

## **DEVELOPMENT OF SHARIA BANKING IN NATIONAL LEGAL SYSTEM AND NATIONAL BANKING SYSTEM IN INDONESIA**

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### ***Abstract***

*Sharia banks are banks that carry out their business activities based on the principles of Islamic law in banking activities based on fatwas issued by the National Sharia Council of the Majelis Ulama Indonesia. This research aims to explain the development of sharia banking in the national legal system and national banking system in Indonesia. The method used in this research is normative legal research using the statutory approach. The results of this research are that the initiative regarding the establishment of sharia banks in Indonesia began in 1990 by the Majelis Ulama Indonesia, which was realized with the establishment of Bank Muamalat Indonesia on November 1, 1991. The initial development of sharia banking in the national banking system was responded quickly by the government with the enactment of Law No. 7/1992 concerning Banking, which was later amended by Law No. 10/1998. In addition to being devastating to the national banking system, the economic crisis that occurred in 1998 also became a starting point for the development of sharia banking in Indonesia. Some conventional banks began to expand their business by establishing sharia banks. Responding to the significant development of sharia banking in the national banking system, on July 16, 2008 Law No. 21/2008 concerning Sharia Banking was passed as a separate legal basis for sharia banks in Indonesia.*

**Keywords:** *Law, Sharia Banking, Development*

### **INTRODUCTION**

As mandated by the Pancasila and the 1945 Constitution of the Republic of Indonesia, the goal of national development is the creation of a just and prosperous society based on economic democracy by developing a just economic system. To ensure the continuation of economic democracy, all potentials, initiatives, and creations of the people must be fully mobilized and developed within the limits that do not harm the public interest, so that all potential economic forces can be mobilized into tangible economic forces for the benefit of increasing prosperity people. In order to achieve this goal, the implementation of economic development must pay more attention to the harmony, harmony and balance of the elements of equitable development,

economic growth and national stability. One institution that has a strategic role in harmonizing, harmonizing, and balancing each element of the development trilogy is banking.

Banking is everything related to banks, including institutions, business activities, as well as ways and processes in carrying out their business activities. In simple terms, a bank is defined as a financial institution whose business activities are raising funds from the community and channeling the funds back to the community, as well as providing other financial services (Kasmir, 2012: 3).

According to business activities, types of banks can be distinguished from conventional banks and sharia banks (Djoni S. Gazali dan Rachmadi Usman, 2012: 151). Conventional banks are banks that carry out their business activities conventionally, while sharia banks are banks that carry out their business activities based on Islamic legal principles in banking activities based on fatwas issued by the National Sharia Council of the Majelis Ulama Indonesia (Andrew Shandy Utama, 2018: 38).

The initiative to establish an sharia bank in Indonesia only began in 1990 by the Majelis Ulama Indonesia and the first sharia bank established in Indonesia was Bank Muamalat Indonesia in 1991. Based on data from the Financial Services Authority in 2017, currently there are 13 sharia banks in Indonesia, Sharia business units from conventional commercial banks are 21 banks, and Islamic People's Financing Banks are 102 banks.

From the introduction outlined above, the problem discussed in this research is how is the development of sharia banking in the national legal system and the national banking system in Indonesia?

## **METHOD OF RESEARCH**

Legal research is a scientific activity that is based on certain methods, systematics, and thoughts that aim to study one or several specific legal phenomena by analyzing them (Soerjono Soekanto, 2007). The method used in this research is normative legal research, using a statutory approach. Normative legal research is a process of finding legal rules, legal principles, and legal doctrines in order to address the legal issues faced (Peter Mahmud Marzuki, 2011). Data sources used in this research are secondary data, namely data obtained from statutory regulations, scientific journals, and legal literature. The data collection technique used in this research is literature study. The data analysis technique used in this research is qualitative analysis.

## **RESULTS OF RESEARCH AND DISCUSSIONS**

Sharia banks are banks that carry out their business activities based on Islamic legal principles in banking activities based on fatwas issued by the National Sharia Council of the Majelis Ulama Indonesia (Andrew Shandy Utama, 2018: 38). According to the Organization of the Islamic Conference,

Islamic banks are financial institutions that have laws, rules and procedures as a form of commitment to the principles of sharia and prohibit receiving and paying interest in operational processes carried out (Veithzal Rivai dan Arviyan Arifin, 2010: 31).

It has been a long time for Muslims, including in Indonesia, to experience various obstacles in developing their economic potential and development. One reason is the disease of dualism between the economy and sharia which is quite chronic. This dualism arises as a result of the inability of the people to combine the two disciplines, economics and sharia, which should complement and perfect each other (Muhammad Syafi'i Antonio, 2002: 17).

In Indonesia, as mandated by the Pancasila and the 1945 Constitution of the Republic of Indonesia, the goal of national development is the creation of a just and prosperous society based on economic democracy by developing economic systems that are based on equitable market mechanisms. In order to realize this goal, the implementation of national economic development is directed at an economy that is pro-populist, equitable, independent, reliable, fair, and able to compete in the international economic arena. In order to achieve national development goals and be able to play an active role in healthy global competition, participation and contribution of all elements of society are needed to explore various potentials in society to support the process of economic acceleration in an effort to realize national development goals.

One form of exploring the potential and form of community contribution in the national economy is the development of an economic system based on Islamic values (sharia) by elevating its principles into the national legal system. Sharia principles are based on the values of justice, expediency, balance, and universality. These values are applied in banking arrangements that are based on sharia principles, which are referred to as sharia banking.

Sharia banking principles are part of Islamic teachings relating to economics. One of the principles in Islamic economics is the prohibition of usury in various forms and uses a system including the principle of profit sharing. With the principle of profit sharing, Sharia banks can create a healthy and fair investment climate because all parties can share, both profits and potential risks that arise, so that it will create a balanced position between the bank and its customers. In the long run, this will encourage national economic equality because the profits are not only enjoyed by capital owners, but also by capital managers.

Initiatives regarding the establishment of sharia banks in Indonesia began in 1990. On 18-20 August 1990, the Majelis Ulama Indonesia held a 'Bank and Banking Interest Workshop' in Bogor, West Java. The results of the workshop were then discussed in more depth at the IV National Congress of the Majelis Ulama Indonesia in Jakarta on August 22-25, 1990 to form a working team for the establishment of sharia banks in Indonesia. The work of the team was the establishment of Bank Muamalat Indonesia on November 1, 1991, which officially began operating on May 1, 1992 (Rachmadi Usman, 2012: 71). After

that, a number of Syariah People's Credit Banks were established, namely BPR Syariah Berkah Amal Sejahtera, BPR Syariah Dana Mardhatillah, and BPR Syariah Amanah Rabaniah in Bandung, and BPR Syariah Hareukat in Aceh.

The early development of sharia banking in the national banking system was responded quickly by the government. On March 25, 1992, Law No. 7/1992 concerning Banking was passed to replace Law No. 14/1967 concerning Banking Fundamentals to accommodate the establishment of sharia banks in Indonesia.

Article 6 Letter m and Article 13 Letter c of Law No. 7/1992 states that the business of commercial banks and rural credit banks, one of which is to provide financing for customers based on profit sharing principles in accordance with the provisions stipulated in government regulations. This provision becomes the legal basis for Islamic banking in carrying out its business activities. This provision was then strengthened by the ratification of Government Regulation No. 72/1992 concerning Banks Based on the Profit Sharing Principle.

According to Government Regulation No. 72/1992, banks based on profit sharing principle are commercial banks or Rural Credit Banks that carry out business activities solely based on profit sharing principles in accordance with shari'ah in determining the compensation to be given to the public in connection with the utilization of public funds entrusted with to the bank, determine the compensation to be received in connection with the provision of funds to the public in the form of financing, and determine the compensation in connection with other business activities that are commonly carried out by the bank on the profit sharing principle.

The birth of Law No. 10/1998 as an amendment to Law No. 7/1992 further strengthens regulations regarding sharia banking in Indonesia. Article 1 of Law No. 10/1998 clearly states that both commercial banks and Rural Credit Banks are banks that carry out business activities conventionally and / or based on sharia principles. The article also explains the understanding of sharia principles, namely the rules of agreement based on Islamic law between banks and other parties for depositing funds and / or financing business activities, or other activities declared in accordance with sharia, including financing based on profit sharing principles (*mudharabah*) , financing based on the principle of equity participation (*musharakah*), the principle of buying and selling goods with a profit (*murabahah*), and financing of capital goods based on the principle of pure lease without choice (*ijarah*) or with the option of transferring ownership of goods leased from the bank by another party (*ijarah wa iqtina*).

In providing credit and conducting other business activities, every bank, both conventional and sharia banks, must take methods that do not harm the bank and the interests of customers who entrust their funds to the bank. Since banks mainly work with funds from the public which are deposited with banks on the basis of trust, each bank needs to continue to maintain its health and maintain public trust in it.

Indonesian people have lost confidence in the banking world at the time of the economic crisis in 1998. The economic crisis has been a devastation for the national banking system. The real evidence that resulted was, among others, the freezing of 38 banks' businesses, including Ciputra Bank, Ganesha Bank, Pesona Bank, Alfa Bank, Aspac Bank, and so on. Furthermore, there were 7 banks that were taken over by the government, namely RSI Bank, Putera Sukapura Bank, POS Bank, Artha Pratama Bank, Nusa National Bank, Jaya Bank, and IFI Bank. In addition, there were also 4 government banks, namely Dagang Bank, Exim Bank, Bumi Daya Bank, and Bapindo which were merged into Bank Mandiri (Andrew Shandy Utama, 2018: 6).

However, it turns out that sharia banks were not affected by the economic crisis that occurred in 1998. During the economic crisis, factually Bank Muamalat Indonesia, the only Islamic commercial bank in Indonesia, was included in the category of healthy banks because it had a Capital Adequacy Ratio with 'A' category. This means that sharia banks can actually show relatively better performance compared to conventional banks (Abdul Ghofur Anshori, 2009: 4-5).

Besides being a devastation to the national banking system, the economic crisis that occurred in 1998 also became a starting point for the development of sharia banking in Indonesia. This is because sharia banks are not affected by the economic crisis. Several conventional banks, both state-owned and private banks, are expanding their business by establishing sharia banks, such as Bank Syariah Mandiri which was founded in 1999, Bank Permata Syariah which was founded in 2002, Bank Mega Syariah which was founded in 2004, Bank Rakyat Indonesia Syariah which was founded in 2008, Bank Syariah Bukopin which was founded in 2008, and so on (Andrew Shandy Utama, 108-109).

Responding to the significant development of sharia banking in the national banking system, on July 16, 2008 Law No. 21/2008 concerning Sharia Banking was passed as a separate legal basis for sharia banks in Indonesia.

Sharia Banking Law No. 21/2008, legally philosophical, has fulfilled the demands of a sense of justice and legal certainty of justice seekers, especially concerning sharia economic business transactions (M. Ali Mansyur, 2011: 74).

The development of sharia banking in Indonesia has been rapid. One of the unique and interesting periods of a long series of developments in sharia banking in Indonesia is the period of maturation of concepts and initial pioneers which took place in the decade of the 90's. At that time there was still a sharia commercial bank, namely Bank Muamalat Indonesia. With its status as the first Sharia commercial bank in Indonesia, Bank Muamalat Indonesia became the pilot project and trademark of the rise and implementation of massive Islamic economic legal thinking in Indonesia. The decade in which Bank Muamalat Indonesia stood became a momentum that has been eagerly awaited by the Indonesian people since tens or even hundreds of years ago. This period is very strategic because it becomes a stepping stone of success or failure of sharia banking in the next era. The long stretch of sharia banking

dynamics in Indonesia cannot be separated from the existence of Bank Muamalat Indonesia (Mohamad Nur Yasin, 2010: 10).

Based on data from the Financial Services Authority in 2017, currently there are 13 sharia banks in Indonesia, Sharia business units from conventional commercial banks are 21 banks, and Islamic People's Financing Banks are 102 banks. This is evidence of the existence and development of sharia banking that is significant in the national banking system. That is, sharia banks are financial institutions that can develop rapidly on the basis of the trust of Indonesian people who are predominantly Muslim.

In addition to having legal responsibility towards the applicable laws and regulations, sharia banks also have moral responsibility towards the community and religious responsibility to God. Sharia banks have a moral responsibility to the community means that the community considers employees who work in Islamic banks have good morals in accordance with Islamic teachings, for example honest in working. Sharia banks have the responsibility of worship to God, which means that sharia banks indirectly preach Islamic sharia in the field of muamalah, for example, encourage people to leave usury.

The development of sharia banking in Indonesia is inseparable from the political situation surrounding its presence and juridical problems and problems regarding the relationship between Islamic law and national and western law. The development of sharia is influenced by the thoughts and efforts of Islamic scholars and economists, both individually and institutionally, as well as the development and progress of Islamic banking in the international world (Sofyan Mei Utama, 2012: 565).

The development of sharia banks in Indonesia is currently running very rapidly. Even so, the number of banks, number of bank offices, and total assets of sharia banks is still very small when compared to conventional banks. Based on data from the Financial Services Authority in 2018, the number of customers holding funds in sharia banks is only 23.1 million people and customers who borrow funds in sharia banks are only 4.7 million people. This number is certainly still very small when compared with the total population of Indonesian Muslims, which number reached 207.1 million according to population census data in 2010.

## **CONCLUSION**

Sharia banks are banks that carry out their business activities based on the principles of Islamic law in banking activities based on fatwas issued by the National Sharia Council of the Majelis Ulama Indonesia. The initiative regarding the establishment of Islamic banks in Indonesia began in 1990 by the Majelis Ulama Indonesia, which was realized with the establishment of Bank Muamalat Indonesia on November 1, 1991. The initial development of Islamic banking in the national banking system was quickly responded by the

government with the adoption of Law No. 7/1992 concerning Banking, which was later amended by Law No. 10/1998. In addition to being devastating to the national banking system, the economic crisis that occurred in 1998 also became a starting point for the development of sharia banking in Indonesia. Some conventional banks began to expand their business by establishing sharia banks. Responding to the significant development of sharia banking in the national banking system, on July 16, 2008 Law No. 21/2008 concerning Sharia Banking was passed as a separate legal basis for sharia banks in Indonesia.

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