

LEGAL DISCOVERY THROUGH A SOCIOLOGICAL APPROACH TO LAW (AN INTEGRATIVE ANALYSIS OF POSITIVE LAW AND IJTIHAD AND THE FATWAS OF THE COMPANIONS AS SOURCES OF ISLAMIC LAW)

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Abstract: *This study analyses the integration between legal sociology and Islamic legal methodology, particularly through the concepts of ijtiḥad and fatwa of the companions, in the process of legal discovery in the development of Islamic economic law in Indonesia. Based on the view that law is not only a set of formal norms, but also a social institution shaped by cultural, economic, and religious dynamics, this study emphasises that the applicability of law is largely determined by social legitimacy and its suitability to the empirical reality of society. This study uses a qualitative approach with a literature study method, through an examination of legislation, fatwas from religious institutions, court decisions, and relevant scientific literature. The results show that a number of sharia economic practices have developed as living law in society before being institutionalised through state regulations. At the same time, positive law also functions as an instrument of social engineering to shape economic behaviour oriented towards justice and benefit. The traditions of ijtiḥad and fatwa saḥābat reflect a pattern of legal reasoning that is contextual, problem-centred, and responsive to social needs, which is conceptually in line with the sociological approach to law that emphasises the importance of the social dimension and substantive objectives of law. This study confirms that there is a strong convergence between legal sociology and Islamic legal methodology in the framework of protecting public interests and substantive justice. Therefore, the integration of legal sociology, positive law, ijtiḥad, and saḥābat fatwas is a significant conceptual foundation for the development of responsive, contextual law with strong social legitimacy in Indonesia's pluralistic legal system, particularly in the field of Sharia economic law.*

Keywords: *Legal Sociology, Ijtiḥad, Islamic Economic Law*

Introduction

Legal discovery constitutes both an intellectual and practical process of determining legal norms for concrete cases that are not explicitly regulated or are inadequately governed by statutory provisions. Within modern legal systems, judges are no longer perceived merely as *la bouche de la loi*, but rather as active subjects who interpret and construct the law in order to realise substantive justice in accordance with social needs (Ali, 2008; Attamimi, 1990). Accordingly, a sociological approach to law becomes significant, as it conceptualises law not only as a system of written norms, but also as a social institution shaped by values, culture, social structures, and the dynamics of social relations within society (Soekanto, 2012; Friedman, 2001). From the perspective of the sociology of law, law is understood as both a product of social interaction and an instrument that influences social behaviour. Consequently, the effectiveness of law is not determined solely by the normative authority of legal rules, but also by their congruence with social values and societal needs. Legal norms that diverge from social realities risk losing social legitimacy and becoming difficult to enforce effectively (Soekanto, 2012; Wignjosoebroto, 2002).

Within the Islamic legal tradition, contextual approaches to legal discovery have been embedded since the era of the Prophet's Companions. In situations where explicit guidance could not be found in the Qur'an and Hadith, the Companions employed *ijtihād* as a method

of legal reasoning and issued *fatwas* as normative responses to emerging social problems (Al-Qaradawi, 1997; Hafidhuddin, 2002). This practice demonstrates that Islamic law has, from its inception, been dynamic and adaptable to social change, provided that such adaptation remains within the framework of the objectives of Islamic law (*maqāṣid al-sharī'ah*) (Auda, 2008; Zuhaili, 2010). Thus, textual and contextual dimensions in Islamic law should not be viewed as dichotomous, but rather as complementary elements in achieving public welfare (*maṣlaḥah*).

The urgency of integrating sociological approaches to law with Islamic legal methodology becomes increasingly evident in the context of legal pluralism in Indonesia. The national legal system accommodates Shari'ah values in the domains of family law, Islamic economics, waqf, and Islamic banking through the jurisdiction of the Religious Courts and sector-specific regulations (Manan, 2012; Indonesia, 2004; Indonesia, 2008). In this regard, the state demonstrates a commitment to ensuring public welfare through the formulation and implementation of legislation that is responsive to social dynamics and contemporary developments. This commitment is reflected, inter alia, in the Indonesian marriage law system, which harmonises *taklīfī* and *waq'ī* norms as part of an integrative effort between Shari'ah principles and the administrative requirements of the modern state (Zulbaidah, Amin, Rosele, & Utang, 2025). The development of Islamic law in Indonesia cannot be separated from the influence of civilisational values and the multicultural reality of society. In this context, a tauhid-based social reconstruction is regarded as a relevant paradigm, as it reinforces awareness of transcendental responsibility to God while simultaneously affirming social and civic responsibilities as citizens within a pluralistic society (Zulbaidah, 2024). This approach contributes to strengthening the social legitimacy of Islamic law while maintaining its relevance within democratic and diverse social structures.

Nevertheless, legal responsiveness to social realities must remain grounded in valid and systematic methodologies of legal derivation. Accordingly, comprehensive mastery of *lughawiyyah* (linguistic) principles constitutes a fundamental prerequisite for deriving legal rulings from the Qur'an and Hadith, given the distinctive structure and semantic richness of Arabic as the language of revelation, which critically affects the accuracy of legal inference (*istinbāt*) (Zulbaidah, 2025a). In addition, *tashrī'iyah* principles within the framework of *uṣūl al-fiqh* function as methodological instruments for deriving legal rulings from the primary sources and for establishing subsidiary legal norms (*furū'*) in a systematic and coherent manner, thereby ensuring that legal reform remains within the normative boundaries of Shari'ah (Zulbaidah, 2025b). Therefore, the integration of sociological approaches to law, the tradition of *ijtihād* in Islamic jurisprudence, the framework of *maqāṣid al-sharī'ah*, and the methodological apparatus of *uṣūl al-fiqh* and linguistic principles constitutes an essential conceptual foundation for developing laws that are socially responsive, substantively just, and endowed with both normative and sociological legitimacy within Indonesia's pluralistic legal landscape (Rahardjo, 2006; Marzuki, 2014).

Methods

This study employs a qualitative approach using a descriptive analytical method and a normative juridical perspective based on library research (Novianti, 2024). The qualitative design is selected because the study seeks to obtain an in-depth understanding of ideas, concepts, and theoretical constructions concerning the integration of the sociology of law and Islamic legal methodology, particularly through the concepts of *ijtihād* and *fatwa saḥabat*, within the context of the development of Islamic economic law in Indonesia. This approach enables critical and contextual interpretation of texts, scholarly opinions, and legal documents in a comprehensive manner. The data sources consist of legal and scientific materials relevant to the research focus. Primary legal materials include legislation related to Islamic economics, waqf, and halal product guarantees, fatwas issued by the National

Sharia Council of the Indonesian Ulema Council, and compilations of court decisions in Islamic economic cases. Secondary materials comprise textbooks, peer-reviewed journal articles, and academic works addressing the sociology of law, legal philosophy, *uṣūl al-fiqh*, *maqāṣid al-sharī'ah*, and theories of *ijtihād*, including studies on the transformation of *ʿurf* from traditional to digital forms within the framework of *uṣūl al-fiqh* that accommodate the values of younger generations in husband–wife relations (Zulbaidah, Yuniardi, Januri, Najmudin, & Cason, 2025). Tertiary materials, such as dictionaries, legal encyclopaedias, and journal indexes, are utilised to facilitate literature searches and to clarify technical and conceptual terms.

Data collection is conducted through documentary study by systematically searching for, inventorying, and classifying relevant literature in accordance with the research objectives (Novianti, 2023). The collected materials are then organised thematically into several analytical categories, including theories of the sociology of law, concepts of *ijtihād* and *fatwa* in Islamic jurisprudence, and the practice of Islamic economic law in Indonesia. This thematic organisation is intended to construct a structured conceptual map and to facilitate integrative analysis across disciplinary domains. Data analysis is carried out using qualitative documentary analysis combined with content analysis and thematic analysis techniques. Qualitative documentary analysis positions documents as the primary data source by identifying, coding, and systematically organising major themes in order to reveal meanings, patterns, and discursive tendencies within legal and scholarly texts. This approach enables an in-depth understanding of both the content and context of documents and is therefore appropriate for legal research, public policy studies, and socio-humanities scholarship oriented towards the analysis of meaning and normative implications. Content analysis is applied to examine normative substance and legal arguments contained in legislation, fatwas, and court judgments, while thematic analysis is employed to identify patterns of reasoning, similarities in principles, and points of convergence between sociological approaches to law and Islamic legal methodology. Furthermore, critical interpretation is undertaken by situating these conceptual findings within the broader framework of national legal development and prevailing social needs.

To ensure data validity, this study employs source triangulation by comparing various types of literature, ranging from normative legal sources and theoretical works to documents reflecting legal practice. In addition, argumentative consistency is examined by comparing expert opinions and assessing the compatibility between theoretical frameworks and evolving legal practices. The collected data are analysed inductively in order to produce systematic, factual, and in-depth findings in accordance with the research objectives (Novianti, 2020). Accordingly, the results are expected to demonstrate both academic validity and practical relevance for the development of Islamic economic law in Indonesia.

Results and Discussion

Theoretical Framework of Sociology of Law

The sociology of law conceptualises law as an integral part of the social structure that is influenced by economic, political, cultural, and religious factors. Law is therefore not merely understood as a set of formal norms, but as a social phenomenon that lives, evolves, and adapts in accordance with societal dynamics (Soekanto, 2012; Friedman, 2001). From this perspective, the effectiveness of law is not determined solely by its normative validity, but also by its social legitimacy and acceptance within the community. This approach challenges legal formalism, which assumes that the meaning and application of law can be fully derived from statutory texts. In practice, legal norms are interpreted, negotiated, and sometimes resisted within social contexts shaped by power relations and collective values. Consequently, the success of legal regulation largely depends on its capacity to resonate with prevailing social norms and institutional practices (Wignjosoebroto, 2002).

1. Living Law as the Basis of Social Legitimacy

The concept of *living law*, introduced by Eugen Ehrlich, asserts that the law which truly governs social behaviour is not necessarily the law enacted by the state, but the norms that are actually observed in everyday social life (Ehrlich, 1936). State law represents only one segment of a broader normative order, while customs, religious norms, and professional practices often exert stronger influence on individual and collective conduct (Wignjosoebroto, 2002). Living law is characterised by its organic emergence from collective practices, its rapid adaptability compared to statutory law, and its function as a primary source of social legitimacy for human actions (Soekanto, 2012). In the Indonesian context of Islamic economics, profit-sharing arrangements among micro and small enterprises had long existed as trust-based community practices before being institutionalised within formal Islamic banking frameworks (Abdurrahman, 2020; Antonio, 2011). Similarly, the long-standing management of zakat through mosques and pesantren demonstrates the persistence of religious-based social norms operating independently of formal state regulation (Hafidhuddin, 2002). These examples illustrate that formal legislation often follows, rather than initiates, social legal practices.

2. Law as a Tool of Social Engineering

In contrast to the reflective character of living law, Roscoe Pound conceptualised law as an instrument of social engineering designed to shape social behaviour in accordance with planned objectives (Pound, 1942). From this standpoint, legal regulation functions proactively to restructure social relations and institutional practices. Within the Indonesian legal system, Islamic economic regulations operate not merely as mechanisms of legal recognition, but as strategic tools to transform the national economic order towards principles of justice, partnership, and prohibition of usury (Indonesia, 2008; Nasution, 2021). The incorporation of DSN-MUI fatwas into regulatory frameworks further demonstrates how religious norms are translated into formal compliance standards to standardise market behaviour and reduce normative uncertainty (Dewan Syariah Nasional-MUI, 2000–2023; Ascarya, 2013). Likewise, productive waqf regulations aim to reorient public perception of waqf from a static charitable asset into a sustainable economic instrument for long-term social development (Indonesia, 2004). This regulatory strategy reflects an intentional effort to construct new economic mentalities and institutional practices through legal intervention, thereby positioning law as an agent of social transformation rather than a passive recorder of social change.

3. Rationality in the Sociology of Law

Max Weber's theory of legal-rational authority emphasises that modern law derives its legitimacy from predictable procedures, formal consistency, and institutional efficiency rather than from tradition or charismatic authority (Weber, 1978). Legal rationality thus becomes a prerequisite for public trust and regulatory compliance in complex modern societies. This rationality is evident in the standardisation of Islamic contracts and the establishment of supervisory mechanisms to ensure sharia compliance within financial institutions (Suharto, 2020; Ascarya, 2013). The prohibition of *riba* is not merely theological, but also economically rational as it seeks to prevent exploitative financial relationships and structural inequality within credit systems (Karim, 2010; Antonio, 2011). Similarly, the transformation of waqf into productive assets reflects rational considerations of asset efficiency and long-term social benefit (Indonesia, 2004). Hence, Islamic legal norms increasingly align with regulatory rationality required by modern financial governance.

Ijtihad as A Dynamic Method of Islamic Legal Discovery

Ijtihad represents the maximum intellectual effort of jurists to derive legal rulings for issues not explicitly regulated in primary sources of Islamic law (Al-Qaradawi, 1997; Kamali, 2011). Conceptually, ijtihad functions as an epistemological bridge between normative texts and empirical social realities, enabling Islamic law to maintain relevance across changing historical contexts. Historically, the companions of the Prophet employed contextual reasoning when addressing rapidly evolving social and administrative challenges, particularly during the expansion of Islamic governance (Hidayat, 2019). The policies of Caliph Umar ibn al-Khattab illustrate how legal enforcement was adjusted in response to social conditions, thereby prioritising public welfare over rigid textual application (Hafidhuddin, 2002). This reflects a pragmatic jurisprudential orientation that resonates with contemporary notions of responsive law (Rahardjo, 2006). Methodologically, ijtihad encompasses diverse approaches such as *bayani*, *qiyasi*, *istislahi*, *istiqla'i*, and *jama'i*, which integrate textual interpretation, analogical reasoning, public interest, empirical induction, and collective scholarly deliberation (Hasan, 2006; Auda, 2008). This methodological plurality demonstrates that Islamic legal theory inherently accommodates sociological considerations in legal reasoning, allowing legal norms to be evaluated in terms of their social consequences. In modern contexts, ijtihad remains crucial for addressing legal issues in family law, digital transactions, contemporary finance, and public ethics, where new social realities continually emerge beyond classical legal formulations (Kamali, 2011; Hidayat, 2019).

Companions' Fatwas as Sociologically Grounded Legal Sources

Fatwas issued by the companions of the Prophet were fundamentally case-oriented and pragmatic, responding directly to concrete social problems (Hafidhuddin, 2002). Their authority derived not only from proximity to prophetic teachings, but also from their deep understanding of social conditions and communal needs (Hasan, 2006). The defining characteristics of companions' fatwas include contextual sensitivity, flexibility, and problem-solving orientation, closely resembling judicial reasoning in modern legal systems where judges interpret norms in light of specific factual circumstances (Ali, 2008; Attamimi, 1990). The jurisprudential methods employed such as *qiyas*, *istihsan*, *maslahah*, and maqāṣid-oriented reasoning align with sociological approaches that regard social needs and consequences as fundamental sources of legal legitimacy (Auda, 2008; Soekanto, 2012). This demonstrates that Islamic legal tradition historically incorporated functional and sociological dimensions in legal interpretation, long before such perspectives were formally developed within modern socio-legal theory.

Integration of Sociology of Law, Positive Law, Ijtihad, and Companions' Fatwas

The integration of sociology of law and Islamic legal tradition is grounded in their shared orientation towards social benefit and substantive justice. Sociology of law begins with empirical social realities, while ijtihad and companions' fatwas originate from normative texts and maqāṣid al-sharī'ah; nevertheless, both converge on the objective of protecting public welfare and social order (Auda, 2008; Soekanto, 2012). Within the Indonesian legal system, this integration is evident in religious court practices and Islamic economic regulations that combine statutory law with Islamic ethical principles (Manan, 2012; Indonesia, 2008). Judicial decisions in Islamic economic disputes demonstrate that judges frequently go beyond mechanical application of statutory provisions by considering substantive justice and the socio-economic conditions of litigants (Mahkamah Agung RI, 2005–2024; Rahardjo, 2006). This integrative model supports the development of responsive, contextual, and socially legitimate law within Indonesia's plural legal environment, where normative diversity and religious values remain deeply embedded in social life (Wignjosoebroto, 2002; Marzuki, 2014).

Conclusion

The results of the study indicate that law cannot be understood solely as a formal norm, but rather as part of a constantly evolving social reality that is influenced by the values, culture, and practices of society. In the context of Islamic economics in Indonesia, many legal practices actually developed earlier in social life before being institutionalised through state regulations. On the other hand, law also functions as an instrument that is consciously used to shape social behaviour and direct economic structural change towards the goals of justice and benefit. The tradition of Islamic law through *ijtihad* and *fatwa sahabat* shows that from the outset, law has been contextual, responsive, and oriented towards solving real problems in society. The methods of reasoning used are not only based on texts, but also take into account social impacts and public interests. This shows a fundamental compatibility between the sociological approach to law and Islamic legal methodology. The integration of legal sociology, positive law, *ijtihad*, and the *fatwas* of the companions provides a strong framework for the development of law in pluralistic and religious Indonesia. This integrative approach allows for the emergence of legal discovery practices that are not only normatively valid, but also substantively fair, contextual, and have strong social legitimacy in society.

Reference

- Abdurrahman, M. (2020). Living law dalam praktik ekonomi syariah di Indonesia. *Jurnal Hukum Islam*, 18(2), 145–160.
- Abdullah, A. (2017). *Sosiologi hukum: Teori dan perkembangan*. Rajawali Pers.
- Ali, A. (2008). *Menguak teori hukum dan teori peradilan*. Kencana.
- Al-Qaradawi, Y. (1997). *Ijtihad dalam syariat Islam*. Dar al-Shuruq.
- Al-Syafi'i, M. (2003). *Al-Risalah*. Dar al-Kutub al-'Ilmiyyah.
- Antonio, M. S. (2011). *Bank syariah: Teori dan praktik*. Gema Insani.
- Ascarya. (2013). *Akad dan produk bank syariah*. BI Institute.
- Attamimi, B. (1990). *Peranan putusan hakim dalam penemuan hukum*. Alumi.
- Auda, J. (2008). *Maqasid al-shariah as philosophy of Islamic law*. International Institute of Islamic Thought (IIIT).
- Dewan Syariah Nasional–Majelis Ulama Indonesia. (2000–2023). *Himpunan fatwa DSN-MUI tentang ekonomi syariah*. MUI.
- Ehrlich, E. (1936). *Fundamental principles of the sociology of law*. Harvard University Press.
- Friedman, L. M. (2001). *American law: An introduction*. W. W. Norton & Company.
- Hafidhuddin, D. (2002). *Fatwa, ijtihad, dan dinamika hukum Islam*. Gema Insani.
- Hasan, A. (2006). *Ushul fiqh*. RajaGrafindo Persada.
- Hidayat, S. (2019). Peran *ijtihad* dalam pembaruan hukum Islam. *Jurnal Ushuluddin*, 27(1), 55–70.
- Indonesia. (2004). *Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf*.
- Indonesia. (2008). *Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah*.
- Indonesia. (2014). *Undang-Undang Nomor 33 Tahun 2014 tentang Jaminan Produk Halal*.
- Kamali, M. H. (2011). *Principles of Islamic jurisprudence*. Islamic Texts Society.
- Karim, A. (2010). *Ekonomi Islam: Suatu kajian kontemporer*. Rajawali Pers.
- Novianti, L. (2020). Prinsip Islam dalam Melindungi Hak Minoritas. *Adiya: Jurnal Hukum dan Kemanusiaan*, 14(2), 228–241.
- Novianti, L. (2023). Pidana Mati Terhadap Tindak Pidana Terorisme di Indonesia Dihubungkan dengan Tujuan Pemidanaan dalam Perspektif Hukum Positif dan Hukum Pidana Islam. *JSIM: Jurnal Ilmu Sosial dan Pendidikan*, 4(1), 50–70.
- Novianti, L. (2024). Green Constitution dalam Mendorong Green Economy sebagai Pembangunan Inklusif Berkelanjutan. *Gunung Djati Conference Series*, 42, 1–10.

- Mahkamah Agung Republik Indonesia. (2005–2024). *Kompilasi putusan ekonomi syariah*.
- Manan, A. (2012). *Hukum ekonomi syariah dalam perspektif kewenangan peradilan agama*. Kencana.
- Marzuki, P. M. (2014). *Pengantar ilmu hukum*. Kencana.
- Nasution, M. (2021). Aplikasi social engineering dalam hukum ekonomi syariah. *Indonesian Journal of Islamic Law*, 5(1), 1–20.
- Pound, R. (1942). *An introduction to the philosophy of law*. Yale University Press.
- Rahardjo, S. (2006). *Hukum progresif*. Genta Publishing.
- Soekanto, S. (2012). *Sosiologi hukum: Suatu pengantar*. Rajawali Pers.
- Suharto, B. (2020). Rasionalitas akad syariah dalam perspektif Weberian. *Jurnal Sosiologi Hukum*, 12(3), 201–220.
- Weber, M. (1978). *Economy and society*. University of California Press.
- Wignjosebroto, S. (2002). *Dari hukum kolonial ke hukum nasional*. RajaGrafindo Persada.
- Zuhaili, W. (2010). *Al-fiqh al-Islami wa adillatuhu*. Dar al-Fikr.
- Zulbaidah, Yuniardi, H., Januri, Najmudin, N., & Cason, C. (2025). From traditional ‘urf to digital ‘urf: Accommodating the values of the young generation on husband–wife relations in the framework of *uṣūl al-fiqh*. *Al-Istinbath: Jurnal Hukum Islam*, 10(2), 784–808. <https://doi.org/10.29240/jhi.v10i2.14630>
- Zulbaidah, Amin, S., Rosele, M. I., & Utang. (2025). The practical application of harmonized *taklīf* and *waḍʿī* laws in the Indonesian marriage law system. *Lex Localis – Journal of Local Self-Government*, 23(S6), 441–453. <https://doi.org/10.52152/b6tq4m06>
- Zulbaidah. (2024). Multicultural influence of the conceptual value of civilization on changes in Islamic law. *Pena Justisia*, 23(2).
- Zulbaidah. (2025) Kaidah-Kaidah Lughawiyah (Hukum Keluarga), Bandung: Liventurindo.
- Zulbaidah. (2025) aidah-Kaidah Tasryi’iyah (Hukum Keluarga), Bandung: Liventurindo.