ucial_History_of_Sharia_Banking_Law_Development_in_Indonesia.pdf

by Ahmad Dahlan

Submission date: 20-Jun-2023 09:08PM (UTC+0700)
Submission ID: 2119711196
File name: ucial_History_of_Sharia_Banking_Law_Development_in_Indonesia.pdf (368.71K)
Word count: 6542
Character count: 36467

Al-Manāhij: Jurnal Kajian Hukum Islam
Vol. 17 No. 1, January-June 2023, 27-40
DOI: https://doi.org/10.24090/mnh.v17i1.7191

Published by Sharia Faculty of State Islamic University of Prof. K.H. Saifuddin Zuhri Purwokerto

Al-Manāhij

P-ISSN: 1978-6670 | E-ISSN: 2579-4167

The Crucial History of Sharia Banking Law Development in Indonesia

Ahmad Dahlan [1*], Mawardi [2], Shaifurrokhman Mahfudz [3]

[1]UIN Profesor Kiai Haji Saifudin Zuhri Purwokerto, Indonesia*
Jl. A. Yani no. 40 A Purwokerto

[2]Universitas Islam Negeri Sultan Syarif Kasim Riau, Indonesia
Jl. HR. Soebrantas Simpang Baru, Kota Pekanbaru, Riau

[3]School of Law, Western Sydney University
48 Martin Pl, Sydney NSW 2000, Australia

Email: [1]ahmaddahlan@uinsaizu.ac.id, [2]mawardi@uin-suska.ac.id, [3]19577920@student.westernsydney.edu.au*

Submitted	: 07-12-2022	Accepted	: 26-03-2023
Revision	: 20-03-2023	Publish	: 06-04-2023

Abstract: This article aims to explain Sharia banking law development in Indonesia from various sources based on facts or documents found in literatures and interviews made with several informants involved in the process of formulating Sharia banking law development as well as all law and legislation aspects in Indonesia. Two well-known figures, Karnaen A. Perwaatmadja and M. Syafi'i Antonio, were involved in the process of formulating Sharia banking law development in 1990s, as well as Zuhrizal Zubir, Sharia Bank Supervisor from Bank Indonesia Jakarta, and Bank Indonesia Purwokerto, Central Java in 2002. The research results showed that Sharia banking law development in Indonesia historically had several stages. First, the formulation of Sharia banking law was full of political contents. Second, Sharia banking law was based on a dual banking system dominantly in market accommodation. Third, the independence of legalization of Sharia banking law did not increase Sharia banking market share.

Keywords : Crucial history, Banking law, Sharia bank, Indonesia

Abstrak: Artikel ini bertujuan untuk menjelaskan perkembangan hukum perbankan syariah di Indonesia dari berbagai sumber berdasarkan fakta atau dokumen yang ditemukan dalam literatur dan wawancara, yang dilakukan dengan beberapa informan yang terlibat dalam proses perumusan perkembangan hukum perbankan syariah serta semua aspek hukum dan perundang-undangan di Indonesia. . Dua tokoh ternama, Karnaen A. Perwaatmadja dan M. Syafi'i Antonio, terlibat dalam proses penyusunan perkembangan hukum perbankan syariah tahun 1990-an, serta Zuhrizal Zubir, Pengawas Bank Syariah dari Bank Indonesia Jakarta, dan Bank Indonesia Purwokerto, Jawa Tengah pada tahun 2002. Hasil penelitian menunjukkan bahwa perkembangan hukum perbankan syariah di Indonesia secara historis memiliki beberapa tahapan. Pertama, perumusan undang-undang perbankan syariah sarat dengan muatan politik. Kedua, hukum perbankan syariah didasarkan pada dual banking system yang dominan dalam akomodasi pasar. Ketiga, independensi legalisasi hukum perbankan syariah tidak meningkatkan pangsa pasar perbankan syariah.

Kata Kunci : Sejarah krusial, Hukum perbankan, Bank syariah, Indonesia

Introduction

Historically, sharia banking law in Indonesia has developed since the then President Soeharto's New Order administration in the 1990s. This is quite different from the previous administration or Soekarno's Old Order era, where only a little data related to the development of banking law was found, despite the stipulations of many regulations.

The first legislation on banking from this era is Government Regulation (GR) No. 1 Of 1946 concerning *Bank Rakyat Indonesia*. It is a banking law that legalizes the first commercial bank in Indonesia named *Bank Rakyat Indonesia*, a legacy from the pre-independence era, which were previously called *Algemeene Volkscredietbank* and *Syumin Ginko*. Also, it is unique because in article 4(a) it sets forth that the President is part of the Executive Board of the bank.

The second one is Government Regulation in lieu of Law No. 2 of 1946 concerning the Establishment of *Bank Negara Indonesia*. It is another banking law that sets forth that *Bank Negara Indonesia* shall serve as the central bank and a circulation bank, i.e., a bank that regulates the circulation of money in Indonesia. Later on, it was revoked through Law No. 2 Drt (*Darurat*/Emergency) 1955 concerning *Bank Negara Indonesia* (BNI). Upon its issuance, apart from being a central bank, BNI was also a commercial bank that could operate various branch offices in Indonesia and abroad for export and import transaction services.

Furthermore, there is Law No. 11 of 1953 concerning Principal Act on Bank Indonesia. The uniqueness of this law is contained in Article 3 (paragraph 3), which states that Bank Indonesia had a double function, namely as a central and commercial bank, and was allowed to open domestic and foreign branches.

Finally, we have Government Regulation No. 13/prp/1960 in conjunction with Presidential Decree No. 21 of 1965 concerning *Bank Dagang Negara* (BDN). BDN needed to continue to operate based on its supporting laws and structure, organization, and activities as a basis to keep its actions in harmony with BNI as the central bank at that time.

Whereas the New Order, which replaced the Old Order, was the administration that initiated the development of sharia banking law in Indonesia in the 1990s through legislations and government regulations. Prior to the 1990s, some banking laws and regulations were issued, including Law No. 14 of 1967 concerning Fundamentals of Banking, and Law No. 13 of 1968 concerning Central Bank which amended Law No. 11 of 1953.

Law No. 14 of 1967 was the initial momentum of the New Order in structuring national banking law, especially to organize the foundations of banking. This foundation was lied by Law No. 11 of 1953 concerning Principles Act on Bank Indonesia, which had been in effect since the old Order, yet the policies resulting from it werestill uncommon. One of these uncommon policies was the fact that Bank Indonesia served dual functions as a central and a commercial bank and it also opened representative offices abroad.

Meanwhile, as far as sharia banking law in Indonesia is concerned, it began in the 1990s or approximately 15 years after the establishment of the Islamic Development Bank (IDB) in 1975. "Crucial history" is the keyword used to find the articles that contain many aspects unknown to the public. Using the keywords, some articles were found. The first article is written by Parmudi who

discusses only briefly the early history of sharia banking institutions and laws.[1] Kara's article, on the other hand, despite its extreme detail, is mostly just comparisons of banking laws in 1992 and 1998 as viewed from a political aspect.[2] Furthermore, Anshori explains in more detail the historical banking law in Indonesia, but it is not until 2019s.[3] Hejazziey studied the development of Islamic banking from the Indonesian political perspective, yet it only focuses on the challenges of the New Order era.[4] Finally, Hendriarto studied Islamic banking law in Indonesia in regard to the normative aspects and sharia principles.[5]

In comparison, this article uses an analysis supported by interviews with national figures who have some knowledge on the early development of Islamic banks in Indonesia. They are Karnaen Anwar Perwaatmadja (Executive Director of the Islamic Development Bank (IDB) in 1988-1992), M. Syafi'i Antonio (Tazkia Institute), and Zuhrizal Zubir (Supervisors of Islamic Banks from Bank Indonesia Jakarta, and in 2002 was placed at Bank Indonesia Purwokerto).

According to the data from literature and interviews, the crucial history of the development of Islamic banking law in Indonesia can be classified into some periods. The first period was the formulation of sharia banking law. The second one was the period when Islamic banking law was based on a dual banking system. The last period was when the independence of Islamic banking was legalized.

First Period: Legal Formulation of Islamic Banking

1. Development of Profit Sharing System

Profit sharing or investment, trading, and leasing are the three main principles in terms of distribution in Islamic banking.[6] Profit-sharing is a contract based on the principle of cooperation, namely *muḍârabah* and *mushârakah*. It becomes the contract that forms the basis for financial transactions in Sharia banking.[7] *Muḍârabah* is the most popular contract under the profit-sharing mechanism, as it is a form of cooperation contract where one party serves as the capital owner (*rabb-u-mâl*) and the second one runs the business (*mudhârib*).[8] However, in this period, the term profit sharing was used to represent all contracts or agreements in Islamic bank transactions, including *murâbaḥah, bay' al-thaman âjil, ijârah*, and others.

The development of Islamic banking law with profit-sharing banks began in the early 1990s under the New Order administration when Law No. 7 of 1992 concerning Banking (Law 92) was stipulated to

---

1 Muhammad Parmudi, *Sejarah Dan Doktrin Bank Islam* (Yogyakarta: Kutub, 2005).

2 Muslimin Kara, *Bank Syariah Di Indonesia: Analisis Kebijakan Pemerintah Indonesia Terhadap Perbankan Syariah* (Yogyakarta: UII Press, 2005).

3 Abdul Ghofur Anshori, "Sejarah Perkembangan Hukum Perbankan Syariah di Indonesia dan Implikasinya Bagi Praktik Perbankan Nasional," *La_Riba Jurnal Ekonomi Islam* 7, no. 2 (2008): 159-172.

4 Djawahir Hejazziey, "The Establishment of Islamic Banking Law in Political Perspective," *Al-'Adalah* 12, no. 3 (2015): 465–478.

5 Prasetyono Hendriarto, "Relevance on Islamic Principle Law with Application at The Field: Review of Islamic Banking Publication in Indonesia," *International Journal of Business, Economics & Management* 4, no. 1 (2021): 47–53.

6 Muhammad Hafizh, Nur Hidayah, and Purnama Ramadani Silalahi, "Macroeconomics and Profit Sharing Financing in Islamic Banking in Indonesia: The Third Parties Fund as Intervening"," *Jurnal Akuntansi dan Keuangan Islam* 8, no. 2 (2020): 131–147.

7 Muhammad Syarif Hidayatullah and Rahmat Fadillah, "Economic and Legal Dimensions of Collateral Existence in Modern Mudhārabah Contracts: Understanding the Relationship between Risk Management, National Law, and Contemporary Fiqh," *Al Manahij* 16, no. 2 (2022): 223.

8 Wahbah al-Zuhayli, *Al-Fiqh Islâmî Wa Adilliatuh*, (Damaskur: Dâr al-Fikr, 1405H/1985 M), IV: 836; Afzalur Rahman, *Banking and Insurance*, London: The Muslim Schools Trust, London, 1979: 305–6.

respond to the national and international economic growth, which had not been accommodated by the previous banking law, Law No. 14 of 1967 concerning Banking Fundamentals.

The Law 92 accommodates the legal space and norms regarding contracting, which is the basis for Islamic bank practice. Nevertheless, it was mentioned in only two articles and was known as the profit-sharing principle as contained in Chapter III, article 6 point (m), and article 13 point (c), which read:

> 6(m) to provide financing and or other services based on the sharia principle following the provisions stipulated by Bank Indonesia.
>
> 13(c) to provide financing and investment based on sharia principle following the provinsions stipulated by Bank Indonesia.

Even though practically Islamic banking law has been developed in several Islamic countries, for example, Malaysia with its establishment of Islamic banks since the 1980s, this law only accommodates its systems in a general sense.[9] Also, in Perwaatmadja's point of view, the expansion of economic structure and institution is yet to respond to the Islamic banking system, which is experiencing rapid growth in several countries.[10]

2. Government Regulations as Sharia Banking Law

Not too many data mention the historical background of the problems related to the foundations of Islamic banking law or licenses under Law 92. Perwaatmadja, for example, said that political compromise and lobbying took place between various parties, especially between the Indonesian Ulama Council (MUI), the Association of Indonesian Muslim Scholars (ICMI), and the Cabinet Secretary Moerdiono to complement Law 92 which had not entirely accommodated Islamic banking's principles. In its early stages, it was complicated to convince President Soeharto and the People's Legislative Assembly to include the elements of or term "sharia" or the names of the contracts in the law draft. Moreover, at that time, the concept was not "sharia bank" but "Islamic bank", where the word Islam in the legality of national law was still sensitive and could be interpreted as a right-wing Islamic movement.[11]

The New Order regime was still transitioning from its authoritarianism and strictness towards Islamic movements to be a more-welcoming administration to Islam.[12] Thus, it is only natural that the government and the House of Representatives (DPR) are cautious in accommodating the political interests of Muslims.

Political lobbying in the initial stages of the process had been performed, especially during the hearing between the then Chairman of the MUI, KH. Hasan Basri, and President Soeharto on Wednesday, 12 February 1992 at 10.00 am Indonesian West Time Zone (WIB). Perwaatamadja, who accompanied Hasan Basri to meet President Soeharto, said:

---

[9] Zuhrizal Zubir, "Interview", Tuesday, 5 June 2017, at his house, Jl. A. Yani Purwokerto.
[10] Karnaen A. Perwaatmadja, *Interview*, 14 May 2017, At his house, Perum Moneter CC-3, Petamburan Jakarta.
[11] Karnaen A. Perwaatmadja, *Interview*.
[12] Vedi R. Hadiz, "Indonesian Political Islam: Capitalist Development and the Legacies of the Cold War," *Journal of Current Southeast Asian Affairs* 30, no. 1 (2011): 3–38; Djawahir Hejazziey, "The Establishment of Islamic Banking Law in Political Perspective": 465-478.

> Before meeting President Soeharto, the MUI Team had brought up two names: Bank Muamalat Islam Indonesia and Bank Muamalat Indonesia. When these names were presented to President Soeharto, he chose Bank Muamalat Indonesia (BMI), without further comment.

From this, it is safe to say that there were virtually no problems institutionally after President Soeharto issued his approval to establish an Islamic bank named "mualamat", an unfamiliar yet safer and less controversial term.[13] However, these meeting had no significant positive impact on statutory regulations, despite the importance of statutory regulation to strengthen the institution of Islamic banking. Later on, Perwaatmadja and many stakeholders explained the discussions and similarities they had among drafters consisting of MUI, ICMI, and related ministries, especially the Minister of Finance, Minister of Law, and Minister of State Secretary in the formulation of "brand" which will be used as a symbol of an Islamic bank. In approximately four months (June-September) in 1992, the name Bank Muamalat was born.

In October, President Soeharto contributed significantly to the development of Islamic banking law by issuing government regulations that strengthened Islamic banks' legality.

First, Government Regulation No. 70 of 1992 concerning Commercial Banks, Article 5 (paragraph 3) states:

> Commercial Banks that operate based on profit-sharing principle, in their articles of association draft and work plans, must expressly state that their business activities are solely based on the profit-sharing principle.

Second, Government Regulation No. 71 Of 1992 concerning Rural Banks, Article 6 (paragraph 2) states:

> Rural Banks that will carry out their business activities based on profit-sharing principle must expressly state that the bank's business activities are solely based on the profit-sharing principle in their articles of association draft and work plan.

Third, Government Regulation No. 72 Of 1992 concerning Profit-Sharing Principle-Based Banks. This regulation emphasized that Islamic bank was still a bank that employed the profit-sharing principle.

These government regulations show that the fundamental differences in the development of Islamic banking law in its early period are that Islamic banks applied the profit-sharing principle and had an institutional structure namely the *Dewan Pengawas Syariah* (DPS) or Sharia Supervisory Board as emphasized in Article 5 (paragraphs 1-3) of Government Regulation No. 72 Of 1992. The phrase "based on the profit-sharing principle" is critical in legalizing bank transactions based on contracts in Islamic law.

The fact that it took around 15 years for sharia banking law to be developed in the 1990s since the birth of the Islamic Development Bank (IDB) and approximately ten years since the development of BIMB (Bank Islam Malaysia Berhad) in Malaysia was considered a delay. This is quite surprising considering Indonesia was a member of the OIC (Organization of Islamic Conference) that formulated the rules regarding the concept of IDB.[14]

---

[13] Karnaen A. Perwaatmadja, *Interview*; Karnaen A. Perwaatmadja and Muhammad Syafi'i Antonio, *Apa dan Bagaimana Bank Islam* (Yogyakarta: Dana Bhakti Prima Yasa, 1999), 84.

[14] M.Syafi'i Antonio, *Interview*, at Tauzia University, Bogor, 2017.

Referring to Richard Robison's structural determinism theory, whose roots stem from a combination of class theory and state autonomy theory, it could be said that the role of the local bourgeoisie was very decisive in the direction of the New Order government's economic policies.[15] It was analogized that the ruler was led by Soeharto and was supported by ICMI, and MUI drove class figures and 10 Muslim ministers to participate in collecting what it took for the ruler to issue Islamic bank regulations, namely government regulations which set forth the bank with the profit-sharing principle.

William Liddle placed Suharto as the one playing a crucial role as a president who could maximize his strengths to achieve goals, including the Islamic banking project.[16] While in the 1970-1980s he partnered with non-Muslim technocrats and generals such as General LB. Moerdani in the 1980s, in the 1990s he partnered with BJ. Habibie. His changing side to be close to B.J. Habibie was one of the factors in encouraging the development of Islamic banking law in Indonesia in its early days.[17]

Second Period: Dual Banking System

1. Sharia Contracts in Legislation

The term dual banking system means that a bank can carry out two activities simultaneously as conventional banks or sharia banks.[18] The development of Islamic banking law during this "dual banking system" period was signified by the stipulation of Law No. 10 Of 1998 concerning Banking which was stipulated as a response to two events at that time.

First, it was a response to the monetary and economic crisis in 1998. During the 1998 crisis, the national economy was shaken by various fragile banking institutions. Many banks were liquidated, merged, and included in the recapitalization.[19]

Second, it was a response to the continuous rapid development of the national economy, especially regarding the legality aspect of the national Islamic banking system, which still referred to the regulation of Government Regulation No. 72 Of 1992 and Circular Letter of Governor of Bank Indonesia No. 25/4/BPPP Of 1993, which still failed to accommodate the Islamic banking system as a whole.[20]

Law 98 included several issues that had not been explained in Law No. 7 Of 1992, such as regarding the Deposit Guarantee Agency (LPS), and changed the applicability of bank secrecy, where it was no longer applicable to all activation posts and liabilities of all bank customers, but only to information about depositors and their deposits.[21]

The enforcement of Law 98 resulted in changes in the operational system of Islamic banks. Prior to its enactment, it was only a technical profit-sharing system. Once the law was enacted, it became a recognition as an Islamic value system as set forth in Article 1 Point 7.

---

[15] Rizal Malarangeng, *Mendobrak Sentralisme Ekonomi Islam: 1986-1992*, ter). Martin Alaeda (Jakarta: Gramedia, 2002), 28; Richard Robison, *Indonesia-The Rise of Capital* (Sidney: Allen and Unwin, 1996).

[16] Rizal Malarangeng, *Mendobrak Sentralisme Ekonomi Islam*, 28-30; R. William Liddle, *Leadership and Culture in Indonesia* (Sidney: Allen and Unwin, 1990); Jeffrey Winters, *Power in Motion* (New York, Ithaca: Cornell University Press, 1996).

[17] R. William Liddle, "'The Islamic Turn in Indonesia: A Political Explanation,'" *The Journal of Asian Studies* 55, no. 3 (1996): 630.

[18] Yaser Taufik Syamlan, "Does Dual Banking System in Indonesia Differentiate Investment Account Requirement?," *TIFBR: Tazkia Islamic Finance and Business Review* 11, no. 1 (2017): 81-106.

[19] Ahmad Dahlan, *Political Economy of Islamic Banking in Indonesia: The Political Superstructure of Sharia Banking Policy in 1992-2011* (Irvine, USA: Universal Publisher, 2021), 45.

[20] Consideration of Law no.10/1998.

[21] Abdul Ghofur Anshori, *Pembentukan Bank Syariah Melalui Akuisisi dan Konversi*, 15.

> Sharia Banks are Banks that carry out activities based on Sharia Principles and by type consist of Sharia Commercial Banks and Sharia Rural Banks
>
> Sharia products or principles are also expressly set forth in Article 1 point 13.
>
> Sharia principles are rules of agreement based on Islamic law between banks and other parties for depositing funds or financing business activities or other activities declared permittable as per sharia, namely 1) *muḍârabah*, 2) *musyârakah*, 3) *murâbaḥah*, 4) *ijârah* and 5) *ijârah wa iqtinâ*.

The article shows that five sharia contracts are covered in the law. *Muḍâraba* (finance trusteeship) and *Musharaka* (equity partnership) are two such financial instruments based on the profit-and-loss sharing mechanism, where instead of lending money to an entrepreneur at a fixed rate of return, the financier shares in the venture's profits and losses.[22] *Murâbaḥah* has various definitions, yet the meaning is more or less similar, namely:

> نقل ملكه العقد الأول بالثمن الأول مع زيادة الربح
>
> (Transacting objects owned through the first contract at the first price plus an additional price). Therefore, *murâbaḥah* is a trustworthy sale and purchase in which the buyer bases his trust on price information from the seller.[23]

Some of the contracts above are more operational developments in Islamic banking law. Interestingly, this period used *ijârah wa iqtinâ* contract, i.e., a lease purchase contract which in banking law was referred to as *ijârah muntahiya bit tamlik*.

2. Evolution from Profit-Sharing Bank to Sharia Bank

This period shows how national banking has its own wisdom where the government is opening up banking business activities based on sharia principles. This is to accommodate the aspirations and needs of developing in the community.[24]

The issuance of Law No. 10 of 1998 is a crucial basis for the evolution of Islamic banking, as well as a new era for the presence of the "sharia" label in bank to replace the previous term, namely "banks with profit sharing principles" or "mualamat". This change can be interpreted as a declaration in political, economic, and social aspects that the naming "Sharia bank" is an "iconic name" of an Indonesian Islamic bank.[25] Globally, sharia banks are better known as Islamic banks when in fact their management principles are not too different in applying sharia principles for raising funds, financing, and other activities.[26] This change from "Islamic" into "Sharia" affects many aspects of the economic domain. In the regulations of Bank Indonesia, religious law, or academic activities (nomenclature of study programs or even bachelor's degrees), the word Islam was replaced with "sharia".

---

[22] Hussain G. Rammal, "Financing Through Musharaka: Principles and Application"," *Business Quest, Online*, 2004, http://www.westga.edu/~bquest/2004/musharaka.htm.

[23] Jamal Abdul Aziz, "Transformasi Akad Bay' Al-Murabahah dari Konsep Fikih ke Produk Bank (Analisis Kritis Perspektif Fikih Muamalah)", *Al-Manahij* 8, no. 2 (2014): 249.

[24] Thoriqoh Nashrullah Fitriyah, "Development of Sharia Banking and Its Contributions for The Development of National Banking", *International Journal of Nusantara Islam*, 8, no. 1, (2020): 10-18.

[25] M. Syafi'i Antonio, *Interview*.

[26] Veithzal Rivai dkk., *Bank dan Financial Institution Management* (Jakarta: RajaGrafindo Persada, 2007), 733.

The provisions that support sharia banks are set forth in Article 1, paragraph 7 of Law No. 23 Of 1999 concerning Bank Indonesia, which reads:

> Financing based on sharia principles shall mean the provision of funds or equivalent claims based on an agreement or arrangement between Bank Indonesia and the Bank, which requires the bank being financed to return the funds or claims after a certain period of time with a reward or profit sharing.

In this section, it is essential to explain that attempts had long been made to arrive at the issuance of Law No. 23 of 1999 (Law 1999) concerning Bank Indonesia, especially regarding the definition of central bank's independence for the best interest of the government and Bank Indonesia.[27] In its development, to avoid indications of the independence of Bank Indonesia as a "state within a state", Law No. 3 of 2004 (Law 2004) concerning Amendment to Law No. 23 of 1999 concerning Bank Indonesia was issued. The independence notion is emphasized by the phrase "in carrying out its duties and authorities", rather than in everything without limits.

As for Islamic banking, there is a relationship between Indonesian banks and the presence of national Islamic banking. Article 11 of Law 2004 mentions:

1. Bank Indonesia may provide credit or financing based on Sharia Principles for a maximum period of 90 (ninety) days to Banks to overcome short-term financing difficulties for the Banks concerned.
2. The provision of credit or financing based on Sharia Principles, as referred to in paragraph (1), must be guaranteed by the receiving Banks with a high-quality and easily disbursable guarantee, whose minimum value is equal to the amount of credit or financing they receive.
3. The implementation of the provisions as referred to in paragraphs (1) and (2) shall be stipulated in a Regulation of Bank Indonesia.

Article 11 of Law 2004 is an example of how the existence of Bank Indonesia continues to support the existence of Islamic banks. Thus, the substantial independence of Bank Indonesia as stated in Law No. 23 of 1999, or when it is slightly reduced as in Law No. 3 Of 2004, the presence of these two laws in supporting the development of Islamic banking regulations is still maintained.

Even before the issuance of Law No. 3 Of 2004, in November 2003, the working unit serving Sharia banking, namely the Sharia Banking Bureau, was upgraded to become the Directorate of Sharia Banking (DPBS) which oversees four teams, namely, Research and Development, Regulatory, Licensing Team, and Sharia Bank Supervisory Teams. Meanwhile, the addition of the Monitoring Team was an answer to the development of the sharia industry, which until January 2006, reached a total asset demand of more than IDR18 trillion.

On 18 August 2005, DPBS underwent organizational improvements, and the number of Teams was expanded to 7 Teams, i.e., Research, Development, Regulatory, Monitoring 1, Monitoring 2, Information, and Licensing Teams. The addition of the Development Team was to respond to the emergence of various development innovations in the sharia banking industry.[28]

Establishing the Directorate General of Islamic Banks within the institutional structure of Bank Indonesia is a successful achievement of economic goals through political policies, as well as the long

[27] Aulia Pohan, *Potret Kebijakan Moneter Indonesia* (Jakarta: RajaGrafindo, 2008), 195-196.
[28] Zuhrizal Zubir, *Interview*.

struggle of Indonesian Islamic banking institutions, which were politically still very weak and unable to compete with their conventional counterparts.

Third Period: Independence of Legal and Rules

1. Independence of Sharia Banking Law

The development of the ideal sharia banking law began when Law No. 21 Of 2008 concerning Sharia Banking was stipulated on 16 July 2008.[29] The issuance of Islamic banking laws resulted in consequences that fundamentally improved the existence of national Islamic banking, especially those related to institutions.

Referring to Zubairi Hasan, the ratification of the Islamic banking law was a pro-sharia political struggle supported by nine factions at the House of Representatives.[30] Only one faction rejected it, namely, the faction of *Partai Damai Sejahtera* (*PDS*) or the Prosperous Peace Party. They argued that the 2008 Law was inconsistent with Indonesia's basic principles which were based on Pancasila, rather than on a particular religion.[31]

At the Final Meeting (Plenary) of the House of Representatives (DPR) chaired by the Speaker of the DPR at that time, Agung Laksono, on 17 June 2008, the PDS faction, represented by its spokesperson, Rena Rosmanita Sitomorang, argued that Law No. 21 Of 2008 violated Pancasila and Article 7 paragraph (1) of the 1945 Constitution which read:

All citizens are equal in law and government and must uphold that law and government without exception.

However, PDS faction's resistance could not prevent the Sharia Banking Law from being ratified. After Law No. 21 of 2008 was issued, Bank Indonesia focused on developing sharia banking to improve its positioning-differentiation-branding (PDB) in regard to the Grand Strategy for Development of the Sharia Banking Market 2009-2012.

Ramzi A. Zuhdi, a member of the Sharia Banking Committee, the Director of the Directorate of Sharia Banking, Bank Indonesia, explained that the Grand Strategy for the service included such programs as New Image Program, Market Segment Development Program, Product Development Program, Improvement Program, as well as a Universal and Open Communication Program. Some of these programs lead to the goals of Islamic banking, which are to benefit both parties and to be more than just a bank.[32]

Meanwhile, the core materials of the contract and sharia principles in banking are also more systematic and detailed, as stated in Article 1 Point 25 which reads:

Financing is the provision of funds or equivalent claims in the form of:

a. profit-sharing transactions in the form of *muḍâraba* and *mushâraka*;
b. leasing transactions in the form of *ijarah* or lease-purchase in the form of *ijarâ muntamlik*;
c. sale and purchase transactions in the form of *murâbaha*, *salam*, and *istiṣnâ* receivables;

[29] Law no. 21 of 2008 concerning Sharia Banking was ratified and signed by President Susilo Bambang Yudhoyono.

[30] 1) F-Golkar, 2) F-PDIP, 3) F-PPP, 4) F-PD, 5) F-PAN, 6) F-PKB, 7) F-PKS, 8) F-PBR, 9) F-PBPD.

[31] Zubairi Hasan, *Undang-Undang Perbankan Syariah: Titik Temu Hukum Islam dan Hukum Nasional* (Jakarta: RajaGrafindo Press, 2009), 10-11.

[32] Ramzi A. Zuhdi, "IB (Ai-Bi) Melaju dengan Strategi Baru", *publikasi online*, http://www.bi.go.id/id/perbankan/edukasi/Documents/2c9aeef33b82474fa7bf3e57ad2 b0a9aMelaju_Dengan_Strategy_Baru.pdf., 1-4.

d. lending and borrowing transactions in the form of *qardh* receivables; and

e. leasing transactions of services in the form of *ijarah* for multi-service transactions

shall be based on agreements or arrangements between Sharia Banks and/or Sharia Business Units and other parties that require the financed and/or funded parties to return the funds after a certain period of time with an *ujrah* reward, without a reward, or profit sharing.

The most prominent development in this law is that the sharia contracts have been divided according to the function of the contract, as well as a more systematic division of each contract compared to the previous one. Another prominent is the addition of *salam* and *istishna* contracts in buying and selling, *ijârah muntahiya bit tamlik* as a substitute for *ijârah wa iqtinâ'*, and *qarḍ* contracts. The *qarḍ* contract means: *Daf'u mâl irtifâqan liman yantafi' bih wa yurad badalah*[33] [Paying the money as a convenience to whoever benefits from it and returning it in exchange, with nothing extra]. This contract is a special part of Islamic banking.

2. Independence of Fatwa Council

The Fatwa Council in sharia finance and banking is the National Sharia Board at the Indonesian Ulema Council (DSN-MUI). It was established to realize the aspirations of Muslims regarding economic issues and encourage the application of Islamic teachings in the field of economics/finance under the guidance of Islamic law. It is also a means for efficiency and coordination of the clergy in responding to issues related to economic/financial problems.

The establishment of DSN-MUI at that time referred to MUI Decision Letter No. Kep-754/MUI/II/1999, dated 10 February 1999 concerning the Establishment of DSN-MUI. It had a less intense presence and its scope of work was only within the organizational systems and services for implementing sharia compliance in sharia financial institutions. After the passing of Law 2008, its existence became more solid in legal organizations and banking law, as set forth in Article 1 (paragraph 12) of the Law.

> Sharia principles are principles of Islamic law in banking activities based on fatwas issued by institutions with authority to issue fatwas in sharia.

The article above describes that the principles of Islamic law shall be based on institutional fatwas. It can be seen as characteristics of the development of a social institution, in this case DSN-MUI, through regulations that had not been included in the previous rules, namely Law No. 10 of 1998, Law No. 3 of 1999, and Law No. 3 of 2004. As an institution, DSN-MUI plays a prominent role and needs independence in developing Islamic legal products in Islamic economic, financial, and banking systems.

3. Financial and Social Intermediaries Institution

The enactment of Law No. 21 of 2008 places Islamic banks in the primary function of financial institutions as well as intermediary institutions for several social transactions that comply with

[33] Mulyono Jamal and Muhammad Taqiyuddin, "Tathîq 'Aqd al-Qard al-Hasan fî al-Tamwîl fî al-Fiqh al-Islamî (Dirâsat Hâlat fî Musaasat Hasanat Libayt al-Mâl al-Tamwîl Bi Ponorogo 2019 M/1440 H)," *Al-Muamalat* 2, no. 2 (2019): 209.

Islamic sharia and have been included in Indonesian regulations and are not found in conventional banks. Sharia banks and sharia business units have their own uniquenesses. One of them is their ability to carry out social functions in the form of *Baytul-Mâl*, to receive funds from *zakât*, *infâq*, *sadaqat*, grants, or other social funds and channeling them to *zakât* management organizations.[34]

The Law 2008 introduces several new contents and legal institutions that support the implementation of national development in the context of improving fairness, togetherness, and equal distribution of people's welfare.

Conclusion

The results of the study showed that historically, the development of sharia banking law in Indonesia has gone through several stages.

The first one is the formulation of Islamic banking legal bases. At this time, the developed laws and government regulations were still laden with the dominance of political power—only a few of sharia systems and principles in sharia banking law had been developed.

The second stage was when Islamic banking law was based on a dual banking system. A prominent feature of this period was the Islamic banking law which, on one hand, placed the position of Islamic banks on par with conventional banks. However, there was leeway for traditional bank "entrepreneurs" to open only Islamic business units under traditional banks' banner. For this reason, Law No. 10 of 1998 served as a manifestation of the constitution of the Islamic banking market, which followed the market and the wishes of conventional banks.

The third stage was the legalization of legal independence of Islamic banking. Law No. 21 Of 2008 is a manifestation of strength and great struggle in the realization of independent Islamic banking law, especially on sharia principles and contracts and the existence of the National Sharia Board-Indonesian Ulema Council, which regulates all matters concerning sharia in financial institutions that has been more vital as it is stipulated in the sharia banking law.

To conclude, the development of sharia banking law in Indonesia is dynamic and gradual, following the political conditions and developing sharia economic trends. It started from banking law with the "profit-sharing principle", then turned into "sharia principles", and eventually became a part of the "halal industry" with its legal instruments shifting from statutory regulations to regulations that are "the center of executive power" or regulations based on government power as its legal center.

References

al-Zuhayli, Wahbah. *Al-Fiqh Islâmî Wa Adillatuh*. Damaskus: Dâr al-Fikr, 1405H/1985 M. Vol. IV.

Anshori, Abdul Ghofur. *Pembentukan Bank Syariah Melalui Akuisisi dan Konversi*. Yogyakarta: UII Press, 2010.

Antonio, M. Syafi'i. *Interview*, At Tauzia Institute, Bogor, 2017.

Antonio, M. Syafi'i. *Interview*. At CNBC Indonesia TV, CNBC Indonesia, 28 August 2020.

[34] M. Syafi'i Antonio, *interview*, at Kompleks Kampus Tauzia Institute, Bogor, 2017.

Aziz, Jamal Abdul. "Transformasi Akad Bay' al-Murabahah dari Konsep Fikih ke Produk Bank (Analisis Kritis Perspektif Fikih Muamalah)". *Al Manahij* 8, no. 2 (2014): 247–266.

Basir, Cik. *Penyelesaian Sengketa Perbankan Syariah*. Jakarta: Prenada, 2009.

Bustamar, Zainuddin and Aidil Alfin. "Sharia Banking Law Reconstruction in Indonesia". In *Proceedings* of the 1st International Conference on Recent Innovations (ICRI) (2018): 1162-1168.

Dahlan, Ahmad. *Political Economy of Islamic Banking in Indonesia:* The *Political Superstructure of Sharia Banking Policy in 1992-2011. Irvine, USA: Universal Publisher, 2021.*

Djumhana, Muhamad. *Hukum Perbankan di Indonesia*, Bandung: Citra Aditya Bakti, 1993.

Fitriyah, Thoriqoh Nashrullah. "Development of Sharia Banking and Its Contributions for The Development of National Banking". *International Journal of Nusantara Islam* 8, no. 1, (2020): 10-18. DOI :10.15575/ijni.v8i1.853212

Hadiz, Vedi R. "Indonesian Political Islam: Capitalist Development and the Legacies of the Cold War." *Journal of Current Southeast Asian Affairs* 30, no. 1 (2011): 3-38.

Hafizh, Muhammad, Nur Hidayah, Purnama Ramadani Silalahi. "Macroeconomics and Profit Sharing Financing in Islamic Banking in Indonesia: The Third Parties Fund as Intervening", *Jurnal Akuntansi dan Keuangan Islam* 8, no. 2 (2020): 131-147.

Harahap, Sofyan Syafri. *Akuntansi Syari'ah*. Jakarta: Bumi Aksara, 1997.

Hasan, Zubairi. *Undang-undang Perbankan Syariah: Titik Temu Hukum Islam dan Hukum Nasional.* Jakarta: RajaGrafindo Press, 2009.

Hejazziey, Djawahir. "The Establishment of Islamic Banking Law in Political Perspective." *Al-'Adalah* 12, no. 3, (2015): 465-478.

Hendriarto, Prasetyono. "Relevance on Islamic Principle Law with Application at The Field: Review of Islamic Banking Publication in Indonesia." *International Journal of Business, Economics & Management* 4 no. 1, (2021): 47-53.

Hidayatullah, Muhammad Syarif and Rahmat Fadillah, "Economic and Legal Dimensions of Collateral Existence in Modern Mudhārabah Contracts: Understanding the Relationship between Risk Management, National Law, and Contemporary Fiqh," *Al Manahij* 16, no. 2, 2022: 223-238.

Jamal, Mulyono and Muhammad Taqiyuddin. "Tatbîq 'Aqd al-Qard al-Hasan fi al-Tamwîl fi al-Fiqh al-Islamî (Dirâsat Hâlat fi Musaasat Hasanat Libayt al-Mâl al-Tamwîl Bi Ponorogo 2019 M/1440 H). Al-*Muamalat* 2, no. 2 (2019): 205-216.

Kara, Muslimin. *Bank Syariah Di Indonesia: Analisis Kebijakan Pemerintah Indonesia Terhadap Perbankan Syariah*. Yogyakarta: UII Press, 2005.

Liddle, R. William. *Leadership and Culture in Indonesia.* Sidney: Allen and Unwin, 1990.

Liddle, R. William."The Islamic Turn in Indonesia: A Political Explanation". *The Journal of Asian Studies* 55, no. 3, (1996): 613-634.

Malarangeng, Rizal. *Mendobrak Sentralisme Ekonomi Islam: 1986-1992,* terj. Martin Alaeda (Jakarta: Gramedia, 2002.

Otoritas Jara Keuangan (OJK), *Laporan Perkembangan Keuangan Syariah Indonesia 2019.*

Parmudi, Muhammad. *Sejarah dan Doktrin Bank Islam*. Yogyakarta: Kutub, 2005.

Perwaatmadja, Karnaen A. and Muhammad Syafi'i Antonio, *Apa dan Bagaimana Bank Islam*. Yogyakarta: Dana Bhakti Prima Yasa, 1999.

Perwaatmadja, Karnaen A. *Interview*, 14 May 2017. At his house, Perum Moneter CC-3, Petamburan Jakarta.

Pohan, Aulia. *Potret Kebijakan Moneter Indonesia*. Jakarta: RajaGrafindo, 2008.

Qurratu'ain, Ishmah. "President of Indonesia Launches the Country's First Islamic Economy Master Plan", *KNKS*, May 16, 2019.

Rahman, Afzalur. *Banking and Insurance*. London: The Muslim Schools Trust, London, 1979.

Rammal, Hussain G. "Financing Through Musharaka: Principles and Application", *Business Quest*, Online, (2004): 1-7. Available at: http://www.westga.edu/~bquest/2004/musharaka.htm

Rivai, Veithzal dkk. *Bank dan Financial Institution Management*. Jakarta: RajaGrafindo Persada, 2007.

Robison, Richard. *Indonesia-The Rise of Capital*. Sidney: Allen and Unwin, 1996.

Syamlan, Yaser Taufik. "Does Dual Banking System in Indonesia Differentiate Investment Account Requirement?," *TIFBR: Tazkia Islamic Finance and Business Review* 11, no. 1 (2017): 81-106.

Warde, Ibrahim. *Islamic Finance: Keuangan Islam dalam Perekonomian Global*, terj. Andriyadi Ramli. Yogyakarta: Pustaka Pelajar, 2009.

Winters, Jeffrey. *Power in Motion*. New York, Ithaca: Cornell University Press, 1996.

Zubir, Zuhrizal. *Interview*. Tuesday, 5 June 2017. At his house, Jl. A. Yani Purwokerto.

Zuhdi, Ramzi A. "iB (ai-Bi) Melaju dengan Strategi Baru." *publikasi online*, http://www.bi.go.id/id/perbankan/edukasi/Documents/2c9aeef33b82474fa7bf3e57ad2 b0a9aMelaju_Dengan_Strategy_Baru.pdf.

ucial_History_of_Sharia_Banking_Law_Development_in_Indo...

ORIGINALITY REPORT

18%	15%	10%	8%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

MATCH ALL SOURCES (ONLY SELECTED SOURCE PRINTED)

1%

★ jos.unsoed.ac.id

Internet Source

Exclude quotes	Off	Exclude matches	Off
Exclude bibliography	On		