



System of Islamic Banking Regulation in Indonesia and Malaysia

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Submitted	:	2024-11-21	Accepted	:	2024-12-20
Revision	:	2024-11-30	Publish	:	2024-12-31

Abstract: *This study discusses the Islamic banking regulation system in Indonesia and Malaysia, two countries with the largest Muslim populations that play an important role in the development of the global Islamic finance sector. The main objective of this research is to compare and analyze the differences and similarities in Islamic banking regulations between the two countries, which have different legal backgrounds and financial systems. This study examines the legal foundations regulating Islamic banking in Indonesia and Malaysia, as well as how these regulations are implemented to support the sustainable development of the Islamic banking industry. Furthermore, this research also explores the challenges faced by both countries in ensuring compliance with Sharia principles, as well as efforts to create an inclusive and stable system in the banking sector. The novelty of this research lies in its in-depth understanding of the contextual differences in the implementation of Islamic banking regulations, as well as the comparison of policy and strategy aspects applied in Indonesia and Malaysia, providing a new contribution to the study of Islamic banking regulation in Southeast Asia.*

Keywords: *system, islamic banking, regulation, Indonesia, Malaysia*

Introduction

Elements of Aqidah, Sharia, and Morals are the three main aspects of Islam. Aqidah is another name for faith. Sharia is an example of Islamic balance, as well as morality is an example of the splendour of Islam.¹ When these three elements are carried out on us, we will surely experience happiness and will always be grateful to Allah SWT for the blessings He has given us. His servants who follow orders and keep away from prohibited activities. The three sections above may be sections that our sharia will practice quite often and apply in our daily routine, for example, trading, making exchanges, the liability of creditors and others. Islamic banking is also known as interest-free banking. It has a literal meaning, that is, a bank whose operations must adhere to sharia elements, especially those whose working procedures are dominated by provisions in the Qur'an and sources of Islamic law. Furthermore, banks following sharia principles are banks whose operations are based on sharia principles. Especially those related to Islamic muamalah procedures or transactions avoided from practices feared to contain usury. Based on profit sharing and financing.

Obligations and obstacles recorded in the Al-Qur'an and Hadith will automatically be followed by sharia banking that the As-Sunnah and Al-Qur'an guide. Sharia banking, also known as Islamic banking, is an alternative to the Islamic banking system that prioritizes thoroughness in deliberations, investment banking that has morality, prioritizes elements of solidarity and kinship in the process, and stays away from speculative nature (maysir) in financial transactions. It also provides an alternative method for Islamic banks to benefit one another, especially for the bank and the public. Islamic banking is the path of choice so that all levels of Indonesian society can enjoy a solid and reliable financial framework no matter what happens. Provide various positive influences and accommodations for Islamic banks through additional changes in financial quality. The principles of justice, brotherhood and togetherness are all based on the understanding or meaning of humanity. This understanding or meaning is built to rebuild humanity after being hampered by a system that encourages greed. Al-Qur'an and As-Sunnah are the primary legal basis for sharia banking. Allah SWT

¹ Adiwarman A.Karim, *Bank Islam Analisis Fiqih Dan Keuangan* (Jakarta: PT Raja Grafindo Persada, 2014).

says at 130, namely ²: "O you who believe, try not to eat increased usury and fear Allah so that you can find true success".Q.S. Al Imran (3) : (130).

Banks function as financial intermediaries between users of capital and owners of capital. Islamic banking functions as a financial intermediary, particularly in Indonesia.³ The bank also operates several businesses and is growing by providing various products, including services based on sharia principles to raise funds and channel funds. As a result, banks are called community trust organizations and must consistently maintain banking when expanding their operations.⁴

Sharia Arabic means the road or line that must be crossed. Rules and laws that have been outlined and taught by Allah SWT, or have outlined the main points, are mainly forced on Muslims to obey them. Islamic teachings are also called sharia by Muslims to unite them with Allah SWT and between them and humanity. In terms of terminology, sharia is rules and laws.⁵ Therefore, in essence, sharia is the substance of rules and laws that have strong ties to the prohibitions and orders of Muslims. Therefore, it is reasonable to conclude that sharia compliance regulation is an aspect of sharia banking law.⁶ Our society's legal and economic conditions must be considered when establishing Islamic banking in Indonesia. In Indonesia, Islamic banking must operate following economic systems or policies related to banking, and Indonesian law must be adapted to existing laws in Indonesia. Affect the sovereign territory of Indonesia. As a result, the growth of Islamic banking in Indonesia is inseparable from government support, one of which is reflected in the banking policies issued by the government. Similar to Malaysia, Islamic banks in Malaysia are required to comply with the regulations set by the supervision.

According to Soetandyo Wignyosoebroto,⁷ research means a search, namely tracing an answer to a problem, which can also be called the method that should be taken to provide answers to the community. Methodologically, systematically, and consistently scientific research activities related to the analysis and construction of

² (Kemenag RI, 2019, p. 66)

³ Bank Indonesia, *Strategi Peningkatan Perbankan Syariah Di Indonesia* (Jakarta, n.d.).

⁴ Muhammad, *Audit & Pengawasan Syariah Pada Bank Syariah* (Yogyakarta: UII Press, 2011).

⁵ Al-Islam Syaikh Mahmud Syalthut, *Aqidah Wal Syariah*, 1st ed., 1959.

⁶ Abdullah M. Noman, "Objectives of Monetary Advancements For Islamic Banks," 2003.

⁷ Soetandyo Wignyosoebroto, *Regulasi Pandangan Dunia, Teknik Dan Isu* (Jakarta: Elsam dan Huma, 2002).

law.⁸ This paper employs qualitative research. In banking law, this method is used in writing to study the Islamic banking system in Malaysia and Indonesia. The strategy used by researchers is a conceptual approach, especially strategies with principles and theories contained in the rule of law. This approach departs from knowledge of legal issues to understand Indonesian banking law, which will later be used as a benchmark for the Indonesian nation, especially in understanding and interpreting the Islamic banking system in Indonesia and Malaysia in banking law.⁹

This comparison is deemed necessary and significant to provide objectivity in the study of banking law in Indonesia and to identify legal cases that have the potential to be utilized by Indonesian sharia banking law for improvement or development. Checks that are validly used are Sharia Banking in Malaysia. It can be used as a comparison because of the dissimilarity of existing legal and financial management. Malaysian banking law is conceptually similar to Indonesian banking law. However, it is very different from Indonesian banking law, which influences policy in terms of regulations and legislation. Moreover, the money system is enforced. Implementing this strategy is expected to provide an objective explanation of all the issues raised in this paper. We are thinking about valid strategy studies, especially in the sharia banking legal system.

Position of Islamic Banking

Without bank income (Premium Free Bank) and usury (Interest-Free Bank) are terms used to describe Islamic banking entities other than the term Islamic bank. Islamic banking is a bank that must adhere to the principles of Islamic law in its operations. Islamic Financial, *lariba* bank, or Sharia bank. In Indonesia, the term “sharia bank” or, more specifically, a bank based on sharia principles” is used to refer to sharia banking.¹⁰

The development of a country is very dependent on its banking system. Reflected in the legal definition of banking, which is a business that collects money from the public through savings and other ways to improve people's living standards.¹¹ Other authors call Islamic banks universal banks, that is, those involved simultaneously in

⁸ Soerjono Soekanto, *Prolog Eksplorasi Sah, Perguruan Tinggi Indonesia* (Jakarta, 2012).

⁹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010).

¹⁰ “Islamic Banking,” Wordpress.com, n.d.

¹¹ Perpres RI, “Pasal 1 Angka (3) Dan (4) UU No. 10 Tahun 1998 Tentang Perbankan” (1998).

investment and commercial banking.¹² The characteristics of Islamic banking, in particular, are different from conventional banking:¹³

1. The costs mentioned above can only be set up to the time specified in the agreement (consensus) in a contractual bond. This fee will be mutually agreed upon in nominal terms when the contract agreement is realized or implemented. The amount is not fixed and can be done with reasonable freedom of bidding.
2. Islamic banking does not use calculations based on specific benefits which will be determined in advance in the contract (contract) to finance a project. In essence, only Allah knows the nature of a project's loss.
3. Therefore, deposits are considered community contributions by depositors in the form of savings. Meanwhile, the bank views it as a deposit in the form of a deposit because it is responsible for donating funds for several projects funded by sharia-based banks. Usually, depositors are not promised a sure reward.
4. Trust function is the obligation to guard and be responsible for the security of the funds stored and ready at any time if the owner takes the funds. This function is a particular function of using Islamic institutions to bridge the gap between those who have funds and those who need capital.

In 1963, Dr Abdul Hamid An-Naggar set up a local interest-free savings bank located on the Nile banks in the Mit Ghamir area. However, a few years later, it was closed. began Islamic banking.¹⁴

Following sharia principles, Islamic banking mandates that Islamic banks provide social services through qard funds (benevolent loans) or zakat funds and donations. The idea of Islamic banking also stipulates that Islamic banks should play a significant role in the growth of their human capital and their contribution to environmental development and protection. In addition, the function that distinguishes Islamic banks from conventional banks is this one. While this is usually done by people concerned with social issues in conventional banks, social functions in Islamic banks cannot be separated from other functions. Islamic banks must hold orders to receive zakat, infaq and sadaqah or qardhul hasan and hand them over to those entitled to receive them.

¹² Sutan Remy Sjahdeini, *Islamic Financial Items and Legit Perspectives* (Jakarta: Kencana Prenadamedia Gathering, 2014).

¹³ Bustari Muchtar and Et Al, *Bank Dan Lembaga Keuangan Lain* (Jakarta: Kencana, 2016).

¹⁴ Andri Soemitran, *Bank Dan Lembaga Keuangan Syariah*, 2nd ed. (Jakarta: Dating, 2010).

In addition to adhering to the Sharia Banking Law, Sharia Banks and UUS must also comply with other laws and regulations related to implementing the social functions of Islamic Banks and UUS.

Malaysia's particular discussion on Islamic countries discusses the concept of establishing a global Islamic bank. The conference decided on several things: First, every profit must be subject to economic law, namely profit and loss; otherwise, it is included in usury, and even that usury at all or much is unlawful. as soon as possible. Third, while waiting to establish Islamic Banks, banks that apply conventional systems are allowed to operate. Moreover, this only applies if you are in a state of urgency or emergency.¹⁵ There is a tragedy of equality and similarity that should be considered in the progress of human culture. Justice in Islamic banking prohibits elements of maysir (elements of speculation or coincidence), gharar (unclear), haram and usury. It also gives something to those entitled and treats something according to their position.¹⁶

The development of a country is very dependent on its banking system. The success or failure of a nation's populist economic development is directly correlated with the role of banks as intermediary financial institutions. Some people think that conventional banks cannot overcome people's economic problems. Law Number 21 of 2008 concerning Islamic Banking was born because the provisions of Islamic Banking in Law Number 7 of 1992, as amended by Law Number 10 of 1998, were not yet specific and did not accommodate the operational characteristics of Islamic Banking. Islamic banking. In addition, based on the principles of economic democracy and prudence, justice, integration, equity, and convenience must be included. In contrast to the Banking Law, Provisions regarding this principle place more emphasis on the phrase "based on sharia principles." Expected to address Indonesia's economic difficulties and align with Islamic banking principles.

Characteristics of Islamic Banking in Banking Law

In the context of encouraging economic expansion and equity and increasing national stability for social improvement, Indonesian banking aims to support long-term

¹⁵ Warkum Soemitro, *Islamic Financial Standards and Companies Connected with BMI and Takaful in Indonesia*, 3rd ed. (Jakarta: Rajawali Press, 2002).

¹⁶ Muhammad Ayub, *Understanding Islamic Finance* (Jakarta: PT Gramedia Pustaka Utama, 2009).

national development.¹⁷ Thus, banks are known as the chart of public trust. Banks are a body of people's beliefs that are always obliged to control the needs of the community and the needs of the bank itself while improving its work. Likewise, sharia banking conducted in Indonesia must comply with the provisions of the Pancasila and the 1945 Constitution that apply in Indonesia. Support for national development in the context of increasing justice is the goal of sharia banking, unity and equity of people's financial resources. There must be a distinction between Islamic financial institutions and conventional management. The issue of usury is one of the most critical aspects in the discourse and practice of Islamic banking, so the dominant position of usury is a concern. Especially when equated with Islamic economics, it is not a complete representation of Islamic economics. The advantages and disadvantages of bank interest laws have long been debated. You can buy and sell goods with money. The result of the buying and selling process is debt. Conversely, interest is money. Borrowing money with interest is not a high-paying job.¹⁸

Similar equality will be challenged. However, it is also possible that most managers in Islamic financial institutions come from traditional banking backgrounds. Some find it difficult to leave the customary financial practices implanted. In a meaningful sense, our general public is used to supporting what is provided by conventional banks due to the existence of conventional banks in Indonesia since the establishment of De Javasche Bank in 1872¹⁹. As long as these provisions follow the aims and objectives, the bank sharia can follow Indonesian banking regulations. There must be consistency between the concept of Islamic banking products and conventional banking products so that there is a field level between existing Islamic banking operations and conventional banking. Despite similarities in product understanding, this must be understood. However, the operationalization of principle orientation must be understood differently because of the differences.²⁰

In simple terms, banking law is the law that regulates everything related to banks, including institutions, business operations, and methods or procedures for

¹⁷ Malayu S.P Hasibuan, *Dasar-Dasar Perbankan* (Jakarta: PT Bumi Aksara, 2007).

¹⁸ Murtadla Muthahari, *Proteksi Dan Riba* (Bandung: Pustaka Hidayah, 1995).

¹⁹ Muhammad, *Review Dan Pengawasan Syariah Di Bank Syariah* (Yogyakarta: UII Press, 2011).

²⁰ Warkum Sumitro, "Standar Perbankan Syariah Dan Yayasan Terkait BMI Dan Takaful Di Indonesia" (Jakarta: PT Raja Grafindo Persada, 2002).

doing business. (Usman, 2010, p. 1) Groups of rules governing the laws regarding various activities of a bank's financial chart, which includes all of its components, both in essence and in existence, is known as banking law. Furthermore, its relationship with various daily problems.²¹

Legal provisions specifically apply to sharia banking are Law No. 21 of 2008 concerning sharia banking. The principles of Islamic sharia have been in force throughout history and can be found worldwide. Islamic law, i.e., God's law would also apply to other planets in other galaxies if humans lived there. However, Islamic law cannot be separated by time, age, and tempo because of the many rules that study it contextually. It even has to be adapted to different morals because these provisions were revealed in such a way in the Qur'an and when it was compiled into Al-Hadith when Rasulullah SAW was still alive. The provisions of the Koran are the only ones that can be changed or adjusted in any way.²²

Licensing, Legal Forms of Banks, and Ownership

Before a bank institution can adequately carry out its operational work, a banking business license is essential and valuable for control.

1. Licensing

Of course, special requirements must be met for banks to carry out their business activities to collect funds from the public and return them to the community in various ways. Strict regulations make banks different from other business actors, especially in withdrawing reserves directly from the public as deposits ²³. An Islamic bank must meet the requirements for a business license, covering organizational and management structure, capital, ownership, expertise in Islamic banking, and business continuity.²⁴

2. Form of Sharia Banking Legal Entity

²¹ Muhammad Djumhana, *Peraturan Perbankan Di Indonesia* (Bandung: PT Bina Aksara, 2000).

²² Sutan Remy Sjahdeini, *Pokok Perbankan Syariah Dan Sudut Pandang Hukum* (Jakarta: Kencana Prenadamedia Gathering, 2014).

²³ Abdul Ghofur Anshori, *Peraturan Perbankan Syariah (Peraturan No. 21 Tahun 2008)* (Bandung: PT Refika Aditama, 2013).

²⁴ (Pasal 5 Angka (2) UU No. 10 Tahun 1998 Tentang Perbankan, 1998)

The legal form of banking regulations is different between rural banks, representative offices and branches, and foreign commercial bank legal entities. A limited liability company is a legal form used by Islamic banks.²⁵

3. Ownership

In Indonesia, banking regulations have imposed strict restrictions on establishing banks. The type of bank that needs to be established determines the requirements for its establishment. Islamic Commercial Banks can only be held or established by Indonesian citizens or legal entities. Local governments and citizens or foreign legal entities cooperate with Indonesian citizens or legal entities.²⁶

Overview of the Islamic Banking System in Indonesia and Malaysia in Banking Law

1. Overview of the Islamic Banking System in Indonesia

a. Financial and Banking Systems

The Indonesian state has started to present a dual monetary and banking framework due to the benefit sharing allowed by Indonesian banks in this country focused ten the Year 1998. At that time, Islamic financial institutions joined conventional financial institutions in existence and operation. Likewise, Islamic financial institutions exist in Malaysia. Indonesia is developing into the financial chart of choice for people who need balanced financial administration with sharia standards and against ordinary monetary foundations in advertised products and services.²⁷

b. Flow of Thought

The Syafi'i's mazhab is adhered to by most Muslims in Indonesia, as is the case with most Muslims in Malaysia. However when it comes to banking, Indonesian 'ulama' apply Islamic principles with caution and a tendency to share ideas and opinions with Middle Eastern ulama'. As a result, the contracts used in Islamic banking transactions are those that most scholars have approved (jumhur Ulama).²⁸

²⁵ (Pasal 7 UU No. 10 Tahun 1998 Tentang Perbankan, 1998)

²⁶ (Pasal 9 Angka (1) UU No. 10 Tahun 1998 Tentang Perbankan, 1998)

²⁷ Ascarya, *Akad Dan Barang Bank Syariah* (Jakarta: PT Raja Grafindo Persada, 2011).

²⁸ Ascarya.

c. Islamic banking development strategy and its products

Indonesia has determined a long-term strategy for expanding Islamic banking and its products. This strategy aligns with sharia law and does not use fraudulent or controversial contracts. Meanwhile, a prudent approach adhering to sharia principles ensures that the products offered are guaranteed pure according to sharia and can be accepted by the general public and the international community.²⁹ The government's commitment to developing sharia banking is based on, among other things: meeting the public's need for sharia banking services, developing sharia banking that has the characteristics of business activities that emphasize ethical investment and preparing a forum for international investors to carry out the same management and financial transactions based on sharia elements, will increase the resilience of the national banking system.

2. Overview of the Islamic Banking System in Malaysia.

Malaysia is home to various tribes and religions. Islam, on the other hand, is the official state religion. As a result, the Malaysian State Government is obliged to support the establishment of Islamic banking institutions in Malaysia, the same as the Islamic religion practised by the majority of its citizens and the state ³⁰. Bank Islam Malaysia Berhad (BIMB) is the first Islamic bank in Malaysia. The Islamic Banking Act is the legal basis for establishing Islamic banks in Malaysia. The rules for overseeing and regulating both conventional and Islamic banking systems have been given to Bank Negara Malaysia, also known as the central bank of Malaysia.

a. Financial and banking system.

A dual financial and banking system has been implemented in Malaysia. People seeking Islamic financial services increasingly turn to Islamic financial institutions as an alternative option. Islamic financial institutions compete with conventional financial institutions in terms of the products and services they provide.

b. School of thought

²⁹ Ascarya.

³⁰ Sutan Remy Sjahdeini, *Item Perbankan Syariah Dan Sudut Hukum* (Jakarta: Kencana Prenadamedia Gathering, 2014).

The Shafi'i school is adhered to by the majority of Muslims in this country. Despite having the same philosophy as the majority of Muslims in Indonesia. As Islamic legal authorities, Ulama has a unique perspective on how Islamic principles are applied in the banking industry. Islamic scholars in Malaysia believe that the flow of funds is equivalent to debt and property (cashflow=debt=property). Since debt and property are the same, debt can be traded anywhere. For example, a receivable valued at \$1,000 can be sold at a discount of \$850. The permissibility of Bai' Al-Inah and Bai' Al-Dayn are two examples of Islamic finance (Islamic finance) products and tools in Malaysia that are being used and influenced by opinions based on this principle.

c. Strategy for the development of Islamic banking and its products in Malaysia

The creation of a comprehensive Islamic banking and financial system that functions together with the conventional banking system is the goal being pursued in the enhancement of Islamic Banking in Malaysia. Malaysia takes a comprehensive and practical approach to improve Islamic Banking and its development. Product. Islamic banking is running well in Malaysia thanks to a comprehensive development strategy because all supporting infrastructure for Islamic banking is available. Islamic banking in Malaysia, on the other hand, is free to be imaginative and innovative to develop financial instruments and products in response to market demand thanks to increasing practical efforts. Islamic Banking Malaysia offers a broader range of Islamic financial inventions and mediums.

Conclusion

Based on this explanation, Islamic banking (also known as Islamic banking) has the main characteristic of being a guideline for the Islamic banking system in Indonesia. This characteristic is comprehensive because Islamic banking can be used by anyone regardless of religion or financial condition. Its products include buying and selling, leasing, profit-sharing financing, Hajj and Umrah savings, demand deposits, time deposits and available savings. It is constructive to have ATMs, mobile banking, internet banking, and connections between Islamic banking to facilitate the acquisition and distribution of infaq, zakat, alms, and endowments of benevolent funds. It is fair if Islamic banking treats something according to its portion and only gives something to

those entitled. The *maslahah* of Islamic banking is beneficial and improves life in all respects. Islamic banking is open to everyone because it is transparent in its operations and carries out contracts honestly. We can see that Islamic banking in Indonesia already has a strong foundation for applying the Islamic economic philosophy from these characteristics. The development of a country is very dependent on its banking system. The success or failure of a nation's populist economic development is directly correlated with the role of banks as intermediary financial institutions. Some people think that conventional banks cannot overcome people's economic problems. Law Number 21 of 2008 concerning Islamic Banking was born because the provisions of Islamic Banking in Law Number 7 of 1992, as amended by Law Number 10 of 1998, have not been specific and do not accommodate the operational characteristics of Islamic Banking. Islamic banking in Indonesia must be utilized and implemented by all Muslims in Indonesia in a complete and intact manner. In order to maintain the credibility and honesty of the Islamic banking industry, it is necessary to conduct business and conduct transactions according to Islamic principles. As a result, Islamic banks must ensure that their offerings comply with Islamic law. the growth of the sharia banking industry must fully support the growth of sharia banking in Indonesia to realize the public's desire for *riba*-free banking.

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