

THE LEGAL POSITION OF THE INDONESIAN ULEMA COUNCIL IN APPLYING THE PRINCIPLES OF ISLAMIC LAW IN ISLAMIC BANKING OPERATIONS IN INDONESIA

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ABSTRACT

National economic development through the establishment of Islamic Banks is an implementation of Article 29 of the 1945 Constitution of the Republic of Indonesia. The presence of Islamic Banking in the national economy is a strategic legal policy of the government because its operations are based on the principles of Islamic law, namely principles derived from the Qur'an, Hadith, Ijma', and Qiyas. However, in its application, these principles of Islamic law are manifested in the form of fatwas issued by the National Sharia Council-Indonesian Ulema Council (DSN-MUI) as a source of positive law for Islamic banking. Therefore, this study raises legal issues related to the legal position of the Indonesian Ulema Council in the application of sharia principles to Islamic Banking operations in Indonesia. This study aims to analyze and determine the legal position of the Indonesian Ulema Council in the application of sharia principles to Islamic Banking in Indonesia. The research method used is normative research, which provides answers to the problems raised with the perspective of what should be done. The results of the study indicate that the DSN-MUI fatwa has a crucial role as a positive legal basis in the operation of Islamic Banking in Indonesia, although formally it is not a statutory regulation. The implications of this study indicate the importance of recognizing and strengthening the role of the DSN-MUI in the national legal system to ensure compliance of Islamic Banking operations with applicable sharia principles.

Keywords: *Legal Position, MUI, Sharia Principles, Islamic Banking*

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INTRODUCTION

The 1945 Constitution of the Republic of Indonesia in paragraph IV, among others, states that "...to establish an Indonesian State Government that protects the entire Indonesian nation and the entire homeland of Indonesia and to advance the general welfare ...", then the national development goal is the creation of a just and prosperous society, based on economic democracy, by developing an economic system that relies on fair market mechanisms that favor the people's economy, equitable, independent, reliable, equitable, and able to compete in the international economic arena (Santoso & Hermanto, 2020). Furthermore, Article 29 of the 1945 Constitution paragraph (1) states that the State is based on God Almighty, ayat (2) states that the State guarantees the freedom of each resident to embrace their respective religions and to worship according to their religion and belief. Therefore, it is necessary to explore the potential and contribution of the community in the national economy by developing an economic system based on Islamic values (Sharia) by adopting sharia principles into the National Legal System (Amsari et al., 2024). Sharia principles are based on the values of justice, benefit, balance, and universality (rahmatan lil 'alamin). The values of Islamic teachings are applied in banking arrangements based on Sharia Principles called Islamic

Banking (Fithriah, 2018). This means that the teachings of Islam in the economic field called Islamic sharia economy including Islamic Banking have become positive law in Indonesia.

Article 29 paragraph (2) of the 1945 Constitution is the basis for each resident to embrace and worship in accordance with their respective religions. This means that the State guarantees the freedom of each resident to embrace their respective religions and to worship according to their religion, including worship in the banking sector (Hendrarto, 2020). Because for a Muslim all his actions and actions must be carried out based on Islamic sharia including in banking transactions.

The enactment of Law No. 21 of 2008 concerning Islamic Banking which has been amended by Law No. 11 of 2020 concerning Job Creation amended by Perpu No. 2 of 2022 concerning Job Creation is a milestone for the Indonesian people (Alkautsar, 2022). This law regulates Islamic banking in which there are regulations regarding sharia compliance issues whose authority lies with the Indonesian Ulema Council (MUI), in its implementation carried out by each banking institution carried out by the Sharia Supervisory Board (DPS) which must be formed in each Islamic Bank and UUS. Furthermore, the fatwa issued by MUI into the Regulation of Bank Indonesia, in the internal of Bank Indonesia formed Islamic banking committee, whose membership consists of representatives from Bank Indonesia, Ministry of Religious Affairs, and elements of society whose composition is balanced.

The rise of Islamic economics in the 1930s in the part of official economic activities such as banking which is characterized in its business activities based on sharia principles. In 1960 when Pakistan established a local bank with the principle of no interest, then followed by Egypt by establishing Mit Ghamir Local Savings. (Manan & Sh, 2017). In the 1970s the Indonesian National Islamic Movement also rose by introducing the Islamic economic system, as an alternative to the capitalist economic system and the socialist economic system. (Karim, 2011). In 1973, Amanah Bank was born in the Philippines and then followed by Islamic banks in the world. The development of Islamic Banks in Indonesia juridically formally began with the birth of Bank Muamalat on November 1, 1991 or 24 Rabi'us Tsani 1412 AH. Bank Muamalat Indonesia was founded on the idea of the Indonesian Ulema Council (MUI), the Indonesian Muslim Scholars Association (ICMI) and Muslim entrepreneurs who later received support from the Government of the Republic of Indonesia. (Darmawan, 2018). PT Bank Muamalat Indonesia (BMI), which according to its deed of establishment, was officially established on November 1, 1991. After that, since May 1, 1992, BMI then officially operated in Indonesia with an initial capital of Rp 106,126,382,000, - Furthermore, Bank Syariah Mandiri (BSM) which was established in 1999.

The large number of schools of thought or schools of law of Indonesian Muslims, so that the fatwa issued by the DSN-MUI can be disputed by other schools of thought. In addition, the development of variations in Islamic banking products and businesses is also a burden for the DSN-MUI in issuing appropriate fatwas, so that Islamic banking can compete in global competition. Therefore, this study aims to analyze and determine the legal position of the Indonesian Ulema Council in the application of Islamic principles to Islamic Banking in Indonesia. So that the benefits of this study are to provide a comprehensive understanding of the role and legal position of the Indonesian Ulema Council (MUI) in the application of Islamic principles to Islamic Banking in Indonesia.

METHOD

The research used in this dissertation is normative legal research. Hadin Muhjadi and Nunuk Nuswardani, stated "normative legal research is research that examines legal issues from the point of view of legal science in depth to the legal norms formed". (Muhjad & Nuswardani, 2012) Piter Mahmud Marzuki states "legal research is a process for finding legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand." (Marzuki, 2013) The legal issue in question is how the legal position of the Indonesian Ulema Council in applying sharia principles in Islamic Banking operations in Indonesia.

This research will reveal the legal veil regarding the legal issue, through a process to find legal norms that should be formed. This research also includes legal research as stated by Bambang Sunggono who quotes Pollack's opinion which states that the main purpose of a research (Legal research) is to test whether a certain normative postulate can or cannot be used to solve a certain legal problem in concreto. (Sunggono, 2006).

RESULTS AND DISCUSSION

One of the goals of national development is the creation of a just and prosperous society, based on economic democracy, by developing an economic system that relies on fair market mechanisms (Parwitasari, 2014). National economic development is directed at an economy that favors the people's economy, equitable, independent, reliable, equitable, and able to compete in the international economic arena. As a follow-up, it is necessary to support all the portensions of the nation to play an active role in global competition in economic acceleration in order to realize national development goals. One form of exploring the potential of Indonesian society in the national economy is the development of an economic system based on Islamic values (Sharia) by adopting its principles into the National Legal System. The presence of the state in applying sharia principles in Indonesian positive law is legal politics. Political Law is a state policy that wants to empower the law. Some say it is not the state's policy but the wisdom of the community, some also say government policy (Tambunan, 2002). This means that a political law will concern the relationship between citizens and the state (Tambunan, 2002). (Tambunan, 2002). So a politics will concern the interests of the people, because politics will be closely related to the state, where the objects and subjects of the state are the people. Soedjono Dirdjosisworo defines legal politics as including activities to seek and select values and apply these values to the law in seeking its goals. (Dirdjosisworo, 2010).. *Hirsch Ballin* cited by A.S.S Tambunan Political Law is to empower or apply the law in this case the law in force in Indonesia. (Tambunan, 2002). In relation to the science of law, political science, and sociology, the science of legislation from a narrower angle and from another angle is broader. Narrower in terms of the object of research (only the formation of State regulations) and broader in terms of the problem, paradigm and method. (Tambunan, 2002).

The definition of sharia principles is explained in Article 1 point 12 of Law No. 21 of 2008 concerning Islamic Banking which states that Sharia Principles are the principles of Islamic law in banking business activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia. Meanwhile, the principles of Islamic law are principles based on the Quran, Hadith, Ijma' and Qias. Therefore, the decision of the National Sharia Council-Majelis Ulama Indonesia is a source of positive law in the field of Islamic economics, including in Islamic banking. However, the enactment of the Fatwa of the

Government Regulation. e). Presidential Regulation. f). Provincial Regional Regulations; and g). Regency/City Regional Regulations

In the hierarchy of laws and regulations, there are no provisions governing the validity of the fatwa of the Indonesian Ulama Council, but in the Law of the Republic of Indonesia Number 21 of 2008 concerning Islamic Banking, it is regulated that Islamic Banking is everything related to Islamic Banks and Islamic Business Units, including institutions, business activities, as well as ways and processes in carrying out their business activities. Meanwhile, Sharia Bank is a Bank that conducts its business activities based on Sharia Principles and according to its type consists of Sharia Commercial Banks and Sharia People's Financing Banks. Sharia Principles are the principles of Islamic law in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia.

The authority of the National Sharia Council of the Indonesian Ulema Council (DSN - MUI) is based on the general explanation of the Islamic banking law above, namely as a law that specifically regulates Islamic banking, this law regulates sharia compliance issues whose authority lies with the Indonesian Ulema Council (MUI) which is represented through the Sharia Supervisory Board (DPS) which must be formed in each Islamic Bank and UUS. To follow up on the implementation of fatwa issued by MUI into Bank Indonesia Regulation, within Bank Indonesia, an Islamic banking committee is formed, whose membership consists of representatives from Bank Indonesia, Ministry of Religious Affairs, and elements of society with balanced composition.

The Financial Services Authority Regulation (POJK) No. 31/Pojk.05/2014 on the Implementation of Sharia Financing Business reorganizes the fatwa of the Indonesian Ulema Council to become the object of supervision of the Financial Services Authority (OJK) and becomes an addition to the application of the fatwa of the Indonesian Ulema Council into positive law. The POJK includes. The implementation of Sharia Financing activities must fulfill the principles of justice ('adl), balance (tawazun), benefit (maslahah), and universalism (alamiyah) and not contain gharar, maysir, usury, zhulm, risywah, and haram objects.

The appointment of the Ulema Council as the party that can and is authorized to issue Fatwas applicable to Islamic Banking can be understood as an effort to provide legal certainty. It cannot be imagined that if the Indonesian Ulema Council is not authorized to issue fatwas in Islamic banking operations in Indonesia, then each pesantre, each Islamic mass organization, each adherent of the mazab can issue their own fatwas. Obviously, this is a productive contract and provides legal uncertainty.

The 1945 Constitution of the Republic of Indonesia provides a strong foundation for the enactment of Islamic banking in Indonesia. Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) states that "*The State is based on the One True God*". Furthermore, in paragraph (2) it is stated that "The State guarantees the freedom of each citizen to embrace their respective religions and worship according to their religions and beliefs.". The definition of guarantee in the sound of Article 29 paragraph (2) of the 1945 Constitution can be interpreted that the State protects in providing facilities for every adherent of religion and belief to worship according to their respective religions and beliefs. (Widiyono & SH, 2024).

Furthermore, based on the main foundation above, positive legal support is formed in Indonesia for the enactment of Islamic banking scattered in various regulations on various sharia businesses, namely in:

1. Law Number 21 of 2008 on Islamic Banking is a new milestone as it is the first Islamic banking law in Indonesia.
2. Law No. 40 of 2007 concerning Limited Liability Companies. In this Limited Liability Company Law, Article 109 regulates the Sharia Supervisory Board. Companies that carry out business activities based on sharia principles in addition to having a Board of Commissioners must have a Sharia Supervisory Board. The Sharia Supervisory Board consists of one or more sharia experts appointed by the GMS on the recommendation of the Indonesian Ulema Council. The Sharia Supervisory Board is tasked with providing advice and suggestions to the Board of Directors and overseeing the Company's activities to comply with sharia principles.
3. Law No. 7 of 1989 as amended by Law No. 3 of 2006 and last amended by Law No. 50 of 2009 concerning Religious Courts. Religious courts have now been authorized to hear sharia economic cases including sharia banking.

This can be seen in article 49 of Law No. 3 of 2006 which states: Religious courts have the duty and authority to examine, decide, and resolve cases at the first instance between people of the Islamic faith in the fields of: a. marriage; b. inheritance; c. wills; d. grants; e. waqf; f. zakat; g. infaq; h. shadaqah; and i. shari'ah economy." Furthermore, the explanation of the article states that dispute resolution is not only limited to the field of shari'ah banking, but also in other shari'ah economic fields. What is meant by "between people who are Muslims" is including people or legal entities that automatically submit themselves voluntarily to Islamic law regarding matters that fall under the authority of the Religious Courts in accordance with the provisions of this Article.

What is meant by "shari'ah economy" is an action or business activity carried out according to the principles of shari'ah, including: a. shari'ah banks; b. shari'ah microfinance institutions. c. shari'ah insurance; d. shari'ah reinsurance; e. shari'ah mutual funds; f. shari'ah bonds and shari'ah medium-term securities; g. shari'ah securities; h. shari'ah financing; i. shari'ah pawnshops; j. shari'ah financial institution pension funds; and k. shari'ah business.

4. Regulation of the Financial Services Authority (OJK) as the supervisor and regulator of Islamic bank operations, as mandated by Article 7 of Law No. 21 of 2011 concerning the Financial Services Authority (OJK), so that this OJK as a regulator issues provisions governing Islamic Banks.
5. Bank Indonesia, which is also authorized to supervise Islamic banking of Islamic Banks and UUS, is related to the obligation of Islamic Banks to maintain a level of health which includes at least regarding capital adequacy, asset quality, liquidity, profitability, solvency, management quality that illustrates capability in financial aspects, compliance with Sharia Principles and Islamic management principles, and other aspects related to the business of Islamic Banks and UUS. Supervision of Islamic Banks by Bank Indonesia is regulated in article 50 of the Islamic Banking Law, namely the guidance and supervision of Islamic Banks and UUS is carried out by Bank Indonesia. So that Bank Indonesia is authorized to enforce these provisions.
6. Regulation of the Supreme Court of the Republic of Indonesia Number: 02 of 2008 concerning the Compilation of Sharia Economic Law.
7. Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance, Article 1 point 2 states:

Sharia insurance is a collection of agreements, consisting of agreements between sharia insurance companies and policyholders and agreements between policyholders, in the context of managing contributions based on sharia principles in order to help and protect each other in a way:

- a. provide compensation to participants or policyholders for losses, damages, costs incurred, lost profits, or legal liability to third parties that participants or policyholders may suffer due to the occurrence of an uncertain event; or
- b. provide payments based on the death of a participant or payments based on the life of a participant with benefits that have been determined and/or based on the results of fund management.

Sharia Principles are the principles of Islamic law in insurance activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia.

8. Financial services authority regulation number 29/pojk.05/2014 concerning the operation of the finance company business (specifically in Sharia multi finance and other financing institutions)
9. Fatwas of the Indonesian Ulema Council.

CONCLUSION

The validity of the fatwa of the Indonesian Ulema Council is formally juridically appointed by the Law, namely: Law No. 21 of 2008 concerning Sharia Banking which states that Sharia Principles are the principles of Islamic law in banking business activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia. Meanwhile, the principles of Islamic law are principles based on the Quran, Hadith, Ijma' and Qias. These fatwas are issued by the National Sharia Council-Majelis Ulama Indonesia (DSN-MUI). Fatwa DSN-MUI as the main source of law in Islamic banking operations in Indonesia has not been included and designated by Law Number 12 of 2011 concerning the Formation of Legislation which was later amended by Law Number 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislation.

REFERENCES

- Alkautsar, B. D. (2022). *Perlindungan Hukum Perseroan Terbatas (PT) Perorangan Berdasarkan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja*. Universitas Islam Sultan Agung Semarang.
- Amsari, S., Harahap, I., & Nawawi, Z. M. (2024). Transformasi Paradigma Pembangunan Ekonomi: Membangun Masa Depan Berkelanjutan melalui Perspektif Ekonomi Syariah. *Ekonomis: Journal of Economics and Business*, 8(1), 729–738.
- Darmawan, B. (2018). *Sejarah Berdirinya Muamalat, Bank Syariah Pertama di Indonesia*. Ekonomi Islam.Com.
- Dirdjosisworo, S. (2010). *Pengantar ilmu hukum*.
- Fithriah, N. (2018). Innovation of Islamic banking industry as an alternative Islamic economic development in Indonesia. *Jurnal Jurisprudence*, 7(2), 132–141.
- Hendrarto, I. C. (2020). *Membangun Ekonomi Berkeadilan Di Desa: Melalui BUMDes Syariah*. Kementerian Desa PDT dan Transmigrasi.
- Karim, A. A. (2011). *Bank Islam: Analisis fiqih dan keuangan*.
- Manan, H. A., & Sh, S. (2017). *Hukum ekonomi syariah: dalam perspektif kewenangan peradilan agama*. Prenada Media.

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- Marzuki, P. M. (2013). *Penelitian hukum*.
- Muhjad, M. H., & Nuswardani, N. (2012). *Penelitian Hukum Indonesia Kontemporer*. Genta Pub.
- Parwitasari, T. A. (2014). *Pengaturan Kepemilikan Saham Pada Bank Umum Nasional Indonesia Oleh Badan Hukum Asing Dalam Kerangka Demokrasi Ekonomi*. UNS (Sebelas Maret University).
- Santoso, R., & Hermanto, A. (2020). ANALISIS YURIDIS POLITIK HUKUM TATA NEGARA (Suatu Kajian Tentang Pancasila dan Kebhinnekaan Sebagai Kekuatan Negara Kesatuan Republik Indonesia). *Nizham: Jurnal Studi Keislaman*, 8(01), 125–135.
- Sunggono, B. (2006). *Metodologi penelitian hukum*.
- Tambunan, A. S. S. (2002). *Politik hukum berdasarkan UUD 1945*. Puporis Publishers.
- Widiyono, H. T., & SH, M. H. (2024). *Aspek Hukum Akad-Akad Pembiayaan Syariah: Dasar Hukum, Teknik Pembuatan Akta, dan Contoh dalam Praktik Perbankan*. PT. RajaGrafindo Persada-Rajawali Pers.