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Politics of Sharia Banking Law in Indonesia

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Abstract

Basically, Islamic banks have the same function as conventional banks, namely as intermediate institutions that carry out their functions by collecting funds from the public, managing them, then channeling them back to people in need in the form of loans, but of course the government will not establish Islamic bank institutions if basically their functions are will be the same as conventional banks. The purpose of this study was to determine the role of legal politics on the development of Islamic banking in Indonesia. This research was structured using descriptive analysis method using a form of library research, with a detailed description of the existing facts, both in the form of secondary data, primary legal materials, and tertiary legal materials. Based on the research findings, it can be concluded that the development of Islamic banking. This can be proven by the gradual start of sharia banking regulations from when it was still a profit-sharing bank in Law Number 7 of 1992. This was further strengthened in Law Number 10 of 1998 with the term bank operating according to sharia principles. Until finally confirmed independently in Law No. 21 of 2008.

Keywords: Conventional Banks, Islamic Banks, Legal Politics

A. Introduction

Banking institutions as agents of trust, are public trust, as an alternative investment and as a depository of funds as well as banking service activities (Conscience, 2011). Currently, public understanding of information and communication technology (ICT) has begun to be massive, especially in the use of technology features in banking, starting from the use of Automated Teller Machines (ATMs), then developing with an understanding of Internet/Mobile Banking as a form of technological development. banking services to provide convenience to the public, to the distribution of business capital with very tempting low interest rates.

But unfortunately a thousand dear, at a time when the public's understanding of the offer of banking facilities that provide convenience and tantalizing, at that time the understanding of the community's religion is getting better, most Muslims have realized the disadvantages of banking for their business activities which are forbidden because they contain usury. This has implications for the development of Islamic banking which is present as a solution for the Islamic community with the halal concept offered. Eating unclean treasures is a characteristic of the Jewish people that Allah has enshrined in His word:

لَوْ نَرَا لَيْسَ إِلَّا كَلِيمُ الْعُدْوَانِ الْإِثْمِ □ ارْعُوقُ □ ا □ □

Meaning: And you will see most of them (Jews) hastening to sin, enmity and eat the unlawful. Verily, what they have done is very bad. (Surat al-Maidah (5): 62). People who use Islamic banking as an instrument to support muamalah activities have started to become massive. The community has gradually begun to move from conventional banks to Islamic banks, this is a concern for the government at this time



it is proven that at this time the substance of Islamic law has been more or less elaborated into positive law.

The development of sharia banking in the future is directed at providing the greatest benefit to the community and contributing optimally to the national economy, referring to other strategic plans, such as the Indonesian Banking Architecture (API), the Indonesian Financial System Architecture (ASKI), and the National Medium-Term Development Plan. (RPJMN). Thus, the development of Islamic banking is part of the activities that support the achievement of strategic plans on a larger scale at the national level.

The blueprint for the development of Sharia banking in Indonesia contains the vision, mission and targets for developing Sharia banking as well as a set of strategic initiatives with clear priorities to address the main challenges and achieve targets within the next 10 years, namely achieving a significant share of the Sharia banking market through deepening the role of banking. Sharia in national, regional and international financial activities, in a condition where integration with other financial sectors is starting to form (Goddess, 2020).

A society certainly has goals and ideals to be achieved. Politics has an interest in choosing and formulating the goals to be achieved by a society, as well as politics, namely to determine how the ways that must be taken to achieve these goals. Society is governed and organized by politics by the government in such a way that it can be easily directed towards the goals agreed upon by society (Indriana & Halim, 2020).

Therefore, politics can be referred to as the activity of choosing social goals, designing ways and stages of achieving social goals, and moving people to certain orientations. In this respect it is similar to the law. Law is also a matter of determining certain goals of society and formulating the means that must be used to achieve these goals. Law is not something autonomous. As a social phenomenon, it is related to the dynamics and bustle of society determining and achieving common goals. Legal politics shapes and determines the dynamics that occur in law, where the law is directed to become the law that should apply (*iure constituendo*). (Hutabarat et al., 2022).

B. Method

This study was structured using descriptive analysis method using a form of library research, with a detailed description of the existing facts, both in the form of secondary data on primary legal materials, such as the 1945 Constitution, Law no. 7 of 1992 concerning Banking, Law no. 10 of 1998, the work of the legal community as well as tertiary legal materials in the form of data obtained from magazines and the internet related to research, scientific writings and scientific journals, books on banking as a reference and also studying legislation regarding Islamic banking in Indonesia.

C. Results and Discussion

1. The Existence of Islamic Banking in Indonesia

The existence of Islamic banks in Indonesia is marked by the issuance of Law no. 7 of 1992 concerning Banking, with the start of the operation of Bank Muamalat in Indonesia (Barlinti, 2012), which was later amended by Law no. 10 of 1998, at that

time the number of Islamic banks in Indonesia was still very limited, namely only Bank Muamalat Indonesia (BMI), which was the only Islamic bank operating since 1992.

During the period 1992-1998 the development of Islamic banks was quite slow, later in 2005 the number of financial institutions with sharia principles had grown to three sharia commercial banks, 88 sharia-based rural credit banks, and 17 sharia business units. The Financial Services Authority (OJK) recorded the number of Islamic banks in Indonesia as many as 146 Islamic Banks or the most in the world, consisting of 13 Sharia Commercial Banks (BUS), 34 Sharia Business Units (UUS), and 99 Sharia People's Financing Banks (BPRS). Of this amount, OJK recorded that the operational head office owned by BUS had reached 470 offices and UUS as of December 2017 reached 154 units.(Muqorobin & Cahyo, 2019).

However, after almost 30 (thirty) years of existence in Indonesia, we still meet many uztadz, religious teachers, and people who are Muslim but do not want to become customers of Islamic banks and use Sharia bank products. development of Islamic Banks in Indonesia. In fact, the potential of Indonesia's population, which is 80 percent Muslim, is very possible to support the existence of Islamic banking by leaving usury conventional banks by using Islamic bank products.

Before the birth of Islamic banks in Indonesia, conventional bank products were halal due to emergency factors. KH. Mas Mansyur, Chairman of the Muhammadiyah Executive Board for the period 1937-1944, argued that the use of conventional bank services was something that had to be done because Muslims did not have their own usury-free bank.(Goddess, 2020). This was allowed because at that time Islamic financial institutions were still very difficult to reach by the public, later in 2001 the National Sharia Council (DSN) issued Fatwa Number: 20/DSN-MUI/IV/2001 concerning Implementation of Investments for Sharia Mutual Funds which explained that the business of conventional banks is forbidden(MUI, 2001). This means that since 19 (nineteen) years ago, Conventional Banks have become haram.

Seeing the increasing need of the Indonesian people for Islamic banking services, the government finally initiated the establishment of Islamic Banking, through Law no. 7 of 1992 concerning Banking. Basically, Islamic banks have the same function as conventional banks, namely as intermediate institutions that carry out their functions by collecting funds from the public, managing them, then channeling them back to people in need in the form of loans, but of course the government will not establish Islamic bank institutions if basically their functions are will be the same as conventional banks.

In several respects, Islamic and conventional banks have similarities, especially in terms of technical receipts of money, transfer mechanisms, computer technology, general financing requirements and so on, but there are some basic differences but the most important difference is the halal concept implemented in Islamic banking.(Dewi & GH, 2020).

The establishment of Islamic banks is intended to accommodate the increasingly massive needs of Muslims, the need for a halal banking system stimulates the government to accommodate the needs of the community, especially seeing that 80% of the Indonesian people are Muslims who are very supportive and allow Indonesia to become the largest Islamic finance industry in the world.

In addition, the social phenomenon of people in Indonesia whose religious understanding of each individual is getting better, so as a form of support, the government issues laws and regulations to support the existence of a Sharia economy in Indonesia, so that people can avoid things that are forbidden by Allah swt. such as usury, maisir, gharar, tadlis and other elements that make a transaction unlawful.

The prohibition of usury in the Qur'an can be grouped into four stages, each of which is based on the provisions of the Qur'anic verse. The four stages of the prohibition of usury can be explained as follows:(Umam, 2017):

Stage I, rejects the notion that usury lending which in appearance seems to help those in need is an act of approaching or taqarrub to Allah SWT, namely through the Word of God in Surat ar-Rum verse (39), which means: "And, something usury (additional) that you give so that he adds to the wealth of humans, then usury does not add to the sight of Allah. And, what you give in the form of zakat which you mean to achieve the pleasure of Allah, then (who do so) it is those who multiply (the reward) ".

Stage II, usury is described as something bad, which is accompanied by strong threats to the Jews who eat usury. This is contained in the Qur'an Surah an-Nisa verse (160-161) which means:

"So, because of the oppression of the Jews, We forbade them (eating) good things (which were previously) lawful for them, and because they hinder a lot (of people) from the path of Allah, and because they eat usury, when in fact they have been forbidden from it, and because they eat people's property in a false way. We have prepared for those who disbelieve among them a painful torment."

Stage III, usury is forbidden by being associated with a doubled addition. We can read this in the Al-Quran Surah Ali Imran verse (130). It means as follows: "O you who believe, do not eat usury multiplied and fear Allah so that you will get good luck."

Stage IV, Allah SWT clearly and firmly forbids any kind of addition that is taken from the loan. This is contained in the Qur'an Surah al-Baqarah verses 278-279, which means as follows: "O you who believe, fear Allah and leave the rest of usury (which has not been collected) if you are believe. So if you do not do (leaving the rest of usury) then know that Allah and His Messenger will fight you. And, if you repent (from taking usury) then for you the principal of your property, you are not wronged nor are you wronged.

2. Politics of law

Legal politics (legal policy) is the purpose and reason behind the formation of laws and regulations. Legal politics is something that is important in understanding why it is necessary to establish a statutory regulation and determine what is to be translated into legal sentences and be formulated in articles. The politics of national law includes two things. First, legal development which contains the creation and updating of legal materials so that they can be adapted to the needs. Second, the implementation of existing legal provisions, including the affirmation of institutional functions and the guidance of law enforcers(Juwana, 2005).

According to Sadjipto Rahardjo, legal politics is the activity of choosing and wanting to be used to achieve certain social and legal goals in society. it is more of a sociological approach which means that law can also be interpreted as social engineering(Sulaiman, 2017).

Meanwhile, according to 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 with the core of making and updating legal materials so that they are in accordance with needs; second, the implementation of existing legal provisions, including the affirmation of institutional functions and the guidance of law enforcers (Hasnita, 2012).

Closely related to this legal politics is the legal positivity effort. Positification is an effort to dogmatize a normative law as well as Islamic law which is absorbed by Positive law. This means that positive Islamic law is the same as Islamic law which has been accommodated into national law (formalization). Formal legal provisions governing the implementation of sharia economic activities in Indonesia are all provisions that have gone through a process of positivity by the state. If this sharia economic law has been formalized by the state, then the power of entry comes from the state, so that it applies thoroughly to the Indonesian people and binds the sharia economic activities. (Irawan, 2018).

With regard to the term policy (policy), it has a variety of meanings. We can see this from the views of several figures who try to explain what a policy really is. According to Klein, policy making is a deliberate and methodical effort to achieve a specific set of goals (Klein, 2002) While Kuypers explained, the policy is an arrangement of: (Rachman, 2019)

- a. Goals chosen by public administrators both for their own sake and for the benefit of the group;
- b. The paths and means chosen by him
- c. The times they choose.

So it can be concluded that policy is a position that once stated will affect the success of decisions that will be made in the future (Sulaiman, 2017):

3. The Role of Legal Politics in the Development of Islamic Banking in Indonesia

The development of the Islamic economy in Indonesia is inseparable from several driving factors. namely external factors and internal factors. External factors are causes that come from abroad, in the form of sharia economic developments in other countries. This awareness then spread to other countries and finally to Indonesia. Meanwhile, the internal factor is the fact that Indonesia is destined to become the country with the largest Muslim population in the world. This fact raises awareness among scholars and economic practitioners about the need for an economy that is in accordance with Islamic values to be run by the Muslim community in Indonesia. In its application in Indonesia, the development of the sharia economy is currently heading to a positive point. The Financial Services Authority (OJK) recorded the number of Islamic banks in Indonesia as many as 146 Islamic banks or the most in the world, consisting of 13 Sharia Commercial Banks (BUS), 34 Sharia Business Units (UUS), and 99 Sharia People's Financing Banks (BPRS). Of this amount, OJK recorded that the operational headquarters owned by BUS had reached 470 offices and UUS as of December 2017 reached 154 units. (Muqorobin & Cahyo, 2019). This shows that Islamic economics has been able to answer the needs of people who want to take advantage of banking but avoid the usurious system.

As mentioned earlier, legal politics can be interpreted as a policy of state administrators that is fundamental in determining the direction (*ius constituendum*), the form and content of the law to be formed (*ius constitutum*). Regarding the nature of the *ius constituendum*, the government's policy in determining the direction of the sharia economy in Indonesia is contained in existing regulations. This shows that the existence of banking has begun to be recognized in positive law, as evidenced by the enactment of Law No. 21 of 2008 concerning Islamic banking and at the same time it shows that there are serious efforts for the government to support the existence of Islamic banking in Indonesia, then the expansion of the absolute authority of the Court. Religion so that the Religious Courts are also authorized to adjudicate sharia economic disputes, which is also the basis for the formation of Perma Number 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES) as the basis for deciding Sharia economic disputes in the Religious Courts.

Then legal politics that is *ius constituendum*, namely legal products that are or will be published. From the two fields of legal politics, both in terms of direction and policy or in terms of laws and regulations that have been issued or are still in process, sharia economic law politics can be analyzed from two points of view, legal politics that is positively charged for sharia economic development. in Indonesia, and legal politics which is still not conducive to the progress of sharia economy in Indonesia. In detail, this overview of legal politics in the field of Islamic economics can be mapped as follows:

- a. The promulgation of Law Number 19 of 2008 concerning State Sharia Securities (SBSN), which was ratified on 7 May 2008. These State Sharia Securities (SBSN/SUKUK) are in the form of State securities issued based on sharia principles, as evidence of the participation share against SBSN Assets, both in rupiah and foreign currencies. The enactment of the Law is very important and most awaited by investors, both foreign investors and domestic investors. The basis for the Government's consideration when drafting and ratifying the law was the National Sharia Council Fatwa No.32/DSN-MUI/IX/2002, namely in the context of supporting the success of national development in order to create a just society,(Handayani, 2012).
- b. The promulgation of Law no. 21 of 2008 concerning Sharia Banking, on June 17, 2008. The issuance of the Sharia Banking Law has further strengthened the position of Sharia Economics in Indonesia because it already has its own legal basis. The Financial Services Authority (OJK) recorded the number of Islamic banks in Indonesia as many as 146 Islamic banks or the most in the world, consisting of 13 Sharia Commercial Banks (BUS), 34 Sharia Business Units (UUS), and 99 Sharia People's Financing Banks (BPRS). Of this amount, OJK recorded that the operational headquarters owned by BUS had reached 470 offices and UUS as of December 2017 reached 154 units.(Wahid, 2021).
- c. The promulgation of Law no. 41 of 2004 concerning Waqf to complement the law, the government has also stipulated Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004, plus Ministerial Decree Number 4 of 2009 concerning the Administration of Cash Waqf. This is a form of support from the Indonesian government in the

Islamic public finance sector which has shown its alignment with the implementation of Islamic public finance legally and formally.

- d. The National Sharia Council (DSN) was formed on February 10, 1999 in accordance with the MUI Decree No. kep754/MUI/II/1999. The task of the National Sharia Council is to carry out MUI duties in dealing with issues related to the sharia economy, whether related to the activities of sharia financial institutions or others. To carry out these main tasks, the National Sharia Council has the authority to (Gayo & Taufik, 2012):
 - 1) Issue a fatwa that binds the Sharia Supervisory Board in each Sharia Financial Institution and becomes the basis for legal actions of related parties.
 - 2) Issue fatwas that form the basis for provisions/regulations issued by authorized institutions, such as the Ministry of Finance and Bank Indonesia.
 - 3) Provide support and/or revoke and support the names that will sit on the Sharia Supervisory Board at a Sharia Financial Institution.
 - 4) Invite experts to explain a problem that is needed in the discussion of Islamic economics, including domestic and foreign monetary authorities/financial institutions.
 - 5) Provide recommendations to Islamic financial institutions to stop deviations from the fatwa that have been issued by the National Sharia Council.
 - 6) Propose to institutions that have the right to take action if orders are not heard
- e. The promulgation of Law no. 38 of 1999 concerning Zakat shows that the political economy of Islam in the realm of public finances by the Indonesian government is quite accommodating to the needs of Muslims to carry out the 3rd pillar of Islam.
- f. The promulgation of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts has provided a new direction for the absolute competence of the Religious Courts to handle, decide, and resolve sharia economic cases. This amendment is intended to meet the legal needs of the community who are shari'a compliant.
- g. KHES (Sharia Economic Law Compilation) is a follow-up to the expansion of the authority of the Religious Courts as regulated in Law Number 3 of 2006, thus initiating the Supreme Court to compile the Sharia Economic Law Compilation (KHES) Perma 2 of 2008. This is a response to new developments in the study and practice of Islamic economics in Indonesia. The presence of KHES is part of an effort to positive Islamic civil law in the national legal system, considering that the practice of sharia economics is getting better. KHES has also become a breakthrough for the Supreme Court to fill the legal vacuum, because there are no laws and regulations governing sharia economics and as a guide for religious court judges in resolving sharia economic cases which are increasing day by day.
- h. Cash Waqf Movement The national cash waqf movement was led by President Susilo Bambang Yudhoyono at the State Palace in Jakarta on January 8, 2010,

the management of which was handed over to the Indonesian Waqf Board (BWI). BWI has made rules regarding cash waqf so that its collection, use and accountability can be transparent and will be audited by an independent auditor. Through the national cash waqf movement, now people can carry out cash waqf that is easier and more flexible to use for the welfare of the people.

- i. The issuance of Government Regulation No. 39 of 2008 on Sharia Insurance concerning the Second Amendment to Government Regulation Number 73 of 1992 concerning the Implementation of Insurance Business.
- j. Establishment of the Directorate of Sharia financing at the Ministry of Finance of the Republic of Indonesia. 19 of 2008 concerning SBSN, resulting in the birth of various types of state sukuk, including retail and corporate sukuk.

D. Conclusion

Efforts to reaffirm the law to dogmatize Islamic law are a form of government support for the existence of Islamic Banking in Indonesia. The positification of regulations related to sharia banking is carried out in order to respond to the dynamics and developments of society regarding the needs of sharia banking which are increasingly prevalent in the country and which increasingly require a firm and clear legal basis. Regulations regarding Islamic banking are growing gradually and evolutionarily in line with the development of Islamic banking. This can be proven by the gradual start of sharia banking regulations from when it was still a profit-sharing bank in Law Number 7 of 1992. This was further strengthened in Law Number 10 of 1998 with the term bank operating according to sharia principles. Until finally it was independently confirmed in Law Number 21 of 2008 with stricter terms, namely Sharia Banking and other supporting regulations including Law Number 19 of 2008 concerning State Sharia Securities (SBSN), Law No. 41 of 2004 concerning Waqf, Law no. 38 of 1999 concerning Zakat, Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, and Government Regulation no. 39 of 2008 Sharia Insurance. Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, and Government Regulation No. 39 of 2008 Sharia Insurance. Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, and Government Regulation No. 39 of 2008 Sharia Insurance.

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