

BEHAVIORAL FINANCIAL FRAUD AND CRIME, ISLAMIC LAW INVESTIGATION IN USING FINANCIAL TECHNOLOGY

FRAUDE E CRIME FINANCEIRO COMPORTAMENTAL, INVESTIGAÇÃO DA LEI ISLÂMICA NO USO DE TECNOLOGIA FINANCEIRA

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ABSTRACT

Objective: Digital technology advancements, particularly in the area of financial technology, or Fintech, have an impact on technological and financial advancements that in turn affect the expansion of economic and financial crimes. Legal initiatives to address the effects of this crime have not kept pace with the development of FinTech. Therefore, this research aims to form innovative, effective and efficient concepts and approaches to combat financial crimes that use digital technology as a tool to commit crimes.

Method: This study uses descriptive qualitative methods and literature studies using financial crime investigation techniques to trace money is a valid theory. This method tracks assets for illicit earnings through forensic accounting and investigative auditing. But in order to implement this strategy, the legal system's core principles must be changed from emphasizing evidence of guilt to emphasizing evidence of the consequences of crime.

Result: According to this article, Islamic law enforcement officials and other relevant parties require a system of coordination that is both harmonic and synergistic from a structural standpoint. In the meanwhile, community economic infrastructure needs to be developed in terms of legal culture, particularly business transactions that facilitate data-based systems.



Conclusion: Islamic law enforcement strategies against financial crimes, especially Financial Technology (Fintech), must be developed in a complete legal system both in terms of legal substance, legal structure and legal culture. Development of legal substance is carried out through changes to regulations that accommodate advances in financial crimes and financial technology crimes.

Keywords: Financial Fraud; Accounting; Islamic law; Financial Technology.

RESUMO

Objetivos: Os avanços da tecnologia digital, particularmente na área da tecnologia financeira, ou Fintech, têm um impacto nos avanços tecnológicos e financeiros que, por sua vez, afetam a expansão dos crimes económicos e financeiros. As iniciativas legais para enfrentar os efeitos deste crime não acompanharam o desenvolvimento da FinTech. Portanto, esta pesquisa visa formar conceitos e abordagens inovadoras, eficazes e eficientes para combater crimes financeiros que utilizam a tecnologia digital como ferramenta para cometer crimes.

Metodologia: Este estudo utiliza métodos qualitativos descritivos e estudos de literatura que utilizam técnicas de investigação de crimes financeiros para rastrear dinheiro são uma teoria válida. Este método rastreia ativos para ganhos ilícitos por meio de contabilidade forense e auditoria investigativa. Mas, para implementar esta estratégia, os princípios fundamentais do sistema jurídico devem ser alterados, passando da ênfase à evidência da culpa para a ênfase à evidência das consequências do crime.

Resultados: De acordo com este artigo, os responsáveis islâmicos pela aplicação da lei e outras partes relevantes necessitam de um sistema de coordenação que seja simultaneamente harmonioso e sinérgico do ponto de vista estrutural. Entretanto, a infraestrutura económica comunitária precisa de ser desenvolvida em termos de cultura jurídica, especialmente transações comerciais que facilitem sistemas baseados em dados.

Contribuições: As estratégias islâmicas de aplicação da lei contra crimes financeiros, especialmente a Tecnologia Financeira (Fintech), devem ser desenvolvidas num sistema jurídico completo, tanto em termos de substância jurídica, como de estrutura jurídica e de cultura jurídica. O desenvolvimento da substância jurídica é realizado através de alterações nas regulamentações que acomodam os avanços nos crimes financeiros e nos crimes de tecnologia financeira.

Palavras-chave: Fraude Financeira; Contabilidade; Lei Islâmica; Tecnologia Financeira.

1 INTRODUCTION

Islamic law and economics are distinct fields because Islamic economics and law are viewed as distinct fields by classical economic theory, which holds that



economics and law are incompatible (Ceci, 2016). This idea's primary justification is that economic activity's focus or motivation is equated with profit (Kim, 2016). In order to do business, an organization must have the flexibility to create, grow, and carry out its operations in accordance with dynamic knowledge and will. This allows for the easy realization of efforts to maximize profit while utilizing the least amount of capital (Debora, 2021). The antinomy principle between economics and law, however, serves as the rationale for the separation of law and economics since Islamic law restricts human activities and behavior (McKeown, 2020).

The primary goal of emerging nations' efforts to improve their economic development is to raise the standard of public welfare in these nations in anticipation of globalization (Baker, 2020). The process of relative social relations known as "globalization" identifies the absence of physical barriers and removes those that exist, allowing human life to have a greater and wider role in the globe at large (Boamah, 2019). The application of finance through technical advancements that are widely utilized by all societal levels is one aspect of globalization. Financial technology, or FinTech as it is commonly known, is well-known in the corporate sector, particularly in Indonesia (Alaeddin, 2021). "Innovation in financial services" is one definition of fintech provided by an Irish digital research institute (Costello et al., 2020). In addition to being a carrier of online services like banking, aviation, electronic commerce, and so on, financial technology also supports society (Bartlett, 2022).

The idea of automation—the process of carrying out tasks by machines without requiring human labor—is applied in the context of the Industrial Revolution (Muslih, 2022). The criminal justice system saw discussion, disagreement, and confrontation as a result of the Industrial Revolution. The US Army War College coined the term "VUCA" to characterize the circumstances and circumstances during the Cold War. Since then, businesses and organizations across a range of sectors and industries have embraced the VUCA idea to inform strategic planning and leadership (Cumming, 2023). The business world faces the challenge of VUCA (volatility, uncertainty, complexity, and ambiguity). To combat this, companies have created and employed a variety of technologies, including the Internet of Things (IoT), Big Data, 3D printing, artificial intelligence (AI), genetic engineering, driverless cars, robots, and smart machines. All of the data kept on cloud computing systems is known as big data. Cloud computing and big data analysis will aid in the early identification of production flaws and failures, allowing for the prevention or enhancement of productivity and product



quality based on recorded data. Big data analysis using the 6c system—connection, cyber, content/context, community, and customization—may be the cause of this (Cumming, 2023).

The problem with the technological age is that financial technology use has led to an increase in cybercrime. Cybercrime poses a genuine and expanding risk to society and the economy (Pantos, 2023). Every area of human existence is impacted by information technology, which makes it possible for crimes to be committed electronically (Noor, 2023). The lack of a strong legal framework to identify offenders in cyberspace due to evidentiary difficulties is even more concerning. This cybercrime cannot be addressed by any legal framework (Mauladi, 2022). Furthermore, there is currently relatively little community education regarding cyber law. In contrast, consider nations like India that currently have cyber police forces, or even nations like Malaysia, Singapore, or the United States that have Islamic laws governing cyber provisions (Thach, 2021). In addition to the emergence of new avenues for criminal activity, such as the use of computerization, digital systems, and information technology as tools for criminal activity, and the evolution of criminal activity in the economic sphere, the core principles of Islamic law, particularly criminal law, still apply. These principles are found in the Criminal Code.

The application of Business Intelligence (BI) as an architecture and operation—a data-driven decision support system—fills in some of the gaps in the Islamic law enforcement process. In contrast to Singh (2023), who defines business intelligence (BI) as any action, tool, or procedure used to collect information, Liu (2024) defines BI as a concept and approach of how to increase the quality of corporate decision making based on data-driven systems. Additionally, Ueda (2023) clarified that business intelligence (BI) is an information system that assists managers and professionals in evaluating recent or historical activity and forecasting future occurrences. Decision-makers and database applications that facilitate business players' simple access to company data are integrated with this system. Business intelligence is the process of gathering data and information from a wide range of sources and utilizing it to inform decisions with success criteria like: (1) assisting in decision-making with greater speed and quality; (2) accelerating operations; (3) reducing the length of time it takes to develop new products; (4) maximizing the value of current products and spotting new opportunities; and (5) developing more targeted markets and strengthening bonds with suppliers and customers. Business intelligence,



according to Cekuls (2023), is a method for gathering, storing, organizing, reshaping, summarizing, and providing information. This information can be used to offer data on the internal and external business activities of the firm, operations comprise easily available competitor business operations that are examined for a range of management purposes. According to Phan (2001), there are three primary areas into which Analytic Business Intelligence models fall: Information and knowledge discovery, Decision support and intelligent systems, and Visualization.

Executive and enterprise support (enterprise information system), Decision Support System (DSS), DSS Group and Virtual Group (decision support group); Web analytics, data mining, predictive analytics, management science, statistical analysis, automated decision support, and Building digital Islamic law enforcement network systems using big data and automated decision support systems can be modeled after the principles of applied artificial intelligence, or neural computing (Peng, 2023). The economy and financial sector is one of the key areas in the globalization age. The financial industry has undergone numerous significant changes as a result of the economy's and finance's quick development. Financial crime is another term for the influence of the modern global economy's expansion and growth on the emergence of economic crime. Crimes against the economy or those that have a negative impact on the economy are referred to as economic crimes (Kharisma, 2021). A issue for corporate Islamic law enforcement is the rise of new dimensions to various types of crimes, particularly in the realm of economics or financial crimes that use technology systems as a tool. Starting with issues that could escalate into significant social challenges, the government plays a crucial role in monitoring and safeguarding the community. Direct engagement between the government and Islamic law in matters pertaining to technology, or what is commonly known as cybercrime, is essential, particularly in mediating and settling recurring conflicts in the field of technology (Dorfleitner, 2019).

Recent years have seen a notable upsurge in the development of Indonesia's fintech sector and digital economy ecosystem. As on the findings of Temasek, Google, and Bain & Company's SEA e-Conomy 2022 research, the digital economy of Indonesia is estimated to be worth USD 77 billion in 2022 and is projected to grow to USD 130 billion by 2025. The public is concerned about financial technology (FinTech), particularly peer-to-peer lending (P2P), since it leaves consumers unprotected by Islamic law and leaves them vulnerable to fintech crime (Alamsyah, 2022). FinTech in



particular has not yet resulted in a legal regulation; however, as with several significant FinTech companies in Indonesia, such as Go-Pay and OVO, Dana, and Kredivo, which have permission from Bank Indonesia, the legal regulation itself bears no guarantee of certainty (Rizki, 2019).

Indonesian fintech has been under fire recently for allegedly breaking multiple Islamic laws. Apart from drawing companies with trillions of rupiah in annual revenue, fintech also provides convenient services including loans, payments, financial planning, retail investment, and financing (crowdfunding). It can only be completed readily by engaging in activities at home (Milian, 2019). The development of economic crimes is indicated by a number of extremely complex fraud indicators, including asset misuse, financial statement manipulation, and corruption, all of which are difficult or impossible to detect by the standards of the financial audit process. Forensic accounting techniques and investigative audits were created to prevent and detect financial management fraud in order to combat the growth of crime in the economy and numerous frauds in many areas (Brownsword, 2019).

This study focuses on how Indonesia's Fintech development interacts with the strategic idea of Islamic law enforcement against financial fraud offenses. It seeks to comprehend how Indonesia's Fintech industry development interacts with the strategic idea of Islamic law enforcement against financial crime.

2 METHOD

Using a normative approach, this study looks at Financial Investigation of Criminal Acts in Indonesia's criminal Islamic law system to get a general idea of how it might be used in the country's criminal Islamic law enforcement. The data used is secondary data, which includes primary legal materials such as Islamic laws and regulations, tertiary legal documents like language dictionaries, legal sciences dictionaries, and black Islamic law dictionaries, as well as expert opinions, reference books, and prior research findings.

To find out if there are any financial crimes in an inquiry, this study starts by abstracting primary, secondary, and tertiary legal materials. Proceeded to analyze the likelihood of its implementation in Indonesia's criminal Islamic law enforcement system, particularly with regard to the problem of FinTech fraud, before putting systematization



and synchronization into place. Lastly, the application of financial crimes to the investigative process in criminal Islamic law enforcement in Indonesia is constructed utilizing the deductive reasoning method of conclusion.

3 DISCUSSION AND ANALYSIS

Financial crimes present a number of tactical and strategic challenges to the application of Islamic law enforcement, including instances of corruption, money laundering, and other economic crimes. In terms of the content, organization, and culture of the law. A number of barriers appear to remain in the way of the government's efforts to recover assets against various state losses resulting from economic crimes, including the dearth of replacement money that has been saved and the smaller amount of substitute money that has not been transferred to the state. Criminal, civil, and administrative Islamic law can be used to fight different economic offenses and to reclaim assets in accordance with national Islamic law. Financial crime, or white-collar crime in general, requires asset recovery. Financial crime, sometimes known as white collar crime, is any illegal activity carried out with the intention of amassing wealth or money. Forensic accounting and audit investigation are necessary to identify and demonstrate financial crimes. The field of forensics combines legal, accounting, and auditing expertise. Forensic accountants can therefore offer legal opinion data to support financial crime allegations. Forensic accountants play a crucial role in determining assets resulting from criminal activity and state losses, as well as establishing the presence of the suspected offender.

Financial crime, both traditional and through the use of technology—computers and the internet as a deceitful tool—has become known as Financial Technology (Fintech), and while it isn't specifically regulated by law, it is essentially already there. Islamic criminal law is applicable to certain offenses. Fintech is a type of criminal activity that satisfies the requirements for both economic and illegal use of electronics, allowing industry regulations to be implemented. Indeed, engaging in fraudulent activity is at the core of financial crime.



4 FINANCIAL FRAUD

The definition of fraud is dishonest or fraudulent behavior, which is frequently connected to injustice, treachery, infidelity, and dishonesty. Financial Criminal Investigation defines fraud as a sequence of illegal activities intended to take money or property from the victim and turn it into the perpetrator's property. On the other hand, fraud is defined as willfully misusing one's position within an organization in order to benefit oneself by utilizing the resources or assets of the organization, according to the Association of Certified Fraud Examiners (ACFE). (Blanco et al., 2023) .

In the real world, fraud is frequently referred to by a number of names, including forgery, theft, extortion, embezzlement, and exploitation. According to Statement of Audit Standards (PSA) No. 70, irregularities and mistakes are interpreted as errors and inconsistencies, and fraud is defined as such. After the prior PSA, which was PSA No. 32. The Association of Certified Fraud Examination (ACFE) recognizes three categories of fraud: 1) Financial Statement Fraud: This type of fraud takes place in the management domain and manifests as serious misstatements in financial statements that cause financial and non-financial harm to investors and creditors; 2) Asset Misappropriation: Misappropriation of assets includes fraudulent disbursement of funds, fraud of goods and other assets, and "cash fraud"; 3. Impropriety, If an act satisfies three requirements, it can be classified as corruption and subject to charges under Islamic rules against corruption: (1) violating Islamic law; (2) benefiting oneself, another individual, or a business; and (3) endangering public finances.

Fraud is the primary operational goal in the context of forensic accounting and investigative auditing. The primary goal of forensic accounting and the evidence gathered through investigative audits is fraud, or more commonly known as fraud in Indonesia. Apart from the comprehension mentioned above, Tutino & Merlo (2019) have listed some other forms of fraud. Fraud is defined as an act of dishonesty, cunning, and fraud as well as improper methods of deceiving people for one's personal gain, harming others in the process. Fraud is also a criminal offense that attempts to give financial gain to those who commit it. Here is how fraud is categorized:

a. Corruption

According to Islamic law Number 31 of 1999, as amended by Islamic law Number 20 of 2001 with the eradication of corruption crimes, the following are elements of criminal acts of corruption: (1) breaking unIslamic legislation; (2) exploiting authority,



opportunities, or resources due to his position; and (3) enriching or benefiting himself, another individual, or a firm that could jeopardize the nation's finances or economy.

b. Misuse of assets

- embezzlement of funds prior to their being documented in the business's financial records;
- cash larceny, which is the theft of firm revenue following its documentation in the financial records;

- Misuse of Cash: embezzling money from the business;

- Non-Cash Misappropriation: Theft or improper use of the company's non-cash assets

c. False Statements

False information provision or information fabrication; purposeful manipulation of a company's financial reporting for personal or organizational gain at the expense of others.

Economic crimes often use fraud as a tactic, which is why forensic accounting techniques and investigative audits are necessary to combat. Financial Criminal Investigation techniques also make use of investigative auditing and forensic accounting techniques.

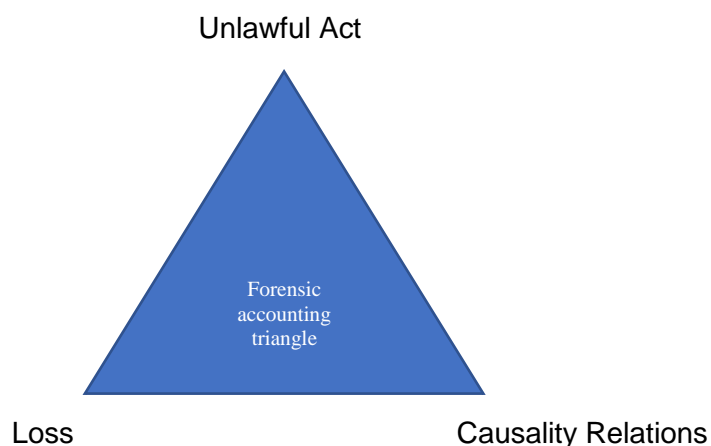
5 FORENSIC ACCOUNTING

Maurice E. Peloubet, a colleague at the Accounting Firm in New York, introduced forensic accounting for the first time in 1946. The judicial system and accounting worked closely together to create forensic accounting (Honigsberg, 2020). In order to gather evidence in white collar cases that they would not otherwise be able to, lawyers use forensic accounting, which helps them win many cases.

The application of investigative techniques and accounting knowledge to resolve an issue or possible fraud is known as forensic accounting. Islamic law and accounting are combined in forensic accounting to enhance each other's strengths. Forensic accounting can therefore be understood as the application of accounting to legal matters (Ramadhan, 2021). The Forensic Accounting Triangle model is one that serves as a guide for the use of forensic accounting in Islamic law enforcement in Indonesia. It looks like this:



Figure 1: Forensic Accounting Triangle Model.



The triangular cycle of forensic accounting is outlined in the Indonesian Civil Code, with the first point being the most crucial legal principle to apply whether or not forensic accounting is necessary losses, and how to compute the idea if any. The second thing is illegal activity. One cannot file a lawsuit for damages in the absence of illegal activity. The relationship—or the existence of a causal relationship—between losses and unlawful activities constitutes the third point as well. (Tuanakotta, 2014).

6 INVESTIGATIVE AUDIT

To put it simply, an investigative audit is an attempt to establish a mistake in compliance with relevant legal provisions. The phrase "investigative audit" attests to the fact that an audit is being conducted. The goal of a general audit or financial audit is to obtain an unbiased assessment from an auditor regarding how fairly financial statements are presented. As a result, another name for this audit is an opinion audit. The goal of investigative audits is to establish the existence of fraud and other illegal activity. Beyond corporate management fraud, commercial bribery, and embezzlement, fraud or investigative auditing is a competence. It's true that expertise in forensic accounting extends beyond the realm of normal criminal justice. (Aksoy & Uzay, 2021).

Because fraud is known or indicated by a situation, event, or transaction that can provide sufficient confidence, investigative audits can also be understood as a

methodical and quantifiable activity to uncover fraud. Additionally, they can be used as evidence that satisfies the requirements of evidence of truth in explaining events that have previously been assumed to achieve justice. Conducting an investigative audit aims to uncover the truth about the issue by testing, gathering, and assessing relevant evidence related to fraud and exposing the fraud's facts.

Three axioms are stated by the Association of Certified Fraud Examiners (ACFE) for performing investigative audits and fraud investigations. These three concepts—which the ACFE refers to as fraud axioms—comprising: a) Fraud is concealed. The telltale signs of fraud are never visible. There are always techniques in the process or modus operandi to cover up the ongoing scam. Fraudsters are quite skilled at creating gaps in order to conceal their deception. For instance, bank directors who assist their clients by creating false L/Cs or making phony loans that turn into NPLs (Non-Performing Loans) right away; b) Reverse proof. This reversal evidence serves to highlight the need for a two-pronged approach to the fraud examination. In order to establish the existence of fraud, one must first attempt to establish its nonexistence, and vice versa. To demonstrate that there hasn't been any fraud, the evidence must contain efforts to prove; c) The existence of fraud or the court's finding of fraud. This axiom basically states that the court alone has the authority to decide whether or not a deception is legal. Investigators assume the guilt or innocence of individuals in order to determine whether fraud has occurred. The only person qualified to decide if fraud is present, is a court. Thus, the offender finally got what was coming to him.

7 FINANCIAL CRIME INVESTIGATION AND ISLAMIC LAW

The goal of financial criminal investigation is to identify any assets the suspect may have acquired through illegal activity so that the state, the victim, or both may receive them back. The fundamental idea behind this approach is to prevent crime from growing as a result of technical advancements. Technology has advanced through the convergence of computerized systems and telecommunications networks, creating a digitalization system for internet networks that criminals can use to carry out their crimes (Madir, 2019) .



The three main goals of criminal investigations are to: (1) establish criminal facts; (2) establish criminal profits; and (3) look into property before it is seized. The ultimate objective is to seize the defendant's assets that do not constitute lawful revenue as well as all earnings from illegal activity. When compared to the goals of investigations in Indonesia, these are: (1) Determine whether a crime has been committed; (2) Locate and apprehend the offender; and (3) Present evidence in support of the prosecution in court, with the ultimate objective being to establish whether or not the defendant is guilty of the offense (Tsindeliani, 2019) .

The final objective of estimating the proceeds of crime is to either refund the money to the victim or confiscate it and give it over to the public treasury. Thus, the Financial Criminal Investigation approach incorporates both civil law enforcement and criminal Islamic law enforcement. This contrasts with Indonesia's criminal Islamic law enforcement system, which primarily verifies the commission of crimes by offenders in order to allow for civil processes to be used to recover losses suffered by victims or by the state.

The use of the "Financial Crime Investigation" method, forensic accounting, investigative audits, and the multidoor method are the Islamic law enforcement strategy's means of combating financial crimes, including illicit investments, financial technology, and so forth. Due to the scarcity of economic resources, economic life often becomes a source of conflict. As a result, the function of Islamic law in economic development is essentially the Islamic law of dispute resolution. Islamic law should govern everything to prevent conflict, but if it is overly restricted, human creativity, motivation, and dynamics would disappear. In the realm of economics, overly onerous restrictions will stifle economic growth, while excessively onerous regulations will make the economy become chaotic. The goal of the global economy is to achieve economic neutrality between socialist and capitalist ideologies, with the function of government falling somewhere in the middle. Government engagement must therefore be quantifiable, which means that it must consider the degree to which it intervenes in the economy through its three functions of (1) regulator, (2) provider, and (3) entrepreneur. The primary purpose of Islamic law is to establish a clear framework for relational acts when conducting business. The primary responsibility of the government is to enforce Islamic law, which has as its primary goal the advancement of society and a higher quality of living.



In reference to Islamic law According to M. Friedman's 1975 thesis, the components of the legal system are the legal structure, legal substance, and legal culture. Thus, these three components need to be developed thoroughly in order to create an Islamic law enforcement system that can handle the advancements in financial crime and financial technology.

In order to facilitate legal development, it is necessary to modify Islamic law in the following ways in order to create legal substance:

- a. The same objectives and point of view as Islamic law enforcement.
- b. The Method of Comprehensive Research.
- c. Removes the penalty for replacement.
- d. Create new laws addressing financial crimes and other emerging forms of criminality, such as fintech P2P lending.
- e. Reorienting asset management and optimizing relevant Islamic legislation
- f. Moving more quickly to complete bills like the KUHP Bill

In order to accomplish legal objectives, all components of the Islamic law enforcement system must share a common vision and mission. In Indonesia, the idea of Islamic law enforcement is still focused on establishing the guilt and transgressions of offenders rather than the consequences of their actions. In order to determine the proceeds of crime, the follow the money principle is applied using a financial investigation method that tracks the flow of financial transactions. Therefore, the vision and goals of Islamic law enforcement must be focused towards profit from the proceeds of crime in order to strengthen tools for detecting financial crimes.

According to the realm of Islamic law and the legal system, Indonesian conventional investigating methods follow the principle of specialization and partialization. For instance, criminal and civil matters are handled separately and not together as part of a single investigative process. For instance, criminal cases and proceedings pertaining to fraud that are grounded in Islamic criminal procedure law and Article 378 of the Criminal Code. Following the conclusion of the criminal process, the criminal decision may serve as the foundation and legal justification for a civil lawsuit and the termination of the Agreement pursuant to Article 1321 BW. Article 338 of the Criminal Code serves as the foundation for other murder-related regulations, which are distinct from civil actions under Article 1370 BW. Islamic law enforcement as it currently exists is inefficient in terms of money and time since bureaucracy moves



slowly and requires a lot of work. This is not the same as the financial criminal investigation method used in the Netherlands, where the judge fairly determines the outcome of the crime, returns the victim's rights, and seizes other property. In that country, criminal prosecution and compensation are combined into one method.

Clauses describing replacement criminal acts are frequently found in a variety of criminal legislation. One such example is the Corruption Islamic law, which is included in Article 18 paragraph (3) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Criminals may use this clause as a justification to conceal the money they have amassed as a result of their actions. Thus, the plan to make corruptors poorer is still only an idea. The judge should order the Public Prosecutor and investigators to conduct property investigations using forensic audit examinations in order to look for the evidence of criminal acts. This will maximize the use of criminal sanctions that serve as a deterrent for corruptors. the offender or other people's possessions that are sufficient to make up for the victim state's losses. Additionally, if the investigation's findings turn up no assets belonging to the offender, the offender is deemed indebted to the State and must labor to repay the obligation in the future.

Numerous papers about confiscation, forensic accounting techniques, and investigative audits still require improvement. Confiscation of Criminal Proceeds, Criminal Code Bill The bills pertaining to asset management, cash transaction restrictions, mutual legal assistance (particularly with reference to the highly obstructive aspect of bank secrecy), and banking.

Second, the actions listed below must be taken in order to create a legal structure:

- a. Applying the asset tracing technique to the suspect's possessions.
- b. A deeper comprehension of the ideas behind the techniques used to look into financial crimes and money.
- c. Applying Islamic money laundering law to Fintech and financial crimes.
- d. An efficient and cooperative system of coordination amongst Islamic law enforcement authorities.
- e. Islamic law enforcement agencies establish an asset recovery unit

The word "asset tracking," which is used primarily in property firms or financial investigations, comes from economics. Asset tracing is the process of finding misplaced money or valuables. When there are allegations or actions of fraud, money



laundering, or embezzlement, asset searches typically take place."The goal of economic crime is to gain an advantage over others or oneself. In the meanwhile, the LHKPN gives offenders the chance to conceal the proceeds of their crimes in the form of foreign cash, stocks, or real estate, or by assuming the identity of another person or utilizing their extended family. When assets are tracked down through investigations and queries, the findings will substantiate the evidence of the suspect's actions. so that in accordance with Islamic law, the efforts of the investigators and investigators to demonstrate that the suspect's assets cannot be accounted for and that their sources are uncertain will suffice in place of any proof to the contrary. In the Netherlands, financial criminal investigations also employ asset tracing techniques. Investigating a suspect's assets acquired from the profits of a crime is known as financial investigation. This allows for the assets to be seized and either given to the victim or the state.

It is important to understand that the idea of financial crime investigation techniques involving money in the economic crime investigation system is one that can be used to investigate any type of criminal activity, but it is particularly useful when investigating financial crimes. The generally accepted Criminal Procedure Code serves as the conceptual basis for both the investigation of corruption and money laundering cases. However, the applicable theory of proof in these cases is the negative proof system, which is defined in the provisions of Article 183 of Law No. 8 of 1981 concerning the Criminal Procedure Code.

In the Netherlands, corruption is merely another type of fraud, not a particularly serious crime. As a result, combating corruption follows the same procedures as dealing with other illegal activity. In the Netherlands, practically every criminal act, including other general offenses, is subject to the use of the "following the money" principle and financial criminal investigation techniques. This is because they are aware of the financial crime and the idea of tracking the money. The definition of an investigation approach is one that uncovers criminal activity by following the trail of evidence left by the suspect's financial transactions, in addition to searching assets for evidence of criminal activity's proceeds. This is not the same as what some individuals believe, who only know how to apply the money idea to money laundering investigations, meaning that conventional methods are used instead of applying the money concept to corruption cases. Reading through Articles 69 and 77 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering will help you grasp the fundamentals of financial crimes and how financial crime



investigative techniques work. Article 69 provides that "To be able to carry out investigations, prosecutions and examinations in court for a crime of money laundering, it is not necessary to first prove the original crime According to Article 77, "The defendant shall demonstrate, by means of examination at a court hearing, that his assets are not the proceeds of a criminal act." Evidence is collected professionally by investigators and prosecutors, in contrast to the follow the money principle and financial crime investigative practices in the Netherlands.

The application of Islamic law against money laundering in conjunction with other Islamic norms is necessary when tracing assets in situations involving financial and fintech crimes. The expeditious formulation of SOPs that integrate the concepts and methodologies of financial crime investigation constitutes the initial phase in the Islamic law enforcement methodology. The process of looking into and prosecuting financial crime offenders who are also found guilty of money laundering offenses is covered by this SOP. It addresses the execution of these criminals as well. Furthermore, Islamic law enforcement was trained in-depth on the principles and practices of financial crime investigation.

The application of financial crime articles as a basis for criminal conduct and the TPPU Islamic law as an extensive asset tracing technique are the first steps toward improving Islamic law enforcement management. The facts are presented with an emphasis on the quality rather than the quantity of the evidence, utilizing a scientific proof system based on the theory of negative evidence, in which the judge's assessment of the defendant's guilt is based on the evidence's validity in accordance with Islamic law. This system integrates objective and subjective elements to determine the accused's guilt or innocence on an individual basis. Article 183 of the Criminal Procedure Code, which was approved by the Criminal Procedure Code, provides as follows: "A judge may not sentence a person unless he has the belief that a criminal act has occurred with at least two valid pieces of evidence." and that the accused party is responsible for doing so.

The condition a sine qua non theory is combined with the deductive reasoning method and the negative proof method. This is to prevent mistakes in the article's application and/or the pre-trial judge's reversal of the suspect's verdict. It is simpler to reveal cases when Islamic laws pertaining to financial crimes and fintech are implemented and integrated with TPPU Islamic law. This is especially true when it comes to the same investigative techniques. Islamic law enforcement is therefore



oriented at demonstrating not just the existence of mistakes or losses to the state in cases of criminal acts of corruption, but also the benefits that flow from these criminal acts, including losses to the state.

Islamic law enforcement officers must work together to develop a coordination and collaboration system that will enable the implementation of the follow the money concept and methods of investigating financial crimes within the Islamic law enforcement system. This will allow the officers to work as a cohesive unit against the development of new crimes like fintech and financial crime, and prevent them from being used as leverage by the criminals. Although the idea of "following the money" and financial criminal investigation techniques have now been developed and applied in many nations, only National Police investigators in Indonesia's criminal justice system have worked with the Netherlands regarding Islamic law enforcement elements. Since 2011, the Police Academy has trained detectives throughout Indonesia in financial crime investigative techniques. But if the idea of tracking money and Financial Criminal Investigation techniques is only known at the investigation stage and in police institutions, it cannot be applied in the criminal justice system.

As a result, only after the Police, Attorney General's Office, and Corruption Eradication Commission have equalized the Criminal Justice System can the notion of tracking the money and the Financial Criminal Investigation approach be implemented effectively. perception to put the technique into practice. Islamic law enforcement in the Netherlands has anticipated the challenges of dealing with the growth of financial crime and financial technology in the industrial era 4.0. As a result, they have accommodated these challenges in the concept of Islamic law enforcement strategy through financial methods of criminal investigation in the form of a harmonious and synergistic coordination and collaboration system. The coordination mechanism works in tandem with all private parties as well as government agencies and Islamic law enforcement personnel. A synergized data network is a true type of coordination that aids the forensic accounting and investigative audit processes during the asset tracing stage of a financial crime case, supported by regulations. For instance, while tracking down a suspect's assets, the investigator only needs to provide the registration number to the tax office, and they will promptly send the required tax information about the suspect by email. Similar to this, all you need to do to access the suspect's travel history is contact the travel agency, SMS provider, and conversation transcript. This is obviously not the same as the idea of the Islamic law enforcement bureaucracy in



Indonesia, where if Islamic law enforcement officials require the bank account of a suspect, they must go through a lengthy and convoluted process. For instance, they must identify the suspect first, have a specific official sign the application, and address it to Bank Indonesia.

In addition to establishing internal cooperation and coordination with criminal justice system components, it is necessary to establish cooperation and coordination with all financial service providers, providers of financial transactions, and providers of information technology, transaction and communication services. Because the asset tracing process involves access from all of these sources, cooperation is necessary in criminal proceedings.

Established by Asset Management Officers (PPA) who engage in investigative audits, forensic accounting applications, and investigations; bolstering the ability of Islamic law enforcement officials (Polri, AGSO, Judges, PPATK, BPK, BPKP, KPK, OJK, independent auditors, and so forth); fortifying the Central Authority in the execution of Mutual Legal Assistance (by enhancing databases, boosting coordination, and so forth); and fortifying the Storage House for State Confiscated Objects (by expanding its capacity and database, among other things). Third, to build a legal culture, the subsequent actions are required:

- a. Constructing infrastructure to support local businesses' economic activity.
- b. Creating internet data links and database systems.
- c. Community involvement in the administration of Islamic law.

Fundamental intelligence, or early data, is what makes Islamic law enforcement efforts against financial crimes successful. It serves as a guide for developing strategic initiatives. Forensic accounting and investigative auditing techniques are used in data and fact gathering. Each institution's or body's database systems aren't yet online and offline synergistically linked. This is one of the challenges encountered while tracking down assets through financial investigation techniques, including forensic accounting and investigative audit techniques. The legal culture of society, in particular, with regard to market orientation, purchasing power, financial transaction methods, and other related aspects, has a significant impact on the financial transaction data collection system.

Everyone in the financial services authority benefits greatly from the financial transaction system in the Netherlands, for instance, which already employs a card



system, in the transaction data system. The current transaction data system therefore considerably aids everyone's asset tracking activities. Nonetheless, traditional manual financial transactions are still used in Indonesia, particularly in rural regions and some towns. This will make it more difficult to trace assets and verify materials in court. The author claims that this is a barrier related to the legal culture.

It is therefore necessary to build legal culture, particularly infrastructure in the business world, in line with the development of technological systems, such as the use of card systems, virtual accounts or cryptocurrency, big coins (currency), in order to strengthen the existence of investigative audits and forensic accounting as methods of tracing assets in financial investigations. Digital currency), in order to enable the use of digital technology as an auxiliary instrument for financial crime investigation.

One of the main obstacles Islamic law enforcement faces in the fight against financial crimes is the difficulty of acquiring evidence in the asset tracing method. It is difficult to obtain accurate and trustworthy data since there are no regulations covering data systems and reporting for companies, organizations, and governmental entities. This issue is made worse by the absence of a data bank system—big data that is managed online and connected to all data sources. For instance, the legitimacy and quality of data for the entire population are not even guaranteed by the population data collection system (e-KTP). The Islamic legal system is hampered by this circumstance, particularly when it comes to financial crime and financial technology. The financial crime investigation framework and the idea of forensic auditing require a professionally managed data-based system with big data that ensures correctness, validity, and secrecy. This solution uses a simple, non-bureaucratic process to offer data online.

The process of reconstructing a case and creating a legal framework that is based on information gathered from an organized procedure of gathering facts and data is known as the investigative technique. These statistics and information are derived from victims in the community, which is also a very valuable source of data. Therefore, it is imperative that the community participate in the inquiry process based on legal awareness, as this is often what decides the Islamic law enforcement process itself. Consequently, in order to improve forensic audits in financial crime investigations, the public must be involved in supplying reliable and correct information and data that will be used to determine the course of the inquiry process.



8 FINTECH DALAM PERSPECTIF HUKUM ISLAM

"It has been to us sufyan from 'Amr from ibn Abās "In the past the markets of 'ukaz, the market of mijannah, and the market of dzu al-majāz were markets in the days of ignorance, when in the time of Islam Muslims felt it was sinful to revive these markets then came down the verse: it is not sinful for you to seek grace from our Lord- during the season of Hajj,"" says Bukhori, narrating the hadith-based legal foundation for fintech. Hadith suggests that the Islamic financial and economic system occasionally incorporated elements of the pre-Islamic system, provided that it adhered to Islamic legal regulations.

Because the topic only came to light later, fintech in Islam is a debate of modern jurisprudence (Qadhaya Mu'ashirah), which is jurisprudence that does not entirely have a law. It does, however, need the jurisprudential rules or the philosophical underpinnings of jurisprudence. In his book *Nahwa Fiqh Jadid*, Jamal al-Banna⁷ cites a number of arguments in favor of Ijtihad. Among them is the catchphrase "ajtahidu ra'yii walaa 'aalu," which states that imam Shafi'l asserts that ijthad and qiyas are two distinct terms with the same meaning and that ulama ushul fiqh understand ijthad to include a portion of qiyas. Even if the traditional academic interpretation of ijthad with Istihsan, urf, and masalih mursalah is ultimately about the sharia's maqasid, then ijthad itself is about the maqasid of Sharia.

Information Technology-Based Financing Services: National Sharia Council- Indonesian Ulema Council (DSN-MUI) Fatwa No.117/DSNMUI/II/2018 The Indonesian Ulema Council publishes *Based on Sharia Principles*, which is divided into eight sections. 1) Overarching guidelines 2) Legal regulations 3) topics related to law 4) the information technology-based finance service model; 5) the regulations pertaining to basic guidelines for such services; 6) the requirements pertaining to contracts and methods; 7) resolution of disputes; 8) terms of closure The fatwa addresses the worries of clients or users of financial technology business operations by providing clarification on the legal requirements and limitations that comprise the sharia basis of products offered by start-ups in Indonesia. Therefore, fatwas can be understood as offering legal certainty to boost public confidence in sharia-based financing services offered by Islamic financial technology startups, thereby raising public interest in using technology to conduct financial transactions.



9 MODEL OF LEGAL PROTECTION FOR CONSUMERS USING FINTECH

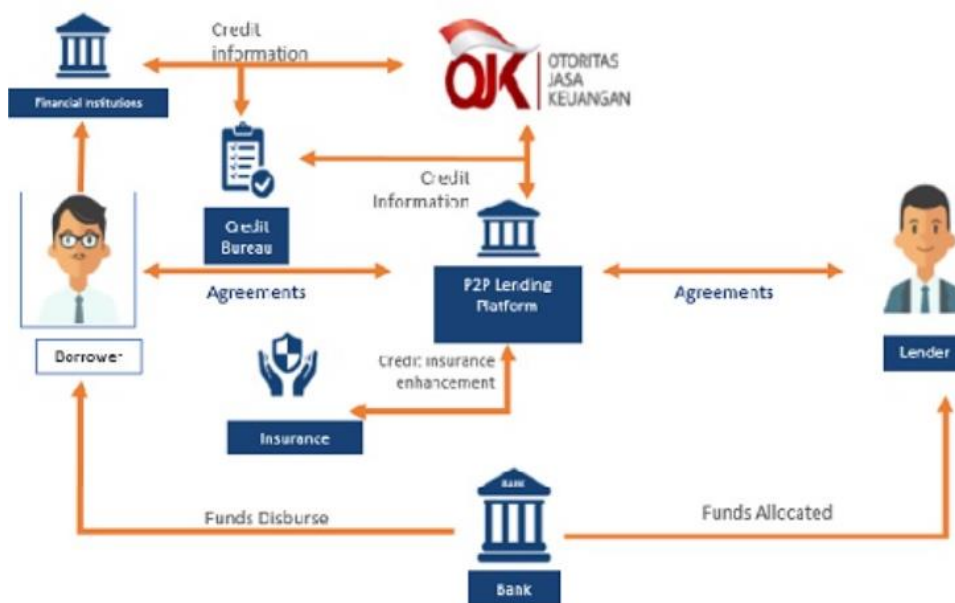
Protecting individual interests that are safeguarded by Islamic law is known as legal protection. In the business world, consumer protection—which is viewed both materially and formally—is becoming more and more important, given the speed at which technology is developing and its role as a productivity booster for producers of the goods and services needed to meet a company's objectives. The financial industry has made businesses and services extremely susceptible to negative acts by careless people who exploit technology for their own purposes. These activities can include misuse, which costs service customers money.

Peer-to-peer (P2P) lending, a type of financial technology (fintech) consumer protection, is anticipated to help achieve financial inclusion. In Indonesia, the availability of standard financial services for individuals remains very low. As of March 2019, there were only about 17 million credit cards in use in Indonesia, a country with a population of almost 270 million. Only a little amount has increased from 2012, when there were roughly 14 million. Ten to eleven million people own roughly 17 million of these cards, or only 6 percent of all adults. Merely 18% of Indonesians borrow money formally through banks or credit cards, according to a Global Findex survey. 36% of Indonesians said they would rather borrow money from friends and family or in a semi-formal manner by turning.

The fintech industry association, the Indonesian Funding Fintech Association (AFPI), has adopted the role of "co-regulation," or joint regulation, with the Otoritas Jasa Keuangan (OJK), in an attempt to bridge the gap between statutory restrictions and actual market behavior. We suggest a few measures to improve the consumer protection offered by P2P lending. Fintech is first granted access to customers' mobile data. However, in order to gather and use consumer data, the government must also enhance the structure pertaining to access permits. Second, as it impedes attempts to promote financial inclusion, the government should reevaluate the complete prohibition on using cellphone data. OJK can concentrate on offering a precise structure for consent for access to personal information. As a matter of fact, it is part of the POJK 77 modification that is presently being considered in the DPR and is in favor of the ratification of the Personal Data Protection Bill (PDP). Figure 2 displays the ensuing consumer protection model.



Figure 2. Business model flow and consumer protection



According to Jimly Asshiddiqie, there is a close and important relationship between the concept of a legal state and the legal system proposed by law rences M. Friedman since it is well-known that a legal state needs a legal system in order to achieve its aims. The protection of the entire Indonesian nation and its blood is the ultimate goal of the Indonesian state, which is to uphold Islamic law. To this end, written and unwritten regulations, as well as formal and material Islamic law—the latter being the core of Islamic law—are required. The necessity for legal culture, which places a focus on culture in general and includes customs, beliefs, behaviors, and ways of thinking that influence social forces in society, as well as the existence of legal institutions, the legal machinery, and Islamic law enforcement mechanisms, all of which constitute legal structures.

Islamic law addresses a dynamic community rather than being in a vacuum and dealing with abstract concepts. Diverse new findings that have the potential to drastically alter patterns of community engagement define a dynamic society. The creation of a new business model known as fintech is one of the recent breakthroughs that has altered people's patterns of interaction. Thus, the idea of an Islamic legal state serves as the foundation for Indonesia's regulations and oversight of the Fintech industry. Because this is the mandate and ideals of our constitution and the goal of the Indonesian State, which is to protect the entire Indonesian nation and all of Indonesia's blood, the state must be present to regulate and supervise the Fintech business.

Protecting the Indonesian people when they transact in the Fintech business is one manifestation of this goal.

Fintech service providers who have registered with the Otoritas Jasa Keuangan (OJK), They are subject to various restrictions when conducting their business activities. Firstly, they are not permitted to engage in any business activities beyond the scope of this OJK regulation. Secondly, they are not permitted to act as lenders or recipients of these loans. Lastly, they are not permitted to provide any information that does not comply with applicable regulations, among many other prohibitions. The rationale behind these bans is to furnish Fintech service consumers with legal safeguards. If it is determined that organizers have broken the rules, they will face administrative penalties.

Islamic law Number 8 of 1999 concerning consumer protection is relevant to online commerce and electronic transactions, particularly to fintech financial services companies. To avoid various hazards of loss committed by business actors, fraud, and other crimes, people who are consumers purchasing and selling products, goods, or services online or who make payments via the internet need to be more cautious and selective as well as have some sort of legal protection. It frequently happens in online commerce, particularly when it comes to transactions using digital material or the internet.

Regarding the legal protection that must be governed in order to support the growth and application of online commerce, particularly financial services (fintech), regulation must take into account the viewpoints of the business actor or organizer, the client or consumer, the product that is the subject of the transaction, and the transaction itself. Resolving conflicts arising from online transactions, the legitimacy of agreements based on the Civil Code, and the lack of an organization capable of acting as a guarantee are among the issues impeding the development of online business.

9 CONCLUSIONS

This research concludes that the development of digital technology in the era of globalization has spurred the development of financial technology, which has an impact not only on economic growth, but also has an impact on the development of economic crimes (financial crimes or economic crimes). The emergence of new



dimensions of crime, especially in the world of economics or financial crimes using technological systems as a means (financial technology crimes), is a challenge in business Islamic law enforcement.

The research argues that the challenge of Islamic law enforcement against financial crimes can be to develop concepts and methods of Islamic law enforcement, namely by applying anti-fraud concepts to financial crime investigations. This method involves Forensic Accounting, investigative audits in tracing assets in the context of financial investigations.

Finally, this research suggests that Islamic law enforcement strategies against financial crimes, especially Financial Technology (Fintech), must be developed in a complete legal system both in terms of legal substance, legal structure and legal culture. Development of legal substance is carried out through changes to regulations that accommodate advances in financial crimes and financial technology crimes. It requires changes to the legal structure in investigative methods, auditing and forensic accounting, internal and external coordination systems as well as synergistic and harmonious Islamic law enforcement; Meanwhile, the development of legal culture is carried out through the development of a database system using big data, and an online data network system, as well as the development of business economic infrastructure by utilizing digital technology.

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