

# Islamic Economic As an Alternative to Economic System in Indonesia

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**Abstract-** Islamic economic and finance have shown progressive development in the world including in Indonesia. In Indonesia's context, the need for Islamic economic and finance has gained legitimacy as it is shown in the legislation and in the agreement by the National Shariah Council. Consequently, the integration of Islamic law to economy cannot be neglected. Therefore, the Supreme Court establishes KHES as a one of the materiality in the settlement of shariah economic disputes. The present study aims at discussing whether or not the Islamic economic system can be an alternative choice of economic system in Indonesia. Method used to examine this research question was doctrinal qualitative method with normative purpose. The source of data was mainly taken from a library research including the legal material of primary data, secondary legal data, and tertiary data. Interviews with the Islamic economic legal experts were also conducted to sharpen the analysis of the study. The study found that the economic development in the period of reformation can be fulfilled if Islamic economic system is studied further and intensively. It is also found that Islamic economic system must be adjustable in the period of reformation. Therefore, the economic sector includes Muamalah can be developed at any time. However, to achieve this several aspects need to be considered such as in terms of banking; the limitation of interest rates between usury interest rates and other interest rates which is not categorized as usury should be considered carefully.

**Index Terms-** Islamic Economic, Shariah Economic Law Compilation (KHES), Indonesia

## I. INTRODUCTION

Economic is human beings behavior which is related to their activities to earn and spending money. These activities are based on people's needs and desires that impossible to acquire automatically. To fulfill both of them, people have to set aside half of their desires or setting priority, which one is important. Unfortunately, there are several people who cannot hold their desire which leads them to persecute, either to human beings or other creatures.

'Need' can be defined as a person's desire that require to be fulfilled and be satisfied. Based on the intensity of usage, need is divided into three types, namely, primary needs, secondary needs, and tertiary needs. Primary needs are the main demand that must be fulfilled in order for people to live such as food, clothing, and shelter. While the last two demands, in which, secondary and tertiary needs are varied and can be diverged from an individual to other. Related to Islam's perspective, Qur'an

explicitly mentions it in Surah Thaha Verse 117-119 about the primary needs. In the context of food, there is a sentence about 'making an effort', in which, people have to work to fulfill their needs in order to live while in heaven, people no need to work to fulfill their needs as it states 'nor being hungry and being thirsty'. In relation to clothes, it is illustrated with 'unclothed', while the shelter is illustrated with 'you will not be hot from the sun'.<sup>1</sup> Moreover, Shihab explained that the demands of foods, clothes, and shelter are primary needs of man and woman, husband and wife. Therefore, husband obligates to make an effort in getting all of them. These demands encourage people to endeavor in fulfilling both goods and service.

Islamic economic system can be divided into three main sectors; the public sector, the private sector, and the social welfare sector which has its own Shariah's function, institution, and foundation. These sectors lie in various economic activities as the capital market activity, in which one of the economic activities that directly related to those three sectors.<sup>2</sup> Islam emphasizes economic activity as a realization on one of the responsibilities of human beings as the Caliph in this world in order to live in balance. Islamic economics or known as shari'ah economics is grounded upon the ethical teachings within the Qur'an. Muhammad bin Abdullah al-Arabi defined shari'ah economic<sup>3</sup>: '*Islamic economic is a set of general principles of economic which is derived from Qur'an and Sunnah, and it should consider the situation and environment*'.

The notion of Islamic economic in legal perspective is rarely found because the origin of Islamic economic study is not derived from legal perspective but it is derived from the economic studies but these two points are part of *muamallah*. The need of Islamic economic is along with the need of dispute settlement, both in adjudication and non-adjudication.<sup>4</sup> After

<sup>1</sup> Quraish Shihab, *Wawasan Al-Qur'an* (Bandung : Mizan, 1996), p.408.

<sup>2</sup> Muhammad Syafi'i Antonio, *Bank Syariah dari Teorik Praktik*, (Jakarta: Gema Insani, 2001), p.7.

<sup>3</sup> Abdullah Abdal-Husain al-Tariqi, *Ekonomi Islam: Prinsip, Dasardan Tujuan*, Terjemahan, (Yogyakarta: Magistra Insania Press, 2004), p.14.

<sup>4</sup> Bambang Sutiyono, *Hukum Arbitrase dan Alternatif Penyelesaian Sengketa*, (Yogyakarta: Gama Media, 2008), p. 5, & p. 11-12. See also Eman Suparman,

enacted Law no. 3 of 2006 regarding amendments to the Law no. 7 of 1989 regarding Religious Judicature; Religious Judicature obtained an expansion authority in solving an economic shariah dispute. The expansion of this authority then get legitimacy in the provisions of shariah economic in which obtain the legal standard of law no. 21 of 2008 regarding shariah banking.

Based on the above background, the study has three objectives. The first is to address Islamic economic system. The second is to discuss to what extent the importance of Islamic economic system can be as an alternative economic system. The third is to highlight the implication of Islamic economic in Compilation of Shariah Economic Law (KHES).

## II. RESEARCH METHOD

The method of this study was doctrinal qualitative with normative purpose<sup>5</sup>. The qualitative study explored deeply and comprehensively the issue(s)-related the present study. Therefore, the result of this study was more valid. The objects of this study were primary data, secondary legal data, and tertiary law material. To obtain these data, library research was conducted. It is a method of obtaining data (e.g. legal materials) by searching, recording or writing, inventorying, reviewing books, literature, legislation, result of previous studies, and documentation related to the present research issue(s), and interviewing people about the present research issue(s)-related such as the expert(s) of Islamic economic legal and the practitioner(s) who interest and is currently developing the theory of Islamic economic.

## III. THEORITICAL BACKGROUND

Islamic economic system is established as the middle ground between the system of Capitalism and Communism. The major principle of Islamic economic system is to provide the human rights related to the balance of the wealth sharing. Islam grants an individual's rights on how he treats his wealth. On the other hand, Islam regulates an individual regarding his rights and action to his wealth by morals intrinsically and law extrinsically, with the aim that the wealth is not hoarded but it circles to one individual to other until they obtained their wealth legitimately and properly.

### 1) *Islamic economic*

Islamic economic system assumes that the bond of society-interest between both parties is intimately associated. Both parties are required to build harmony and not competition nor conflict. Related to this concept, in this research, Islamic economic system is viewed as an alternative choice to replace the role of capitalism and communism economic system which had failed in prospering the society. Islamic economic system should

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*Arbitrasedan Dilema Penegakan Keadilan*, (Jakarta: Fikahati Aneska, 2012), p.7.

<sup>5</sup> Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Rajawali, 1990), p. 15.

be the only option of Muslims that can be used as a guide to counting on, to act, and to stand forth in order to build the Muslims' economy.

According to Halide, Islamic economic is a set of economic principles that are derived from Qur'an and As-Sunnah which related to the economic matter.<sup>6</sup> Meanwhile, Al-Arabi defined Islamic economic as a set of economic principles which is derived from Al-Qur'an and As-Sunnah and they become a fundamental of the economic development which adjustable with the change of age and environment.<sup>7</sup>

These two definitions imply that Islamic economic system is the fulfillment of human beings' needs system to achieve prosperity which is based on Islamic teachings within Qur'an and As-sunnah and it is developed by human' thought. Furthermore, the definitions above emphasize onto two ideas of Islamic economic as follow: First: it refers to 'a set of economic principles which is derived from Al-Qur'an and As-sunnah and related to economic matters.' Second: it refers to 'an economic which is based on Al-Quran and As-Sunnah that must be adjustable to the change of age and environment'.

The second point related to the way of the experts in an Islamic country to reconcile or solving economic issues by implementing the principles from Al-Qur'an and As-sunnah. It is also related to the principles which can be adjusted to the change of age and environment.<sup>8</sup> Meanwhile, the first idea implies that the principles that are derived from Al-Quran and As-sunnah are fixed, or the experts called it "Mazhab Islamic economic". Moreover, Prawiranegara<sup>9</sup> defined Islamic economic system is an economic system in which the economic principles are affected and restricted by Islamic teachings.<sup>10</sup> It is derived from the Al-quran and the hadiths and is developed by the human thought that qualifies for ijtihad. Therefore, it can be applied in society. Based on the concepts above, Islamic economic system must be built through a set of values and morals that enable to develop an economic activity organizational based on the specific aspects, include: the philosophy of Islamic economic, the value of Islamic economic principles, and the value of Islamic economic instrumental<sup>11</sup>. Islamic economic is characterized by triangulation concept, God-Man-Nature. This concept

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<sup>6</sup> Moh. Daud Ali, *Sistem Ekonomi Islam Zakat dan Wakaf*, (Jakarta, UI Press, 1988), p.3, First Published.

<sup>7</sup> Gemala Dewi, SH.LLM; *Aspek-Aspek Hukum Dalam Perbankan Perasuransian Syaria' ahd Indonesia*. (Jakarta, Prenada Media, 2004), Second Published, p.33.

<sup>8</sup> Prof. HA. Djazuli, MA, *Fiqhi Syari'ah, Implementasi, Kemaslahatan Umat dalam Rambu-Rambu Syari'ah*, (Jakarta, Prenada Media 2003), pp.411-412.

<sup>9</sup> Syafruddin Prawiranegara, *Sistem Ekonomi Islam* (Jakarta : Publicita, t.t.), pp. 10-15.

<sup>10</sup> Muhammad Daud Ali, *Sistem Ekonomi Islam, Zakat dan Wakaf*. (Jakarta: Universitas Indonesia Press. 1988), p.20

<sup>11</sup> A.M. Saefudin, et. al. *Solusi Islam Atas Problematika Umat (Ekonomi, Pendidikan dan Dakwah)*. (Jakarta: Gema Insani Press, 1998), p.34

distinguishes it from other concepts such as Capitalism and Marxism.

Generally speaking, the post-independence's economic system strategy in Indonesia tends to use the model or system of neo-Keynesian economics<sup>12</sup>. It emphasizes the importance of the economic growth by "strong impulse" and is planned through the market mechanism (liberal). Due to the factor of "external impulse", Indonesia has the highest debt in the world. The capitalistic policy causes Indonesia become a victim of the capitalist international system<sup>13</sup>. Related to the concept, the fundamental values of Islamic economic may result to the antagonistic-relationship. It is related to the Islam which emphasizes the value of wealth or other economic resources' ownership, mainly those that affected the life of the people, the value of justice, and the value of equilibrium which is implemented on the product of Islamic economic, namely, social security through the concept of Zakat, profit-sharing system (non-riba'), Al-musyarakah (cooperation), and hisbah.

## 2) Tithe (Zakat)

Zakat (tithe) is an obligatory form of giving based on shariah. Zakat must be paid by every Muslim, man or woman, who reached a nisab (the required amount of wealth)<sup>14</sup>. Nisab is the minimum amount of wealth or property that must be owned by Muslim before being obliged to Zakat. Zakat plays an essential role in the allocation of property and wealth and has an effect on an individual's consumption behavior. According to Saefudin<sup>15</sup>, in the context of society-economy, Zakat can create peace and security in society and avoid the gap of society level class because of unequal income differences. In addition, the implementation of Zakat by the government can aid the growth of economic stability, in which, an increase of productivity followed by equitable distribution income as well as the increase of vocation for the citizen. Todaro (1995) stated that Zakat is a form of social security which is earned proportionally (through nisbah Zakat mechanism) from the upper-classes' income through the policy of progressive taxation wealth and income.

## 3) Musharakah

*Musharakah* is a joint agreement in which both parties (partners) or more (capital owners) agree to defray a business, sharing the profit based on the agreement both parties. Furthermore, both parties can have the different amount of investment because the party investing the capital shares equally

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<sup>12</sup> Saidi, Zaidi. *Soeharto Menjaring Matahari*. (Bandung-Jakarta: Mizan bekerjasama dengan PIRAC, 1998). p.74

<sup>13</sup> Mubyarta. 1999. "Ekonomi Indonesia Korban Kapitalisme". in *Bulletin PIMNAS XII*. Edisi 2/26 Februari. Jakarta: pp.2-3

<sup>14</sup> A.M. Al-

'Assal, and Fathi Ahmad A.K. *Sistem Ekonomi Islam, Prinsip-Prinsip dan Tujuan-Tujuannya*. Translated by Abu Ahmadi and Anshori Umar Sitanggalin *An-Nidzaamul Iqtishaadi Fil Islam Mabaadi-Uhu Wahdaafuhu* (N.Y). (Surabaya: Bina Ilmu, 1980). pp.110

<sup>15</sup> A.M. Saefudin, et al. *Solusi Islam Atas Problematika Um at (Ekonomi, Pendidikandan Dakwah)*. (Jakarta: Gema Insani Press, 1998). p.46

in both the profit and loss. There are two kinds of *Musharakah* in Islamic Fiqh; *Amlak Syirkah* and *Uqud Syirkah*. *Musharakah Uqud* is divided into five kinds of agreement: 1) *'Inan Syirkah*, 2) *Mudlarabah Syirkah*, 3) *Wujuh Syirkah*, 4) *Abdan Syirkah*, 5) *Mufawadah Syirkah*.

## 4) Hisbah

Hisbah is an intervention form by government or state in the functionalization of Islamic economic, as the government is the owner of the products and its benefits, a producer, a distributor, as well as the economic supervisory agency. According to Saefudin<sup>16</sup>, Hisbah is a state institution which has existed in the age of Prophet Muhammad SAW. It has a role as an economic market auditor in which guarantee the absence of rape and violations of moral rule in the monopoly market, the protection of consumer's rights, security and economic health life. This institution is independent from judicial authority and executive authority. The role of government or state here is needed for the instrumentation and functionalization of Islamic economic values in legal aspect, in planning and supervisory in the allocation of resources and funds, the even distribution of income and wealth as well as an economic growth and stability.

## IV. RESULTS AND DISCUSSION

### 1) Islamic Economic System

The growth of Islamic economic in Indonesia nowadays has become an interesting and exciting phenomenon for Indonesian whose majorities of religion are Islam. The practical of Conventional economic activity such as the capital market activities which is characterized by its venture seems to become a psychological barrier for Muslims to actively engage in investing, at least, in the capital market or shariah capital market. Mutual funds is one of the capitals market's products. It is an agreement that pools money from many investors and usually managed by the fund manager. It is a unit of investment which is set up for specific objectives. On the Article 1 number 27 regarding Law on Investment "a collective investment scheme pooled by a Fund Manager from investors to be managed."

The concept of buying in a mutual fund and saving are mostly similar. The difference between both of them is the passbook cannot be traded while mutual funds can be traded. There are two kinds of mutual fund, namely, open-end fund and close-end fund. A collective investment scheme that can re-trade the shares to the Fund Manager is called open-end fund. Meanwhile, close-end fund is a mutual fund that can be traded to other investors through a secondary exchange market. These varieties of investment products lead to the comprehensive capital exchange market as a means of investment. Investors have a variety of investment product choices based on their investment's goal. Furthermore, for those who need funds (issuer), they can sell a variety of investment

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<sup>16</sup> A.M. Saefudin, et al. *Solusi Islam Atas Problematika Um at (Ekonomi, Pendidikandan Dakwah)*. (Jakarta: Gema Insani Press, 1998). p.56

product to the investor. Besides funds, an issuer can also sell the bond, or combining between share and bond, or bond with other options.<sup>17</sup>The trading of mutual fund can be done in the Shariah capital exchange market or conventional capital exchange market. If the trading is done in shariah capital exchange market, then an agreement as a legal instrument which is used in the trading must be based on the principles of Islamic law.

The development of Shariah capital market in Indonesia shows several advancements such as the issuance of six Fatwa(s) (instruction/guidance) which are published by National Shariah Council of Ulama Indonesia (DSN-MUI) during 200th until 2004th. The six Fatwa(s) are :

1. No.05/DSN-MUI/IV/2000 regarding share trading;
2. No.20/DSN-MUI/IX/2000 regarding guidelines for the implementation of shariah mutual fund investment;
3. No.32/DSN-MUI/IX/2002 regarding shariah bonds (Sukuk);
4. No.33/DSN-MUI/IX/2002 regarding Shariah bonds Mudharabah (Sukuk Mudharabah);
5. No.40/DSN-MUI/IX/2003 regarding capital market and the general guideline of the implementation of shariah principle in the capital exchange market
6. No.41/DSN-MUI/III/2004 regarding Ijarah Shariah bonds (Sukuk Ijarah)

These fatwa(s) regulate the Shariah principles in the capital market which include: the shares are considerably satisfied the Shariah principles if it has obtained a decree of Shariah compatibility in written-form by DSN-MUI. There are several steps that must be done to obtain the shariah decree of DSN-MUI; first, the issuer-candidate must present the structure of profit sharing between investors, the transaction structure, the form of agreement such as the trust agreement and others. As a follow up of the fatwa(s) DSN-MUI, BAPEPAM-LK through the decree of the chairman of BAPEPAM-LK Number Kep-131/BL/2006 dated November, 23rd 2006 issued a regulation of No.IX.A.14 regarding the agreements which are used in the issuance of Shariah shares in the capital market and decree of the chairman BAPEPAM No.Kep 130/BL/2006 dated November, 23rd 2006 issued the regulation No.IX.IX.A.13 regarding the issuance of Shariah shares.

The development of Shariah capital market in Indonesia is generally characterized by several indicators. One of them is the considerable amount of Shariah capital market players who issuing shariah shares besides the shares in Jakarta Islamic Index (JII). Moreover, the development of the transaction of Shariah shares in Jakarta Stock Exchange (BEJ) can be illustrated based on the attachment of Jakarta Stock Exchange Announcement No.Peng499/BEJDAG/U/12-2004 dated December 28th, 2004 regarding the list of sharesowner's names that recorded in the

Jakarta Islamic Index (henceforth, JII) from January 3rd, 2005 to June 2005 as follows: Astra Agro Lestari, Adhi Karya (persero), Aneka Tambang (Persero), Bakrie & Brothers, Barito Pacific Timber, Bumi Resources, Ciputra Developmen, Energi Mega Persada, Gajah Tunggal, International Nickel Ind, Indofood Sukses Makmur, Indah Kiat Pulp & Paper, Indocement Tunggal Prakasa, Indosat, Kawasan Industri Jababeka, Kalbe Farma, Limas Stokhomindo, London Sumatera, Medco Energi International, Multipolar Perusahaan Gas Negara (Persero), Tambang Batu Bara Bukit Asam, Semen Cibinong, Semen Gresik (Persero), Timah, Pabrik Kertas Tjiwi Kimia, Telekomunikasi Indonesia, Tempo Scan Pacific, United Tractors, Unilever Indonesia<sup>18</sup>.The activity of Shariah stocks as listed in JII has increased quite well. It was identified by the increment of shares about 37,90% , from 118,952 points at the end of 2003 to 164,029 points at the end of 2004. So does the increment of capitalization value of Shariah' shares that listed in JII around 48,42%, starting from Rp.177,78 Trillion at the end of December 2013 to Rp.263,86 at the end of December 2004.<sup>19</sup>

In the context of shariah bonds (Sukuk) recently, the development of shariah bonds is obviously shown by the increasing numbers of initial public offering of Shariah bonds in Ijarah contract. The other sign that shows the development of Shariah bonds in recent years is characterized by the increase of the shariah bonds issuance in the Indonesia stock market. It illustrated by the achievement of the shariah bonds issuance at the end of 2004 Rp.1424 trillion comparing to the shariah bonds issuance around Rp.740 billion at the end of 2003. It implies that there is a significant improvement of shariah bonds issuance around 92,43%, however, the percentage of shariah bond issuance is only 1,72% in the amount of the bonds issuance in the Indonesia stock market which achieved Rp.83.005,349 trillion in 2004.Such as, there are only six issuers whose offering Shariah bonds in The Indonesia Capital Market since up to end of 2003 with a number of emission Rp. 740 billion, whereas in 2004, the number of issuersincreased from six to seven issuers that have received an effective statement from Bapepam. Thus, from the earlier to end of 2004, there are thirteen issuers whose offering Shariah bonds comparing in 2003 that only consist of six issuers or the increment is around 116,67%.<sup>20</sup>

The other sign that shows the development of Shariah bonds in recent years is characterized by the increase of the shariah bonds issuance in the Indonesia stock market. The shariah bonds issuance achieved Rp.740 billion at the end of 2003 while at the end of 2004, it achieved Rp1.424 trillion. It implies that there is a significant improvement of shariah bonds issuance around 92,43%, however, the percentage of shariah bond issuance is only 1,72% in the amount of the bonds issuance in the Indonesia stock market which achieved Rp.83.005,349 trillion in 2004.<sup>21</sup>

In the midst of the increasing number of investment products under the name of Shariah, it should be noted that the lack of legal regulation that covers every Shariah transaction activities in the stock market implies that the protection toward

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<sup>17</sup>Wahana *Investasidan Alternatif*  
*Pembiayaan Perusahaan,*

<http://pasarmodal.blog.gunadarma.ac.id>,retrieved onJanuary, 31<sup>st</sup>2018

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<sup>18</sup>*Ibid.*

<sup>19</sup>*Ibid.*

<sup>20</sup>*Ibid.*

<sup>21</sup>*Ibid.*

investors or customers in the Shariah stock market context remains unclear.

## 2) The Importance of Islamic Economic

To elaborate the importance of Islamic Economic in Indonesia economic system, the history of Islamic economic from Islamic figures' thought should be shown firstly. Along the Islamic history, the Islamic thinkers, as well as the political leaders, have developed their ideas in the economic field. Their contributions to the economic field allow them to be regarded as the founder of the origins Islamic economic, unfortunately, they are not notably well-known. It is caused by Islam is viewed as an Ardhi religion, and Muslims did not do colonization and imperialism to the area which is controlled. The great thinkers of Islamic who contribute in economic field are Abu Yusuf (W. th. 182 H), Yahya bin Adam (W. th. 303 H), al-Ghazali (W. tahun 505 H), Ibnu Rusyd (W. th. 595 H), al-'Izz bin 'Abd al-Salam (W. th. 660 H), al-Farabi (W. th. 339 H), Ibnu Taimiyyah (W. th. 728 H), al-Maqrizi (W. th. 845 H), Ibnu Khaldun (W. th. 808 H), dan many others. They have studied about the methodology of Islamic economic, in which western writers used their ideas as references in their work such as the Muqaddimah's ideas from Ibnu Khaldun.<sup>22</sup>

The development of Islamic economic will be characterized by three factors: a) First, the development of theological studies and discourse of renewal which introducing the Islamic values as a basis of work ethos and Islamic entrepreneurship ethos. b) Second, the development of a small business, a home business, and informal sector which become a fundamental basis of Muslim economic as well as the development of Muslims' industry in the modern large-scale sector. c) The third, the development and the achievement of the experiment in Islamic economic system, particularly in the Islamic finance. Such as the fastest-growing of shariah banking system in Indonesia, Malaysia, Sudan, England, Egypt, Turkey, etc. However, the legitimacy of Islamic economic system not only depends on the achievement of the system which is grounded by the teachings of Islam but also it depends on the achievement of its system in expanding the power of Islamic economic.

The nature of Islamic economic is Rabbani and Insani. It is called Rabbani because it is loaded with divine guidance and values. Meanwhile, it is regarded as Insani if the implementation of economic system is intended for human prosperity. Faith is essential to Islamic economic because it directly affects the individual's perspective toward personality, attitude, preferences, attitude to people, resources and the environment.<sup>23</sup> These values of faith turn out to be the binding rules, in which every human action must have the value of moral and worship. In vertical-view, each individual must have a good moral character while in horizontal-view, it must have a benefit for human beings and the other creatures. Islamic economic emphasizes on human beings as the center of circulation of the economic benefits which is taken from available various resources. It is contrast to the naturalist

concept which set on resources as an essential factor or monetarist ideas which put on finance capital as an essential factor.<sup>24</sup>

Rahardjo stated that there are three possible interpretations related to the terminology of "Islamic economic". The first, economic emphasizes the values and the teachings of Islam. The second, Islamic economic system is related to the regulation that binding the economic activities in a particular way. The third is Islamic economic. This notion is interpreted as it is developed in Islamic organization (henceforth, OKI). OKI is the organization that contributed to the growth of Muslims' economic and at the same time, they also develop the theory of Islamic economic.

In the study of finance, Islamic economic clearly distinguishes between money and capital. In the context of Islam, money is a flow concept while capital is a stock concept. Therefore, in economic perspective, the quicker money-go-round then the better economic is. Within in this frame, Islam suggested qadr and alms that enable the money turn-over fast in economic activity. Furthermore, money in the Islamic context is seen as a public good, owned by society while capital is a personal good. Hence, hoarding money implies reducing the amount of money in economic circulation. If it is presupposed as a blood, then the economic will lack of adequate blood or economic stagnation. Therefore, it is forbidden to hoard money. Meanwhile in the context of capital, the capital is seen as private assets. Therefore, capital is the object of Zakat. Logically, capital must be productive. For those who cannot do it, Islam recommended to do Musharakah or Mudharabah, that is profit-sharing business.

Antonio explained several advantages in implementing Islamic economic as follow:

1. A Broad-based economic. Islamic economic is not intended for Muslims but it is intended for all people. Implementing Islamic economic encourage people to work hard in earning wealth and needs in certain ways by following the regulations that has been created.

2. The justice and brotherhood of man; Islam aims to form a society in a 'solid-form'. Each individual is bounded by the brotherhood and affection as a family. In the Islamic context, justice can be referred to:

- a. The social justice. Islam regards each mankind is equal in front of Allah.

- b. the economic justice. The equality of human beings in society as well as the equality before the law which must be balanced with economic justice. Without economic justice, social justice will be pointless.

3. The justice of income distribution: the income inequality and the natural resources which is contrary to the spirit and commitment of Islam on brotherhood man and socio-economic justice. The income gap should be overcome in Islamic way, such as abolish the monopoly with government's exception in the particular fields; ensuring parties' rights and chance to actively involved in economic process either in production, distribution, circulation, or consumption aspect; ensuring the fulfillment basic needs of each individual; implementing the trusteeship of At

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<sup>22</sup>Zainul Arifin, *Memahami Bank Syariah: Lingkup, Peluang, Tantangan dan Prospek*, (Jakarta, Alfabeta, 1999), p. 7

<sup>23</sup>Mustafa

Edwin Nasution et al., *Pengenalan Eksklusif Ekonomi Islam*, (Jakarta, Kencana, year 2006), p. 12-13.

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<sup>24</sup>*Ibid.*

*takaaful al Ijtimai* or social economic security insurance in which enable to indemnify and help the poor people.

4. The individual freedom in social welfare context: the fundamental of Muslim faith is 'mankind is created by Allah'. It implies that since human was born, he has a freedom. Therefore, nor individual or state do not have rights to revoke human's independence and making human's life bonded.

In implementing Islamic economic activity, there are several legal principles that must be followed:

1) Freedom on effort

Almighty Allah SWT has given the guidance in order human beings utilize the gift from Allah which is the earth and everything in it. Allah SWT says:

*"He is the one who hath made the earth subservient unto you, so walk in the paths thereof and eat of His providence."* (Q.S. 26 :15)

Islam does not restrict an individual to try varieties of effort/business based on their abilities, proficiency, and skills such as agriculture, fisheries, plantation, trade, etc. to obtain his own property/wealth. Islam views property which is got from an individual's effort or work as a commendable wealth. This statement was mentioned by Prophet Muhammad SAW when he was being asked about the best job of human being. Then, He answered that what best is the effort from their own hands and all the Mabrur trading (the most lawful and the most memorable) (H.R. Ahmad, Thabrani dan Ibnu Umar); (Sayid Sabiq ; Fiqhi Sunnah).

2) The prohibition of Riba' (Usury)

Riba in Arabic word 'Az-Ziadah', literally means increment, addition, or excess while in Islamic Fiqh the term Riba is an unjustified increment of fund in trading or business, (either an excessive addition or lower addition). The prohibition of Riba in Al-Quran is consist with three stages:

a. The first stage on Riba was revealed in Mecca period. Allah says:

*"And whatever you give for interest to increase within the wealth of people will not increase with Allah. But what you give in zakah, desiring the countenance of Allah - those are the multipliers"* (Q.S.30:39)

b. The second stage on Riba was revealed in Madinah. Allah warns Muslims from dealing with Riba clearly by saying:

*"O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful."* (Q.S. 3:130)

c. In the last stage, Prohibition of Riba is completely clear and firm. Allah SWT says:

*"O you who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged. And if someone [debtor] is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew."* (Q.S.2: 278-280)

In Quran Surah Al-Baqarah verse 278-280, it affirms that Riba is prohibited if there is an interest (however the amount is) in the process of trading or business. Allah clearly says that the amount of money or property must be payback as how much it borrows without addition or interest.

3) The prohibition of Gharar (uncertainty) or the possibility of fraud trading (Ba'iu Al-Gharar)

Al-Gharar means uncertainty (truth or untruth). Bai'u Al-Gharar means trade which leads to the uncertainty results, either it's a success or unsuccessful, happened or not happened. Such as: the trading of a drop (seed) of an animal which is in its womb, birds that are flying, fish that are still in the water, and the unripe fruits unless it is picked immediately on the tree.

4. The prohibition of abuse on authority to gaining wealth

Islam prohibits human beings to gaining wealth by abusing their authority or power. It is illustrated by the story from Imam Buchari about Ibn Al-Lutaibh who comes to Rasulullah SAW to show the result of his work which is assigned by Rasulullah SAW to take Zakat from Bani Sulaiman and he divided the Zakat into two parts; for other people and for himself by saying "this Zakat is for all of you and the other is mine that given for me as a gift." Rasulullah SAW who hear it, then stand up and says, Amma Ba'du: I have assigned some of you to take on duties that Allah mandated me. Meanwhile, you come and said this [Zakat] is for people and the rest of it [Zakat] is a gift for you. Then, why don't you just sit down at his/her house and waiting for a gift?. For the sake of Allah that given me trusteeship, no one have a rights to take this [Zakat] except he will carrying it on the nape of neck on the judgment day. Later, the prophet of Muhammad SAW takes those entire gift that given for Ibn Al-Lutaibah and put it in accumulation storage.

5) The prohibition of lavishness

Islam has made the regulation of how people spend wealth/property as it shown in Al-Qur'an Chapter 17 Verse 27 and Verse 16:

*"Indeed, the wasteful are brothers of the Satan, and ever has Satan been to his Lord ungrateful."* (Q.S.17:27)

*"And when We intend to destroy a city, We command its affluent [obey to Allah] but they defiantly disobey therein; so the word comes into effect upon it, and We destroy it with [complete] destruction."* (Q.S. 17:16)

These verses of Qur'an imply that Islam forbids people to live lavishly because it leads people to live lazily and possibly encourage people to do a bad thing. Lavish-living shows the economic-gap between the rich and the poor and cause other people being envious.

6. The prohibition against the hoarding of wealth

It refers to the collecting large amounts of something by holding it or avoiding it away from the market. Hoarding of wealth has been condemned by Islam with threats of severe punishment. Here is the statement which highlights the view-point of the forbidden of wealth hording:

“And those who hoard gold and silver and spend it not in the way of Allah, give them tidings of a painful punishment. On the day when gold and silver be heated in the fire of Hell and seared therewith will be their foreheads, their flanks, and their backs [it will be said]; “This is what you hoarded for yourselves, so taste what you used to hoard.” (Q.S. 9:34-35)

Wealth-hoarding has the disadvantage to the economy as it makes the asset away from the market circulation. It also applies to the hoarding of basic needs as it makes the price of the goods increases when the goods are reduced in the market. This provision is illustrated below:

Narrated by Abu Dawud, At-Tirmidzi and Muslim from Muammar reported that the Prophet (S.A.W) said “those who do wealth hoarding are guilty (sinful)”

Narrated by Imam Ahmad and At-Thabrani from Ma'qol bin Yasar reported that Prophet SAW said ‘those who interfere in the price of a good for the aim to increase it excessively will be put on the fire on the judgment day.’

The ideas that have been described above are the principles in implementing economic activity in which related to the principle of the religious-valued in law and it becomes a good deed if it's obeyed. The principle of law in the implementation of Islamic economic reflects the importance of law status in Islamic economic activity. Furthermore, the implementation of Islamic economic reflects the mission of Islamic economic to achieve its status in society. There are several missions of Islamic economic in supporting the societies' economy, as follows:

a. *Fulfilling human needs*

As explained above, Qur'an and As-Sunnah are sources of law and Muslim's guidance in doing business to fulfill their demands in their life as well as in the Hereafter. As Allah says:

‘But seek, through that which Allah has given you, the home of the Hereafter; and [yet], do not forget your share of the world. And do good as Allah has done good to you. And desire not corruption in the land. Indeed, Allah does not like corrupters.’(QSAIQashash:V.77).

It clearly seen that Islamic economic mission is aimed to guide people to fulfill their life's needs as it is a major aspect in human's life. One thing that should be considered is the intention to fulfill the needs must be seen as a devoted to Allah S.W.T. Therefore, the needs of fulfillment must be done in a good way. Therefore, Islamic economic regulates people on the way they fulfill their needs by providing rules which affect on the act of people in doing business as well as in producing goods, such as the the production must be halal.

b. *Eliminating poverty*

Eliminating poverty or at least decreasing poverty in society is the major mission of Islamic economy. By decreasing or eliminating poverty, it assumes that the piety to Allah S.W.T will be increased, and vice versa, poverty caused people feeling insecure in society as well as close to kufr. A prophet S.A.W. says: ‘purity (poverty) nearly causes to kufr’

Allah says:“and give them half of the wealth which He has given you“(Q.S. AnNur:33).

“Believe in Allah and His messenger and spend out of that in which He has made you successors“(Q.S.AIHadid:7).  
“and from their properties was given the right of the [needy] petitioner and deprived” (Q.S. AdzDzariyat:19)

Those verses above show that Islamic economic system consist of the teachings related to *infaq, shodaqoh*, and the obligation to pay *Zakat* as the fifth pillar of Islam. These Islamic teachings lead people to eliminate or reducing the poverty or closing the economic gap between the rich people and poor people.

### 3) Implication of the implementation Islamic Economic in Compilation of Economic Shariah Law (KHES)

In order to establish guidelines in solving the Shariah economic dispute in the Religious Court, The Compilation of Economic Shariah Law (usually abbreviated as KHES) is issued. However, KHES is being questions by particular people and it isalso compared with the existence of other Compilation of Islamic Law which has been established earlier and has beenused in the religious court. They argued that the legal standard of KHES is still using the regulation of Supreme Court. Considering at the development of Islamic law in Indonesia's economic and Shariah finance field, the implementation of KEHS must coincide with civil law and business law which is based on the legislation as well as the shariah economic provision in the Fatwa of DSN MUI which has been provided by Indonesian Bank regulation on UU No.21 year 2008 regarding Shariah banking.

- 1) The history of the compilation of Economic Shariah Law (KHES) cannot be separated from the Article 49 of Law No.3/2006 regarding Amendments to the Law No.7/1989 regarding Religious Court. This Article emphasizes on the authority expansion to Religious Court to solve the Shariah Economic disputes. The enactment of Law No. 3/2006 led the Supreme Court to arrange the variety of policies such as creating formal law and material law as guidance for judges to resolve shariah economic disputes in Religious Court.<sup>25</sup>The article 49 Law No.3/2006 regarding amendment on Law No.7/1989 about Religious Court mentions that: ‘Religious court is obligated and is authorized to examine, deciding, and resolving Muslim's case at the first level related to: a. Marriage; b. Heritage; c. Will; d. Grant; e. Waqf; f. Zakat; g. Infaq; h. Shadaqah; and i. Sharia Economic.’ Referring on the Article 49 Law No.3/2006 shariah economic is ‘an act or business activity which is implemented based on shariah principles, include: a. Shariah Bank; b. Islamic Micro-finance institution; c. Shariah Insurance; d. Reinsurance Shariah; e. Shariah mutual funds; f. bonds; g. Shariah securities; h.

<sup>25</sup>BagusAhmadi, “Akad Bay, Ijarah dan Wadi'ah Perspektif Kompilasi Hukum Ekonomi Syari'ah (KHES)”,*Epistime*,Vol.. No.2,December2012,p.315.

Shariah financing; i. Shariah pawnshop; j. Shariah pension funds; dan k. Shariah Business.<sup>26</sup>

According to the decree of Supreme Court No.KMA/097/SK/X/2006 about Supreme Court that form the team to create KHES which was led by Manan and be reported to the chief of Supreme Court. There are several stages that KHES team done: The first stage was the KHES team united their legal opinion by asking for different groups' opinion such as National Sharia Arbitration Board. The next stage was to find the ideal format (united the legal framework) which was taken from Indonesia Bank employee. And the last stage, the team sought information through the study of literature and comparing it with other countries. The arrangement of KHES which includes 21 members comes from various fields: economic experts, university, DSN-MUI, *Basyarnas*, Bank practitioners either from Bank of Indonesia, state-owned bank, or private bank, as well as the parties in the foreign financial institution.

Specifically, the team arranges the draft of KHES based on the book of Majallah Al-Ahkam (*The Islamic civil code of the Ottoman Empire in the 18th century*). The currently used of KHES draft consist of 796 Articles. Meanwhile, the initial draft of KHES consists of 5 Chapters and 1040 Articles include legal prowess, capability and compulsion, wealth, agreement, *Zakat*, and grant; The last draft consist of 4 chapters and 849 Articles, in which the four chapters of Compilation Shariah Economic Law (KHES) consist of Book I regarding on the subject of Law and *Amwal*, Book II regarding on agreement, Book III regarding *Zakat* and grant, and Book IV regarding on Shariah Accounting. To complete the draft of KHES, new item were included. It was derived from the contemporary jurisprudence books and the result of scientific studies conducted by the center of International Islamic Economic Studies. The draft of KHES was discussed about a year (two years include the formation of team by Supreme Court) until KHES was issued in the decree of PERMA No.02/2008 date September 10<sup>th</sup>, 2008.<sup>27</sup>

There are Eighty percents or 653 Articles of 796 Articles (Article 20-674 KHES) regarding to Agreement's regulation in

<sup>26</sup>Ifa Lathifa Fitriani, Kompilasi Hukum Ekonomi Syariah dalam Pemaknaan Hukum Islam dan Sistem Hukum Positif Di Indonesia, *Supremasi Hukum* Vol. 5, No. 1, June 2016. pp.56-57

<sup>27</sup>Bagus Ahmadi, "Akad Bay, Ijarah dan Wadi'ah Perspektif Kompilasi Hukum Ekonomi Syari'ah (KHES)", *Episteme*, Vol. 7, No. 2, December 2012, pp.314-316. See also Abdul Mughits, "Kompilasi Hukum Ekonomi Syari'ah (KHES) dalam Tinjauan Hukum Islam", *Al-Mawardi*, XVII edition year 2008, pp. 142-145. See also "Menguntit Jejak Kompilasi Hukum Ekonomi Syari'ah" retrieved in [www.hukumonline.com](http://www.hukumonline.com), on Mei, 3<sup>rd</sup> 2016. See also Ifa Lathifa Fitriani, Kompilasi Hukum Ekonomi Syariah dalam Pemaknaan Hukum Islam dan Sistem Hukum Positif Di Indonesia, *Supremasi Hukum* Vol. 5, No. 1, June 2016. p. 57

KHES.<sup>28</sup>The term of agreement in Islamic law perspective is a contract while *iltizam* refers to engagement or commitment. Anshori described the meaning of agreement from the perspective of Al-Quran is *al-aqdu* (contract) dan *al-ahdu* (commitment).<sup>29</sup>The term of *aqdu* can be linked with the term of *verbinten*is KUHPer, meanwhile *al-ahdu* can be linked with an agreement.<sup>30</sup>An agreement or contract is an agreement between two or more parties which consist of two elements, *Ijab* and *Qabul*, as legal statement between both or more parties. In the Book II of KHES, it elaborates about the general principles of contract or agreement (principle, harmonious, terms, legal consequences, etc.) as well as the types of contract (*syirkah dansyirkah milk, mudharabah, muzara'ah dan musaqah, khiyar, ijarah, kafalah, hawalah, rahn, wadi'ah, gashband itlaf, wakalah, shulh, bonds of Mudharabah Shariah, capital exchange market, Shariah mutual funds, SBI Shariah, Shariah bonds, multi-financial service, qardh, Bank account of Shariah, and shariah pension funds*).<sup>31</sup>

Despite the adaptation from the literature studies by scholars as the Islamic law sources for KHES, the regulations in KHES are also mostly adopted from DSN MUI guidance<sup>32</sup>. DSN MUI guidance cannot be neglected since the MUI in Indonesia is viewed as the perspective representation of Indonesia's Muslim scholars, and it is also emphasized by the enactment of law No.21/2008 regarding the legitimacy of Shariah bank which

<sup>28</sup>Samsul

Anwar, *Hukum Perjanjian Syariah: Studi Tentang Teori Akad dalam Fiqh Muamalat*, (Jakarta: Raja Grafindo Persada, 2010), p.47 & p.68. See also Ifa Lathifa Fitriani, *Kompilasi Hukum Ekonomi Syariah...Ibid...* p. 57

<sup>29</sup>Abdul Ghofur Anshori, *Hukum Perjanjian Islam di Indonesia: Konsep, Regulasi, dan Implementasi*, (Yogyakarta: UGM Press, 2010), pp.22-23. See also Ifa Lathifa Fitriani, *Kompilasi Hukum Ekonomi Syariah...Ibid...* p. 57

<sup>30</sup>Abdul Ghofur Anshori, *Hukum Perjanjian Islam di Indonesia: Konsep, Regulasi, dan Implementasi*, (Yogyakarta: UGM Press, 2010), pp.22-23. See also Ifa Lathifa Fitriani, *Kompilasi Hukum Ekonomi Syariah...Ibid...* p. 57

<sup>31</sup>See *Kompilasi Hukum Ekonomi Syari'ah*, Mahkamah Agung Republik Indonesia 2008, pp.1 5-183. See also Ifa Lathifa Fitriani, *Kompilasi Hukum Ekonomi Syariah dalam Pemaknaan Hukum Islam dan Sistem Hukum Positif Di Indonesia*, *Supremasi Hukum* Vol. 5, No. 1, June 2016. p. 57

<sup>32</sup>Ridawan HR, *Fiqh Politik: Gagasan, Harapan, dan Kenyataan*, (Yogyakarta: FH UII Perss, 2007), pp. 84-98.

brings to the recognition of MUI by the government.<sup>33</sup>The following guidance of DSN MUI which is adopted by KHES are: guidanceNo.5/DSN-MUI/IV/2000 regarding shares trading, guidanceNo.6/DSN-MUI/IV/2000regarding “Ba’i Al-Istisna” in the Article 56-155 related to sale and purchase, guidanceDSNNo.48/II/2005 regarding the reschedule of *Marabahah* claim, guidance DSNNo.49/DSN-MUI/II/2005 regarding *Murahaah* agreement conversion, guidance DSNNo. 47/DSN-MUI/II/2005 in KHES Article 116-113 regarding to the settlement of *Murabahah* receivables for those who are unable to pay.Guidance DSNNo.09/DSN-MUI/2000in the Article 295-372 regarding *Ijarah*.Guidance DSNNo.12/DSN-MUI/2000in the Article 362-372 regarding *Hawalah*.Guidance No.32/DSN-MUI/IX/2002 in the Article 575-580 and 605-608 regarding Shariah bonds and other provisions.

Related to the Islamic law sources, KHES is divided into two sources<sup>34</sup>: 1)Islamic law sources areAl-Quran, Ijma, and Qiyas. These sources had been agreed by Muslim scholars (Jumhur scholars).2) *Istihsan, istislah, urf,istishab, mazhabshabat*, etcwhich still being questioned.

KHES in the perspective of Islam may refer to <sup>35</sup>one of *Ijtihad jama’i*’s products (collective).<sup>36</sup>*Ijtihad*is defined as the effort of *Faqih* in implementing the teachings of Islamic law in certain ways(*istinbat*). *Ijtihad* is done by Muslim scholars and Ulil Amri which clearly emphasize to the Islamic law sources that recognized by Muslim scholars as it is shown in Q.S. An-

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<sup>33</sup>Article26UUNo.21year2008regarding Shariah banking, Verse (1): “Kegiatan usaha sebagaimana dimaksud dalam pasal 19, pasal 20, dan pasal 21danatauproduk danjasasyariah,wajibtundukkepada ketentuan prinsip syariah.Verse(2):“Prinsip syari’ah sebagaimana dimaksud pada ayat (1) difatwain oleh Majelis Ulama Indonesia”.Verse (3): Fatwa sebagaimana dimaksud pasal 26 ayat (2) dituangkandalamPeraturanBankIndonesia.DalamRangkapenyusunanPeraturanBank Indonesiasebagaimana dimaksudpadaayat(3),BankIndonesiamembentuk Komite Perbankan Syari’ah”.See also Ifa Lathifa Fitriani, *Kompilasi Hukum Ekonomi Syariah...Ibid..* p. 59

<sup>34</sup>AbdulMughits, “Kompilasi Hukum Ekonomi Syari’ah (KHES) dalam Tinjauan Hukum Islam”, *Al-Mawardi*,XVII editionyear2008,p.153.SeeSainulandMuhammadIbnuAfrelian, “Aspek Hukum Fatwa DSN-MUI dalam Operasionalnya di Indonesia”, *Jurnal Hukum dan Ekonomi Syariah*, Vol.03, No.02, September2015, pp.187-188.

<sup>35</sup>HasbiAsh-Shiddieqi, *Pengantar Hukum*, (Jakarta: Bulan Bintang, 1975), p.29,

<sup>36</sup>Akh. Minhaji, “Sejarah Sosial Pemikiran Hukum Islam: Sebuah Pengantar”, dalam *Antologi Hukum Islam*, (Yogyakarta: Program Studi Hukum Islam, 2010), p.27. See also Abdul Wahab Khalaf, *Sumber-Sumber Hukum Islam*, (Bandung: Risalah, 1984), pp.1-2.

Nisa (4): verse 59. *Ijtihad* is divided into several methods<sup>37</sup>: a. Interpretation linguistic method focuses on Al\_qur’an and Hadits’s interpretation. This interpretation related to the text in Al-Qur’an which states that the status of law are either clearly (*Zahir nass, mufassar, and muhkam*) or unclearly (*khafi, mushkil, mujmal and mutashabih*). b. Causation method which aims to construct law cases which the legal text-form is unavailable. *Qiyas* and *Illat* are used by Muslim scholars to construct this legal case. c. Allignment refers to match the legal propositions which may contrast to each other. Such as the theory of *Nasakhand Tarjih* which frequently recited by *Abdul Wahab* related to the study of *ushul fiqh*.

The definition of Islamic law is indefinite because there is no exact definition of Islamic law either in the Islamic law literature studies or within Al-Qur’an. Al-Quran only shows the term of *syari’ah, fiqh, Allah’s law*, and other terms of Islamic law. Islamic law is derived from the western legal thought and related to *Roman law*. Non-Muslim scholars used the term of Islamic law as the translation of *fiqh* or Islamic *fiqh*.<sup>38</sup> According to Ash-Shiddieqi, Islamic law is a set of law scholar’s efforts to implementing shariah in a society.<sup>39</sup> This implies that Shariah and *fiqh* in Islamic studies are differentiated based on their meaning.<sup>40</sup> Other perspective of Islamic law is proposed by Anwar. He defined it based on the law interpretation of the subject. First, the jurisdiction which emphasizes in Shariah law is formal and binding.<sup>41</sup> The perception of judge as a state apparatus in Islamic perspective is similar with the government perspective that related to the theory of modern Triassic politics consist of judiciary, executive and legislative. Second, *Ifta’* (guidance), which is interpreted as non-formal and unbinding, then the apparatus is *Mufti* and the institution is formal.<sup>42</sup>

Based on the statements above, it can be concluded that KHES is derived from the product of *Fiqh* which is used as guidance. Additionally, it may also derive from the judge jurisprudence which is used by International Islamic Economic Studies Center and it is adopted in KHES. KHES is formal and unbinding (persuasive) because it consist a set or compilation of guidance (*fatwas*). Therefore, following Rahman’s idea, he suggested to insert the result of *ijtihad* which has become

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<sup>37</sup>Munawir Haris, “Metodologi Penemuan Hukum Islam”, *Ulumuha*, Volume 16 No.1, Juni 2012, p.7-14.

<sup>38</sup>Moh.Dahlan, *Abdullah Ahmed An-Na’im: Epistimologi Hukum Islam*, (Yogyakarta: Pustaka Pelajar, 2009), p.91.

<sup>39</sup>M.Hasbi Ash-Shiddieqi, *Filafat Hukum Islam*, (Jakarta: Bulan Bintang, 1975), p.44.

<sup>40</sup>Abdul Wahhab Khallaf, *Ilmu Ushul Fikih*, (Jakarta: Pustaka Amanah, 1974), p.11.

<sup>41</sup>Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, (Jakarta: Gramedia, 2008), pp.281-287. See also Ifa Lathifa Fitriani, *Kompilasi Hukum Ekonomi Syariah dalam Pemaknaan Hukum Islam dan Sistem Hukum Positif Di Indonesia*, *Supremasi Hukum* Vol. 5, No. 1, June 2016. p. 60

<sup>42</sup>Syamsul Anwar, *Studi Hukum Islam Kontemporer*, (Jakarta: RMB Books, 2007), pp.304-305.

the *ijma'* of Islamic jurists in *Qanun* by legislative decree who has an authority in creating *qanun*.<sup>43</sup>

By neglecting the different perceptions from Muslim scholars toward the boundary of *ijtihad*, *Ijtihad* in the modern life context plays an important role in the study of *ushul fiqh*.<sup>44</sup> Such as Muhammad Sahrur explained the *ijtihad* which can be and cannot be done. The *ijtihad* which cannot be done is elaborated in two ways: *ash-sha'a'ir* (ritual of faith), he further explained that it is forbidden because it is *bid'ah* and *heresy*. The second is *al-akhlaq* (ethical space) and *al-muthul al-ulya*. Meanwhile, the *ijtihad* that can be done is in *at-tashri* (legislation).<sup>45</sup> Abdul Wahab Khalaf explicitly stated that when the legal problem is firm and clear, then *ijtihad* cannot be done (*qathi'i nashnya*). while when the legal issue is *Zhanni* or implies a double meaning, then it is possible to do *ijtihad* by *tarjih* (choosing).<sup>46</sup> Other perspective comes from As-Shiddiqi who stated that law (*fiqh*) is adjustable within the age and environment as it states *infiqh* rule "*taghayyirual-ahkam bitaghayyiru al-azmanwa al-amkan*". This statement is grounded by several major arguments: first, the rules within *fiqh muamalat* which shows 'the nature of *Muamalat legalis* 'all actions are permitted, except there is a rule that forbidden it'. Second, it is based on *hadith* of the Prophet S.A.W. "you know more about your world".<sup>47</sup> This concept is more adjustable because it emphasizes on the legal form that adjustable on the change of society as well as the customary change.

Despite the divergence of Muslim scholars' perspective toward *ijtihad*, the existence of KHEs is one of *Ijtihad* which done by Muslim scholars' to develop a law in order to fulfill the needs of society. The method which is used in the formation of KHEs may refers to *ijma'*. In the modern age, the implementation of *ijma'* can be done as it is shown in Abduh and Iqbal.<sup>48</sup> In the writer's perspective, the methodology which is

implemented by *Mujtahid* (led by Abdul Manan Kala) to create KHEs refers to the method which is always used by Islamic thinkers, such as Hasbi As-Shiddiqi.<sup>49</sup> Meanwhile, the method which is implemented toward the issues that has been listed by DSN MUI and the earlier *ijma'* in KHEs is a comparison of elective thinking system method. Other method is by comparing shariah economic law which is implemented in other country and their relation to the Indonesia's civil law system.

As it describes above that the draft of KHEs involves various parties (*ijtihad collective*) and it assumes that the parties who involves in the arrangement of KHEs draft are *Mujtahid*. Moreover, Al-Qur'an, *Hadiths* as well as other sources of Islamic law that have been agreed upon by *jumhur* and vice versa, are the major guidelines in arrange the KHEs.

KHEs in the perspective of Islamic Law in Indonesia may also be referred to *fiqh* because it satisfies the nature of Islamic *fiqh*. Zuhaili defined *fiqh* as a set of law *Syara'* which regulate the act of human being through the detailed arguments. While Ash-Shiddieqi supported the definition of Al-Khitib who defined *fiqh* as a set of law *syara'* which is cited from several of *Mazhabs* either four *mazhab* or other *mazhab*.<sup>50</sup> It characterized by: the practical of *fiqh* is based on the divine; impulse of faith and morals; collective, and accepting the change of context (i.e. environment and age). Other perspective mentions that KHEs can be categorized as *fiqh* because it satisfies its aspects such as; Islamic law, related to *mukallaf*, *ijtihad* and *istidal*, the sources are derived from Al-quran and *hadiths*.<sup>51</sup> Moreover, KHEs can also be referred as an Indonesian-*fiqh*. The term of Indonesian-*fiqh* is used to refer an Islamic law provision which characterized by Indonesian-sense.<sup>52</sup> Generally, Indonesian-*fiqh* is used by Muslims figures who initiated *fiqh* (Islamic law) based on Indonesia's characteristics. The notion of Indonesia-*fiqh* began to discuss by Hazairin.

## V. CONCLUSION

Based on the above discussion, it can be concluded that:

1. the economic development in the period of reformation can be fulfilled if Islamic economic system is studied further and intensively,
2. Islamic economic system must be adjustable in the period of reformation. Therefore, the economic sector includes *Muamalah* can be developed at any time. To achieve this, it should consider several aspects such as

<sup>49</sup> *Ibid.*, p.69-70.

<sup>50</sup> Abdul Wahhab Khalaf, *Ilmu Ushul Fikih*, (Jakarta: Pustaka Amanah, 1974), p.11. Wahbah Az-Zuhaili, *Ushul Fiqhal-Islami*, Juz1, (Beirut: Dar Al-Fikr, 2001), p.25. Hasbi Ash-Shiddieqi, *Pengantar Hukum*, (Jakarta: Bulan Bintang, 1975), p.29.

<sup>51</sup> Abdul Mughits, "Kompilasi Hukum Ekonomi Syari'ah" p.151.

<sup>52</sup> See also the study of Hasbi Ash-Shiddiqi in Nourouzaman Shiddiqi, *Fiqh Indonesia: Pengagasan dan Gagasannya*, (Yogyakarta: Pustaka Pelajar, 1997), pp.234-241.

<sup>43</sup> Abdul Manan, *Reformasi Hukum Islam di Indonesia: Tinjauan dari Aspek Metodologis, Legalisasi dan Yurisprudensi*, (Jakarta: Raja Grafindo Persada, 2006), p.235.

<sup>44</sup> Akh. Minhaji, "Sejarah Sosial Pemikiran Hukum Islam: Sebuah Pengantar", in *Antologi Hukum Islam*, (Yogyakarta: Program Studi Hukum Islam, 2010), p.27.

<sup>45</sup> Muhammad Shahrur, *Metodeologi Fiqih Islam Kontemporer*, (Nahw Usul Jadidah Li Al-Fiqihal-Islami), (Yogyakarta: eLSAQ Press, 2004), pp.212-213.

<sup>46</sup> Abdul Wahab Khalaf, *Sumber-Sumber Hukum Islam*, p.4.

<sup>47</sup> Nourouzaman Shiddiqi, *Fiqh Indonesia: Pengagasan dan Gagasannya*, (Yogyakarta: Pustaka Pelajar, 1997), p.78. See Shahih Muslim Hadis No.4358. Lihat juga Ibnu Taimiyah, *Al-Qawa'id al-Nuraniyah al-Fiqhiyah*, Juz II, (Riyadah: Maktabah al-Ruysd, 1422H/2001M), p.306.

<sup>48</sup> Ali Sodikin, *Ushul Fiqh: Sejarah, Metodologi dan Implementasinya di Indonesia*, (Yogyakarta: Beranda Publishing, 2012), pp.85-86.

in terms of banking, the limitation of interest rates between usury interest rates and other interest rates which is not categorized as usury should be considered carefully.

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