

REGULATIONS AND FUTURE OF SHARIAH BANKING SYSTEM IN INDONESIA

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ABSTRACT

Shariah economy is a reflection of the Qur'an that contains the norms of law and rules concerning to the economic affairs of mankind which also comes from hadith. This research analyzes the Shariah banking system in Indonesia that began in the 1990s. It was starting with the normative juridical of Indonesian Law number 10 of 1992 that rules the permissibility of conventional banks using the principle of profit sharing based on Shariah law. Regulations on banking activities are further regulated in more detail in Law no. 10 of 1998. That rule is the result of amendment of Law No.10 of 1992 which legalized such banking system of the reformation era in Indonesia. This law is such a new era of Shariah banking rapidly development, where many financial industries are transformed as Islamic financial institutions. Those regulations guide the Shariah banking operations nationally that make a better system in future.

Keywords: Regulations, shariah banking, Islam society, Indonesia,

INTRODUCTION

As a country with the largest Muslim population in 2010 reached 237.6 million people, Indonesia should be the pioneer the Islamic finance development in the world. This is not an 'impossible dream' because Indonesia is a potential global player of Shariah finance. The economic potentials are enormous, including: (i) the large Muslim population is a potential customer of the Islamic finance industry; (Ii) a bright economic outlook, reflected by relatively high economic growth (range 6.0% -6.5%) supported by solid economic fundamentals; (Iii) the increasing of Indonesia's sovereign credit rating to investment grade will increase investor interest to invest in domestic financial sector, including Shariah Financial industry; And (iv) have abundant natural resources that can serve as underlying transactions of Islamic financial industry, (Halim, 2012: 1).

In the assessment of Global Islamic Financial Report (GIFR) in 2011, Indonesia was ranked in the fourth country with potential and conducive to the development of Shariah Financial industry after Iran, Malaysia and Saudi Arabia (Graph 1). By looking at several aspects of the index calculation, such as the number of Islamic banks, the number of non-bank Islamic financial institutions, as well as the size of the largest Shariah financial assets, Indonesia is projected to be ranked first in the next few years. This optimism is in line with the high rate of institutional expansion and accelerated growth in Shariah banking assets, coupled with an increasing volume issuance.

The real thing in the economic aspects of the spotlight today is the existence of banks based on the more popular Islamic economy called Shariah or Islamic banking. The existence of Islamic banking or Shariah is a response to the anxiety of the soul of the Islamic community in Indonesia; the only economic traffic oriented to world life does not run in tune with the rules of Islam (*ukhrawi* (Arabic)). Shariah regulation avoids the actions of unlawful (*Haram*

(Arabic)), especially for the issue of bank interest that is identified with usury which has been driven by conventional banks (Antonio 2001: 67).

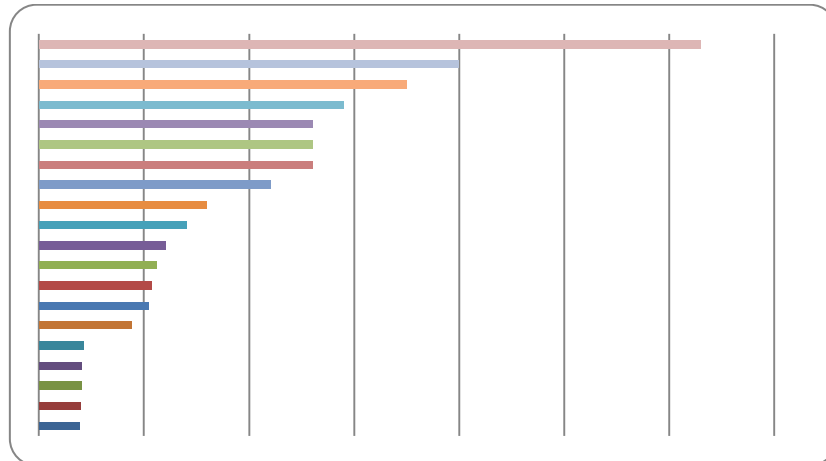


Figure 1. Islamic Finance Country Index (IFCI, 2011)

At the practical level, the existence of Shariah financial institutions now shows a rapid growth. This is in line with the increasing awareness of most Muslims to implement Islam based on *kaffah* manner. These developments certainly provide new hope for business actors to run a business that is not only oriented to material profits alone, but also in accordance with the spirit of Shariah law that promises to meet the inner needs or *batiniyah* (Burhanuddin, 2010: 2).

The emergence of Islamic banks is expected to be able to answer and respond to the economy system of Islamic societies in Indonesia. A new Shari'ah regulation for banks plays an important role in tune with Holy -Qur'an and Hadith. Besides that, Shariah banking is also believed to bring *maslahah* (Arabic) or benefit for economic improvement and equity of society welfare. These hopes are finally realized the common ideal that is *baldatun thayyibatun wa rabbun ghafur*.

Based on the explanation above, the author interested in conducting the research on the implementation of Shariah economy in Indonesia. The formulation of the problem in this study is how the implementation of Islamic economic system in Indonesia. From the formulation of the problem then the purpose of this study is to know how the application of Shariah economic system in Indonesia.

DISCUSSION

Basically, economics is a science that explains how to meet the needs of human life, in order to maintain its survival. So, it is not different with other economics that Shariah economy is a science that can be applied in the joints of human life in the fulfillment of its survival. M.A. Mannan (1992: 15) defined that Shariah economics as a social science studying people's economic issues inspired by Islamic values. Meanwhile, M.A. Suma (2008: 49) defined Shariah economy as a science that discusses the economic issues from various viewpoint of Islam, especially from aspect of law or Shariah. From the definition above, it can be concluded that the rules that apply in Shariah economy is a reflection of Islamic teachings and values, both in economy and worship. Nevertheless, Shariah economics is not necessarily aimed for Muslims, because Islam allows its people to transact or conduct economic activities with non-Muslims.

The Purpose of Shariah Economics

As mentioned earlier, Shariah economy is a reflection of the Qur'an that contains the norms of law and rules concerning to the economic affairs of mankind which also originate from hadith. Just like conventional economics, Shariah economy also recognizes the element of profit. The interesting point is the difference in point of view between the two systems, in which Shariah economics confine themselves to the moral and social conditions to fulfill the profits while the conventional economy does not pay attention to them. Therefore, there are three principles of legal philosophy in Shariah economics (A.M. Saefuddin, 1984: 19), namely:

A) Everything that exists in the universe, the heavens, the earth and other natural resources, even the possessions controlled by man are belong to God, for He created them. All of God's creation is subject to His will and provisions (Surah Thaha verse 6 and QS.Al-Maidah verse 120). Humans as the Caliphs are entitled to take care and utilize the universe for the survival and life of man and the environment.

B) Allah created man as caliph with perfect means of equipment in order to be able to perform his duties, rights and obligations on earth. All other creatures, especially flora and fauna, are created by God for human beings, in order to be utilized for the benefit of human life and life (Surat ar-Rahman verse 20, verses 37-38, Zumar verse 21).

C) Belief in Judgment Day and Judgment Day. Confidence on the Day of Judgment is an important principle in the Islamic economic system, because with that belief, human economic behavior will be controlled, because he is aware that all his actions including his economic actions will be held accountable by God. Accountability is not only about economic behavior, but also about the wealth that is mandated by God to man.

The three basic principles of Islamic economic law philosophy gave birth to the basic values that became the Islamic economic system of law (Ali, M.D & Habibah, D. 1995: 214), among them as follows:

1. Ownership

Indeed, people are born to take care and manage everything that is on earth. So, it is also possible that humans also want to have something to survive. However, in essence, the owner of the universe and its contents is only God. Islam as a supreme religion from previous religions also regulates the ownership of mankind. This is then the basis and implemented into the Shariah economy. The concept of ownership in Shariah economy is clearly different from the concept of capitalist and socialist economic ownership. This is very visible from the source or rationale of the system. The capitalist and socialist economic system derives from human speech, whereas Shariah economy comes from the words of Allah and the great Prophet Muhammad, namely Al-quran and hadith.

According to Arabic, ownership (property) means to persuade something and to have power to take action on what it has. The word *Al-milkiyah* or possession is a noun attributed by *masdar*, that is, *Al-milku* that contains the meaning of influence or power over something related to it. According to the *fuqaha* (the expert of fiqh), ownership is the relationship between man and his property which has been established by the Shari'a. It makes humans have the authority over the goods they have such as taking care, keeping, and using the goods in accordance with Islamic Shari'a.

Muhammad Baqir Sadr said that the concept of Islamic ownership is different from the concept of capitalist and communist. The communist concept only recognizes co-ownership, whereas the capitalist concept accentuates private designation only. The Islamic economic

system sees the importance of integrated ownership at the same time, called as *muzdawijah* ownership, which recognizes the existence of private ownership as well as joint ownership and statehood. (Khalil, 2010: 115).

M. Daud Ali explained that there are three important things about the concept of ownership in the Islamic economic system of law. First, ownership is not an absolute mastery of economic resources, but the ability to use them. Secondly, the length of ownership of an object is limited to the length of time of man lives in the world, and if he dies, then his possessions shall be distributed to his heirs in accordance with the provisions laid down by Allah in Surah Nisa verses 7, 11, 12, And 176. Third, natural resources related to the public interest or concerning the lives of the people must be the common property of the state in order to be managed and utilized for the common interest.

2. Benefits

The happiness of the world and the hereafter is certainly a purpose of life that every Muslim wants to achieve by worshiping Allah Almighty. If every Muslim holds that right purpose, certainly he will not behave at will. In addition, the fulfillment of needs and the achievement of desires, in fact requires many things that support to meet those needs, such as the need for exchange tools, markets, producers, consumers and other factors. That is why humans are said to be economic beings. However, not all human beings are able to uphold Islamic values in meeting their every need. Not infrequently, there are people who do not pay attention to Islamic values in transacting or even deliberately cheating and violating the rules that have been upheld by Islam. This is called as *al-mafsadah* which means something out of the straight line, whether small or large.

Islam gives the attention to aspects of the economy, because Islam considers that the economic activities not only to meet the needs of life, but must pay attention to the common interest. *Maslahah* comes from the Arabic language, that is, *salaha-yasluhu*, the word is not found in the Qur'an, but the word is pronounced in another form 108 times. *Maslahah* can be interpreted as a good human act and bring benefits for himself and also others around him (Ministry of Religion, 2009: 177).

For the benefit of humanity, both short and long term, Allah as *syar'i* instituted the laws of Shariah (Cairo: dar al-fikr, 388). According to Ibnu Mandzur, *maslahah* means kindness and it is a single word form of *maslahih* (Beirut: dar al fikr, 1972: 348). *Maslahah* is equivalent to benefit; the meaning of *maslahah* is the opposite of *mafsadah* (damage). Furthermore, Al-razi meant 'benefit' as something *dharuriy* (principal), where everyone can feel it and there is no need for definition formulation (Beirut: dar al-pole al-scientific, 1998: 319).

There are many things that need to be pursued for the realization of benefit including sacrificing personal interests for the common interest. Therefore, the entire Shari'a of Islam is upheld on the general principle of *jalbul-maslahah* (taking benefit) and *dar'ul mafasid* (rejecting damage). As well as economic activities that must be directed for the realization of the common interest, although in the economy there is a principle of "capital minimal, profits maximal" which tend to pursue profits.

3. Distribution Justice

One concept of Shariah economy which is also a solution for the economic problems that occurred is the concept of distribution justice. This is very important for the joints of the world economy, especially for Indonesia. Where people who embrace the capitalist economic system will be selfish and prefer to enrich themselves rather than attention to neighbors and

the surrounding environment. M. Anas Zarqa put forward the principle of economic distribution in Islam. (Leicester UK: IIIIE, 1995: 196), among them are:

- a. Fulfilling the needs of all beings;
- b. Raising positive effects for the person doing so;
- c. Creating goodness among all people (rich and poor);
- d. Reducing income disparities;
- e. Making good use of natural resources and fixed assets;
- f. Giving hope to others through giving.

From the explanation above, it can be seen that Shariah economics highly uphold the fulfillment of human life, both for themselves and others. Even the benefits that will be obtained are not only from the physical side, but also provide benefits for the spiritual side. M. Syafi'i Antonio in Amalia (2009: 119) further, confirmed that there are two main distribution systems in Islam. First, the commercial distribution system that goes through the economic process. Meeting a buyer with the seller is one of the most commercially viable processes of distribution, whereby a person who has excess funds and needs something, gives the money he has to the seller. The second is the distribution system of social dimension such as alms, *infaq*, and *waqf*. This is an alternative to distribute revenue because remembering not everyone can be involved in the first distribution process. In addition, there is one system of property distribution which is explicitly regulated by Islam, namely inheritance.

The three basic values of the Islamic economic system are the basis of their instrumental values. Instrumental value meant are five, including the *zakat* (Alms), prohibition of usury and gambling, economic cooperation, social security, and the role of the state (Saefuddin, A.M., 1984: 19).

The View of Islamic Law in Indonesia

In the 1990s starting with the normative juridical of Law no. 10 of 1992 which contains the rules of the permissibility of conventional banks using the principle of profit sharing. Regulations on banking activities are further regulated more detail in Law no. 10 of 1998. The law is the result of amendment of Law No.10 of 1992 which was born at the time of the reformation era. This law is a new era that started the development of Shariah banking rapidly, where many financial industries are transformed and staggered to open Islamic financial institutions, so that it needs legal guidance and rules related to Shariah banking operations nationally.

In response to this issue, the Indonesian Council of Ulama (ICU) established the National Shariah Council (NSC) in 1999. NSC is a national body that creates regulation or rules related to the implementation of Shariah banking operations. In the method of publishing decision, the NSC uses the four sources of law agreed upon by scholars namely the *Quran*, *Hadith Nabawi*, *Ijma* and *Qiyas*. In addition, the NSC also studied paradigm of *istinbath law* conducted by four imams of the school, namely *Hanafi*, *Maliki*, *Syafii*, and *Hambali* and other considerations that are temporal and conditional.

A) The decision of ICU - NSC and its position

As the highest Islamic institution, ICU has an important role in making rules or a determination to solve all problems in society called fatwas. One of them is economic problems and financial traffic. As mentioned before that ICU has established a council that functions to make rules or provisions in order to resolve problems related to the economy.

The decision issued by ICU-NSC is very easily accepted by the community and used as a legal basis to carry out activities. The decision made by ICU-NSC is not solely generated from the thoughts of the scholars, but also the result of *istinbath* against Al-quran and related to Hadith. Therefore, the position of the decision of ICU-NSC in Indonesia is very high because it contains Al-quran and Hadith.

B) Duties and authority of ICU-NSC

In the Act No. 10 of 1998, the term "NSC" was not found in the Directorate of Bank Indonesia (BI) in 1999. The decree stated that NSC is a "council established by the Indonesian Council of Ulama (ICU) which has the duty and authority to ensure conformity between products, services and business activities of banks with Shariah principles ". The following is the duty, authority and working mechanism of SNC based on the certificate of the board of directors of ICU and the decision of SNC-ICU No.1-2 of 2000 about Basic guidelines and household guidelines of NSC.

There are four main tasks of NSC delegated by ICU (Ma'ruf Amin, 2011: 180), they are:

1. Developing the implementation of Shariah values in economic activities in general and finance in particular.
2. Issuing a decision on the types of financial activities.
3. Issuing the decisions on Shariah's products and services.
4. Observing the adoption of fatwas that have been issued.

While the authorities of the NSC delegated by ICU are:

1. Issuing a decision binding the Shariah Supervisory Board (SSB) in each Syariah financial institution and forming the basis of legal actions of related parties.
2. Issuing a decision which forms the basis for the provisions / regulations issued by authorized agencies, such as the Ministry of Finance and Bank Indonesia.
3. Providing recommendations and / or revoking the recommendation of names that will sit as Shariah Supervisory Board (SSB) in a Syariah financial institution.
4. Providing advice on developing Syariah financial institutions to directors and / or commissioners regarding the operational of Shariah financial institutions concerned.
5. Inviting experts to explain a problem that is needed in the discussion of Shariah economy, including the monetary authority / financial institutions at home and abroad.
6. Giving warning to Shariah financial institution to stop the deviation from fatwa which has been issued by National Shariah Council.
7. Proposing to the competent authorities to take action if warnings are ignored.

In outline, the working mechanism of the National Shariah Council (NSC) is:

1. Submitting the fatwa commands by the NSC Executing Agency (EA) in plenary meetings.
2. Establishing, modifying or revoking various decisions and guidelines for the activities of Shariah financial institutions in plenary meetings.
3. Submitting or clarifying study results of the business or questions about a product or service Shariah financial institutions in plenary session.
4. Conducting plenary meetings at least once in three months or when necessary.
5. Making a statement for every year contained in the annual report (annual report) of Islamic financial institutions that have / not fulfilled all Syariah provisions in accordance with the decision issued by the National Shariah Council.

C) Shariah Supervisory Board (SSB)

The SSB that has been established by ICU is a definite step to advance the Shariah financial institutions in the Indonesian economy. Not only stop there, it is also formed SSB (Shariah Supervisory Board) in order to improve the monitoring of NSC to the operation of financial institutions concerned. Based on the NSC Basic Guidelines (chapter II, paragraph 5), what is meant by SSB is "the existing body in Shariah financial institution and the implementation of national Shariah council decision in Shariah financial institution".

Here is a working mechanism of SSB, based on NCS Basic Guidelines (Ma'ruf Amin, 2011:183), they are:

1. Performing supervision periodically on Syariah financial institutions under its supervision.
2. Obligation to propose the development of Shariah financial institution to the head of the institution concerned and to the National Shari'ah Council.
3. Reporting the development of Shariah finance products and operations that are overseen to the National Shariah Board at least twice in one fiscal year.
4. Formulating issues that require discussion of the National Shariah Council

From the explanation above, it can be seen that SSB is an extension of the NCS that functions are to monitor and report on all what is required by NSC. Thus, it is quite clear that the tasks, functions and powers between SSB and NSC are very different. NSC serves to establish regulations or rules in the form of decision, while SSB serves to oversee the operations that take place in a Syariah financial institution and report it to the NSC.

CONCLUSION

The Indonesian government regulations on the Shariah economic also recognizes the element of profits and make the conventional banking possible to create new system to adopt the Islam society in Indonesia. The Shariahh economic applies the Islamic moral and social requirements in order to meet the profits, not like the conventional one. It does pay attention to the aspects of Islamic communities in Indonesia.

REFERENCES

- [1]. Ali, M. D., & Habibah, D. (1995). *Islamic Institutions in Indonesia*. Jakarta: Raja Grafindo Persada.
- [2]. Amalia, E. (2009). *Distributive Justice in Islamic economics*. Jakarta: Rajawali Pers.
- [3]. Amin, M. (2011). *The New Era of Islamic Economy of Indonesia: From fiqh to Islamic economic practice*. Jakarta: Elsas.
- [4]. Antonio, M. S. (2001). *Bank Syariah from theory to practice*. Jakarta: Gema Insani.
- [5]. Burhanuddin, S. (2010). *Legal Aspects of Sharia Financial Institutions*. Yogyakarta: Graha Ilmu.
- [6]. Halim, A. (2012). *Islamic scholarly lecture (IAEI)*. Jakarta: Milad ke-8 IAEI
- [7]. Kementerian, A. R.I. (2009). *Economic Development of the Ummah*. Jakarta: Lajnah Pentahshihan Mushnaf Al-Qur'an.
- [8]. Khalil, J. (2010). *Islamic Economic Jihad*. Jakarta: Gramata Publishing.
- [9]. Mannan, M. A. (1992). *Islamic Economics: Theory and Practice*. Jakarta: Intermasa.
- [10]. Saefuddin, A.M. (1984). *Study of Islamic Economic System*. Jakarta: Media Dakwah.
- [11]. Saefuddin, A.M. (1984). *Study of Islamic Economic System*. Jakarta: Media Dakwah.
- [12]. Suma, M. A. (2008). *Economy & Finance ISLAM: Digging Roots, Unraveling Fiber*. Tangerang: Kholam Publishing.
- [13]. Zarqa, M. A. (1995). *Islamic Distributive Scheme*. Leicester, UK: IIIIE, IIU Islamabad and the Islamic Foundation.