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Legal Pluralism in Foreign Exchange Contract: A Comparative Study of International Civil Law and Contemporary Islamic Law

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Abstract

Foreign currency transactions in Indonesia are regulated by Law of the Republic of Indonesia Number 7 of 2011 concerning Currency, which makes the Rupiah the only legal tender in Indonesia, with exceptions for certain transactions such as international trade and foreign exchange transactions conducted through banks authorized by Bank Indonesia. This study was a normative juridical with a comparative approach that intended to compare two views of private international law and contemporary Islamic law through secondary data sources. The results of the study indicated that in private international law, foreign exchange transactions were regulated by freedom of contract, which limited the application of international legal norms. On the other hand, in Islamic Law, foreign exchange transactions must be carried out with the principle of justice and avoid practices involving usury, maysir (speculation), and gharar (uncertainty). Islamic law recommends that transactions be carried out in cash (spot), which is in accordance with sharia provisions to avoid prohibited speculative elements. Although these two legal systems have different approaches, both aim to ensure fair transactions by applicable provisions. Therefore, in practice, foreign exchange transactions must meet the principles of transparency, fairness, and compliance with existing regulations, both in the national legal system and Islamic law, to avoid practices that are detrimental and inconsistent with applicable laws.

Keywords: Legal Pluralism; Foreign Exchange Contract, International Civil Law, Contemporary Islamic Law.

Abstrak

Transaksi jual beli mata uang asing di Indonesia diatur oleh Undang-Undang Republik Indonesia Nomor 7 Tahun 2011 tentang Mata Uang, yang menjadikan Rupiah sebagai satu-satunya alat pembayaran yang sah di Indonesia, dengan pengecualian untuk transaksi tertentu seperti perdagangan internasional dan transaksi valuta asing yang dilakukan melalui bank yang terotorisasi oleh Bank Indonesia. Penelitian berjenis yuridis normative dengan pendekatan perbandingan yang bermaksud membandingkan dua pandangan hukum perdata Internasional dan hukum Islam kontemporer melalui sumber data sekunder. Hasil penelitian menunjukkan bahwa Hukum Perdata Internasional, transaksi valuta asing diatur dengan kebebasan berkontrak yang membatasi penerapan norma-norma hukum internasional. Di sisi lain, dalam Hukum Islam, transaksi valuta asing harus dilakukan dengan prinsip keadilan dan menghindari

praktik yang melibatkan riba, maisir (spekulasi), dan gharar (ketidakpastian). Hukum Islam menganjurkan transaksi dilakukan secara tunai (spot), yang sesuai dengan ketentuan syariah untuk menghindari unsur spekulasi yang dilarang. Meskipun kedua sistem hukum ini memiliki pendekatan yang berbeda, keduanya bertujuan untuk memastikan transaksi yang adil dan sesuai dengan ketentuan yang berlaku. Oleh karena itu, dalam praktiknya, transaksi valuta asing harus memenuhi prinsip transparansi, keadilan, dan kepatuhan terhadap peraturan yang ada, baik dalam sistem hukum nasional maupun hukum Islam, untuk menghindari praktik yang merugikan dan tidak sesuai dengan hukum yang berlaku.
Keywords: Pluralisme Hukum; Kontrak Valuta Asing, Hukum Perdata Internasional, Hukum Islam Kontemporer.

Introduction

A foreign exchange transaction is an integral part of international trade and the rapidly developing financial world.[1] In the midst of economic globalization, these transactions not only involve individuals or companies but are also related to various legal systems that apply in different countries. One of the aspects increasingly receiving attention is the regulation of foreign exchange transactions from the perspective of private international law and Islamic law, which have different principles in regulating financial transactions. According to the perspective of private international law, foreign exchange transactions are regulated using universal principles and prioritize legal certainty that can be accepted by all parties, regardless of their country of origin. This includes aspects such as freedom of contract, protection of property rights, and international dispute resolution mechanisms.[2] However, in practice, private international law is often faced with challenges in aligning its provisions with different legal systems, including Islamic law.

Islamic law, with its main principles such as the prohibition of usury (interest), *gharar* (uncertainty), and *maysir* (gambling), provides a different framework for assessing and regulating financial transactions, including foreign exchange transactions.[3] According to Islamic law, foreign exchange transactions must meet certain requirements to not violate sharia principles, such as the prohibition of transactions containing usury and high uncertainty.[4] According to Islamic law, foreign exchange is also called *Al-Sharf* which etymologically means additional or excess (*az-ziyadah*), while in terminology *Al-Sharf* is

[1] Eka Julianti, "Strategi Penguatan Pasar Uang Dan Valuta Asing Syariah Sebagai Pilar Ekonomi Berkelanjutan," *Digital Business and Entrepreneurship Journal* 3, no. 1 (2025): 73–82, https://doi.org/10.25134/digibe.v3i1.197.
[2] Mifta Nur Feriska, "Kebebasan Berkontrak Dan Perlindungan Konsumen Dalam Perjanjian Sewa Menyewa Pada Sebuah Keseimbangan Hukum," *Journal Sains Student Research* 1, no. 1 (2023): 893–902, https://doi.org/10.61722/jssr.v1i1.415.
[3] Ahmad Fuadi Tanjung, Raju Adha, and Marliyah, "Analisis Perkembangan Pasar Derivatif Di Indonesia," *Jurnal EMT KITA* 8, no. 1 (2024): 285–94, https://doi.org/10.35870/emt.v8i1.2047.
[4] Ahmad Kameel Mydin Meera, "Cryptocurrencies From Islamic Perspectives: The Case Of Bitcoin," *Bulletin of Monetary Economics and Banking* 20, no. 4 (2018): 475–92, https://doi.org/10.21098/bemp.v20i4.902.

buying and selling money with money, either the same type or different types, or buying and selling gold with gold, silver with silver, gold with silver, either in the form of coins or currency.[5] Basically, in Islamic economics, there should be no purpose for speculation, but foreign exchange trading is currently carried out with the aim of speculation which can damage the economic system of a country. Foreign exchange transaction is included in the category of contemporary Islamic legal issues because their legal status is *ijtihadiyyah* and falls into the realm of law that does not have a definite legal text reference. Therefore, i*jtihad* must be carried out by *mujtadis* to be able to group foreign exchange transactions into economic activities that are permitted or prohibited according to Islam.

In the development of legal studies related to foreign exchange transactions, a number of previous studies have provided an important foundation, but still leave significant room for exploration, especially in the context of the interaction between private international law and Islamic law. A study by Muhammad Nazieh Ibadillah (2019) shows that currency exchange is permitted in Islam based on DSN-MUI Fatwa No. 28/DSN-MUI/III/2002, with supervision carried out through cooperation between DSN-MUI and Bank Indonesia, both directly and indirectly. A study by Muhammad Yusman (2023) strengthens these findings through a multidisciplinary approach—philosophical, legal, sociological, and sharia—but still focuses on sharia legitimacy and the supervision system of money changer practices. Meanwhile, Masrur Ridwan and Muhammad Shidqon Prabowo (2020) highlight the criminal law aspects of online foreign exchange trading, including challenges in the legal evidence process as well as the limited number of supervisors and market players' awareness of the risk of fraud.

Different from previous studies, this study offers a new contribution by examining the dynamics of legal pluralism in foreign exchange contracts, namely how the principles of Islamic law and norms of private international law are actualized simultaneously in contemporary contractual practices. The main focus is directed at crucial issues such as *gharar* (uncertainty) and *maysir* (speculation), which until now have not been widely analyzed interdisciplinary or comparatively in the Indonesian context. Another novelty of this study lies in its approach that integrates the perspective of private international law with the principles of Islamic law, as well as the study of supervisory mechanisms based on institutional

[5] Dianova, Eriyan Rahmadani, and Gunawan Djajaputra, "Analisis Hak Dan Kewajiban Para Pihak Dalam Perjanjian Jual Beli Yang Berujung Wanprestasi," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 5, no. 1 (2025): 21–28, https://ejournal.penerbitjurnal.com/index.php/humaniora/article/view/1035.

cooperation, especially the role of DSN-MUI together with Bank Indonesia, which has received relatively little attention in previous literature. In addition, this study also discusses the practical challenges faced by online foreign exchange transaction actors, such as difficulties in submitting legal evidence and limited supervisory capacity, which add a new dimension to the discourse on foreign exchange law. Thus, this study is expected to enrich academic discourse and provide real contributions to efforts to harmonize the Islamic legal system and private international law in responding to the complexity of global financial transactions.

This study aims to analyze the regulation of foreign exchange transactions in private international law and evaluate the potential for conflict or common ground between the principles of Islamic law and the legal system. This study is expected to provide conceptual and practical contributions for academics, legal practitioners, and policymakers in understanding the relationship between the two legal systems in the context of global financial transactions. The urgency of this study lies in the need to understand the extent to which private international law is able to accommodate sharia values, especially in countries with a Muslim majority population that apply Islamic law principles in their economic practices. The interaction between the two legal systems needs to be studied comprehensively in order to formulate an inclusive, fair, and applicable legal framework to support transparency and legitimacy in foreign exchange transactions. Thus, this study is expected to contribute to efforts to harmonize international law and Islamic law in the contemporary economic realm.

Research Method

This study used legal normative research, which was also known as doctrinal legal research. This method focused on the analysis of written legal norms that originate from laws and regulations, legal doctrines, fatwas, and opinions of legal experts. In accordance with Peter Mahmud Marzuki's definition, normative legal research is research that examines law as a system of norms, with an emphasis on legal logic, consistency between norms, and legal principles that regulate the problems studied.

The data used in this study were secondary, including primary legal materials, namely laws and regulations, jurisprudence, and international treaties; secondary legal materials such as legal literature, scientific articles, and textbooks; and tertiary legal materials in the form of legal dictionaries and encyclopedias. All data were obtained through systematic library research.

Data analysis was conducted deductively, by drawing conclusions from general premises to specific premises based on legal norms relevant to the research object. The approaches used included the statute approach to examine the structure and substance of applicable positive legal norms, as well as the comparative law approach used to compare the principles, systems, and implementations between private international law and contemporary Islamic law.

Results and Discussion

1. Foreign Exchange Transaction

Foreign exchange or currency trading according to the language comes from the word *Sharf,* which is interpreted as addition, exchange, avoidance, diversion, or sale and purchase transaction.[6] In terms of *Sharf*, it is an agreement to buy and sell a currency with another currency. Foreign currency transactions can be carried out either with the same type of currency (for example rupiah with rupiah) or with different types (for example rupiah with dollars or vice versa).[7] Another opinion says that *Sharf* is a gold exchange transaction with silver or foreign exchange, where foreign currency is exchanged with domestic currency or with other foreign currencies.[8]

According to the term *fiqh*, *al-Sharf* is the sale and purchase of similar goods or dissimilar goods in cash.[9] Such as trading gold for gold or gold for silver, either in the form of jewelry or currency. The practice of buying and selling between foreign currencies (forex), or exchanging between similar currencies.[10] *Sharf* is also interpreted as an agreement to buy and sell one currency with another. Foreign currency buying and selling transactions can be carried out either with the same currency, for example, rupiah with rupiah, or dissimilar, for example, rupiah with dollars or vice versa.[11]

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[6] Hernawaty, Heriyati Chrisna, and Noviani, "Transaksi Valas Dalam Perspektif Konvensional Dan Syariah," *Jurnal Akuntansi Bisnis & Publik* 11, no. 1 (2020): 1–7, https://jurnal.pancabudi.ac.id/index.php/akuntansibisnisdanpublik/article/view/951.
[7] Yusriadi Ibrahim, "Jual Beli Valuta Asing Dalam Perspektif Fiqh Muamalah," *Syarah: Jurnal Hukum Islam & Ekonomi* 10, no. 2 (2021): 173–91, https://doi.org/10.47766/syarah.v10i2.213.
[8] Khotibul Umam, "Jual Beli Valuta Asing Dalam Ekonomi Islam," *Syiar Iqtishadi: Journal of Islamic Economics, Finance and Banking* 4, no. 2 (2020): 18–35, https://doi.org/10.35448/jiec.v4i2.9842.
[9] Alimatul Farida, "Analisis Mekanisme Jual Beli Mata Uang (Al-Sharf) Menurut Fatwa DSN-MUI No. 28/MUI/III/2002," *MALIA: Jurnal Ekonomi Islam* 12, no. 2 (2021): 137–50, https://doi.org/10.35891/ml.v12i2.2659.
[10] M. Rizky Kurnia Sah and La Ilman, "Al-Sharf Dalam Pandangan Islam," *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum Dan Syariah* 7, no. 2 (2018): 28–47, https://e-journal.stishid.ac.id/index.php/uls/article/view/30.
[11] Hernawaty, Chrisna, and Noviani, "Transaksi Valas Dalam Perspektif Konvensional Dan Syariah."

The conditions for buying and selling foreign currency (*al-Sharf*) are:[12]

a. Handover before *iftirak* (separation)

The exchange transaction is carried out before both parties separate. This applies to the exchange of currencies of the same type or different, therefore both parties must carry out the handover before both of them separate from the transaction place and may not delay payment of one of them. If this requirement is not met, then the law is invalid.

b. *Al-Tamatsul* (equal)

Exchanging money whose value is not equal is forbidden, this condition applies to the exchange of money of the same type. While exchanging money of different types is permitted. For example, when exchanging US dollars for US dollars, the value must be the same. However, if exchanging US dollars for rupiah, *al-tamatsul* is not required. This is practically permitted considering that the exchange rate of currencies in each country in the world is different. Also, if examined, there are only a few specific currencies that are popular and are the driving currencies in the world economy, and of course, the value of each currency is very high.

c. Cash Payment

It is not valid if in a money exchange transaction, there is a delay in payment, whether the delay comes from one party or is agreed upon by both parties. This condition is regardless of whether the exchange is between the same type of currency or different currencies.

d. Does Not Contain a *Khiyar* Contract

If there is a *khiyar* condition in the *al-sharf* contract, whether the condition is from one party or both parties, then according to the majority of scholars, it is invalid. Because one of the conditions for a valid transaction is handover, while *khiyar* conditions become an obstacle to perfect ownership. This can certainly reduce the meaning of the perfection of handover.

2. Foreign Exchange Transaction Law based on the Private International Law and Contemporary Islamic Law

The validity of buying and selling transactions using foreign currency is regulated by the Law of the Republic of Indonesia Number 7 of 2011 concerning Currency. Based on this Law, several things need to be considered regarding the validity of buying and selling transactions using foreign currency in Indonesia as follows:[13]

[12] Suryani Suryani, "Transaksi Valuta Asing Sarf Dalam Konsepsi Fikih Mu'amalah," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 13, no. 2 (2013): 253–68, https://doi.org/10.18326/ijtihad.v13i2.253-268.
[13] Oleh Hm and Eka Suci, "Virtual Menurut Perspektif Hukum Positif Di Indonesia" 17 (2022): 35–42.

a. Prohibition of Foreign Currency.

The Currency Law stipulates that the Rupiah currency is the only legal tender in the territory of Indonesia, except for certain transactions exempted by Bank Indonesia. Therefore, in buying and selling transactions in Indonesia, the currency officially used is the Rupiah. The use of foreign currency in daily transactions in Indonesia is not permitted.

b. Foreign Exchange Transaction.

For transactions involving foreign currencies, including foreign exchange trading, Bank Indonesia has regulations governing the mechanisms and procedures that must be followed. Foreign exchange transactions must be conducted through a bank or financial institution licensed by Bank Indonesia as a Foreign Exchange Dealing Room. Settlement of foreign exchange transactions must be conducted through a foreign exchange account as regulated in Bank Indonesia regulations.

c. Compliance with Tax Provisions.

Transactions using foreign currency must comply with applicable tax provisions. Parties involved in the transaction must ensure that reporting and tax payment obligations are in accordance with applicable provisions.

Exceptions to the obligation to use Rupiah are contained in Article 21 paragraph (2) of the Currency Law, which states that the obligation to use Rupiah does not apply to:

a) Certain transactions in the context of implementing the State Budget;
b) Receipt or provision of grants from or to overseas;
c) International trade transactions;
d) Deposits in banks in the form of foreign currency; or
e) International financing transactions

Based on Article 1320 of the Indonesian Civil Code, four conditions are required for an agreement to be valid or not:

1) Agreement,
2) Capacity,
3) Concerning a certain matter,
4) A lawful cause.

The four conditions are divided into two parts, namely subjective conditions and objective conditions, subjective conditions are the agreement and competence of the parties, and objective conditions are a certain thing and a lawful cause. The difference in the conditions for the validity of an agreement into two categories, namely subjective and

objective, has an important meaning regarding the consequences that occur if the conditions do not meet the subjective conditions, resulting in the agreement being canceled (*vernietiqbaar*).[14] An agreement that does not meet the objective requirements results in the agreement being null and void (*inietig van rechtswege*), meaning that from the beginning an agreement was never born and there was never a contract.[15]

At first glance, foreign exchange transactions are the same as buying and selling transactions that must meet the elements (pillars), such as seller, buyer, and contract. So, foreign exchange transactions also meet these elements. However, there is a difference in the goods being traded. In foreign exchange transactions, what is traded is money itself, so money occupies two points, namely as a means of exchange and as a commodity that is traded. In other words, foreign exchange transactions are identical to buying and selling currency.

Private International Law (PIL) is defined as national law that regulates private law events and relationships involving foreign elements.[16] This was stated by the National Law Development Agency which stated that Private International Law (PIL) plays a role in resolving disputes involving foreign elements. Cheshire, as quoted by Ari Purwadi, also stated that "Private International Law comes into operation whenever the court is faced with a claim that contains a foreign element". One of the main problems in PIL is determining the applicable law in civil cases involving foreign elements. In international commercial contracts, the parties are given the freedom to determine the contents of their agreement, but this freedom is not absolute, and must still pay attention to applicable norms, such as propriety, morality, and public order.

In addition, the freedom of contract in international commercial contracts is also limited by mandatory legal rules, which are regulated by applicable law. One of the functions of the applicable law in a contract is as a limiting function, namely to prevent clauses that conflict with mandatory legal rules.[17] This mandatory legal rule is considered a very important

[14] Irsandi Ivanov, Rika Lestari, and Dasrol Dasrol, "Analisis Penggunaan Mata Uang Asing Dalam Perjanjian Jual Beli Di Indonesia Berdasarkan Syarat Sah Perjanjian," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 23 (2024): 328–40, https://doi.org/10.5281/zenodo.14564297.
[15] Feriska, "Kebebasan Berkontrak Dan Perlindungan Konsumen Dalam Perjanjian Sewa Menyewa Pada Sebuah Keseimbangan Hukum."
[16] Devina et al., "Pendekatan Hukum Perdata Internasional Dalam Penyelesaian Sengketa Terkait Hak Kekayaan Intelektual Di Bidang Merek (Sengketa IKEA PT Ratania Khatulistiwa Indonesia Dan IKEA Swedia)," *Indonesian Journal of Law and Justice* 1, no. 3 (2024): 1–11, https://doi.org/10.47134/ijlj.v1i3.2123.
[17] Kristian Megahputra Warong, "Kajian Hukum Hak Asasi Manusia Terhadap Kebebasan Berpendapat Oleh Organisasi Kemasyarakatan Di Media Sosial," *Lex Administratum* 8, no. 32 (2020): 73–92, https://ejournal.unsrat.ac.id/index.php/administratum/article/view/31266.

principle in determining the validity of an agreement, as expressed by Adolf, who stated that the national law that must be obeyed is the mandatory legal rule, and the parties cannot ignore it. Mandatory provisions in an agreement, such as those stated in Law No. 24/2009 concerning the state language, can be classified as overriding mandatory rules, which are crucial for maintaining public interests in the social and political fields.

In Islam, foreign exchange can be likened to the exchange of gold and silver (*al-sharf*). Literally, *al-sharf* means addition, exchange, avoidance, diversion, or sale and purchase transaction.[18] Paper currency must replace the function of gold and silver, which were previously used as a means of exchange. Furthermore, paper currency becomes the only unit of account and intermediary in exchange and becomes a price value like gold and silver. Thus, the law of exchanging paper currency in Islamic law is termed *al-sharf* as is the case with gold and silver. Scholars have also agreed that selling gold for gold and silver for silver is not permissible unless the sale and purchase are balanced and in cash.

In reference to Islamic finance, *bai'al-sharf* is defined as a sale and purchase, or exchange of foreign currency with another currency, such as between rupiah and dollar, dollar with yen, and so on. For the sale and purchase to be valid, this *sharf* must meet four conditions, namely;

1) Mutual handover before both are separated
2) Have the same quality
3) There must be no *khiyar* conditions
4) There must be no specific time limit.

In Indonesia, the Fatwa of the National Sharia Council of the Indonesian Ulema Council has regulated the provisions and limitations in foreign exchange transactions through the DSN fatwa Number: 28/DSN-MUI/III/2002 dated March 28, 2002. The fatwa states several foreign exchange trading behaviors that are usually carried out in the conventional foreign exchange market that must be avoided, such as trading without delivery (future non-delivery trading or margin trading), buying and selling foreign exchange that is not a commercial transaction, making sales exceeding the amount owned or purchased, and making pure swap transactions.[19]

In this regard, the Fatwa of the National Sharia Council of the Indonesian Ulema Council Number: 28/DSN-MUI/III/2002 on March 28, 2002, concerning the law on foreign

[18] Hernawaty, Chrisna, and Noviani, "Transaksi Valas Dalam Perspektif Konvensional Dan Syariah."
[19] DSN-MUI, "Fatwa No:28/DSN-MUI/III/2002 Tentang Jual Beli Mata Uang (Al-Sharf)," Dsn-Mui § (2002).

exchange transactions currently running in the foreign exchange market can be explained as follows:

1. A sports transaction is a transaction of buying and selling foreign currency for delivery at that time (over the counter) or settlement within a maximum of 2 days. According to sharia, the law of this kind of transaction is permissible, because it is considered cash, while the two days is considered an unavoidable settlement process and is an international transaction.
2. The forward transaction is a transaction of buying and selling foreign currency whose value is determined at present and is enforced for the future, between 2 x 24 hours to one year, the law is haram, because the price used is the agreed price (*muwa'adah*) and the delivery is carried out at a later date, even though the price at the time of delivery is not necessarily the same as the agreed value unless it is done in the form of a forward agreement for unavoidable needs (*li al-hajah*)
3. Currency futures/swap transactions are contracts for the purchase and sale of foreign currency at a sport price combined with purchases between sellers of the same foreign currency at a forward price in the future, or in other words, the exchange of currency with other currencies is not done in cash but for a fairly long period of time. This is forbidden because it contains *maysir* (speculation).
4. Currency options transactions are contracts to obtain the right to buy or the right to sell that do not have to be carried out on a number of foreign currency units at a certain price and time period or end date, it is forbidden because it contains elements of *maysir* (speculation).

Based on the fatwa above, the type of foreign exchange transaction that has a sharia basis is a spot transaction that in its implementation has been in accordance with sharia principles. As for other types of foreign exchange transactions, it seems that they are not in line with sharia principles, because in practice they are not carried out in cash and contain elements of speculation.[20] In this regard, it should be realized that Islam basically views money only as a means of exchange, not as a commodity. Therefore, the motive for the demand for money is to meet transaction needs, not for speculation. The concept of Islam does not recognize money demand for speculation, namely, the motive for the demand for money is to meet transaction needs. Islam also does not recognize the concept of the time

[20] Siti Nurhalizah et al., "Fiqh Valuta Asing Syariah," in *Gunung Djati Conference Series*, vol. 42, 2024, 551–64, https://conferences.uinsgd.ac.id/index.php/gdcs/article/view/2248.

value of money, but Islam recognizes the concept of the economic value of time, meaning that what is valued is time itself. In this case, money is a flow concept so it must always circulate in the economy. Thus, in foreign exchange transactions, Muslims need to pay attention to the rules of the game that do not conflict with sharia principles.

Based on the provisions above, it can be analyzed that currency buying and selling transactions (*sharf*) are in principle permissible if they are in accordance with the provisions of sharia principles, including:

1. Not for speculation (*riba'*).
2. In transactions carried out on similar currencies, the value must be the same and in cash (*at-taqabudh*).
3. In transactions of different types of currencies, they must be carried out at the exchange rate (rate) in effect at the time the transaction is carried out and in cash.

First, the transaction of buying and selling currency (*sharf*) must be in line with the provision that Allah SWT does not limit usury to borrowing and lending transactions, but in all forms of barter sales as in Q.S. Al-Baqarah verse 275 which means:

> "Those who consume interest will stand ˹on Judgment Day˺ like those driven to madness by Satan's touch. That is because they say, "Trade is no different than interest." But Allah has permitted trading and forbidden interest. Whoever refrains—after having received a warning from their Lord—may keep their previous gains, and their case is left to Allah. As for those who persist, it is they who will be the residents of the Fire. They will be there forever."

Second, it does not contain elements of *maysir* (gambling) or *qimar* (speculation), which is getting something very easily without working or getting a profit without working. The current currency buying and selling transactions definitely state a business behavior that solely expects large profits without working and trying.[21] Third, it does not contain elements of *gharar*, which is a situation when someone does not know what is stored in him or what will happen at the end of a business/buying and selling activity. The existence of elements of risk that contain doubt, probability, and uncertainty dominantly, as well as elements of doubt associated with fraud or crime by one party against the other party are also acts of buying

[21] Novita Ambarsari and Luhur Prasetiyo, "Perilaku Pedagang Di Pasar Wisata Plaosan Dalam Perspektif Etika Bisnis Islam," *Niqosiya: Journal of Economics and Business Research* 2, no. 1 (2022): 121–38, https://doi.org/10.21154/niqosiya.v2i1.732.

and selling that are prohibited in Islam.[22] Fourth, the element of *Juhala*, namely uncertainty is very dominant because the basis of the transaction is the possibility of loss or profit that cannot be predicted and ascertained, and the element of uncertainty in currency buying and selling transactions cannot be avoided. The element of *juhala* in currency transactions occurs if the selling or buying price exchange rate has not been determined at the time the contract takes place so this transaction contains an element of *juhala* which is prohibited in Islamic business. [23]

Based on the explanation above, it can be analyzed that foreign exchange (forex) transactions from the perspective of private international law and contemporary Islamic law involve two different but interrelated legal frameworks. In private international law, forex transactions are considered international economic activities that require rules related to contracts and dispute resolution involving parties from different countries. This law regulates the obligations and rights of the parties in the transaction, as well as the implementation mechanism based on the principle of freedom of contract and international conventions. On the other hand, in contemporary Islamic law, forex transactions are regulated by the principles of justice, transparency, and the prohibition of usury (interest) and *gharar* (excessive uncertainty). Islamic law recommends that foreign exchange transactions be carried out in cash (spot) to avoid speculative elements that are prohibited in sharia. Thus, although these two legal systems have different approaches, both aim to ensure fair transactions in accordance with applicable principles, both in international law and in Islamic norms.

Conclusion

A foreign exchange transaction is one of the important aspects in the dynamics of the global economy and has been regulated in various legal systems, both in private international law and contemporary Islamic law. From the perspective of private international law, foreign exchange transaction is based on the principle of freedom of contract and the principle of legal certainty, which allows the parties to enter into agreements as long as they do not

[22] Hadist Shohih and Ro'fah Setyowati, "Perspektif Hukum Islam Mengenai Praktik Gharar Dalam Transaksi Perbankan Syariah," *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 12, no. 2 (2021): 69–82, https://doi.org/10.28932/di.v12i2.3323.
[23] Jamaluddin Jamaluddin and Reza Ahmad Zahid, "Reinterpretasi Ketetapan Hukum Asuransi Perspektif Hukum Islam," *Indonesian Journal of Humanities and Social Sciences* 4, no. 2 (2023): 477–98, https://doi.org/10.33367/ijhass.v4i2.4547.

conflict with the mandatory laws of a country. However, this approach has not fully considered the moral and ethical aspects of finance, which are the focus of Islamic law.

Meanwhile, in contemporary Islamic law, foreign exchange transaction (*al-sharf*) is strictly regulated based on sharia principles, such as the prohibition of usury (interest), *gharar* (uncertainty), and *maysir* (speculation). A foreign exchange transaction is only permitted if it is carried out in cash (spot) and meets the provisions of *fiqh* such as handover before separation (*taqabudh*), no *khiyar* requirements, and does not contain elements of gambling or excessive uncertainty. This shows that Islamic law provides strict moral boundaries in order to maintain justice and economic stability for the people.

The comparison between these two legal systems shows that there are common ground and different points of contact. Both systems aim to create fair and transparent transactions, but their approaches are different. Private international law is more flexible in the context of globalization and cross-border trade, while Islamic law emphasizes compliance with sharia principles in every aspect of financial transactions. Therefore, the harmonization of these two legal systems is important in the context of the global Muslim community, especially to ensure transactions that are not only legally valid but also in accordance with the values of justice and Islamic morality. By understanding these two perspectives, it is hoped that the community can carry out foreign exchange transactions that are legal, fair, and do not harm any party, both in terms of national law and sharia.

References

Devina, Nisya Hamidah Khairani, Ameliya Ratna Sari, Maria Sesilia Toe Labina, Surya Afif Rahmandika, and Mustika Mega Wijaya. "Pendekatan Hukum Perdata Internasional Dalam Penyelesaian Sengketa Terkait Hak Kekayaan Intelektual Di Bidang Merek (Sengketa IKEA PT Ratania Khatulistiwa Indonesia Dan IKEA Swedia)." *Indonesian Journal of Law and Justice* 1, no. 3 (2024): 1–11. https://doi.org/10.47134/ijlj.v1i3.2123.

Dianova, Eriyan Rahmadani, and Gunawan Djajaputra. "Analisis Hak Dan Kewajiban Para Pihak Dalam Perjanjian Jual Beli Yang Berujung Wanprestasi." *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 5, no. 1 (2025): 21–28. https://ejournal.penerbitjurnal.com/index.php/humaniora/article/view/1035.

DSN-MUI. Fatwa No:28/DSN-MUI/III/2002 tentang Jual Beli Mata Uang (Al-Sharf), Dsn-Mui § (2002).

Farida, Alimatul. "Analisis Mekanisme Jual Beli Mata Uang (Al-Sharf) Menurut Fatwa DSN-MUI No. 28/MUI/III/2002." *MALIA: Jurnal Ekonomi Islam* 12, no. 2 (2021): 137–50. https://doi.org/10.35891/ml.v12i2.2659.

Feriska, Mifta Nur. "Kebebasan Berkontrak Dan Perlindungan Konsumen Dalam Perjanjian Sewa Menyewa Pada Sebuah Keseimbangan Hukum." *Journal Sains Student Research* 1, no. 1 (2023): 893–902. https://doi.org/10.61722/jssr.v1i1.415.

Hernawaty, Heriyati Chrisna, and Noviani. "Transaksi Valas Dalam Perspektif Konvensional Dan Syariah." *Jurnal Akuntansi Bisnis & Publik* 11, no. 1 (2020): 1–7. https://jurnal.pancabudi.ac.id/index.php/akuntansibisnisdanpublik/article/view/951.

Hm, Oleh, and Eka Suci. "Virtual Menurut Perspektif Hukum Positif Di Indonesia" 17 (2022): 35–42.

Ibrahim, Yusriadi. "Jual Beli Valuta Asing Dalam Perspektif Fiqh Muamalah." *Syarah: Jurnal Hukum Islam & Ekonomi* 10, no. 2 (2021): 173–91. https://doi.org/10.47766/syarah.v10i2.213.

Ivanov, Irsandi, Rika Lestari, and Dasrol Dasrol. "Analisis Penggunaan Mata Uang Asing Dalam Perjanjian Jual Beli Di Indonesia Berdasarkan Syarat Sah Perjanjian." *Jurnal Ilmiah Wahana Pendidikan* 10, no. 23 (2024): 328–40. https://doi.org/10.5281/zenodo.14564297.

Jamaluddin, Jamaluddin, and Reza Ahmad Zahid. "Reinterpretasi Ketetapan Hukum Asuransi Perspektif Hukum Islam." *Indonesian Journal of Humanities and Social Sciences* 4, no. 2 (2023): 477–98. https://doi.org/10.33367/ijhass.v4i2.4547.

Julianti, Eka. "Strategi Penguatan Pasar Uang Dan Valuta Asing Syariah Sebagai Pilar Ekonomi Berkelanjutan." *Digital Business and Entrepreneurship Journal* 3, no. 1 (2025): 73–82. https://doi.org/10.25134/digibe.v3i1.197.

Meera, Ahmad Kameel Mydin. "Cryptocurrencies From Islamic Perspectives: The Case Of Bitcoin." *Bulletin of Monetary Economics and Banking* 20, no. 4 (2018): 475–92. https://doi.org/10.21098/bemp.v20i4.902.

Novita Ambarsari, and Luhur Prasetiyo. "Perilaku Pedagang Di Pasar Wisata Plaosan Dalam Perspektif Etika Bisnis Islam." *Niqosiya: Journal of Economics and Business Research* 2, no. 1 (2022): 121–38. https://doi.org/10.21154/niqosiya.v2i1.732.

Nurhalizah, Siti, Talitha Nabilah, Zia Sidqurrahman, and Ilham Nurjaman. "Fiqh Valuta Asing Syariah." In *Gunung Djati Conference Series*, 42:551–64, 2024. https://conferences.uinsgd.ac.id/index.php/gdcs/article/view/2248.

Sah, M. Rizky Kurnia, and La Ilman. "Al-Sharf Dalam Pandangan Islam." *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum Dan Syariah* 7, no. 2 (2018): 28–47. https://e-journal.stishid.ac.id/index.php/uls/article/view/30.

Shohih, Hadist, and Ro'fah Setyowati. "Perspektif Hukum Islam Mengenai Praktik Gharar Dalam Transaksi Perbankan Syariah." *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 12, no. 2 (2021): 69–82. https://doi.org/10.28932/di.v12i2.3323.

Suryani, Suryani. "Transaksi Valuta Asing Sarf Dalam Konsepsi Fikih Mu'amalah." *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 13, no. 2 (2013): 253–68. https://doi.org/10.18326/ijtihad.v13i2.253-268.

Tanjung, Ahmad Fuadi, Raju Adha, and Marliyah. "Analisis Perkembangan Pasar Derivatif Di Indonesia." *Jurnal EMT KITA* 8, no. 1 (2024): 285–94. https://doi.org/10.35870/emt.v8i1.2047.

Umam, Khotibul. "Jual Beli Valuta Asing Dalam Ekonomi Islam." *Syiar Iqtishadi: Journal of Islamic Economics, Finance and Banking* 4, no. 2 (2020): 18–35. https://doi.org/10.35448/jiec.v4i2.9842.

Warong, Kristian Megahputra. "Kajian Hukum Hak Asasi Manusia Terhadap Kebebasan Berpendapat Oleh Organisasi Kemasyarakatan Di Media Sosial." *Lex Administratum* 8, no. 32 (2020): 73–92. https://ejournal.unsrat.ac.id/index.php/administratum/article/view/31266.