

JURNAL CITA HUKUM



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- **Perjanjian Berbahasa Asing yang Dibuat oleh Notaris Berdasarkan UU No. 30 Tahun 2004**
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Menyambut baik kontribusi dari para ilmuwan, sarjana, profesional, dan peneliti dalam disiplin ilmu hukum untuk dipublikasi dan disebarluaskan setelah melalui mekanisme seleksi naskah, telaah mitra bebestari, dan proses penyuntingan yang ketat.

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Some Demands Towards Establishment For Islamic Banking Law In Islamic Perspective*

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Abstrak: *Beberapa Tuntutan Terhadap Pemberlakuan Hukum Perbankan Syariah.* Hukum dibentuk untuk melayani masyarakat. Dengan demikian, hukum tunduk kepada masyarakat. Berbeda halnya dengan hukum agama (Islam), masyarakat wajib tunduk kepada hukum agama (Islam). Hukum yang dapat dipatuhi dan diterima oleh masyarakat adalah hukum yang didesain sesuai dengan ideologi dan kepercayaan masyarakat itu sendiri. Masyarakat Indonesia mayoritas memeluk agama Islam. Untuk itu, kelahiran dan pembentukan hukum perbankan syariah banyak dipengaruhi oleh tuntutan masyarakat yang didukung berlatar belakang agama yang dianut, di samping adanya tuntutan ideologi, politik, ekonomi, dan budaya.

Kata Kunci: bank syariah, ideologi, politik ekonomi

Abstract: *Some Demands Towards Establishment for Islamic Banking Law.* The law was established to serve the community, thus subject to public law. Unlike the case with religious law (Islam), the public shall be subject to the laws of religion (Islam). The law can be complied with and accepted by society is designed in accordance with the laws of the ideology and beliefs of society itself. Indonesia Society majority embraced Islam. To that end, the birth and establishment of Islamic banking law, heavily influenced by the demands of the people who supported background in religion, in addition to the demands of ideology, politics, economics and culture.

Keywords: Islamic banking, ideology, political power, political economy

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Introduction

Laws are made or designed by man (man-made) is only intended to regulate the life of human beings as members of society, not as individuals, to such so-called secular law. The worldly law established to submit to serve the needs of society, and therefore the law is subservient to society.¹ In the law of regulations, rules relating to private law but norms are not called "moral", "morality" or "decency". In this case, the law is the law worldly as a result of the process of human life in society, as expressed by Cicero that "where there is a community there is no law" (*Ubi societates ibi ius*)².

In the course of the establishment of Islamic banking laws as will be the national law, many collisions occur politics surrounding. National law is a form of Islamic banking products by the government policy towards the establishment of Islamic banking law in Indonesia.

To establish and foster national law treated certain legal politics. Indonesian national law politic, subjects set in the Outlines of State Policy, elaborated further by the minister of justice of the Republic of Indonesia to implement, have established an institution (now) named National Law Development agency (BPHN) or Babinkumnas. Through coordination undertaken by these bodies, is expected in the future will come true one national law in our country³.

Once approved and enacted, Act No.. 21 of 2008 on the Law of Islamic Banking, Islamic law has now become part of the positive law applicable to all citizens regardless of religion in Indonesia with what he holds. This law is based on the ideas explored and interpretations of the scholars of that contained in al-Qur'ân and al-Sunnah and that serve as guidelines with respect to the elements of Islamic culture alive in Indonesian society.

The emergence of Islamic banking law was heavily influenced by various aspects of the charges. There are at least five demands which led to the birth of Islamic banking among other demands of the state ideology, the demands of religion as the majority of the biggest religious, political demands of power/conflict of interest, the demands of the political economy, and social and cultural demands. From the various causes of the birth of the Islamic banking law will be explored from the perspective of Islam.

The First : The Demands of Ideology

Indonesia with the philosophical basis of Pancasila and the precepts of the first mentioned, "Belief in God Almighty", indicates that the country is the country that is based on religion. This factor indicates a particular relationship with religion is

¹ Muhammad Muslehuddin, *Philosophy of Islam and The Orientalists*,

² Suparman Usman, *Hukum Islam Asas-asas dan Pengantar Studi Hukum Islam dalam Tata Hukum Indonesia* (Jakarta: Gaya Media Pratama, 2002), Cetakan kedua, 65.

³ Muhammad Daud Ali, *Hukum Islam Pengantar Ilmu Hukum dan Hukum Islam di Indonesia* (Jakarta: PT. Rajagrafinda Persada, 2009), 266-267

Islam. For that Islam teaches his people to always serve and worship the Almighty God who created man.

Factor this ideology demands that demand should be established a law that regulates the life of the banking law in accordance with Islamic values. As described in Al-Qur'ân, (Q:S/ Adz Dzariyaat/51:56).

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ ﴿٥٦﴾

Meaning : *And I (Allah) created not the jinns and humans except they should worship Me (Alone).* (Q:S/ Adz Dzariyaat. 51:56).

This verse indicates that all activities are carried out by humans and jinn should be based on the command of Allah, and solely to serve him, including pure worship mahḍlah and ghairu mahḍlah or *deal with*. These activities should be governed by the rules set forth in a statute or law. This is so that people do not get out of their moorings or bond has been set Allâh.

Then another verse which invites people so all we worship a God who has created the human interests and not the interests of God so that they become people enjoy life in peace and happiness. In Al-Qur'ân described, (Q:S/ Al Baqarah, 2:21)

يَا أَيُّهَا النَّاسُ اعْبُدُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ وَالَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ ﴿٢١﴾

Meaning : *O mankind! Worship your Lord (Allah), Who created you and those who were before you so that you may become Al-Muttaqoon (the pious).* (Q:S/ Al Baqarah, 2:21).

The Second; The Demands Religion

Muslims absolute obligation to enforce the laws that Allah sent down on the al-Qur'ân through the Prophet Muhammad. Obligation to enforce the law is none other than Allâh aims to make people's lives a happy, good life in this world and in the hereafter.

Forms of enforcing Islamic sharia as the Prophet Ibrahim demonstrated his son (Ishmael) in the al-Qur'ân with no favoritism, see to whom, when it is the command of Allah, then should be implemented. As explained in the book of God's holy al-Qur'ân, (Q:S/ Ash Shaaffat, 37:102).

فَمَا بَلَغَ مَعَهُ السَّعْيَ قَالَ يَبْنَؤُا إِنِّي أَرَىٰ فِي الْمَنَامِ أَنِّي أَذْبَحُكَ فَانظُرْ مَاذَا تَرَىٰ ۚ قَالَ يَتَأَبْتِ أَفْعَلُ مَا تُؤْمَرُ
سَتَجِدُنِي إِنْ شَاءَ اللَّهُ مِنَ الصَّابِرِينَ ﴿١٠٢﴾

Meaning : *And, when he (his son) was old enough to walk with him, he said: "O my son! I have seen in a dream that I am slaughtering you (offer you in sacrifice to Allah), so look what you think!" He said: "O my father! Do that which you are commanded, Insha Allah (if Allah will), you shall find me of As-Sabirin (the patient ones, etc.)."* (Q:S/ Ash Shaaffat, 37:102).

From the verse above can be understood that sharia law is a product of the Indonesian people, especially Muslims, and extracted based on the values of al-Qur'ân should be enforced. And enforce Shari'a as a liability that never looked rank, family ties or whoever he is. If it is an order from Allah, then it should be implemented or enforced according to the provisions and rules.

As it is known that the Islamic countries, with different backgrounds are running the reform measures on the banking and financial system to fit the teachings of Islam. Challenges faced by Muslim countries today is how to design and execute sustainable banking and financial system that is consistent with the nature of Islamic ideology, the elimination of usury, and help achieve socio-economic goals of Islam.

On the other side of credit institutions that are banking and finance capitalist system based on interest rates, which have been relatively robust adopted by Muslim countries over the last two centuries under the influence of colonialism has bad implications on development. This is such an encouraging effort to re-establish the financial and banking system in accordance with Islamic teachings. Besides the existence of Islamic banking and finance system is a response to economic vulnerability, financial and banking world today. The current economic system requires the banking and financial system architecture firm and resilient.

Islam insists on the prohibition of the practice of usury. The word "usury" in al-Qur'ân called eight times in four different letters, among others:

- a. (Q: S. 2:275-276, 278). 275 consists of 3 words, 276 and 278 words each, so 5 words; verse describes people who eat (take) riba can not stand but as stands one whom Satan possessed because (pressure) madness, whereas Allâh has justify selling and forbidden usury.

Meaning :*Those who eat Riba⁴ (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitan (Satan) leading him to insanity⁵. That is because they say: "Trading is only like Riba (usury)," whereas Allah has permitted trading and forbidden Riba (usury). So whosoever receives an admonition from his Lord and stops eating Riba (usury) shall not be punished for the past; his case is for Allah (to judge); but whoever returns (to Riba (usury)), such are the dwellers of the Fire - they will abide therein. Allah will destroy Riba (usury) and will give increase for Sadaqat⁶ (deeds of charity, alms, etc.) And Allah likes not the disbelievers, sinners. O you who believe! Be afraid of Allah and give up what remains (due to you) from Riba (usury) (from now onward), if you are (really) believers. (Q: S. 2:275-276, 278)*

- b. Surah Al 'Imran below explain to people who believe that does not take usury doubled and for people who have been eating for immediate pious to Allah, so good luck.

⁴ Riba is divided into two kinds: nasiah and Fadl. Riba nasiah payment is required by those who lend. Riba-Fadl was exchange of goods with similar goods, but more numerous because the people who exchange so require, such exchange gold for gold, rice paddy, and so on. Riba referred to in this paragraph are manifold Riba nasiah common in Arab society the time of ignorance.

⁵ It means: people who take Riba not peaceful soul like the devil possessed.

⁶ Referred to destroy Riba is destroy property or to negate his blessing. and is meant to foster charity is to develop the property have been issued donate or multiply the blessings.

Meaning : *O you who believe! Eat not Riba (usury) doubled and multiplied⁷, but fear Allah that you may be successful.* (Q:S. Ali 'Imran/3:130)

- c. Then the letter An Nisa 'also consists of one word, which explains that for those who devour usury, consuming the property of the vanity of them it will surely get a grievous Penalty. (Q:S. An Nisaa'/4:161).

Meaning : *Say (O Muhammad SAW): "Truly, my Lord has guided me to a Straight Path, a right religion, the religion of Ibrahim (Abraham), Hanifa (i.e. the true Islamic Monotheism - to believe in One God (Allah i.e. to worship none but Allah, Alone)) and he was not of Al-Mushrikoon.*

- d. The latter in Ar-Rum letter regarding usury, consists of one word, which points out that Allah gives a comparison between usury and usury charity where it will not add to the hoards of people who commit usury, while the charity will provide additional abundant, as well as reward and the pleasure of Allah.

Meaning : *And that which you give in gift (to others), in order that it may increase (your wealth by expecting to get a better one in return) from other peoples property, has no increase with Allah, but that which you give in Zakat seeking Allahs Countenance then those, they shall have manifold increase.* (Q:S. Ar Ruum/ 30:39).

Likewise, in Al-Hadith explicitly ban on usury⁸:

From Abu Sa `ad r.a., recounted: *"On one occasion, Bilal came to the Holy Prophet. Bring Barni dates. Then the Prophet asked him, "where's Dates? Bilal replied, Kurma us inferior because it's my exchange with the two hanging hanging these dates for the food of the Prophet ". Then the Prophet said. "This is called usury. You do not ever do it again. If you want to buy dates (which was nice), first selling its date (which is not good), and then with the money buy selling it a better date. "(Hadits Narrated, Muslim)*

From Jabir r.a., said: *"Messenger of Allah. Cursing riba eaters, who told devour usury, riba certificate maker clerks and witnesses. According to him: They are the same (sin) "*

After assessment against usury, it turns out, in addition to sin for violating the ban or the provision of Allah, also impact on the economy brings huge implications on human life. Implications include:

First; Society as a customer facing uncertainty, the results of the company's credit taken can not be predicted with certainty. While he is still obliged to pay a percentage form by taking certain amount of money that remains above the principal amount of the loan. In addition, it will further burden the customer as to the determination of the percentage of interest will be multiple times the percent of the

⁷ The definition of 'Riba' here, is Riba nasi'ah. according to most scholars that it is forever forbidden Riba nasi'ah, although not doubled. Riba is of two kinds: nasiah and Fadl. Riba nasiah payment is required by those who lend. Riba-Fadl was exchange of goods with similar goods, but more numerous because the people who exchange so require, such exchange gold for gold, rice paddy, and so on. Riba referred to in this paragraph are manifold Riba nasiah common in Arab society the time of ignorance.

⁸ Shahih Muslim by David Ma'mun Volume III, Chapter Riba in the book Warkum Sumitro, *Asas-Asas Perbankan Islam dan Lembaga Terkait: BAMUI, Takaful dan Pasar Modal Syari'ah* (Jakarta: PT Raja Grafindo Persada, 2004), 11.

remaining loan term of the loan. Thus, in a certain period can occur any time the amount to be refunded customers doubled from principal.⁹

This situation is contrary to the provisions of Allah, which is the point that only Allah can know something is going to happen in the future, humans will not be able to predict, it is described by Allah in the Qur'an Luqman letter.

Meaning: *Verily, Allah is with Him alone is the knowledge of the Hour, and He sent down rain, and knows what is in the womb. and no one can know (for sure) what will be earned tomorrow¹⁰. and no one can figure out where on earth he would die. Surely Allah is knowing, All-Aware. (Q:S,Luqman/ 31:34)*

Second ; Application of the system resulted in the exploitation rate (extortion) by the rich against the poor. Money/capital controlled by the wealthy are not channeled into productive ventures that can create jobs for the community, but it's actually a huge capital to unproductive interest credit. In addition, the application of the system of interest would lead to bankruptcy of enterprises, and in turn could lead to cracks domestic life, if the borrower is not able to repay the loan and interest¹¹. Al-Qur'ân explain that wealth should not only rotates on rich people only, but should be circulated to all human beings on this earth.

Third ; The system of interest would not be able to eradicate poverty, because the bank with less interest provide opportunities to the poor, to expand its business in a more sustainable economy. But instead of poor people as customers increasingly soulless consumerism and higher dependence to the bank. If the credit runs out for the interests of the consumer, directly taking credit again continuously. Even the various bank lines of credit do so in the end they will be in debt interest increases. The banks are now said to be successful in his efforts to equitable distribution of income, as institutions continue to guarantee the flow of interest payments from borrowers sources continuously towards creditors.

Islamic economics should ensure that the work of each individual. And verily the Muslims not as a recipient of alms (Mustahiq), but that should be giving alms or zakat (Muzakki). In al-Qur'ân, confirmed the division of Zakat in order to ensure the life of the poor:

Meaning: *As-Sadaqat (here it means Zakat) are only for the Fuqara (poor), and Al-Masakin (the poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allahs Cause (i.e. for Mujahidoon - those fighting in the holy wars), and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise.¹² (Q:S. At Taubah/9:60)*

⁹ Warkum Sumitro, *Asas-Asas perbankan Islam dan Lembaga Terkait: BAMUI, Takaful dan Pasar Modal Syari'ah*, 14.

¹⁰ That is: the man can not know with certainty what will be earned tomorrow or ever will get, however they are required effort.

¹¹ Warkum Sumitro, *Asas-Asas perbankan Islam dan Lembaga Terkait: BAMUI, Takaful dan Pasar Modal Syari'ah*, 14.

¹² Entitled to receive zakat are: 1. poor people: people who highly miserable life, have no assets and personnel to meet their livelihood. 2. poor people: people who are not quite livelihoods and the state of

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Similarly, the Hadith of the Messenger of charity, that hands on is better than the hand below.

From Abi Hurairah, he said, Said the Prophet. "At best alms is what is left of the rich. The hand over was better than hand over. Begin (giving alms) from the yoke. 'One woman said: "If you feed me, and if you divorce me". The servant said, "give me a meal and bid me to work". And the child said, "Give me to eat up (no) one sad (because) I do¹³".

As described above, the system is not able to eradicate poverty rate. Finally, the Indonesian people will always depend on the state. While the state does not have the ability to maintain and nurture its people out of poverty, because the management of the bank or the economic system by using the system of interest, not a profit-sharing system. Islam guarantees for the efforts and needs of a living human being. It is described in the Al-Qur'ân. (Q.:S. Huud/11:6).

Meaning : *And no (moving) living creature is there on earth but its provision is due from Allah. And He knows its dwelling place and its deposit¹⁴ (in the uterus, grave, etc.). all is in a Clear Book (Al-Lauh Al-Mahfooz - the Book of Decrees with Allah). (Q.:S. Huud/11:6)*

The Third ; Demands Political Power

General Suharto was a good Muslim, but he did not agree with the politics based on religion as it was championed by politicians NU students¹⁵. However, due to various considerations, one of which is because the majority of Indonesia's population is Muslim, it would not be easy for him to reject not just against NU¹ Mochtar Mas'oeed, *Ekonomi dan Struktur Politik...*, 130.

In addition, because the interest is considered to be the interests of the Muslims, then any reason to keep the integrity of the nation and state unity, the brotherhood should prevail, as al-Qur'ân explain that fellow Muslims are brothers.

Meaning : *The believers are nothing else than brothers (in Islamic religion). So make reconciliation between your brothers, and fear Allah, that you may receive mercy. (Q.:S. Al Hujuraat/ 49:10)*

Demands of power politics or conflict of interest, the commodity used as a booster to reach Muslims with the approval of the bank's operations are based on the

deficiency. 3. Board of zakat: people who were given the task to collect and distribute zakat. 4. Convert: no hope infidels to Islam and those who are new to the faith of Islam is still weak. 5. freeing slaves: covers also to release the captive Muslims by infidels. 6. people in debt: who owes due to interests that are not immoral and can not afford it. As for those who owe to maintain the unity of Muslims paid the debt to the charity, even though he can afford it. 7. in the way of Allah (*sabilillah*): That for the purposes of the defense of Islam and Muslims. among interpreters have argued that it *fisabilillah* includes common interests such as establishing schools, hospitals and others. 8. people who are on the way which is not immoral experiencing tribulations along the way.

¹³ HR. Bukhari, Muslim, Ahmad dan Ibnu Majah dari Aisyah.

¹⁴ According to some commentators is the abiding place here is the world and the hereafter is storage. and according to some commentators the other purpose is abiding place, and where the coccyx is intended uterus. The meaning Yang reptiles here are all God's creatures are animate.

¹⁵ Mochtar Mas'oeed, *Ekonomi dan Struktur Politik...*, 130.

guidance of al-Qur'ân and Sunnah, let alone unity as adhesive brotherhood in Islam should prevail.

To strengthen brotherhood among Muslims must be accompanied by a gentle, in accordance with the guidance and hope al-Qur'ân that matters of war and other worldly matters, such as politics, economics, society and others.

Meaning : *And by the Mercy of Allah, you dealt with them gently. And had you been severe and harsh hearted, they would have broken away from about you; so pass over (their faults), and ask (Allah) Forgiveness for them; and consult them in the affairs. Then when you have taken a decision, put your trust in Allah, certainly, Allah loves those who put their trust (in Him¹⁶). (Q:S. Ali 'Imran/3:159).*

This Prudence, which is later by President Soeharto used to embrace Muslims as well as encouraging the establishment of Sharia bank.

The Fourth: Demands Political Economy

Al-Qur'ân explain that, was originally a counsel against the capitalist-materialist Qarun prophet who lived in the time of Moses. whereas in the previous paragraph we are told that Qarun hoard wealth that had warehouses, so that to carry the key required warehouse only the strong force. Repeatedly his people posing a threat not to brag. However, Qarun replied haughtily, saying that wealth is derived from science. He forgot that Allah punish those who hoard their wealth.

Then we are told that Qarun wearing a seductive splendor of faith who are easily influenced by worldly luxuries. In the next paragraph, it is mentioned that the person who is knowledgeable is more honoring character of the malignancy and the material and prefer the divinity of the worldly deception. As described in the Qur'an, which means the following:

Meaning : *But seek, with that (wealth) which Allah has bestowed on you, the home of the Hereafter, and forget not your portion of legal enjoyment in this world, and do good as Allah has been good to you, and seek not mischief in the land. Verily, Allah likes not the Mufsidoon (those who commit great crimes and sins, oppressors, tyrants, mischief-makers, corrupts). (Q:S. Al Qashash/28:77).*

Indonesia's economic circumstances at the time was uncertain, then the presence of Islamic banking to bring fresh, at least give hope for the future of the national economy.

The Fifth ;Social and Cultural Demands

In accordance with national development objectives Indonesia to achieve the creation of a just and prosperous society based on economic democracy, the need to develop an economic system which is based on values of justice, solidarity, equity and

¹⁶ That is: the affairs of war and other worldly matters, such as politics, economics, society and others.

utilization in accordance with Islamic principles. Al-Qur'ân has taught that Islamic economic system must be based on the values of justice and solidarity.

Meaning : *O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honorable of you with Allah is that (believer) who has At-Taqwa (i.e. one of the Muttaqoon (pious - see V.2:2). Verily, Allah is All Knowing, All-Aware. (Q:S. Al Hujuraat/49:13).*

Then Al-Qur'ân also provide the basis of the importance of living with helping each other, helping each other help do not follow the desires and deviate from the truth. and distort the facts and words or decline to do justice.

Meaning : *O you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents, or your kin, be he rich or poor¹⁷, Allah is a Better Protector to both (than you). So follow not the lusts (of your hearts), lest you may avoid justice, and if you distort your witness or refuse to give it, verily, Allah is Ever Well Acquainted with what you do. (Q:S. An Nisaa' /4:135).*

Then in the next verse of Al-Qur'ân explained that the we will not be able to live alone. Therefore, it must help each other to help in the good but not the bad.

Meaning : *Help you one another in AlBirr and AtTaqwa (virtue, righteousness and piety); but do not help one another in sin and transgression. And fear Allah. Verily, Allah is Severe in punishment. (Q:S. Al-Maidah, 5:2).*

Conclusion

Islamic banking law dug by Islamic values contained in the Qur'an and Sunnah. To that end, the law of Islamic banking is part of the religion of Islam that applies to Muslims wherever he is, whatever the nationality. While the national law is the law applicable to a particular nation, in a particular national state. In the case of Indonesia, national law also means law established by Indonesia after Indonesia's independence and apply for Indonesian people, especially the citizens of the republic of Indonesia, instead of colonial law. Thus, Islamic law is used now instead of colonial law.

The establishment of Islamic banking laws influenced by several factors. The dominant factor of course, the religious factor. This is due to the majority of Indonesia's population is Muslim. With the factor demands of society, both national and international community, thus born Islamic banking in Indonesia.

¹⁷ The point: the defendant or the defendant.

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