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HISTORY AND DEVELOPMENT OF REGULATIONS ON ISLAMIC BANKING IN THE NATIONAL LEGAL SYSTEM IN INDONESIA

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ABSTRACT

Islamic bank is a bank that runs its business activities based on sharia principles. At the time of the economic crisis of 1998, many conventional banks collapse while Islamic banks are not affected. After the crisis, Islamic banking experienced significant growth in Indonesia. The problem discussed in this research is how is the history and development of regulation on Islamic banking in national legal system in Indonesia? The method used in this research is normative legal research by using approach of legislation. Sources of data used in this research are secondary data, namely data obtained from legislation, scientific journals, and legal literature. Data collection techniques used in this research is literature study. Data analysis technique used in this research is qualitative analysis. The result of this research is that the initiative on establishment of Islamic bank in Indonesia was started since 1990 by the Indonesian Council of Ulama, which was realized with the establishment of Bank Muamalat Indonesia on November 1, 1991. The early development of Islamic banking in the national banking system was responded quickly by the government with the enactment of Law Number 7 of 1992 about Banking, which was later amended by Law Number 10 of 1998. In addition to being a devastation to the national banking system, the economic crisis that occurred in 1998 also became the starting point for the development of Islamic banking in Indonesia. Some conventional banks began to expand their business by establishing Islamic banks. Responding to the development of significant Islamic banking in the national banking system, on July 16, 2008 was enacted Law Number 21 of 2008 about Islamic Banking as the legal basis for Islamic banks in Indonesia.

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INTRODUCTION

As mandated by the Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, the goal of national development is the creation of a just and prosperous society based on economic democracy by developing a just economic system. In order to ensure the ongoing economic democracy, all potentials, initiatives and creativity of the people must be mobilized and developed fully within the limits that are not detrimental to the public interest, so that all potential economic forces can be mobilized into a real economic power for the benefit of increasing prosperity people. In order to achieve these objectives, the implementation of economic development

should pay more attention to harmony and balance of elements of equity development, economic growth, and national stability. One institution that has a strategic role in harmonizing and balancing each element of the development trilogy is banking. Banking is anything about the bank, including institutions, business activities, and ways and processes in carrying out its business activities. In simplest terms, the bank is defined as a financial institution whose business activities are collecting funds from the community and channeling the funds back to the community, as well as providing other bank services (Kasmir, 2012: p.3). According to its business activities, the types of banks can be distinguished from conventional banks and Islamic banks. (Djoni S. Gazali and Rachmadi Usman, 2012: p.151) According to Law Number 21 of 2008, conventional bank is a bank that conducts its business in a conventional way; while Islamic bank is a bank that runs its business activities based on sharia principles.

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The principle of sharia is the principle of Islamic law in banking activities based on fatwas issued by institutions that have authority in the determination of fatwa in the field of sharia, namely the National Sharia Council of the Indonesian Council of Ulama. Based on data from the Financial Services Authority in 2017, currently Islamic commercial banks there are 13 banks, Islamic business units from conventional commercial banks amounted to 21 banks, and Islamic Rural Banking amounted to 102 banks. Based on the above description, then the problem discussed in this research is how is the history and development of regulations on Islamic banking in the national legal system in Indonesia?

MATERIALS AND METHODS

The method used in this research is normative legal research by using approach of legislation. Sources of data used in this research are secondary data, namely data obtained from legislation, scientific journals, and legal literature. Data collection techniques used in this research is literature study. Data analysis technique used in this research is qualitative analysis.

RESULTS AND DISCUSSION

The history of the first Islamic banking was the establishment of an Islamic bank in Egypt, the establishment of the Islamic Rural Bank in Cairo in 1963. The first private Islamic bank was the Dubai Islamic Bank, founded in 1975 by a group of Muslim entrepreneurs from various countries (Abdul Ghofur Anshori, 2009: pp.25-26). The development of Islamic banking internationally began with the Minister of Foreign Affairs held by the Organization of Islamic Conference in Pakistan in December 1970. Egypt proposed the establishment of the International Islamic Bank for Trade and Development and the proposal for the establishment of the Federation of Islamic Banks. After getting discussions from 18 Islamic countries, the proposal was finally accepted. In 1975, the Minister of Finance Meeting convened by the Organization of Islamic Conference in Saudi Arabia approved the establishment of the Islamic Development Bank.(Abdul Ghofur Anshori, 2009: p.26)

According to the Organization of the Islamic Conference, Islamic banks are financial institutions that have laws, rules and procedures as a form of commitment to sharia principles and prohibit receiving and paying interest in the operational process undertaken.(Veithzal Rivai and Arviyan Arifin, 2010: p.31). For a long time Muslims, including Indonesia, have faced various obstacles in the development of their economic potential and development. One of the causes is a chronic suffering of dualism between economics and sharia. This dualism arises as a result of the inability of the people to combine the two disciplines of science, economics and sharia, which should complement each other and refine (Muhammad Syafi'i Antonio, 2002: p.17). In Indonesia, as mandated by Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, the goal of national development is the creation of a just and prosperous society based on economic democracy by developing an economic system based on fair market mechanisms. In order to realize these objectives, the implementation of national economic development is directed to the economy that favors the populist economy, equitable, independent, reliable, fair and able to compete in the international economic arena.

In order to achieve the goals of national development and be able to play an active role in healthy global competition, participation and contribution of all elements of society is needed to explore the potentials of the community to support the process of economic acceleration in the effort to realize the national development goals. One form of excavation potential and the form of community contribution in the national economy is the development of economic systems based on Islamic values (sharia) by lifting its principles into the national legal system. Sharia principles are based on the values of justice, benefit, balance, and universality. These values are applied in a banking arrangement based on sharia principles, which are referred to as Islamic banking. The principle of Islamic banking is part of Islamic teachings related to the economy. One of the principles in Islamic economics is the prohibition of usury in its various forms and uses the system among other principles of profit sharing. With the principle of profit sharing, Islamic banks can create a healthy and fair investment climate because all parties can share, both profit and potential risks arising, thus creating a balanced position between the bank and its customers. In the long term, this will encourage the national economic equity because the profit is not only enjoyed by the owners of capital only, but also by the capital manager. The initiative on the establishment of Islamic banks in Indonesia began in 1990. On 18-20 August 1990, the Indonesian Council of Ulama held "Banking and Banking Interest Workshop" in Bogor, West Java. The results of the workshop were then discussed more deeply at the 4th National Assembly of the Indonesian Council of Ulama in Jakarta on 22-25 August 1990 to form a working team on the establishment of an Islamic bank in Indonesia. The team's work resulted in the founding of Bank Muamalat Indonesia on November 1, 1991, officially operating on May 1, 1992 (Rachmadi Usman, 2012: p.71). Thereafter, several Islamic Rural Banks, Islamic Rural Banks of Berkah Amal Sejahtera, Islamic Rural Banks of Dana Mardhatillah, dan Islamic Rural Banks of Amanah Rabaniah in Bandung, serta Islamic Rural Banks of Hareukat in Aceh.

The early development of Islamic banking in the national banking system was responded quickly by the government. On March 25, 1992, Law Number 7 of 1992 about Banking supersedes Law Number 14 of 1967 about Banking Principles to accommodate the establishment of sharia banks in Indonesia (Andrew Shandy Utama, 2017: p.81). In Article 6 Letter m and Article 13 Letter c of Law Number 7 of 1992 stated that the business of commercial banks and Rural Banks one of them is to provide financing for customers based on the principle of profit sharing in accordance with the provisions stipulated in government regulations. This provision becomes the legal basis for Islamic banking in conducting its business activities. This provision is then reinforced by the enactment of Government Regulation Number 72 of 1992 about Bank Based on Profit Sharing Principle. According to Government Regulation Number 72 of 1992, banks based on profit sharing principles are commercial banks or Rural Banks which conduct business activities solely based on the principle of profit sharing in accordance with the sharia in determining the remuneration that will be given to the public in connection with the utilization of trustworthy public funds to the bank, stipulates the remuneration to be received in connection with the provision of funds to the public in the form of financing, and sets out the remuneration in relation to other business activities commonly performed by the bank on the principle of profit sharing.

The birth of Law Number 10 of 1998 as amendment to Law Number 7 of 1992 reinforced the regulation concerning Islamic banking in Indonesia. In Article 1 of Law Number 10 of 1998 it is stated clearly that commercial banks and Rural Banks are banks conducting conventional and / or sharia-based business activities.

The article also explains the definition of sharia principles, namely the rules of agreement under Islamic law between banks and other parties for the storage of funds and / or financing of business activities, or other activities stated in accordance with sharia, among others financing based on the principle of profit sharing (*mudharabah*), financing based on the principle of capital participation (*musharakah*), the principle of sale and purchase of goods with gain (*murabahah*), and financing of capital goods based on the principle of pure lease without choice (*ijarah*) or with the option of transferring ownership of goods leased from the bank by another party (*ijarah waiqtina*). In giving credit and conducting other business activities, every bank, either conventional or Islamic bank, is obligated to take measures that do not harm the bank and the interests of the customers who entrust their funds to the bank. Given that banks primarily work with funds from communities held on the banks on a trust basis, every bank needs to continue to maintain its health and maintain public trust in it. Indonesians have lost confidence in the banking world during the economic crisis of 1998. The economic crisis is a devastation to the national banking system. The real evidences that resulted were among others the freezing up of 38 banks, including Bank Ciputra, Bank Ganesha, Bank Pesona, Bank Alfa, Bank Aspac, and so forth. Furthermore, there are 7 banks that are taken over by the government, namely Bank RSI, Bank Putera Sukapura, Bank POS, Bank Artha Pratama, Bank Nusa Nasional, Bank Jaya, and Bank IFI. In addition, there are also 4 government banks, namely Bank Dagang, Bank Exim, Bank Bumi Daya, and Bapindo which merged into Bank Mandiri.

However, it turns out that Islamic banks are not affected by the economic crisis that occurred in 1998. At the time of economic crisis took place, in fact Bank Muamalat Indonesia which is the only Islamic banks in Indonesia are included in the category of a healthy bank because it has Capital Adequacy Ratio with category "A". That is, Islamic banks can show a relatively better performance compared with conventional banks (Abdul Ghofur Anshori, 2009: pp.4-5). In addition to the destruction of the national banking system, the economic crisis that occurred in 1998 also became the starting point of the development of Islamic banking in Indonesia. This is because Islamic banks are not affected by the economic crisis. Several conventional banks, both state-owned and private, then expanded their business by establishing Islamic banks, such as Bank Syariah Mandiri established in 1999, Bank Permata Syariah established in 2002, Bank Mega Syariah established in 2004, Bank Rakyat Indonesia (BRI) Syariah which was established in 2008, Bank Syariah Bukopin established in 2008, and so forth. (Andrew Shandy Utama, 2017: p.81). Responding to the development of significant Islamic banking in the national banking system, on July 16, 2008, Law Number 21 of 2008 about Islamic Banking was established as the legal basis for Islamic banks in Indonesia (Andrew Shandy Utama, 2017: p.81). The Law on Islamic Banking Number 21 of 2008 in juridical philosophy has fulfilled the demands of justice and legal certainty of justice seekers, especially concerning the business transactions of sharia economy (M. Ali Mansyur,

2011: p.74). The development of Islamic banking in Indonesia has been rapid and fast. One of the unique and exciting periods of a long series of Islamic banking developments in Indonesia is the period of maturation of early concepts and stubs that took place in the decade of the 90's. At that time there was still one Islamic bank, namely Bank Muamalat Indonesia. With its status as the first Islamic bank in Indonesia, Bank Muamalat Indonesia became a pilot project and trademark awakening as well as the implementation of a large-scale thinking of Islamic economic law in Indonesia. Decade where Bank Muamalat Indonesia stands to be a moment that has been eagerly awaited by the people of Indonesia since tens or even hundreds of years ago. This period is very strategic because it becomes a stepping stone to the success or failure of Islamic banking in the next era. The long stretch of dynamics of Islamic banking in Indonesia cannot be separated from the existence of Bank Muamalat Indonesia (Mohamad Nur Yasin, 2010: p.10).

Based on data from the Financial Services Authority in 2017, currently Islamic commercial banks there are 13 banks, Islamic business units from conventional commercial banks amounted to 21 banks, and Islamic Rural Banking amounted to 102 banks. This is evidence of the existence and development of significant Islamic banking in the national banking system. That is, Islamic banks are financial institutions that can grow rapidly on the basis of the belief of the majority of Indonesian Muslims are Muslims. In addition to having legal liability to the prevailing laws and regulations, Islamic banks also have a moral responsibility to society and the responsibility of worship to God. Islamic banks have a moral responsibility to the community means that people consider employees who work in Islamic banks have good morals in accordance with Islamic teachings, such as honest in the work. Islamic banks have the responsibility of worship to Allah means that Islamic banks have indirectly preached Islamic shari'ah in the field of muamalah, for example, encourage people to leave usury.

The development of Islamic banking in Indonesia can not be separated from the political situation that encompasses its presence and the juridical issues and problems concerning the contact between Islamic law with national law and western law. The development of sharia is influenced by the thinking and efforts of Islamic scholars and economists, both individually and institutionally, as well as the development and advancement of Islamic banking in the international world (Sofyan Mei Utama, 2012: p.565). The development of Islamic banks in Indonesia today is running very rapidly. Nevertheless, the number of banks, the number of bank offices, and total assets of Islamic banks is still very small when compared with conventional banks (Dian Ediana Rae, 2008: p.7).

Conclusion

The initiative on the establishment of Islamic banks in Indonesia began in 1990 by the Indonesian Council of Ulama, which was realized by the establishment of Bank Muamalat Indonesia on November 1, 1991. The early development of Islamic banking in the national banking system was responded quickly by the government with the enactment of Law Number 7 of 1992 about Banking, which was later amended by Law Number 10 of 1998. In addition to the destruction of the national banking system, the economic crisis that occurred in 1998 also became the starting point of the development of Islamic banking in Indonesia. Some conventional banks began to expand their business by establishing Islamic banks. Responding to the development of significant Islamic banking

in the national banking system, on July 16, 2008 was passed Law Number 21 of 2008 about Islamic Banking as the legal basis for Islamic banks in Indonesia.

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