

## LEGAL PROTECTION FOR LOCAL PRODUCTS IN ASEAN MARKET LIBERALISM: A Legal Analysis and Fiqh Muamalah Perspective

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### Abstract

Market liberalisation in Southeast Asia through the ASEAN Economic Community (AEC) has created a new economic paradigm that emphasises the free flow of goods, services, and investment. However, this integration poses significant challenges to the sustainability of local products, especially those produced by Micro, Small, and Medium Enterprises (MSMEs). This journal aims to analyse in depth the legal protection mechanisms for local products in Indonesia within the framework of ASEAN liberalism and review them from the perspective of Fiqh Muamalah. Using a normative juridical approach, this study examines the synchronisation of Indonesian positive law, such as the Trade Law and the Job Creation Law, with sharia principles such as justice (*'adl*), benefit (*maslahah*), and protection (*himayah*). The analysis shows that although national legal instruments have sought to protect through non-tariff measures and the empowerment of MSMEs, structural imbalances and regulatory ambiguities continue to harm local producers. The Fiqh Muamalah perspective offers a reconstruction of policy through the state's role as *murabbī* (guide) to ensure market balance and economic sovereignty for the people.

**Keywords:** *ASEAN Liberalism, Legal Protection, Local Products, Fiqh Muamalah, Maslahah Mursalah.*

## Abstrak

Liberalisasi pasar di Asia Tenggara melalui Komunitas Ekonomi ASEAN (AEC) telah menciptakan paradigma ekonomi baru yang menekankan pada aliran bebas barang, jasa, dan investasi. Namun, integrasi ini menimbulkan tantangan signifikan bagi keberlanjutan produk lokal, terutama yang dihasilkan oleh Usaha Mikro, Kecil, dan Menengah (UMKM). Jurnal ini bertujuan untuk menganalisis secara mendalam mekanisme perlindungan hukum bagi produk lokal di Indonesia dalam kerangka liberalisme ASEAN dan meninjau mekanisme tersebut dari perspektif Fiqh Muamalah. Dengan menggunakan pendekatan yuridis normatif, studi ini mengkaji sinkronisasi antara hukum positif Indonesia, seperti Undang-Undang Perdagangan dan Undang-Undang Penciptaan Lapangan Kerja, dengan prinsip-prinsip syariah seperti keadilan (*'adl*), manfaat (*maslahah*), dan perlindungan (*himayah*). Analisis menunjukkan bahwa meskipun instrumen hukum nasional telah berusaha melindungi melalui tindakan non-tarif dan pemberdayaan UMKM, ketidakseimbangan struktural dan ambiguitas regulasi terus merugikan produsen lokal. Perspektif Fiqh Muamalah menawarkan rekonstruksi kebijakan melalui peran negara sebagai *murabbī* (pembimbing) untuk memastikan keseimbangan pasar dan kedaulatan ekonomi bagi rakyat.

**Kata Kunci:** Liberalisme ASEAN, Perlindungan Hukum, Produk Lokal, Fiqh Muamalah, Maslahah Mursalah.

## INTRODUCTION

Economic globalisation has encouraged countries in Southeast Asia to integrate their economic strengths to compete globally.<sup>1</sup> This transformation reached its peak with the implementation of the ASEAN Economic Community (AEC), which aims to form a single market and a competitive production base. In the AEC blueprint, this economic integration aims to remove trade barriers, both tariff and non-tariff, to increase efficiency and collective welfare.<sup>2</sup> However, behind the promise of prosperity, complex dynamics shape the position of local products amid a flood of imported goods that often have a comparative advantage in terms of price and quality.<sup>3</sup>

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<sup>1</sup> Hermana, A. A., Fajrin, H. M., Reva, Y. N., & Saleh, M. Z., "The Impact of the ASEAN Economic Community (AEC) on Indonesia's Economic Growth in the Era of Globalisation," *Inisiatif: Journal of Economics, Accounting and Management*, Vol. 4 No. 1 (2025). Page 55.

<sup>2</sup> Khaldun, R. I., "The Political-Economic Dynamics of ASEAN: Optimising Free Trade Area Policy," *Journal of Integrative International Relations*, Vol. 7 No. 1 (2022): p. 67.

<sup>3</sup> Misbahul Munir Makka, Chairul Fahmi, and Jefry Tarantang, "Religiosity of Muslim Customers as a Motivation to Save at Bank Syariah Indonesia," *Kunuz: Journal of Islamic*

The AEC is built on the principle of trade liberalisation, which emphasises the *free flow of goods, services, investment, and skilled labour*. This principle requires each ASEAN member country to open its domestic market widely with equal treatment between domestic and imported products.<sup>4</sup> In the context of international trade law, this policy is in line with the principles of *non-discrimination* and *national treatment* as adopted by the World Trade Organisation (WTO). As a consequence, the scope for state intervention to protect local products has become increasingly limited and must be carried out carefully to avoid violating international commitments.<sup>5</sup>

In Indonesia, the trade sector is the backbone of the economy, accounting for 12.96% of the Gross Domestic Product (GDP).<sup>6</sup> However, massive market openness without adequate protection risks causing premature deindustrialisation and marginalisation of small businesses. Local producers often face obstacles in terms of standardisation, capital, and access to technology, which are exacerbated by the influx of subsidised foreign products. This phenomenon raises fundamental questions about the effectiveness of national regulations in protecting the economic interests of the people amid international commitments.

Various studies in Indonesia show that MSMEs, as the main producers of local products, are in a vulnerable position in the regional market liberalisation scheme. Limited production capacity, weak bargaining power, and a lack of understanding of international trade mechanisms make it difficult for MSMEs to compete with mass-produced foreign products. This condition is exacerbated by the fact that trade protection instruments such as anti-dumping, countervailing duties, and safeguards are more easily accessible to large industries than to small and medium-sized enterprises.

Theoretically, legal protection for local products is not only related to state sovereignty but also touches on values of social justice.<sup>7</sup> From the

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<https://doi.org/10.30984/KUNUZ.V4I1.838>.

<sup>4</sup> Aristeus, S., "Opportunities for Indonesian Industry and Trade in the Implementation of the ASEAN Economic Community," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, No. 3 (2014): 22.

<sup>5</sup> Ibid, p. 25

<sup>6</sup> Ministry of Finance of the Republic of Indonesia, Report on the Impact of the ASEAN Economic Community on the Industrial and Service Sectors and Labour in Indonesia, Number LAP-10 (2017).

<sup>7</sup> Muhammad Achyar, Chairul Fahmi, and Riadhus Sholihin, "ISLAMIC LAW REVIEW OF MONOPOLY PRACTICES IN MODERN ECONOMICS," *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 5, no. 2 (December 30, 2024): 288–308,  
<https://doi.org/10.22373/AL-MUDHARABAH.V5I2.6545>.

perspective of Fiqh Muamalah, economic activity must be based on values of divinity and humanity that prohibit all forms of injustice, exploitation, and monopoly.<sup>8</sup> Islam emphasises that wealth should not only circulate among a handful of rich people, a principle that often conflicts with the logic of pure market liberalism.<sup>9</sup> Fiqh Muamalah views the market not as a value-free space, but as a social institution whose balance must be maintained. The state has a moral and legal obligation to prevent economic domination by the strong over the weak. Therefore, state intervention in the form of regulations, subsidies, and certain restrictions on the flow of imported goods can be justified as long as it aims to realise the public interest and prevent greater harm. A critical review that combines positive law with Islamic economic ethics is needed to formulate a more comprehensive strategy for protecting local products.

This integrative approach is relevant, given that positive law is often procedural and technocratic, while the values of Sharia law offer ethical and philosophical dimensions that emphasise substantive justice.<sup>10</sup> By combining these two perspectives, the protection of local products is not only interpreted as a defensive economic policy, but also as an effort to maintain the economic dignity of the nation and the sustainable welfare of society.<sup>11</sup> This study will outline the mechanisms of market liberalisation in ASEAN, the legal framework for protecting local products in Indonesia, and a critical analysis based on the principles of Fiqh Muamalah. By understanding the intersection of secular regulations and Sharia values, it is hoped that innovative ideas will emerge to strengthen national economic sovereignty in the era of regional free markets.

## RESEARCH METHOD

This study uses a normative legal research method, emphasizing the examination of applicable legal norms and principles relevant to the

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<sup>8</sup> Hj. Suharti & Husnul Hidayati, *Fiqh Muamalah: Dynamics of Classical Law and Contemporary Innovation* (Jakarta: Sanabil, 2023).

<sup>9</sup> Suryani, S., "Economic Justice in the Perspective of Sharia Economics," *Unimus Journal*, Vol. 2 No. 1 (2011): p. 40.

<sup>10</sup> Randy, R., & Herianti, H., "Integrative Model of Consumer Protection Based on Maqāṣid Sharia in Indonesia," *Journal of Social Science Research*, Vol. 3 No. 1 (2025): p. 3.

<sup>11</sup> Thesis, UIN Alauddin Makassar. (2021). *Analysis of Trade Policy from the Perspective of Maslahah Mursalah* (2021).

phenomenon under study.<sup>12</sup> According to Philipus M. Hadjon, normative legal research is research aimed at discovering and formulating legal arguments through analysis of the main issues.<sup>13</sup> The normative legal research method treats law as a norm, focusing on the analysis of legislation, legal principles, legal doctrines, and normative concepts related to the protection of local products within the framework of ASEAN market liberalisation.<sup>14</sup> This type of research was chosen because the issues examined do not focus solely on community behaviour or empirical implementation, but rather on the construction and coherence of legal norms governing the protection of local products within a regional free trade regime.<sup>15</sup> Thus, this study focuses on *library research* as the main source for collecting and analysing legal materials.

The legal materials in this study include primary, secondary, and tertiary sources. Primary legal materials are those whose main sources include national legislation and relevant international legal provisions; secondary legal materials include law textbooks, scientific journals, research results, and academic works discussing free trade, local product protection, and Islamic economics. In contrast, tertiary legal materials are used as supporting materials, such as legal dictionaries and encyclopaedias.<sup>16</sup> The analysis of legal materials was conducted qualitatively using descriptive-analytical and prescriptive analysis methods. Descriptive-analytical analysis is a type of research that describes and explains applicable legal provisions. In contrast, prescriptive analysis aims to formulate normative recommendations for a fair model of protection for local products that aligns with the principles of Fiqh Muamalah.<sup>17</sup> Normative legal research is prescriptive in nature because prescriptiveness is an intrinsic characteristic of legal science that can be

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<sup>12</sup> Muhammad Siddiq Armia, *PENENTUAN METODE & PENDEKATAN PENELITIAN HUKUM*, ed. Chairul Fahmi (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022).

<sup>13</sup> Taufik Firmanto, Sufiarina Sufiarina, Frans Reumi, & Indah Nur Shanty Saleh, *Legal Research Methodology: A Comprehensive Guide to Scientific Writing in the Field of Law* (Jakarta: PT. Sonpedia Publishing Indonesia, 2024) p. 21.

<sup>14</sup> Efendi, J., Ibrahim, J., & Rijadi, P. (2016). *Legal Research Methods: Normative and Empirical*.

<sup>15</sup> Ramadhan, A. (2024). Syafrida, "Legal Protection of Law Number 6 of 2023 concerning Job Creation for Strengthening MSME Business Actors," *Journal of Research and Community Service (COMSERVA)* Vol. 2.

<sup>16</sup> Taufik Firmanto, Sufiarina, Frans Reumi, & Indah Nur Shanty Saleh, *Legal Research Methodology (Comprehensive Guide to Scientific Writing in the Field of Law)* (Jambi: PT Sonpedia Publishing Indonesia, 2024), p. 95.

<sup>17</sup> Yulianingsih, D. I., & Heriyawan, M. S. (2025). The Role of Islamic Economic Ethics in International Trade. *Islamic Economics Scientific Journal*, 11(04).

understood only by moving (departing) from an internal standpoint.<sup>18</sup> Through this method, the research is expected to contribute academically to the development of national trade law oriented towards social justice and economic sovereignty.

## RESULTS AND DISCUSSION

### A. ASEAN Market Liberalisation Mechanisms and Their Impact on Domestic Industry

ASEAN economic integration is an evolutionary process that began with limited free trade agreements and led to the formation of a fully integrated economic community. The main mechanism driving this process is the ASEAN Free Trade Area (AFTA), which was initiated in 1992, with its main instrument being the Common Effective Preferential Tariff (CEPT). Through CEPT, member countries are committed to reducing import tariffs to 0-5% for products that meet the minimum local content criteria of 40%.<sup>19</sup>

Conceptually, market liberalisation within the AEC is useful for fostering healthy competition and enhancing national industrial competitiveness.<sup>20</sup> However, in practice, this liberalisation does not have a uniform impact on all member countries. Differences in levels of industrialisation, technological capacity, and state support for the domestic sector have led to an imbalance in competition. Countries with more mature industrial structures and high production efficiency tend to reap greater benefits. In contrast, those with industrial bases still reliant on small and medium-sized enterprises face significant pressure.<sup>21</sup> Under such conditions, it has been shown that ASEAN market liberalisation is not only understood as a neutral economic mechanism but also as a process that operates within a structure of inequality between countries. Indirectly, liberalisation can strengthen countries that are already structurally superior, while countries

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<sup>18</sup> Asmak Ul Hosnah, Dwi Seno Wijanarko, & Hotma P. Sibuea, *Characteristics of Legal Science and Normative Legal Research Methods* (Jakarta: Rajawali Pers, 2021), p. 202.

<sup>19</sup> Hermana, A. A., Fajrin, H. M., Reva, Y. N., & Saleh, M. Z. (2025). The Impact of the ASEAN Economic Community (AEC) on Indonesia's Economic Growth in the Era of Globalisation. *Inisiatif: Journal of Economics, Accounting and Management*, 4(1), p. 52.

<sup>20</sup> Aristeus, S. (2014). Opportunities for Indonesian industry and trade in the implementation of the ASEAN Economic Community. *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* (3), 22.

<sup>21</sup> Khaldun, R. I. (2022). ASEAN Economic-Political Dynamics: Optimising Free Trade Area Policies. *Journal of Integrative International Relations*, 7(1), p. 66.

with less developed industrial capacity, such as Indonesia, will be at a disadvantage.<sup>22</sup>

For Indonesia, ASEAN market liberalisation presents a structural dilemma. On the one hand, an open regional market provides extensive export opportunities for national products. However, the influx of competitively priced imported products narrows the market for local products, especially those produced by micro, small, and medium enterprises (MSMEs). This situation shows that market liberalisation is not neutral, but rather strengthens the dominance of businesses that have had structural advantages from the outset. Indonesian MSMEs are in an unbalanced position because they have to compete in a free market without legal protection. At the same time, imported products are not only cheaper but also larger in scale and more efficient in distribution.<sup>23</sup>

The implementation of the MEA itself is based on four main pillars, namely:

Table 1: Four Main Pillars

MEA Pillar	Main Focus	Implementation Mechanism
Single Market and Production Base	Free flow of goods, services, investment, skilled labour, and capital.	Elimination of tariffs and non-tariff barriers, harmonisation of quality standards.
Competitive Economic Zone	Competition policy, consumer protection, and intellectual property rights.	Enactment of competition laws, regulation of copyright/patent protection.
Equitable Economic Development	Development of SMEs and integration of new countries (CLMV).	SME assistance programmes, technical assistance for developing countries.
Global Economic Integration	A coherent approach to external economic relations.	Free trade agreements with dialogue partners (China, Japan, Korea).

<sup>22</sup> Chairul Fahmi and Peter Tobias Stoll, "Measuring WTO Approaches in Resolving Palm Oil and Biofuel Trade Disputes from Indonesia," *BESTUUR* 12, no. 2 (December 31, 2024): 172–90, <https://doi.org/10.20961/BESTUUR.V12I2.94203>.

<sup>23</sup> Soimah, N. (2017). The Readiness of SMEs in Bulungan to Face the ASEAN Economic Community (AEC). *Journal of Economics and Development Studies*, 9(2), p. 153.



The main pillars, namely the single market and production base, have the most direct impact on Indonesia's domestic industry. The elimination of tariffs and harmonisation of quality standards allows foreign products to circulate widely in the national market with minimal barriers. For large industries, these conditions can be utilised to expand production and distribution networks. However, for local MSMEs that still face limitations in capital, technology, and market access, the free flow of goods actually poses a threat to business continuity. Indirectly, liberalisation provides a competitive advantage to large industries already integrated into regional production chains. At the same time, local MSMEs face the risk of being squeezed out of the domestic market. Without affirmative policies from the state, this pillar could accelerate the marginalisation of MSMEs within the regional free trade system. The success of these pillars depends heavily on each country's ability to adjust its domestic economic structure. For Indonesia, the biggest challenge lies in the first pillar, where the highly free flow of goods demands high competitiveness in the manufacturing industry. If national production capacity is not increased, this integration will actually widen the trade deficit in consumer goods.<sup>24</sup>

ASEAN has identified 12 priority sectors for faster integration. Seven of these are goods sectors: agro-industry, fisheries, rubber, textiles, timber, electronics, and automotive. In the service sector, the five areas of focus are health, tourism, e-commerce, air transport, and logistics.<sup>25</sup> In Indonesia, the liberalisation of these sectors has had a paradoxical effect. On the one hand, the processed food and automotive sectors have seen increased exports to ASEAN markets, in line with tariff reductions and the simplification of trade procedures. On the other hand, imports of electronic products and household consumer goods have increased sharply, especially from ASEAN countries with strong manufacturing bases. This has significantly demonstrated that liberalisation in leading sectors has not fully led to independence in national industries. In other words, increased exports in some sectors do not necessarily offset the surge in imports in other sectors. As a result, liberalisation has deepened Indonesia's dependence on imported manufactured goods, particularly in sectors with high added value and advanced technology.

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<sup>24</sup> Adiyanti, D. (2016). The Effects of Liberalisation in ASEAN on Indonesia as a Third World Country. *Scientific Journal of International Relations*, 12(2), p. 154.

<sup>25</sup> Food and Drug Supervisory Agency. (7 January 2015). *ASEAN Economic Community (AEC) 2015*. <https://www.pom.go.id>



Trade liberalisation also encourages specialisation based on each country's comparative advantages. However, in practice, countries with cheaper production factors or strong government subsidies often dominate the market. This creates a risk of import dependency for Indonesia, where goods that could be produced domestically are imported from abroad due to lower prices.<sup>26</sup>

This increase in imports cannot be separated from the mechanism of specialisation based on comparative advantage, which is the basic principle of trade liberalisation. Countries with lower production costs, government subsidies, and greater technological expertise can offer products at prices that local Indonesian producers struggle to match. As a result, domestic products that could actually be produced independently are displaced by cheaper imported goods.<sup>27</sup> This phenomenon highlights the risk of import dependency, which runs counter to the ideal of national economic independence. This import dependency points to structural weaknesses in national industrialisation policy. Market liberalisation without an industrial protection strategy can weaken domestic production capacity and hinder technology transfer. In the long term, this situation could reduce Indonesia's bargaining power in the regional trading system.

From the perspective of the domestic economic structure, AEC liberalisation reveals the fundamental weaknesses of the Indonesian industry, particularly in the MSME sector. Most MSMEs still operate on a small scale, with simple technology and limited distribution systems.<sup>28</sup> When faced with mass-produced, efficient foreign products, local MSMEs are in a very vulnerable position. The vulnerability of MSMEs underscores the importance of the state's role in correcting market failures. Without favourable policy intervention, free-market mechanisms have the potential to eliminate small businesses from the national production chain and to precipitate premature deindustrialisation. Without adequate state intervention, free-market mechanisms have the potential to cause premature deindustrialisation and to widen economic disparities. Furthermore, the free flow of goods within the

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<sup>26</sup> Nuraini, A., Wiryanto, F. S., & Fawwaz, M. F. A. (2025). INDONESIA'S EFFORTS TO BALANCE PROTECTIONIST POLICIES AND TRADE LIBERALISATION. *Musytari: Journal of Management, Accounting, and Economics*, 24(12), p. 1247.

<sup>27</sup> Yolanda, Y. (2016). Analysis of the Development of Indonesia's Foreign Trade. *Journal of Economics*, 18(1), p. 49.

<sup>28</sup> Pudyastiwi, E., & Djatmiko, A. (2020). Indonesian Micro, Small and Medium Enterprises (MSMEs) in Facing Free Trade in ASEAN. *Undiksha Civic Education Journal*, 8(2), p. 140.

AEC also affects society's consumption structure. Cheap, easily accessible imported products encourage consumers to shift their preferences from local to imported products. This change in consumption patterns not only has economic implications but also affects cultural sovereignty and national economic identity. In the long term, the dominance of foreign products in the domestic market can weaken the local production ecosystem and eliminate incentives for domestic industrial innovation.

Thus, the mandatory implementation of Indonesian National Standards (SNI) for certain products is a mechanism for legal protection and increased competitiveness. However, for MSMEs, SNI requirements are often a burden due to the high costs of registration and testing. Without government subsidies, these requirements risk criminalising local producers who do not yet have the technical capacity to meet these standards.<sup>29</sup>

On the other hand, Law No. 33 of 2014 concerning Halal Product Guarantee (JPH Law) provides a new dimension of protection for Muslim consumers while also serving as a competitive instrument for local products in the domestic and regional markets.<sup>30</sup> The obligation to obtain halal certification for all products circulating in Indonesia forces imported products to adapt to local values, indirectly benefiting domestic producers who are already accustomed to halal standards. From the perspective of Islamic economic law, the halal certification requirement not only functions as a consumer protection instrument but also as a mechanism for affirming the values of justice and public interest.<sup>31</sup> Halal certification can be positioned as a legitimate and equitable non-tariff instrument that promotes competition aligned with local values and the principles of Fiqh Muamalah, without violating ASEAN's free trade commitments.<sup>32</sup>

## **B. National Legal Framework for the Protection of Local Products**

The Indonesian government has formulated various regulations to mitigate the impact of the free market. This legal protection is divided into two

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<sup>29</sup> Valensia, V., & Sartono, T. (2020). Product standardisation through Indonesian National Standards (SNI) as a form of consumer protection in Indonesia. *Legality: Scientific Law Journal*, 28(2), p. 199.

<sup>30</sup> Hosanna, M. A., & Nugroho, S. A. (2018). Implementation of Law No. 33 of 2014 concerning halal product guarantees for halal certificate registration on food products. *Adigama Law Journal*, 1(1), p. 515.

<sup>31</sup> Ibid, p. 522.

<sup>32</sup> Chairul Fahmi, Audia Humairah, and Ayrin Sazwa, "MODEL OF LEGAL DISPUTE RESOLUTION FOR BUSINESS CONTRACT DEFAULT," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 23, 2023): 242–63, <https://doi.org/10.22373/JURISTA.V7I2.228>.

main categories: empowering domestic businesses and implementing trade remedies.

Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises and its amendment through Law No. 6 of 2023 concerning Job Creation are fundamental legal instruments in the protection of the people's economy.<sup>33</sup> Legal protection for MSMEs covers licensing, financing and market access.

In terms of licensing, to strengthen the protection and sustainability of micro, small and medium enterprises (MSMEs) amid free market competition, the Indonesian government has implemented a number of strategic policies. One such effort is the simplification of business licensing through the implementation of the Online Single Submission (OSS) system, which is designed to cut through the previously complex and time-consuming bureaucratic procedures. Through this system, MSME players can obtain business legality more quickly and efficiently, thereby promoting legal certainty and business operational sustainability.<sup>34</sup>

Substantively, the ease of licensing through OSS not only has an impact on administrative aspects but also affects the operational sustainability of MSMEs. Business legality provides legal certainty for small business actors in carrying out their economic activities, while also increasing the trust of business partners and financial institutions. In the context of competition with foreign products, this legal certainty becomes the initial capital for MSMEs to enter a broader supply chain, including government procurement of goods and services and regional markets. In addition to licensing aspects, the government also pays serious attention to access to financing for MSMEs.<sup>35</sup>

This increase in access to financing is expected to encourage MSMEs to improve their production capacity, product quality and business efficiency. With adequate capital support, MSMEs have greater opportunities to innovate, expand their marketing networks and increase the competitiveness of local products. In the context of competition with foreign entities that have large capital and advanced technology, state intervention through this

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<sup>33</sup> Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises. Accessed on the website <https://peraturan.bpk.go.id> on 10 January 2026.

<sup>34</sup> Khumaidi, A., Suyono, S., Puspita, D., & Anggraeni, L. (2022). Utilisation of the online single submission (OSS) website for the creation of business identification numbers (NIB) for MSMEs in Tanggamus. *NEAR: Journal of Community Service*, 2(1), p. 26.

<sup>35</sup> Arifin, M., Mustofa, A., & Pramudiana, I. D. (2014). Implementation of OSS in Integrated Electronic Business Licensing Services at the Investment and PTSP Office. *Journal of Public Sector Innovation*, 4, p. 14.

financing scheme is a form of affirmation to reduce structural inequalities in the market.

Various funding schemes, such as People's Business Credit (KUR) and Productive Presidential Assistance, are provided to increase the capital capacity of small businesses. This policy aims to give MSMEs greater resilience and competitiveness, particularly in facing the influx of foreign products and businesses as a result of regional market liberalisation. State protection for MSMEs is also realised through market reservation policies.

In addition to licensing facilities and access to financing, market reservation for MSMEs is a form of direct protection provided by the state to maintain the sustainability of local businesses. Regulations that require ministries, institutions, and local governments to allocate a certain portion of goods and services procurement to local MSMEs reflect the state's support for the people's economy.<sup>36</sup> This policy provides a relatively safe market space for MSMEs amid the rapid influx of imported products and the dominance of large businesses. Regulations that require ministries and state institutions to allocate a certain portion of goods and services procurement to local MSME products are a direct protective measure. This policy not only opens up wider market access for MSMEs, but also strengthens their position in the national economic structure and promotes economic justice amid a free trade system.

Furthermore, market reservation not only functions as a protective instrument but also as a learning tool for MSMEs to improve production standards and business management. The involvement of MSMEs in government procurement of goods and services encourages small businesses to meet standards of quality, timeliness and accountability. Thus, the market reservation policy plays a strategic role in building the foundations of national economic independence while preparing MSMEs to compete sustainably in a wider market.

This regulation not only provides a normative definition of MSME criteria based on capital and annual turnover, but also stipulates the state's obligation to create a business climate conducive to the sustainability and growth of small businesses.<sup>37</sup> This protection is realised through ease of licensing, expanded access to financing, and market reservation policies for

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<sup>36</sup> Tarigan, H. J., Nasution, B., Sunarmi, S., & Siregar, M. (2021). Legal Certainty in the Implementation of SME Empowerment Priorities in Goods/Services Procurement. *Fiat Iustitia: Law Journal*, p. 70.

<sup>37</sup> Ramadhan, A. (2024). Syafrida, "Legal Protection of Law Number 6 of 2023 concerning Job Creation for Strengthening MSME Business Actors." *Journal of Research and Community Service (COMSERVA)* Vol, 2. p. 1470.

MSME products. However, there has been criticism that the implementation of the MSME Law has not been fully effective due to the absence of strong law enforcement mechanisms against partnership violations by large businesses. In addition, overlapping authorities between central and regional ministries often confuse business actors in the field.

In addition to empowering MSMEs, Indonesia also has trade protection instruments that are recognised in the international trade legal regime. These instruments include anti-dumping measures, countervailing duties, and safeguard measures.<sup>38</sup> Anti-dumping instruments are applied to imported goods entering Indonesia at prices lower than the normal price in their country of origin (*dumping price*), thereby causing or potentially causing material losses to similar industries in the country. This policy aims to create *fair trade* and protect domestic producers from unfair trade practices.

The application of anti-dumping measures aims to restore and maintain healthy and fair business competition in the domestic market. Dumping practices, characterised by the sale of imported goods below their normal price, have the potential to create market distortions because domestic producers have to compete with prices that do not reflect reasonable production costs. If this condition is allowed to continue, the domestic industry may experience a decline in production capacity, layoffs, and even bankruptcy due to an inability to compete on price.<sup>39</sup>

Through the imposition of anti-dumping duties, the state seeks to correct this imbalance by raising the price of dumped imported goods to a reasonable level. This policy provides protection for domestic industries so that they can operate sustainably, improve efficiency, and strengthen their competitiveness without unfair price pressures. Thus, anti-dumping measures are not intended as a form of excessive protectionism, but rather as a balancing instrument to ensure that market mechanisms function healthily.

In addition to anti-dumping, Indonesia also imposes countervailing duties on imported goods that are proven to have received subsidies from the exporting country's government. The provision of such subsidies has the potential to distort market mechanisms and place domestic producers in an unbalanced position. Therefore, the imposition of countervailing duties serves to neutralise the impact of foreign subsidies so that fair competition in

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<sup>38</sup> Sutrismono, N. (2007). Strengthening the Trade Remedy Legal System, Protecting Domestic Industry. *Ius Quia Iustum Law Journal*, 14(2).

<sup>39</sup> Sanjaya, D. R., Hadi, M. H. S., & Supriyadi, S. (2022). Dumping in the Perspective of International Trade Law. *Amsir Litigation Journal*, p. 16.

international trade can be created. On the other hand, when there is a significant surge in imports that threatens the survival of the domestic industry as a whole, the state can take safeguard measures as a temporary protective measure. This policy provides space for domestic industries to make structural adjustments and increase their competitiveness before returning to face the free market mechanism. The imposition of countervailing duties is intended to neutralise the market distortion caused by these subsidies. With this policy, subsidised imported products no longer have a price advantage that is detrimental to domestic industries. Countervailing duties are an important tool in maintaining a level playing field and protecting domestic producers from unfair trade practices.

Through the application of countervailing duties, importing countries seek to correct this imbalance by imposing additional levies on imported goods that are proven to have received subsidies. These levies are intended to eliminate the economic benefits of the subsidies received, so that the prices of imported goods once again reflect fair market conditions. Thus, countervailing duties serve as a corrective measure that enables the creation of a level playing field between imported and domestic products. The use of this instrument in Indonesia is often hampered by lengthy and costly verification processes, which are often beyond the reach of small local producer associations. In addition, this policy must comply with WTO rules, which often favour the spirit of free markets over the protection of national industries in developing countries.<sup>40</sup>

On the other hand, when there is a significant surge in imports that threatens the survival of the domestic industry as a whole, the state can take *safeguard* measures as a temporary protective step. This policy provides space for the domestic industry to make structural adjustments and improve its competitiveness before returning to the free market mechanism.<sup>41</sup> *Safeguard* measures are temporary protective measures that can be taken by countries in response to a significant surge in imports that threatens the survival or causes serious damage to domestic industries as a whole. These measures provide space for domestic industries to make structural adjustments in order to improve their competitiveness amid global trade pressures.

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<sup>40</sup> Adolf, H. (2004). *International trade law: principles and basic concepts*.

<sup>41</sup> Hosanna, M. A., & Nugroho, S. A. (2018). Implementation of Law Number 33 of 2014 concerning halal product guarantees for halal certificate registration on food products. *Adigama Law Journal*, 1(1), p. 529.



For Indonesia, the existence of safeguard instruments is highly relevant given that its industrial structure is still dominated by labour-intensive sectors and MSMEs that are vulnerable to global trade fluctuations. A surge in imports in certain sectors not only impacts the market share of local producers but also has broader implications for social and economic stability. Therefore, safeguard measures can be viewed as a strategic instrument for countries to maintain the continuity of national industrial development amid increasingly competitive free trade dynamics. However, the effectiveness of trade protection instruments such as safeguards cannot stand alone without the support of domestic policies that can structurally strengthen the competitiveness of national products.

In addition to tariff and non-tariff instruments, product standardisation and certification are important mechanisms for screening products in the domestic market. The mandatory implementation of Indonesian National Standards (SNI) aims to protect consumers while enhancing the competitiveness of national products. However, for MSMEs, SNI requirements often become an additional burden due to the relatively high costs of testing and certification. Without adequate subsidy and assistance schemes, this policy has the potential to drive small local producers out of their own market, rather than protecting business continuity.

On the other hand, Law No. 33 of 2014 concerning Halal Product Guarantee presents a new dimension of protection that is unique in the context of Indonesia as a country with a Muslim majority population. The obligation of halal certification not only serves as consumer protection but also as a strategic instrument in enhancing the competitiveness of local products.<sup>42</sup> Imported products wishing to enter the Indonesian market must comply with national halal standards, thereby indirectly creating entry barriers based on local values. For domestic producers who are already familiar with halal standards, this policy can be a competitive advantage in the ASEAN regional market. Therefore, legal protection for local products is not enough to stop at the normative level, but requires strengthening the role of the state in ensuring substantive justice for domestic producers, especially MSMEs, amid ASEAN market liberalisation.

### **C. The Fiqh Muamalah Perspective on ASEAN Market Liberalism**

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<sup>42</sup> Pratama, R. B. A. (2023). International Legal Protection of MSMEs for Community Welfare Based on Social Justice. *Legal Standing: Journal of Law*, 8(1), 1-17.

Fiqh Muamalah is a branch of Islamic law that regulates human relations in economic activities. Unlike the liberal capitalist system, which emphasises absolute freedom and maximum profit, Fiqh Muamalah places ethics, justice, and public interest as its main objectives. In Fiqh Muamalah, economic activities are understood as part of social worship that must comply with sharia principles.<sup>43</sup>

#### a. Basic Principles of Islamic Economics

In conducting economic transactions, Islam outlines several fundamental principles that must be adhered to in order for such activities to be considered valid and bring blessings. The principle of justice (*'adl*) occupies the most important position in conducting economic transactions, whereby every transaction must take place without harming either party. In the context of a free market and trade liberalisation, justice is interpreted as the creation of a level *playing field*, i.e. conditions of equal competition between local and foreign producers without any structural domination that oppresses certain parties.

In addition, Islam emphasises the principle of honesty (*shidq*), which requires every business actor to convey information transparently regarding the quality, composition, and characteristics of products. Deceptive practices (*tadlis*), whether in the form of information manipulation or concealment of product defects, are viewed as acts that undermine market trust and are contrary to Islamic business ethics. The principle of balance (*tawazun*) is also an important foundation in Islamic economics, which demands harmony between individual and public interests, as well as between the real and financial sectors, so that economic activities are not only profit-oriented but also socially beneficial. Furthermore, Islam strictly prohibits all forms of economic exploitation, such as usury, gharar, and maysir, because these practices have the potential to create inequality, injustice, and market instability. This prohibition emphasises that market freedom in the Islamic perspective is not absolute, but must be framed by moral and ethical values in order to achieve economic justice and shared prosperity. These principles form the basis for criticism of market liberalism, which often neglects the plight of small producers in favour of aggregate efficiency. From an Islamic perspective,

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<sup>43</sup> Ismaliyanto, J., Fahriani, F. Z., Astuti, H. H., Ratnawati, N., Dewantara, A., Harmaini, H., ... & Djatmiko, T. (2025). *Introduction to Sharia Economics: Concepts, Principles, and Practices*. p. 36.

economic growth that is not accompanied by equitable wealth distribution is a form of systemic failure.

b. Critical Analysis of Liberalism from a Sharia Perspective

Fiqh Muamalah views that humans do not act solely rationally, but are also influenced by desires that have the potential to give rise to destructive economic practices, such as monopolies, hoarding (*ihtikār*), and unfair competition.<sup>44</sup> Therefore, freedom in Islam is not absolute freedom, but freedom that is limited by the principles of moral responsibility and Sharia supervision. In the context of the AEC, the phenomenon of a flood of imported products that weakens and even kills local businesses can be classified as a form of harm (*mafsadah*). This condition contradicts the fiqh principle of *lā ḍarara wa lā ḍirāra*, which prohibits economic activities that harm oneself or others. If the free market is proven to damage the livelihoods of the majority of local producers, then state intervention is not only justified but also a normative obligation to restore justice and market balance.

c. *Maslahah Mursalah* in Economic Policy

*Maslahah mursalah* is a method of determining law based on the public interest that is not explicitly regulated in the text, but is in line with the objectives of sharia (*maqāṣid al-syarī'ah*). In the context of protecting local products, policies such as subsidies for MSMEs, the application of import tariffs on strategic products, and campaigns to promote love for domestic products ( ) can be justified in terms of Sharia through the framework of *maslahah mursalah*. These fair protective policies aim to preserve the five essential elements of *maqāṣid al-syarī'ah*, namely religion, life, intellect, lineage, and property. By protecting the people's economy, the state not only safeguards the sustainability of MSMEs but also ensures social stability and moral resilience so that society does not fall into structural poverty, which has the potential to undermine religious and social life.

**D. The Role of the State as *Murabbī* and *Himayah* Mechanism**

The state is not positioned as a passive actor that allows market mechanisms to operate without limits, but rather as an authority responsible for ensuring that economic activities are carried out in accordance with the

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<sup>44</sup> Hj. Suharti & Husnul Hidayati. *Fiqh Muamalah: Dynamics of Classical Law and Contemporary Innovation*. Sanabil Publishing.

principles of justice, benefit, and protection of the weak.<sup>45</sup> In the context of ASEAN market liberalisation, the role of the state becomes increasingly crucial in maintaining the sustainability of local products and national MSMEs.

The role of the state as a *murabbī* requires the government not only to open up market access, but also to build the capacity of domestic businesses so that they can compete fairly. In the context of protecting local products, this function is reflected in policies to empower MSMEs through technology training, improving the quality of human resources, and providing efficient production and distribution infrastructure. Without such intervention, market liberalisation actually weakens the position of small businesses that do not have the same capital and technology as foreign businesses. In addition to being a mentor, the state in an Islamic economy also acts as a guardian of market balance through the *himāyah* mechanism. Historically, *himāyah* refers to state protection policies for certain sectors or regions in the public interest. In the context of the modern economy, this concept can be interpreted as a form of selective protectionism aimed at protecting strategic industries and industries that are still in the development stage (infant industries). Restrictions on imports of consumer goods that can be produced domestically are one form of *himāyah* implementation that is justified by Islamic law ( ), as long as the policy is aimed at preventing harm and maintaining the welfare of the wider community.

<sup>46</sup>The concept of *himāyah* in Islamic law has strong points of convergence with the mechanisms of positive law in Indonesia. Market reservation policies for MSMEs in government procurement of goods and services, the application of Indonesian National Standards (SNI), mandatory halal certification, and business competition regulations are legal instruments that are substantively in line with the principle of distributive justice in Fiqh Muamalah. These regulations aim to prevent the accumulation of wealth in large business groups, ensure honesty and consumer protection, and avoid monopolistic practices and hoarding (*ihtikār*). However, the implementation of local product protection still faces complex challenges. One of the main challenges is Indonesia's commitment to international trade agreements, such as the WTO and various free trade agreements, which often limit the state's

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<sup>45</sup> Islahi, A. A. (2014). History of Islamic economic thought: Contributions of Muslim scholars to economic thought and analysis. In *History of Islamic Economic Thought*. Edward Elgar Publishing.

<sup>46</sup> Randy, R., & Herianti, H. (2025). An Integrative Model of Consumer Protection Based on Sharia Maqāṣid in Indonesia. *Socius: Journal of Social Science Research*, 3(1), p. 4.

scope for intervention in protecting domestic industries. From the perspective of Fiqh Muamalah, international agreements that cause extreme inequality and harm the majority of the population can be reviewed because they contradict the principles of justice and the prohibition of oppression.

Another challenge is the paradox of certification for MSMEs. Although SNI and halal certification aim to increase competitiveness and protect consumers, the costs and bureaucratic complexity often pose obstacles for small businesses. Within the framework of Islamic economics, this condition contradicts the principle of *taysir* (ease) and the role of the state as *murabbī*. Therefore, facilitating free or subsidised certification for MSMEs is a form of state responsibility in ensuring that regulations do not become instruments of structural exclusion. In the digital era, the challenge of protecting local products has become more complex with the emergence of cross-border trading platforms. Imported products can directly reach consumers without going through conventional distribution mechanisms, thereby accelerating the dominance of foreign products in the domestic market. Policies restricting trade transactions on social media can be seen as a form of *maslahah mursalah* to prevent market disruption and the destruction of local producers. However, these policies must be accompanied by the development of national digital platform sovereignty that supports the people's economy.

Overall, the protection of local products in the era of ASEAN market liberalisation requires an integrative approach between positive law and Islamic ethics. Economic nationalism in the Islamic perspective is not anti-foreign, but rather based on social solidarity and collective responsibility to maintain the economic independence of the people. Reforms to the national legal structure need to be directed towards favouring MSMEs, whether through affirming the public interest in trade policy, a guidance-based approach to law enforcement, or the use of technology for preventive monitoring of trade flows. Thus, the role of the state as *murabbī* and implementer of *himāyah* becomes the main foundation in building a fair, sovereign and sustainable trading system.

## CONCLUSION

The liberalisation of the ASEAN market through the ASEAN Economic Community (AEC) is a global inevitability that requires national legal readiness to protect the interests of local products. Normatively, Indonesia already has protection instruments through the MSME Law, the Trade Law,

and standardisation and certification policies. However, the effectiveness of these regulations still faces serious obstacles in the form of administrative complexity, high compliance costs, and pressure from liberal-oriented international trade commitments, so that protection for domestic businesses is not yet optimal.

In this context, the perspective of Fiqh Muamalah offers an ethical and normative basis for reconstructing local product protection policies. The principles of justice (*'adl*), benefit (*maslahah*), and the role of the state as *murabbī* affirm the legitimacy of state intervention to protect weak business actors from exploitative market domination. Selective protectionism policies, legal affirmation for MSMEs, ease of certification, and strengthening of the real sector are not only legally justifiable but also a moral obligation of the state in maintaining economic balance and the sovereignty of the people. Therefore, " To face future challenges, Indonesia needs to align its national regulations with the ethical values of Islamic economics and Pancasila. Strengthening the competitiveness of local products should not only be the responsibility of business actors, but must be fully supported by the state through fiscal, monetary, and trade policies that favour the people. With the right integration between modern positive law and universal sharia values, Indonesian local products will not only survive in the ASEAN market, but will also be able to become a driving force for equitable and sustainable prosperity. The integration of modern positive law and universal sharia values is an important prerequisite for Indonesian local products to not only survive in the ASEAN market, but also act as a driving force for equitable and sustainable prosperity.

Research shows that Indonesian MSMEs are in a vulnerable position in the ASEAN market competition due to limited production capacity, technology, and market access, which is exacerbated by the entry of foreign products with structural advantages. Therefore, the government needs to strengthen its role through affirmative policies in the form of facilitation and subsidies for SNI and halal certification, expansion of access to financing, market reservation for MSMEs, and supervision of unfair business competition practices. On the other hand, MSMEs are required to be adaptive and independent by not solely relying on state protection, but actively improving quality, innovation, business efficiency, and the use of digital technology in order to compete professionally in the free market. Synergy between fair state intervention and SMEs' readiness to face competition is a key prerequisite for achieving sustainable protection of local products in line with the principles of justice and public interest in Fiqh Muamalah.



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