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Legal analysis of derivative transactions in islamic economics

Gunawan Widjaja
Faculty of Law Universitas 17 Agustus 1945 Jakarta; widjaja_gunawan@yahoo.com (G.W.)

Abstract: The legal position regarding derivative transactions in Islamic economic practices has attracted significant attention from Islamic financial institutions such as AAOIFI and DSN-MUI. Derivative instruments can be incorporated into the sharia framework as long as they fulfil the core principles of sharia such as being free from elements of riba (interest), gharar (uncertainty), and maysir (gambling). These bodies have issued guidelines and fatwas such as the DSN-MUI fatwa No. 96/DSN-MUI/IV/2015, which permits the use of derivatives for hedging purposes under a number of strict requirements that ensure transparency and fairness and emphasizes that transactions are based on real needs and not speculation. However, implementing these legal guidelines on the ground faces various challenges. Key challenges include correctly applying derivative instruments so that they do not turn into prohibited tools of malicious speculation. Strict supervision and audit systems are needed to ensure compliance with Shariah principles on an ongoing basis, as well as ensuring transparency in the execution of transactions. In addition, in-depth training and education for Islamic finance practitioners is essential to support proper and effective implementation. Thus, the legal position regarding derivative transactions in the Islamic economy is clear and feasible to implement with strict supervision and supported by continuing education.
Keywords: *Derivative transactions, Indonesia, Islamic Economics, Law.*

1. Introduction

Derivative instrument transactions have become a popular financial tool among market participants in the modern economy. These sophisticated instruments are utilised for hedging purposes as well as speculation, and even arbitrage. Derivatives include a wide variety of contracts such as futures, options, and swaps that allow investors to take positions based on the value of certain assets without having to physically own the assets concerned [1]. The presence of derivatives is considered important in efforts to mitigate risk and increase financial market liquidity [2].

Derivative transactions are financial contracts whose value is determined by or derived from the value of reference assets, such as stocks, bonds, commodities, currencies, interest rates, and even market indices [3]. Derivative instruments include contracts such as futures, options, and swaps, which allow parties to protect themselves from risk (hedging), speculate on underlying asset price movements, and even capitalize on price differences between various markets (arbitrage). The advantage of derivatives lies in their ability to realize complex financial strategies without having to own the underlying asset physically, thus offering high flexibility and liquidity for both investors and market participants [4].

Derivative transactions have an important relevance in the modern economy for many reasons. Firstly, derivative instruments provide market participants with an efficient mechanism to manage risk. Companies can protect themselves from volatile price fluctuations, such as changes in currency exchange rates, commodity prices, and even interest rates, which negatively affect their profits and financial stability [5]. Through futures or options contracts, for example, a company is able to lock in a certain price for an underlying asset to more accurately predict and manage costs [6].

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* Correspondence: widjaja_gunawan@yahoo.com

Second, derivatives increase the liquidity and efficiency of financial markets. With derivatives, investors have more choice and flexibility in formulating their investment strategies. They also allow for faster and easier transactions, as derivatives allow trading on predicted future asset values without the need for direct physical exchange. This increased liquidity, in turn, reduces the difference between selling and buying prices, facilitates price discovery, and makes financial markets more efficient overall [7].

Third, derivative instruments support financial market innovation and development. They enable the creation of a wide range of new financial products that can fulfil the needs of different market participants. For example, weather-based, credit-based and other derivative products can be adapted to the specific needs of investors [8]. In an increasingly complex and globalised modern economic society, adapting and creating such financial innovations is vital for economic growth and better risk management. Thus, derivatives play an important role in creating order and stability in a dynamic global financial system [9].

However, in the context of Islamic economics, these transactions raise a number of complex legal issues. Basic principles of Islamic economics such as the prohibition of riba (interest), maisir (speculation) and gharar (uncertainty) are often considered incompatible with the characteristics of derivative transactions. This has sparked significant debate among academics, practitioners and scholars [10].

Some scholars and fiqh experts think that derivatives, especially those based on speculation, can lead to maisir and gharar, contrary to Shariah's principles. They are concerned that the presence of these elements can lead to injustice and instability in the financial market, which is contrary to the main objectives of Islamic economics that prioritise justice, balance and shared prosperity [11]. Conversely, there are also views from some academics and practitioners that derivatives can be a sharia-compliant tool if used carefully, for example for hedging purposes, which can help reduce risk and not solely for speculation. Islamic financial institutions have begun to innovate by creating derivative products that comply with sharia principles, such as salam and wa'ad contracts [12].

In addition, studies on derivative transactions in the context of Islamic economics are still relatively limited and often vary depending on the interpretation and ijtihad (Islamic legal reasoning) used. Therefore, in-depth and comprehensive research on how derivative transactions can be harmonized with Islamic law is very important.

2. Research Methods

This study uses the literature research method, which is an approach used to collect and analyse information from preexisting sources. This research does not involve primary data collection but rather focuses on the systematic and critical study of literature relevant to a particular topic [13] [14] [15].

3. Results and Discussion

3.1. Definition and Types of Derivative Transactions

Derivative transactions are financial contracts between two or more parties where the value or payment in the contract depends on, or is derived from, the value of the underlying asset, such as stocks, bonds, commodities, interest rates, or market indices [16]. Derivative instruments are used to hedge against risks or for speculative purposes. In practical terms, derivatives allow market participants to adjust their risk exposure to future price movements without owning the underlying asset itself [17].

There are several main types of derivative transactions, each of which has different characteristics and purposes:

1) Futures: Contracts that require the purchase or sale of an asset at a predetermined price on a specific date in the future. These contracts are usually executed on a futures exchange and are used to manage the price risk of commodities, currencies, or stock market indices.
2) Options: A contract that gives the option holder the right, but not the obligation, to buy or sell an underlying asset at a predetermined price before or at maturity. There are two main types of

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options: call options (the right to buy) and put options (the right to sell). Options are often used to protect prices from declines or for speculation.

3) Swaps: A contract where two parties agree to exchange cash flows or the value of two different financial instruments [18]. The most common types of swaps are interest rate swaps (exchange of cash flows based on fixed and floating interest rates) and currency swaps (exchange of cash flows in different currencies). Swaps are used to manage interest rate risk and exchange rate risk [19].

Derivative transactions have an important presence in the global economy due to their ability to provide an efficient tool for risk management. By using derivatives, companies can protect themselves from exchange rate fluctuations, interest rate changes, and commodity price variability that may affect their operations. In addition, derivative instruments also increase liquidity in financial markets, allowing market participants to transact at lower costs and higher efficiency [20]. Thus, derivative transactions play a significant role in supporting financial stability and improving market liquidity, which ultimately contributes to overall economic efficiency.

3.2. Basic Principles of Islamic Economics

Islamic economics is an economic system based on the principles of Islamic law (sharia) taken from the Qur'an, Hadith, and the agreement of scholars. This system aims to realize social justice, equal distribution of wealth, and the welfare of all mankind [21].

The following are some of the main principles that form the basis of Islamic economics:

1) The prohibition of usury is one of the main principles in Islamic economics. Riba, or interest charged on borrowed money, is considered an unfair practice and undermines economic balance. Islam emphasizes the importance of fair and balanced transactions and encourages financing schemes based on profit and loss sharing, such as mudharabah and musyarakah. This principle aims to avoid exploitation and ensure that all parties involved in the transaction benefit equally [22].
2) The second principle is the prohibition of gharar, which means avoiding transactions that contain uncertainty or excessive speculation. Gharar includes any form of transaction that is unclear or has unmeasured risks. This concept encourages transparency and clarity in all aspects of economic transactions. For example, in buying and selling, both parties must know all terms and conditions to avoid fraud or misrepresentation. Contracts that contain gharar are considered void under sharia law [23].

Islamic economics views wealth as a mandate from God that must be managed fairly and ethically. This principle includes the obligation to use wealth for purposes that benefit society and not solely for personal gain. Islam encourages property owners to give zakat, sadaqah and charity to reduce the economic gap and help the less fortunate. Individual ownership is recognized but its use must be in accordance with Shariah values and norms [4].

One of the other key principles in Islamic economics is the obligation to invest in halal and productive activities. Investments in businesses that are considered haram, such as liquor, gambling, and other non-halal products, are prohibited. Instead, Islamic economics encourages investment in sectors that are productive and provide broad socio-economic benefits, such as education, health, and infrastructure development [24]. As such, the system aims to ensure that wealth and resources are utilized efficiently and beneficially for the welfare of all humanity.

3.3. The Law on Derivative Transactions

Bound transactions are financial contracts whose value is rooted in the cost of an underlying asset, such as stocks, bonds, commodities, market indices, or currencies. In the realm of contemporary economics, tying includes a variety of tools such as futures, options, swaps, and more. Although tied transactions are popular in global financial markets due to their ability to manage risk and speculate, Islamic law has a particular view on their use [25].

In Islamic law, transactions that contain gharar, which is uncertainty or vagueness in the contract, are prohibited. Many tied instruments, especially those used for speculation, may contain elements of

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gharar because they involve significant uncertainty regarding future value. Furthermore, tied transactions are often associated with maysir or gambling, a practice strictly prohibited in Islam. Bound speculation is often considered similar to gambling as it involves deliberate risk and high uncertainty in the hope of making large profits in a short period of time [26].

One of the important concepts in Islamic law is real ownership and tangible assets. In many tied transactions, such as futures and options, the contract does not necessarily involve physical ownership of the underlying asset, but rather only has value based on the future price of the underlying asset. Islam teaches the importance of transactions that are based on real goods or services and have intrinsic value, not just speculation on the future value of a commodity or financial instrument [27].

Bound transactions used for hedging purposes may be considered more aligned with Islamic principles if the objective is to manage risks encountered in halal business activities. Hedging can help companies or individuals secure the value of their assets against volatile market fluctuations [28]. However, each transaction must be conducted with full transparency and not contain excessive elements of usury or gharar. Each party should be responsible for the risks taken, and there should be no exploitation of one party over another [29].

Many scholars and fatwa bodies around the world provide guidance on the use of bonds in Islamic finance. Bodies such as the National Shariah Council in Indonesia or the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) often issue fatwas to help explain how shariah principles can be applied to modern financial tools [30]. While there are variations in interpretation, most guidelines emphasise that bonds used for purely speculative purposes are haram, but there are prudent exceptions for transactions that are genuinely hedged against real and calculated risks in an honest and fair manner [31].

With this guidance, Muslims can better understand the limitations and possible applications of tied transactions within the framework of Islamic law, avoid prohibited practices, and endeavour to carry out ethical and responsible economic activities.

3.4. Conformity of Derivative Transactions with Sharia Economic Principles

Derivative transactions, although they can be utilised as a risk management and speculation tool, often contradict the principles of Islamic economics. One of the key principles in Islamic economics is the prohibition of gharar (uncertainty) and maysir (gambling) [32]. Many derivative instruments contain a very high element of uncertainty regarding future values, which can resemble gambling practices because they involve deliberate risk and uncertainty in order to gain profits. For example, futures and options contracts tend to be criticised from a Shariah perspective as they do not fulfil the principles of certainty and fairness in transactions [33].

In addition, derivative transactions often do not involve physical ownership of the underlying asset. In Islamic law, legitimate transactions must involve real goods or services that have intrinsic value. Derivative contracts, where the value is derived from the price of the underlying asset, are often speculative and do not reflect the trading of real goods. This is contrary to the principles of Islamic economics, which emphasise real ownership and real asset-based transactions [34]. Therefore, derivative instruments in their most speculative form are often considered to be inconsistent with the values and guidelines outlined in Islamic law.

However, not all derivative instruments are completely prohibited in Islamic economics. Derivatives used for hedging against real risks can be viewed more positively if done transparently and fairly. Hedging can help companies or individuals manage market risks in a safer and more responsible way, as long as the transactions do not contain riba (interest) and maintain the principles of balance and traceability [35]. With guidance from the National Shariah Council or other fatwa bodies, Shariah-compliant derivatives such as forwards or swaps can be utilized as halal risk management tools within a fair and responsible business framework.

In the context of Islamic economics, social justice and accountability are key principles that must be fulfilled in every financial transaction. Derivative instruments used for hedging can be aligned with

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these principles if they are intended to manage real risks faced by halal business activities [36]. The use of derivatives to protect assets from volatile market fluctuations can provide financial stability and support long-term business planning. However, in order to maintain Shariah compliance, each transaction must be conducted with full disclosure and avoid unfair exploitation or disadvantage of other parties [37].

In addition, fatwa bodies and scholars are important in providing guidance on how derivative instruments can be utilised within the Shariah framework. Bodies such as the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) and Indonesia's National Sharia Council are constantly working to clarify how modern financial products can be adapted to Islamic law [38]. They emphasise that while pure speculation is prohibited, instruments designed to manage risk in a fair and open manner are acceptable. These guidelines are very important in helping financial practitioners, businesses, and Muslims in general in carrying out economic activities in accordance with sharia principles [39].

Thus, the compliance of derivative instrument transactions with Islamic economic principles depends on how the instruments are used. Derivative instruments that are only for speculation purposes and contain elements of uncertainty (gharar) and elements of gambling (maysir) are not in accordance with sharia values. In contrast, derivative instruments that are specifically designed to protect against real risks, are conducted with full transparency, and uphold the principles of fairness and openness may be considered more in line with Islamic law. Therefore, the role of scholars and fatwa bodies is crucial in providing guidance and ensuring that all derivative instrument transactions are conducted in a halal and ethical manner. By applying the strict principles of Islamic economics, Muslims can participate in the global financial markets while still upholding their religious values.

3.5. Views of Ulama and Fiqh Experts on Islamic Financial Institutions

Islamic financial institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the National Sharia Council - Indonesian Ulema Council (DSN-MUI) have an important role in issuing fatwas related to modern financial instruments including derivatives. The fatwas issued by these institutions serve as guidelines for practitioners of the Islamic finance industry to ensure that their products and services comply with sharia principles [40]. For example, AAOIFI has issued many standards and guidelines relating to various aspects of Islamic finance, including risk handling and the application of derivative products in accordance with Islamic law. The DSN-MUI also regularly issues fatwas on new financial products to ensure that they do not contain riba (interest), gharar (uncertainty), or maysir (gambling) [41].

The presence of these fatwas provides legal certainty and ensures the sharia integrity of the financial products presented. In many cases, DSN-MUI has approved the use of some derivative instruments such as forward contracts and swaps, provided that the main purpose is for hedging and not for speculation [42]. These fatwas are usually accompanied by strict technical conditions to ensure that only the real risks faced by the business are managed, rather than to profit solely from changes in the price of the underlying asset. For example, they often require full transparency in every transaction and a clear and fair value for both parties involved [43].

These fatwas are not only binding, but also provide a sense of security for investors and consumers who want to ensure that their financial activities do not contradict their religious principles. With the development of the global market, fatwa institutions are constantly reviewing and adjusting their guidelines to ensure the relevance and overall Shariah compliance in every new financial product that emerges [44]. Such institutions are essential to address modern finance challenges while remaining guided by Shariah values, thus enabling Muslims to actively participate in the global economy without compromising religious principles [45].

The development of modern financial instruments such as derivatives has created an urgent need for clear guidance and fatwas from Islamic financial institutions. The various fatwas that have been issued by institutions such as AAOIFI and DSN-MUI demonstrate a continuous effort to bridge between the

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principles of sharia and the realities of the dynamic global financial market [46]. This approach demands an in-depth study and comprehensive understanding of modern financial mechanisms, as well as the potential risks and benefits that the use of such instruments can bring within the Islamic framework. For example, the DSN-MUI fatwa No. 96/DSN-MUI/IV/2015 on derivatives in Islamic hedging transactions requires that such transactions should be based on real needs and implemented with full transparency and fairness for all parties involved [47].

In implementation, however, there are many challenges. One of the main challenges is to ensure that the permitted derivative practices are Shariah-compliant, avoiding transactions that are speculative in nature and potentially harmful to either party. This requires a strict shariah supervision and audit system to monitor business activities continuously [48]. In addition, there is also a need for education and training for financial practitioners and the general public on how to use derivative instruments in a way that complies with sharia principles. The mere existence of a fatwa is not enough if it is not accompanied by proper understanding and application in the field [49].

Thus, Fatwas from Islamic financial institutions such as AAOIFI and DSN-MUI play a key role in ensuring that derivative instruments and other modern financial products can be used within a framework that complies with sharia principles [50]. These fatwas provide clear and binding guidance for Islamic finance industry practitioners, while providing legal certainty for investors and consumers. However, effective implementation requires concerted efforts, including a strict supervisory system, education for financial practitioners, and active participation from all relevant parties [51] [52].

With a prudent approach and guided by the principles of fairness, accountability, and transparency, derivative instruments can be used to manage risks in business and investment without violating sharia principles. Thus, Muslims can actively participate in the global economy while adhering to their religious values and laws. The continuation of these efforts will ensure that Islamic finance is not only relevant in the modern world, but also contributes to broader economic stability and fairness.

4. Conclusion

Derivative-based financial instrument transactions in the Islamic economic system have become a significant topic of discussion among religious-minded financial parent institutions such as AAOIFI and DSN MUI. The main findings of legal analyses of such transactions reveal that derivatives can be accommodated within the sharia framework by fulfilling certain requirements such as being free from elements of riba (interest), not containing gharar (uncertainty), and not being a gambling mechanism (maysir). The institution's fatwa such as Fatwa DSN MUI Number 96/DSN-MUI/IV/2015 explains that derivatives can be utilised for hedging and risk management purposes based on transparency, fairness, and avoiding speculation. This provides a clear legal framework and ensures financial products remain compliant with sharia principles.

While these fatwas provide fundamental guidance, their implementation on the ground faces various obstacles. The main constraints include ensuring proper understanding and correct application of derivative instruments to prevent prohibited speculative practices. In addition, a rigorous supervision and audit system is required to ensure ongoing compliance with Shariah principles. Training and education for Shariah-based finance practitioners is also crucial to support effective implementation. Thus, derivative transactions in a faith-based economic system can provide the necessary tools for risk management without compromising religious teachings, provided they are conducted with adequate supervision and education.

The legal position on derivative transactions in Islamic economics is based on fiqh principles that aim to maintain fairness, prevent excessive speculation, and protect the interests of all parties involved. Institutions such as AAOIFI and DSN MUI have issued guidelines and fatwas regulating derivative instruments' use in a sharia context. DSN MUI's Fatwa No. 96/DSN-MUI/IV/2015, for example, allows the utilisation of derivatives for hedging purposes under certain strict conditions, including ensuring that the transaction is based on real needs, conducted transparently, and fair to all parties. This approach suggests that while derivatives are acceptable in the Islamic economy, their use must be

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carefully monitored so as not to violate the fundamental principles of Shariah such as the prohibition against riba, gharar and maysir.

However, the implementation of this legal position is not easy. It requires strict supervision and an effective audit system to ensure that all derivative transactions comply with the prescribed rules. In addition, adequate education and training for Shariah-based financial practitioners is necessary to ensure a thorough understanding and proper application of these instruments. These constraints reflect the complexity of balancing Shariah principles and the practical needs of managing risk in modern financial markets. Thus, while the legal position on derivative transactions in the Islamic economy is clear, their successful implementation depends on supervision, education and strict adherence to existing guidelines.
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