

Research Article

Implementation of Law Number 21 of 2008 Concerning Sharia Banking Against Sharia Financial Institutions

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Abstract.

The role of Law Number 21 of 2008 concerning Islamic Banking for Islamic financial institutions is very large. This is because Islamic financial institutions (LKS) currently 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, including the activities of Islamic financial institutions in the form of banks and non-banks. According to the normative juridical point of view, the legal basis for sharia economic dispute resolution in Indonesia is Law Number 3 of 2006 concerning the Religious Courts and Law Number 4 of 2004 concerning Judicial Power as a form of upholding legal justice for the community in carrying out economic activities.

Keywords: financial, banking, Sharia institutions

1. Introduction

The history of Islamic banking practice in Indonesia was originally in 1992 at that time PT. Bank Muamalat Indonesia started to operate whose establishment was in 1991 (November 1, 1991), whose initial idea for the formation of Bank Muamalat Indonesia was from the Indonesian Ulema Council (MUI) and the Government of the Republic of Indonesia. The legal basis for sharia banking in the State of 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, special legal requirements for Islamic banking are very important.[1]

Law number 10 of 1998 concerning Banking does not yet have specific scope regarding the profit sharing system in Islamic banking, moreover in terms of understanding Islamic banks themselves also lack a special understanding. So that there is still a need

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for special regulations that cover every activity of Islamic banking and Islamic financial institutions in Indonesia at that time.[2]

Globally, Islamic banking in Indonesia is currently experiencing more rapid development than before, in the early 1990s, PT Bank Mega Syariah was established in 1990 (July 14, 1990), only after that did many conventional banks start establishing bank business units. such as: PT Bank Syariah Mandiri established in 1999 (1 November 1999), PT Bank BNI Syariah established in 2000 (29 April 2000), PT Bank BRI Syariah which was established in 2008 (17 November 2008), PT Bank CIMB Niaya Syariah which was founded in 2010 (21 July 2010) PT Bank Danamon Syariah which was founded in 2014 (December 2014), etc.[3]

In early history, in 2021 the establishment of a special bank with sharia activities in Indonesia was inaugurated, which was a merger of all the conventional banks that had become officially registered customers with PT Bank Syariah Indonesia which was officially established on February 1, 2021 which was the result of a merger between PT Bank BRI Syariah Tbk, PT Bank Syariah Mandiri, and PT Bank BNI Syariah regarding the merger of three Islamic bank businesses strengthened by 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 become a factor in accelerating the development of Islamic banks in Indonesia, both in terms of future law and also the development goals of Islamic banking in Indonesia.

The development of Islamic banking in the State of Indonesia through Law Number 21 of 2008 concerning Islamic banking is a guarantee of legal certainty for stakeholders and also to be able to give legal confidence to all people in the State of Indonesia in contracting and contracting and carrying out activities with products and services from PT. Bank Syariah Indonesia and other Islamic financial institutions in a safe, peaceful and fair manner in accordance with sharia principles that are carried out in sharia banking and sharia financial institutions with a special system, namely a profit sharing system.[5]

2. Methodology

2.1. Types of research

The type of research used is library research (Library Research) with qualitative research methods or also known as qualitative literature study methods.[6] Meanwhile Moleong

explained that qualitative research is research that has the goal of providing an understanding of phenomena or events that occur in research subjects such as for example: behavior, motivation, and perception.[7] In this study using a qualitative research method Library Studies.

2.2. Nature of Research

The nature of the research used is a normative juridical research method, namely legal research conducted by means of a literature study using primary library research materials and secondary data.[8] The process is through normative law (normative law research) with the applicable laws and regulations in Indonesia related to the implementation of Law number 21 of 2008 concerning sharia banking towards Islamic Financial Institutions (LKS) in Indonesia.

2.3. Research Data Sources

The data source consists of several data that are used as facts (information) as a source of all things that are related to the research objectives. There are two types of research data sources that researchers use, namely as follows:

1. Primary data sources, namely data sources originating from original research data (basic research data as information) in this study primary research data sources include: Al-Quran, assunnah (hadith), ijma', Qiyas, etc. sharia economy.
2. Secondary data sources are data sources that come from supporting data for the two studies. In this research, secondary data sources include: Law Number 21 of 2008 concerning Islamic Banking, Law Number 3 of 2006 concerning Religious Courts, and Law Number 4 of 2004 concerning Judicial Power.[9]

2.4. Data Collection Techniques

The data collection technique used by researchers is a literature study data collection technique. This data collection technique is to collect information through reading literature or written sources such as in the form of books, previous research, journals, articles, theses, results of research reports, all of which are related to the research theme.[10] What the researchers did was to collect articles, journals, laws and regulations related to the implementation of Law No. 21 of 2008 concerning Islamic banking on LKS.

2.5. Data Processing Techniques

Data processing techniques are techniques used or methods used as a means of converting data into a form of data that can be used according to the wishes of the researcher which is adjusted to the operational sequence determined manually or automatically. In this study, researchers used qualitative data processing techniques through the process of data collection, data reduction, data presentation, verification and conclusions.[6]

2.6. Data analysis technique

Data analysis techniques in general are a way or method that is used to process data that has been obtained to be used as a research result in the form of information that is valid and easily understood by readers both academically and in general.[7] In this study the data analysis technique used was descriptive qualitative data analysis technique which used literature study data to be analyzed to obtain valid and clear conclusions.

3. Results and Discussion

3.1. Islamic Banking in Indonesia

The definition of an Islamic bank is known in Indonesia with the general designation that is Islamic Bank in English translation known as Islamic Bank. The practice of Islamic banking in Indonesia is to operate Islamic principles as the basis for the foundation of the Islamic banking system. The Islamic banking operational system in Indonesia uses a profit-sharing system that does not use interest percentages to adjust the world bank's liquidity, but instead 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.[11]

The existence of Islamic banking in Indonesia still exists today even though it was hit by the monetary crisis in 1998 so that Islamic financial institutions in Indonesia were able to contribute a very large role in maintaining the economy of Indonesia at that time.[12] The development of Islamic banking in Indonesia is getting faster and faster after getting the support of Islamic scholars in Indonesia, and given the opportunity from BI regulations which provide regulatory accommodation to the Islamic banking industry in Indonesia so that it attracts investors to open Islamic banking in Indonesia.

Islamic financial institutions at that time historically contributed by working 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 the State of Indonesia through Law Number 21 of 2008 concerning Islamic banking. Islamic banks begin to operate freely in Indonesia and are supported by the government.[13]

The history of legal provisions for Islamic financial institutions in Indonesia was decided in 2021. Islamic financial institutions have officially registered institutions and have licenses from the financial services authority that we know today, namely PT Bank Syariah Indonesia (BSI), whose existence has continued to develop until now. and in the future Indonesia in echoing a profit-sharing economic system with sharia principles in our beloved country Indonesia.

Sharia Banks in Indonesia in a sense are stipulated in article 1 of Law No. 21 of 2008 concerning Islamic Banking in number 7 that: "Sharia Banks are banks that carry out their business activities based on sharia principles, and according to their type consist of Sharia Commercial Banks and Finance Banks Sharia People." Then in number 10 it reads that: "Sharia Business Unit (USS), hereinafter referred to as USS, is the work unit of the Conventional Commercial Bank head office which functions as the main office of the unit office that carries out business activities based on sharia regulations or work units in branch offices of a bank domiciled abroad that carries out conventional business activities that functions as the main office of sharia sub-branch offices and/or sharia units." [14]

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

The birth of Law Number 21 of 2008 concerning Islamic Banking with its main function is to accommodate the development of Islamic banking in Indonesia which is a statutory regulation to comply with the provisions of Article 49 of Law no. 3 of 2006 concerning the Religious Courts, specifically for changes to religious court institutions concerning (competencies) that must be carried out by the religious courts in fulfilling the mandate of the Law to be able to resolve sharia economic disputes in the State of Indonesia.[15] Religious Courts with Law no. 3 of 2006 has the authority to settle cases for Muslims (people who are Muslim) including family law (Marriage, Inheritance, Zakat) and sharia economics including sharia banks, sharia microfinance institutions, sharia mutual funds,

sharia bonds, sharia insurance, sharia reinsurance , sharia medium term papers, sharia securities, sharia pawnshops, sharia DPLK, and sharia business.[16]

Normative juridical approach to the existence of Law No. 21 of 2008 concerning Islamic banking as an effort of the government's seriousness in supporting and realizing justice for all people in the State of Indonesia so that it is more meaningful and through Law No. 3 of 2006 concerning religious courts and also Law No. 4 of 2004 concerning Power Judiciary to be able to support the realization of the development of Islamic financial institutions in Indonesia.

3.3. Normative Juridical Aspects of Islamic Financial Institutions in Indonesia

With Law No. 3 of 2006 concerning the Religious Courts, the Religious Courts have absolute authority from a philosophical point of view to answer the legal needs of the people in Indonesia to uphold justice through Law No. 21 of 2008 concerning Islamic banking and Law No. 3 of 2006 above for the community. especially Muslims who need provisions in implementing sharia principles both philosophically and practically in sharia financial institutions in Indonesia.

The Special Judicial Body for sharia economic disputes is the Religious Court which legally and normatively obtains a constitutional mandate from Law No. 3 of 2006 concerning Religious Courts, especially in articles 24 and 25 which are integrated into synchronization by Law Number 48 of 2009 concerning Strengthened Judicial powers also by Law No. 21 of 2008 concerning Islamic banking which legally must be able to become a law that upholds justice for Muslim and non-Muslim communities in participating in transactions in the products of Islamic financial institutions in Indonesia.[16]

3.4. Implementation of Law Number 21 of 2008 on Islamic Financial Institutions

Based on the principle of the basic purpose of establishing Law number 21 of 2008 concerning Islamic banking is to function as:

3.4.1. Providing Legal Certainty

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

customers and users of Islamic financial institution services as well as legal certainty for business actors in Islamic financial institutions. The reason for this is that legal certainty is important because in the Islamic financial institution industry to be able to develop widely and practice it freely in the State of Indonesia is with 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 by synergizing with Law No. 3 of 2006 concerning religious courts and Law No. 49 of 2009 concerning judicial power to provide guarantees of legal certainty. to foreign investors, such as investors from Arab countries and from other Middle Eastern countries in the Islamic financial institution industry in Indonesia.

Whereas the above law is clear evidence from the government of the Republic of Indonesia in providing guarantees of legal certainty for consumers (customers) of the Islamic financial institution industry, and also guarantees of legal certainty for the Islamic Financial Institution Industry in the State of Indonesia as the government's real work in assisting and facilitating development of the Islamic financial institution industry.

3.4.2. Government support for LKS

Government support through the formation and enactment in 2008 of the Sharia Banking Law and the provisions of the Law that bind it above further provides a clear picture that the government of the Republic of Indonesia provides full support for the growth of Islamic Financial Institutions (LKS) in Indonesia. That is with real evidence as a means[11]:

1. Facilitate the socialization of Islamic financial institutions to the Indonesian public, who have so far been closed about information about Islamic financial institutions. With the formation of Law Number 21 of 2008 above, it can provide more insight to the Indonesian people that Islamic financial institutions are legally permitted to operate in Indonesia. And Islamic financial institutions in Indonesia are permitted to socialize and contribute to the development of the Indonesian economic system through all agencies that can be invited to cooperate, such as formal institutions (state) and non-formal institutions (private) from Islamic financial institutions.
2. The existence of support from the government of the Republic of Indonesia has had a very good impact on increasing Islamic financial institutions in terms of authorized capital (statutes of association). In addition, with government support, investors also get legal security to invest in Islamic financial institutions in Indonesia, especially Islamic Banking (PT. Bank Syariah Indonesia).

3. The existence of support from the central government of the Republic of Indonesia also provides assistance to Islamic financial institutions to be able to expand their network throughout the territory of the Republic of Indonesia through the legal basis, namely Law Number 21 of 2008 concerning Islamic Banking which has been established and ratified by the Government of Indonesia.

3.4.3. Business Opportunities from the Birth of Sharia Banking Regulations

The birth of Law Number 21 of 2008 concerning Islamic Banking has had a major impact as an effort by Islamic financial institutions in Indonesia, especially Indonesian Sharia Banks, in the future, they will have great opportunities in the Islamic financial institution industry.[16] 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 to open a Sharia Business Unit (UUS) as described above, namely PT Bank BRI Syariah, PT Bank BNI Syariah, and PT Bank Syariah Mandiri, according to the provisions of article 5 paragraph 7 of Law No. 21 of 2008 concerning Syariah banking; then apart from that the three conventional banks have been legalized from their sharia business units which have merged into a merger to become one PT. Bank Syariah Indonesia according to article 17 paragraph 2 of Law No. 21 of 2008 concerning Islamic Banking,[16]

Whereas the existence of Law Number 21 of 2008 concerning Sharia Banking and Law number 3 of 2006 concerning Religious Courts and Law Number 49 of 2009 concerning Judicial Power provides a great opportunity for the movement of business activities of Islamic Financial Institutions (LKS) to be able to carry out business activities through sharia products ranging from wadiah, wakalah, mudharabah, musyarakah, ijarah, and other sharia products deposited by the government in the form of micro and macro sharia which are development assets for Islamic Financial Institutions (LKS) both in the form of Banks and Non Bank.

3.5. Sharia Economic Law Regulations for Islamic Financial Institutions

Islamic Financial Institutions (LKS) in the form of Islamic Banks have a fundamental mechanism, namely as institutions that receive (deposits) given by owners of capital (depositors) who have special obligations (liabilities) who can provide offers related to

the Islamic Financial Institutions (LKS) financing system. for investors to develop basic capital assets, and the pattern of schemes carried out with the financing system must be adapted to the foundations of Islamic law. Regarding the obligations of both customers and investors, there are two main categories, namely: First, with the system of interest-free current and saving accounts and investment accounts, which are based on the PLS principle (Profit and Loss Sharing) carried out by the bank together with depositors (customers);[17]

Islamic banking (Islamic Banking) using a normative juridical approach, namely: an empirical juridical approach that PT. Bank Syariah Indonesia is recognized in fact as being in the Republic of Indonesia. Then through the normative juridical that the juridical recognition of Islamic Banks is contained in the legislation in the State of Indonesia, namely in Law No. 7 of 1992 concerning Banking which regulates Islamic Banks in its article 1 concerning the definition of Islamic Banking, Law No. 3 of 2004 concerning Amendments to Law No. 23 of 1999 concerning Bank Indonesia which regulates Islamic Banks concerning the Definition of Islamic Banks in Indonesia.[18]

3.6. Implications of Sharia Economic Law for Islamic Financial Institutions

Islamic Financial Institutions (LKS) based on Islamic sharia principles are a positive alternative for all people in the country of Indonesia because their principles are in accordance with Islamic religious teachings or beliefs and are not willing to take advantage of the services of conventional banks or banking institutions with the principle of an interest system. those who are considered by the community as a violation of Islamic religious sharia. Because of this, Islamic Financial Institutions (LKS) must conform both in concept to Islamic Shari'a teachings and in practice to agreements/contracts that must not contain gharar (unclear), usury (money interest) and maisir (gambling). Islamic financial institutions (LKS) in the process of implementing muamalah transactions must be built on the principles of benefit, fairness, sincerity, honesty,

Sharia Law rules never prohibit any form of transaction as long as it does not contain elements of tyranny or known as MAGADIR (Maysir, Gharrar and Riba) in it, and also does not contain hoarding (ihtikâr), does not contain fraud, or it is indicated that the transaction may cause disputes or hostilities between people, such as gharar or speculative nature, and so on which are prohibited by Sharia Economic Law.[19]

The main problem in muamalah is the element of benefit. If there are problems, then it is very possible that the transaction is permissible. Like the permissibility of an

istishna contract, even though it is a sale and purchase/bai'al-ma'dûm (the object is not present at the time of the contract), because there is a need and the benefits that will be obtained, it does not cause disputes and has become a community habit.[20]

3.7. Settlement of Sharia Economic Disputes in Islamic Financial Institutions

In Islamic financial institutions (LKS) there is a special process for resolving disputes in Islamic economic activities, both from Islamic financial institutions in the form of banks, namely: PT. Indonesian Islamic Banks, as well as Islamic financial institutions in the form of non-bang forms such as Islamic 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 reads that: "(1) The settlement of Sharia Banking disputes is carried out by courts within the Religious Courts; (2) In the event that the parties have agreed to settle a dispute other than as referred to in paragraph (1), the settlement of the dispute is carried out in accordance with the contents of the Akad; (3) Settlement of disputes as referred to in paragraph (2) may not conflict with Sharia Principles." [21]

Administrative Sanctions applied by Law Number 21 of 2008 concerning Sharia Banking is that: "Bank Indonesia establishes administrative sanctions on Islamic Banks or UUS, members of the board of commissioners, members of the Sharia Supervisory Board, directors, and/or employees of Islamic Banks or Commercial Banks. Conventional which has UUS, which hinders and/or does not implement Sharia Principles in carrying out its business or duties or does not fulfill its obligations as stipulated in this Law." Is a sanction given to Islamic Financial Institutions (LKS) in the form of Islamic Banks.[22]

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 who own UUS that violate Article 41 and Article 44. (2) The imposition of administrative sanctions as referred to in paragraph (1) does not reduce criminal provisions as a result of violations of bank secrecy." [23]

In the next article it is explained about administrative sanctions, namely that: "(1) The administrative sanctions as referred to in this Law are: a. monetary fines; b. written warning; c. a decrease in the soundness 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 the

management of Sharia Banks and Conventional Commercial Banks that have UUS, and then appoint and appoint a temporary replacement until the General Meeting of Shareholders appoints a permanent replacement with the approval of Bank Indonesia; g. inclusion of management members, employees and shareholders of Islamic Banks and Conventional Commercial Banks that have UUS in the list of disgraceful persons in the banking sector; and/or h. revocation of business license. (2) Further provisions regarding the implementation of administrative sanctions as referred to in paragraph (1) are regulated in a Bank Indonesia Regulation.”[24]

In Islamic financial institutions (LKS) in the form of non-banks, the settlement system is determined in accordance with the rules for each of them which are subject to Law Number 3 of 2006 concerning Religious Courts, and Law Number 49 of 2009 concerning Judicial Power. In which each bank and non-bank Islamic financial institution (LKS) case dispute settlement process is resolved through non-litigation stages, namely through a mediation process (peace efforts) in accordance with Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts known as PERMA No. 1 of 2016 concerning Mediation Procedures.[25] Then for cases of sharia economic disputes that cannot be resolved using non-litigation efforts, they can be resolved through a litigation process to the Religious Courts according to the mandate of Law number 3 of 2006 concerning Religious Courts.

4. Conclusion

Based on the results of the above research, it can be concluded that with the promulgation of Law Number 21 of 2008 concerning Islamic Banking, the position of Islamic banking and Islamic financial institutions in Indonesia has been supported by the financial supervisory board, namely the Financial Services Authority (OJK), so that the supervisory system towards sharia financial institutions both in the form of banks and non-banks is getting better.

With the government's decision to issue Law Number 21 of 2008 concerning Islamic Banking, it has a positive impact by increasingly helping Islamic financial institutions in the form of banks in Indonesia to be able to spread their wings throughout the Republic of Indonesia, then the issuance of Law Number 3 of 3006 concerning The Religious Courts provide legal certainty for legal protection for both customers and investors, then provide legal certainty for Islamic financial institutions which is also supported by Law Number 49 of 2009 concerning Judicial Power as legal certainty for consumer

protection customers and investors and Islamic financial institutions in the event of problems (sharia economic disputes).

The implementation of Law Number 21 of 2008 concerning Islamic Banking has been able to answer many questions of Islamic financial institutions in the form of banks and non-banks to be able to operate and carry out Islamic economic activities in Indonesia. Apart from that, it can provide legal certainty from government support for customers at Islamic financial institutions in Indonesia.

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