# DIRECTION AND POLITICS OF ISLAMIC BUSINESS LAW IN INDONESIA

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***Abstract:*** The implementation of Islamic Sharia in the field of business has a strong legal basis in the Indonesian legal system. The legal basis is: The 1945 Constitution, especially article 29, several Laws and several Government Regulations, or other regulations relating to sharia businesses that are developing today, such as Law Number 7 of 1992 jo Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Law Number 38 of 1999 concerning Zakat Management, Law Number 3 of 2006 concerning Religious Courts, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 19 of 2008 concerning National Sharia Securities (SBSN), Law Number 21 of 2008 concerning Sharia Banking, Law Number 33 of 2014 concerning Halal Product Guarantee (JPH), and Law Number 40 of 2014 concerning Insurance. Sharia Financial/Business Institutions that are currently developing include Sharia Banks, Sharia Insurance, Sharia Mutual Funds, Sharia Pawnshops and others.

***Keywords:*** Islamic Business Law, Islamic Sharia, Sharia Financial

## Introduction

The direction and policy of Islamic business development in Indonesia shows dynamic conditions, not only due to ideological interests (*ideology interest*) but also economic interests (*economics interest).*

Economic interests are part of the factors that make sharia regulation or Islamic economics such as in the business of banking, insurance, bonds, investment, tourism, hospitality, halal products and so on.

Some data on the development of Islamic economics in Indonesia today can be seen as follows: The financial performance of Islamic Commercial Banks (BUS) and Islamic Business Units (UUS) from various aspects reached more than 30 percent. Islamic banking income in July 2022 amounted to 9,210 billion, the capital obtained by Islamic Banks increased by 23.5 percent from 50,661 to 57,331 billion. Likewise, Islamic banking third party funds rose 11.4 percent, namely 215.339 trillion. In terms of financing, Islamic banking grew by 6.9 percent, from 256.159 trillion (2021) to 282.989 billion (2022). In terms of non-performing finance (NPF), it rose from 0.81 percent (2021) to 0.79 percent (July 2022). Then, total financing increased from 38.80 (2021) to 40.33 (2022).

The essence of the establishment of Islamic Business Institutions is not only to promote and develop the application of Islamic principles, but also to improve the economic quality of the community in particular or the country's economy in general. Islamic business has a direct relationship with the politics of a country. The success of an idea or economic system will be influenced by political processes and mechanisms.

It is believed that business practices have long been alive in Indonesian society, where the tradition of Islamic law was once the sole law. This was true before the Dutch colonial power launched its legal politics in Indonesia, where Islamic law was a stand-alone law with a

good and strong position in society and in state legislation. In contrast to the current era, regulation is often assumed to be the cause of the stagnant development of Islamic banking practices. In fact, theoretically, *living law* (law that reflects the values of life in society) should be positioned by national legal politics as a tool to encourage and direct the progress of society.

Closely related to this legal politics is the legal positification effort. Positification is understood as an effort to formalize a normative law such as Islamic law into national law. Therefore, positive Islamic law means Islamic law that has been elevated to national law (formalized). Formal legal provisions governing the implementation of Islamic business activities in Indonesia are all provisions that have gone through the positification process by the state. If this Islamic business law has been formalized by the state, then the power of enactment comes from the state, so that it applies thoroughly to the people of Indonesia and can be forced to be applied in these economic activities.

The belief that law is a product of legal politics, indirectly, leads to a frame of mind that certain legal products are products of certain politics as well. Various political processes in Indonesia have also brought changes to the development of the financial industry. In other words, Sharia Economic Law is also a legal product that cannot be separated from the political process.

This research will describe the development of the enactment of Islamic law related to the economy or what is called the politics of sharia economic law from the 1990s to the present. This paper begins with an explanation of the *politics of law* taken from several opinions of state administration experts, then describes the theories of the enactment of Islamic law in Indonesia since the Dutch colonial era until now.

The main discussion lies in the discussion of Islamic economic law that has been in effect in Indonesia since 1999 until now *(ius constitutum)*, as well as some forms of Islamic economic law that should exist *(ius constituendum).*

**Literature Review**

According to Mohammad Mahfud MD, legal politics is a legal policy that will be or has been implemented nationally by the Government of Indonesia which includes: first, legal development which emphasizes the making and updating of legal materials to suit the needs; second, the implementation of existing legal provisions including the affirmation of institutional functions and the development of law enforcers.

From this understanding, it can be seen that legal politics includes the process of making and implementing laws that can indicate the nature and direction in which the law will be built and enforced. Thus, legal politics is the direction or official line that is used as the basis and method for making and implementing laws in order to achieve the goals of the nation and state. Legal politics can also be said to be an answer.

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The politics of sharia economic law is essentially the effort and enforceability of Islamic law in Indonesia. In its journey, the process of enacting Islamic law in Indonesia has experienced a long legal dynamic since the Dutch colonial era, independence to the reform era.

Some theories of the applicability of Indonesian Islamic law are as follows:

*1) Receptio in complexu theory*

Since the 19th century, Islamic law has been applied in Indonesia, as Solomon Keyzer (1823-1868) argued. This opinion was reinforced by L.W. Christian van den Berg with the statement that the law follows the religion that a person adheres to. If the person embraces Islam then Islamic law applies to him. According to Berg, Indonesian Muslims have done the reception of Islamic law in its entirety and as a unit called *receptio in complex*.

The theory of *receptio in complexu* is contained in Article 75 of the 1855 RR (*Regeeringsreglement*). Article 75 paragraph 3 of the RR reads: "the Indonesian judge shall apply the religious laws (*godsdienstige wetten*) and customs of the Indonesian population". Islamic law applies to Muslims with the term *godsdienstige wetten*. During this theory, Stbl.1888 No.152 was issued regarding the establishment of a Religious Court (*Priesterrad*) in addition to the District Court (*Landraad)*, which was previously preceded by the preparation of a book containing a collection of Islamic law, the handbook of judges, such as the *Mogharrer Code in* 1747, *Compendium Freijer* in 1761.

*2) Theory of reception*

The theory of *receptio in complexu was* refuted by Snouck Hurgronje (1857-1936), who at the time was advising the Dutch East Indies government on Islam and the people's religion with his theory called *receptio*. According to Snouck, the applicable law for Muslims is customary law. Islamic law applies if it has been accepted by customary law. This theory became famous after it was systematized and developed by Cornelis van Vollenhoven and Ter Haar and their followers. This theory very systematically dwarfs and even eliminates the applicability of Islamic law in Indonesia. The applicability of Islamic law (in the material sense) as well as in the judicial process (in the formal sense) was removed. When this theory was in effect, the politics of Islamic law was truly in decline and even in the brink of destruction.

*3) Receptio Exit Theory*

The emergence of the *receptio* theory as stated above raises opposition among Islamic jurists because according to Hazairin, the theory put forward by Snouck Hurgronje is the theory of the devil. This theory wanted to kill the Islamic law that had been accepted by the Indonesian people and was an invitation to Muslims not to obey in carrying out the commands of Allah and His Messenger. At the time of Indonesia's independence, Hazairin said:

"That the theory of reception, both as a theory and as a provision in Article 134 paragraph 2 of the *Indische Staatsregeling* as the Dutch constitution has long been Modar (dead, pen), namely erased by the enactment of the 1945 Constitution, as the constitution of the Republic of Indonesia."

This understanding is what is meant by the death or abolition of the *receptie* theory or the exit from the *receptio* theory called *Receptie exit*. The enactment of the *receptio exit* theory began with the ratification of the 1945 Constitution by PPKI on August 17, 1945. The opening part is the Jakarta Charter which is the success of national figures who have always fought for the application of Islamic law, although in the charter has been abolished seven words ("with the obligation to carry out Islamic law for its adherents") but there is a philosophical basis is Pancasila as formulated in the fourth paragraph of the Preamble of the 1945 Constitution and the juridical basis contained in article 29 of the 1945 Constitution on the freedom of religious law enforcement for its adherents.

The applicability of Islamic law was finally included in the formulation of the foundation of the Republic of Indonesia known as the Jakarta Charter which reads: "The state is based on Godhead with the obligation to implement Islamic sharia for its adherents." These last seven words that were originally included in the Jakarta Charter were removed by the Indonesian Independence Preparatory Committee (PPKI).

However, through the Presidential Decree of July 5, 1959, which declared a return to the 1945 Constitution, Soekarno said that "we believe that the Jakarta Charter written on June 22,

1945 is the inspiration behind the 1945 Constitution, and is an integral part of this constitution." In the history of the formation of the country's foundation, the first principle was derived from the Jakarta Charter, which reads "the state is based on the almighty God, with the obligation to implement Islamic law for its adherents.

*4) Receptio a contrario theory*

*Receptio a contrario* theory is also a counter theory to *Receptio* theory. Receptio *a contrario* theory was coined by Prof. Hazairin with the statement that the theory of reception cannot be used to look at the basic facts and problems of law in Indonesia. According to Hazairin, the specialty of religious law is that religious law is felt by the Muslim people as part of the matter of faith.

This theory is the opposite of the *Receptio* theory, where customary law only applies if it does not conflict with Islamic law. In some areas that are considered very strong in customs, such as in the Acehnese community who want marriage and inheritance to be regulated and adjusted to Islamic law. When applicable, customary law can also be accepted if it does not conflict with Islamic Law.

*5) Existence Theory*

Existence theory is a theory that explains the existence of Islamic law in Indonesian National law. According to this theory, the forms of existence (existence) of Islamic law in national law are: (1) Exists, in the sense that Islamic law is in national law as an integral part of it; (2) exists, in the sense of its independence which is recognized as having national legal force and as national law; (3) exists in national law, in the sense that Islamic legal norms (religion) function as a filter for Indonesian national legal materials; (4) Exists in national law, in the sense that it is the main material and main element of Indonesian national law.

## Method

This research uses qualitative analysis. This qualitative analysis is basically the results of interviews and theories so that from these results several things can be drawn that can be used as conclusions for the discussion of this paper. The data analyzed qualitatively will be presented in the form of a systematic description by explaining the relationship between various types of data, then all data is selected and processed and then stated descriptively so that in addition to describing and revealing the legal basis, it can also provide solutions to the problems in this study.

## Result and Discussion

Departing from the definition of legal politics above, the author divides the politics of sharia business law into two characteristics. In *ius constitutum* is a sharia business law product that has been published and is currently running and legal politics that is *ius constituendum, which* is a legal product that should be enacted.

The politics of sharia business law which is a legal product that has been published is:

*a. Law No. 7 of 1992 on Banking and Law No. 10 of 1998 on Banking*

In Indonesia, the establishment of a bank institution with a new sharia system emerged since the early 1990s. Based on the mandate of the National Conference of the Indonesian Ulema Council (MUI) in August 1990, a working group was formed to establish a bank based on Islam in Indonesia which eventually gave birth to Bank Muamalat Indonesia (BMI) in Jakarta.

Law No. 7 of 1992 on Banking introduced a banking system based on profit-sharing principles. This provision is found in Article 6 (m) and Article 13 paragraph (c) which states that one of the businesses of commercial banks and rural banks is to provide financing for customers based on profit-sharing principles. This is continued in the provisions mentioned in

Government Regulation (PP) Number 72 of 1992 concerning Banks Based on Profit Sharing Principles.

Article 6 of Government Regulation No. 72 Year 1992 reads:

1. Commercial banks or rural banks whose business activities are solely based on profit-sharing principles are not allowed to conduct business activities that are not based on profit-sharing principles.
2. Commercial Banks or Rural Banks whose business activities are not based on profit-sharing principles are not allowed to conduct business activities based on profit-sharing principles.

*b. Law No. 38 Year 1999 on Zakat Management*

Zakat regulation in Indonesia was initiated in 1968 through Minister of Religious Affairs Regulation No. 4/1968 on the establishment of BAZ in villages and BAZ in sub-districts as its coordinator. Followed by the issuance of SKB two ministers (Minister of Religious Affairs and Minister of Home Affairs) which confirmed BAZIS and BAZ as non-governmental organizations. The government's political law on zakat reached a bright point when the issuance of Law No. 38/1999 on Zakat Management resulted in the establishment of the National Amil Zakat Agency (BAZNAS) through Presidential Decree No. 8/2001. Furthermore, the Law on Zakat Management was amended into Law Number 38 Year 2011 on Zakat Management.

*c. Law No. 3/2006 on Religious Courts*

On February 21, 2006 Law No. 7 1989 on Religious Courts was amended to Law No. 3 Year 20006 on Amendment to Law No. 7 1989 on Religious Courts (PA). One of the most fundamental amendments to Law No.7 1989 is the absolute competence of the Religious Courts which has been expanded (extensive) absolute competence.

The expansion of authority is found in the amendment to Article 49 which reads:

*"Religious courts have the duty and authority to examine, decide and resolve cases at the first instance between people of the Islamic faith in the fields of: marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and Islamic economics."*

In the explanation section, it is stated that what is meant by "sharia economy" is all actions or business activities carried out according to sharia principles, among others, including: (a) sharia banks, (b) sharia microfinance institutions, (c) sharia insurance, (d) sharia reinsurance, (e) sharia mutual funds, (f) sharia bonds and sharia medium-term securities, (g) sharia securities, (h) sharia financing, (i) sharia pawnshops, (j) sharia pension funds of sharia financial institutions, and (k) sharia business.

With this expansion of authority, the judicial institution authorized to resolve disputes relating to the economy has become the absolute competence of the Religious Courts (PA) which has been owned by the General Courts (PN). The successful expansion of the absolute competence of the Religious Courts (PA) means that it has broken the confinement and marginalization of Islamic law (read: sharia economic law) that has prevailed in Indonesia so far.

The *restraint* on the authority of the Religious Courts (PA) over Islamic economic disputes so far is basically a restriction on the applicability of Islamic law in the Religious Courts which is a continuation of the receptio theory which seeks to eliminate Islamic law in Indonesia by relying on its applicability to customary law and also Western law. Therefore, the success of expanding the absolute competence of the PA is a political victory for Indonesian Islamic law.

Thus, the competence of PA judges in deciding sharia economic disputes is a significant progress towards the legitimacy and existence of the Islamic economic system in Indonesia. This is because the issue of dispute is something that is inherent in the existence of the Islamic economy itself. This means that the application of the Islamic economy has been running partially or becomes incomplete when part of it does not become the authority of the sharia system itself, in this context dispute resolution in the Sharia economy.

*d. Law No. 40 Year 2007 on Limited Liability Companies*

The next development of sharia economic law relates to the Sharia Supervisory Board (DPS) found in Law Number 40 of 2007 concerning Limited Liability Companies (PT). The latest PT Law requires every limited liability company that conducts business activities based on sharia principles to have a Sharia Supervisory Board (DPS) in addition to other elements.

Article 109 of Law Number 40 of 2007 concerning limited liability companies states: (1) Companies conducting business activities based on sharia principles in addition to having a board of commissioners must have a Sharia Supervisory Board. (2). The Sharia Supervisory Board as referred to in paragraph (1) shall consist of one or more sharia experts appointed by the GMS upon the recommendation of the Indonesian Ulema Council. (3) The Sharia Supervisory Board as referred to in paragraph (1) is tasked with providing advice and suggestions to the board of directors and overseeing the company's business activities to be in accordance with sharia principles.

*e. Law Number 21 of 2008 concerning Sharia Banking*

The position of Islamic banks is very strong with the birth of Law Number 21 of 2008 concerning Islamic Banking. This is because the law not only emphasizes the dual banking system in the national banking system, but also emphasizes the alignment of Islamic banks with conventional banks in the national banking system.

*f. Law No. 19 of 2008 on National Sharia Securities (SBSN)*

g. *Law No. 33 of 2014 concerning Halal Product Guarantee (JPH)*

Law Number 33 of 2014 concerning JPH issued on September 25, 2014 is an important history in the protection of Muslim consumers in consuming products circulating in the market. The very important clause in the JPH Law is a guarantee that products that enter, circulate, and are traded in the territory of Indonesia must be halal certified. Currently, the JPH Law has not been directly enforced because it needs preparation for its implementation for five years (in 2019). In addition, there are several forms of further arrangements so that this Law can be applied.

*h. Law No. 40 of 2014 on Insurance*

Initially, the legal politics of Islamic insurance in Indonesia was marked by several Minister of Finance Regulations on Islamic Insurance, among others, namely:

1. Decree of the Minister of Finance Number 426/KMK.06/2003 concerning Business Licensing and Institutionalization of Insurance Companies and Reinsurance Companies. This Decree is the basis for establishing sharia insurance, as stipulated in Article 3 which states that *"Any party may conduct insurance or reinsurance business based on sharia principles..."*
2. Decree of the Minister of Finance Number 424/KMK.06/2003 concerning the Financial Health of Insurance Companies and Reinsurance Companies. Provisions relating to sharia insurance are contained in Articles 15-Article 18 regarding the assets that are allowed to be owned and controlled by insurance companies and reinsurance companies with sharia principles.
3. Decree of the Director General of Financial Institutions No. Kep.4499/LK/200 concerning Types, Valuation and Investment Restrictions of Insurance Companies and Reinsurance Companies with Sharia Systems. In this regulation, the types of investments that are permitted are:
   a) Islamic time deposits and certificates of deposit;
   b) Bank Indonesia wadiah certificate;
   c) Islamic stocks listed on the stock exchange;
   d) Islamic bonds listed on the stock exchange;
   e) Islamic securities issued or guaranteed by the government;
   f) Islamic mutual fund participation unit;

g) Islamic direct investment;
h) Building or land with buildings for investment;
i) Financing of land or building ownership, motor vehicles, and capital goods with murabahah scheme;
j) Working capital financing with murabaha scheme with deferred payment;
k) Working capital financing with mudharabah scheme; and
l) Policy loan.

With the issuance of Law Number 40 of 2014 concerning Insurance, the existence of sharia insurance in Indonesia has a strong legal basis. Sharia insurance is one of the two forms of insurance (dual insurance system) in Indonesia, namely conventional insurance and sharia insurance. The existence of sharia insurance has been found in Article 1 number 2 which reads Sharia Insurance is a collection of agreements, consisting of agreements between insurance companies and policy holders agreements between policyholders, in the context of managing contributions based on sharia principles in order to help and protect each other.

As for the politics of law related to the law in the future (*ius constituendum*), there are a number of rules that are very important to be promulgated in the framework of the applicability of Islamic economic law in Indonesia, including:

1. *Further regulation of Islamic insurance*

Slowly that the foundation of Islamic insurance has a strong legal basis. Currently, the position of Islamic insurance is one part of the two insurance systems that apply in Indonesia or what is called the dual insurance system, namely conventional insurance and Islamic insurance. However, Islamic insurance law in Indonesia requires a strong legal foundation through special regulations. Therefore, the regulation of Islamic insurance requires a separate legal basis as the Islamic banking industry has its own laws. Islamic insurance law can specifically be a strong legal basis for the development of Islamic insurance in the future both at the institutional, product and guarantee levels.

2. *Further arrangements regarding Halal Product Guarantee*

There are at least seventeen (17) forms of halal product regulation mandated by Law Number 33 of 2014 concerning Halal Product Guarantee (JPH) to be regulated further. There are eight (8) things that must be regulated by Government Regulation (PP), namely:

a) Cooperation arrangements between the Halal Product Guarantee Agency (BPJPH) and related ministries;
b) Regulation of the Halal Inspection Agency (LPH) and MUI;
c) Regulations regarding the location, place, and tools of the Halal Product Process (PPH), location, place, and PPH tools that must be separated from the location, place, and tools for slaughtering, processing, storage, packaging, distribution, sale, and presentation of non-halal products;
d) Regulation of the Halal Guarantee Agency (LPH);
e) Regulation of certification fees and also regulation of supervision;
f) Regulation of the types of halal-certified products in stages;
g) JPH international cooperation arrangements; and
h) Provisions regarding procedures for registration of halal certificates from foreign products.

In addition, there are nine (9) implementing rules regulated by Ministerial Regulations (Permen), namely:

a) Arrangements for procedures for imposing administrative sanctions;
b) Regulations regarding halal supervisors, procedures for submitting applications for halal certificates, provisions for materials derived from animals and materials from microbes and materials produced through chemical processes, biological processes, or genetic engineering processes, procedures for determining LPH;
c) Regulations on halal labeling, halal certificate renewal provisions;

d) BPJPH financial management arrangements;
e) Procedures for community participation and awarding; and
f) Regulation by Presidential Regulation (Perpres), namely provisions regarding the duties, functions, and organizational structure of BPJPH.

**Conclusion**

Based on the above description, the development and growth of Islamic economic practices in Indonesia is moving very significantly. This is in addition to increasing public awareness of the practice of religion in a kaffah in the economic field, also due to the support of the government which is manifested in various regulations and political will that increasingly support the development of Islamic economics in Indonesia.

According to the history of Islamic finance in Indonesia, the establishment of sharia-based financial institutions was mostly attempted by groups of Muslim professionals who were more practice-oriented. However, financial theory in general has not been agreed among academics. This group of professionals feels no need to wait for the development of theory too far. They tend to put the fiqh muamalat into practice, of course after conceptualization. Further developments are guarded by the Sharia Council formed at the national level as well as in each Islamic bank and financial institution. If we look at the phases of the development of Islamic finance in Indonesia, then we will find various rules that emerge from the initiative of religious leaders and Muslim professionals. The following are the phases of the emergence of modern Islamic finance in Indonesia

a. 1983-1992: plan to implement a profit-sharing system;
b. 1992-1998: legal foundation of the first Islamic bank;
c. 1998-2010: Sharia policies emerged in various sectors;
d. 2010-2015: stabilization of sharia policy; and
e. 2015-present: digitalization of Islamic finance.

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