



## Juridical-Philosophical Review of the Position of Sharia Compliance in Islamic Banking in Indonesia

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**Abstract:** *A juridical-philosophical analysis of the position of sharia compliance in Islamic banking in Indonesia aims to explore the understanding and legal foundation underlying the implementation of sharia principles within the Islamic banking industry. In this context, sharia compliance refers to adherence to Islamic legal principles that must be applied by Islamic banks in all aspects of their operations, including financial products and services. Islamic banking in Indonesia has a clear legal foundation, namely Law No. 21 of 2008 on Islamic Banking, which provides the legal basis for the development of Islamic banking in Indonesia. In this regard, sharia compliance becomes a crucial element to ensure that transactions and banking activities do not violate sharia principles such as the prohibition of riba (interest), gharar (uncertainty), and maysir (gambling). Philosophically, the implementation of sharia compliance in Islamic banking is not only related to legal aspects but also to moral and ethical aspects in Islam that prioritize justice, blessings, and social welfare. From this perspective, sharia compliance functions as a foundation to create an economic system that is fair, transparent, and based on adherence to religious values. However, challenges in implementing sharia compliance in Islamic banking in Indonesia still exist, particularly related to differences in interpreting the implementation of sharia principles, as well as the need to continuously align regulations and operational practices to keep pace with global economic developments. Therefore, the position of sharia compliance in Islamic banking in Indonesia is not only a legal obligation but also a commitment to integrate*

*moral principles into the management of the financial sector, which ultimately aims to create the welfare of the community within a just economic system.*

**Keywords:** *juridical-philosophical, position, sharia compliance, islamic banking*

## **Introduction**

The development of Islamic economics in the last ten years has been experiencing rapid progress, particularly in Indonesia. It is undeniable that with the growth of Islamic economics, many financial institutions that apply Islamic principles have emerged. The development of Islamic banks in Indonesia has now become a benchmark for the success of the existence of Islamic economics. Bank Muamalat, as the first Islamic bank and a pioneer for other Islamic banks, has been the first to implement this system amidst the proliferation of conventional banks. The global financial crisis in 1998, the 2008 crisis, and the 2011 crisis in Europe caused the European banking industry to collapse, sinking conventional banks, many of which were liquidated due to the failure of their interest-based systems. In contrast, banks implementing the Islamic banking system were able to remain resilient and survive.<sup>1</sup>

One of the key pillars in the development of Islamic banks is sharia compliance. This pillar is what primarily differentiates Islamic banks from conventional banks. To ensure the application of Islamic principles in banking institutions, sharia supervision is required, which is carried out by the Sharia Supervisory Board (DPS). According to the main findings of a study by Bank Indonesia, some customers who use Islamic banking services tend to stop being customers, among other reasons, due to doubts about the consistency in the implementation of sharia principles.<sup>2</sup> In addition to developments in the banking sector, issues related to the principles of Islamic economics and sharia compliance also color and influence other economic sectors. These issues emerge in terms of values, conceptual dimensions, and have become established in society.<sup>3</sup>

The compliance and alignment of Islamic banks with sharia principles are often questioned by customers. This implicitly indicates that the practice of Islamic banking

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<sup>1</sup>Novia, *Peran Perbankan Syariah dalam Mengimplementasikan Keuangan Inklusif di Indonesia*, Jurnal Etikonomi Vol. 14 No. 2 Oktober 2015, h. 222.

<sup>2</sup>Wulpiah, *Urgensi Penerapan Kepatuhan Syariah Pada Perbankan Syariah (Telaah Konseptual-Analitis)*, Asy-Syar'iyah: Jurnal Ilmu Syariah dan Perbankan Syariah, Vol. 2, No. 1 Tahun 2017, h. 101.

<sup>3</sup>Ahmad Dakhoir, *Hukum Syariah Compliance di Perbankan Syariah*, Yogyakarta: K-Media, 2017, h. 1.

has, so far, paid insufficient attention to sharia principles, which is one of the reasons for the public's lack of trust in Islamic banks. This, in turn, impacts customer loyalty to Islamic banking services. The increase in customer trust can be used as an indicator of the success of the development of Islamic banks and as a prediction of their future success.<sup>4</sup> Therefore, sharia compliance is the fulfillment of sharia principles within the operational system as a reflection of the characteristics of the institution itself, particularly in Islamic banks. From the public's perspective, especially for users of Islamic banking services, sharia compliance is the core of the integrity and credibility of Islamic banks. Considering that the public's belief and trust in Islamic banks are based on and maintained through the implementation of Islamic legal principles, which are adapted from the operational rules of these institutions. This is because non-compliance with sharia principles will negatively impact the image of Islamic banks and could lead to potential customers and users of Islamic banking services abandoning them.<sup>5</sup>

Conceptually, the Islamic financial industry aligns with the demands of modern times and has become a historical obligation to emerge and grow as an alternative and solution-oriented financial system. However, realizing this is not an easy task; there are many challenges and obstacles that the Islamic financial industry must face in the future. Both Islamic banks and non-bank financial institutions are still in the early stages of their evolution. Although its growth rate is rapid, it currently occupies only a small niche in the financial sector of Muslim-majority countries, let alone in the international financial sector. Despite these challenges, the movement towards the Islamization of banking is progressing well.<sup>6</sup>

The progress made over the last quarter of a century has shown encouraging results. By 2015, Islamic banks had experienced rapid growth. Quantitatively, the development of Islamic banks can be seen in the number of banks operating based on

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<sup>4</sup>Aqidah Asri Suwarsi, *Identifikasi Potensi Nasabah Baru Bank Syariah Ditinjau dari Customer Switching Intention*, Jurnal Ekonomi dan Bisnis Islam, Vol. 3, No. 2 Juli-Desember 2017, h. 170.

<sup>5</sup>Wulpiah, *Urgensi Penerapan Kepatuhan Syariah Pada Perbankan Syariah (Telaah Konseptual-Analitis)*, Asy-Syar'iyah: Jurnal Ilmu Syariah dan Perbankan Syariah, Vol. 2, No. 1 Tahun 2017, h. 101-102.

<sup>6</sup>Moh. Indra Bangsawan, *Eksistensi Ekonomi Islam (Studi Tentang Perkembangan Perbankan Syariah di Indonesia)*, Jurnal Law and Justice Vol. 2, No. 1 April 2017, h. 24-25.

Islamic principles and in terms of business volume. By 2015, there were 12 Islamic Commercial Banks (BUS), 22 Islamic Business Units (UUS), and 161 Islamic Rural Banks (BPRS). Overall, the network of branches for Islamic Commercial Banks and Islamic Business Units reached a total of 2,881 offices.<sup>7</sup>

The presence of Law No. 10 of 1998 on banking has opened wide opportunities for the development of Islamic banking. This law not only mentions Islamic banks alongside conventional banks in its articles, but it also specifically outlines the system and products of Islamic banking. Islamic banking products must comply with sharia law, which allows Islamic banking to adapt and align its products. However, this adaptation process also has the potential to impact the purity of sharia-compliant products if not carefully implemented.<sup>8</sup>

The amendment of Law No. 7 of 1992, which became Law No. 10 of 1998 on banking, marked the beginning of the operation of Islamic banking in Indonesia. However, the regulations within this law were still weak, especially due to the limited provisions related to banking activities conducted under Islamic principles. As a result, Bank Indonesia issued regulations in the form of Bank Indonesia Regulations (PBI) and Circular Letters (SEBI). The issuance of Bank Indonesia Regulation (PBI) No. 7/35/PBI/2005 on amendments to Bank Indonesia Regulation No. 6/24/PBI/2004 on Islamic Commercial Banks, and PBI No. 8/3/PBI/2006 on the conversion of conventional banks into Islamic commercial banks, as well as the opening of branches by conventional banks operating under Islamic principles, followed these regulations. In line with the previous regulations, Law No. 21 of 2008 on Islamic Banking was enacted, which provides a clearer and more integrated framework for regulating Islamic banking in Indonesia.<sup>9</sup>

The development of Islamic banking, in terms of products, operationalization, and regulation, must, of course, adhere to the principles of sharia compliance. As a crucial pillar in overseeing and developing Islamic economics, particularly Islamic banking in Indonesia, every activity in Islamic banking must be formulated in

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<sup>7</sup>Moh. Indra Bangsawan, *Eksistensi Ekonomi Islam (Studi Tentang Perkembangan Perbankan Syariah di Indonesia)*, Jurnal Law and Justice Vol. 2, No. 1 April 2017, h. 25.

<sup>8</sup>Abdul Aziz, *Aplikasi Keuangan Syariah Pada Perbankan*, Jurnal Perspektif Ekonomi Darussalam Vol. 2, No. 1 Maret 2016, h. 15-16.

<sup>9</sup>Luqman Nurhisam, *Kepatuhan Syariah (Sharia Compliance) dalam Industri Keuangan Syariah*, Jurnal Hukum IUS QUIA IUSTUM No. 1, Vol. 23 Januari 2016, h. 81-82.

accordance with sharia compliance. Therefore, sharia compliance must have a legal foundation and binding force, both juridically and philosophically, in guiding the development and growth of Islamic banking in a sociological context as it evolves in society.

Research on sharia compliance in Islamic banking in Indonesia from a juridical-philosophical perspective is a normative legal study that is analyzed through a legislative approach (statute approach),<sup>10</sup> philosophical approach<sup>11</sup> and conceptual approach.<sup>12</sup> Normative legal research uses legal materials in the form of regulations, such as laws and government regulations. In this type of research, a researcher always bases their thinking on statutory regulations as the primary legal source for the study. Research on legal materials such as legislation and court decisions cannot be categorized as social research, as it separates law from any form of non-legal analysis. The position of sharia compliance in Islamic banking in Indonesia, from a juridical-philosophical perspective, is divided into several thoughts. In this study, the author elaborates on the norms and doctrines regarding the position of sharia compliance in Indonesian Islamic banking, and then conducts a legal analysis of its position from a juridical-philosophical perspective using normative research. The normative legal materials used as references in this research are divided into three categories: primary, secondary, and tertiary sources. Primary materials include Law No. 18 of 2008 on State Sharia Securities (SBSN), Law No. 21 of 2008 on Islamic Banking, Bank Indonesia Regulations (PBI), Bank Indonesia Circular Letters (SEBI), and Fatwas from the National Sharia Board of the Indonesian Ulema Council (DNS-MUI). In addition to

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<sup>10</sup>Pendekatan perundang-undangan digunakan sebagai dasar awal menganalisis peraturan perundang-undangan dan regulasi yang bersangkutan paut dengan isu hukum, khususnya mengenai *ratio legis* (alasan mengapa ada ketentuan) dan dasar ontologis lahirnya suatu undang-undang. Lihat Hajar M. *Model-Model Pendekatan dalam Penelitian Hukum dan Fiqh*, Yogyakarta: Kalimedia, 2017, h. 70-71.

<sup>11</sup>Pendekatan filsafat hukum berusaha mengungkapkan hakikat hukum dengan menemukan landasan terdalam dari keberadaan hukum sejauh yang mampu dijangkau akal budi manusia. Lihat Fajlurrahman Jurdi, *Logika Hukum*, Jakarta: Kencana, 2017, h. 47. Lihat juga dalam Jefry Tarantang, *Teori dan Aplikasi Pemikiran Kontemporer dalam Pembaruan Hukum Keluarga Islam*, Jurnal Transformatif, Vol. 2, No. 1, April 2018, h. 29.

<sup>12</sup>Penelitian hukum dalam level dogmatik hukum atau penelitian hukum untuk keperluan praktik hukum tidak dapat melepaskan diri dari pendekatan perundang-undangan, dan pendekatan konseptual. Lihat Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2010, h. 94.

these primary sources, secondary and tertiary sources are also used as supporting materials. Secondary sources refer to works or theories that discuss primary sources, such as related regulations and the ideas of experts. Tertiary sources include things that support the primary and secondary sources, such as dictionaries, and so on.

### **The Position of Sharia Compliance in the Practice of Islamic Banking in Indonesia**

One of the legal aspects in Islamic banking is the regulation of sharia compliance. Sharia compliance is an essential part of Islamic banking in terms of both management and operations. This is supported by the requirement for the existence of a Sharia Supervisory Board (DPS) for every sharia-based financial institution. The Sharia Supervisory Board (DPS) is responsible for overseeing the implementation of contracts or agreements to ensure they align with sharia principles.

The development of regulatory frameworks specifically designed to regulate sharia compliance can no longer be avoided. The demand to enhance the regulatory framework for sharia compliance presents a legal challenge for every country that seeks to develop Islamic finance. These countries are challenged to reformulate their legal frameworks to fully accommodate the unique characteristics of Islamic banking. As long as compliance with sharia principles is a necessity for Islamic banking, sharia supervision exists in Indonesia. Therefore, it can be said that sharia supervision by the Sharia Supervisory Board (DPS) is an inseparable part of sharia compliance. In this context, the regulation of sharia supervision certainly includes the existence of a sharia board, which is a key part of the regulatory framework for sharia compliance.<sup>13</sup>

In general, sharia compliance refers to the adherence of Islamic banks to sharia principles. An Islamic bank is a financial institution that operates in accordance with Islamic sharia principles, meaning that the bank conducts its operations based on Islamic regulations, particularly concerning the proper way of conducting transactions (muamalat) in Islam. The core principle of Islamic banking is reflected in the products it offers, which are free from interest and based on profit-sharing principles.<sup>14</sup>

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<sup>13</sup>Luqman Nurhisam, *Kepatuhan Syariah (Sharia Compliance) dalam Industri Keuangan Syariah*, Jurnal Hukum IUS QUIA IUSTUM No. 1, Vol. 23 Januari 2016, h. 78-79.

<sup>14</sup>Wulpiah, *Urgensi Penerapan Kepatuhan Syariah Pada Perbankan Syariah (Telaah Konseptual-Analitis)*, Asy-Syar'iyah: Jurnal Ilmu Syariah dan Perbankan Syariah, Vol. 2, No. 1 Tahun 2017, h. 106-107.

According to Adrian Sutedi, operational sharia compliance is adherence to the Fatwa of the National Sharia Board (DSN), as the DSN Fatwa represents the embodiment of sharia principles and rules that must be followed in Islamic banking. In the operation of Islamic banks, compliance does not only encompass products, but also includes systems, techniques, and the company's identity. Therefore, the company culture, including attire, decoration, and the corporate image, is an important aspect of sharia compliance in Islamic banks. The aim is to create a collective morality and spirituality, which, when combined with the production of goods and services, will support the advancement and growth of an Islamic way of life. This sharia compliance is consistently used as a framework for the system and finances of Islamic banks, in the allocation of resources, management, production, capital market activities, and wealth distribution.<sup>15</sup>

Sharia compliance is part of the implementation of a risk management framework and aims to establish a culture of compliance in managing risks in Islamic banking. Sharia compliance also has international standards established by the Islamic Financial Services Board (IFSB), where sharia compliance is considered a key element of institutional governance (corporate governance).<sup>16</sup> Sharia compliance is a manifestation of the fulfillment of all sharia principles within an institution that embodies characteristics, integrity, and promotes the performance and stability of the Islamic financial services industry. It does so by issuing global standards of prudential principles and guidelines for the industry, which encompass banking, capital markets, and the insurance sector. The standards are developed by the Islamic Financial Services Board (IFSB) following a legal process outlined in the Guidelines and Procedures for the Preparation of Standards/Guidelines, which include the issuance of exposure drafts, workshops, and, if necessary, public hearings. The IFSB also initiates research and coordinates on related industry issues, as well as roundtables, seminars, and conferences for regulators and industry stakeholders, enhancing the credibility of Islamic banks. In this context, the culture of compliance represents the values,

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<sup>15</sup>*Ibid.*, h. 107-108.

<sup>16</sup>IFSB adalah organisasi penetapan standar internasional, diresmikan tanggal 3 November 2002 dan mulai beroperasi pada tanggal 10 Maret 2003.

behaviors, and actions that support the creation of compliance by Islamic banks with all the regulations set by Bank Indonesia.<sup>17</sup>

The fundamental concept of the compliance function is to act as the implementer and manager of compliance risk, coordinating with units within risk management. The compliance function performs supervisory tasks that are preventive in nature and serves as a crucial element in the management and operations of Islamic banks, capital markets, Islamic insurance, Islamic pawnshops, and non-bank Islamic financial institutions (such as sharia financial cooperatives). This is done to ensure that the policies, provisions, systems, and procedures implemented by Islamic financial institutions are in accordance with the regulations and legal provisions set by Bank Indonesia, the Government, Bapepam-LK, the MUI Fatwa, and legal rulings established by the Sharia Supervisory Board (SSB) in international standards.<sup>18</sup>

The authority to oversee sharia compliance lies with the Sharia Supervisory Board (DPS). The Sharia Supervisory Board complements the supervisory duties assigned by the board of commissioners, with sharia compliance becoming increasingly important due to customer demand for innovation and business-oriented approaches in offering new instruments and products, as well as ensuring adherence to Islamic law.<sup>19</sup> The Sharia Supervisory Board (DPS) consists of sharia experts who oversee the activities and operations of financial institutions to ensure compliance with sharia principles. The sharia board bears significant duties and responsibilities and functions as part of the stakeholders, as they protect the rights of investors and entrepreneurs who place their trust and confidence in the financial institution. The existence of the Sharia Supervisory Board is tied to five key corporate governance issues: independence, confidentiality, competence, consistency, and transparency.<sup>20</sup>

Sharia compliance must emphasize the active role of all elements within the compliance organization of the institution, which consists of the Director overseeing

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<sup>17</sup>Bank Indonesia, Peraturan Bank Indonesia Nomor 13/2/PBI/2011 Tentang Pelaksanaan Fungsi Kepatuhan Bank Umum, Tanggal 12 Januari 2011.

<sup>18</sup>Haniah Ilhami, *Pertanggungjawaban Dewan Pengurus Syariah Sebagai Otoritas Pengawas Kepatuhan Syariah Bagi Bank Syariah*, Jurnal Mimbar Hukum, Volume 21 Nomor 3, Oktober 2009, h. 477.

<sup>19</sup>Hennie Van Greuning dan Zamir Iqbal, *Analisis Risiko Perbankan Syariah (Risk Analysis For Islamic Banks)*, Jakarta: Salemba Empat, 2011, h. 177.

<sup>20</sup>Zamir Iqbal dan Abbas Mirakhor, *Pengantar Keuangan Islam: Teori dan Praktek*, terj. Oleh A.K. Anwar, Jakarta: Prenada Media Group, 2008, h. 365.



the compliance function in Islamic banks, the head of the compliance unit, and the compliance working unit responsible for managing compliance risks. Compliance is a shared responsibility carried out by all bank employees, from top to bottom (top-down). Various regulations in laws and Bank Indonesia Regulations (PBI) have been established as the regulatory framework for the development of Islamic banking in Indonesia, such as Law No. 21 of 2008 on Islamic Banking, which more explicitly and integratively governs Islamic banking in Indonesia.<sup>21</sup> The legal regulation of sharia compliance has also been established by Bank Indonesia, through Bank Indonesia Regulation No. 13/2/PBI/2011 concerning the Implementation of the Compliance Function in Commercial Banks, which was established on January 12, 2011, and became effective on September 1, 2011.

The compliance function is responsible for formulating strategies to foster a compliance culture within the bank, creating compliance policies or principles, establishing compliance systems and procedures to develop internal bank guidelines, ensuring that all policies, provisions, systems, procedures, and business activities minimize compliance risks, taking preventive measures to ensure that policies and/or decisions made by the bank's board of directors or foreign bank branch managers comply with Bank Indonesia regulations and applicable laws, and carrying out other tasks related to the compliance function. As the regulator, Bank Indonesia needs to closely monitor various banking-related issues that have arisen in recent times, particularly aspects such as the integrity of bank management, the importance of transparency, and customer education. This is because risk management systems and strict oversight may not always be effective in preventing abuse by bank managers who intentionally exploit weaknesses in the system. Bank Indonesia must strengthen the screening process based on the character, integrity, and competence of bankers.<sup>22</sup>

The effectiveness of Sharia compliance is built through several efforts, namely: Protective, which ensures the Bank's adherence to applicable policies, regulations,

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<sup>21</sup>Agus Triyanta, *Implementasi Kepatuhan Syariah dalam Perbankan Islam (Syariah) (Studi Perbandingan antara Malaysia dan Indonesia)*, Jurnal Hukum No. Edisi Khusus Volume 16, Oktober 2009, h. 217.

<sup>22</sup>Direktorat Perbankan Syariah, *Outlook Perbankan Syariah Indonesia*, 2012, Bank Indonesia, h. 28.

and rules through analysis in the fields of finance, accounting, operations, and other activities in inspections (on-site) and supervision (off-site); Constructive, which maintains the level of resource efficiency and maximizes effectiveness through improvement suggestions and objective information to review all management levels; Consultative, which provides recommendations beneficial to the entire management as an enhancement of policies to achieve organizational goals by identifying potential risks and deviations to improve and increase the efficiency of resource and fund usage, so that deviations can be detected.<sup>23</sup>

### **Juridical-Philosophical Review of the Position of Sharia Compliance in Islamic Banking in Indonesia**

To address the challenge of developing Sharia products, there are four things that banking players can do, namely operating philosophy, organization structure, experience effect, and management style. These play a significant role in the growth of the Sharia market share, including the development and innovation of products, and are part of the research and development function as well as brand experience, which can provide intense insights to the public about Sharia products.<sup>24</sup>

Sharia compliance is part of the good governance system in Sharia banking. The management of Sharia banks cannot be separated from the fulfillment of Sharia principles, especially in the implementation of intermediation functions. In the operational level, the collection and distribution of public funds must adhere to Sharia principles. Sharia compliance is one of the elements in assessing the health level of a Sharia bank. Maintaining the health level of a bank is directly related to maintaining public trust. Therefore, if a bank neglects to maintain its health by not applying Sharia principles, public trust in the bank will be lost. From the perspective of Sharia Banking, Sharia compliance involves enhancing Sharia knowledge and creating innovative products and creative services while remaining compliant with the DSN regulations. The underoptimal role of the Sharia Supervisory Board (DPS) can impact risk management. The type of risk management closely related to the role of DPS is reputational risk, which subsequently impacts displaced commercial risks, such as

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<sup>23</sup>Bank Syariah Mandiri, *Laporan Pelaksanaan Good Corporate Governance*, Tahun 2011, h. 64.

<sup>24</sup>Agus Waluyo, *Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi ke dalam Hukum Positif*, Jurnal Penelitian Sosial IAIN Salatiga, Vol. 10, No. 2, Desember 2016, h. 530.

liquidity risk and other risks. Strengthening the role of DPS can be achieved through various aspects, including clarifying the scientific competence of DPS, defining the maximum term limits for DPS members, and evaluating the role of DPS in Sharia banks by the Indonesian Ulama Council (MUI) and Bank Indonesia.<sup>25</sup>

According to Article 29, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is stated that the state guarantees the freedom of every citizen to embrace their religion and to worship according to their religion and beliefs. The word "guarantee," as stated in paragraph (2) of Article 29 of the 1945 Constitution, is "imperative," meaning that the state is obliged to actively take steps to ensure that every citizen can practice their religion and worship according to their faith. In essence, through the provision of Article 29, paragraph (2) of the 1945 Constitution, the state guarantees the implementation of the fulfillment of all Islamic law for Muslims in various aspects of their life, which can essentially be carried out legally and formally by Muslims, both directly and indirectly, through adoption in the national positive law.<sup>26</sup> Thus, it is clear that the position of Sharia compliance in the practice of Sharia banking is guaranteed both constitutionally and philosophically, as the normative elaboration is manifested in Law No. 21 of 2008 on Sharia Banking.

Based on the legal-political aspects of the emergence of Law No. 21 of 2008 on Sharia Banking, there are still outstanding issues, including the juridical, institutional, and mechanical stages. The juridical stage focuses on how written laws (legal formal) can function and be enforced in society to achieve justice. Of course, the law enforcement aspect, as discussed by Friedman, is influenced by the subsystems of substance, structure, and culture, which will determine the effectiveness of a piece of legislation. Therefore, at this stage, there is a close relationship with the legal principles commonly known as the basic values of law: utility, justice, and legal certainty.<sup>27</sup>

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<sup>25</sup>Wulpiah, *Urgensi Penerapan Kepatuhan Syariah Pada Perbankan Syariah (Telaah Konseptual-Analitis)*, Asy-Syar'iyah: Jurnal Ilmu Syariah dan Perbankan Syariah, Vol. 2, No. 1 Tahun 2017, h. 109-110.

<sup>26</sup>Akhyar Ari Gayo, dkk, *Kedudukan Fatwa MUI dalam Upaya Mendorong Pelaksanaan Ekonomi Syariah*, Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, 2013, h. 80.

<sup>27</sup>M. Ali Mansyur, *Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia*, Jurnal Dinamika Hukum, Vol. 11 Edisi Khusus Februari 2017, h. 71.

The Sharia banking law, when viewed from a juridical aspect, is considered a good law, because a good law is one that has juridical strength and provides legal certainty. In order to achieve legal certainty, the law enforcement elements from Friedman (substance, structure, and culture) emphasize that humans are the main actors in all activities aimed at realizing justice. A legal approach that is empirically positivistic is not enough to achieve justice; instead, the process of interaction between humans and their environment, grounded in culture, becomes more meaningful. In this context, the understanding of law through the internal experiences of the legal subjects and the law itself constitutes their meaning. Based on understanding (*verstehen*) and interpretation, we can grasp the meanings and values behind their behaviors. Therefore, the study used is no longer solely juridical-dogmatic but adopts a socio-legal-anthropological approach, oriented toward the functionalization of law.<sup>28</sup>

Law No. 21 of 2008 on Sharia Banking (UUPS) exists as a response to the growing demand, particularly in the philosophical aspect, to meet the increasing legal needs of society (especially Muslims) in fulfilling their awareness of practicing Islamic law as a consequence of their beliefs. This means that legal pluralism must be accepted as a reality (Real of Entity) of diversity (legal plurality) in community life, as expressed by Cottrell (1995): "We should think of law as a phenomenon pluralistically, as a regulation of many kinds existing in a variety of relationships, some of them quite tenuous, with the primary legal institutions of the centralized state."<sup>29</sup>

The existence of Sharia banks is essentially aimed at meeting the needs of Muslim society for the comprehensive implementation of Islamic teachings, including in their financial activities. The trust and belief of the community in Sharia banks are primarily based on the implementation of Islamic legal principles adopted in the institution's operational regulations, thus requiring compliance with Sharia principles. Without adherence to these principles, it could influence the public's decision to utilize the services provided by Sharia banks. From this perspective, Sharia compliance is at the core of the integrity and credibility of Sharia banks.

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<sup>28</sup>Sajipto Rahardjo, 2007, *Menggagas Hukum Progresif*, Semarang: Pustaka Pelajar, h. 10. Lihat juga dalam M. Ali Mansyur, *Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia*, Jurnal Dinamika Hukum, Vol. 11 Edisi Khusus Februari 2017, h. 70.

<sup>29</sup>M. Ali Mansyur, *Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia*, Jurnal Dinamika Hukum, Vol. 11, Edisi Khusus Februari 2017, h. 69.

Sharia compliance is a logical consequence of using guidelines that are legally formalized as agreed-upon standards and become an essential requirement for Sharia banks in carrying out their operations. In efforts to fulfill Sharia values, Sharia banks must use fatwas from the Sharia National Board (DSN) and Bank Indonesia Regulations (PBI) as tools to measure the compliance with Sharia principles, both in products, transactions, and operations. Operationally, Sharia banks must adhere to DSN fatwas as a manifestation of Sharia principles and regulations. According to Sutedi, Sharia compliance in the operations of a Sharia bank not only covers products but also includes systems, techniques, and company identity. Therefore, corporate culture is one of the key aspects of Sharia compliance in Sharia banks. This aims to create a collective morality and spirituality that, when combined with the production of goods and services, will support the advancement and growth of Sharia banks.

The compliance of Sharia banks with legal regulations is considered to be quite effective. According to Bank Indonesia, the compliance of Sharia banks with the regulations can be seen in their annual reports. As an auditor, Bank Indonesia has disclosed that Sharia banks do not violate regulations in the distribution of financing funds. This compliance is also reflected in the composition of supporting committees of the Board of Commissioners, such as the Audit Committee, Risk Monitoring Committee, and Remuneration and Nomination Committee, including their functions, work mechanisms, meetings, and performance reports.<sup>30</sup>

## Conclusion

The position of *sharia compliance* in Islamic banking in Indonesia is of significant importance both juridically and philosophically. Juridically, *sharia compliance* serves as the legal foundation that ensures every transaction and operational activity of Islamic banks adheres to the Islamic principles outlined in the regulations, particularly Law No. 21 of 2008 on Islamic Banking. The application of these principles includes the prohibition of *riba*, *gharar*, and *maysir*, as well as promoting justice and social welfare within the banking system. Philosophically, *sharia*

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<sup>30</sup>Agus Waluyo, *Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi ke dalam Hukum Positif*, Jurnal Penelitian Sosial IAIN Salatiga, Vol. 10, No. 2, Desember 2016, h. 527-528.

*compliance* goes beyond legal adherence; it reflects the moral and ethical values of Islam that emphasize justice, blessings, and the welfare of the community. By integrating these principles, Islamic banking aims to create a financial system that is transparent, just, and socially responsible. However, challenges remain in its implementation, particularly regarding differences in interpreting sharia principles and the need to align regulations and operational practices with global economic developments. Therefore, *sharia compliance* must continue to be strengthened, both in regulatory aspects and banking practices, to ensure the creation of a more just and sustainable financial system. Thus, the position of *sharia compliance* in Islamic banking in Indonesia is not only a legal obligation but also a moral commitment to building a more equitable economic system that benefits the community.

## References

- Abdul Azis, *Aplikasi Keuangan Syariah Pada Perbankan*, Jurnal Perspektif Ekonomi Darussalam Vol. 2, No. 1 Maret 2016.
- Agus Triyanta, *Implementasi Kepatuhan Syariah dalam Perbankan Islam (Syariah) (Studi Perbandingan antara Malaysia dan Indonesia)*, Jurnal Hukum No. Edisi Khusus Volume 16, Oktober 2009.
- Agus Waluyo, *Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi ke dalam Hukum Positif*, Jurnal Penelitian Sosial IAIN Salatiga, Vol. 10, No. 2, Desember 2016.
- Ahmad Dakhoir, *Hukum Syariah Compliance di Perbankan Syariah*, Yogyakarta: K-Media, 2017.
- Akhyar Ari Gayo, dkk, *Kedudukan Fatwa MUI dalam Upaya Mendorong Pelaksanaan Ekonomi Syariah*, Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, 2013.
- Aqidah Asri Suwarsi, *Identifikasi Potensi Nasabah Baru Bank Syariah Ditinjau dari Customer Switching Intention*, Jurnal Ekonomi dan Bisnis Islam, Vol. 3, No. 2 Juli-Desember 2017, h. 170.
- Bank Indonesia, *Peraturan Bank Indonesia Nomor 13/2/PBI/2011 Tentang Pelaksanaan Fungsi Kepatuhan Bank Umum*, Tanggal 12 Januari 2011.
- Bank Syariah Mandiri, *Laporan Pelaksanaan Good Corporate Governance*, Tahun 2011.
- Direktorat Perbankan Syariah, *Outlook Perbankan Syariah Indonesia*, 2012, Bank Indonesia.
- Fajlurrahman Jurdi, *Logika Hukum*, Jakarta: Kencana, 2017.
- Hajar M. *Model-Model Pendekatan dalam Penelitian Hukum dan Fiqh*, Yogyakarta: Kalimedia, 2017.

- Haniah Ilhami, *Pertanggungjawaban Dewan Pengurus Syariah Sebagai Otoritas Pengawas Kepatuhan Syariah Bagi Bank Syariah*, Jurnal Mimbar Hukum, Volume 21 Nomor 3, Oktober 2009.
- Hennie Van Greuning dan Zamir Iqbal, *Analisis Risiko Perbankan Syariah (Risk Analysis For Islamic Banks)*, Jakarta: Salemba Empat, 2011.
- Ibnu Elmi Achmad Slamet Pelu, dan Jefry Tarantang, *Fatwa Majelis Ulama Indonesia Sebagai Solusi Permasalahan Umat Islam di Indonesia*, Al-Manahij: Jurnal Kajian Hukum Islam, Vol. 14 No. 2, Desember 2020, 307-316 DOI: <https://doi.org/10.24090/mnh.v14i2.3927>
- Jefry Tarantang, *Teori dan Aplikasi Pemikiran Kontemporer dalam Pembaruan Hukum Keluarga Islam*, Jurnal Transformatif, Vol. 2, No. 1, April 2018.
- Luqman Nurhisam, *Kepatuhan Syariah (Sharia Compliance) dalam Industri Keuangan Syariah*, Jurnal Hukum IUS QUIA IUSTUM No. 1, Vol. 23 Januari 2016.
- Luqman Nurhisam, *Kepatuhan Syariah (Sharia Compliance) dalam Industri Keuangan Syariah*, Jurnal Hukum IUS QUIA IUSTUM No. 1, Vol. 23 Januari 2016.
- M. Ali Mansyur, *Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia*, Jurnal Dinamika Hukum, Vol. 11 Edisi Khusus Februari 2017.
- M. Ali Mansyur, *Aspek Hukum Perbankan Syariah dan Implementasinya di Indonesia*, Jurnal Dinamika Hukum, Vol. 11 Edisi Khusus Februari 2017.
- Moh. Indra Bangsawan, *Eksistensi Ekonomi Islam (Studi Tentang Perkembangan Perbankan Syariah di Indonesia)*, Jurnal Law and Justice Vol. 2, No. 1 April 2017.
- Novia, *Peran Perbankan Syariah dalam Mengimplementasikan Keuangan Inklusif di Indonesia*, Jurnal Etikonomi Vol. 14 No. 2 Oktober 2015.
- Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2010.
- Sajipto Rahardjo, *Menggagas Hukum Progresif*, Semarang: Pustaka Pelajar, 2007.
- Undang-Undang No. 21 Tahun 2008 tentang Perbankan Syariah.
- Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas.
- Wulpiah, *Urgensi Penerapan Kepatuhan Syariah Pada Perbankan Syariah (Telaah Konseptual-Analitis)*, Asy-Syar'iyah: Jurnal Ilmu Syariah dan Perbankan Syariah, Vol. 2, No. 1 Tahun 2017.
- Zamir Iqbal dan Abbas Mirakhor, *Pengantar Keuangan Islam: Teori dan Praktek*, terj. Oleh A.K. Anwar, Jakarta: Prenada Media Group, 2008.