

# JURIDICAL STUDY OF THE DEVELOPMENT OF ISLAMIC BANKING LAW AND ITS IMPLICATIONS FOR ISLAMIC BANK PRODUCTS

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**Abstract:** This study aims to analyze the development of Islamic banking law and its implications for the development of Islamic banking products. The researcher examined the significance of changes in laws related to Islamic banking for regulatory development and their implications for the development of Islamic banking institutions and products using a juridical-normative approach. This research includes literature research with a normative approach. The data collection technique used in the study is documentation techniques. Meanwhile, the data analysis technique used is induction technique with a qualitative approach. The results of the study show that changes in the law on Islamic banking have had a significant effect on the development of Islamic banking regulations in Indonesia. The implementation of Law Number 21 of 2008 concerning Sharia Banking is expected to answer some of the problems and doubts regarding the direction of development of Islamic banking in the future, including the direction of legal developments governing Islamic banking activities. With the enactment of Islamic banking regulations spread across sharia banking laws and regulations, the compilation of sharia economic law and fatwa dsn-mui as the legal basis for Islamic banking activities in Indonesia, it is expected to have implications for increasing the market share of Islamic banking and service networks and being able to encourage the development of Islamic banking products. The implications of this research are expected to develop knowledge in the field of legal politics and laws and regulations in the fields of economics and business. In addition, it is hoped that it can be useful for the fulfillment of human life celebrations related to aspects of structuring collective life, including developing an appreciation of legal and unlawful politics.

**Keywords:** *Legal Development, Legal Politics, Islamic Banking, Product Development*

**Abstrak:** Penelitian ini, bertujuan untuk menganalisis perkembangan hukum perbankan syariah dan implikasinya terhadap pengembangan produk-produk perbankan syariah. Peneliti mengkaji signifikansi perubahan undang-undang terkait perbankan syariah bagi perkembangan regulasi dan implikasinya terhadap pengembangan institusi dan produk-produk perbankan syariah menggunakan pendekatan yuridis-normatif. Penelitian ini termasuk penelitian kepustakaan dengan pendekatan normatif. Teknik pengumpulan data yang digunakan dalam penelitian adalah teknik dokumentasi. Sedangkan teknik analisis data yang digunakan adalah teknik induksi dengan pendekatan kualitatif. Hasil dari penelitian menunjukkan bahwa perubahan undang-undang tentang perbankan syariah, telah berpengaruh secara signifikan bagi perkembangan regulasi perbankan syariah di Indonesia. Implementasi Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah, diharapkan dapat menjawab sebagian persoalan dan keragu-raguan mengenai arah perkembangan perbankan syariah ke depan, termasuk arah perkembangan hukum yang mengatur kegiatan perbankan syariah. Dengan diberlakukannya regulasi perbankan syariah yang tersebar dalam Peraturan Perundang-undangan Perbankan Syariah, Kompilasi Hukum Ekonomi Syariah dan Fatwa DSN-MUI sebagai landasan hukum bagi kegiatan perbankan syariah di Indonesia, diharapkan dapat berimplikasi terhadap peningkatan pangsa pasar perbankan syariah dan jaringan pelayanan serta mampu mendorong perkembangan produk perbankan syariah. Implikasi penelitian ini, diharapkan dapat mengembangkan pengetahuan di bidang politik hukum dan peraturan perundang-undangan dalam bidang ekonomi dan bisnis. Selain itu, diharapkan dapat berguna bagi pemenuhan hajat hidup manusia berkenaan dengan aspek penataan kehidupan kolektif termasuk mengembangkan apresiasi terhadap politik hukum dan peraturan perundang-undangan, khususnya perbankan syariah.

**Kata Kunci:** Perkembangan Hukum, Politik Hukum, Perbankan Syariah, Pengembangan Produk.

## Introduction

Banks, whose operational principles are based on Islamic sharia, are currently getting serious attention from various parties.<sup>1</sup> Such attention, arose both from among economists and from jurists. From an economic perspective, the presence of Islamic banking is a unique economic phenomenon considering that its presence has stomped the existence of conventional banking which has been considered established.<sup>2</sup> Meanwhile, from the perspective of legal experts, the presence of Islamic banking has become a driver for the birth of new regulations on banking. In fact, the presence of Islamic banking is seen as a unique legal event, because Islamic banking was born when the legal umbrella did not yet exist<sup>3</sup>

At the beginning of the establishment of Islamic banking, in the 1990s, the Government together with the Dpr felt the need to amend Law Number 14 of 1967 concerning Banking.<sup>4</sup> As a result, Law Number 7 of 1992 concerning Banking recognizes the existence of banking using the principle of profit sharing.<sup>5</sup> This law is further detailed in Government Regulation Number 72 of 1992 concerning Banks with the Principle of Profit Sharing. Thus, the profit-sharing principle in laws and regulations is the core of Islamic banking products to avoid the interest system that

was then used as an operational principle in conventional banking.<sup>6</sup> Nevertheless, the profit-sharing principle is only one of the businesses of banks, both commercial banks and people's rural banks. This means that the law has not provided a strong legal basis for the development of Islamic banks because it has not expressly regulated the existence of banks based on sharia principles but profit-sharing banks.<sup>7</sup> The definition of profit-sharing bank intended in Law Number 7 of 1992 concerning Banking does not yet cover the definition of a Sharia bank that has a wider scope than just profit sharing. Similarly, with operational provisions, until 1998 there were no complete operational provisions specifically regulating the business activities of Islamic banks.

In this regard, with Law Number 7 of 1992 which recognizes the existence of banking using this profit-sharing principle, it is considered insufficient, because banking products become very narrow.<sup>8</sup> This means that Islamic banking products only revolve around the principle of profit sharing and are difficult to develop in more varied banking products.<sup>9</sup> As a result, Islamic banking has not made significant progress, as it is difficult to compete with conventional banking, which first has more varied banking

<sup>1</sup> Nofinawati Nofinawati, "Perkembangan Perbankan Syariah Di Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 14, no. 2 (2016): 168.

<sup>2</sup> Setia Budhi Wilardjo, "Peran Dan Perkembangan Bank Syariah," *Value Added* 53, no. 9 (2019): 3, <http://jurnal.unimus.ac.id>.

<sup>3</sup> Tutik Nurul Janah, "Pengaruh Islamic Law System Terhadap Hukum Ekonomi Indonesia," *Al-Ahkam Jurnal Ilmu Syari'ah dan Hukum* 4, no. 2 (2019).

<sup>4</sup> Suryani Suryani, "Sistem Perbankan Islam Di Indonesia: Sejarah Dan Prospek Pengembangan," *Muqtasid: Jurnal Ekonomi dan Perbankan Syariah* 3, no. 1 (2012): 111.

<sup>5</sup> Muhamad Kholid, "Prinsip-Prinsip Hukum Ekonomi Syariah Dalam Undang-Undang Perbankan Syariah," *Asy-Syari'ah* 20, no. 2 (2018): 145–162.

<sup>6</sup> S Margono, "Pelaksanaan Sistem Bagi Hasil Pada Bank Syariah (Tinjauan Umum Pada BTN Syariah Cabang Semarang)" (2008), <http://eprints.undip.ac.id/18228/>.

<sup>7</sup> Titik Triwulan Tutik, "Kedudukan Hukum Perbankan Syariah Dalam Sistem Perbankan Nasional," *Muqtasid: Jurnal Ekonomi dan Perbankan Syariah* 7, no. 1 (2016): 1.

<sup>8</sup> Wery Gusmansyah, *Hukum Perbankan Dan Lembaga Keuangan Syariah*, Researchgate.Net, 2020, [https://www.researchgate.net/profile/Wery-Gusmansyah-2/publication/341706781\\_HUKUM\\_PERBANKAN\\_DAN\\_LEMBAGA\\_KEUANGAN\\_SYARIAH/links/5ecfb59e92851c9c5e645055/HUKUM-PERBANKAN-DAN-LEMBAGA-KEUANGAN-SYARIAH.pdf](https://www.researchgate.net/profile/Wery-Gusmansyah-2/publication/341706781_HUKUM_PERBANKAN_DAN_LEMBAGA_KEUANGAN_SYARIAH/links/5ecfb59e92851c9c5e645055/HUKUM-PERBANKAN-DAN-LEMBAGA-KEUANGAN-SYARIAH.pdf).

<sup>9</sup> Tiara Juliana Jaya, "Branding Perbankan Syariah Melalui Produk-Produk Pendanaan," *Islamic Banking: Jurnal Pemikiran dan Pengembangan Perbankan Syariah* 6, no. 1 (2020): 69–80.

products.<sup>10</sup>

Based on this idea, it was deemed necessary to amend this Law on Banking. At the end of the 20th century, Law Number 10 of 1998 concerning Banking was born, which was the result of amendments to Law Number 7 of 1992. The difference between the two, Law Number 7 of 1992 and Law Number 10 of 1998, if in Law Number 7 of 1992 concerning Sharia Banking is only referred to as a bank with the principle of profit sharing, while in Law Number 10 of 1998 Islamic banking is stated explicitly with Islamic banks. Thus, Law Number 10 of 1998 can become the legal basis of Islamic banks both in terms of institutions and operational foundations. In the law, it is recognized the existence of conventional banks and Islamic banks side by side in the Indonesian banking system or known as the dual banking system.

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Furthermore, conventional commercial banks and people's credit banks can operate based on sharia principles and conventional commercial banks through a certain licensing mechanism from Bank Indonesia can carry out Islamic banking business activities by opening Sharia Branch Offices.<sup>12</sup> To follow up on Law Number 10 of 1998, Bank Indonesia issued provisions regarding institutions and office networks for Sharia Commercial Banks, Conventional Commercial Banks that open Sharia Business Units and Sharia Branch Offices and sharia bpr

provisions. In addition, with Law Number 10 of 1998, Islamic banking opportunities to develop businesses and innovations in banking products have become very broad. Islamic banking products are not only with the principle of profit sharing alone, but can also use other principles besides interest.<sup>13</sup>

The enactment of Law Number 10 of 1998, which amends Law Number 7 of 1992, followed by the issuance of a number of implementing provisions in the form of a Decree of the Board of Directors of Bank Indonesia or Bank Indonesia Regulations, has provided a stronger legal basis and wider opportunities for the development of Islamic banking in Indonesia.<sup>14</sup> The regulation has provided wide opportunities for the development of Islamic banking networks, among others, through permits to open Sharia Branch Offices by conventional banks. In other words, it is possible for Commercial Banks to carry out their business activities conventionally while being able to do so based on Sharia Principles.<sup>15</sup> Thus, it can be seen that after the issuance of the regulation, the Islamic banking system since 1998 has shown a fairly rapid development, which is around 74% growth in assets per year. In fact, in 2003 and 2004, the growth of Islamic banks in Indonesia exceeded 90% from previous years.<sup>16</sup>

In subsequent developments, it turned out that the presence of Law Number 10 of

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<sup>10</sup> Subandi Subandi, "Problem Dan Solusi Pengembangan Perbankan Syariah Kontemporer Di Indonesia," *Al-Tahrir: Jurnal Pemikiran Islam* 12, no. 1 (2012): 1.

<sup>11</sup> Dewi Sukma Kristianti, "Rekonstruksi Dual Banking System: Keberadaan Prinsip-Prinsip Syariah Perbankan Dalam Sistem Hukum Perbankan Nasional," *Veritas et Justitia* 1, no. 2 (2015): 329–355.

<sup>12</sup> Meriyati Meriyati and Agus Hermanto, "Sosialisasi Sejarah Bank Perkreditan Rakyat (BPR) Dan Bank Perkreditan Rakyat Syariah (BPRS) Kepada Alumni Pondok Al-Iman Yang Berada Di Palembang," *AKM: Aksi Kepada Masyarakat* 1, no. 2 (2021): 43–52.

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<sup>13</sup> Moh. Faizal, "Syirkah Prinsip Bagi Hasil Pada Pembiayaan Di Bank Syari'ah," *Islamic Banking: Jurnal Pemikiran dan Pengembangan Perbankan Syariah* 2, no. 2 (2017): 56–79, <https://ejournal.stebisigm.ac.id/index.php/isbank/article/view/32>.

<sup>14</sup> A. Zuliansyah, "Mereview Arah Undang-Undang Perbankan Syariah Di Indonesia," *Muqtasid: Jurnal Ekonomi dan Perbankan Syariah* 2, no. 1 (2011): 91.

<sup>15</sup> Ahmad Buchori et al., "Kajian Kinerja Industri Bprs Di Indonesia," *Buletin Ekonomi Moneter dan Perbankan* 5, no. 4 (2004): 64–123.

<sup>16</sup> Cakti Indra Gunawan and dkk, *Buku Strategi Perbankan Syariah*, 2017.

1998 was also seen as not representative enough to develop Islamic banking, especially in the legal aspect. In this regulation, there are still many aspects that have not been regulated, while its existence requires the formal legality of the legislation. In addition, in Law Number 10 of 1998, the existence of syariah banking is still in the shadow of conventional banks. In other words, the existence of Islamic banking is only as a scndline of banking institutions in Indonesia.<sup>17</sup>

With this in mind, the Islamic banking community, which is supported by other stakeholders, seeks to create a special law on Islamic banking. This business, it turned out to be successful with the birth of Law Number 21 of 2008 concerning Sharia Banking.<sup>18</sup> This regulation not only strengthens the existence of Islamic banking legally, but also has regulated various aspects related to Islamic banking.<sup>19</sup> With this law, it is expected that Islamic banking can develop even more rapidly, which in turn can increase market share, which until now is still hovering below the 6.65% mark as of February 2022 of the bank's total assets nationally.<sup>20</sup>

The description of the process of the birth of the Islamic banking law above,

indicates a gradual transformation of the law. First, Islamic banking was only one type of bank business, which later developed into one type of bank, and in the end it was born into an independent banking institution. This legal transformation process is considered gradual considering that the journey takes about 16 years, namely from Law Number 7 of 1992 until the birth of Law Number 21 of 2008.

From a legal perspective, of course, the birth of Law Number 21 of 2008 implies that there are problems, both politically and sociologically. This is because the birth of the law took a long time after Islamic banking institutions existed. As is understandable, Islamic banking institutions have emerged in 1991, namely with the establishment of Bank Muamalat on November 1, 1991.<sup>21</sup> This bank has been declared as an Islamic banking since the beginning, even though at that time there was no law that approved it.

The next issue is why lawmaking on Islamic banking should be done gradually. First, Islamic banks are only declared as bank businesses with the principle of profit sharing, namely in Law Number 7 of 1992. The next development is declared as Islamic banking, although it is still one type of bank of many types of banks, namely in Law Number 10 of 1998. In 2008 Islamic banking had its own law that regulated it, namely Law Number 21 of 2008.

The transformation of Islamic banking law seems to have gone to its full potential. This can be seen at the beginning that Islamic banks were only stated as one of the principles of banking business, namely the principle of profit sharing. However, then the regulation developed so that it regulates various aspects related to Islamic banking. In fact, in the last regulation of Law Number 21

<sup>17</sup> Choiriyah Choiriyah, "Sosialisasi Perbankan Syariah Ditengah Pandemi Covid-19 Di Masjid Nuruddin Desa Gelebak Dalam Kecamatan Rambutan Kabupaten Banyuasin Palembang," *AKM: Aksi Kepada Masyarakat* 1, no. 2 (2021): 79–90.

<sup>18</sup> Novarela Dori dan Mulia Sari Indah, "PELAPORAN CORPORATE SOCIAL RESPONSIBILITY PERBANKAN SYARIAH DALAM PERSPEKTIF SYARIAH ENTERPRISE THEORY (Studi Kasus Pada Laporan Tahunan PT Bank Syariah Mandiri)," *Jurnal Akuntansi dan Keuangan Islam* 2, no. 2 (2016): 145–160.

<sup>19</sup> Utary Maharany Barus and Yudika Dwi Erwanda, "Peran Otoritas Jasa Keuangan (OJK) Dan Dewan Pengawas Syariah (DPS) Dalam Pengawasan Akad Pembiayaan Pada Perbankan Syariah Yang Mengandung Klausula Eksonerasi," *Naskah Publikasi* (2015): 16.

<sup>20</sup> Ahmad Rifqi Hidayat and Aidha Trisanty, "Analisis Market Share Perbankan Syariah Di Indonesia," *At-Taqqaddum* 12, no. 2 (2020): 183–200.

<sup>21</sup> F Rofi'udin, "Sejarah Perkembangan Bank Muamalat Indonesia Tahun 1991-2002" (2021), [http://digilib.uinsby.ac.id/46364/%0Ahttp://digilib.uinsby.ac.id/46364/2/Fuad Rofi%27udin\\_A9221623.pdf](http://digilib.uinsby.ac.id/46364/%0Ahttp://digilib.uinsby.ac.id/46364/2/Fuad%20Rofi%27udin_A9221623.pdf).



of 2008, the type of sharia bank business that is the basis for the formulation of Islamic bank products has been stated in detail. However, the reality is that the effect of the transformation of Islamic banking law has not been clear on the development of Islamic banking products. The indication is that Islamic banking products from 1991 to 2022 have not shown significant development.

## Research Methods

This research uses a juridical-normative approach. The law in this study, is conceived as a norm, rule, principle or dogma. This research, can be categorized as normative legal research.<sup>22</sup> The research method used in the research is content analysis. This is intended to analyze the content of laws and regulations on Islamic banking and other aspects that accompany it. This research data collection technique, using a literature study, a data collection technique carried out by examining data sourced from laws and regulations, textbooks, scientific journals and relevant research results.<sup>23</sup>

This data collection technique is carried out through several stages (1) document collection in the form of laws and regulations related to Islamic banking and other relevant data sources; (2) classify documents and other data sources according to the formulation of the problem posed; (3) read and review documents and other relevant data sources; and (4) interpret the content of legislation associated with the legal transformation process. Meanwhile, the technical analisis of the data used is a qualitative approach that is carried out through the following three stages:<sup>24</sup> (1) data

reduction, in which the data obtained is reduced, summarized and selected the main things; (2) data display, namely by creating a model, matrix or graph so that the entire data and its detailed parts are clearly mapped; and (3) verification and conclusion, which is the stage of testing the data based on the theoretical framework and formulating conclusions to answer the formulation of the problem posed.

## Literature Review

This research, dotted with the theory of justice proposed by Aristotle. According to Aristotle (384-322 BC), the state must stand on laws that guarantee justice to its citizens.<sup>25</sup> Justice is a condition for the achievement of happiness in life for its citizens and as the basis of justice, it is necessary to teach morality to every human being in order to become a good citizen. In Aristotle's perspective, who rules in a country is not a real human being, but a just mind, whereas the real ruler is only the holder of law and balance. In addition, according to Aristotle, the state should be based on laws formulated on the principle of justice. One of the characteristics of a legally based state is the creation of legal products.

In this regard, in an effort to make a law, it is required to have a juridical basis, both formal juridical and material juridical.<sup>26</sup> Formal juridical basis, meaning the legal basis governing the institutions authorized to form and establish laws and regulations. Meanwhile, what is meant by the material juridical basis is the legal basis that regulates the content material that must be contained

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<sup>22</sup> I. M. Wirarta, *Metodologi Penelitian Sosial Ekonomi*, Andi Offset, 2006.

<sup>23</sup> Muhammad Rijal Fadli, "Memahami Desain Metode Penelitian Kualitatif," *Humanika* 21, no. 1 (2021): 33-54.

<sup>24</sup> Ahmad Rijali, "Analisis Data Kualitatif,"

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*Alhadharah: Jurnal Ilmu Dakwah* 17, no. 33 (2019): 81.

<sup>25</sup> Muchamad Safa'at, "Pemikiran Keadilan (Plato, Aristoteles, John Rawls)," *Institute of Economic Science Kediri*, no. November (2002): 1-13, [http://repository.unp.ac.id/822/1/FARIDAH\\_437\\_96.pdf](http://repository.unp.ac.id/822/1/FARIDAH_437_96.pdf).

<sup>26</sup> Machmud Aziz, "Landasan Formil Dan Materiil Konstitusional Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 6, no. 3 (2009): 585-594.

in a statutory regulation. According to Bagir Manan, the juridical foundation is very important in making legislation because it will show: <sup>27</sup> (1) the necessity of the authority of the legislators; (2) the necessity of conformity of the form or type of legislation with the regulated material; (3) the necessity of following certain ordinances; and (4) the necessity does not conflict with higher-level legislation.

To carry out various provisions in the constitution, among others, the politics of national law are established, namely the will of state power on the direction of the development of national law. The politics of law, undergoing changes along with the changes in society nationally. This, it appears, in the political emphasis of law from the codification and unification of law towards recognition of the plurality of the legal order. Today, legal politics can be reflected in the National Medium-Term Development Plan (RPJMN), especially in the field of legal development. <sup>28</sup>

Legal politics is a legal policy that will or has been implemented nationally by the government in the form of legal development that is instigated by making and updating legal materials, in order to be in accordance with the needs of the community. This is in line with the legal theory of development of Mochtar Kusumaatmadja which states that the laws made must be appropriate and must pay attention to the legal awareness of the community. This, means that the law is not only a tool, but also as a means to build

society. According to Mochtar Kusumaatmadja, in a broad sense the law is not only a whole of the principles and rules that govern human life in society, but also includes institutions and processes that embody the enactment of rules in reality. <sup>29</sup>

In this context, then legal politics includes a process of making and implementing laws that can show the nature and in which direction the law will be built and enforced. Therefore, social change is one of the variables that determine the change of a law. The demands for legal reform and the dynamics of social interaction of various groups of people are considerations in the process of forming laws and regulations. <sup>30</sup>

## Result and Discussion

### Regulatory Changes for the Development of Islamic Banking in Indonesia

The rapid development of Islamic banking in Indonesia requires a set of laws and regulations that can provide legal certainty to Islamic banking practitioners in carrying out their business. <sup>31</sup> According to Rosjidi Ranggawidjaja in Syihabudin (2003), the type of legislation as a legal product that exists at a certain time depends on the legal basis used as a reference. The legal basis of such a state, implemented in the form of the basis of the state and the constitution. In Indonesia itself, the two legal bases are

<sup>27</sup> Vera Bararah Barid M. Jeffri Arlinandes Chandra, Rofi Wahanisa, Ade Kosasih et al., "Tinjauan Yuridis Pembentukan Peraturan Perundang-Undangan Yang Sistematis, Harmonis Dan Terpadu Di Indonesia," *Jurnal Legislasi Indonesia* 19, no. 147 (2022): 1–11, <https://ejurnal.peraturan.go.id/index.php/jli/article/view/790>.

<sup>28</sup> Kementerian Perencanaan Pembangunan Nasional, "Rencana Pembangunan Jangka Menengah Nasional (RPJMN) 2015-2019," *Kementerian Perencanaan Pembangunan Nasional* (2015): 2015–2019.

<sup>29</sup> Lilik Mulyadi, "Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M.," *Jurnal Hukum Indonesia* 8, no. 2 (2009): 1–29, [https://badilum.mahkamahagung.go.id/upload\\_file/img/article/doc/kajian\\_deskriptif\\_analisis\\_teor\\_i\\_hukum\\_pembangunan.pdf](https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/kajian_deskriptif_analisis_teor_i_hukum_pembangunan.pdf).

<sup>30</sup> L Inrastuti and S Polamolo, "Hukum Tata Negara Dan Reformasi Konstitusi Di Indonesia," *Hukum Tata Negara Dan ...* (2019): 1–208, <http://ejurnal.unisri.ac.id/index.php/bkhtn/article/viewFile/3075/2637>.

<sup>31</sup> Agus Marimin and Abdul Haris Romdhoni, "Perkembangan Bank Syariah Di Indonesia," *Jurnal Ilmiah Ekonomi Islam* 1, no. 02 (2017): 75–87.

Pancasila and the 1945 Constitution.<sup>32</sup>

Islamic banking was the first area of Islamic economic activity that developed widely in Indonesia at the beginning of the 20th century.<sup>33</sup> Although this Islamic banking activity, at the beginning, was only carried out by one banking company, namely Bank Muamalat Indonesia which carried out banking activities with sharia principles as a whole, Islamic banking activities were then followed by the establishment of other Sharia Commercial Banks, the establishment of Sharia Business Units by conventional banks, and the establishment of Sharia People's Financing Banks.<sup>34</sup>

The regulation of Islamic banking activities was first regulated in Law Number 7 of 1992 concerning Banking, by referring to the term bank based on the profit sharing principle, without providing a definition of the profit sharing principle. The definition of the profit sharing principle is stated in Government Regulation Number 72 of 1992 concerning Banks Based on the Profit Sharing Principle, Article 2 of the profit sharing principle based on sharia used by banks based on the profit-sharing principle in (a) determining the rewards that will be given to the community in connection with the use of community funds entrusted to them; (b) determine the remuneration to be received in connection with the provision of funds to the public in the form of financing, both for investment and working capital purposes including buying and selling business activities; (c) establish rewards in connection with other business activities

commonly carried out by banks on the principle of profit sharing.

In Law Number 7 of 1992, credit as an activity carried out by conventional banks is defined more broadly than the definition of credit given in Law Number 14 of 1967 concerning Banking Principles.<sup>35</sup> In Article 1 letter c, Law Number 14 of 1967 concerning Banking Principles states that the definition of credit is the provision of money or bills that can be equated with it based on an interbank loan agreement with another party in which the borrower is obliged to pay off the debt after a certain period of time with a predetermined amount of interest. Meanwhile, Article 1 number 12 of Law Number 7 of 1992 states the definition of credit, namely the provision of money or bills that can be equated with it, based on an agreement or agreement on lending and borrowing between the bank and other parties that requires the borrower to pay off the debt after a certain period of time with the amount of interest, compensation or distribution of profits.

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the term bank based on the profit sharing principle was changed to the term bank based on sharia principles. It is stated that the definition of sharia principles in Article 1 number 13 is the rule of agreement based on Islamic law between banks and other parties for the storage of funds and or financing of business activities, or other activities that are declared 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 buying and

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<sup>32</sup> Syihabudin, "Kajian Terhadap Peraturan Perundang-Undangan Indonesia," *Jurnal Hukum* 10, no. Kajian Terhadap Peraturan Perundang Undangan Indonesia (2003): 46–71.

<sup>33</sup> Azharsyah Ibrahim et al., *Pengantar Ekonomi Islam*, 2021.

<sup>34</sup> Sofyan Al-Hakim, "Perkembangan Regulasi Perbankan Syariah Di Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 13, no. 1 (2013): 15.

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<sup>35</sup> Ifa Latifa Fitriani, "Jaminan Dan Agunan Dalam Pembiayaan Bank Syariah Dan Kredit Bank Konvensional," *Jurnal Hukum & Pembangunan* 47, no. 1 (2017): 134.

selling goods by obtaining profits (murabahah) or financing capital goods based on the principle of profit sharing (mudharabah), financing based on the principle of capital participation (musharakah), the principle of buying and selling goods by obtaining profits (murabahah) or financing capital goods based on the principle of capital goods pure rent without choice (ijarah) or with the option of transferring ownership of goods rented from the bank by another party (ijarah wa iqtina).<sup>36</sup>

Law Number 10 of 1998, the definition of credit returns to the understanding in Law Number 14 of 1967 concerning Banking Principles.<sup>37</sup> The definition of credit itself in Law Number 10 of 1998 has issued the word reward and distribution of profit proceeds. In Article 1 number 11 of Law Number 10 of 1998, it is stated that credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the bank and other parties that requires the borrower to pay off his debt after a certain period of time with the provision of interest.<sup>38</sup> Without mentioning rewards and revenue sharing. The application of rewards and the distribution of profit proceeds are included in financing activities. For banks that based on sharia principles do not carry out credit activities, but carry out financing activities that apply rewards or profit sharing.

Ten years later, the government passed Law Number 21 of 2008 concerning Sharia Banking. The term bank based on

sharia principles was changed to the term Islamic bank.<sup>39</sup> The two forms of Islamic banks are called Sharia Commercial Banks and Sharia People's Financing Banks are Islamic banks that carry out their business activities based on sharia principles. The definition of sharia principles in Law Number 21 of 2008 has been changed from the meaning regulated in Law Number 10 of 1998, namely the principle of Islamic law in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the sharia field.<sup>40</sup>

The definition of financing has also changed from the previous provisions, with a broader understanding covering the forms of transactions that can be carried out in financing activities, either in exchange, without remuneration or profit sharing. Conventional Commercial Banks can establish sharia business units. Provisions regarding Commercial Banks carrying out business activities based on sharia principles are regulated in Bank Indonesia Regulation Number 6/24/PBI/ 2004. In the implementation of Islamic banking activities, with the establishment of the National Sharia Council in 1999 and the placement of the Sharia Supervisory Board in Islamic Financial Institutions, there have been changes in the provisions made by Bank Indonesia.<sup>41</sup> In an adjustment to Islamic banking activities, a Decree of the Board of Directors of Bank Indonesia Number 32/34/KEP/DIR was issued on May 12, 1999 concerning Commercial Banks Based on Sharia Principles. Then in 2004, the Decree of the Board of Directors of Bank Indonesia was revoked by Bank Indonesia Regulation Number 6/24/PBI/2004 concerning Commercial Banks Carrying Out Business Activities Based on Sharia

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<sup>36</sup> Tutik, "Kedudukan Hukum Perbankan Syariah Dalam Sistem Perbankan Nasional."

<sup>37</sup> Ifa Latifa Fitriani, "Jaminan Dan Agunan Dalam Pembiayaan Bank Syariah Dan Kredit Bank Konvensional," *Jurnal Hukum & Pembangunan* 47, no. 1 (2017): 134.

<sup>38</sup> Gentur Cahyo Setiono, "JAMINAN KEBENDAAN DALAM PROSES PERJANJIAN KREDIT PERBANKAN (Tinjauan Yuridis Terhadap Jaminan Benda Bergerak Tidak Berwujud)," *Transparansi Hukum* 1, no. 1 (2018): 1-18.

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<sup>39</sup> Al-Hakim, "Perkembangan Regulasi Perbankan Syariah Di Indonesia."

<sup>40</sup> Tutik, "Kedudukan Hukum Perbankan Syariah Dalam Sistem Perbankan Nasional."

<sup>41</sup> Nofinawati, "Perkembangan Perbankan Syariah Di Indonesia."



## Principles.

In this Bank Indonesia Regulation, it is stipulated that in every bank that carries out business activities based on sharia principles, a Sharia Supervisory Board must be placed, which has the task of supervising the implementation of sharia in the bank's business activities.<sup>42</sup> The duties, authorities and responsibilities of the Sharia Supervisory Board are to ensure and supervise the conformity of the bank's operational activities to fatwas issued by the National Sharia Council and review new products and services for which there is no fatwa to be requested for fatwas to the National Sharia Council. The results of the supervision carried out by the Sharia Supervisory Board are then reported at least every 6 (six) months to the Board of Directors, Commissioners, the National Sharia Board and Bank Indonesia. Another provision is that Article 38 of Bank Indonesia Regulation Number 6/24/PBI/2004 stipulates that if the bank wants to issue new products and services, the bank is required to submit an application for approval of the new products and services to be issued to Bank Indonesia by attaching a fatwa of the National Sharia Council.

The enactment of the provisions of Bank Indonesia Regulation No. 9/19/PBI/2007 concerning the Implementation of Sharia Principles in fund-raising and fund-disbursement activities as well as islamic bank services on December 17, 2007, bank Indonesia Regulation No. 7/46/PBI/2005 was revoked and declared no longer valid.<sup>43</sup> Bank Indonesia Regulation No. 9/19/PBI/2007 Article 2 paragraph (1) stipulates that Islamic

banks in carrying out fund-raising activities, disbursement of funds and their services must comply with sharia principles. This sharia principle is stated in the Fatwa issued by the National Sharia Council. Article 2 paragraph (1) of Bank Indonesia Regulation Number 9/19/PBI/2007 affirms that in carrying out fund-raising activities, disbursement of funds and services, banks are required to comply with Sharia Principles.

Explanation of Article 2 paragraph (1) Sharia principles that must be fulfilled by banks are sourced from Fatwas issued by the National Sharia Council. If this provision is violated, Islamic banks will be subject to administrative sanctions as referred to in Article 52 paragraph (2) of Law Number 7 of 1992 as amended by Law Number 10 of 1998. Article 5 of Bank Indonesia Regulation Number 9/19/PBI/2007 banks that do not implement Sharia Principles as referred to in Article 2 paragraph (1) are subject to administrative sanctions as referred to in Article 52 paragraph (2) of Law Number 1992 concerning Banking as amended by Law Number 10 of 1998 in the form of written reprimands, reductions in bank health levels, replacement of management and/or suspension of certain business activities, both for certain branch offices and for the bank as a whole.

The culmination of islamic banking regulation eventually narrowed down to the ratification of Law Number 21 of 2008 concerning Islamic Banking on July 16, 2008. In carrying out Islamic banking business activities, Islamic banks must be guided by Sharia Principles. Sharia principles referred to by this Law are contained in Article 1 number 12 of islamic law principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the sharia field. The principles of Islamic law, which are used as the basis for the implementation of Islamic

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<sup>42</sup> Rahmat Ilyas, "Peran Dewan Pengawas Syariah Dalam Perbankan Syariah," *JPS (Jurnal Perbankan Syariah)* 2, no. 1 (2021): 42–53.

<sup>43</sup> Abdul Ghofur Anshori, "Sejarah Perkembangan Hukum Perbankan Syariah Di Indonesia Dan Implikasinya Bagi Praktik Perbankan Nasional," *La\_Riba* 2, no. 2 (2008): 159–172.

banking activities, are determined that they are contained in fatwas made by authorized institutions.

Regarding the institutions authorized to issue fatwas, it can clearly be seen in the provisions of Article 26. In Article 26 of Law Number 21 of 2008 concerning Sharia Banking, it is determined that Sharia Commercial Banks, Sharia Business Units, and Sharia People's Financing Banks in carrying out their business activities and or sharia products and services must comply with Sharia Principles as utilized by the Majelis Ulama Indonesia (MUI).

This DSN-MUI fatwa is stated in a Bank Indonesia Regulation prepared by the Sharia Banking Committee at Bank Indonesia.<sup>44</sup> This is the recognition of the MUI as an institution authorized to issue fatwas that are used as the basis for Islamic banking activities. Business activities referred to in Article 19, Article 20, and Article 21 and/or sharia products and services, must comply with Sharia Principles. Sharia principles referred to in paragraph (1) are utilized by the MUI. The fatwa referred to in paragraph (2) is stated in the Bank Indonesia Regulation. In the context of preparing the Bank Indonesia Regulation referred to in paragraph (3) of Bank Indonesia, the Sharia Banking Committee in the General Explanation states that sharia compliance issues whose authority rests with the MUI are represented through the Sharia Supervisory Board which must be established in each Sharia Commercial Bank and Sharia Business Unit. To follow up on the implementation of fatwas issued by the MUI into Bank Indonesia Regulations, internally Bank Indonesia a Sharia Banking Committee was formed whose membership consists of

representatives from Bank Indonesia, the Ministry of Religious Affairs and elements of society whose composition is balanced, with expertise in the field of Sharia totaling 11 (eleven) people at most.<sup>45</sup>

Article 55 regarding the settlement of cases also states that in resolving Islamic banking cases carried out by case settlement institutions, it must not conflict with Sharia Principles. Therefore, judges or arbitrators or anyone who resolves cases in the field of Islamic banking must use sharia principles, which are contained in the MUI Fatwa. In the MUI organization, the authority to make fatwas in the field of sharia economy including Islamic banking is the National Sharia Council, which is then called the DSN-MUI Fatwa.

Bank Indonesia Regulation No. 10/17/PBI/2008 concerning Sharia Bank Products and Sharia Business Units specifies that in the event that Sharia Commercial Banks and Sharia Business Units want to issue new products, they must submit a report on the expenditure plan for new products to Bank Indonesia. If the new product, including the product stipulated in the Sharia Banking Product Codification Book (KPPS), Then Bank Indonesia will affirm that there is no objection to the product. The products stipulated in the KPPS are current accounts, savings, time deposits, mudharabah contract financing, musharakah contract financing, murabahah contract financing, salam contract financing, istisna contract financing, ijarah contract financing, qard contract financing, multi-service financing, sharia import L/C, sharia bank guarantee and foreign exchange. However, if the new product does not include the products stipulated in the KPPS, sharia banks and sharia business units must obtain approval from Bank Indonesia. The KPPS

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<sup>44</sup> Khotibul Umam, "Legislasi Fikih Ekonomi Perbankan: Sinkronisasi Peran DSN-MUI Dan Komite Perbankan Syariah," *Mimbar Hukum* 24, no. 2 (2012): 357-375, <https://journal.ugm.ac.id/jmh/article/view/16139>.

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<sup>45</sup> Ahyar A. Gayo, "Hukum Tentang Kedudukan Fatwa Mui Dalam Upaya Mendorong Pelaksanaan Ekonomi Syariah" (2011).

contains the features of Islamic bank products both in terms of funding and financing, as well as information on the benefits, types of contracts, risks, references to Bank Indonesia regulations and sharia legal foundations in the form of fatwas issued by the National Sharia Council.

### **Implications of the Birth of Law Number 21 of 2008 concerning Sharia Banking on the Development of Syariah Banking Institutions**

Some of the implications that may occur after the birth of Law Number 21 of 2008 concerning Sharia Banking include the following:<sup>46</sup> First, the existence of legal certainty guarantees. Guaranteeing legal certainty is fundamental for business actors and users of sharia-based banking services who so far still feel unsafe and lack of freedom in carrying out their activities.<sup>47</sup> In addition, what is no less important is the guarantee of legal certainty that it will attract foreign investors in the form of investment funds in the commercial business sector as well as program funds related to improving community welfare and eliminating poverty. Second, increasing government support for the birth of provisions governing Islamic banking in the form of laws will further increase more tangible government support in advancing Islamic banking in several ways that until now still hinder the development target of Islamic banking in Indonesia. This happened because of the increase in socialization to the public who still did not have minimal understanding and insight into Islamic banks. With the formal laws and regulations, the socialization of Islamic banking will include formal institutions through educational

curricula in schools that contain material on Islamic banking so that socialization will be wider and have the potential to increase the market share of Islamic banking which is still small when compared to conventional banking.

In addition, the increase in Islamic banking capital, especially supports the penetration of investment offerings to investors with various projects that can be synergized between the government and Islamic banking. Furthermore, expanding the Islamic banking network that has not yet reached widely throughout Indonesia, it is hoped that this role can also be supported by the government. Third, the issuance of the implementation of laws related to Islamic banking, all regulations and provisions governing the operation of Islamic banking must previously undergo adjustments referring to the law, both the provisions in the Financial Services Authority and the provisions of Bank Indonesia.<sup>48</sup> Meanwhile, the issue of implementing sharia-compliant governance is under the supervision of the Indonesian Ulema Majlis. Going forward, Majlis Ulama Indonesia will have a representative at Bank Indonesia as the Sharia Supervisory Board.<sup>49</sup> Accordingly, Bank Indonesia must make regulatory adjustments based on the provisions stipulated in the Sharia Banking Law. In this regard, there are 26 regulations that must be adjusted, including regarding the issue of the General Meeting of Shareholders, the Establishment of the Sharia Banking Committee, collateral and regulations regarding the spin-off of sharia units to

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<sup>46</sup> Khotibul Umam, "Sejarah Pembangunan Hukum Perbankan Syariah Di Indonesia," *Veritas et Justitia* 6, no. 2 (2020): 250–273.

<sup>47</sup> Muhammad Iqbal, "Hak-Hak Mitra Pembiayaan Murabahah Di Bank Syariah," *Islamic Banking: Jurnal Pemikiran dan Pengembangan Perbankan Syariah* 5, no. 1 (2019): 11–22.

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<sup>48</sup> Muhammad Urfi Amrillah, "Urgensi Pembentukan Undang-Undang Digital Banking Bagi Perbankan Syariah Di Indonesia," *Jurnal Lex Renaissance* 5, no. 4 (2020): 928–945.

<sup>49</sup> Bambang Iswanto, "Peran Bank Indonesia, Dewan Syariah Nasional, Badan Wakaf Indonesia Dan Baznas Dalam Pengembangan Produk Hukum Ekonomi Islam Di Indonesia," *IQTISHADIA Jurnal Kajian Ekonomi dan Bisnis Islam* 9, no. 2 (2016): 421.

Sharia Commercial Banks. Fourth, strengthening sharia-based financial market synergy. The existence of Islamic banking regulations and state sharia securities laws and regulations that have both been passed, both of which will fill each other and synergize in an effort to win the Sharia-based financial market, which has now become part of the global financial system.<sup>50</sup> On the other hand, both of them complement each other and need each other in providing instruments for investment in the Islamic financial industry, especially in Indonesia, which is still lagging behind other countries such as Malaysia and Singapore.

After the birth of Law Number 21 of 2008 concerning Sharia Banking, the development of Islamic banks in the future will have greater business opportunities in Indonesia.<sup>51</sup> Things that open up great opportunities for Islamic banking market share in accordance with the law, including Islamic Commercial Banks and People's Credit Banks cannot be converted into conventional banks, while conventional banks can be converted into Islamic banks. Then, a merger or amalgamation between Islamic banks and non-islamic banks must become Islamic banks.

Another opportunity is that Conventional Commercial Banks that have Sharia Business Units must separate if the Sharia Business Unit reaches assets of at least 50% of the total asset value of its parent bank or 15 years from the enactment of the Sharia Banking Law.<sup>52</sup> Another thing that can open up opportunities for the development of Islamic banks faster is the possibility of

foreign nationals and/or foreign legal entities who are incorporated in partnership in Indonesian legal entities to establish and/or own sharia urnum banks. The ownership of the foreign party, can be directly or indirectly through the purchase of shares on the stock exchange. Thus, there are many driving factors contained in the Islamic Banking Law in the direction of accelerating the growth of Islamic banks in the future. The Sharia Banking Law also provides more and more diverse opportunities for Islamic bank business activities than conventional banks. There are businesses that can be done by a Sharia Commercial Bank and cannot be done by a conventional bank. Thus, Islamic banking can offer more services than those offered by investment banking because Islamic bank services are a combination that can be provided by commercial banks, finance companies, and bank merchants.

The business activities that can be carried out by a Sharia Commercial Bank are wider than the Sharia Business Unit of a conventional bank. Not all businesses that can be done by Sharia Commercial Banks can be done by Sharia Business Units.<sup>53</sup> Activities that can only be carried out by Sharia Commercial Banks, are guaranteeing the issuance of securities, custody for the benefit of others, becoming a trustee, capital participation, acting as the founder and administrator of pension funds, issuing, offering and trading sharia long-term securities. In addition to commercial enterprises, Islamic banks can also carry out social functions in the form of baitul mal institutions, namely receiving funds derived from zakat, infak, almsgiving, grants or other social funds and distributing them to organizations.

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<sup>50</sup> Cakti Indra Gunawan and dkk, *Buku Strategi Perbankan Syariah*.

<sup>51</sup> Marimin and Romdhoni, "Perkembangan Bank Syariah Di Indonesia."

<sup>52</sup> Ari Andika Putra, Ahmad Mulyadi Qosim, and Hilman Hakiem, "Analisi Peluang Dan Tantangan Pelaksanaan Kewajiban Spin-Off Unit Usaha Syariah Menjadi Bank Umum Syariah," *Al Amwal* 0, no. 2 (2019): 1–12.

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<sup>53</sup> Khotibul Umam, "Peningkatan Ketaatan Syariah Melalui Pemisahan (Spin-Off) Unit Usaha Syariah Bank Umum Konvensional," *Mimbar Hukum Universitas Gadjah Mada* 22, no. 3 (2010): 607–624, <https://journal.ugm.ac.id/jmh/article/view/16239>.



## Implications of Legal Developments on Sharia Banking Product Development

Sharia banking regulations in Indonesia are spread in various laws and regulations, including the Compilation of Sharia Economic Law (KHES) issued through Supreme Court Regulation (PERMA) Number 2 of 2008.<sup>54</sup> The birth of KHES originated from the issuance of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Justice, which expanded the authority of the Religious Court in accordance with the development of law and the current needs of Indonesian Muslims.

Then, Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992; Act No. 23 of 1992 concerning Bank Indonesia as amended by Act No. 3 of 2004 concerning Amendments to Law No. 23 of 1992 concerning Bank Indonesia; Law Number 8 of 1995 concerning the Capital Market; Law Number 38 of 1999 concerning Zakat Management; Law Number 41 of 2004 concerning Waqf; Law Number 40 of 2007 concerning Limited Liability Companies; Law Number 21 of 2008 concerning Sharia Banking; Law Number 19 of 2008 concerning State Sharia Securities; and other laws and regulations in the form of Government Regulations, Presidential Regulations, Bank Indonesia Regulations, Services and Financial Authority Regulations of the Minister of Finance.

In addition to the Compilation of Sharia Economic Law (KHES) and Sharia banking laws and regulations, there is another source of law used for Islamic

banking, namely the DSN-MUI Fatwa.<sup>55</sup> The enactment of the Islamic legal system in Islamic banking activities changed the order of the national banking legal system.<sup>56</sup> Yeni Salma Barinti said that the DSN-MUI Fatwa has binding legal force, so it must be obeyed by Islamic banking actors.<sup>57</sup> The force of this law, is based on several provisions that apply in the legislation, either directly or indirectly. Directly, it is clearly stated in the regulations that fatwas are sharia principles that must be obeyed. If not complied with, Islamic banking actors will be subject to administrative sanctions. Indirectly, it is the mention of the role of the Sharia Supervisory Board which must be in Islamic banking. In carrying out its role as a sharia supervisor, the Sharia Supervisory Board must be guided by fatwas issued by the DSN-MUI.<sup>58</sup>

If you look at the perceptions of Islamic banking institutions and the expert statements mentioned above, the binding force of the DSN-MUI Fatwa not only occurs when it becomes a content material in Bank Indonesia Regulations, but is also needed as a guideline for Islamic banks in the manufacture and development of new products issued as well as the operation of Islamic banking activities as well as the obligation of the Sharia Supervisory Board in Islamic banking to be guided by the DSN-MUI Fatwa.

The establishment of fatwas is a

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<sup>54</sup> Eka Sakti Habibullah, "Hukum Ekonomi Syariah Dalam Tatahan Hukum Nasional," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial* 5, no. 9 (2017): 691–710.

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<sup>55</sup> Atmo Prawiro, "Kelemahan Fatwa Dan Kompilasi Hukum Ekonomi Syariah Dalam Kebijakan Legislasi Ekonomi Di Indonesia," *Jurnal Al-Ashriyyah* 2, no. 1 (2016): 151–191.

<sup>56</sup> Erie Hariyanto, "PENYELESAIAN SENGKETA EKONOMI SYARIAH DI INDONESIA," *IQTISHADIA: Jurnal Ekonomi & Perbankan Syariah* (2014).

<sup>57</sup> Ahyar A. Gayo, "Hukum Tentang Kedudukan Fatwa Mui Dalam Upaya Mendorong Pelaksanaan Ekonomi Syariah."

<sup>58</sup> Barus and Erwanda, "Peran Otoritas Jasa Keuangan (OJK) Dan Dewan Pengawas Syariah (DPS) Dalam Pengawasan Akad Pembiayaan Pada Perbankan Syariah Yang Mengandung Klausula Eksonerasi."

demand that must be met by the DSN-MUI in order to create a guarantee of legal certainty for the implementation of Islamic banking activities, striving for Islamic banking activities in Indonesia to run in an orderly and safe manner. With the fatwa, it is hoped that Islamic banking activities in Indonesia can develop more quickly. At the beginning of the implementation of Islamic banking activities in Indonesia, there was no national law or legislation that regulates Islamic banking activities, so the DSN-MUI Fatwa was urgently needed as a legal basis to cover the legal vacuum in the Islamic banking service sector.<sup>59</sup>

Almost all fatwas issued by the DSN-MUI are absorbed in the form of Bank Indonesia Regulations that will bind all Islamic banks and muamalah fiqh actors, although several fatwas are adapted and merged into one Bank Indonesia Regulation, but Fatwa Number 30 / DSN-MUI / VI / 2002 concerning Sharia Current Account Financing and Fatwa Number 55 / DSN-MUI / VI / 2007 concerning Financing of Musyarakah Sharia Current Accounts cannot be translated into banking regulations because it is difficult to be applied in the banking world.

In the practice of implementing Islamic banking, Bank Indonesia has issued many regulations as a guide for the implementation of sharia principles. Fatwas basically have the nature of according to the circumstances and situations of the place and follow contemporary understanding, so that fatwas can undergo changes.<sup>60</sup> If there is a change in the DSN-MUI Fatwa on certain problems, then this is not impossible to result in changes in Bank Indonesia

regulations. However, in practice, based on research data, there has been no change in Bank Indonesia Regulations due to changes in Fatwas from the DSN-MUI.

Bank Indonesia Regulation No. 7/46/PBI/2005 concerning The Agreement on The Collection of Money and Its Distribution for Banks Carrying Out Transactions Based on Sharia Principles has been replaced by Bank Indonesia Regulation No. 9/19/PBI/2007 concerning the Implementation of Sharia Principles in Money Collection and Distribution Activities as well as Sharia Bank Services. This replacement is carried out to adjust to the fatwa decision issued by the DSN-MUI, in this case the process of making the fatwa has binding force, namely the transformation of Islamic law into national law.<sup>61</sup>

In the process of implementing or pouring fatwas into Bank Indonesia Regulations, Bank Indonesia issued Bank Indonesia Regulation No. 10/32/PBI/2008 concerning the Sharia Banking Committee, which is in charge of describing the DSN-MUI Fatwa relating to Islamic banking, making contributions in the context of absorbing fatwas in Bank Indonesia Regulations and implementing the development of the Islamic banking industry.<sup>62</sup>

The preparation of Bank Indonesia regulations begins with research, then discussions will be held with stakeholders, including the Islamic banking industry and also with the MUI in matters related to discussions on fatwas. The role of DSN-MUI Fatwas as guidelines for sharia principles is not only at the level of being absorbed in Bank Indonesia Regulations or sharia

<sup>59</sup> Ahyar Ari Gayo and Ade Taufik, Irawan, "Perkembangan Bisnis Perbankan Syariah (Hukum Perspektif Perbankan Syariah)," *Rechtsvinding* 1, no. 1 (2009): 257-275.

<sup>60</sup> Soleh Hasan Wahid, "Dinamika Fatwa Dari Klasik Ke Kontemporer (Tinjauan Karakteristik Fatwa Ekonomi Syariah Dewan Syariah Nasional Indonesia (DSN-MUI)," *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam* 10, no. 2 (2019): 193.

<sup>61</sup> Eja Armaz Hardi, "Fatwa Dsn Mui Dan Perkembangan Produk Perbankan Syariah Di Indonesia," *An-Nisbah: Jurnal Ekonomi Syariah* 6, no. 1 (2019): 82-105.

<sup>62</sup> Ja'far Baehaqi, "Paradoks Fatwa Dewan Syariah Majelis Ulama Indonesia Dalam Regulasi Hukum Perbankan Syariah," *Al-Ahkam* 27, no. 1 (2017): 1.

compliance in internal Islamic banking, but also in essence the DSN-MUI Fatwas have been absorbed in Law Number 21 of 2008 in terms of the types of transactions mentioned in the law.<sup>63</sup>

The patterns of absorption of the types of transactions in the DSN-MUI Fatwa into Islamic banking products are seen as follows: Fund Collection, in the form of Sharia Demand Deposits (DSN Fatwa Number 1 / DSN-MUI / IV / 2000 concerning Current Accounts); Sharia Savings (DSN-MUI Fatwa underlying DSN Fatwa Number 2 / DSNMUI / IV / 2000 concerning Savings); Sharia Deposits (DSN Fatwa Number 3/DSN-MUI/IV/2000 on Deposits).

Disbursement of Funds, in the form of Financing on the basis of mudharabah agreements (Fatwa DSN Number 7 / DSN-MUI / IV / 2000 concerning Mudharabah Financing (Qiradh); Financing on the basis of a musyarakah agreement. (DSN Fatwa No. 8/DSN-MUI/IV/2000 on Musyarakah Financing); Financing on the basis of the murabahah agreement (DSN Fatwa Number 4 / DSN-MUI / IV / 2000 concerning Murabahah; DSN Fatwa Number 10/DSN-MUI/IV/2000 on Wakalah; DSN Fatwa No. 13/DSN-MUI/IX/2000 on Down Payment in Murabahah; DSN Fatwa No. 16/DSN-MUI/IX/2000 on Discounts in Murabahah; DSN Fatwa No. 23/DSNMUI/III/2002 on Repayment Deductions in Murabahah; DSN Fatwa No. 46/DSN-MUI/II/2005 on Murabahah Bill Deductions (Khashm Fi Al Murabahah); DSN Fatwa Number 47/DSN-MUI/II/2005 concerning Settlement of Murabahah Receivables for Customers Unable to Pay; DSN Fatwa No. 48/DSN-MUI/II/2005 on Rescheduling on Murabahah Bills; DSN Fatwa No. 49/DSN-MUI/II/2005 on

conversion of Murabahah Agreement); Financing on the basis of a greeting agreement (DSN Fatwa Number 5 / DSN-MUI / IV / 2000 concerning Buying and Selling Greetings); Financing on the basis of istishna agreements (DSN Fatwa Number 6 / DSN-MUI / IV / 2000 concerning The Sale and Purchase of Istishna', and DSN Fatwa Number 22 / DSN-MUI / III / 2002 concerning The Sale and Purchase of Istishna' Parallel); Financing on the basis of ijarah agreements (DSN Fatwa Number 9 / DSN-MUI / IV / 2000 concerning Ijarah Financing and DSN Fatwa Number 27 / DSN-MUI / III / 2002 concerning al-Ijarah al-Muntahiyah bi al- Tamlik); Financing on the basis of the Qardh contract (DSN Fatwa No. 19/DSN-MUI/IV/2001 on al-Qardh); Multi-Service Financing (DSN Fatwa Number 44/DSN-MUI/VIII/2004 concerning Multi-Service Financing).

Service Services, in the form of a Letter of Credit (L/C) for Sharia Imports (Fatwa DSN Number 34/DSN-MUI/IX/2002 concerning Letter of Credit (L/C) for Sharia Imports); Sharia Bank Guarantee (Fatwa DSN Fatwa DSN Number 11 / DSN-MUI / IV / 2000 concerning Kafalah); Foreign Exchange (Sharf), DSN Fatwa Number 28 / DSN-MUI / III / 2002 concerning Currency Buying and Selling (al-Sharf).

In practice, most of the DSN-MUI Fatwas issued have answered the needs of Islamic banking, although there are still some things that have not been answered or the unavailability of DSN-MUI Fatwas in supporting the development of new products and operational activities of Islamic banking.<sup>64</sup>

## Conclusion

<sup>63</sup> Agus Waluyo, "Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi Ke Dalam Hukum Positif," *Inferensi* 10, no. 2 (2016): 517.

<sup>64</sup> Awaluddin Awaluddin and Andis Febrian, "Kedudukan Fatwa DSN-MUI Dalam Transaksi Keuangan Pada Lembaga Keuangan Syariah Di Indonesia," *Al Hurriyah : Jurnal Hukum Islam* 5, no. 2 (2020): 196.

Based on the explanation above, it can be concluded that historically there have been legal efforts to advance Islamic banking in Indonesia. The results of the study show that changes in laws related to Islamic banking have had a significant effect on the development of Islamic banking regulations in Indonesia. The implementation of Law Number 21 of 2008 concerning Sharia Banking is expected to answer some of the problems and doubts regarding the direction of development of Islamic banking in the future, including the direction of legal developments governing Islamic banking activities.

The implications of this research are expected to have both theoretical and practical uses. In theoretical use, it is expected to be able to develop knowledge in the field of legal politics and laws and regulations in the field of Islamic banking. This, including formulating concepts to new thoughts, so that the political discourse of laws and regulations in the field of Islamic banking is getting richer. In addition, it is expected to be useful for the fulfillment of human life celebrations related to aspects of structuring collective life, including developing an appreciation of legal politics and laws and regulations, especially Islamic banking.

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