



The Implementation of Law Number 21 of 2008 Concerning Sharia Banking on Sharia Financial Institutions is Underway Sharia Economic Law Perspective

Fuji Alia Rahma¹, Heni Noviarita², Rita Zaharah³

Postgraduate student of the Sharia Economic Law Study Program at UIN Raden Intan Lampung Indonesia^{1,3}

Lecturer at the Faculty of Shari'a, UIN Raden Intan Lampung, Indonesia²

* Corresponding email: fujialiarahma@gmail.com

Received : Januari 2024 Accepted: April 2024 Published: Juni 2024

Abstract: : *The role of Law Number 21 of 2008 concerning Sharia Banking for Islamic financial institutions is very large, because currently Islamic financial institutions (LKS) have legal certainty to be able to carry out Islamic economic activities in Indonesia. The existence of the Sharia Banking Law provides an answer to the sustainability of the Islamic economy in Indonesia as a whole, both those that include the activities of Islamic financial institutions in the form of banks and non-banks. In this context, what is studied is the basis of sharia economic law and the implementation of Law Number 21 of 2008 in society. The purpose of this research is also to find out the legal position of sharia economics in Indonesia in accordance with the law being studied. This study uses library research with a qualitative research method, also known as a qualitative method of literature study. The results of this study are in accordance with the rules stated in its implementation, strengthened by a normative juridical point of view, which is the legal umbrella in the settlement of sharia economic disputes in Indonesia, namely Law Number 3 of 2006 concerning Religious Courts and Law Number 4 of 2004 about the Judicial Power as a form of upholding legal justice for the community in carrying out sharia economist activities in Indonesia, which is a reflection for the State of Indonesia in providing social justice for all Indonesian people.*

Keywords: *Financial Institutions; Banking; Sharia;*

Abstrak: Peranan Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah bagi lembaga keuangan syariah sangat besar, karena saat ini lembaga keuangan syariah (LKS) telah memiliki kepastian hukum untuk dapat melakukan kegiatan ekonomi syariah di Indonesia. Keberadaan UU Perbankan Syariah memberikan jawaban atas keberlangsungan ekonomi syariah di Indonesia secara menyeluruh, baik yang mencakup kegiatan lembaga keuangan syariah yang berbentuk bank maupun non bank. Dalam konteks ini, yang dikaji adalah landasan hukum ekonomi syariah dan implementasi Undang-Undang Nomor 21 Tahun 2008 di masyarakat. Tujuan dari penelitian ini juga untuk mengetahui kedudukan hukum ekonomi syariah di Indonesia sesuai dengan undang-undang yang dikaji. Penelitian ini menggunakan jenis penelitian kepustakaan (*library research*) dengan metode penelitian kualitatif atau disebut juga dengan metode kualitatif studi kepustakaan. Hasil dari penelitian ini sesuai dengan aturan yang tertera dalam pelaksanaannya, diperkuat dengan sudut pandang yuridis normatif yang menjadi payung hukum dalam penyelesaian sengketa ekonomi syariah di Indonesia yaitu Undang-Undang Nomor 3 Tahun 2006 tentang Peradilan Agama dan Undang-Undang Nomor 4 Tahun 2004 tentang Kekuasaan Kehakiman sebagai bentuk penegakan keadilan hukum bagi masyarakat dalam menjalankan kegiatan ekonom syariah di Indonesia yang merupakan cerminan bagi Negara Indonesia dalam memberikan keadilan sosial bagi seluruh rakyat Indonesia.

Kata kunci: Lembaga Keuangan; Perbankan; Syariah;

■ Introduction

The history of Islamic banking practice in Indonesia began in 1992, when PT. Bank Muamalat Indonesia started to operate, which was established on November 1, 1991. The initial idea for the formation of Bank Muamalah Indonesia came from the Indonesian Ulema Council (MUI) and the Government of the Republic of Indonesia. The legal basis of Islamic banking in Indonesia at that time had not yet expanded; it was still limited to Law Number 7 of 1992 concerning banking in Indonesia, so Bank Muamalah Indonesia at that time still referred to banking laws in general. Meanwhile, the special legal need for Islamic banking is very important. So, starting in 1998, Law Number 10 of 1998 concerning Banking was issued, the content of which has accommodated related regulations on the practice of sharia banking activities, and the scope of Islamic banking in Indonesia in general.¹

Law number 10 of 1998 concerning banking does not have a special scope in terms of understanding the profit-sharing system in Islamic banking, especially in the sense that Sharia banks themselves also lack a special understanding. So it still needs special regulations that overshadow every Islamic banking activity and Islamic financial institution in Indonesia at that time. However, the policy of Bank Indonesia, which has authority over banking, plays a role in regulating the provision of accommodation to Islamic banks through Law Number 10 of 1998 mentioned above

¹ Taufik Kurrohman, *Peran Dewan Pengawas Syariah Terhadap Syariah Compliance Pada Perbankan Syariah*, Jurnal Surya Kencana Satu : Dinamika Masalah Hukum dan Keadilan, Vo.8, No.2, Oktober 2017, h.51

to be able to carry out Islamic banking activities by obtaining the right of autonomy, especially to be able to carry out the practice of Islamic economic activities in the State of Indonesia by way conventional banks are given the opportunity to also open UUS (Syrian business units) and provide special certificates to Wadiah Bank Indonesia.²

Globally, Sharia Banking in Indonesia currently has a more rapid development than before. In the early 1990s, PT. Bank Mega Syariah was established in 1990 (July 14, 1990). Only after that, many conventional banks began to establish Islamic bank business units such as: PT. Bank Syariah Mandiri was established in 1999 (November 1, 1999), PT. Bank BNI Syariah was established in 2000 (April 29, 2000), PT. Bank BRI Syariah was established in 2008 (November 17, 2008); PT. Bank CIMB Niaya Syariah was established in 2010 (July 21, 2010); PT. Bank Danamon Syariah was established in 2014 (December 2014); etc.³

The initial history in 2021 was the inauguration of the establishment of a special bank for sharia activities in Indonesia, which is a merger of all conventional banks that became official registered customers in PT. Bank Syariah Indonesia, which was officially established on February 1, 2021, which is the result of a merger between PT. Bank BRI Syariah Tbk, PT. Bank Syariah Mandiri, and PT. Bank BNI

² Arief R.Permana, dan Anton Purba, *Sekilas Ulasan UU Perbankan Syariah*, Buletin Hukum dan Kebanksentralan, Vo. 6, No.2, Agustus 2008, h.1-3

³ Dikutip dari <https://www.ojk.go.id/kanal/pages.html> pada tanggal 18 April 2023 pukul 12:37 WIB

Syariah regarding the merger of three Islamic bank businesses strengthened with official permission from the Financial Services Authority (OJK) according to letter number SR-3/PB.1/2021 on January 27, 2021.⁴ Judging from the development of Islamic banks in Indonesia, various things will be a factor in accelerating the development of Islamic banks in Indonesia, both in terms of the law in the future and also the development goals of Islamic banking in Indonesia.⁵

The development of Islamic banking in Indonesia through Law Number 21 of 2008 concerning Islamic banking is a guarantee of legal certainty for stakeholders and also to be able to provide legal confidence to all people in the State of Indonesia in contracting and contracting as well as operating together with products and services from PT. Bank Syariah Indonesia and other Islamic financial institutions safely, peace and justice in accordance with sharia principles, which are run in Islamic banking and Islamic financial institutions with a special system, namely the Profit Sharing System.⁶

Financial Institution products. This book contains the basic concept of the sharia economic system, the basic concept of fatwa in the Islamic legal system, the ijthihad method of determining fatwa,

the istinbath rules in making fatwas, the profile and position of the National Sharia Council-Indonesian Ulema Council (DSN-MUI), the Sharia Supervisory Board (DPS), and bank and non-bank financial institutions, and attached DSN-MUI fatwas related to Sharia Economics. This book can be read by students of the Faculty of Sharia and Economics at a number of universities in Indonesia. In addition, this book can also be used by teachers, researchers, observers, and practitioners in the field of Sharia economics.⁷

The type of research used is library research with a qualitative research method, also known as a qualitative method of literature study.⁸ Meanwhile, Moleong explained that qualitative research is research that has the purpose of providing an understanding of phenomena or events that occur in the subject of research, such as behavior, motivation, and perception.⁹ In this study, a qualitative research method of literature study is used.

The nature of the research used is a normative juridical research method, namely legal research conducted through a literature study using primary literature research materials and secondary data.¹⁰ Primary data sources are sourced from the Quran, assunnah (hadith), ijma', Qiyas, and the basis of sharia economic law, then through

⁴ Dikutip dari https://www.ir.bankbsi.co.id/corporate_history.html pada tanggal 18 April 2023 pukul 12:38 WIB

⁵ Dikutip dari https://www.ir.bankbsi.co.id/corporate_history.html pada tanggal 18 April 2023 pukul 12:38 WIB

⁶ Sefta Kurniansyah, Tulus Suryanto, Heni Noviarita, *Pengaruh Kualitas Pelayanan Islami Terhadap Kepuasan Nasabah Studi Pada Bank Umum Syariah di Provinsi Lampung*, Jurnal : Islamic Economics Jurnal, Vol.6, No.2, Desember 2020, h.194

⁷ Dewi Sulastri dan Sarip Muslim, "Penerapan Jaminan Hak Milik Pada Perbankan Syariah Dalam Perspektif Hukum Islam", *Al-Muamalat: Jurnal Ekonomi Syariah*, Vol 5, No 2. (2018), h.18

⁸ Sugiono, *Metode Penelitian Kuantitatif, Kualitatif dan Re&D*, Bandung: Alfabeta, 2016, h.8

⁹ Muhammad Nazir, *Metode Penelitian*, Bogor: Ghalia Indonesia, 2005, h.8

¹⁰ Lexy J.Moleong, *Metode Penelitian Kualitatif Teori dan Praktek*, Jakarta: Rajawali Press, 2015, h.37

normative law (normative law research) with the applicable laws and regulations in Indonesia related to the implementation of Law Number 21 of 2008 concerning Islamic banking for Islamic Financial Institutions (LKS) in Indonesia. The data analysis technique in general is a method or method used for the process of processing data that has been obtained to be used as a research result in the form of valid information that is easy to understand by readers both academically and in general.¹¹ In this study, the data analysis technique used is a qualitative descriptive data analysis technique that uses literature study data analyzed to get valid and clear conclusions.

■ Discussion

1. Sharia Banking in Indonesia: A Sharia Economic Law Perspective

The definition of an Islamic bank is known in Indonesia by its general name, namely Bank Islam, in English translation known as Islamic Bank. The practice of Sharia banks in Indonesia is to operate on sharia principles as the foundation of the Islamic banking system. The operational system of sharia banking in Indonesia uses a profit-sharing system that does not use interest percentages to adjust the liquidity of the World Bank but uses a profit-sharing calculation model system, namely by using the profit-sharing ratio formula, which is a justice system for customers and Islamic banking.¹²

The existence of Islamic banking in Indonesia continues to exist today, even though it was hit by the monetary crisis in 1998, so Islamic financial institutions in Indonesia are able to contribute a very large role in maintaining the economy of Indonesia at that time.¹³ The development of Islamic banking in Indonesia is getting faster and faster after receiving support from scholars in Indonesia, and being given the opportunity by BI regulations that provide regulatory accommodation to the Islamic banking industry in Indonesia so as to attract investors to open Islamic banking in Indonesia.

Islamic financial institutions at that time historically contributed by collaborating with the community through MSMEs (micro, small, and medium enterprises) in restoring the Indonesian economy to escape the monetary crisis. Until its history in 2008, Islamic banking regulations in Indonesia were through Law Number 21 of 2008 concerning Islamic banking. Islamic banks are starting to be able to operate freely in Indonesia and are supported by the government.¹⁴

The history of the legal provisions of Islamic financial institutions in Indonesia was decided in 2021 that Islamic financial institutions have officially registered institutions and have a permit from the Financial Services Authority that we know until now, namely PT. Bank Syariah Indonesia

¹¹ Muhammad Nazir, *Metode Penelitian*, Bogor: Ghalia Indonesia, 2005, h.16

¹² Suryani, *Implikasi dan Tantangan Labirnya UU No 21 tahun 2008 tentang Perbankan Syariah*, Jurnal : Iqtishadia, Vo.8, No.2, September 2015, h.357-358

¹³ Ariza Karina Putri , Beni Antomi, Putri Meilisa, Tri Amar Prasetyo, Heni Noviarita, *Determinasi Perbankan Syariah Di Indonesia*, Jurnal : Business and Entrepreneurship Jurnal (BEJ), Vol.2, No.1, Februari 2021, h. 45

¹⁴ Amir Mahmud, Rukmana, *Bank Syariah: Teori, Kebijakan dan Studi Empiris di Indonesia*, Jakarta: Erlangga, 2010, h.20

(BSI), whose existence is still beginning to develop until now and in the future in Indonesia in echoing the profit-sharing economic system with sharia principles in our beloved Indonesia.

Sharia Banks in Indonesia are meaningfully stipulated in Article 1 of Law No. 21 of 2008 concerning Sharia Banking in Number 7: "Sharia banks are banks that carry out their business activities based on sharia principles and, according to their essence, consist of Sharia Commercial Banks and Sharia People's Financing Banks". Then at the 10th lift, it reads that: "Sharia Business Unit (USS), hereinafter referred to as USS, is a work unit of the head office of a conventional commercial bank that functions as the parent office of a unit that carries out business activities based on sharia perinsure or a work unit at a branch office of a bank domiciled abroad that carries out business activities conventionally, which functions as the parent office of a sharia sub-branch office and/or sharia unit".¹⁵

2. Philosophical Aspects of Law Number 21 of 2008 Concerning Sharia Banking

The birth of Law Number 21 of 2008 concerning Sharia Banking, whose main function is to accommodate the development of Islamic banking in Indonesia, is a legal regulation to comply with the provisions of Article 49 of Law No. 3 of 2006 concerning Religious Courts, especially for changes in religious judicial institutions concerning competence that must be carried out by

religious courts in fulfilling the mandate of the law to be able to resolve sharia economic disputes in the State of Indonesia.¹⁶ The Religious Court, with Law No. 3 of 2006, has the authority to resolve cases for Muslims (people who are Muslims), including family law (marriage, inheritance, and zakat), and sharia economics, including sharia banks, sharia microfinance institutions, sharia mutual funds, sharia bonds, sharia insurance, sharia reinsurance, sharia medium-term letters, sharia securities, sharia pawnshops, sharia DPLK, and sharia businesses.¹⁷

The normative juridical approach to the existence of Law No. 21 of 2008 concerning Islamic banking is a serious effort by the government in supporting and realizing justice for all people in Indonesia so that it is more meaningful, and through Law No. 3 of 2006 concerning religious justice and also Law No. 4 of 2004 concerning judicial power, to be able to support the realization of the development of Islamic financial institutions in Indonesia.

3. Normative Juridical Aspects of Sharia Financial Institutions in Indonesia

With the existence of Law No. 3 of 2006 concerning Religious Courts, the Religious Court has absolute authority from a philosophical point of view to serve the legal needs of the people in the State of Indonesia and to uphold justice through Law No. 21 of 2008 concerning

¹⁶ Andi Akram, "Sejarah Peradilan Agama di Indonesia", Jurnal : Al Manahij, Vol.2, No.1, Juni 2008, h. 104- 105

¹⁷ Ali Mansyur, *Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia*, Jurnal : Dinamika Hukum, Vol.11, Ed. Khusus, Februari 2011, h.69

¹⁵ Pasal 1, angka 7 dan 10, Undang-Undang Nomor 21 tahun 2008 tentang Perbankan Syariah

Islamic banking and Law No. 3 of 2006 above for the community, especially Muslims who need stipulations in the implementation of sharia principles both fancifully and practically in Islamic financial institutions in Indonesia.

The Special Judicial Body for Islamic Economic Disputes is a Religious Court that juridically and normatively obtains a constitutional mandate from Law No. 3 of 2006 concerning Religious Courts, especially in articles 24 and 25, that juridically and normatively obtains a constitutional mandate from Law No. 3 of 2006 concerning Religious Courts, especially in articles 24 and 25, which are combined with synchronization by Law No. 48 of 2009 concerning Judicial Power, which is also strengthened by Law No. 21 of 2008 concerning Islamic Banking, which juridically must be able to become a law that upholds justice for the Muslim and non-Muslim communities in participating in transactions in the products of Islamic financial institutions in the State of Indonesia.¹⁸

4. Implementation of Law Number 21 of 2008 on Sharia Financial Institutions

Based on the principle that the basic purpose of the establishment of Law Number 21 of 2008 concerning Islamic banking is to function as a:

a. Providing Legal Certainty

Legal certainty from the formation of Law No. 21 of 2008 above is a very important basic foundation for the Islamic financial institution industry, both for

the legal certainty of customers and service users of Islamic financial institutions as well as for the for the legal certainty of business actors of Islamic financial institutions. Legal certainty is important because in the Islamic financial institution industry, to be able to develop widely and practice freely in the State of Indonesia, there must be a clear legal basis.

In addition, there is the most important thing, namely the guarantee of legal certainty provided by Law No. 21 of 2008 in synergy with Law No. 3 of 2006 concerning religious justice and Law No. 49 of 2009 concerning judicial power, in order to provide legal certainty guarantees to foreign investors, such as investors from Arab countries and from other Middle Eastern countries in the Islamic financial institution industry in Indonesia.

The above law is clear evidence of the government of the Republic of Indonesia in providing guarantees of legal certainty for consumers (customers) of the Islamic Financial Institution Industry, and also a guarantee of legal certainty to the Islamic Financial Institution Industry in Indonesia as a real work of the government in helping and facilitating the development of the Islamic Financial Institution Industry.

b. Government support for LKS

The government's support through the formation and ratification in 2008 of the Sharia Banking Law and the rules of the law binding it above further provides a clear picture that the government of the Republic of Indonesia provides full support for the growth of Sharia Financial Institutions (LKS) in the country of

¹⁸ Ali Mansyur, *Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia*, Jurnal : *Dinamika Hukum*, Vol.11, Ed. Khusus, Februari 2011, h.70

Indonesia. Namely, with real evidence as a means¹⁹:

- 1) Facilitate the socialization of Islamic financial institutions among the Indonesian people who have been closed to information about Islamic financial institutions. With the formation of Law Number 21 of 2008 mentioned above, it can provide more insight to the Indonesian people that Islamic financial institutions have been legally allowed to operate in the State of Indonesia. And Islamic financial institutions in Indonesia are allowed to socialize and contribute to the development of the economic system of the Indonesian State through all agencies that can be invited to cooperate, such as formal (state) agencies and non-formal (private) institutions from Islamic financial institutions.
- 2) The support from the government of the Republic of Indonesia has had a very positive impact on improving Islamic financial institutions in terms of authorized capital (articles of association). In addition, with the support of the government, investors also get legal security to invest in Islamic financial institutions in Indonesia, especially Sharia banking (PT. Bank Syariah Indonesia).
- 3) The support from the central government of the Republic of Indonesia also provides assistance to Islamic financial institutions to be able to expand their network to all regions of the

Republic of Indonesia through the legal basis, namely Law Number 21 of 2008 concerning Sharia Banking, which has been stipulated and ratified by the Government of Indonesia.

5. Business Opportunities from the Birth of Sharia Banking Regulations

The birth of Law Number 21 of 2008 concerning Sharia Banking has had a great impact as an effort by Islamic financial institutions in Indonesia, especially Bank Syariah Indonesia, will have great opportunities in the Islamic financial institution industry in the future.²⁰ One of the developments at that time was conventional banks, which had been engaged in banking in general without any sharia frills. Since 2008, it has been legal for every conventional bank can open Sharia Business Units (UUS) as described above, such as PT. Bank BRI Syariah, PT. Bank BNI Syariah, and PT. Bank Syariah Mandiri, in accordance with the provisions of article 5 paragraph 7 of Law No. 21 of 2008 concerning Sharia Banking; Then in addition to that, the three conventional banks have been legalized from their sharia business units merged into a merger into one PT. Bank Syariah Indonesia in accordance with article 17 paragraph 2 of Law No. 21 of 2008 concerning Sharia Banking, and thereafter legalized in accordance with the OJK stipulation on the merger of three Islamic bank businesses strengthened with official permission from the Financial Services

¹⁹ Suryani, *Implikasi dan Tantangan Lahirnya UU No 21 tahun 2008 tentang Perbankan Syariah*, Jurnal : Iqtishadia, Vo.8, No.2, September 2015, h.363

²⁰ Ali Mansyur, *Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia*, Jurnal : Dinamika Hukum, Vol.11, Ed. Khusus, Februari 2011, h.71

Authority (OJK) according to letter Number SR-3/PB.1/2021 on January 27, 2021.²¹

With the existence of Law Number 21 of 2008 concerning Sharia Banking, Law Number 3 of 2006 concerning Religious Justice, and Law Number 49 of 2009 concerning Judicial Power, it provides a great opportunity for the movement of business activities of Sharia Financial Institutions (LKS) in being able to carry out business activities through sharia products from wadiah, wakalah, mudharabah, musyarakah, ijarah, and other government-entrusted sharia products in the form of micro and macro sharia, which are development assets for Sharia Financial Institutions (LKS) both in the form of banks and non-banks.

6. Sharia Economic Law Regulations for Sharia Financial Institutions

Sharia Financial Institutions (LKS) in the form of Sharia Banks have a basic mechanism, namely as an institution that accepts (depositors) given by capital owners (depositors) who have special obligations (liabilities) that can provide offers related to the financing system of Sharia Financial Institutions (LKS) to investors to develop basic capital assets, and the scheme pattern carried out with the financing system must be adjusted to the basic Islamic sharia landscape. Regarding the obligations of both customers and investors, there are two main categories, namely: first, with the interest-fee system of current and saving accounts and investment accounts, which is based on

the principle of PLS (Profit and Loss Sharing) carried out by the bank together with the depositor (customer); And the second system is the Alets system, which contains all forms of financing patterns, both in the form of riba-free financing and according to the principle or sharia legal standards, such as contract products: *istisna, mudharabah, salam, musyarakah*, etc.²²

Islamic banks (Islamic Banking) by using a normative juridical approach, namely: an empirical juridical approach that PT. Bank Syariah Indonesia is recognized in fact for its existence in the Republic of Indonesia. Then, through normative juridical means, judicial recognition of Sharia banks is enshrined in the legislation in the State of Indonesia, namely in Law No. 7 of 1992 concerning Banking, which regulates Sharia banks in Article 1 on the definition of Sharia banking; Law No. 3 of 2004 concerning amendments to Law No. 23 of 1999 concerning Bank Indonesia, which regulates Sharia banks concerning the definition of Sharia banks in Indonesia; and Law No. 10 concerning amendments to Law No. 7 of 1998 concerning banking; Law No. 3 of 2004 concerning amendments to Law No. 23 of 1999 concerning Bank Indonesia, which regulates Sharia banks concerning the definition of Sharia banks in Indonesia; and Law No. 10 concerning amendments to Law No. 7 of 1998 concerning Banking, which regulates the definition of Sharia banks and system regulations. Sharia profit sharing in Sharia Commercial Banks, as well as

²¹ Suryani, *Implikasi dan Tantangan Labirnya UU No 21 tahun 2008 tentang Perbankan Syariah*, Jurnal : Iqtishadia, Vo.8, No.2, September 2015, h.364

²² Qadri Azizy, *Hukum Nasional Elektisisme Hukum Islam dan Hukum Umum*, Jakarta : Taraju, 2004, h.139

Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Justice.²³

7. Implications of Sharia Economic Law on Sharia Financial Institutions

Sharia financial institutions (LKS) in the process of implementing muamalah transactions must be built on the principles of benefit, justice, sincerity, honesty, and sustainability. Sharia Financial Institutions (LKS) based on Islamic sharia principles are a positive alternative for all people in Indonesia because their principles are in accordance with the teachings of Islam or the belief that they are not willing to take advantage of the services of banks or conventional banking institutions with the principle of their interest system, which is considered by the community to be a violation of Islamic sharia. Therefore, Sharia Financial Institutions (LKS) must be in accordance with both the concept of Islamic Sharia teachings and, in practice, the agreement or contract, which must not have the content of gharar (ambiguity), riba (money interest), or maisir (gambling). Sharia financial institutions (LKS) in the process of implementing muamalah transactions must be built on the principles of benefit, justice, sincerity, honesty, and sustainability.

Sharia Law Rules never prohibit any form of transaction as long as it does not contain elements of tyranny or is known as MAGADIR (Maysir, Gharrar, and Riba) in it, and also does not contain hoarding (*ibtikâr*), does not contain fraud,

or indicates that the transaction may cause disputes or hostilities among human beings, such as the existence of gharar or speculation, and so on, which is prohibited by Sharia Economic Law.²⁴

The main problem in muamalah is the element of benefit. If there is masalah, then it is very possible that the transaction is allowed. As with the permissibility of the istishna contract, even though it is a buying and selling/*bai' al-ma'dum* (the object does not exist at the time of the contract), because there are needs and benefits that will be obtained, it does not cause disputes and has become a habit of the community.²⁵

8. Sharia Economic Dispute Resolution at Sharia Financial Institutions

In Islamic financial institutions (LKS), there is a special process for resolving disputes in sharia economic activities, both from Islamic financial institutions in the form of banks, namely: PT. Indonesian Sharia Bank, as well as non-bang Islamic financial institutions such as sharia savings and loan cooperatives (KSPS), Baitul Maal Wattamwil (BMT), Sharia Insurance, etc. In accordance with article 55 of Law Number 21 of 2008 concerning Sharia Banking, it is stated that: "(1) The settlement of Sharia Banking disputes is carried out by the courts within the Religious Court; (2) In the event that the parties have agreed to settle the dispute other than as intended in paragraph "1", the dispute settlement shall be carried

²³ Budi Badrusaman, *Implementasi Hukum Ekonomi Syariah pada Lembaga Keuangan Syariah*, Jurnal : Jurnal Ekonomi Syariah dan Bisnis Vol.2 No. 2, November 2019, h.87

²⁴ Zainuddin Ali. *Hukum Perbankan Syariah*. Jakarta : Sinar Grafika. 2010, h.5

²⁵ Arief Budiono, *Penerapan Prinsip Syariah Pada Lembaga Keuangan Syariah*, Jurnal Law and Justice Vol. 2 No. 1 April 2017, h.88

out in accordance with the contents of the Agreement; (3) Dispute resolution as intended in paragraph “2” must not be contrary to Sharia Principles”.²⁶

The Administrative Sanctions applied by Law Number 21 of 2008 concerning Sharia Banking are that "Bank Indonesia imposes administrative sanctions on Sharia Banks or UUS, members of the board of commissioners, members of the Sharia Supervisory Board, directors, and/or employees of Sharia Banks or Conventional Commercial Banks that have UUS, who obstruct and/or fail to implement Sharia Principles in carrying out their business or duties or do not fulfill their obligations as specified in this law." It is a sanction given to Sharia Financial Institutions (LKS) in the form of Sharia banks.²⁷

Then in the next article, it is stipulated that "(1) Bank Indonesia imposes administrative sanctions on Sharia Banks or UUS, members of the board of commissioners, members of the Sharia Supervisory Board, directors, and/or employees of Sharia Banks or Conventional Commercial Banks that have UUS that violate Articles 41 and 44. (2) The imposition of administrative sanctions as intended in paragraph “1” does not reduce the criminal provisions as a result of the violation of bank secrecy”.²⁸

In the next article, it is explained about administrative sanctions, namely: (1) Administrative sanctions as referred to in this Law are: a. monetary fines; b.

written reprimand; c. a decrease in the health level of Sharia Banks and UUS; d. prohibition to participate in clearing activities; e. freezing of certain business activities, both for certain branch offices and for Sharia Banks and UUS as a whole; f. dismissal of management of Sharia Banks and Conventional Commercial Banks which has a UUS, and subsequently appoint and appoint a temporary replacement until the General Meeting of Shareholders appoints a permanent replacement with the approval of Bank Indonesia; g. the inclusion of members of the management, employees, and shareholders of Sharia Banks and Conventional Commercial Banks who have UUS in the list of reprehensible persons in the banking sector; and/or revocation of business license. (2) Further provisions regarding the implementation of administrative sanctions as intended in paragraph “1” are regulated in the Bank Indonesia Regulations”.²⁹

In Islamic financial institutions (LKS) in the form of a non-bank system, the settlement is determined according to the respective regulations, which are subject to Law Number 3 of 2006 concerning religious justice and Law Number 49 of 2009 concerning judicial power. Each dispute resolution processor's Islamic finance (LKS) of banks and non-banks is resolved through non-litigation stages, namely through the mediation process (peace efforts), in accordance with Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, known as PERMA No. 1 of 2016

²⁶ Pasal 55 Undang-Undang Nomor 21 tahun 2008 tentang Perbankan Syariah

²⁷ Pasal 56 Undang-Undang Nomor 21 tahun 2008 tentang Perbankan Syariah

²⁸ Pasal 57 Undang-Undang Nomor 21 tahun 2008 tentang Perbankan Syariah

²⁹ Pasal 58 Undang-Undang Nomor 21 tahun 2008 tentang Perbankan Syariah

concerning Mediation Procedures.³⁰ Then, for cases of sharia economic disputes that cannot be resolved using non-litigation efforts, they can be resolved through the litigation process with the Religious Court in accordance with the mandate of Law No. 3 of 2006 concerning Religious Courts.

- **Conclusion**

Based on the results of the above research, it can be concluded that with the inauguration of Law Number 21 of 2008 concerning Sharia Banking, the position of Islamic banking and Islamic financial institutions in the State of Indonesia has also been supported by the financial supervisory board, namely the Financial Services Authority (OJK), so that the supervision system for Islamic financial institutions, both in the form of banks and non-banks, has become better. Sharia Financial Institutions (LKS) based on the principles of Islamic sharia is a positive alternative for all people in Indonesia because their principles are in accordance with the teachings of Islam or their beliefs are not willing to take advantage of the services of banks or conventional banking institutions with the principle of their interest system, which is considered by the community to be a violation of Islamic sharia. Therefore, Sharia Financial Institutions (LKS) must be conceptually appropriate Islamic sharia teachings as well as in practice for agreements and contracts that do not contain *gharar* (ambiguity), *riba* (money interest), or *maisir* (gambling). *Sharia*

financial institutions (LKS) in the process of implementing muamalah transactions must be built on the principles of *maslahat*, justice, sincerity, honesty, and continuity.

With the government's decision to issue Law Number 21 of 2008 concerning Sharia Banking has had a positive impact on increasingly helping Islamic financial institutions in the form of banks in the State of Indonesia to be able to spread their wings throughout the Republic of Indonesia, then the issuance of Law Number 3 of 3006 concerning Religious Justice has become legal certainty for legal protection for both customers and investors, Furthermore, it provides legal certainty to Islamic financial institutions which is also supported by Law Number 49 of 2009 concerning Judicial Power as legal certainty for the protection of consumers, customers and investors as well as Islamic financial institutions in the event of problems (sharia economic disputes).

The implementation of Law Number 21 of 2008 concerning Sharia Banking has been able to answer many questions from Islamic financial institutions in the form of banks and non-banks about operating and carrying out sharia economic activities in the State of Indonesia. Apart from that, it can provide legal certainty from the government's support for customers in Islamic financial institutions in Indonesia.

- **Daftar Pustaka**

- Akram, Andi, "*Sejarah Peradilan Agama di Indonesia*", Jurnal : Al Manahij, Vol.2, No.1, Juni 2008
- Ali, Zainuddin, *Hukum Perbankan Syariah*. Jakarta : Sinar Grafika. 2010

³⁰ Peraturan Mahkamah Agung Nomor 1 tahun 2016 tentang perubahan atas PERMA Nomor 1 tahun 2008 tentang Prosedur Mediasi

- Azizy, Qadri, *Hukum Nasional Elektisisme Hukum Islam dan Hukum Umum*, Jakarta: Taraju, 2004
- Badrusaman, Budi, *Implementasi Hukum Ekonomi Syariah pada Lembaga Keuangan Syariah*, *Jurnal: Jurnal Ekonomi Syariah dan Bisnis* Vol.2 No. 2, November 2019
- Bank Indonesia, *Cetak Biru Pengembangan Perbankan Syariah Indonesia*. Jakarta: Islamic Development Bank, 2002
- Budiono, Arief, *Penerapan Prinsip Syariah Pada Lembaga Keuangan Syariah*, *Jurnal Law and Justice* Vol. 2 No. 1 April 2017
Dikutip dari https://www.ir.bankbsi.co.id/corporate_history.html pada tanggal 18 April 2023 pukul 12:38 WIB
Dikutip dari <https://www.ojk.go.id/kanal/pages.html> pada tanggal 18 April 2023 pukul 12:37 WIB
- Idrus, Muhammad, *Metode Penelitian Ilmu Sosial*, Yogyakarta: Erlangga: 2009
- Kurniansyah, Sefta, Tulus Suryanto, Heni Noviarita, *Pengaruh Kualitas Pelayanan Islami Terhadap Kepuasan Nasabah Studi Pada Bank Umum Syariah di Provinsi Lampung*, *Jurnal : Islamic Economics* Jurnal, Vol.6, No.2, Desember 2020
- Kurrohman, Taufik, *Peran Dewan Pengawas Syariah Terhadap Syariah Compliance Pada Perbankan Syariah*, *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum dan Keadilan*, Vo.8, No.2, Oktober 2017
- Mahmud, Amir, dan Rukmana, *Bank Syariah: Teori, Kebijakan dan Studi Empiris di Indonesia*, Jakarta: Erlangga, 2010
- Mansyur, Ali, *Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia*, *Jurnal : Dinamika Hukum*, Vol.11, Ed. Khusus, Februari 2011
- Moleong, Lexy J., *Metode Penelitian Kualitatif Teori dan Praktek*, Jakarta: Rajawali Press, 2015
- Nazir, Muhammad, *Metode Penelitian*, Bogor: Ghalia Indonesia, 2005
- Nazir, Muhammad, *Metode Penelitian*, Bogor: Ghalia Indonesia, 2005
- Peraturan Mahkamah Agung Nomor 1 tahun 2016 tentang perubahan atas PERMA Nomor 1 tahun 2008 tentang Prosedur Mediasi
- Putri, Ariza Karina, Beni Antomi, Putri Meilisa, Tri Amar Prasetyo, Heni Noviarita, *Determinasi Perbankan Syariah Di Indonesia*, *Jurnal : Business and Entrepreneurship Jurnal (BEJ)*, Vol.2, No.1, Februari 2021
- R.Permana, Arief, dan Purba, Anton, *Sekilas Ulasan UU Perbankan Syariah*, *Buletin Hukum dan Kebanksentralan*, Vo. 6, No.2, Agustus 2008
- Sugiono, *Metode Penelitian Kualitatif; Teori dan Praktek*, Bandung: Alfabeta, 2016
- Sugiono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, Bandung: Alfabeta, 2016
- Suryani, *Implikasi dan Tantangan Labirnya UU No 21 tahun 2008 tentang Perbankan Syariah*, *Jurnal: Iqtishadia*, Vo.8, No.2, September 2015
- Undang-Undang Nomor 21 tahun 2008 tentang Perbankan Syariah
- Undang-Undang Nomor 3 tahun 2006 tentang Peradilan Agama
- Undang-Undang Nomor 4 tahun 2004 tentang Kekuasaan Kehakiman
- Undang-Undang Nomor 49 tahun 2009 tentang Kekuasaan Kehakiman

The Implementation of Law Number 21 of 2008 Concerning Sharia Banking on Sharia Financial Institutions is Underway Sharia Economic Law Perspective

by Asas Jurnal Hukum Ekonomi Syari'ah

Submission date: 05-Aug-2024 03:41PM (UTC+0700)

Submission ID: 2427592498

File name: 5._Puji.docx (101.1K)

Word count: 5258

Character count: 29142

The Implementation of Law Number 21 of 2008 Concerning Sharia Banking on Sharia Financial Institutions is Underway Sharia Economic Law Perspective

ORIGINALITY REPORT

21 %	%	%	21 %
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

1	Submitted to Universitas Islam Indonesia Student Paper	5 %
2	Submitted to UIN Syarif Hidayatullah Jakarta Student Paper	3 %
3	Submitted to UIN Sunan Gunung Djati Bandung Student Paper	2 %
4	Submitted to Universitas Negeri Semarang Student Paper	1 %
5	Submitted to School of Business and Management ITB Student Paper	1 %
6	Submitted to Universitas Islam Negeri Sumatera Utara Student Paper	1 %
7	Submitted to Universitas Airlangga Student Paper	1 %

Submitted to Universitas Jenderal Soedirman

8	Student Paper	1 %
9	Submitted to iGroup Student Paper	1 %
10	Submitted to Sultan Agung Islamic University Student Paper	1 %
11	Submitted to Universitas Nahdlatul Ulama Sunan Giri Bojonegoro Student Paper	1 %
12	Submitted to UIN Sultan Maulana Hasanudin Student Paper	1 %
13	Submitted to Al-Maktoum Institute for Arabic and Islamic Studies Student Paper	<1 %
14	Submitted to Syntax Corporation Student Paper	<1 %
15	Submitted to Heriot-Watt University Student Paper	<1 %
16	Submitted to Landmark University Student Paper	<1 %
17	Submitted to Universitas Negeri Jakarta Student Paper	<1 %
18	Submitted to Sriwijaya University Student Paper	<1 %

19	Submitted to Universitas Pelita Harapan Student Paper	<1 %
20	Submitted to Universitas Hasanuddin Student Paper	<1 %
21	Submitted to Universitas Jember Student Paper	<1 %
22	Submitted to Lake Elsinore Unified School District Student Paper	<1 %
23	Submitted to University of Hong Kong Student Paper	<1 %
24	Submitted to International Islamic University Malaysia Student Paper	<1 %
25	Submitted to UIN Maulana Malik Ibrahim Malang Student Paper	<1 %

Exclude quotes Off

Exclude matches Off

Exclude bibliography Off