

MODEL OF ENGINEERING IN THE ESTABLISHMENT OF ISLAMIC BANKING IN INDONESIA

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ABSTRACT

This study analyzes the dynamics of Islamic banking regulation in Indonesia to develop an engineering model to establish Islamic banking regulation in Indonesia. This study is library research using qualitative methods with descriptive-analytic analysis techniques. This study found that the dynamics of Islamic banking regulations are divided into three periods. First, the validity period of Law Number 7 of 1992 is called the integration period, namely Islamic banking's initial efforts into the national banking system. Second, the enactment of Law Number 10 of 1998 is referred to as the period of Islamic banking to become mainstream banking, which is to become part of the main strength among banks in the national banking system. Third, Law Number 21, the Year 2008, shows that Islamic banking has become mainstream banking as intended in the national banking system. Suggestions from the results of the dynamic readings of Islamic banking regulation to enter the fourth period, namely the period of Islamic banking leading the national banking system, are necessary to apply an engineering model of the regulation formation using a sociological approach.

Keywords: Shariah banking, Dynamics of Regulations, Legislation, and Engineering Model.

1. INTRODUCTION

The majority of Muslim people have preserved the system of conventional economic in Indonesia.¹ The current global economic conditions have also demanded that all countries, including Indonesia, create a climate of ease of doing business.² Thus, creating financial products that embed the term Shari'a on them is not easy and requires various adjustments, such as; the prevailing laws and regulations, the contemporary economic development of a global society that tends to be value-free, various transactions models, and so on. All of that must be able to be adjusted to the principles of sharia.³

Sharia banking in Indonesia has also encountered these difficulties in growth and development, particularly in the regulatory aspect. Therefore, regulation plays an essential role in

¹The word "conventional" is a commonly used antonym of the word "sharia," namely a system that has been used or is generally running. Generally, this term is intended to be used as a term to distinguish it from the Islamic economic system. See Abdul Mujib, "Dinamika Hukum dan Perkembangan Perbankan Islam di Indonesia", *Jurnal al-ahkam* Vol. 23, No. 2, Oktober 2013, 168-169.

²Yanto Bashri (ed). *Mau Ke Mana Pembangunan Ekonomi Indonesia. Prisma Pemikiran Prof. Dr. Dorodjatun Kuntjoro-Jakti* (Jakarta: Predna Media, 2003), p. 12-13.

³The National Sharia Council-Indonesian Ulema Council (DSN-MUI) is the one authorized to determine the principles of sharia in the economy in Indonesia. Along with the development of the sharia economy in Indonesia, the Indonesian Ulema Council (MUI) added a tool to its organizational structure with the name of the National Sharia Council (DSN) in 1999. This institution was established to deal with problems related to Islamic Financial Institutions. Based on the decree. MUI No. Kep.754 / II / 1999, MUI considers the need to establish a sharia board that has the task of issuing fatwas on types of Sharia Financial Institution products such as sharia banking, sharia insurance, and others order to comply with binding sharia values. See. M. Cholil Nafis, *Teori Hukum Ekonomi Syariah* (Jakarta: UI-Press, 2011), p. 106-107; See also Decree of the Board of Directors of Bank Indonesia Number 32/34/1999 article 31, and the implied statement of the law. N0. 21 of 2007 concerning Islamic Banking Article 26 paragraph (2) and (3).

maintaining or controlling Islamic banking's innovation and creativity in responding to modern economic transactions' challenges.⁴ Theoretically, the function of law on economic development are mentioned as follows:⁵

1. Legal development, which is part of the community's social life development, cannot be separated from the relationship with legal issues. Law and economy are one of the classic ties between law and social life. From an economic point of view, the need to use the law as an institution in society also determines the economic policies.
2. Law functions to provide legal certainty and legal protection in economic development.
3. Legal provisions regulate and limit various economic activities, hoping that economic development does not neglect the people's rights and interests. To protect the community's rights and interests, which are generally stated in formal law, aim to realize the goals and objectives of economic development.

If the available regulations tend to be too strict and inflexible, it will be difficult for Islamic banking to innovate and lose economically. On the other hand, if the regulations are too open and accessible, there will be heated competition, so it is feared that there will be unfair competition. What is also being considered is how the issued regulations do not go out of Shari'a's corridor. Therefore, the regulations that are expected to cover Shari'a banking are regulations that encourage Shari'a banking to continue

⁴ Arfan Faiz Muhlizi, "Penataan Regulasi dalam Mendukung Pembangunan Ekonomi Nasional," *Jurnal RechtsVinding*, Vol. 6, No. 3, Desember 2017, 350.

⁵ Mardani, *Hukum Sistem Ekonomi Islam*, Ed. 1, Cet. 1 (Jakarta: Rajawali Pers, 2015), 3.

to freely innovate and maintain healthy competition conditions but still guarantee their satisfaction.

Historically, Indonesia's Islamic banking regulations began with the issuance of Law no. 7 of 1992, then Law No. 10 of 1998, and the last is Law no. 21 of 2008. Several supporting regulations were issued by the Financial Services Authority (OJK) and Bank Indonesia (BI). These regulatory changes have contributed to Islamic banking development in Indonesia in particular and national banking practices in general. This article will describe and analyze the dynamics of Islamic banking regulations in Indonesia and the engineering model to form Islamic banking regulations that are offered for this analysis.

2. METHODOLOGY

The study will use a qualitative research method with library research. As part of qualitative, it is based on written data, words, sentences, and charts.⁶ The data can be obtained from books, journals, reports, articles, and laws and regulations concerning the regulation of Sharia banking in Indonesia, namely; UU no. 7 of 1992, then Law No. 10 of 1998, and the last is Law no. 21 of 2008, then analyzed it with inductive thinking.⁷

The use of data is secondary such as Law no. 7 of 1992, Law No. 10 of 1998, and Law no. 21 of 2008, as well as several supporting regulations issued by the Financial Authority Service (*Otoritas Jasa Keuangan: OJK*) and Central Bank of Indonesia (BI). The collected

⁶ Sugiyono, *Metode Penelitian & Pengembangan: Research and Development*, Cet. 3 (Bandung: Alfabeta, 2017), 7.

⁷ *Ibid*, 368.

data is obtained by using data collection techniques with documentation.⁸

3. THEORETICAL OVERVIEW

3.1. The Development Of Shariah Banking In Indonesia

Halim Alamsyah, Former Deputy Governor of Bank Indonesia, said that BI as the regulator is very enthusiastic about encouraging the development of Shariah banking due to 3 (three) reasons:⁹

1. Islamic banks are closer to the real sector because the products offered, especially in the financing, always use underlying transactions in the real sector so that the impact is more pronounced in boosting economic growth.
2. There are no speculative products (*gharar*), so that they have a strong endurance, and their toughness has been tested against the direct hit of the global financial crisis. At the macro level, Islamic banking can create financial system stability and the national economy.
3. The profit-loss sharing system, which becomes the spirit of Islamic banking, will bring fairer benefits to all parties, both for fund owners as depositors, entrepreneurs as debtors, and fund managers.

These three reasons have become the characteristics of Islamic banking in a particular way in several aspects; touch directly the real sector, financial products that are not speculative,

⁸ Sugiyoni, *Metode Penelitian & Pengembangan: Research and Development*, p. 239.

⁹ Halim Alamsyah, "Perkembangan dan Prospek Perbankan Syariah Indonesia: Tantangan Dalam Menyongsong MEA 2015", speech at Ikatan Ahli Ekonomi Islam (IAEI), Milad ke-8 IAEI, April 13, 2012.

and the system for the results, not based on interest.¹⁰ Based on these three aspects, it becomes the basis or trigger for Islamic banking's future development in Indonesia.

Physically, the development of Islamic banking can be seen in several ways. First, in terms of the number of customers. The number of sharia financial customers in Indonesia until 2014 was 37.3 million people. This figure has made Indonesia a country with the most significant number of Islamic financial customers worldwide.¹¹ Second, in total assets. According to the sharia banking statistical report submitted by OJK, the total assets owned by Shari'a Commercial Banks (BUS) and Shari'a Business Units (UUS) in August 2018 amounted to 433,521 billion rupiah.¹² Third, the number of Islamic banking offices. The total of BUS and UUS offices as of August 2018 were 2,172 offices spread across Indonesia. The following is a detailed table of developments in Islamic banking reported by the OJK:¹³

¹⁰Based on these three things, it is a criticism of the Islamic banking system against conventional banking. Apart from these three things, the criticisms raised by the Islamic banking system are also because conventional banking adheres to a gambling system (maysir) and elements of sleaze. See Abdul Ghofur Anshori, "Perkembangan Hukum, Kelembagaan, dan Operasional Perbankan Syariah di Indonesia", presented at stadium generale FH UGM, Multimedia Room FH UGM Yogyakarta. Juni 14, 2008, 1.

¹¹Sabirin, "Nasabah adalah Amunisi bagi Bank Syariah" dalam Retrieved from https://www.kompasiana.com/amp/sabirinsaiga/nasabah-adalah-amunisi-bagi-bank-syariah_56fb617023bd6a05b3ad7c, accessed on Mei 01, 2017.

¹²Otoritas Jasa Keuangan, *Statistik Perbankan Syariah Sharia Banking Statistics 2018 Agustus*, (Jakarta: Otoritas Jasa Keuangan, 2018), 4.

¹³Otoritas Jasa Keuangan, *Statistik Perbankan*, 4.

Table 1: Sharia Banking Network

Indikator	Tabel 1. Perkembangan Total Aset, Jumlah Kantor dan Tenaga Kerja Perbankan Syariah - SP3 2018 (Sharia Banking Network)												Indikator	
	2015	2016	2017					2018						
			Apr	Mei	Jun	Jul	Agp	Apr	Mei	Jun	Jul	Agp		
Bank Umum Syariah	215.423	254.334	275.944	274.944	270.055	280.227	285.397	285.487	284.235	282.235	284.219	282.457	281.475	Sharia Commercial Bank
- Total Aset	12	15	15	15	15	15	15	15	15	15	15	15	15	- Number of Offices
- Jumlah Kantor	1.886	1.886	1.887	1.887	1.887	1.887	1.882	1.874	1.882	1.882	1.882	1.882	1.882	- Number of Offices
- KCO	483	473	485	473	473	473	483	473	483	487	487	487	487	- Bank Offices
- KCS	1.051	1.227	1.195	1.195	1.195	1.195	1.178	1.174	1.173	1.173	1.173	1.171	1.171	- Sharia Bank Offices
- KIK	208	186	185	185	185	185	175	171	181	175	183	185	184	- Cash Office
- KTA	3.027	3.127	3.200	3.207	3.200	3.200	3.286	3.286	3.200	3.207	3.286	3.286	3.286	- ATMs/Kios
- Jumlah Tenaga Kerja	15.414	15.152	15.237	15.242	15.246	15.251	15.288	15.271	15.281	15.300	15.317	15.303	15.317	- Number of Employees
Bank Syariah Khusus	63.859	602.323	119.729	119.745	122.445	123.847	128.454	128.739	128.875	128.844	128.855	128.894	129.247	- Sharia Business Unit
- Jumlah Bank Umum Konvensional yang memiliki UUS	22	2	2	2	2	2	2	2	2	2	2	2	2	- Number of Conventional Bank Sharia Business Unit
- Jumlah Kantor UUS	311	321	341	339	340	340	344	346	341	346	346	346	346	- Number of Offices
- KCO	139	146	152	152	152	154	154	154	155	155	155	155	155	- Bank Offices
- KCS	159	157	155	151	155	157	154	151	152	152	152	152	152	- Sharia Bank Offices
- KIK	46	45	51	51	51	51	51	51	51	51	51	51	51	- Cash Office
- KTA	165	151	153	153	162	158	163	164	161	163	163	163	163	- ATMs/Kios
- Jumlah Tenaga Kerja	4.402	4.487	4.387	4.387	4.227	4.328	4.371	4.385	4.371	4.324	4.347	4.379	4.387	- Number of Employees
- Jumlah Kantor Syariah Syariah	28.292	28.384	28.289	28.289	28.289	28.442	28.481	28.481	28.287	28.289	28.284	28.289	28.287	- Total Offices
- Jumlah Kantor Syariah Syariah Syariah	2.289	2.281	2.198	2.198	2.110	2.188	2.188	2.179	2.175	2.179	2.175	2.176	2.176	- Total Number of Offices
- Jumlah Kantor Syariah Syariah Syariah	2.176	2.220	2.171	2.171	2.079	2.079	2.178	2.178	2.169	2.169	2.169	2.170	2.170	- Total Number of Sharia Bank
- Jumlah Tenaga Kerja Syariah Syariah	33.914	33.287	33.848	33.737	33.306	33.846	33.346	33.842	33.848	33.848	33.773	33.788	33.848	- Total Number of Employees
Bank Perbankan Syariah Khusus														- Sharia Special Bank
- Jumlah Kantor	103	103	107	107	107	107	107	107	107	107	107	107	107	- Number of Offices
- Jumlah Kantor	440	457	445	445	445	442	441	441	441	441	441	441	441	- Number of Offices
- Jumlah Tenaga Kerja	1.102	1.321	1.451	1.451	1.473	1.514	1.493	1.488	1.478	1.478	1.488	1.477	1.477	- Number of Employees

These figures have shown Islamic banking development, which has constantly been increasing from year to year. The following table also explains the development of Islamic banks in more detail:

Table 2: Individual Sharia Banking Network

Statistik Perbankan Syariah, Agustus 2018

Sharia Banking Statistics, August 2018

Kelompok Bank	Tabel 3. Jaringan Kantor Individual Perbankan Syariah - SP3 Agustus 2018 (Individual Sharia Banking Network)				Group of Banks
	KPO/KC	KCPI/UPS	KK	Group of Banks	
	HO/OB	SBO/SU	CO		
Bank Umum Syariah	467	1.171	184	Sharia Commercial Bank	
1 PT. Bank Aceh Syariah	26	88	24	1 PT. Bank Aceh Syariah	
2 PT. Bank Muamalat Indonesia	23	152	57	2 PT. Bank Muamalat Indonesia	
3 PT. Bank Victoria Syariah	9	5	3	3 PT. Bank Victoria Syariah	
4 PT. Bank BRISyariah	52	206	12	4 PT. Bank BRISyariah	
5 PT. Bank Jabar Banten Syariah	9	55	1	5 PT. Bank Jabar Banten Syariah	
6 PT. Bank BNI Syariah	68	183	17	6 PT. Bank BNI Syariah	
7 PT. Bank Syariah Mandiri	130	426	52	7 PT. Bank Syariah Mandiri	
8 PT. Bank Mega Syariah	25	32	6	8 PT. Bank Mega Syariah	
9 PT. Bank Panin Dubai Syariah	17	3	9	9 PT. Bank Panin Dubai Syariah	
10 PT. Bank Syariah Bukopin	12	7	4	10 PT. Bank Syariah Bukopin	
11 PT. BCA Syariah	11	12	11	11 PT. BCA Syariah	
12 PT. Bank Tabungan Pensiunan Nasional Syariah	24	2	-	12 PT. Bank Tabungan Pensiunan Nasional Syariah	
13 PT. Maybank Syariah Indonesia	1	-	-	13 PT. Maybank Syariah Indonesia	

The table above illustrates the distribution of individual Islamic commercial bank networks. The following also provides an overview of conventional commercial banks that have sharia service units:¹⁴

¹⁴Otoritas Jasa Keuangan, *Statistik Perbankan.....*, p. 5.

Table 3: Sharia Business Unit

Unit Usaha Syariah	160	146	64	Sharia Business Unit
14 PT Bank Danamon Indonesia, Tbk	9	1	14	PT Bank Danamon Indonesia, Tbk
15 PT Bank Permata, Tbk	11	2	15	PT Bank Permata, Tbk
16 PT Bank Maybank Indonesia, Tbk	10	-	16	PT Bank Maybank Indonesia, Tbk
17 PT Bank CIMB Niaga, Tbk	15	-	17	PT Bank CIMB Niaga, Tbk
18 PT Bank OCBC NISP, Tbk	9	-	18	PT Bank OCBC NISP, Tbk
19 PT Bank Sinarmas	34	2	19	PT Bank Sinarmas
20 PT Bank Tabungan Negara (Persero), Tbk	22	40	20	PT Bank Tabungan Negara (Persero), Tbk
21 PT BPD DKI	3	12	5	PT BPD DKI
22 PT BPD Daerah Istimewa Yogyakarta	1	4	22	PT BPD Daerah Istimewa Yogyakarta
23 PT BPD Jawa Tengah	7	11	9	PT BPD Jawa Tengah
24 PT BPD Jawa Timur, Tbk	7	9	24	PT BPD Jawa Timur, Tbk
25 PT BPD Sumatera Utara	5	17	25	PT BPD Sumatera Utara
26 PT BPD Jambi	1	1	26	PT BPD Jambi
27 PT BPD Sumatera Barat	3	6	27	PT BPD Sumatera Barat
28 PT BPD Riau dan Kepulauan Riau	2	4	28	PT BPD Riau dan Kepulauan Riau
29 PT BPD Sumatera Selatan dan Bangka Belitung	3	2	29	PT BPD Sumatera Selatan dan Bangka Belitung
30 PT BPD Kalimantan Selatan	2	9	30	PT BPD Kalimantan Selatan
31 PT BPD Kalimantan Barat	1	4	31	PT BPD Kalimantan Barat
32 PT BPD Kalimantan Timur	4	15	32	PT BPD Kalimantan Timur
33 PT BPD Sulawesi Selatan dan Sulawesi Barat	4	-	33	PT BPD Sulawesi Selatan dan Sulawesi Barat
34 PT BPD Nusa Tenggara Barat	2	7	34	PT BPD Nusa Tenggara Barat
Bank Pembiayaan Rakyat Syariah	101	-	197	Sharia Rural Bank
TOTAL	718	1.317	435	TOTAL

These numbers are very likely to continue to increase. This is because the number of customers of Islamic banks from year to year will continue to increase, given the potential of Indonesian people, who are predominantly Muslim, who are still very many who have not become Islamic bank customers from the total. It is then supported by the expansion of the number of Islamic banking offices increasing because considering the proximity of offices and ease of access are among the factors that influence the choice of customers in opening accounts at Islamic banks. Besides, efforts to improve Islamic banking services' quality are increasingly parallel to conventional banking, such as automated teller machines (ATMs), mobile banking and internet banking, etc.

The rapid development of Islamic banking in Indonesia has given Indonesia international awards and achievements. Bank Indonesia received an award as the best central bank or The Best Central Bank of the Year 2018 by the Global Islamic Finance Award (GIFA) Committee. The award was presented at the 8th GIFA Award 2018 event on September 29, 2018, in Sarajevo, Bosnia, and Herzegovina. The award received by Bank Indonesia is the highest in the world in the field of Islamic finance. An award is a form of international recognition of the thoughts and initiatives made by Bank Indonesia in developing the Islamic economy and finance in

Indonesia and internationally.¹⁵ The development of Islamic finance in Indonesia on the global market has also made Indonesia one of the top ten countries with the world's most prominent Islamic finance index. Also, Bank Syariah Mandiri (BSM) won an award from Cambridge Analytica. BSM won The Strongest Islamic Bank award. Apart from these awards, Mandiri Syariah also received awards from the Islamic Retail Bank in Indonesia, Best Brand Experience, and The Best Chief Risk Officer.¹⁶

These achievements indicate how Islamic banking has great potential for its development in Indonesia. However, this great potential has also had significant implications, apart from being a good image in the international viewpoint and significant implications to Indonesia's economic growth itself in real terms.¹⁷

¹⁵The awarding of awards to Bank Indonesia was based on several criteria. First, there is a basis for research in encouraging Islamic finance and banking, such as in the initiation of zakat core principles and waqf core principles with BAZNAS, the Indonesian Waqf Board (BWI), and the Islamic Development Bank (IDB), as well as various monetary, macroprudential and Islamic financial market deepening instruments. Second, close cooperation with other institutions involved in improving the Islamic economy and finance. Third, support and organization of various seminars and workshops in Islamic economics and finance. See Bank Indonesia, "BI Receives the Best Central Bank Award 2018 Global Islamic Finance Award Version" , Retrieved from <https://www.bi.go.id/id/ruang-media/info-terbaru/Pages/BI-Terima-Penghargaan-Bank-Sentral-Terbaik-2018-Versi-Global-Islamic-Finance-Award.aspx>, accessed on March 13, 2019..

¹⁶M Fachrezy Zulfikar, "BSM Raih Penghargaan Bank Syariah Terkuat di Asia" retrieved from <https://www.goodnewsfromindonesia.id/2018/11/24/bsm-raih-penghargaan-bank-syariah-terkuat-di-asia>, accessed on march 13, 2019.

¹⁷Sasmita Vinda in her article explained that there is a long-term relationship between the Islamic banking sector and Indonesia's economic growth. See Sasmita Vinda, "Analisis Kontribusi Perbankan Syariah Terhadap Pertumbuhan Ekonomi Indonesia" retrieved from [https://www.academia.edu/17205398/ANALISIS_KONTRIBUSI_PERBANKAN SYARIAH TERHADAP PERTUMBUHAN EKONOMI INDONESIA](https://www.academia.edu/17205398/ANALISIS_KONTRIBUSI_PERBANKAN_SYARIAH_TERHADAP_PERTUMBUHAN_EKONOMI_INDONESIA), accessed on March 13, 2019. Karunia Putri's research also supports this research that the relationship between Islamic banking and Indonesia's economic growth (GDP) is a

Even so, this great potential must be maximized because until now, the market share (market share) of Islamic banking is still around 5%.¹⁸

Finally, with the passing of several legislation products that provide legal certainty and increase the activity of the Islamic financial market, such as (1) Law No.21 of 2008 concerning Islamic Banking; (2) Law No. 19 of 2008 concerning State Sharia Securities (Sukuk); and (3) Law No.42 of 2009 concerning the Third Amendment of Law No.8 of 1983 concerning VAT for Goods and Services, will make it easier for Islamic banking to move and innovate. The data above also illustrates how Islamic banking law has contributed significantly to institutional development and the achievement of third-party funds (DPK) and the increase in Indonesia's Islamic banking assets.

3.2. The Position of Sharia Economic Law in the National Legal System

The existence of Islamic law in the history of Indonesia has been in effect for three periods; (1) the era of the Islamic empire, (2) the colonial period, and (3) the independence period. First, the Islamic empire's era was proven by establishing Islamic kingdoms and the findings of the fiqh works of the archipelago scholars who

two-way (reciprocal) relationship, where Islamic banking affects economic growth and economic growth affects Islamic banking. This study also produces the same conclusion as Sasmita Vinda's research, that between Islamic banking and Indonesia's economic growth (GDP), there is a long-term relationship. See Kurnia Putri, "Analisis Perbankan Syariah Terhadap Pertumbuhan Ekonomi Indonesia (Studi Kasus Pada Bak Umum Syariah Periode Tahun 2010-2015)", (Yogyakarta: UIN-Sunan Kalijaga Yogyakarta, 2016), unpublished thesis. p. ii.

¹⁸Rehiya Sebayang, "2023, BI Targetkan Industri Syariah Capai Market Share 20%" Retrieved from <https://www.cnbcindonesia.com/syariah/20181212142636-29-46049/2023-bi-targetkan-industri-syariah-capai-market-share-20>, accessed on march 13, 2019.

lived in the 16th and 17th centuries AD, which were used as positive law.¹⁹

The second, the colonial period. This era is divided into two periods; the Dutch colonial period and the Japanese colonial period. The existence of religious courts was proved during the Dutch colonial period in various regions: Central Java, Aceh, Jambi, South Kalimantan, etc.²⁰ Also, the compilation of the Compendium Freijher legal guideline recognizes the legality of inheritance law and Islamic marriage law in it. However, there were apparent attempts by the Dutch colonialists to obstruct the application of Islamic law.²¹ As for the Japanese colonial period, this was evidenced by establishing the Office of Islamic Affairs (Shumubu), which was later reorganized. All religious matters deemed very importantly could be easily managed, directly under the Muslim elite's control.²²

Third, during the independence era. This period consists of three times: independence, the Old Order, and the New Order. At the beginning of independence, a compromise was realized in the elimination of the seven words "... by implementing Islamic law for

¹⁹Ramly Hutabarat, *Kedudukan Hukum Islam dalam Konstitusi-konstitusi Indonesia dan Peranannya dalam Pembinaan Hukum Nasional* (Jakarta: Pusat Studi Hukum Tatanegara Universitas Indonesia, 2005), 61-62.

²⁰ Daniel S. Lev, *Peradilan Agama Islam di Indonesia*, diterjemahkan ke bahasa Indonesia oleh Zaini Ahmad Noeh (Jakarta: Intermedia, 1986), 25.

²¹This can be proven by the existence of a regulation issued by the Governor General of the Dutch East Indies (1830) which stipulates that "the Religious Courts are under the supervision of the colonial court". See Daniel S. Lev, *Peradilan Agama Islam di Indonesia*, has been translated into Indonesian by Zaini Ahmad Noeh (Jakarta: Intermedia, 1986), 21.

²²Harry J. Benda, Terj. Daniel Dhakidae, *Bulan Sabit dan Matahari Terbit: Islam Indonesia Pada Masa Pendudukan Jepang* (Jakarta: PT. Dunia Pustaka Jaya, 1980), h. 183, quoted from Muhammad Husni, "Kondisi Umat Islam Masa Penjajahan Jepang" in *Journal Rihlah*, Vol. III, No. I, October 2015, 64.

its adherents" in the Jakarta Charter, which philosophically was manifested in the first principle of Pancasila "God Almighty," which juridically became a fundamental element in the national legal system.²³ During the Old Order period, Islamic law was manifested in the Preamble of the Constitution and Article 29 paragraphs (1) and (2) of the 1945 Constitution, Presidential Decree July 5, 1959. It is explicitly explained that the constitution was inspired by the Jakarta Charter and the issuance of several laws, government decrees, and government regulations relating to Islamic law. Several laws relating to Islamic law were also issued during the New Order period.

Based on this perspective, it can be concluded that the validity of Islamic law in Indonesia has solid arguments and foundations in this point of view; history (the reason of history); and the constitution (the reason of constitution). Such arguments are also increasingly being strengthened by the Muslim community's basic demands for the need for Islamic law itself²⁴ as an effort to practice Islamic teachings perfectly (*kaffah*).

If people continue to follow this logic, then the existence of shari'a economic law in the national legal system automatically has a solid and robust foundation and foundation, as a unity with Islamic law itself. It even emphasized that the need for a sharia economy has become and is in line with national needs. Eka Sakti Habibullah wrote:

²³Wahyuni Retno Wulandari, *Hukum Islam dalam Tata Hukum di Indonesia* (Jakarta: Universitas Trisakti, 2009), 86.

²⁴This kind of demand is also known as a sociological argument. The sociological argument is one of the four foundations for something that deserves to be used as a legal norm in the form of legislation. In full, the four foundations are; clear philosophical, juridical, sociological, and political. See Rasyidi Ranggawidjaja, *Pengantar Ilmu Perundang-Undangan Indonesia* (Bandung: Mandar Maju, 1998), 43.

“The existence of Islamic/Sharia economic law in the Indonesian legal system today is no longer merely due to historical and demographic demands (because the majority are Muslim) as some people/parties think. However, it is further from that, it is also due to the needs of the broader community after it is known and felt true how fair and equitable the Sharia economic system is in safeguarding the people’s welfare which is aspired by the nation and the Unitary State of the Republic of Indonesia.”²⁵

In its development, Islamic economic law emerged legally-formally with the existence of Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning the Religious Courts (UUPA). Act no. 3 of 2006 has expanded the PA's authority, which initially only had the authority to resolve disputes in the fields of marriage, inheritance, wills, grants, waqf, and sadaqah. However, it also now handles adoption applications and resolves disputes in zakat, infaq, property, other civil rights among Muslims, and the sharia economy. In detail, the PA's authority is; (1) Sharia Banks, (2) Sharia Microfinance Institutions, (3) Sharia Insurance, (4) Sharia Reinsurance, (5) Sharia Mutual Funds, (6) Sharia Bonds and Sharia Medium Term Securities, (7) Sharia Securities, (8) Sharia Financing, (9) Sharia Securities, (8) Sharia Financing, (9) Sharia Pawnshops, (10) Sharia Financial Institution Pension Funds, and (11) Sharia Business.

After that, the Sharia Economic Law Compilation (KHES) was published based on the law's mandate. No. 3 of 2006. This KHES is specifically issued or regulated by the Supreme Court Regulation (Perma) No. 2 of 2008. In this Perma, the scope of sharia

²⁵ Eka Sakti Habibullah, “Hukum Ekonomi Syariah dalam Tatanan Hukum Nasional” in *Journal Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam*, p. 696.

economic law in KHES is, First, the subject of law and amwal. Second, About Akad, including Contract principles, Rukun, Terms, Legal categories, 'Disgrace, Consequences and Benefits of Akad, Ba'i, Ba'i Consequences, Syirkah, Mudharabah, Muzara'ah and Musaqah, Khiyar, Ijarah, Kafalah, Hawalah, Rahn, Wadi'ah, Gashb, and Itlaf, Wakalah, Shulhu, Relief of Rights, Ta'min, Mudharabah Sharia Bonds, Capital Markets, Sharia Mutual Funds, Sharia Bank Indonesia Certificates (SBI Syariah), Sharia Bonds, Multi-Service Financing, Qardh, Sharia Current Account Financing, and Sharia Pension Fund. Third, Zakat. Fourth, Grants. And Fifth, Islamic Accounting.

Based on this, Islamic banking law's material and legal problems fall under Indonesia's Religious Courts' authority. Thus, the legal position of Islamic banking in Indonesia can be resolved through arbitration or mediation. In terms of stronger legal force, it can be resolved in the Religious Courts. Next, we will explain the history of the development of Islamic banking law in Indonesia.

3.3. Dynamics of Sharia Banking Regulation In Indonesia

As previously stated, Islamic banking regulations have a powerful and solid position in the national legal system in Indonesia. It is none other than providing peace and encouragement to the public as consumers in using Islamic banking products, especially for Islamic banking practitioners to develop banking products to suit the demands of the times and the demands of Islamic law. By then, academics must also evaluate the dynamics running of Islamic banking regulations so far.

The dynamics of Islamic banking regulations can be classified into 3 (three) laws. The following will be analyzed 3 (three) of these Laws:

3.3.1. Law Number 7 of 1992

When its acc was issued, the Government Regulation (PP) Number 72 of 1992 includes banks based on the Profit-Sharing principle in its article. This PP appears to translate Act No.7 of 1992, particularly in Article 1 point 12. This article states that "the provision of money or an equivalent bill, based on a loan agreement or agreement between the bank and other parties, requires the borrower to pay off the debt after a certain period with the amount of interest, reward or profit-sharing." This PP seeks to interpret how the payment of credit forms is based on the profit-sharing system.

The profit-sharing system referred to by this PP is expressly disclosed as the principle of profit-sharing based on sharia, as stated in Article 2 of PP. 72 of 1992. The following details are in full, "The profit-sharing principle as referred to in Article 1 paragraph (1) is the profit-sharing principle based on Shari'ah used by the bank based on the profit-sharing principle in a) determining the compensation to be given to the public in connection with the use/utilization of public funds entrusted to him; b) determine the compensation be received in connection with the provision of funds to the public in the form of financing for both investment and working capital purposes; c) determine remuneration in connection with other business activities that banks commonly carry out on a profit-sharing basis.

Then, this PP was elaborated by SEBI. No. 25.4. BPPP dated February 29, 1993. The main point of the SEBI is to determine several rights, including first, banks based on profit sharing are Commercial Banks and Rural Banks whose business is solely based on the profit-sharing principle. Second, the profit-sharing principle in question is the profit-sharing principle based on shari'ah. Third, banks based on the profit-sharing principle are required to have a

Shari'ah Supervisory Board. Fourth, commercial banks or Rural Banks whose business activities are solely based on the profit-sharing principle cannot do business that is not based on the profit-sharing principle. On the other hand, commercial banks or Rural Banks whose business activities are not based on the profit-sharing principle cannot carry out business activities based on the profit-sharing principle.

For this reason, when this Law and Government Regulation comes into effect, the only banks allowed to operate the profit-sharing system are Commercial Banks or Rural Banks. It is also expressly stated in PP No. 72 of 1992 Article 1. This provision is further emphasized in article number six of Government Regulation No. 72 of 1992, that: (a) Commercial Banks or Rural Banks whose business activities are solely based on the interest of results are not allowed to carry out business activities that are not based on the profit-sharing principle, (b) Commercial Banks or Rural Banks whose business activities are not based on the profit-sharing principle are not allowed to carry out business activities based on the profit-sharing principle. Only Bank Muamalat Indonesia (BMI) operated with a profit-sharing / shari' ah system at that time.

It can be understood that the services that BMIs can provide are sufficient only from the point of view of an institution that provides services and products only limited at that time. This condition also becomes difficult because regulations are not regulated by regulations, such as; management of third-party funds, mudharabah, and musyarakah, which requires banks to invest in other parties, while this is against the law.²⁶ Then, it can

²⁶See The sixth article and the seventh article of Law No. 7 of 1992 concerning Banking.

be understood that the practices that occur in the field in the operation of Islamic banks are only the result of legal interpretations of Law No. 7 of 1992, which is limited with the support of PP No. 72 of 1992 concerning Banks with Profit Sharing Principles.

Thus, the conditions of Law and Government Regulation issued at that time, which only regulated this way, provided an understanding that regulations greatly influenced Islamic banking development. Even so, this is a fairly good initial stage to introduce Islamic banks in Indonesia from where they did not previously exist.

3.3.2. Law Number 10 of 1998

This law is an amendment to Law No. 7 of 1992 concerning Banking. So, this law automatically eliminates PP. 72 of 1992 concerning Banks with Profit Sharing Principles. What is regulated by this law is more comprehensive or enhances Law no. 7 of 1992 concerning Banking that existed before.

According to Abdul Ghofur Anshori, this law was published as the government's response to the crisis that occurred at that time; monetary and financial institutions severely impacted national banking. The issuance of this law is the hope that public trust will return to banking.²⁷

The period of enacting this law can be referred to as the beginning of Islamic banking's development period because the existence of this law confirms the legality of Islamic banking—article 1 paragraph (13) of the law. No. 10 of 1998 emphasizes that the principle of Shari'ah is a rule of agreement based on Islamic law

²⁷Abdul Ghofur Anshori, "Sejarah Perkembangan Hukum Perbankan Syariah di Indonesia dan Implikasinya bagi Praktik Perbankan Nasional" in *Journal of Ekonomi Islam*, "La_Riba", Vol. II, No. 2, Desember 2008, 168.

between a bank and other parties to deposit funds and finance business activities or other activities that are stated following Shari'ah.

In its existence, Islamic banking is confirmed by its existence through the definition of Article 1 paragraph (3) and paragraph (4) of Law No.10 of 1998 that Commercial Banks are banks that carry out business activities conventionally and or based on Sharia Principles which in their activities provide services in traffic Payment. Meanwhile, Rural Banks are banks that carry out business activities conventionally or based on Sharia Principles and do not provide payment traffic services.

Commercial Banks or Rural Banks' option to carry out their activities based on sharia principles; has provided room for Indonesia to run banking with a dual banking system. Thus, conventional banks can open sharia services.²⁸

3.3.3. Law Number 21 of 2008

This law's emergence is a "big leap" for the development of Islamic banking in Indonesia. Why not? In this era, the existence of Islamic banking has been strictly separated from conventional banking. In addition, Article 5 paragraph (7) and Article 17 paragraph (2) Law No. 21 of 2008 provide space or opportunity for the opening of new Islamic commercial banks and/or conversion from conventional to sharia. The opposite is true or through the acquisition process.²⁹ Thus, this separate regulation stimulates the

²⁸The firmness of these regulations is still strengthened by the issuance of Law no. 23 of 1999 concerning Bank Indonesia, in which Bank Indonesia was responsible for banking regulation and supervision, including shariah banks. Bank Indonesia has the authority to set monetary policy based on shariah principles.

²⁹ The Spin-off which is an obligation regulated in the Transitional Provisions of Article 68 of Law Number 21 of 2008, namely:

a. Conventional Commercial Banks own UUS whose asset value has reached at least 50% (fifty percent) of the total asset value of their parent bank or 15

development of Islamic banking to become more advanced with this law's existence.

In detail, too, it is necessary to establish a Sharia Committee based on this law's mandate. This mandate is operated by Bank Indonesia Regulation No. 10/32 / PBI / 2008. Article 1 paragraph (1) explains that the Sharia Banking Committee, after this referred to as the Committee, is a forum consisting of experts in the field of sharia muamalah and economists, financial experts, and banking experts, who are tasked with assisting Bank Indonesia in implementing the Fatwa of the Ulama Council. Indonesia is a regulation that will be outlined in a Bank Indonesia Regulation.³⁰

With the firmness to specifically separate Islamic banking and the formation of a sharia committee, there is a serious effort to establish many BUS in a juridical manner. This also indicates the seriousness of purifying Islamic banking to be genuinely under Islamic law.

If it is looked at the enactment of Law Number 7 of 1992 until Law Number 10 of 1998, only one sharia bank was established in Indonesia. This explains that the current arrangement closed the fertility of the establishment of Islamic banks in Indonesia. However, after the issuance of Law No. 10 of 1998, which became an amendment to Law No. 7 of 1992, and the existence of several

(fifteen) years since the enactment of this Law. For this reason, the Conventional Commercial Bank is required to separate the UUS into a Sharia Commercial Bank.

b. Further provisions regarding Separation and sanctions for Conventional Commercial Banks that do not conduct Separation as referred to in paragraph (1) are regulated in a Bank Indonesia Regulation.

³⁰The Committee's specific duties are to assist Bank Indonesia in: (a) interpreting MUI fatwas related to Islamic banking; (b) provide input for implementation into Bank Indonesia Regulations; (c) developing the Islamic banking industry. The results of the implementation of these tasks will be submitted to Bank Indonesia in the form of recommendations. See Article 5 PBI No. 10/32 / PBI / 2008.

supporting regulations, all triggered Islamic banks to develop rapidly.

Based on the exposure of these periods, the author can classify them and give names to the different periods based on applying the regulations and the characteristics of the practice that occurred in those periods. Namely, the dynamics of Islamic banking regulations in Indonesia can be concluded by dividing it into 3 (three) periods. First, the period of enactment of Law No.7 of 1992 is referred to as the integration period, namely Sharia banking's initial attempt to enter the national banking system. Second, the enactment of Law No. 10 of 1998 is referred to as the period of Islamic banking to become mainstream banking, namely to become part of the main power among banks that have existed in the national banking system. Third, the period of Law No. 21 of 2008 is a clear indication that Islamic banking has become mainstream banking, as intended, in the national banking system.

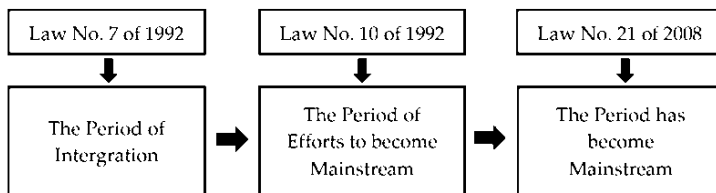


Figure 1. The Development of Islamic Banking Law in Indonesia

4. DISCUSSION (MODEL OF ENGINEERING IN THE ESTABLISHMENT OF ISLAMIC BANKING IN INDONESIA)

The stage after the third period is the fourth period. The fourth period is when Islamic banking in Indonesia has become a

leader in the national banking system. In order to enter this period, there needs to be a regulation that makes this happen. For that, there must be engineering that needs to be done. In this case, it is proposed the fourth-period engineering model with a sociological approach to forming laws.

The sociological approach attempts to form a law because laws cannot be separated from the situation and development of the society in which the law will be enforced. Therefore, the social and cultural conditions of the community will influence the formulation of the legislation itself.³¹ A legal norm can apply in people's lives if the legal norm has legal effectiveness. This law's effectiveness can be manifested through a coercive approach by the state or as a legal awareness of the community itself.³² Thus, in this context, the legislators must absorb the community's aspirations and hopes in the legislative process of law.³³

This approach was chosen so that the constitution which will bring the sharia burden into the fourth period can be appropriately implemented. Because what happens is to use a coercive approach by issuing laws unilaterally by the state, the public and practitioners will not implement them properly. In the end, the law will not be substantial. If under the law's order to issue various sharia banking products, it is inconceivable, but the public does not want or need them, then these products will be "devoid of interest."

³¹B. Hestu Cipto Handoyo, *Prinsip-Prinsip Legal Drafting dan Desain Naskah Akademik* (Yogyakarta: Universitas Atmajaya Yogyakarta, 2008), p. 67.

³²Zainudin Ali, *Sosiologi Hukum* (Jakarta: Sinar Grafika, 2010), p. 62.

³³Jimly Ashiddiqie, *Perihal Undang-Undang* (Jakarta: Rajawali Press, 2011), p. 118.

If the engineering is made into a picture, then the model for engineering to make Islamic banking the leader for the national banking system will take the following form:

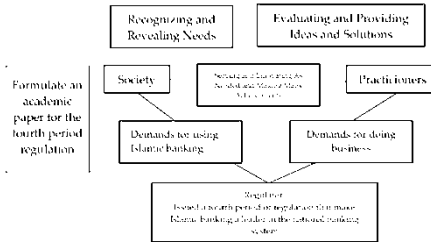


Figure 2. Model for Engineering to make Islamic Banking the Leader

The explanation of engineering with a sociological approach carried out by each party is as follows:

With their essential functions in science and research who have a significant concern with the banking world, academics must carefully observe and reveal the needs of the Indonesian people and state, both micro and macro, the monetary sector or the real sector, and nationally and globally. Then, provide correct and appropriate ideas and solutions to problems encountered in the banking sector effectively and efficiently. As well, constantly evaluating the performance of sharia banking practitioners in running the wheels of banking for the welfare of society and the country by certainly not losing their sharia values. Finally, the leading role which is very important for academics is their ability to awaken and convince the public to transact and carry out economic activities using Islamic banking. The role of academics is the leading role in efforts to bring Islamic banking into the fourth period.

Society: Indonesian people, especially Muslims, must be aware of transacting and carrying out economic activities using

Islamic banking to carry out Islamic law in a kaffah (perfect) manner. The community's active role in using Islamic banking is one of the economic activities that will support Islamic banking to be a leader in Indonesia's national banking system. The community's demands (sociological demand) to Islamic financial transactions and their desires exist when they feel safe and comfortable in Islamic banking.

Practitioners: Practitioners of Islamic banking must strive and work optimally, effectively, efficiently, and innovatively in adjusting society's needs so that Islamic banking can obtain various achievements and achievements, both in terms of services, facilities, ease of obtaining funds, total assets, market share. , etc. The government as a regulator can be convinced to issue Islamic banking regulations that elevate and oversee Islamic banking to become the primary banking system in Indonesia.

The role of a regulator is to look at the progress and achievements of Islamic banking and the increased public awareness that demands a regulation that makes Islamic banking the primary system of national banking. It will automatically become a demand and 'force 'regulators (regulators) to issue regulations that make Islamic banking a leader in the national banking system in Indonesia.

5. CONCLUSION AND RECOMMENDATION

Observing the development and dynamics of Islamic banking regulations from year to year as described above, it can be concluded that the dynamics of Islamic banking regulations in Indonesia are divided into three periods. First, the enactment of Law Number 7 of 1992 is referred to as the integration period, namely the initial attempt of sharia banking to enter the national banking system. Second, the enactment of Law No. 10 of 1998 is

referred to as the period of Islamic banking to become mainstream banking, which is to become part of the main force among banks in the national banking system. Third, the period of Law No. 21 of 2008 clearly shows that Islamic banking has become mainstream banking as intended in the national banking system.

On that basis, in the future, it is necessary to issue Islamic banking regulations, which will lead Islamic banks to become leaders of the national banking system. Therefore, it needs effort and proof from Islamic banking itself and people who are aware of Islamic banking in economic activities. By then, Islamic banking will replace conventional banking as a mainstream banking system in Indonesia. This can be done using an engineering model through a sociological approach so that Islamic banking regulations can be issued that can lead Islamic banks to become leaders for the national banking system.

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