supervisor for the Islamic financial services implementations. Malaysia's and Indonesia's regulations have yet answered the sharia fintech developments.

Financial technology merupakan bagian dari ekosistem digital yang perkembangannya sangat pesat dan masif, tak terkecuali fintech syariah. Namun, fintech konvensional dan syariah adalah dua sistem yang berbeda dan seharusnya memiliki peraturan yang berbeda pula. Permasalahannya apakah regulasi fintech syariah di Indonesia sudah tepat apa belum, lalu bagaimana dengan regulasi di Malaysia yang dianggap berhasil mengembangkan fintech syariah. Tujuannya adalah untuk mengetahui sejauhmana kesiapan Indonesia dan Malaysia dalam mendukung trend fintech syariah dalam regulasi. Penelitian kualitatif ini menggunakan buku dan artikel akademis sebagai tambahan literatur dan peraturan sebagai metode analisis. Hasil penelitian menunjukkan bahwa Indonesia dan Malaysia sama-sama berusaha mengakomodasi regulasi. Indonesia masih menggunakan Peraturan Otoritas Jasa Keuangan dan Peraturan Bank Indonesia, dan belum memenuhi prinsip syariah. Malaysia menggunakan Islamic Financial Services Act (IFSA) 2013, sebuah Undang-Undang yang mengatur kepatuhan syariah dari sektor jasa keuangan Islam. Malaysia juga memiliki Dewan Pertimbangan Syariah sebagai pengawas pelaksanaan jasa keuangan Islam. Regulasi yang dimiliki oleh Malaysia dan Indonesia belum menjawab perkembangan fintech syariah.

Keywords: *financial services authority regulations, islamic financial act, sharia fintech*

Introduction

Financial Technology (hereafter called as fintech) is an economic trend that is accelerating in response to the global development of technology and information. Catching up with the advancement, sharia economy launches the sharia-based financial technology. Despite being a newbie, its presence has elicited positive responses from Muslim. Sharia Fintech is currently being established in several countries. Based on data from the Islamic Fintech News (IFN) 2020, Britain leads the first largest Fintech company with 27 companies, followed by Malaysia with 19 companies, the United Arab Emirates with 15 companies, Indonesia with 13 companies, Saudi Arabia and the United States each has 9 company.

Several studies have discussed about sharia fintech regulations, particularly in Indonesia and Malaysia. Some of them reviewed about, 1) the assessment of regulatory needs for the fintech regulations in Malaysia¹; (2) the explanation regarding how the fintech regulation and supervision in Indonesia is seen from

1 Muhammad Ilyas Bin Ab Razak et al., "Fintech In Malaysia: An Appraisal to the Need of Shariah-Compliant Regulation," *Pertanika Journal of Social Science and Humanities* 28 (December 25, 2020): 3223–33, <https://doi.org/10.47836/pjssh.28.4.40>.

the perspective of Islamic economic law²; and (3) the explanation on the Sharia Financial Technology regulatory models in the legal framework in Indonesia, and the researcher used Malaysia and the UK as the subject of comparison³.

The previous studies did not focus on the comparison of sharia fintech regulations between Indonesia and Malaysia. Hence, the recent author wants to examine the role of the Indonesian and Malaysian governments in supporting the implementation of sharia fintech through the preparation and application of regulations. Both countries are chosen because they are nearby and are well-known in developing the sharia fintech seriously.

Indonesia and Malaysia are the Asian countries that have implemented sharia Fintech successfully and Muslim is majority there, but Indonesia has larger population than Malaysia. However, the effectiveness of implementing sharia economy in a country does not only depends on the presence of the large Muslim community. It also depends on the government's willingness to promote the implementation of sharia economy, one of which is through issuing strong regulations.

Sharia Fintech is a startup company that is emerging like mushrooms during the rainy season, but the industry is still in its development compared to the existing highly regulated financial industry.⁴ The presence of Fintech in any country was expected to facilitate the easy, quick, and safe circulation of money in society. However, as this trend continues to develop, Fintech must gather support from stakeholders.

The support is in the forms of capital, markets, producers, or government regulations. Law or regulations are important because they ensure legal certainty in the operation of a business or corporation. Regulations would be crucial to the stability and sustainability of a company. Additionally, technological sophistication continues to grow each time, not only in the field of electronics and health but also business and finance.⁵

2 Muhammad Fachrurrazy and Dirah Nurmila Siliwadi, "Regulasi Dan Pengawasan Fintech Di Indonesia: Perspektif Hukum Ekonomi Syariah," 2020.

3 Maulana Reyza Alfaris, Muhammad Waliyam Mursida, and Moch Irfan Dwi Syahroni, "Model Regulasi Financial Technology Syariah Dalam Kerangka Hukum Indonesia: Studi Perbandingan Malaysia Dan Inggris," *Jurnal Legislatif*, 2019, 73–96.

4 Aniek Rumijati et al., *Kemandirian Ekonomi Dan Bisnis Indonesia Menghadapi Era Revolusi Industri 4.0* (UMMPress, 2020).

5 Ana Toni Roby Candra Yudha Nadhifa S. EI, M. SEI, Abu Rizal Amiruddin, Alivia Fitriani Hilmi, Atika Fissilmi Kaffah, Fatimala Nur Fauzi, Ika Evarianti, Laila Maghfiroh, Nada El Nadia, Pravita Salbia Nurmanda, Putri Ayu Etika Rohmah, Riska Delta Rahayu, Riski Delta Ningtyas, Silva Syahri Rahmadhani, Siti Hasnaa Madinah, Siti Ikmalus Solikhatin, Zahrotun, *Fintech Syariah : Teori dan Terapan* (Scopindo Media Pustaka, 2020).

Indonesia and Malaysia develop sharia fintech rapidly. This is done in order to assist and fulfil the demands of Muslim community as they implement Islamic economy. However, the two countries' efforts vary in many ways, one of which is in terms of regulatory strengthening. While both incorporate Islamic law into their national legal systems, their legal umbrella varies according to their respective countries' policies.

Research Methods

This study was conducted using qualitative methods, by going through two types of process. First, book review, which is data collection techniques by taking the main ideas Snyder⁶ about the sharia fintech. Second, the documentation Robinson & John⁷ is carried out through reported data reviews, in the form of official document data issued by both state regulations regarding sharia fintech in Indonesia and Malaysia. Primary data consists of laws both in Indonesia and Malaysia or other regulations used by Indonesia and Malaysia. Secondary data is obtained from books, related journals, and online news about sharia fintech. The data collection is done by the documentation and library research. The existing legal materials are then analyzed using content analysis techniques. This technique is used to obtain a theoretical basis by reviewing and studying the laws and regulations or other regulations used, report documents, articles, and other research, as well as various information regarding the sharia fintech regulations both in print and electronically. Later, these legal materials will be reviewed using the relevant literature.

Sharia Fintech Regulation in Indonesia

Fintech is an innovation in technology-based economics focusing on providing financial service that use modern software.⁸ It attracts global attention as a challenging technology that empowers companies to compete effectively in the current twenty-first century.⁹ Fintech presence brings ease, including saving

6 Hannah Snyder, "Literature Review as a Research Methodology: An Overview and Guidelines." *Journal of Business Research* 104 (November 1, 2019): 333–39.

7 John A. Pearce II and Richard B. Robinson. *Manajemen Strategis Buku 2*. Salemba Empat, 2014

8 International Organization of Securities Commission, "IOSCO Research Report on Financial Technologies (Fintech)," available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD554.pdf>, 2017.

9 Dodi Yarli, "Analisis Akad Tijarah Pada Transaksi Fintech Syariah Dengan Pendekatan Maqhasid," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 9, no. 2 (December 10, 2018), <https://doi.org/10.21043/yudisia.v9i2.4766>.

time, thoughts, energy, and costs.¹⁰ In addition, it provides variety of innovative services using a digital set.¹¹ There are at least two factors that drive fintech innovation: the power of demand and supply.¹² This innovation has now developed into sharia fintech, a combination of innovations in finance and technology that simplifies the transaction and investment process based on sharia values.¹³ Every transaction through sharia fintech cannot be separated from the principles of sharia business, which are based on the foundations of sharia economics, namely divinity (*ilabiyah*), justice (*al-'adl*), prophet hood (*an-nubuwwah*), governance (*al-khilafiah*), and results (*al-maad*).¹⁴

Sharia fintech is here to boost the growth of the Islamic financial industry. In Malaysia, for example, sharia fintech stabilizes the growth of industrial economy in a short time, so that more opportunities in the Islamic economic sector can be exploited.¹⁵ Through sharia fintech, consumers, especially millennial and techno-literate generations, no longer need to go to a bank to make financial transactions, but simply do it online because it is easier and faster.¹⁶ Making financial transactions can now be done anywhere and anytime by a finger-touch.¹⁷ So, the presence of fintech really provides a significant facility and influence on

10 Rizal Fahlefi, "Inklusi Keuangan Syariah Melalui Inovasi Fintech Di Sektor Filantropi" (Batusangkar International Conference III, IAIN Batusangkar, 2018).

11 Peter Gomber et al., "On the Fintech Revolution: Interpreting the Forces of Innovation, Disruption, and Transformation in Financial Services," *Journal of Management Information Systems* 35, no. 1 (2018): 220–65.

12 Muhammad Afdi Nizar, "Teknologi Keuangan (Fintech): Konsep Dan Implementasinya Di Indonesia [Financial Technology (Fintech): It's Concept and Implementation in Indonesia]" (University Library of Munich, Germany, 2017).

13 Ridwan Muchlis, "Analisis SWOT Financial Technology (Fintech) Pembiayaan Perbankan Syariah Di Indonesia (Studi Kasus 4 Bank Syariah Di Kota Medan)," *AT-TAWASSUTH: Jurnal Ekonomi Islam* 1, no. 1 (2018): 335–57.

14 Achmad Basori Alwi, "Pembiayaan Berbasis Teknologi Informasi (Fintech) Yang Berdasarkan Syariah," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 21, no. 2 (2018): 248–64.

15 Baiza Bain, "Islamic Finance: Fintech in Islamic Finance," *The Edge Markets*, July 4, 2016, <http://www.theedgemarkets.com/article/islamic-finance-fintech-islamic-finance>.

16 Norafni Farlina Rahim, Mohammed Hariri Bakri, and Siti Norbaya Yahaya, "Fintech and Shariah Principles in Smart Contracts," chapter, *FinTech as a Disruptive Technology for Financial Institutions* (IGI Global, 2019), <https://doi.org/10.4018/978-1-5225-7805-5.ch009>.

17 Irma Muzdalifa, Inayah Aulia Rahma, and Bella Gita Novalia, "Peran Fintech Dalam Meningkatkan Keuangan Inklusif Pada Umkm Di Indonesia (Pendekatan Keuangan Syariah)," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi Dan Perbankan Syariah* 3, no. 1 (2018); Robert Maximilian Grüschow, Jan Kemper, and Malte Brettel, "How Do Different Payment Methods Deliver Cost and Credit Efficiency in Electronic Commerce?," *Electronic Commerce Research and Applications* 18 (2016): 27–36; Lucky Nugroho and Syed Lutful Kabir Chowdhury, "Mobile Banking for Empowerment Muslim Women Entrepreneur: Evidence from Asia (Indonesia and Bangladesh)," *Tazkia Islamic Finance and Business Review* 9, no. 1 (2015).

all aspects of human life.¹⁸

Basically, fintech is a collection of technological innovations, process disruptions, and service transformations.¹⁹ There are fundamental differences between conventional and sharia fintech. In sharia fintech, certain principles must be adhered to, including *gharar* elimination (uncertainty), *maysir* (betting or gambling), and *riba* (usury).²⁰ Thus, sharia fintech presents unique opportunities and challenges, which must be addressed in order to meet the following conditions: accessible (via cell phones, internet, and applications), packaged (convenient and simple to use, adds value by removing friction and performing work), and transparent (certified fintech products and respected by consumers and institutions).²¹

Sharia fintech gains attention from wide community, especially Muslims. Apart from being extremely user-friendly, the system is also based on sharia. Thus, the presence of sharia fintech is expected to improve the community's effectiveness and efficiency²², while remaining consistent with Islamic teachings. Sharia fintech, like other Islamic financial institutions, definitely needs adequate regulation. Regulations are crucial to ensuring legal certainty for entrepreneurs and consumers, as well as reducing fraud and crime associated with the implementation of sharia fintech. An important objective when drafting regulations is to ensure that the difference between conventional and sharia fintech mechanisms is clear.²³ As a result, this encourages Islamic Law to regulate the growth of sharia fintech in Indonesia.²⁴

Indonesia is considered as a simple country that develops a sharia economy, including sharia fintech, because of its large Muslim population. Until 2020, AFSI (Indonesian Sharia Fintech Association) records that Indonesia has 120 existing sharia fintech. Meanwhile, the OJK (Financial Services Authority) has registered

18 Nugroho and Chowdhury, "Mobile Banking for Empowerment Muslim Women Entrepreneur: Evidence from Asia (Indonesia and Bangladesh)"; Muhamad Ngafifi, "Kemajuan Teknologi Dan Pola Hidup Manusia Dalam Perspektif Sosial Budaya," *Jurnal Pembangunan Pendidikan: Fondasi Dan Aplikasi* 2, no. 1 (2014).

19 Ni Luh Wiwik Sri Rahayu Ginantra et al., *Teknologi Finansial: Sistem Finansial Berbasis Teknologi Di Era Digital* (Yayasan Kita Menulis, 2020).

20 Nadhifa, *Fintech Syariah*.

21 Lawrence Wintermeyer, "The Future Of Islamic FinTech Is Bright," *Forbes*, accessed May 17, 2021, <https://www.forbes.com/sites/lawrencewintermeyer/2017/12/08/the-future-of-islamic-fintech-is-bright/>.

22 Dina Dwi Setiani et al., "Fintech Syariah : Manfaat Dan Problematika Penerapan Pada UMKM," *Jurnal Masharif Al-Syariah : Jurnal Ekonomi Dan Perbankan Syariah* 5, no. 1 (2020), <http://dx.doi.org/10.30651/jms.v5i1.4718>.

23 Alfaris, Mursida, and Syahroni, "Model Regulasi Financial Technology Syariah Dalam Kerangka Hukum Indonesia: Studi Perbandingan Malaysia Dan Inggris."

24 Fachrurrazy and Siliwadi, "Regulasi Dan Pengawasan Fintech Di Indonesia: Perspektif Hukum Ekonomi Syariah."

12 sharia fintech, including Ammana, Alami Sharia, Sharia Investree, Sharia Fund, Danakoo Syariah, Qazwa, Duha Syariah, Bsalam, Blessing Fintech Syariah, Papitu Syariah, Kapital Boost Indonesia, and Indonesian Ethics (ojk.go.id). This demonstrates that sharia fintech accounts for just 7.5% of total fintech in Indonesia.²⁵

In Indonesia, there are at least two forms of sharia fintech: peer-to-peer (P2P) lending and crowdfunding. P2P is a platform that connects two parties via digital media.²⁶ Meanwhile, crowdfunding is a solution for entrepreneurs because it helps people financially who are interested in starting a company.²⁷ It then evolves into an electronic facility providing capital service. Later, the issuer will sell its shares directly to investors through the internet, completing the online share offering process. A new innovation, the online stock offering, can make it easier for small businesses and startups to raise money.²⁸ Both forms of sharia fintech must adhere to predetermined sharia principles. Thus, sharia fintech truly needs an adequate legal umbrella, not only to serve as a point of reference throughout the implementation process, but also to provide legal certainty and security for entrepreneurs and consumers.

In 2016, to support the existence of fintech in Indonesia, the Financial Services Authority (OJK) Regulation Number 77/POJK.01/2016 was issued concerning Information Technology-Based Lending and Borrowing Services, which is very comprehensive. This regulation describes: “regulations concerning Information Technology-Based Borrowing and Lending Services, Information Technology-Based Borrowing and Lending Service Users, Information Technology-Based Lending and Borrowing Service Agreements, Risk Mitigation, Information Technology System Governance, Operation of Money Borrowing and Lending Services. Based on Information Technology, Education and Protection of Technology-Based Borrowing and Lending Service Users, Electronic Signatures, Principles and Techniques for Customer Recognition, Prohibitions, Periodic Reports, and Sanctions in implementing Fintech”.

As a series of regulations regarding fintech in Indonesia, the OJK Circular Number 18/SEOJK.02/2017 was then issued. It describes the regulations regarding

25 Mahendra Galih Prasaja, “Tantangan Dan Masa Depan Financial Technology Terhadap Perkembangan Industri Keuangan Syariah Di Era Revolusi Industri 4.0,” *SEGMENT Jurnal Manajemen Dan Bisnis* 16, no. 2 (2020).

26 Dinh Hoang Bach Phan et al., “Do Financial Technology Firms Influence Bank Performance?,” *Pacific-Basin Finance Journal* 62 (2020): 101210.

27 Arief Yuswanto Nugroho and Fatichatur Rachmaniyah, “Fenomena Perkembangan Crowdfunding Di Indonesia,” .. *Ekonika* 4, no. 1 (2019).

28 Anisah Novitarani, “Analisis Crowdfunding Syariah Berdasarkan Prinsip Syariah Compliance Serta Implementasinya Dalam Produk Perbankan Syariah,” *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 2 (2018): 247–62.

information technology risk management and information technology-based lending and borrowing services management. This circular also explains: “the roles and responsibilities of directors, data centers and disaster recovery centers, electronic and information technology system governance, human resources, information technology change management, technology transfer, data and information management, information technology risk management, electronic system security, incident handling and resistance to disruption, use of electronic signatures, service availability and transaction failures, disclosure of product and service information, and finally retention”.

Along those regulations, Bank Indonesia also released the ones concerning the implementation of financial technology in the form of Bank Indonesia Regulation Number 19/12/PBI/2017. This regulation details the “procedures for registration, regulatory sandbox, licensing and approval, monitoring and supervision, cooperation between providers, payment system services with financial technology providers, collaboration and cooperation, sanctions, and other provisions”. To foster the growth and innovation of financial technology, Bank Indonesia provides space for fintech operators to test their products, services, technology, and/or business models through the Regulatory Sandbox established by Member of the Board of Governors Regulation Number 19/14 / PADG / 2017. So in this regulation, it is explained how the testing procedure and process in the regulatory sandbox.²⁹

Additionally, the Regulation of Members of the Board of Governors Number 19/15/PADG/2017 contains the following: “procedures for registration, submission of information, and monitoring of financial technology.” The registration process can be completed later through an established application. Currently, fintech operations can be registered by downloading the registration form from Bank Indonesia’s official website. After completing the registration form and attaching all necessary documents, it can be submitted to Bank Indonesia.³⁰

In Indonesia, the OJK and BI regulations are also used as a legal umbrella in implementing sharia fintech. Whereas, in this regulation there is not a single article regulated the implementation of sharia fintech. As the author mentioned above, that implementing sharia fintech differs from conventional one, so there should be a clear boundary between conventional and sharia fintech. In its implementation, sharia fintech must use a contract allowed by Islamic law. Besides that, it must also pay attention to sharia principles. So that the legal umbrella that regulates these

29 “Teknologi Finansial (Fintech),” accessed May 17, 2021, <https://www.bi.go.id/id/fungsi-utama/sistem-pembayaran/ritel/financial-technology/default.aspx>.

30 “Teknologi Finansial (Fintech).”

matters becomes very important in order to provide legal certainty and protect entrepreneurs and consumers.

The current sharia fintech regulations in Indonesia are the OJK Regulations Number 77/POJK.01/2016 and Number 18/SEOJK.02/2017, the Bank Indonesia Regulation Number 19/12/PBI/2017. The Board of Governors Member's Regulations Number 19/15/PADG/2017 has not complied with sharia principles because it does not regulate matters related to the implementation of sharia fintech in Indonesia.

The MUI then issued a *fatwa* of DSN (National Sharia Board) in response to the enthusiasm of the Indonesian people to start using sharia fintech. Two consecutive years DSN-MUI issued fatwa related to sharia fintech, namely Fatwa Number 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money and Fatwa DSN MUI Number 117/DSN-MUI/II/2018 concerning Based Financing Services Information Technology Based on Sharia Principles. The first fatwa explains that the meaning of Islamic electronic money is the e-money complying with sharia principles. In its implementation, sharia electronic money can use the *wadi'ah* contract, the *qardh* contract, the *ijarah* contract, the *ju'alah* contract, and the *wakalah bil ujarah* contract. The first fatwa also explains that the implementation of Islamic electronic money must avoid usury, *gharar*, *maysir*, *tadlis*, *risywah*, and *israf*. In addition, it is not allowed to make transactions on objects that are *haram* (forbidden) and immoral.

Electronic money is the largest stake-holders in financial technology, accounting for at least 42.22 percent of all fintech sectors in Indonesia.³¹ It was apart from Sharia-compliant products such as BSM E-Money etc. LinkAja is now also sharia-certified, and is expected to continue growing. In fatwa no. 116/DSN-MUI/IX/2017 on Sharia Electronic Money, there are special provisions requiring the issuer to deposit the nominal sum of electronic money in a sharia bank. Then, if the card used as a medium of electronic money is lost, the issuer's nominal balance must not be lost. Additionally, fatwa No. 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money explains that if one party cannot fulfill its obligations or if a dispute arises between the parties, the dispute is resolved through a sharia-based dispute settlement institution under relevant laws and regulations.

In 2018, the DSN-MUI issued Fatwa No. 117/DSN-MUI/II/2018 on Sharia-compliant Information Technology-Based Financing Services. This can

31 Nur Rizqi Febriandika and Fifi Hakimi, "Analisis Kesesuaian Syariah Electronic Money Pada Bank Penerbit Uang Elektronik Di Indonesia," *An-Nisbah: Jurnal Ekonomi Syariah* 7, no. 1 (2020): 213–49.

be used to regulate the financial sector according to Sharia Fintech regulation. According to the fatwa, information technology-based financing services based on sharia principles are the implementation of Islamic financial services that bring together or connect a Financing Provider and a Financing Recipient in the sense of conducting a financing contract electronically through internet services. This administration is a legal entity registered in Indonesia that provides, manages, and operates financial services based on information technology. Meanwhile, users are providers of financing and the recipients who use information technology-based financing services.

In the similar fatwa, it is also explained: “contracts that can be used are *ijarah*, community, *mudharabah*, *qardh*, *wakalah*, and *wakalah bil ujab*. In its implementation, Information Technology Based Financing Services based on Sharia Principles must avoid *gharar*, *maysir*, *tadlis*, *dharar*, and standard contracts”. Thus, information technology-based financing services are allowed on terms under sharia principles and it must also comply with the provisions in this fatwa.

The information technology-based financing service agreement permitted under this fatwa consists of: “factoring financing, third party purchase order financing, goods procurement financing for businesses selling online (online seller), financing procurement of goods for businesses selling online with payment through payment gateway operators, financing for employees, and community-based financing. If there is a dispute between the parties, it can be done through deliberation to reach a consensus. If consensus is not reached, then dispute resolution is carried out through a dispute resolution institution based on sharia in accordance with the applicable laws and regulations”.

As previously mentioned, the DSN-MUI fatwa is a decision or opinion issued by MUI on *muamalah*-related issues based on the request of Muslim community. When it refers to Indonesian legal hierarchy, fatwa is not considered positive law with permanent and binding legal force. By definition, fatwas are non-binding and may or may not be followed by the Muslim community, as they lack of legal force. As a result, a fatwa is insufficient to act as a legal umbrella for sharia fintech implementation. It was because Indonesia is a pluralistic country, with its diverse religions, traditions, and cultures. Indonesia is a state of law, so sharia fintech, which creates problems for society, has a proper and adequate legal umbrella.

The DSN-MUI fatwa regulates the implementation of fintech based on the sharia principles. However, this regulation has not been able to answer the challenges of the sharia fintech developments in Indonesia, because the DSN-MUI fatwa is not a positive law that all Indonesian citizens can obey. The fatwa is only

a recommendation that can be followed or not, therefore the DSN-MUI Fatwa Number 116/DSN-MUI/IX/2017 and Number 117/DSN-MUI/II/2018 do not have binding and coercive legal force.

Sharia Fintech Regulation in Malaysia

According to a 2020 study, Malaysia has developed into one of Southeast Asia's fastest growing fintech market, with 200 local and international fintech companies operating as of September 2020. Malaysia's potential to become a global leader in Islamic fintech is unsurprising. Islamic fintech development in Malaysia is facilitated by comprehensive Malaysian regulations, a diverse fintech environment, a supportive Islamic finance community, and the government's commitment to promoting the Islamic economy. These contributions paved the way for Malaysia to establish itself as a global center for Islamic fintech. This achievement has also led to Malaysia's ranking as the world's leading Islamic economy, according to the State of the Global Islamic Economy 2020/2021 report.³²

Malaysia deserves the achievements because it has chosen a more user-friendly way that adapts a revolutionary approach that seeks to digitize the economy and become a growing fintech hub in Asia, especially for Islamic fintech (www.salaamgateway.com). The Malaysian state financial regulators, namely Bank Negara Malaysia (BNM), the Malaysian Securities Commission (SC) and the Malaysia Digital Economy Corporation (MDEC) have so far struck the right balance between promoting innovation in the fintech sector and maintaining financial stability. Their approach is proactive. The regulations have sought to promote an environment conducive to fintech development by reducing barriers to innovation, developing infrastructure to support and fostering greater competition in the sector, as well as ensuring financial stability and confidence in the financial system. (IMF Country Report No.20/58).

Malaysia's first law for the Islamic Finance industry is The Islamic Banking Act (IBA) of 1983. This law is the first regulation for Islamic banks to require full licensing and regulation in Malaysia to conduct business that is under Sharia and establish sharia advisory board to advise on bank operations.³³ In 1989, the Banking and Financial Institutions Act (BAFIA) 1989, authorized any license for institutions, whether conventional banks or other financial institutions, to run

32 "State of the Global Islamic Economy 2020/2021," 2020, <https://www.inceif.org/fintech/>.

33 Mohamad Akram Laldin and Hafas Furqani, "Islamic Financial Services Act (IFSA) 2013 and the Shariah-Compliance Requirement of the Islamic Finance Industry in Malaysia," *ISRA International Journal of Islamic Finance* 10, no. 1 (January 1, 2018): 94–101, <https://doi.org/10.1108/IJIF-12-2017-0052>.

Islamic banking or Islamic banking financial business in Malaysia.³⁴

In 2005, Bank Negara Malaysia (BNM) issued the Sharia Committee Governance Guidelines for Islamic Financial Institutions, as the first systematic effort to develop the SGF, which is defined in three dimensions, namely: 1) provisions and procedures for establishing sharia committees in each Financial Institution. Islam (IFI), 2) roles, scope of duties and responsibilities of the sharia committee, and 3) relations and work procedures between sharia administrators and the BNM Sharia Advisory Council (SAC) committee.³⁵

In 2009, the Bank Central Malaysia Act was introduced. This law was created to ensure the Central Bank of Malaysia's continued existence and to regulate its administration, aims, functions, and powers, as well as consequential or incidental matters. Additionally, the law recognizes the important position of the Syari'ah Advisory Council (SAC) as the supreme authority on sharia-related affairs in the financial sector.³⁶

BNM released a comprehensive SGF in 2010 to raise the standard for sharia governance. SGF specifies the key roles and functions of Islamic Financial Institutions (IFIs) in order to ensure the effective implementation of the sharia governance process in their operation, regulation, and business activities. Meanwhile, IFI is required to establish an SGF that places importance on the accountability and responsibility of all officials involved in its implementation.³⁷ However, in 2017, the 2010 SGF was amended to enhance existing regulatory criteria and standards for Islamic Financial Institutions' (IFIs) sharia governance. Additionally, the SGF revision took into account the increasing scale and power of the Islamic finance business, as well as recent policy developments in governance, compliance, and risk management.

In 2013, Malaysia issued the Islamic Financial Services Act (IFSA) 2013. IFSA is an important branch of the sharia governance framework developed by the Central Bank of Malaysia (BNM). The law was drafted as Malaysia's attempt to improve the sharia compliance of the Islamic financial services sector. The primary objective of IFSA 2013 is to ensure that all operations, businesses, businesses, affairs and activities carried out by Islamic Financial Institutions (IFI) always comply with the principles of Islamic law.³⁸ The strict adherence of Islamic Financial Institutions (IFI) with prescribed sharia principles for such different contracts will guarantee

34 Laldin and Furqani.

35 Laldin and Furqani.

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37 Laldin and Furqani.

38 Laldin and Furqani.

the sanctity, truthfulness and legitimacy of Islamic financial transactions.³⁹

The Islamic Finance Service Act (IFSA) 2013 states that one of the IFI's duties is to ensure that the objectives and operations, business, affairs and activities are carried out in accordance with sharia. Sharia compliance is further explained in Article 28 (2), that compliance with the decision of the Sharia Advisory Board with respect to certain objectives and operations, business, affairs or activities must be carried out in accordance with sharia. In other words, IFIs must comply with all operations, business, affairs and activities based on sharia, by fulfilling the provisions of the BNM SAC and sharia standards, as well as ensuring that internal policies and procedures are in line with sharia requirements; and developing the sharia audit function. IFSA 2013 also emphasizes total sharia compliance efforts for the Islamic Financial Industry, through three dimensions, namely: 1) sharia governance framework, 2) sharia standards for each contract used in IFIs that may affect the interests of depositors and policyholders, and 3) an effective and efficient Islamic financial intermediation function (Islamic Finance Service Act (IFSA) 2013).

The reason IFSA 2013 is vulnerable to future challenges is that it significantly strengthens the foundations of a strong and transparent supervisory and regulatory framework necessary to create a competitive financial system. However, the growth in popularity of Islamic Fintech and Fintech is a recent and unexpected phenomenon. The current legislation is sufficiently broad to cover a wide area of the conventional banking and financial industries. However, Islamic governance does not currently cover the new modern financial practices to technology, such as cryptocurrency, blockchain, big data, crowdfunding, artificial intelligence, insurtech, and robo-advisory. While most IFIs engaged actively with Fintech providers to diversify the features of their products and services during the Industrial Revolution 4.0, no specific regulations ensuring compliance with sharia principles were implemented in this area.⁴⁰

In terms of regulation, Malaysia has indeed been at the forefront of ensuring the security and health of the financial system amidst the rapidly developing Fintech landscape. Cybersecurity is one of the major issues in the reports of major Malaysian banks. The bank adopts risk management measures and increases investment to reduce threats. Cyber risk is also a priority for regulators, with BNM highlighting them in its First Semester 2019 Financial Stability Review. BNM has also established basic guidelines for FIs on cybersecurity risk management through its policy on Risk Management in Technology. In order to better identify cyber

³⁹ Ab Razak et al., "Fintech In Malaysia."

⁴⁰ Ab Razak et al.

risks, BNM and the Financial Industry are in the process of creating a “Financial Threat Intelligence Platform” by 2020Q2. In addition, the National Cybersecurity Policy, which was launched for the first time in 2006, has now been updated at the end of 2019 (IMF Country Report No.20 / 58, 2020).

Malaysian regulators have paid attention to the development of traditional regulations that can pose a risk to financial stability. In 2014, BNM clarified that digital assets are not legal tender in Malaysia and have reiterated its message in various press releases. The SC has also regularly warned investors about the potential risks involved in ICO schemes and closed ICOs in 2018. SC is adopting a phased approach to developing a regulatory framework for digital assets. It has recognized digital currencies and tokens as securities subject to securities regulations and has set requirements for electronic platforms that assist the trading of these assets starting from January 2019. SC has also conditionally approved three recognized market operators to build and operate DAX starting from June 4, 2019. In 2017 and 2018, Malaysia took legislative and regulatory action regarding AML/CFT considerations for certain types of activity in virtual assets (or crypto-assets). Regarding the new lending area being developed by non-financial companies, SC introduced a regulatory framework for crowdfunding and P2P financing in 2015 and 2016, respectively (IMF Country Report No.20/58, 2020).

Malaysia is a leader in Islamic finance, which places it in a powerful position to take advantage of the opportunities of Islamic finance technology. Fintech can benefit from Islamic finance. There are several Fintech applications that may be very useful in Islamic financial products. Islamic financial institutions can take advantage of many of the same benefits and service-enhancing efficiencies that Fintech promises in conventional finance. Indeed, Islamic Fintech is still in its early stages in Malaysia, but BNM supports infrastructure to be promoted in various sectors. Malaysia is home to seven Islamic Fintech startups. According to the Dinar Standard’s Islamic Fintech Report 2018, around 70 percent of Islamic Fintech companies globally are focused on business facilities and consumer finance through ECF equity crowdfunding and P2P Lending. In this area, BNM launched an Investment Account (IAP) platform and an Islamic crowdfunding platform for SMEs, which involved six Islamic banks in 2016.

Islamic Fintech has encouraged the growth of Islamic finance in Malaysia, but only with sufficient product and infrastructure development and regulatory support. Islamic banks in Malaysia are likely to invest more in technology digitization in order to increase customer experience and efficiency e.g. MBSB Bank Berhad and Bank Islam Malaysia Berhad. Malaysia’s two Islamic banks,

previously committed to increase investment in 2019 to expand their digital offerings (IMF Country Report No. 20/58, 2020). Appropriate and adequate regulatory support for Islamic finance development can also benefit the application of Fintech in Islamic finance.

Malaysian regulations more clearly regulate how the Islamic financial system ran based on sharia principles. However, the existing regulations do not specifically discuss sharia fintech. This means that it is still very broad if regulations regarding Islamic finance are also used as the legal umbrella for sharia fintech. Islamic fintech requires many regulations related to its implementation. Therefore, the existing regulations are not yet appropriate and adequate to support the development of sharia fintech. Malaysia needs to issue regulations that specifically discuss sharia fintech clearly and thoroughly so that the implementation of sharia fintech not only grows but develops following the sharia principles.

Conclusion

As a result of the explanation above, it is noticeable that the regulations applied by the Indonesian and Malaysian governments differ. Though Indonesia has the world's largest Muslim population, Malaysia is one of the few countries whose governance is based on Islamic principles. As a result, Indonesia is still working to improve Islamic financial regulations. At the present, Indonesia continues to depend on OJK and BI regulations to regulate the implementation of sharia Fintech. This is performed to verify that most Muslims' desires and needs are fulfilled. Additionally, Indonesia has a National Sharia Council appointed by the MUI to assist and supervise the Islamic financial system's activity, including sharia Fintech. DSN-MUI has also released two fatwas to support sharia fintech implementation in Indonesia. In contrast to Indonesia, Malaysia has had an Islamic Finance Law since 1983, with the most recent is the 2013 IFSA. Malaysia has also prepared this law in anticipation of potential challenges, one of which is technology and digital. This law, however, was considered inadequately broad to cover the entire banking and financial industry. This law does not yet apply to cryptocurrency, blockchain, big data, crowdfunding, artificial intelligence, insurtech, and robo-advisory activities in the Islamic finance sector. Islamic economic activists in Malaysia continue to advocate for the establishment of special regulations governing Islamic financial technologies to improve that it complies with sharia principles. Malaysia, like Indonesia, has a Sharia Advisory Board (SAC). So, the countries of Indonesia and Malaysia both do not have regulations that specifically regulate Sharia Fintech. existing regulations are not fully following the sharia principles and have not

responded to the development of sharia fintech. So, the countries of Indonesia and Malaysia both do not have regulations that specifically regulate Sharia Fintech. The existing regulations are not fully following the sharia principles and have not responded to the development of sharia fintech.

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