

Juridical Fundamentals for the Establishment of Islamic Banking Law in Indonesia

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Abstract

The existence of Islamic banks is a sign of the revival of the Islamic economy in Indonesia, especially since Indonesia is a country where the majority of its people are Muslims. So, the existence of Islamic banking in Indonesia should become an important matter because it is related to the establishment of the people's economy, moreover, Indonesia is a legal state that binds all activities and rules in legal writings that are ratified and agreed upon. This research was conducted to answer about the importance of the legal foundations of the establishment of Islamic banking law in Indonesia. This research method use a normative juridical approach. Legal research with this approach is oriented toward the norms contained in the legislation. The results is, the formal position of Islamic banking law in Indonesia is said to be strong from a juridical point of view, even in line with the position of other conventional banking. On this basis, the existence of laws and regulations related to Islamic banking in Indonesia is something that needs to exist. Because Islamic banking is the foundation of the economic milestone for the Muslim community. The existence of these laws and regulations will further strengthen the existence of Islamic banks in Indonesia, to provide services to all people with a sharia system and pattern, which is based on the Al-Qur'an and also the Hadith of the Prophet Muhammad Saw.

Keywords: Islamic Bank; Law; Constitution; Service; Al-Qur'an

Abstrak

Keberadaan bank syariah merupakan tanda bagi kebangkitan ekonomi syariah di Indonesia, apalagi Indonesia merupakan negara yang mayoritas penduduknya beragama Islam. Maka keberadaan perbankan syariah di Indonesia seharusnya menjadi suatu hal yang penting karena berkaitan dengan terwujudnya ekonomi kerakyatan, apalagi Indonesia adalah negara hukum yang mengikat segala kegiatan dan aturan dalam suatu tulisan hukum yang

disahkan dan disepakati. Penelitian ini dilakukan untuk menjawab tentang pentingnya landasan hukum berdirinya hukum perbankan syariah di Indonesia. Metode penelitian ini menggunakan pendekatan yuridis normatif. Penelitian hukum dengan pendekatan ini berorientasi pada norma-norma yang terkandung dalam peraturan perundang-undangan. Hasilnya, posisi formal hukum perbankan syariah di Indonesia dikatakan kuat secara yuridis, bahkan sejalan dengan posisi perbankan konvensional lainnya. Atas dasar tersebut, keberadaan peraturan perundang-undangan terkait perbankan syariah di Indonesia merupakan sesuatu yang perlu ada. Karena perbankan syariah merupakan tumpuan tonggak ekonomi bagi masyarakat muslim. Adanya peraturan perundang-undangan tersebut akan semakin memperkuat eksistensi bank syariah di Indonesia, untuk memberikan pelayanan kepada seluruh masyarakat dengan sistem dan pola syariah, yang berlandaskan pada Al-Qur'an dan juga Hadith Nabi Muhammad Saw.

Kata Kunci: *Bank Syariah; Hukum; Undang-Undang; Pelayanan; Al-Qur'an*

Introduction

The existence of Islamic banks in Indonesia is currently developing late when compared to the majority of Muslim countries. In fact, in general, Islamic banks are one of the proofs of the development of the Islamic economic system, especially in Indonesia. However, on the other side, the formal position of Islamic banking law is said to be strong from a juridical point of view, even in line with the position of other conventional banking.¹ This research was conducted to answer about the importance of legal foundations of the establishment of Islamic banking law in Indonesia. The goal is for the public to know clearly about Islamic banking laws in force in Indonesia.

In a book written by Diana Yumanita Mascara with the title "*Overview of Islamic Banks*" explains that the development of Islamic banks itself emerged in the mid-20th century and made Islamic banks part of the Islamic economic system. The existence of Islamic banks was first pioneered and established by Mit Ghamr Local Saving Bank in Egypt. However, during its historical course during the heated political situation of its time, the bank was successfully taken over by

¹Septa Diana Nabella et al., "The Effect of Financing on Islamic Banking Assets with Non-Performing Finance As a Moderating Variable in Indonesia," *Jurnal Ekonomi* 12, no. 1 (2023): 1001, <https://ejournal.seaninstitute.or.id/index.php/Ekonomi/article/view/1241/1056>.

the National Bank of Egypt and the Central Bank of Egypt in 1967, and then operated on a usury-based system.²

For history, the usury-free banking system reappeared in 1972, the usury-free banking system was introduced with the arrival of the Nasser Social Bank in Egypt. Another milestone in the development of Islamic Banks was marked by the establishment of the Islamic Development Bank (IDB) in Jeddah in 1975 by countries that participated as members of the Organization of the Islamic Conference (OIC). Then the IDB has a very important role in Muslim countries in funding the development of these Islamic countries. Then, it was the IDB's journey that became an example and a pioneer for other countries to participate in establishing an Islamic financial system.³

This had an impact on the emergence of various types of banks in Egypt in the 1970s and early 1980s. In fact, not only in Egypt but the emergence of these banks also occurred in several other regions, such as Sudan, the Gulf countries, Pakistan, Iran, Bangladesh, Malaysia, to Turkey.⁴ Indonesia's delay in this aspect of Islamic banking is one of the proofs that the economic development of Muslims is lagging. The history of the existence of Islamic banks in Indonesia, began to live in 1980 the polemic over the existence of Islamic banks as a pillar of the Islamic economy began to be separated.

The peak was in 1991 after in-depth deliberations at the Indonesian Ulema Council which began in 1990 to fight for the establishment of an Islamic bank in Indonesia to support the economy of Muslims, the community consensus resulted in the deed of establishment of PT Bank Muamalat Indonesia.⁵ The penetration of the entry of the Islamic bank system in Indonesia has made the factual existence of Indonesian Islamic Banks continue to increase rapidly, starting from an institutional perspective or even an operational basis.

²Ascarya and Diana Yumanita, *Bank Syariah: Gambaran Umum* (Jakarta: Pusat Pendidikan dan Studi Kebanksentralan (PPSK) BI, 2005), 26.

³Nurnasrina, P. Adiyes Putra, and Nurlaili, *Manajemen Pembiayaan Bank Syariah* (Pekanbaru: Cahaya Firdaus, 2019), 38.

⁴Abdullah Saeed, *Menyoal Bank Syariah: Kritis Atas Interpretasi Bunga Bank Kaum Neo-Revivalis* (Jakarta: Paramadina, 2004), 53.

⁵Muhammad Syaff'i. Antonio, *Islamic Banking for Bankers and Financial Practitioners* (Jakarta: Tazkia Institute, 2001), 41.

Developments have been increasingly felt since the enactment of Law Number 7 of 1992 concerning Banking. The law was later amended by Law Number 10 of 1998 concerning the Banking Law. The existence of Islamic banks is even stronger with the existence of Law Number 23 of 1999 concerning Bank Indonesia which has been amended by Law Number 3 of 2004 concerning the BI Law. Where the presence of the BI law allows for the presence of monetary policies based on sharia principles.⁶

In essence, efforts to mature Islamic banking in Indonesia are not merely juridical in the banking law and BI law. However, it is an inseparable part of the efforts to improve the national banking system, the foundation of which is to increase the resilience of the national economy. In this effort, there are several goals in developing banking based on sharia principles. Among them: (1) The existence of Islamic banking can help to reduce the systematic risk of the failure of the financial system in Indonesia; (2) Islamic banking is expected to be able to meet the needs of banking services for Indonesian people who are fanatical about the concept or system of interest in banking; (3) Islamic banking can also create a dual banking system in Indonesia that accommodates both conventional banking and Islamic banking which creates healthy competition and business behavior based on Islamic moral values; (4) The existence of Islamic banking can also encourage the role of banking in Indonesia in driving the real sector and limiting speculation or productivity because financing is shown in businesses that are carried out because they are based on prevailing Islamic moral values.⁷

Looking back at Indonesia's past, at the end of 1997 to be precise, it gives an illustration of banks operating based on sharia principles that were relatively able to survive and had better performance than conventional banks, even though at that time the Indonesian economy was in the midst of high exchange rate flows and high-interest rates in his time. This can be seen in the numerical values of Non Performing Financing (NPFs) whose position is much

⁶Ascarya and Yumanita, *Bank Syariah: Gambaran Umum*, 29.

⁷Aldira Maradita, "Karakteristik Good Corporate Governance Pada Bank Syariah Dan Bank Konvensional," *Yuridika* 29, no. 2 (2014): 194, <https://doi.org/10.20473/ydk.v29i2.366>.

lower than conventional systems, and it is also proven that in that situation there is no negative spread, and the impact it has on carrying out the intermediary function.⁸

This phenomenon is borne by the operational characteristics of Islamic banks which strictly prohibit the practice of *riba* (interest) in their system. In addition, Islamic banks also have a very transparent character in their system, and there is a speculative system. If it is categorized as a Islamic bank, it adheres to three solid systems in practice, namely avoiding the type of *riba*, *gharar* or transparent, and *masyir* which has a speculative meaning.

The existence of the 1998 banking law and the BI law created a new atmosphere for Islamic banking in Indonesia. In fact, from there the number of banks grew very rapidly, from which initially there was only one Islamic commercial bank and seventy-eight Islamic People's Credit Banks (BPRS) in 1998, multiplying into three Islamic commercial banks, with 18 sharia business units and 88 BPRS at the end in 2004 with a network of 443 offices in 20 provinces in Indonesia.⁹

However, at that time the contribution to total national banking was still relatively small, namely IDR 15,3 trillion or the equivalent (1,3%), even though on the other side the assets of Islamic banking have achieved an average growth of more than 80% annually in the period 1998 to 2004. Based on the existence of Islamic banking in Indonesia that the existence of the banking law and the BI law alone is not strong enough to accelerate the development of Islamic banking. Apart from regulating Islamic banks, each of these laws also becomes the main legal basis for national banks in implementing a dual banking system, known as the dual banking system.¹⁰

This means that this system is sustainable for the development of Islamic banking in Indonesia which can help increase the resilience of the national banking system. So, in this case, the existence of Islamic banking requires a solid legal basis in practice, in the form of detailed laws.

⁸Antonio, *Islamic Banking for Bankers and Financial Practitioners*, 44.

⁹Jaime Grinberg and Katia Paz Goldfarb, "Learning to Teach for Social Justice: Context and Progressivism at Bank Street in the 1930's," *Journal of Education and Human Development* 4, no. 2 (2015): 52, <https://doi.org/10.15640/jehd.v4n2a6>.

¹⁰Maradita, "Karakteristik Good Corporate Governance Pada Bank Syariah Dan Bank Konvensional," 197.

However, flexible that can manage the interests of all stakeholders.¹¹

Thus, this research will focus on the main reasons for the existence of the Islamic banking law in Indonesia. This became the main attraction for the discussion which asked the reasons why the Islamic banking law needed to exist. This research will explore the relevance of the banking law and the BI law as well as a series of regulations in their implementation that regulate Islamic banking according to its position in Indonesia as the pioneer of the Islamic economic system in Indonesia.¹²

Methodology

To study the problems in this research, a tools of method is needed to solve problems, and provides clues to the problems to be discussed. The research method used in this writing framework is to use a normative juridical approach. Legal research with this approach is related to primary and secondary laws, which are oriented toward the norms contained in the legislation.¹³ That is, the method is in practice by examining the rules or norms, as well as rules that have continuity with the problems discussed. This approach aims to collect various regulations and legislation, theories, and literature that are very closely related to the problem being discussed.¹⁴

Results and Discussion

According to Hermawan Usman in the journal of Fitria Dewi Navisa, et. al.,¹⁵ explains that law is a set of written or unwritten rules

¹¹Muhammad Urfi Amrillah, "Urgensi Pembentukan Undang-Undang Digital Banking Bagi Perbankan Syariah Di Indonesia," *Lex Renaissance* 5, no. 4 (2020): 931, <https://doi.org/10.20885/JLR.vol5.iss4.art12>.

¹²Saeed, *Menyoal Bank Syariah: Kritis Atas Interpretasi Bunga Bank Kaum Neo-Revivalis*, 56.

¹³Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2012), 118.

¹⁴Agung Hidayat, "Critical Review Buku 'Penelitian Hukum' Peter Mahmud Marzuki Penelitian Hukum Ad Quem Tentang Norma," *Yustisia Merdeka: Jurnal Ilmiah Hukum* 7, no. 2 (2021): 120, <https://doi.org/10.33319/yume.v7i2.109>.

¹⁵Fitria Dewi Navisa et al., "Penyuluhan Hukum Untuk Mewujudkan Masyarakat Anti Penyalahgunaan Narkotika Dan Psikotropika," *Jurnal Pembelajaran Pemberdayaan Masyarakat (JP2M)* 1, no. 3 (2020): 254, <https://doi.org/10.33474/jp2m.v1i3.8803>.

that function to regulate people's lives, and good law is the law that exists in society. Sustained other understanding by E.M. Meyers which states that law is a series of rules made considering decency in practice and aims to be a guideline for state authorities.¹⁶

Etymologically, the word law itself comes from Arabic, "*alkas*" which is then drawn and translated into Indonesian to become the word "*hukum*". The law itself has a function in people's lives, even though basically the law aims to realize the goals implied in the law itself. However, several experts also concluded the benefits of the existence of law in people's lives.¹⁷

As explained by Sudikno Mertokusmo, he explained that the law functions as a protection for human interests, and so that these human interests achieve their goals.¹⁸ So the law must work and be implemented without doubt and fraud in practice. On the other side, Lambertus Johannes van Apeldoorn also concluded about the benefits of the existence of law, he stated that law functions as a rule that regulates the peaceful association of life.

Continued again by Joseph Raz, himself stated that the function of this law has two parts in it, namely direct and indirect functions. The following is a description of the benefits of direct and indirect functions according to Joseph Raz, among them: (1) The law can prevent an act committed by a person, as well as encourage the act to be carried out; (2) Law can be used as a facility for a personal-based plan; (3) Law can also play a role in the existence of the provision of services and distribution of goods; and (4) The law can function as a form of dispute that occurs outside the regular channels.¹⁹

From the concept of legal objectives above, the existence of law in Indonesia and general in life in society has several objectives which are described by Nikolaas Egbert Algra, among them: (1) Law aims to create a social order that is good, orderly, and can be directed and not arbitrary in carrying out social relations between fellow people

¹⁶Iswardono, *Uang Dan Bank* (Yogyakarta: BPFE, 1990), 5.

¹⁷Nurnasrina, Putra, and Nurlaili, *Manajemen Pembiayaan Bank Syariah*, 41.

¹⁸Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Maha Karya Pustaka, 2019), 34.

¹⁹Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of a Legal System* (Oxford: Clarendon Press, 1970), 83.

and society or society and the state; (2) The law also aims to create an orderly order through absolute provisions and create a balance for the life of society and the state; (3) Another function of law is to uphold existing functions or rules and regulations, this is applying emphasis to an aspect of life or important institutions that influence people's lives.²⁰

Apart from the legal function, there are also several duties of the law itself, this was explained by Nikolaas Egbert Algra. As for the description of legal assignments, among them: (1) Law has to divide between rights and obligations for individuals in social life; (2) The law also serves as an initiating role to share authority and regulate in solving problems in social and state life; (3) The important objective of the law is to maintain the stability of legal certainty itself to create a harmonious atmosphere by the objectives of the law to achieve this justice.²¹

In Indonesia itself, as a rule of law, there are several areas of law made by Indonesia. And all of that is a step to create justice, peace, and life by the values of Pancasila as the direction of the Indonesian nation in the state. The various types of law in Indonesia are classified as follows.²²

First, Indonesian criminal law. Criminal law is a framework part of the public law unit. In practice, criminal law in Indonesia is divided into two types of legal fields. Namely the law that discusses material and formal criminal law. Each of these criminal laws has a function and use in practice. For example, material criminal law, which is a field of law that discusses determining criminal acts, criminal sanctions, and perpetrators of criminal acts, and material criminal law arrangements in Indonesia is regulated in the criminal law code or criminal code. Besides that, Indonesia's formal criminal law is an area of Indonesian criminal law that regulates the application of material law. In Indonesia itself, this law has been legalized and

²⁰Ibid.

²¹Ibid.

²²Friska Cintia Devi, Siti Istikhoroh, and Widiar Onny Kurniawan, "Pengaruh Dana Pihak Ketiga Dan Kredit Bermasalah Terhadap Profitabilitas Bank BUMN Yang Terdaftar Di BEI," *Journal of Sustainability Bussiness Research* 3, no. 2 (2022): 185, <https://doi.org/10.36456/jsbr.v3i2.5598>.

recorded through Law Number 8 of 1981 concerning The Criminal Procedure Code.²³

Second, constitutional law. In this legal section, it is explained that constitutional law is a law that discusses and regulates the state. Among them, are the basis for the establishment of the state, the establishment of institutions, institutional structures, state territory, citizens, and legal relations of rights and obligations between state institutions. Constitutional law is a law that regulates law in a state of silence or immobility, so this law is not a law that addresses the real situation of a country, but rather discusses the state in a general sense.²⁴

Third, administrative law. Administrative law, or what is better known as state administration, is a law or provision that is built to discuss administrative activities within the country. In practice, this law will regulate the implementation of government in carrying out its duties as a state apparatus.²⁵

Fourth, Indonesian civil procedural law. Within the realm of Indonesian civil procedural law, it is a field of law that discusses, and regulates, procedural provisions, this law has continuity within the scope of civil law in Indonesia. The practice of Indonesian civil procedural law is a legal seed that was born ancient from the Dutch period which was introduced by Het Herzien Inlandsch Reglement (HIR).

Fifth, Indonesian criminal procedural law. Within the realm of Indonesian criminal procedural law, it is a field of law that discusses, and regulates, procedural provisions, this law has continuity within the scope of criminal law in Indonesia. Indonesian criminal procedural law is regulated through the criminal procedural law book (Law Number 8 of 1981). Meanwhile, the principles contained in this Indonesian criminal procedural law, among them: (1) The

²³Grinberg and Goldfarb, "Learning to Teach for Social Justice: Context and Progressivism at Bank Street in the 1930's," 55.

²⁴Etty Mulyati and Fajrina Aprilianti Dwiputri, "Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan," *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (2018): 137, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/164>.

²⁵Devi, Istikhoroh, and Kurniawan, "Pengaruh Dana Pihak Ketiga Dan Kredit Bermasalah Terhadap Profitabilitas Bank BUMN Yang Terdaftar Di BEI," 188.

principle of writing, is a written legal action on the authority of officials supported by law; (2) The principle of justice is fast, simple, honest, low cost, and impartial to anyone. This is a series of criminal justice processes that are carried out quickly, concisely, fairly, and honestly. Starting from the investigation to arriving at the judge's decision; (3) The principle of obtaining legal assistance, the purpose of this hope is to encourage everyone to have the opportunity, even to have legal aid that functions to defend himself against involvement related to punishment; (4) The principle of openness, this principle has a basis related to openness in the examination of criminal acts which are carried out transparently to the public; (5) The principle of proof, in this aspect, is a basis which stipulates that a suspect or defendant is not burdened to be able to provide evidence. However, it is different if this is regulated differently by law, this principle has a foundation related to openness in the examination of criminal acts which are carried out transparently to the public.²⁶

Sixth, law between legal systems. In short, this law is a law that determines, and regulates the relationship between two groups that must be subject to different legal provisions.

Seventh, customary law in Indonesia. Customary law is a policy or norm related to culture and customs and applies to an area in Indonesia.

Eighth, Islamic law in Indonesia. Islamic law in Indonesia itself cannot be established as a whole, considering that Indonesia is a Muslim-majority country, not entirely Muslim. So the enforcement of Islamic law in Indonesia if it is comprehensive will be very risky to the norms and culture of society. However, Islamic law in Indonesia has been applied to parts of Indonesia's territory, yes that is the region of Aceh which uses Islamic law, which refers to Article 15 Paragraph 2 of Law Number 4 of 2004 concerning Judicial Power in Islamic Sharia Courts in Aceh Province.

Of the many types of law in Indonesia, the application of law in Indonesia itself is in the rules and regulations regarding Islamic banking, regulated in the banking regulations and laws. The

²⁶Grinberg and Goldfarb, "Learning to Teach for Social Justice: Context and Progressivism at Bank Street in the 1930's," 58.

business activities of this bank originally came from the provisions of the bank's founders or entry regulations. In addition, operational provisions are broken down into three main sections of banking, including: (1) Fundraising; (2) Distribution of funds; and (3) Provision of service-based banking services.²⁷

The three businesses above operate based on the banking law and BI law (Bank Indonesia law). So, as long as there is a relationship between the bank and the customer, the engagement is carried out based on the law of the agreement stipulated in the civil code, then also continues to positive civil law, as well as the criminal code (book of commercial law).

In addition to all that, and finally, it is one of the regulatory aspects regarding the revocation of business licenses or bank liquidation, while still taking into account the position of the bank as a legal entity unit and accountability in the field of business for parties who have an interest. On the other side, the development of Islamic banks itself has led to a new rule or method in carrying out bank business activities, which is based on two *qibla*, between the Al-Qur'an and also the Hadith of Prophet Muhammad Saw. Islamic bank rules that are oriented towards these two aspects have strict rules regarding consistency in regulating aspects, business activities, establishment, up to the stage of revocation of business license or liquidation.²⁸

Islamic banks are financial institutions that have an important existence in Indonesia. All current business activities always involve banks, be they small, large, or even medium businesses. An entrepreneur in conducting his business always needs funds in developing his business, from the banking sector and even for remittance activities and also guarantees for transactions. In addition, many professional jobs also use banking services, especially in transferring money, developing offices, etc. Farmers who cultivate large areas of land also need funds to cultivate rice fields or gardens.

An understanding of Islamic banking itself can be found based

²⁷Antonio, *Islamic Banking for Bankers and Financial Practitioners*, 47.

²⁸Muhammad Faisal Yahya et al., "Kredit Bank Syariah Dan Konvensional Banks Pada Masa Ketidakpastian," *Prosiding National Seminar on Accounting, Finance, and Economics (NSAFE)* 1, no. 6 (2021): 182, <http://conference.um.ac.id/index.php/nsafe/article/view/1295>.

on three aspects that define Islamic banking, among them: (1) Viewed based on rules and regulations. Judging from Law Number 21 of 2008 concerning Islamic Banking and Law Number 10 of 1998 jo. UU No.7 of 1992, all three have the same interpretation regarding banks, namely business entities that collect funds from the public in the form of savings and distribute them to the community to improve the standard of living of the people at large. Meanwhile, Islamic banks are banks that carry out their business activities based on sharia principles and by type consist of Islamic commercial banks and BPRS; (2) Viewed based on bank activities or bank services to the services offered to consumers. The meaning of a bank can be clarified based on the products offered to consumers, that a bank is an institution that accepts deposits and distributes them to the public, and provides other services; (3) Viewed based on its economic function in providing services to the community the notion of a bank with an economic function approach, that a bank is an institution that accepts deposits and distributes them to business economic activities and also performs other service activities.²⁹

Based on these three approaches, the definition of a bank is a financial service institution that carries out efforts to collect funds from the public and distribute them to the community in the form of financing or loans and other economic activities in the form of services. Islamic banks which are one of the banks in Indonesia can be interpreted as business entities in the financial sector whose activities are collecting funds from the community and channeling them to the community in the form of financing or loans and carrying out other economic activities in the form of services provided based on sharia principles.³⁰

Based on this understanding, Islamic banks are banks that have special characteristics in their operations by implementing sharia, namely profits and losses sharing both in raising funds and financing and in product services, there is a difference between banks based on sharia principles, compared to conventional banks, namely

²⁹Geoffrey G. Meredith, Robert E. Nelson, and Philip A. Nick, *Kewirausahaan: Teori Dan Praktek* (Jakarta: Pustaka Binaman Pressindo, 1984), 67.

³⁰Sylvia Janisriwati, Paula Swandayani Hartanto, and Theresia Fedora Lolo, "Perubahan Jenis Bank Terhadap Kedudukan Jaminan Kredit," *Jurnal Education and Development* 9, no. 2 (2021): 208, <https://doi.org/10.37081/ed.v9i2.2534>.

Islamic banks.

Sharia law in business activities has been practiced with several principles. Among them, are the principle of profit sharing, the principle of buying and selling, the principle of leasing or renting and buying, as well as other sharia principles, such as the management of Islamic banks between owners and administrators or between institutional support that has links with justice, arbitration, and institutions that oversee sharia.³¹

To establish an Islamic bank, it is necessary to apply to establish an Islamic bank. This license will go through two stages of licensing, namely principal licenses and business licenses, and where these licenses will be issued or ratified by the banking authority Bank Indonesia or BI. In submitting this application, the aspects that are important and need to be observed in this process are aspects of bank ownership and bank management.

Related to this opinion, there is a provision that applies in Article 22 of the Banking Law which provides a statement that commercial banks should be established by all Indonesian people or Indonesian legal entities working with foreign nationals, or foreign legal entities in a partnership system. In addition to that article, Article 23 also states that rural banks can also be established and only owned by Indonesian citizens, regional governments, and Indonesian legal entities, or can be jointly owned by all three.³²

Within the principles of Islamic banks themselves, Islamic banks should be established based on the interrelationship of Islamic principles as a system of life, which describes where humans are caliphs or leaders in this world, based on the information of the Al-Qur'an and Hadith of the Prophet Muhammad Saw. The description of the caliphate discussed in the Al-Qur'an is quoted through a fragment of surah Al-Maidah verse 48 which reads, "*... for each of you, we have wanted clear rules and paths for you ...*".³³

Comprehensive sharia essentially covers all aspects of human

³¹Selim Ahmed et al., "The Impact of Islamic Shariah Compliance on Customer Satisfaction in Islamic Banking Services: Mediating Role of Service Quality," *Journal of Islamic Marketing* 13, no. 9 (2022): 1832, <https://doi.org/10.1108/JIMA-11-2020-0346>.

³²Ibid.

³³Ibid.

life, starting from worship to *muamalah*, while the universal side can be implemented at any time and place until the day of resurrection. Based on this comprehensive and universal perspective, sharia should not adhere to the principle of limiting ownership so that BPRS can also be opened by foreign legal entities, while this still makes a major contribution to the prosperity of the people.

In practice, BPRS has a very big role in financing small businesses, even though the funds provided are constrained due to the small amount they get. So, as a solution to this, only opportunities were opened for foreign bodies to be able to join BPRS with partner status, with national ownership. This could be a problem-solving tools related to capital constraints on small businesses that have minimal value so that they increase. And this will later have an impact and return to the welfare of the people. Not only that, another advantage that can be obtained from this collaboration is that, with the arrival of a foreign legal entity as a partner, it will bring technology and management products that are relatively more advanced and have an impact on improving the quality of BPRS management.

According to the Big Indonesian Dictionary, business is an activity that expends energy, mind, or body to achieve a purpose and goal. So what is meant by business implementation in banking in general, bank institutions or financial intermediation, or even Islamic banking business activities essentially include four aspects in their main activities, among them: (1) Fundraising activities originating from the public; (2) Bank fund distribution activities to the public; (3) Offering services and products from financial services; (4) Business management activities or internal management. From each of these points, the following is a description of each activity point in fulfilling the rules and business for Islamic Banks.³⁴

First, collection of funds from the community. The basis for raising funds from the public has a legally binding basis that is contained in Article 6 point (a) of the Banking Law which is regulated by, collecting funds from the community in deposits in the form of

³⁴Hisam Ahyani et al., "Standardization of Companies and the Islamic Business Environment in Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, no. 1 (2022): 13, <https://doi.org/10.29040/jiei.v8i1.3795>.

demand deposits, certificates of deposit, time deposits, savings, or even other forms that have in common with the things mentioned. In the provisions beside, Article 6 point (c) provides a statement, if the collection of funds is in the form of other than current accounts, deposits, or savings, then it can be embraced through the issuance of a debt statement.

Fundraising in the description of Article 6 of the Banking Law is essentially applied to conventional commercial banks or Islamic commercial banks. The term savings in Article 6 point (a) which quoting demand deposits and savings accounts, basically the substance arrangement is that the funds are deposited, and the bank must return the deposited funds to customers including interest obligations. When viewed from the side of sharia principles, the application of savings is the same as demand deposits and savings. As for deposits and savings, they are more familiar with the investment system. This is based on the provisions that deposits are an investment cooperation relationship, not a savings account.

So it is also the case with the provision that banks can also issue debt acknowledgments, as pada the description of Article 6 point (c), in the context of conventional banks. This is an activity that is reasonable to carry out, even though in sharia activities, the collection of funds is carried out by issuing debt acknowledgments. Because basically, the acknowledgment of debt is not part of the investment. So in this case, the regulation of Islamic banks needs to be reaffirmed, by providing clarity regarding the provision of compensation to the owner of the funds.

Second, distribution of community funds. In channeling funds to the public, it is regulated through the banking law which regulates the business of commercial banks in providing credit, this is related to Article 6 point (b), then proceed to Article 6 point (d) concerning buying securities and Bank Indonesia certificate or SBI. The following is also discussed in Article 6 point (f) which explains placing funds with other banks, as well as placing funds originating from customers with other customers, in the form of securities that have no records or traces of which are not listed on the stock exchange, this is the contents content of Article 6 point (j). And the last content in Article 6 point

(m) discusses the provision of financing or other activities that have a basis and sharia principles by Bank Indonesia (BI) regulations.³⁵

Other fund distribution activities by carrying out foreign exchange activities that comply with the provisions by Bank Indonesia are regulated in Article 7 point (a), discussed next in Article 7 point (b) concerning carrying out capital participation activities in banks or other companies in the financial sector such as leasing, securities companies, venture capital, clearing institutions, and insurance that meet the terms and conditions imposed by Bank Indonesia BI.

Article 7 point (c) explains that participants will be carried out in the context of providing temporary capital to anticipate the failure of the credit system or failure of financing, then based on sharia principles, the participation must be withdrawn by fulfilling the provisions of Bank Indonesia (BI). If it is related to sharia principles, the distribution of credit in Article 6 point (b) in the understanding of channeling funds by setting aside and taking interest in return is something that is not allowed in the sharia system.

This also has similarities with the purchase of securities and SBI, as well as the placement of funds with other parties listed in Article 6 points (d) and (f) need to be infused with comprehensive regulations regarding the purchase of securities and SBI and placement of funds with other banks must comply with sharia principles.

Then there are other forms of distribution of funds which are the main activities of Islamic banks in the description of buying and selling or *murabahah*, then there are also receivables with payment in advance or *salam*, and there are also receivables with gradual payments as well as making mortgage or *rahn* loans which have not been clearly defined in Indonesian legislation.

Third, bank products and services. In the banking law which regulates banking services for commercial banks is a transfer of money either for personal gain or for the benefit of customers, Article 6 point (e) by accepting payment of securities and making calculations or between third parties in Article 6 point (h) concerning carrying out safekeeping

³⁵Lucky Nugroho, Erik Nugraha, and Ahmad Badawi, "Intermediary Strategy Impact to Return on Asset in Covid-19 Pandemics: Islamic Bank vs Conventional Bank (Indonesia Empirical Cases)," *Business Economics and Management Research Journal* 5, no. 3 (2022): 160, <https://dergipark.org.tr/en/pub/bemarej/issue/73285/1152131>.

activities in the interests of other parties based on a stipulation contract. Article 6 point (i) engages in receivable derivative activities, trustee activities, and credit card business activities. Furthermore, in the description of Article 6 point (1) by carrying out all other activities. However, it is still common practice by banks and does not conflict with legally stipulated laws and regulations (Article 6 point (n)).³⁶

In essence, service market activities are carried out by the bank, this is stipulated in Article 6 point (e, g, h, i, l, and n) which is a description of the series of activities that are commonly carried out by Islamic banks. Article 6 point (l) itself stipulates that banks can carry out credit card activities to customers in general, making sure that the general credit cards used by customers contain provisions or interest benefits for the bank. So, it can be concluded that these activities have been expressly determined that these activities are carried out without having things that are prohibited by sharia principles.

In addition, in the statement of Article 14 point (b) that the regulation of BPRS stipulates that BPRS are prohibited from conducting business activities in foreign exchange relations, or implementing capital withdrawals. As is known, the existence of this policy will be very contrary to the business characteristics of Islamic banks based on their products as a system of cooperation or partner relations.

Fourth, bank management. In carrying out management, in essence, the bank will focus on implementing the maximum limit of bank fund facilities for related and unrelated parties. This is regulated in the banking law stipulated by Bank Indonesia (BI) in stipulating the maximum limit provisions in providing credit or financing based on sharia principles, placing investments in securities, providing a guarantee, or other things that have a similarity, which carried out by the bank to individual borrowers or a group of related borrowers.³⁷

The information in Article 11 paragraph (1) stipulates that the maximum limit may not exceed 30% of the bank's capital. Article 11 paragraph (2) continues that the maximum fund is 10% of the bank's capital for shareholders who own 10% or more of the capital

³⁶Muhammad Tun Samudra, "Politics of Sharia Banking Law in Indonesia," *Legal Brief* 11, no. 2 (2022): 1510, <https://doi.org/10.35335/legal.v11i2.326>.

³⁷*Ibid.*

deposited into the bank, members of the board of commissioners, members of the board of directors, commissioners or directors, as well as bank officials and companies in which there is interest from these related parties (Article 11 paragraph (3 and 4)).

So the existence of the provisions of Article 11 paragraphs 3 and 4 can be a threat because of the limitations imposed in providing financing to parties related to the bank. This seems to provide an opportunity for discriminatory practices or self-dealing of bank funding facilities by bank management. If this is related to sharia principles which are based on fairness and honesty as well as strict prohibitions against abusive practices towards other parties, then the opening of these restrictions will hinder the objectives of Islamic banks as banks that provide facilities to people with high credibility, trustworthiness, and transparency as all the practice of these methods and methods is a reflection of the study of knowledge described in the Al-Qur'an and also the Hadith of the Prophet Muhammad Saw.³⁸

Conclusion

As we know, Indonesia is a country that is nicknamed the majority of the Muslim community, this is based on factual evidence that the majority of the Indonesian population is Muslim. From the description above, it can be concluded that the existence of Islamic banks as an Islamic economic system is true. As it is known that Islamic banking in practice is always inseparable from the provisions of the Al-Qur'an and also the Hadith of the Prophet Muhammad Saw. On that basis, there are many rules in the practice of Islamic banking that are far from what is forbidden by Allah Swt. The Islamic banking system can grow, which has been proven from its heyday in the Turkish era, which succeeded in financing every Muslim country through the establishment of Islamic banks. As long as the practice of Islamic banking is needed to strengthen, and guard so that the existence of Islamic banks can run well, this is one of the functions of the law according to to Nikolaas Egbert Algra. It can be seen from the implementation related to Article 29 of the 1945 Constitution which

³⁸Ahmed et al., "The Impact of Islamic Shariah Compliance on Customer Satisfaction in Islamic Banking Services: Mediating Role of Service Quality," 1835.

discusses the nation's economy, which underlies or guides the state to participate in protecting applicable legal policies as the function of law is as protect and order in people's lives. So, on this basis, the existence of laws and regulations related to Islamic banking in Indonesia is something that needs to exist. Because Islamic banking is the foundation of the economic milestone for the Muslim community. The existence of these laws and regulations will further strengthen the existence of Islamic banks in Indonesia, to provide services to all people with a sharia system and pattern, which is based on the Al-Qur'an and also the Hadith of the Prophet Muhammad Saw.

References

- Ahmed, Selim, Muhammad Mohiuddin, Mahfuzur Rahman, Kazi Md Tarique, and Md. Azim. "The Impact of Islamic Shariah Compliance on Customer Satisfaction in Islamic Banking Services: Mediating Role of Service Quality." *Journal of Islamic Marketing* 13, no. 9 (2022): 1829–42. <https://doi.org/10.1108/JIMA-11-2020-0346>.
- Ahyani, Hisam, Haris Maiza Putra, Memet Slamet, and Naeli Mutmainah. "Standardization of Companies and the Islamic Business Environment in Indonesia." *Jurnal Ilmiah Ekonomi Islam* 8, no. 1 (2022): 10–20. <https://doi.org/10.29040/jiei.v8i1.3795>.
- Amiruddin, and Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Jakarta: PT Raja Grafindo Persada, 2012.
- Amrillah, Muhammad Urfi. "Urgensi Pembentukan Undang-Undang Digital Banking Bagi Perbankan Syariah Di Indonesia." *Lex Renaissance* 5, no. 4 (2020): 928–945. <https://doi.org/10.20885/JLR.vol5.iss4.art12>.
- Antonio, Muhammad Syafi'i. *Islamic Banking for Bankers and Financial Practitioners*. Jakarta: Tazkia Institute, 2001.
- Ascarya, and Diana Yumanita. *Bank Syariah: Gambaran Umum*. Jakarta: Pusat Pendidikan dan Studi Kebanksentralan (PPSK) BI, 2005.
- Devi, Friska Cintia, Siti Istikhoroh, and Widiar Onny Kurniawan.

- “Pengaruh Dana Pihak Ketiga Dan Kredit Bermasalah Terhadap Profitabilitas Bank BUMN Yang Terdaftar Di BEI.” *Journal of Sustainability Bussiness Research* 3, no. 2 (2022): 182–90. <https://doi.org/10.36456/jsbr.v3i2.5598>.
- Grinberg, Jaime, and Katia Paz Goldfarb. “Learning to Teach for Social Justice: Context and Progressivism at Bank Street in the 1930’s.” *Journal of Education and Human Development* 4, no. 2 (2015): 50–59. <https://doi.org/10.15640/jehd.v4n2a6>.
- Hidayat, Agung. “Critical Review Buku ‘Penelitian Hukum’ Peter Mahmud Marzuki Penelitian Hukum Ad Quem Tentang Norma.” *Yustisia Merdeka: Jurnal Ilmiah Hukum* 7, no. 2 (2021): 117–25. <https://doi.org/10.33319/yume.v7i2.109>.
- Iswardono. *Uang Dan Bank*. Yogyakarta: BPFE, 1990.
- Janisriwati, Sylvia, Paula Swandayani Hartanto, and Theresia Fedora Lolo. “Perubahan Jenis Bank Terhadap Kedudukan Jaminan Kredit.” *Jurnal Education and Development* 9, no. 2 (2021): 205–14. <https://doi.org/10.37081/ed.v9i2.2534>.
- Joseph Raz. *The Concept of a Legal System: An Introduction to the Theory of a Legal System*. Oxford: Clarendon Press, 1970.
- Maradita, Aldira. “Karakteristik Good Corporate Governance Pada Bank Syariah Dan Bank Konvensional.” *Yuridika* 29, no. 2 (2014): 191–204. <https://doi.org/10.20473/ydk.v29i2.366>.
- Meredith, Geoffrey G., Robert E. Nelson, and Philip A. Nick. *Kewirausahaan: Teori Dan Praktek*. Jakarta: Pustaka Binaman Pressindo, 1984.
- Mulyati, Etty, and Fajrina Aprilianti Dwiputri. “Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan.” *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (2018): 134–48. <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/164>.
- Nabella, Septa Diana, Yandra Rivaldo, Sumardin, Robby Kurniawan, and Sabri. “The Effect of Financing on Islamic Banking Assets with Non-Performing Finance As a Moderating Variable in Indonesia.” *Jurnal Ekonomi* 12, no. 1 (2023): 998–1004. <https://>

ejournal.seaninstitute.or.id/index.php/Ekonomi/article/view/1241/1056.

- Navisa, Fitria Dewi, Marita Lely Rahmawati, Muhammad Rizaldi Hendriawan, Sofiatul Istiqomah, Indah Iftiati, Risky Akbar, Aditya Andika Kameswara, Muhammad Syeisar Nanda P., Tri Anjas Andi Prsetyo, and Hikmatul Azizah. "Penyuluhan Hukum Untuk Mewujudkan Masyarakat Anti Penyalahgunaan Narkotika Dan Psikotropika." *Jurnal Pembelajaran Pemberdayaan Masyarakat (JP2M)* 1, no. 3 (2020): 251–58. <https://doi.org/10.33474/jp2m.v1i3.8803>.
- Nugroho, Lucky, Erik Nugraha, and Ahmad Badawi. "Intermediary Strategy Impact to Return on Asset in Covid-19 Pandemics: Islamic Bank vs Conventional Bank (Indonesia Empirical Cases)." *Business Economics and Management Research Journal* 5, no. 3 (2022): 157–68. <https://dergipark.org.tr/en/pub/bemarej/issue/73285/1152131>.
- Nurnasrina, P. Adiyes Putra, and Nurlaili. *Manajemen Pembiayaan Bank Syariah*. Pekanbaru: Cahaya Firdaus, 2019.
- Saeed, Abdullah. *Menyoal Bank Syariah: Kritis Atas Interpretasi Bunga Bank Kaum Neo-Revivalis*. Jakarta: Paramadina, 2004.
- Samudra, Muhammad Tun. "Politics of Sharia Banking Law in Indonesia." *Legal Brief* 11, no. 2 (2022): 1507–1515. <https://doi.org/10.35335/legal.v11i2.326>.
- Sudikno Mertokusumo. *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Maha Karya Pustaka, 2019.
- Yahya, Muhammad Faisal, Mohammad Iqbal, Muhammad Reza Arifianto, and Satia Nur Maharani. "Kredit Bank Syariah Dan Konvensional Banks Pada Masa Ketidakpastian." *Prosiding National Seminar on Accounting, Finance, and Economics (NSAFE)* 1, no. 6 (2021): 179–85. <http://conference.um.ac.id/index.php/nsafe/article/view/1295>.