

## Legal Positivism and *Fiqh Muamalah* Paradigm's on Indonesian Sharia Fintech Legal Framework

Saifullah<sup>1</sup>, Faishal Agil Al Munawar<sup>2</sup>, Kurniasih Bahagiati<sup>3</sup>,  
Aditya Prastian Supriyadi<sup>4</sup>

**Abstract.** *Sharia Financial Technology in Indonesia is regulated in OJK Regulation No. 10/POJK.05/2022 Concerning Information Technology-Based Joint Funding Services. According to researchers, enacting these regulations still needs improvement because they are disproportionate to the basic rules for implementing Sharia Fintech in Indonesia. A Fiqh Muamalah study needs to be conducted to reconstruct these rules into proportional rules. This research uses normative legal research methods. This research uses a statutory regulatory approach related to Fintech and DSN MUI Fatwa, as well as the Fiqh Muamalah conceptual approach. The results show that based on the Fiqh Muamalah indicator, OJK Regulation No. 10/POJK.05/2022 still needs to be in harmony with Fiqh Muamalah. The OJK Regulations have no concrete rules regarding what contracts can be used for Sharia Fintech schemes.*

**Keywords:** *Fiqh Muamalah; Sharia Fintech; Qardh Contract*

**Abstrak.** *Financial Technology Syariah di Indonesia saat ini diatur dalam Peraturan OJK No. 10/POJK.05/2022 Tentang Layanan Pendanaan Bersama Berbasis Teknologi Informasi. Keberlakuan Peraturan tersebut masih perlu diperbaiki karena tidak proporsional sebagai aturan dasar penyelenggaraan. Perlu ada kajian Fikih Muamalah untuk Merekonstruksi aturan tersebut menjadi aturan yang proporsional. Penelitian ini menggunakan metode penelitian hukum normatif. Pendekatan penelitian menggunakan Pendekatan Peraturan Perundang-undangan yang terkait dengan Fintech dan Fatwa DSN MUI, serta pendekatan Konseptual Fikih Muamalah. Hasil Penelitian menunjukkan, berdasarkan indikator Fikih Muamalah, Peraturan OJK No. 10/POJK.05/2022 masih tidak harmonis dengan Fikih Muamalah. Dalam Peraturan OJK tidak ada aturan konkret mengenai akad apa yang dapat digunakan untuk skema Fintech Syariah.*

**Kata kunci:** *Fikih Muamalah; Fintech Syariah; Akad Qardh*

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<sup>1,2,3,4</sup>Maulana Malik Ibrahim State Islamic University of Malang, Indonesia

E-mail: <sup>1</sup>saifullah@syariah.uin-malang.ac.id, <sup>2</sup>faishalagilalmunawar@uin-malang.ac.id.ac.id,

<sup>3</sup>kurniasih.bahagiati@uin-malang.ac.id, <sup>4</sup>aditya.prastian@uin-malang.ac.id

## Introduction

Technological advancements in the economy are reshaping Islamic law dynamics to integrate internet networks into financial services guided by Sharia values (Alshater et al., 2020). Islamic law responds urgently to the growth of interest-based conventional fintech, which contradicts Islamic principles (Alshater et al., 2022). Global awareness of Sharia principles in business is fostering the development of Sharia fintech entities (Oladapo et al., 2021), positively impacting the global economy, as evidenced by Sharia fintech's \$3 trillion growth globally in 2019 (Islamic Finance Development Report, 2019). Technological sophistication is a key driver, influencing customer preferences, particularly in P2P services (Darmansyah et al., 2020), enhancing user experience and boosting confidence in Sharia-compliant financial access (Abdeen et al., 2019).

Islamic technology integration in business must adhere to Fiqh Muamalah principles, which govern transactions involving *maysir*, *gharar*, and *usury* (Saputra et al., 2022). Fiqh Muamalah serves as the foundational guidance for applying Sharia principles in response to technological advancements disrupting business economics (Julita & Soemitra, 2022). Despite technology becoming integral to modern transactions, Sharia principles must be upheld (Widiastuty, 2022). Fiqh Muamalah's role remains crucial in filtering transactions, even in the absence of applicable national laws (Siswadi & Soemitra, 2022). The Indonesian Ulama Council crystallized Fiqh Muamalah into guidelines with Fatwa DSN MUI No. 117/DSN-MUI/II/2018 on Fintech Services Based on Sharia Principles. Before this, the Financial Services Authority (OJK) responded to fintech developments in 2016 with OJK Regulation No. 77/POJK.01/2016, establishing the legal framework for online financial services in Indonesia.

Therefore, addressing the legality of Sharia Fintech required a solution. Existing regulations focus solely on online loan services, which are more aligned with conventional fintech practices. Indonesia, with the world's largest Muslim population, holds significant potential to enhance its economy through the Sharia fintech sector. However, as highlighted in a study by Nurhasanah and Rahmatullah (2020), Sharia Fintech faces implementation challenges due to the need for regulatory frameworks similar to those for conventional fintech. These legal hurdles have impeded the substantial potential of Islamic fintech in Indonesia, leading to inefficient licensing processes and a proliferation of illegal fintech practices (Muryanto et al., 2021).

The issue of Sharia Fintech Law in Indonesia persisted despite OJK issuing Regulation No. 10/POJK.05/2022 concerning Information Technology-Based

Joint Funding Services, replacing POJK No. 77/POJK.01/2016. This regulation addressed the previously unregulated sectors of conventional and Sharia fintech. However, the regulation of Sharia fintech under POJK needs further refinement to ensure proportionality. Article 1 number 5 of the OJK Regulation specifies that contracts must be in writing and adhere to Sharia principles.

The emphasis on Sharia principles is underscored by the fatwa of the clergy (Article 1 number 4). However, these regulations have not provided legal certainty for a clear and enforceable contractual system to be adhered to by Sharia fintech operators. In muamalah fiqh, contractual teachings are diverse, and not all contracts can be directly applied to Sharia fintech services. In contrast, Islamic Banking under Act No. 21 of 2008 has regulated 9 types of contracts (Mudharabah, Musyarakah, Ijarah, etc.) applicable in the Islamic banking system. Furthermore, the POJK regulations concerning Sharia principles, which solely rely on the MUI Fatwa, cannot be obligatory. The MUI Fatwa does not form part of the traditional legal sources binding on all Indonesians.

Several studies highlight significant aspects of Sharia fintech in Indonesia. For instance, Irwan Sugiarto and Hari S. Disemadi's research reveals that Indonesians remain cautious about adopting Islamic finance, necessitating the use of DSN MUI Fatwa contracts to safeguard customers (Sugiarto & Disemadi, 2020). Aam Slamet Rusydiana's work identifies policy oversight and human resource qualifications as major obstacles hindering the advancement of Islamic financial technology in Indonesia (Rusydiana, 2018). Additionally, Cucu Susilowati et al. (2021) conducted comparative research on fintech regulations between Indonesia and Malaysia, noting Indonesia's need to update regulations such as POJK No. 77/POJK.01/2016 to accommodate Sharia fintech, unlike Malaysia's earlier regulation under the Islamic Financial Services Act (IFSA) in 2013 (Susilowati et al., 2021).

The academic study of Islamic fintech has explored various dimensions, but few have delved into the integration of *Fiqh Muamalah* for constructing comprehensive and mandatory Islamic fintech laws in Indonesia. This research diverges from previous studies by focusing on OJK Regulation No. 10/POJK.05/2022, whereas earlier studies centered on POJK No. 77/POJK.01/2016. The objective is to propose enhanced regulations for Sharia fintech in Indonesia, crucial for optimizing the potential of Islamic fintech businesses. The growth of Islamic fintech globally underscores the necessity for balanced regulations involving stakeholders to ensure transparency, effective business monitoring, and precise criteria for business selection (Liu et al., 2020; Shaikh, Salman Ahmed, 2020).

Proportional legal provisions for Sharia fintech will establish community oversight in the economic context. The law plays a crucial role in social control, shaping a culture of self-regulation, fair contracts, and organizational integrity to prevent one-sided benefits and promote economic justice (Ellickson, Robert C, 1987). This legal certainty for Sharia fintech in Indonesia ensures a balanced business environment, as fintech addresses friction in financial contracts and lowers costs in Sharia banking practices (Hassan et al., 2020). Human development is pivotal for strengthening Indonesia's Islamic fintech sector (Thakor, Anjan V, 2020), requiring mandatory regulations to enhance stakeholder compliance and improve public financial literacy. This approach fosters a fintech ecosystem where transactions align with Fiqh Muamalah principles, promoting ethical awareness and sustainable growth (Laldin, P.D., & Djafri, 2019).

## **Literature Review**

### **Legal Positivism**

POJK No. 10/2022 replaces POJK No. 77/2016 and regulates Information Technology based Lending and Borrowing Services comprehensively. It introduces changes such as restrictions on foreign investors, legal entity requirements, minimum capital amounts, Controlling Shareholders (PSP) regulations, updated licensing procedures, and rules on personal data security, equity, and human resources management. Notably, it includes provisions for conventional service providers to convert to Sharia-compliant ones (Articles 10-14), outlining technical procedures for this transition. However, POJK No. 10/2022 does not extensively detail the implementation of Sharia principles, as it primarily serves as a regulatory framework accommodating online lending transactions under Sharia principles without explicitly explaining Sharia law products in this context.

POJK No. 10/2022, or Financial Services Authority Regulation No. 10/2022, addresses Information Technology-based Lending and Borrowing Services in Indonesia. It replaces POJK No. 77/2016 and introduces more comprehensive rules and amendments. Key provisions include restrictions on foreign investors, requirements for legal entity forms, minimum capital requirements, rules for Controlling Shareholders (PSP), updates on licensing procedures, regulations on personal data security, guidelines for equity and human resources management, and procedures for converting from conventional to Sharia-compliant service providers (Articles 10-14). The regulation aims to provide a stable regulatory framework for these services while accommodating Sharia principles for interested providers.

## Fiqh Muamalah

Fiqh Muamalah pertains to laws governing human actions concerning their assets, encompassing transactions like buying, selling, leasing, and pawning. Its legal framework can be categorized into two areas: 1) Muamalah governed directly by the Quran and Hadith; and 2) Muamalah governed by laws derived from the *ijtihad* of Islamic jurists, which adhere to general rules and principles within Sharia. The second category of muamalah involves specific discussions concerning engagement provisions and agreements aimed at fulfilling needs across various economic activities (Sri Sudiarti, 2018).

Fiqh Muamalah is rooted in the principles of contracts and Islamic business ethics. These principles encompass the rules governing muamalah activities, particularly agreements known as the principles of contract execution (agreement): 1. Generally, all forms of muamalah are permissible (*mubah*), unless explicitly prohibited by the Quran and the Sunnah of the Prophet. Islamic jurisprudence allows for the development of new forms and types of muamalah that meet evolving societal needs. 2. Muamalah is based on mutual consent (*ijab*) without coercion. Islam emphasizes the preservation of free will; contracts involving coercion, deception, or trickery are considered *fasid* (void). 3. Muamalah aims to bring benefits and prevent harm in society. Islamic jurisprudence dictates that muamalah should consider societal benefit and harm avoidance. Any form of muamalah that harms society is not justified. 4. Muamalah is conducted with justice, avoiding oppression and exploitation. This principle asserts that any muamalah containing oppressive elements is impermissible.

The implementation of contracts between parties must adhere to several principles: voluntary consent (*ikhtiyari*), trustworthiness (*amanah*), caution (*ihtiyati*), constancy (*luzum*), mutual benefit, equality (*taswiyah*), transparency, capacity, facilitation (*taisir*), good faith, and lawful reasons. These principles align closely with contract law principles under Indonesian positive law. However, Sharia contracts differ fundamentally in certain aspects not found in conventional agreements: 1. Constancy (*luzum*): Sharia contracts maintain the original value of the object of sale or profit-sharing ratios in partnerships. Money is not treated as a commodity, thus the principle of the time value of money is not recognized. 2. Transparency: Sharia contracts require full disclosure without deception. All rights and obligations of each party, particularly those related to risks, must be clearly stated in the contract (Hendra Cipta, 2016).

Islamic business ethics encompass six main principles rooted in Islamic values: truthfulness, trustworthiness, honesty, sincerity, knowledge, and justice. These principles are derived from Quranic teachings and shape the ethical framework

of Islamic business practices: 1. Unity (Tauhid): Emphasizes the integrated view of business vertically and horizontally, aligning with Islamic principles. 2. Balance (Equilibrium/Justice): Advocates fairness in business dealings and condemns dishonest and unjust practices. 3. Free Will: Acknowledges human desires to fulfill personal needs, tempered by obligations to society through charity (zakat) and alms. 4. Responsibility: Stresses accountability in exercising free will to achieve justice and unity. 5. Trustworthiness (Truth, Goodness, Honesty): Encompasses truthful intentions, attitudes, and behaviors throughout the transaction process, including profit determination and risk prevention. Prohibited business behaviors include: 1. Riba: Usury or interest-based transactions. 2. Fraud: Deceptive practices that mislead parties involved. 3. Taking Unlawfully (Taking Others' Rights): Unauthorized appropriation of others' rights. 4. Cheating (Gharar): Transactions involving excessive uncertainty or ambiguity. 5. Hoarding (Ihtikar): Stockpiling goods to manipulate market prices. 6. Betrayal: Breach of trust in business dealings. These principles guide ethical business conduct by Islamic teachings (Fakhry Zamzam and Havis Aravik, 2020).

## Methods

The normative legal research method serves as the foundation for addressing legal issues discussed in this article to achieve comprehensive solutions. Normative legal research involves formulating legal principles, doctrines, and arguments to provide analytical responses, such as problem-solving (Christiani, Theresia Anita, 2016). This method is deemed suitable for analyzing the intricate regulations governing Islamic fintech implementation in Indonesia. Additionally, the writer adopts a conceptual approach to thoroughly examine the issues (Elliott, R., & Timulak, L., 2005). The concept of Fiqh Muamalah will be pivotal in proposing alternative, more balanced Sharia fintech legal frameworks in Indonesia.

## Results and Discussion

Financial Technology (Fintech), specifically Online Loans, encompasses various types that have gained significant traction in society. One prominent type is peer-to-peer lending (P2P) fintech, which provides non-banking financial services to the public through internet platforms, offering high flexibility. In Indonesia, the growth of P2P Fintech has been rapid, contributing substantially to national economic growth. Statistical data illustrating the development of fintech can be observed in the table below:

Table 1. Indonesia Conventional and Sharia Fintech Development Data 2019 – 2022

Years	Total*	Registered Conventional Fintech Assets	Registered Sharia Conventional Fintech Assets
2019 (December)	164	Rp 1.060.012.958.483	Rp 39.400.630.102
2020 (December)	149	Rp 3.636.486.269.415	Rp. 74.677.072.107
2021 (December)	103	Rp 3.986.220.000.000	Rp. 74.130.000.000
2022 (July)	102	Rp 4.767.690.000.000	Rp. 114.750.000.000

\* Combination of Conventional and Sharia Fintech

Sources: Author's processed data (2022) on Fintech JK statistical data 2019-2022

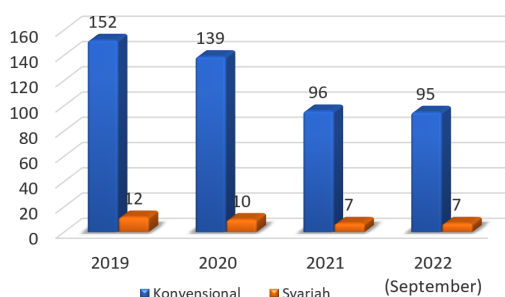
The growth of Fintech in Indonesia is evident not only in the rise of organizers' assets but also in increased community access to financing through fintech services annually. People now consider fintech as an alternative funding source alongside traditional banking. This growth is reflected in the lending data from fintech platforms to the public between 2019 and 2022.

Tabel 2. Fintech Loan Disbursement Data in Indonesia for 2019-2022

No.	YEARS	TOTAL DISTRIBUTION
1.	2019	Rp 7.590.000.000.000
2.	2020	Rp 8.590.000.000.000
3.	2021	Rp 13.610.000.000.000
4.	2022 (July)	Rp 20.670.000.000.000

Although there has been an increase in the distribution of financial funds to the public, there has been a significant decrease in the growth of legal loan entities. Data illustrating the decline in illegal loan entities can be observed in the graph below:

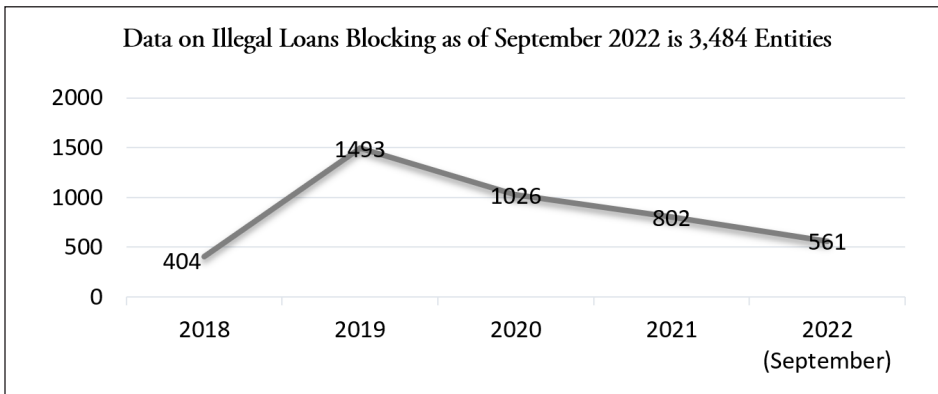
Figure 1. Data on the Development of Legal Lending Platforms in Indonesia (2019-2022)



Sources: Processed data by the author of the 2019-2022 OJK fintech overview data

The increasing trend of loans in Indonesia poses challenges, particularly with the decline of legal fintech options, which fosters the growth of illegal fintech in society. Unclear regulations and licensing from the OJK contribute to the flexibility of illegal fintech activities. The graph below illustrates the government's initiatives to combat unlawful fintech platforms in Indonesia.

Figure 2. Data on Illegal Loans Blocking as of September 2022



Sources: Author Processed Data on illegal loan blocking data 2018–2022 (September)

### **Qardh Study in Fiqh Muamalah: Prohibitions and Permissions in Lending Transactions**

The online loan mechanism used by fintech falls under the category of Qardh (Money Loan) in Fiqh Muamalah studies. Qardh derives from the root "al-qath", which means to cut, referring to the transfer of property from the lender (muqridh) to the borrower (muqtaridh). According to Malikiyyah, Syafi'iyah, and Hanabilah scholars, Qardh involves the lender giving property to the borrower in exchange for similar assets returned by the borrower, such as comparable goods, animals, or merchandise (Wahbah Al-Zuhaili, 1985, Volume 4). In essence, Qardh is akin to a transaction involving the transfer of ownership, similar to buying and selling, as it entails the exchange of property with assets (Abu Bakr bin Mas'ud Al-Kasani, 1986, Volume 7). It is also categorized under the broader concept of salaf (money exchange) (Ibnu Qudamah, 1997, Volume 4).

Imam al-Qarafi (died 684H) viewed qardh as resembling a transaction of sale and purchase. However, the Maliki school distinguishes qardh from buying and selling based on three Sharia principles. Firstly, usury applies if qardh involves weighed goods, according to the Hanafiyyah and Hanabilah, including gold, silver,



and basic commodities. Conversely, Maliki and Shafi'i scholars apply this to food or other valuable items. Secondly, muzabanah refers to transactions where goods are not specified, such as selling animals. Thirdly, qardh is akin to buying and selling when it involves mitsliyat commodities assets with uniformity and equity in the market, such as measured assets like wheat, weighed assets like cotton and iron, counted assets like eggs, and goods sold by length like clothing (Al-Qarafi, 2010, Volume 4). This categorization aims to benefit the community and facilitate acts of charity. Therefore, qardh is considered impermissible unless used for altruistic purposes (Wahbah Al-Zuhaili, 1985, Volume 4).

To validate a qardh contract, several conditions must be met. Firstly, it requires shighah consent, which includes qabul or other recognized forms like mu'athah, though the Shafi'i scholars consider mu'athah insufficient for validity. Secondly, both the lender and borrower must possess the capacity to engage in the contract, being mature, of sound mind, acting voluntarily without coercion, and having full control over their wealth. Those excluded are minors, mentally incapacitated individuals, those under financial restrictions, coerced individuals, and guardians acting without necessity. Thirdly, according to the Hanafi scholars, the lent property must be mitsliyat (similar), whereas the majority of scholars permit any assets suitable for use as loans, including money, grain, and assets valued by qimiy (monetary) standards like animals and immovable property. The assets must be precisely quantifiable in measure, weight, number, or length, and of a type that is identifiable and not mixed with others, ensuring easy returnability (Wahbah Al-Zuhaili, 1985, Volume 4). Therefore, a qardh contract is invalid if undertaken by someone incapable of managing assets, as it involves transactions akin to buying and selling. Moreover, consent and qabul are essential for validity, as qardh involves granting ownership rights, akin to other contracts like sales and grants (Abu Ishaq Al-Syirazi, 1992).

The scholars from all four schools of thought agree that the loaned goods should ideally be returned at the place where the qardh contract was initiated. However, it is permissible to return them elsewhere if it does not incur additional transportation costs or other expenses, and if adequate security can be ensured. If such conditions require additional expenses, it is at the discretion of the lender to accept this arrangement (Al-Khatib Al-Syarbini, 1997). All scholars concur that if the borrower takes mitsliyat (similar) property as a loan, it must be returned in the same form. Regarding qimiy (monetary) property, scholars other than the Hanafiyah allow the borrower to return property of similar value and characteristics, such as substituting a sheep for a goat. Scholars outside the Maliki

school hold that the lender can decide whether to accept replacement property after the borrower has received the loan, as qardh contracts typically have no specific time limit. In contrast, according to Maliki scholars, repayment should occur at the initially agreed deadline, as they believe qardh contracts can be time-limited (Wahbah Al-Zuhaili, 1985, Volume 4).

According to Syafi'iyah and Hanabilah scholars, there is no right of khiyaar majlis (cancellation option) in a qardh contract. Khiyaar, which means the right to cancel, does not apply because either party can terminate the contract at will (Abu Ishaq Al-Syirazi, 1992). Additionally, the majority of fiqh experts (jumhur fuqaha) do not allow specifying a time limit as a condition in a qardh contract. If a qardh loan is delayed beyond a specified time, it remains obligatory. This differs from sale or lease contracts, where delays are not permissible without penalty (Wahbah Al-Zuhaili, 1985, Volume 4).

Hanafi scholars specify four circumstances where deferment in a qardh contract becomes binding. Firstly, through a bequest, where the lender bequeaths the loan to another for a specified period, forbidding heirs from demanding repayment early. Secondly, in cases of doubt about the contract's validity, the lender's decision to defer it makes the time limit binding. Thirdly, a court ruling can enforce a time limit on a qardh contract based on opinions from Malik and Ibn Abi Laila. Fourthly, through hiwalah (debt transfer), where a borrower transfers debt to a third party with deferment, or to another borrower whose debt is also deferred, thus transferring the liability. Hanafi scholars permit withdrawal from a qardh contract under these conditions, though it's not obligatory (Wahbah Al-Zuhaili, 1985, Volume 4). Imam Malik allows deferment in qardh based on mutual agreement and the freedom of both parties in initiating or terminating the contract (Ibnu Qudamah, 1997, Volume 4).

Scholars have varying views on the permissibility of profitable qardh contracts. The Hanafi school, in its dominant opinion, deems qardh that entails pre-determined profit as impermissible. It considers such practices contrary to customary norms unless explicitly permitted by the lender. The recipient of the loaned goods, typically the lender, cannot exploit the loan in ways that foresee profit without prior permission. While some Hanafi scholars allow for profit if expressly permitted, others maintain its impermissibility under Sharia principles against usury, labeling it as makruh (disliked) if conditions are stipulated (Ibnu 'Abidin, 2003).

The Maliki scholars assert that a qardh contract becomes void if it generates profit, likening it to usury. They also deem it impermissible to exploit the borrower's

property, such as using their possessions without genuine respect or need. Furthermore, gifts from borrowers to lenders are forbidden if intended to delay debt repayment, regardless of any new customary practices or social obligations. Such gifts must be returned as equivalent goods or their appropriate value if they were priced items. If there remains a debt obligation between the parties, overpayment by the borrower, whether in quality or quantity, is permissible under the law, whether it occurs before or after a specified repayment date. Additionally, any conditions, promises, or customary practices that increase the debt in a qardh contract are prohibited according to their interpretation.

According to the Maliki scholars, if any additional benefit or increment is added to a qardh contract, it is permissible as long as it is not due to specific conditions, promises, or customary practices. For instance, it is narrated that Prophet Muhammad borrowed a young camel and returned it with an older and more preferred one, which was deemed acceptable. However, if the increment is substantial in size, Imam Malik's opinion in *al-Mudawwanah* states that such additions are generally impermissible, except for very minor increases. In contrast, Imam Ibn Habib (died 853H), another Maliki scholar, permits such additions without restriction.

The Shafi'i and Hanbali scholars assert that qardh contracts intended to generate profit are impermissible. Examples include lending a thousand dinars with conditions like requiring the borrower to sell his house to the lender, or stipulating that the borrowed amount must be repaid with a superior quality dinar coin. They base their stance on Prophet Muhammad's prohibition of combining debt (*salaf*) with commercial transactions. *Salaf* refers to qardh in the dialect of Hijaz. Narrations from companions such as Ubay bin Ka'ab, Ibn Mas'ud, and Ibn Abbas also reinforce the prohibition of profit-seeking qardh contracts. Despite this, the qardh contract itself remains valid, but any condition aimed at generating profit, whether through money or goods, regardless of amount, is considered void. Qardh is viewed as a contract meant for mutual assistance and an act of worship.

In cases where someone owes money without specific conditions, they may repay the debt with goods of better quality or nature, or even sell their house to settle the debt, which is permissible according to Islamic teachings. This practice is supported by the historical accounts of Abu Rafi' (may Allah be pleased with him), who narrated that the Prophet Muhammad (peace be upon him) once owed someone a Bakr camel. When he received a better camel as a gift, he instructed Abu Rafi' to repay the debt with that camel, despite its higher quality. Abu Rafi' initially expressed difficulty in finding a camel of equal quality but eventually complied.

This incident underscores the principle that one should strive to repay debts with the best available resources, as exemplified by the Prophet's statement that the best among people are those who are best in paying off their debts. Similarly, Jabir bin Abdullah (may Allah be pleased with him) also narrated an incident where the Prophet Muhammad (peace be upon him) repaid him with more than what he had owed, illustrating generosity in fulfilling financial obligations.

The prohibition on qardh that brings benefit isn't based on a hadith, as confirmed by Imam Hafidz az-Zalla'i (died 762H), a Hanafi scholar, in his work *Nasbur Raayah* and its commentary. This prohibition primarily concerns qardh contracts involving conditions or customary practices that lead to profit, as explained by Imam al-Karkhi (died 952H), another Hanafi scholar, and other jurists. In the Shafi'i school, there are differing opinions on borrowing where the lender adds something extra upon repayment, with the stronger view leaning towards it being *makruh* (disliked). Among Hanbali scholars, there are two narrations, and the more authentic opinion permits such transactions without any dislike attached to them.

Therefore, the qardh (interest-free loan) contract is deemed permissible under two main conditions: First, it must not involve any form of benefit. If the benefit accrues solely to the lender, scholars unanimously deem it impermissible due to Shariah prohibition and ethical concerns. However, if the benefit accrues solely to the borrower, it is allowed. It is only permissible if both parties benefit in cases of dire necessity. Qardh is also permissible when there is concern for the safety of the lender's wealth during travel, such as lending to a trustworthy person who can safeguard it. Secondly, the qardh contract should not be combined with other transactions like buying and selling. Regarding gifts from the borrower, according to Maliki scholars, the lender should decline them to avoid potential delays in repayment. However, it is permissible if the gift is given for reasons unrelated to the debt itself (Wahbah Al-Zuhaili, 1985, Volume 4).

### **Fintech Law Study on Indonesian Sharia Fintech Contract Arrangement**

According to the Fatwa No. 117/DSN-MUI/II/2018 issued by the National Sharia Council-Indonesian Ulama Council (DSN-MUI) regarding Information Technology-Based Financing Services based on Sharia principles, a Qardh contract is defined as a loan agreement where the borrower must repay the borrowed amount by an agreed time and method. By the Sharia Economic Law Compilation, Qardh is a contract stipulating the return of the borrowed nominal amount without any

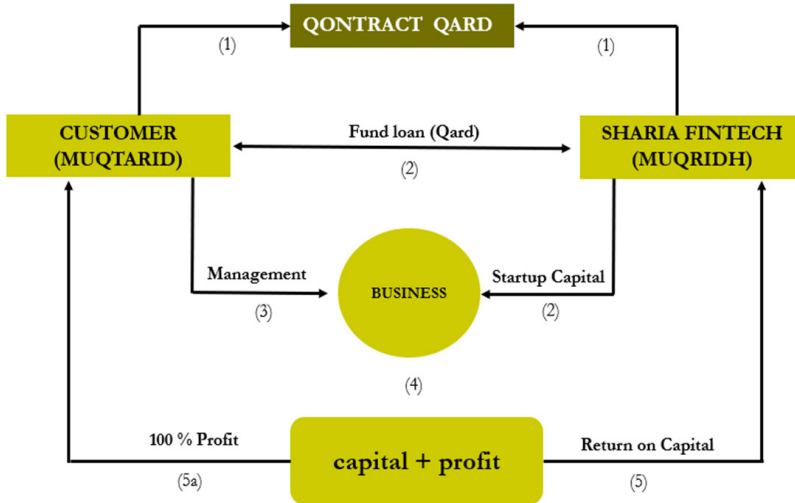
additional funds beyond the principal loan. However, administrative costs such as information processing, data collection, or transaction taxes may be borne by the borrower, as delegated by the loan service provider (Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung Republik Indonesia, 2011).

In contemporary *Fiqh Muamalah* studies, online borrowing (online loans) is considered permissible (*mubah*). The legal transfer is recognized through customary (*adat*) and sharia-compliant legal formalities, despite physical goods not being physically handed over. The Accounting and Auditing Organization For Islamic Financial Institutions (Accounting and Auditing Organization For Islamic Financial Institutions, 2015, p. 57) states that while online loan transactions are permissible (*mubah*), users should heed three main considerations: Firstly, avoiding interest that exceeds the loan amount upon repayment; secondly, adhering to the explicit prohibition of usury (*haram*) in the Qur'an and numerous hadiths of Prophet Muhammad; and thirdly, refraining from delaying debt payments when financially capable, while forgiving those unable to repay debts is highly commendable (<https://mui.or.id/opini/30474/fenomena-pinjaman-online-pinjol-dalam-telaah-fikih/>).

Based on the *Fiqh Muamalah* study, the most suitable Sharia principle for application in Sharia fintech systems is the *qardh* contract. This contract involves transferring property rights to assist others, require borrowers accessing fintech services to repay equivalently. *Qardh* contracts align with Sharia fintech's *riba*-free principle, barring lenders from seeking profit. However, the study allows for profit elements benefiting the borrower, whereas profits for both parties or solely for lenders are prohibited. Exceptions include cases where asset security is a concern, applicable in fintech funding services. Misuse risks underscore the importance of regulating profits in Sharia fintech, permitted only under specific conditions and otherwise prohibited. Additionally, *qardh* contracts within fintech must exclude accompanying transactions beyond its intended scope.

The author emphasizes the need for concrete regulation of the *qardh* contract in positive law to enforce Sharia principles in OJK regulations, which currently face legal gaps. This step is crucial to ensure Sharia-compliant measures similar to those in Islamic banking in Indonesia. Clear legal frameworks using the *qardh* principle are essential to prevent misuse of contractual transactions under the guise of Sharia. These regulations will guarantee Sharia fintech transactions through Islamic channels. To illustrate the implementation of Sharia fintech business contracts via the *qardh* contract, the author proposes a business model scheme, as outlined below:

Figure 3. Illustration of the *Qardh* Contract Scheme in the Sharia Fintech Application (Author's illustration)



The regulations governing online loans through financial technology (fintech) applications are outlined in Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as in the fatwa issued by the National Sharia Council-Indonesian Ulama Council (DSN-MUI) No. 117/DSN-MUI/II/2018 regarding information technology-based financing services based on Sharia principles. According to the fatwa, online loans facilitated by technology must strictly adhere to Sharia principles, ensuring avoidance of practices such as usury (Riba), uncertainty (Gharar), speculation (Maysir), non-transparency (Tadlis), harm (Dharar), and injustice (ZhuLM). Usury involves an increase in principal or deferred payments, while uncertainty relates to vague terms about the contract's object quality or delivery. Non-transparency refers to hiding defects in the contract object to deceive the buyer, while harm encompasses actions that can cause damage to another party. These principles differentiate legal online loans from illegal ones within Sharia-compliant financing services (Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI) NO: 117/DSN-MUI/II/2018 Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah).

Online loans, known as Pinjol in Indonesia, are proliferating rapidly due to their perceived ease and speed in management and disbursement. This convenience has attracted people to consider using online loans. However, in practice, online

loans often lead to numerous issues, including high interest rates, complex billing procedures, and even threats. Despite these challenges, borrowing through online platforms has become increasingly familiar within the community, contributing to the rise in loan-related cases (<https://suaraaisyiyah.id/pinjaman-online-perspektif-islam/>).

The rapid advancement of technology has transformed socio-economic interactions, leading to the proliferation of illegal online loans. Online loans, also known as Peer-to-peer Lending (P2P), are facilitated by technology-based lending platforms. P2P Financial Technology (Fintech) has emerged as an alternative to traditional banking for borrowing and saving money. However, the convenience of online loan transactions has introduced significant societal challenges. These include exorbitant interest rates, physical threats towards borrowers unable to repay debts, threats of exposing personal information on social media, and serious consequences such as suicides and stress. These issues have been widely reported in the media and have strained household relationships.

Based on the mechanism of online loans, it involves individuals lending money to others through technological platforms. These platforms serve as intermediaries connecting lenders and borrowers. Typically, online loans utilize a Qardh contract (interest-free loan), but often include added interest and late fees, resembling *riba jahiliyyah* (pre-Islamic usury). According to Fiqh principles, any loan that benefits the lender constitutes usury. Given the widespread issue of individuals falling into substantial debt due to illegal online loans, the Indonesian Ulama Council (MUI) convened a fatwa commission gathering in Jakarta from 9-11 November 2021. This event brought together around 700 participants, including leaders from various Islamic organizations, scholars, and educational institutions involved in Sharia studies.

In the MUI scholars' assembly, 17 points of discussion were agreed upon, including four main legal provisions for online loans: 1. Borrowing or lending should ideally follow the *tabarru'* contract (benevolence) based on mutual assistance, recommended as long as it aligns with Sharia principles. 2. Deliberately delaying debt payments for those capable of repayment is illegal. 3. Threatening physical harm or exposing someone's secrets due to inability to repay debts is forbidden (*haram*). Providing delays or easing debt repayment for those facing difficulties is recommended (*mustahabb*). 4. Both offline and online loan services involving usury are strictly prohibited, even if entered into voluntarily.

Based on the discussions, the Ulama Assembly recommended three actions: 1. Government bodies like the Ministry of Communication and



Informatics, POLRI (Indonesian National Police), and OJK (Financial Services Authority) should enhance public protection and rigorously enforce regulations against abuses in online loans or fintech peer-to-peer lending, which are causing public concern. 2. Providers of online loans should adhere to the MUI fatwa as a guideline in all transactions. 3. Muslims are encouraged to opt for financial services that comply with Sharia principles. Therefore, using online lending services is permissible in contemporary Fiqh Muamalah as long as agreements and collection practices adhere to Sharia principles, ensuring transparency, honesty, and fairness for both lenders and customers (<https://digstraksi.com/problematika-aplikasi-pinjaman-online-menurut-fiqh-muamalah-kontemporer/>).

The law concerning online loans intersects with scholarly debates on interest, particularly whether it constitutes usury. Scholars unanimously agree that usury (*riba*) is prohibited, but opinions diverge on whether conventional interest, commonly associated with bank transactions, falls under this prohibition. Interest refers to the compensation paid by borrowers for funds received, typically expressed as a percentage. Conventional banks predominantly operate on interest: they collect capital from the public in the form of savings and then lend this capital to borrowers, paying interest to savers and charging interest from borrowers. The interest charged to borrowers exceeds the interest paid to savers, resulting in a profit for the bank (Erwandi Tarmizi, 2018).

### **Harmonization of Indonesian Sharia Fintech Law Towards Fiqh *Muamalah***

POJK No. 10 of 2022 replaces its predecessor, POJK No. 77 of 2016, and regulates Information Technology-Based Lending and Borrowing Services in Indonesia. It introduces comprehensive rules with several amendments compared to POJK No. 77 of 2016. Changes include restrictions on foreign investors, legal entity requirements, minimum paid-up capital, rules on Controlling Shareholders (PSP), updates on licensing procedures, regulations on personal data security, equity and human resources management. Notably, POJK No. 10 of 2022 also includes provisions for the conversion of conventional operators to Sharia-compliant ones.

POJK No. 10 of 2022 includes regulations for converting conventional providers to Sharia-compliant ones in Articles 10 to 14. These articles outline technical procedures for conventional loan providers wishing to transition to Sharia-compliant operations. However, specific details on applying Sharia principles are not extensively covered in POJK No. 10 of 2022, as it primarily serves as a



framework for Sharia-compliant online lending platforms. The regulation requires OJK approval and compliance with minimum equity requirements for providers converting to Sharia principles. Conversion should not negatively impact users of online lending services.

Article 10 of POJK No. 10/2022 needs to be reconciled with *Fiqh Muamalah*, as it contradicts two contractual principles. Firstly, all forms of *muamalah* are permissible (*mubah*) unless specified otherwise by the Quran and Sunnah. Secondly, *muamalah* should be conducted voluntarily (*'an taradhin*), without coercion, which conflicts with two principles of Islamic business ethics: unity (*Tawhid*) and free will. However, Article 10 does align with the principles that *muamalah* should bring benefits and avoid harm, and that it should uphold justice, avoid oppression, and not exploit others' weaknesses, which are in harmony with three principles of Islamic business ethics: balance, responsibility, and truthfulness. Article 10's requirements for converting conventional online loans to Sharia-compliant ones are stringent, making the conversion process challenging.

Article 11 of POJK No. 10/2022 outlines OJK's procedures for approving or rejecting conversion requests. OJK must respond within a maximum of 20 working days upon receiving the application. The approval or rejection decision involves thorough analysis and research on document completeness, feasibility of the conversion plan, fit and proper tests for key personnel, compliance with laws and regulations, and readiness of the organizer's office. OJK communicates its decision through a formal letter and provides reasons for any rejection.

Article 11 of POJK No. 10/2022 stipulates procedures for OJK's approval or rejection of conversion requests. From a *Fiqh Muamalah* perspective, it conflicts with two contractual principles: first, that all forms of transactions are permissible (*mubah*) unless specified otherwise by the Quran and Sunnah; second, that transactions must be voluntary (*'an taradhin*), without coercion. Additionally, it contradicts two principles of Islamic business ethics: Unity (*Tawhid*) and Free Will. However, Article 11 aligns with the principles that transactions should bring benefit and avoid harm, and should uphold justice. It also adheres to the Islamic business ethics principles of Balance, Responsibility, and Truth. Despite this, Article 11's stringent requirements for approving or rejecting conversion applications make the conversion from conventional online loans to Sharia-compliant loans challenging, thus posing a disharmony with *Fiqh Muamalah*.

Article 12 of POJK No. 10/2022 mandates that organizers approved for conversion by OJK must convene a General Meeting of Shareholders (GMS)

within 60 working days of receiving the approval letter. Failure to do so within the stipulated time may lead to OJK canceling the approval. Meanwhile, Article 13 requires organizers to report the GMS implementation to OJK within 15 working days after the GMS, including necessary documents. OJK reviews these reports to ensure completeness before approving or rejecting the conversion from conventional to Sharia-compliant providers and the contracts implemented by them.

Articles 12 and 13 of POJK No. 10/2022 govern procedural requirements for converting from conventional to Sharia-compliant providers. From the perspective of Fiqh Muamalah, these articles contradict two contractual principles: first, that all forms of muamalah are permissible (*mubah*) unless explicitly prohibited by the Quran and Sunnah; and second, that muamalah must be conducted voluntarily (*'an taradhin*), free from coercion. They diverge from two principles of Islamic business ethics: Unity (*Tawhid*) and Free Will. However, they align with two contractual principles: muamalah should benefit society and uphold justice, avoiding oppression and taking advantage of narrow opportunities. They also align with three principles of Islamic business ethics: Balance (*Equilibrium/Fair*), Responsibility, and Truth (*Truth, Goodness, Honesty*).

The provisions in Article 12 of POJK No. 10/2022 are disharmonious with Fiqh Muamalah due to conflicts with two contractual principles and two principles of Islamic business ethics. The stringent requirements for converting conventional online loans to Sharia online loans make the process challenging. Similarly, Article 13's provisions are disharmonious with Fiqh Muamalah. They conflict with two contractual principles and two Islamic business ethics principles, and the heavy requirements for approving changes in business licenses and contracts further complicate the conversion from conventional to Sharia-compliant online loans.

Article 14 mandates that organizers report their conversion implementation to OJK within 15 working days. Reports must include the articles of association attached by the organizers' Board of Directors. From the Fiqh Muamalah perspective, Article 14 conflicts with two contractual principles: 1) All forms of muamalah are permissible (*mubah*) unless specified by the Quran and Sunnah; and 2) Muamalah is conducted voluntarily (*'an taradhin*), without coercion, conflicting with two principles of Islamic business ethics: 1) Unity (*Tawhid*) and 2) Free Will. However, Article 14 aligns with two contract principles: 1) Muamalah is conducted based on benefits and avoiding harm in people's lives; and 2) Muamalah upholds justice, avoids persecution, takes advantage of narrow

opportunities, and does not contradict three principles of Islamic business ethics: 1) Balance (Equilibrium/Fair), 2) Responsibility, and 3) Truth (Truth, Goodness, Honesty).

The provisions in Article 14 are not in harmony with *Fiqh Muamalah* due to conflicts with two contractual principles and two principles of Islamic business ethics. The requirements for converting conventional online loans to Sharia-compliant online loans are stringent, thereby complicating the conversion process. Details on the harmonization of Indonesian Sharia fintech law with contract principles and Islamic business ethics of *Fiqh Muamalah* will be outlined in the table below:

Table 3. Harmonization of Indonesian Sharia Fintech Law Against Contract Principles in *Fiqh Muamalah*

CONTRACT PRINCIPLES	HARMONY	DISHARMONY
All forms of <i>muamalah</i> are mubah unless otherwise specified by the al-Quran and Sunnah of the Prophet.		✓
<i>Muamalah</i> is carried out voluntarily ( <i>'an taradhin</i> ) without containing elements of coercion.		✓
<i>Muamalah</i> is based on bringing benefits and avoiding harm in people's lives.	✓	
<i>Muamalah</i> is carried out by maintaining the value of justice, avoiding persecution, and taking advantage of opportunities in adversity	✓	

Table 4. Harmonization of Indonesian Sharia Fintech Law Against Principles of Islamic Business Ethics in *Fiqh Muamalah*

PRINCIPLES OF ISLAMIC BUSINESS ETHICS	HARMONY	DISHARMONY
( <i>Tauhid/Unity</i> )		✓
(Equilibrium/ <i>Adil</i> )	✓	
(Free Will)		✓
(Responsibility)	✓	
(Truth, Goodness, Honesty)	✓	

Table 5. Harmonization POJK No. 10 of 2022 Against Fiqh *Muamalah*

ASPECT	HARMONY	DISHARMONY
Article 10	(Contract principle: benefit and fairness; Islamic Business Ethics: Balance, responsibility, and truth)	(Contract principle: permissible and voluntary; Islamic Business Ethics: unity and free will)
Article 11	(Contract principle: benefit and fairness; Islamic Business Ethics: Balance, responsibility, and truth)	(Contract principle: permissible and voluntary; Islamic Business Ethics: unity and free will)
Article 12	(Contract principle: benefit and fairness; Islamic Business Ethics: Balance, responsibility, and truth)	(Contract principle: permissible and voluntary; Islamic Business Ethics: unity and free will)
Article 13	(Contract principle: benefit and fairness; Islamic Business Ethics: Balance, responsibility, and truth)	(Contract principle: permissible and voluntary; Islamic Business Ethics: unity and free will)
Article 14	(Contract principle: benefit and fairness; Islamic Business Ethics: Balance, responsibility, and truth)	(Contract principle: permissible and voluntary; Islamic Business Ethics: unity and free will)

The Sharia principles are limited to just these five articles, which primarily focus on technical aspects of conversion rather than substantive Sharia principles. This indicates a lack of harmony with Fiqh Muamalah, as there are conflicts with two contract principles: 1. All forms of muamalah are permissible (*mubah*) unless specified otherwise by the Quran and Sunnah; and 2. Muamalah should be conducted voluntarily ('*an taradhin*'), without coercion. Additionally, two principles of Islamic business ethics, namely Unity (*Tawhid*) and Free Will, lack detailed explanation regarding their purpose in converting conventional online loans to Sharia-compliant ones. The strict requirements further complicate the conversion process from conventional to Sharia online loans.

The harmonization of online loan regulations from the perspective of Fiqh Muamalah reveals several findings: 1. The 2022 POJK (Financial Services Authority Regulation) on Online Loans in the Sharia sector lacks strict regulations for implementing Sharia-based online lending systems according to Fiqh Muamalah. 2. There are no specific regulations that incorporate contract principles similar to those found in Law No. 21 of 2008 concerning

Sharia Banking (such as Mudharabah, Musyarakah, Ijarah, etc.). 3. Concrete rules addressing Islamic business systems like debt collection, transparency, and equity (balance) are absent. The objectives of harmonizing online loan regulations from the perspective of *Fiqh Muamalah* (Islamic commercial jurisprudence) aim to mitigate potential issues: 1. Avoiding Usury (*Riba*). 2. Preventing potential fraud. 3. Ensuring no unlawful appropriation (taking others' rights). 4. Eliminating deception (*Gharar*). 5. Prohibiting hoarding (*Ihtikar*). 6. Preventing betrayal

Table 6. The Objectives of Harmonizing Online Loan (Pinjol) Regulations from the Perspective of *Fiqh Muamalah*

CONTRACT PRINCIPLES	PRINCIPLES OF ISLAMIC BUSINESS ETHICS	OBJECTIVES OF HARMONIZATION
All forms of <i>muamalah</i> are <i>mubah</i> unless otherwise specified by the Al-Qur'an and Sunnah of the Prophet.	( <i>Taubid</i> /Unity)	Avoiding the Potential for Usury ( <i>Riba</i> ).
<i>Muamalah</i> is carried out voluntarily ('an taradhin) without containing elements of coercion.	(Equilibrium/ <i>Adil</i> )	Avoiding the Potential for Fraud.
<i>Muamalah</i> is based on bringing benefits and avoiding harm in people's lives.	(Free Will)	Avoiding the Potential for Unlawful Appropriation (Taking Others' Rights).
<i>Muamalah</i> is carried out by maintaining the value of justice, avoiding persecution, and taking advantage of opportunities in adversity.	(Responsibility)	Avoiding the Potential for Deception ( <i>Gharar</i> ).
	(Truth, Goodness, Honesty)	Avoiding the Potential for Hoarding ( <i>Ihtikar</i> ).
		Avoiding the Potential for Betrayal.

## Conclusion

OJK Regulation No. 10/POJK.05/2022 Concerning Information Technology-Based Joint Funding Services as a substitute for POJK No. 77/POJK.01/2016, there is still a legal vacuum, especially regarding the regulation of Sharia Fintech

Law. In addition, based on the researchers' study, the OJK Regulations are still disharmony with Fiqh *Muamalah*. The regulation of sharia principles in OJK Regulations still needs to be clarified as the basis for implementing sharia fintech. It is because, in the OJK Regulations, there are no concrete rules regarding contracts as a basis and measure that can be carried out for the implementation of sharia fintech business like the Sharia Banking Regulations, which accommodate 9 (nine) types of will which form the basis for the implementation of Islamic banking in Indonesia.

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