

## **Banking And Finance In Islamic Law Perspective**

Yusmalinda

IAIN Cotkala Langsa (yusmalinda929@gmail.com)

---

**Abstract:** *This study describes how the role of Islamic banking and finance in Indonesia and examined in the perspective of Islamic law. As it is known that since the 20th century in the Islamic world there was a discourse about the need for interest-free Islamic banks, to serve the needs of Muslims who are not pleased with the application of interest in banking because it is included in usury, namely transactions that are prohibited by Islamic law. In Indonesia, the transformation of conventional banking towards sharia banking began in 1991, beginning with PT. Bank Muamalat Indonesia Tbk, as the first commercial bank in Indonesia to operate based on Islamic law which has been recognized by Law No 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking. This study uses a descriptive analytical approach and using library research that is used is descriptive analysis. Based on this research, it can be concluded that conventional banking is forbidden by jumhur ulama because it contains usury. In Indonesia, Islamic Banking has been operating in accordance with Islamic law and has been legalized by the MUI.*

**Key words:** *Islamic banking, Islamic finance, Islamic law*

---

### **Introduction**

Islam is a perfect religion (comprehensive) that regulates aspects of human life, both faith, worship, morals and muamalah. One very important teaching is the field of muamalah / iqtishadiyah (Islamic economics). Although the reality that occurs today by Muslims muamalah (Islamic economics) tends to be ignored, even though muamalah teachings are an important part of Islamic teachings, as a result there is a partial study of Islam (piecemeal). Though Allah commands the believers to enter Islam in a kaffah (totality).

As a result of being forgotten in the study in the field of economics, Muslims are left behind in the economy and many Muslims violate the principles of Islamic economics in their livelihoods such as usury, community, gharar, haram and ruse. Likewise in terms of investment and in banking. Muslims still use conventional banking which actually uses the interest system in their transactions where in Islamic sharia interest is prohibited and is called usury. Islamic teachings prohibit interest-based transactions so that all transactions must be based on profit sharing systems (Lewis & Algaud, 2001).

To anticipate that Muslims do not go far from the corridors of Islamic Syariah, especially in the banking sector, then in the 20th century a discourse about the need for interest-free Islamic banks, to serve the needs of Muslims who are not pleased with the application of interest in banking because it is included in usury , namely transactions that are prohibited by Islamic law.

In Indonesia the transformation of conventional banking towards sharia banking began in 1991, beginning with PT. Bank Muamalat Indonesia Tbk, as the first commercial bank in Indonesia to operate based on Islamic law which has been recognized by Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking. And ten years later the law was amended again with law Number 21 of 2008 concerning Sharia Banking.

This paper will elaborate on Islamic Banking and Finance in the Perspective of Islamic Law in Indonesia.

As a result of being forgotten in the study in the field of economics, Muslims are left behind in the economy and many Muslims violate the principles of Islamic economics in their livelihoods such as usury, community, gharar, haram and ruse. Likewise in terms of investment and in banking. Muslims still use conventional banking which actually uses the interest system in their transactions where in Islamic sharia interest is prohibited and is

called usury. Islamic teachings prohibit interest-based transactions so that all transactions must be based on profit sharing systems.

To anticipate that Muslims do not go far from the corridors of Islamic Sharia, especially in the banking sector, then in the 20th century a discourse about the need for interest-free Islamic banks, to serve the needs of Muslims who are not pleased with the application of interest in banking because it is included in usury, namely transactions that are prohibited by Islamic law.

In Indonesia the transformation of conventional banking towards sharia banking began in 1991, beginning with PT. Bank Muamalat Indonesia Tbk, as the first commercial bank in Indonesia to operate based on Islamic law which has been recognized by Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking. And ten years later the law was amended again with law Number 21 of 2008 concerning Sharia Banking. This paper will elaborate on Islamic Banking and Finance in the Perspective of Islamic Law in Indonesia.

## Methods

The method used in this research is analytical descriptive, which is collecting data that describes or describes what it is from the results of the research then compiled and poured in written form (narrative), interpreted and analyzed. This study aims to obtain an objective picture of a situation in a complete and detailed situation regarding the application of Islamic banking and finance in Indonesia in the perspective of Islamic law.

This study uses library research (Library Research), namely research on secondary data. Data collection in this research was obtained through searching of banking regulations, documents, as well as scientific literature and research experts who are relevant and related to the object of research including the issues to be examined and obtained from secondary data.<sup>1</sup>

The analysis used in this study is a qualitative analysis. This analysis means that the data obtained is presented descriptively in the form of correct, complete, systematic sentences, so as not to cause a variety of interpretations and then presented as a basis for drawing conclusions (Soemitro, 1994).

## Result

According to Act Number 21 of 2008, a *Syariah* Bank is a Bank that runs its business activities based on sharia principles and by type consists of *Syariah* Commercial Banks and *Syariah* People Financing Banks. While *Syariah* Business Units according to Act Number 21 of 2008 are work units of a Conventional Commercial Bank head office that functions as the parent office of offices or units carrying out business activities based on syariah principles, or work units in branch offices of a Bank domiciled in foreign companies carrying out conventional business activities that function as the parent office of *syariah* sub-branch offices and / or *syariah* units (Arif, 2010).

Islamic banks in general are financial institutions whose principal business is providing credit and other services in payment traffic and money circulation operating in accordance with *syariah* principles. Therefore, the bank's business will always be related to the issue of money as its main trade (Sudarsoni, 2003).

Opinions of *Ulama* about the Bank. Contemporary *ulamas* disagree about bank interest law. First, some *ulamas*, such as Yusuf Qaradhawi, Mutawalli Sya'rawi, Abu Zahrah, and Muhammad al-Ghazali, stated that the bank's interest was haraam, because it included usury. This opinion is also the opinion of Islamic *ulama* forums, including: Majma 'al-Fiqh al-Islamy, Majma' Fiqh Rabithah al-'Alam al-Islamy, and the Indonesian Ulema Council (MUI). The forbidden practice of bank interest was also revealed by the Tarjih and Tajdid Muhammadiyah Council in the 27th National Conference at the Muhammadiyah University of Malang (UMM).

Then in the Meeting of 150 leading Ulemas in 1965 at the Islamic Research conference, Cairo, Egypt also agreed that the benefits derived from various types of loans (including bank interest) were the practice of usury and forbidden. In Indonesia in 2003, the *Majelis Ulama Indonesia (MUI)* officially issued a fatwa forbidding bank interest, under the pretext that interest charged in debt and credit transactions entered the criteria of usury forbidden by Allah SWT.

Although some scholars disagree about the prohibition of bank interest. But the majority of *ulama* (jumhur) agree that the practice of interest in conventional banking is the same as usury and is therefore haram. Basic *ulama* forbid usury:

### **Understanding Islamic Banking According to Experts**

This is in line with the following opinions of experts:

1. Muhammad Syafi'i Antonio. He said, Islamic banks are categorized as Islamic banks, if they operate based on Islamic sharia principles. Or a bank whose operating procedures are based on the provisions of the *Al-Qur'an and Hadis*.
2. Likewise with Muhammad (2002) in his book *Management of Islamic Banks* which says, Islamic banks are banks that in doing business activities leave usury. Running other *syariah* principles, namely benefit, fairness, and honesty, and free from speculative elements, such as gambling (*maysir*), things that are doubtful (*gharar*), and things that damage (*bathil*).
3. Meanwhile, an Islamic economist, Sudarsono said, Islamic banks are financial institutions that provide financial services and payment traffic, and the circulation of money using

Islamic *syariah* principles.

In other words, the experts also agreed that, Islamic banking is a business entity in the field of finance that provides financial services and payment traffic services, as well as the circulation of money, which is in accordance with the principles of Islamic law, based on the *Al-Qur'an*.

Overall Islamic economics can be defined as the behavior of individual Muslims in economic activities, based on the demands of Islamic law in the context of realizing and maintaining sharia maqasyid (religion, soul, reason, religion and wealth).

In Indonesia, Islamic law is a living law. He walked in the midst of society. Soerjono Soekanto stated that law is a concretization of the value system that applies in society and a situation that is aspired to is the existence of compatibility between law and the value system. Thus, Islamic law is a law that cannot be separated from Indonesian society. This is different from positive law. Positive law was born because of the political power that was in power.

The presence of Islamic / *Syariah* economic law in Indonesian law today is no longer merely due to historical and population demands (because the majority are Muslim) as some people / parties assume; but further than that, also due to the needs of the wider community after being known and felt correctly how fair and equitable the Islamic economic system in guarding the welfare of the people aspired by the nation and State of Indonesia. The position of sharia economic law will be stronger when it is connected with the philosophy and state constitution of Pancasila and the 1945 Constitution of the Republic of Indonesia. In short, the *syariah* economic system is not at all contradictory nor violates Pancasila.

Concrete *syariah* economic law products in Indonesia in particular can be seen from the recognition of the *fatwa* of the National *Syariah* Council, as a material law on *syariah* economics. Likewise in the form of laws, for example Law number 38 of 1999 concerning zakat management, law number 21 of 2008 concerning *Syariah* Banking, etc., is expected to fill the legal vacuum in the field of sharia economics. In the field of insurance, mutual funds, bonds and Islamic capital markets and other Islamic financial institutions, of course, they also require separate laws for their development, in addition to other existing laws and regulations.

In line with the emergence of Islamic financial institutions and with the existence of new laws on religious justice, namely law number 3 of 2006 concerning Religious Courts, the legal position of shari'ah agreements or contracts as part of formal legal economic material is getting stronger which was previously only normative sociological. The birth of law No. 3 of 2006 concerning Religious Courts as amendments to the old Religious Courts Act brings new implications in the history of economic law in Indonesia. During this time, the authority to handle disputes or disputes in the field of Islamic economics is resolved in the District Court which incidentally cannot be considered as sharia law.

Furthermore, Islamic finance in Indonesia is getting stronger with the birth of the Compilation of *Syariah* Economic Laws, which means to positivize and modify syariah economic law in Indonesia. If the KHES is not compiled, the religious court judge decides the syariah economic case by referring to the fiqh books that are spread in various schools, because there is no positive legal reference that is unificative, so there is a disparity in decisions between one court and another court. KHES is issued in the form of Supreme Court (Perma) Regulation No. 2 of 2008 concerning the Compilation of Syariah Economic Laws. This KHES has undergone adjustments to existing *syariah* provisions, such as the DSN Fatwa (*Dewan Syariah Nasional*) and *Hadis*.

The form of the seriousness of the Government of Indonesia in applying *syariah* principles to the economy in Indonesia, especially in Banking, can be seen from the emergence of Legal Products in the Syariah Economy. The following *Syariah* Economic Law Products in Banking:

1. Law Number 21 of 2008 concerning Syariah Banking
2. Bank Indonesia Regulation Number 10/11 / PBI / 2008 Year 2008 concerning Bank Indonesia syariah Certificates
3. Financial Services Authority Regulation Number 20 / POJK.03 / 2019 concerning the Rating System for Syariah Banks
4. Bank Indonesia Regulation Number 12/17 / PBI / 2010 of 2010 concerning Amendment to Bank Indonesia Regulation Number: 10/11 / PBI / 2008 concerning Bank Indonesia Sharia Certificates
5. Bank Indonesia Regulation Number 12/17 / PBI / 2010 of 2010 concerning Amendments to Bank Indonesia Regulation Number 10/36 / PBI / 2008 concerning Sharia Monetary Operations '
6. Supreme Court Regulation No. 02/2008 concerning Compilation of Sharia Economic Law
7. Government Regulation Number 39 Year 2005 concerning Guarantee of Bank Customer Deposits Based on Sharia Principles.
8. DSN-MUI Fatwa Number 123 / DSN-MUI / XI / 2018 concerning Use of Non-Recognized Funds as Income for Sharia Financial Institutions, Sharia Business Institutions and Sharia Economic Institutions.
9. DSN-Mui Fatwa Number 118 / DSN-MUI / II / 2008 Regarding Sharia Bank Customer Deposit Guarantee Guidelines

The implementation of sharia economic application in banking in Indonesia can be seen from the number of banks that use sharia principles continues to increase from year to year. In 2016, there were 196 Islamic banks in Indonesia consisting of 13 Sharia Commercial Banks (BUS), 23 Sharia Business Units (UUS) and 160 Sharia Rural Banks. And in June 2019 there was an increase in the number of Islamic banks in Indonesia reaching 189 Islamic banks consisting of 14 Sharia Commercial Banks (BUS), 20 Sharia Business Units (UUS) and 164 Sharia People Financing Banks (BPRS).

This is proof of the synergy between the Government as a Regulator, the bank as a manager and the Muslim community in general and Indonesian non-Muslim people who also utilize the services of Islamic banks so that Islamic banking can grow and develop in Indonesia.

## References

- Arif, 2012. Lembaga Keuangan Syariah, Bandung : CV. Pustaka Setia
- Mardani, Kedudukan Kompilasi Hukum Ekonomi Syariah di Indonesia, *Jurnal Islamic Economic dan Finance (IEF)*, Universitas Trisakti.
- Marvin K. Lewis dan Latifa M. Algaud, 2001. *Perbankan Syariah, Prinsip, Praktek, Prospek*, Jakarta:Serambi Ilmu Semesta.
- Samsu Rizal Panggabean dan Taufik Adnan Amal, 2004, *Politik Syariat Islam dari Indonesia hingga Nigeria*, Jakarta :Pustaka Alvabet.
- Soejono Soekamto, 1986. Pengantar Penelitian Hukum, Jakarta: Universitas Indonesia.
- Sudarsoni, 2003. Bank dan Lembaga Keuangan Syariah : Deskripsi dan ilustrasi. Yogyakarta: Ekonisia
- Soemitro, 1994. Metodologi Penelitian Hukum dan Jurimetri (Jakarta : Gh