

SHARIA PRINCIPLES IN MATERIAL LAW OF THE NATIONAL BANKING LEGAL SYSTEM

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Abstract:

The national banking legal system uses two operational principles: conventional and Sharia. Sharia banking was born and based on the Islamic legal system. Islamic banks in Indonesia have only been operating for about 25 years. It is still relatively new compared to conventional banks, which have been used for over a century. Various regulations were made to support the development of Islamic banks. This paper will examine the scope of the national banking legal system and the implementation of Sharia principles in the material law of the national banking legal system. From the results of the study, it was concluded that: (1) The legal system of Islamic banking in Indonesia consists of three components of the legal system, namely legal substance (material law and formal law), structure, in the form of institutions that support Islamic banking, and culture, both corporate cultures, as well as the culture of society. It follows the elements of the legal system put forward by L. Friedman. (2) The implementation of Sharia principles in material law within the scope of the national banking legal system has been embodied in laws and regulations in the banking sector, which contain Sharia principles. Hierarchically starting from the constitution, namely the 1945 Constitution, Government Regulations, Financial Services Authority Regulations, National Economic Law Compilation and DSN-MUI Fatwas. However, in several regulatory matters (material law), Islamic banking is still the same as conventional banks.

Keywords: Environmental Management, Sustainability, Accountability, Institutional Barriers, Food and Beverage.

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INTRODUCTION

Banking is an essential element in the development of a country. This role is manifested in the function of banks as financial intermediary institutions, namely collecting funds from the public in the form of savings and channeling them to the public in the form of credit or other forms in the context of improving the people's standard of living (Article 1 point 2 of Law no. 10 of 1998). The function of banks as financial intermediary institutions is crucial for the success or failure of community economic development. In this case, a bank's existence is very dependent on the existence of the public trust. The principle of trust is the spirit of banking activities (Khatibul Umam, 2011)

Banking policy in Indonesia since 1992 has been based on the provisions of Law Number 7 of 1992 concerning Banking, which was later strengthened by Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking adhering to a dual banking system. The dual banking system means implementing two banking systems (conventional and Sharia side by

side) whose implementation is regulated by various laws and regulations (Abdul Ghofur Anshori, 2007, p. 33).

In Law Number 10 of 1998, based on operational principles, banks are divided into two: conventional banks, which are based on the principle of interest and banks based on sharia principles or what are then commonly known as Islamic banks. Islamic banks consist of Islamic Commercial Banks and Islamic People's Financing Banks.

Islamic banking grows and is developed as an alternative to conventional banking practices. Criticism of conventional banks by the concept of Islamic banking is not rejecting banks in their function as financial intermediaries, but in their other characteristics, for example, there are still elements of usury, gambling (maysir), uncertainty (gharar), and bhatil (Khatibul General, 2011, p. 2). Islamic banking is an institution that provides banking services based on Sharia principles. Sharia principles are Islamic legal principles in banking activities based on fatwas issued by institutions with authority to issue fatwas in Sharia (Article 1 point 12 of Law No. 21 of 2008). This principle replaces the principle of interest contained in the conventional banking system.

Referring to Law Number 21 of 2008 concerning Islamic Banking, it can be concluded that what is meant by the institution that has the authority to issue fatwas is the National Sharia Council-Indonesian Ulema Council. Based on this provision, what are Sharia principles and their implementation in banking practices related to pillars and conditions guided by various fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) related to Sharia Banking (Abdul Ghofur Anshori, 2010, p. 37). The legal consequence of using Sharia principles in banking operations is that Sharia banking products are more varied than conventional banking products. Whereas conventional banking products, especially fundraising and channeling funds, are only based on the interest system as a form of achievement and an interpretation of the use of funds, Islamic banking is based on traditional Islamic contracts whose existence is very dependent on the real needs of customers.

According to M. Syafi'i Antonio (2001: 83), Sharia principles consist of: (1) the principle of deposit or savings (depository/al-wadi'ah); (2) the principle of profit sharing; (3) the principle of buying and selling (sale and purchase); (4) the principle of leasing (operational lease and financial lease); and (5) service principle (fee-based service). This opinion is in line with Sharia principles in Article 1 number 13 of Law Number 10 of 1998 that Sharia principles are agreements based on Islamic law between banks and other parties for depositing funds and/or financing business activities or other activities declared following Sharia principles, among others, financing based on the principle of profit sharing (mudharabah), financing based on the principle of equity participation (musyarakah), the principle of buying and selling goods by making a profit (murabaha), or financing of capital goods based on the principle of the pure lease without choice (ijarah), or the option of transferring ownership of goods rented from the bank by another party (ijawah waiqtina).

It is vital to have a national Sharia banking legal system to support the fulfillment of Sharia principles, particularly in the products offered by Sharia banking, to materialize and realize the Sharia principles as indicated above. This research examines the problems identified as follows: (1) What is the scope of the national banking legal system? and (2) How is the implementation of sharia principles in the material law of the national banking legal system?

METHODS

The methodology employed in this article is a literature review. This entails conducting a comprehensive search of national and international literature to systematically gather and analyze existing research and publications relevant to a specific topic or research question. The process

involves identifying and collecting pertinent sources of information, critically evaluating their quality, and synthesizing their findings to draw meaningful conclusions about the state of knowledge on the subject. Literature reviews are widely used in academic research and constitute a critical step in the research process.

RESULT AND DISCUSSION

Implementation of Sharia Principles in the Material Law of the National Banking Legal System. In Article 7 paragraph (1) of Law no. 12 of 2012 concerning the Formation of Legislation, the legal hierarchy in Indonesia is (a) the 1945 Constitution of the Republic of Indonesia; (b) the Decree of the People's Consultative Assembly; (c) Laws/Government Regulations instead of laws; (d) Government Regulations; (e) Presidential challenge; (f) Provincial Regulations; and (g) Regency/City Regional Regulations. The laws and regulations at the top are those that are higher than those below them. Therefore, the below laws and regulations may not conflict with those above them (Explanation of Article 7 paragraph (2) of Law No. 12 of 2012 concerning Formation of Legislation).

Sharia Banking in the Constitution. From a constitutional or constitutional standpoint, the issue of Sharia banking has gotten a place, especially from the preamble of the Constitution that states that the Unitary State of the Republic of Indonesia, which has people's sovereignty based on Belief in One Almighty God, must be accommodated in the life of the nation and State. Constitutional support for inclusive Sharia Banking is contained in Article 28 E: Everyone can embrace religion and worship according to their religion. This article gives an order (imperative) to the state for all Indonesian citizens to worship according to their respective religions and beliefs. For Muslims, worship consists of mahdhah worship, namely ritual worship, and ghair mahdhah worship, namely social worship (muamalah). Economic activities, including banking, must be carried out following the guidelines. Thus, it must follow religious guidance. In conventional banking activities, there are elements of usury, gambling (maysir), uncertainty (gharar), and bhatil. For this reason, Islamic banking was born to protect Muslims in banking activities prohibited by religion following the mandate of Article 28 E of the 1945 Constitution.

Sharia Banking in Law. The operational legality of Islamic banking started with Law No. 7 of 1992. Furthermore, Law No. 10 of 1998 was changed to Law No. 7 of 1992. However, in Law No. 10 of 1998, the Islamic banking arrangement still needs to be improved. Law No. 10 of 1998 only vaguely indicates the uniqueness of a bank providing banking facilities based on profit sharing (Sutan Remy Sjahdeini, 1999: 122) – therefore, Law No. 21 of 2008 concerning Islamic Banking as the legality of Islamic banking in Indonesia. According to Article 1 number 1 of Law No. 21 of 2008 concerning Islamic Banking, Islamic banking is: "everything related to Islamic Banks and Islamic Business Units, including institutions, business activities, and methods and processes in carrying out their business activities. Concerning the above understanding, it is not enough about banking operations to only refer to the Banking Law and Sharia Banking Law because Islamic banks' activities, methods, and processes in carrying out their business activities must refer to relevant laws. There are many laws and regulations related to Islamic banking, especially in material law, including: the Civil Code, Law no. 40 of 2007 concerning Limited Liability Companies, and Law no. 21 of 2011 concerning the Financial Services Authority – laws relating to mortgage rights, fiduciary, taxation, bankruptcy, notary positions, and others. Regarding the substance of these regulations, some have been adapted to Sharia principles; some have not.

Sharia Banking in Government Regulations. According to Zubairi Hasan (2009: 20-21), there are at least 4 (four) Government Regulations that regulate Islamic banking, namely first, PP No. 70 of 1992 concerning Commercial Banks, which has been amended by PP no. 38 of 1998

concerning Amendments to PP No. 70 of 1992. Second, PP No. 71 of 1992 concerning BPR. Third, PP No. 72 of 1992 concerning Banks Based on Profit Sharing Principles. Fourth, the last PP which discusses Islamic banking is PP No. 30 of 1999 concerning the Repeal of PP No. 70 of 1992 concerning Commercial Banks as amended several times, most recently by PP No. 73 of 1998, PP No. 71 of 1992 concerning BPR, and PP no. 72 of 1992 concerning Banks Based on Profit Sharing Principles. The reason for the existence of this PP is that with the enactment of Law No. 10 of 1998 concerning Banking, the implementing provisions concerning Commercial Banks and Rural Banks, including those implementing the principle of profit sharing, become the authority of Bank Indonesia, not the government. However, the PP revoked earlier remains valid if it does not conflict with the law and is not revoked or renewed.

Financial Services Authority Regulations. Until now, the OJK has issued various regulations relating to Islamic banks. With the transfer of regulatory and supervisory duties from Bank Indonesia to OJK, especially those held for Sharia Banks and UUS, the position of OJK Regulations becomes essential.

Fatwa of the National Sharia Council-Indonesian Ulema Council (DSN-MUI). In the study of ushul fiqh, the position of a fatwa is only binding for those who ask for a fatwa and those who give a fatwa. However, in this context (DSN-MUI Fatwa), this theory cannot be entirely accepted because the current fatwa's context, nature and character have developed and are different from the classical fatwa. The old theory of the current fatwa has developed and differs from the classic fatwa. The old theory of fatwas must be reformed and updated following developments and the process of forming fatwas. DSN-MUI is an institution that officially has the authority to establish Sharia economic fatwas. In Islamic banking, fatwas issued by the DSN-MUI have legally binding force for Islamic banks and customers because this authority is stipulated by Law no. 21 of 2008 concerning Islamic Banking (Article 1 number 12 of Law No. 21 of 2008). The current DSN Sharia economic fatwa is not only binding for practitioners of Sharia economic institutions but also for the Indonesian Islamic community.

CONCLUSION

From the above study, it can be concluded as follows: (1) The legal system of Islamic banking in Indonesia consists of three components of the legal system, namely legal substance (material law and formal law), structure, in the form of institutions that support Islamic banking, and culture. , both corporate culture and community culture. It follows the elements of the legal system put forward by L. Friedman. (2) The implementation of Sharia principles in material law within the scope of the national banking legal system has been embodied in several laws and regulations in the banking sector, which contain Sharia principles. Hierarchically starting from the constitution, namely the 1945 Constitution, Laws, Government Regulations, Financial Services Authority Regulations, National Economic Law Compilation and DSN-MUI Fatwas. However, there are still some regulations that still need to be adjusted to Sharia principles.

Based on the conclusions above, it is suggested (1) For the sake of implementing Sharia principles in the national banking legal system, the three components of the legal system must work with each other so that a national banking legal system that contains Sharia principles can be realized; (2) there needs to be socialization to the general public regarding the advantages of Islamic banking and Islamic banking products on a more massive basis.

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