

Analysis of Sharia Business Unit *Spin-Off* Regulations and Islamic Law

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Abstract

Regulations regarding the development of Sharia Business Units (UUS) often experience changes, for example in Law Number 21 of 2008 concerning Sharia Banking in Article 68 paragraph 1. This advice aims to provide clear and specific legal references. Then, the latest regulation regarding UUS issued by the OJK. The Sharia Financial Services Authority (OJK) has issued a regulation regarding the spin-off of Sharia Business Units from Conventional Commercial Banks (BUK). This study aims to analyze OJK regulations regarding Sharia Business Units that have undergone spin-offs from the perspective of the legal system according to Lawrence M. Friedman, focusing on structural, substance, and cultural aspects, as well as the perspective of Islamic law regarding sharia compliance and ethical considerations. The method used is qualitative descriptive, with a sociological juridical approach that evaluates regulations based on legal principles and ethical considerations. Data was collected by means of documentation from Indonesian laws related to spin-offs, including Law Number 21 of 2008 concerning Sharia Banking. This regulation has a positive impact on the development of Sharia Business Units during the spin-off by increasing budget transparency, integrity, and operational efficiency leading to sustainable growth and compliance with Islamic principles.

Keywords: Spin-Off, Sharia Business Unit, Legal System, Islamic Law

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A. INTRODUCTION

The development of the Islamic financial sector has become one of the main focuses of the government and financial authorities in Indonesia in recent years.¹ Islamic finance is a financial system based on Islamic sharia principles, which prohibit *riba* (interest), excessive speculation, and haram business activities. The growth of the Islamic finance sector in Indonesia has shown very good development. This is seen from the large enough market share to attract Islamic finance users in the financial industry to be involved in Islamic business.² This is seen from the data of the 2022 Indonesian Islamic Financial Development Report (LPKSI).³ One form of development of the Islamic financial sector is through the establishment of sharia business units within conventional financial companies or conventional banks that want to provide financial services and products based on sharia principles. In this context, many Conventional Commercial Banks (BUK) in Indonesia have opened Sharia Business Units (UUS) to offer financial products and services based on Islamic law.

However, although this sharia business unit operates under the auspices of conventional banks, there are challenges in integrating the operations and management of sharia units with conventional businesses. In some cases, Islamic business units may experience challenges, and need to adapt to different market

¹ Heri Irawan, Ilfa Dianita, And Andi Deah Salsabila Mulya, "Peran Bank Syariah Indonesia Dalam Pembangunan Ekonomi Nasional," *Jurnal Asy-Syarikah: Jurnal Lembaga Keuangan, Ekonomi Dan Bisnis Islam* 3, No. 2 (2021): 147–58, <https://doi.org/10.47435/Asy-Syarikah.V3i2.686>.

² Asep Ganjar Sukarelwan, Retno Anisa Larasati, Dan Inal Kahfi, "Sistem Operasional Internal Bank Syariah," *Al-Mujaddid: Jurnal Ilmu Agama* 2, No. 1 (2020): 60–70.

³ [https://ojk.go.id/id/berita-dan-kegiatan/info-terkini/pages/ojk-launchkan-buku-laporan-perkembangan-keuangan-syariah-indonesia-\(lpxsi\)-2022.aspx](https://ojk.go.id/id/berita-dan-kegiatan/info-terkini/pages/ojk-launchkan-buku-laporan-perkembangan-keuangan-syariah-indonesia-(lpxsi)-2022.aspx).

characteristics from conventional banks.⁴ For example, in the challenges of IT infrastructure, *e-banking*, network cooperation, funding capacity, and capital. The above are some of the challenges faced by sharia business units in carrying out a spin-off.⁵

In addition, differences in operational principles and policies between sharia units and conventional businesses can also cause imbalances and internal conflicts. To overcome these challenges and provide better opportunities for sharia business units to grow and develop independently, the Financial Services Authority (OJK) as a supervisory and regulatory institution for the financial sector in Indonesia, feels the need to issue rules and guidelines related to spin-offs in sharia business units. Spin-off is a process in which an Islamic business unit is separated from a conventional bank and established as an independent Islamic company.⁶ To be better known as Spin-off is separation.

Law Number 21 of 2008 concerning Sharia Banking provides legal regulations that are certain for the development of Islamic financial institutions. The Sharia Banking Law regulates in detail the legal basis and types of businesses that can be operated and carried out by Islamic banks in Indonesia.⁷ The law also directs that BUK can operate based on sharia principles by opening a UUS. UUS is a unit owned by BUK to carry out business activities with sharia principles. In accordance with the mandate of the Sharia Banking Law, further provisions regarding the separation are regulated in Bank Indonesia Regulation (PBI)

⁴ Rachmadi Usman, *Legal Aspects Of Sharia Banking In Indonesia*, Ed. Tarmizi And Suryani, 2nd Cet (Jakarta: Sinar Grafika, 2014).

⁵ Itang, "Opportunities And Challenges Of Spin-Off Of Sharia Business Units To Become Sharia Commercial Banks," *Alqalam* 33, No. 1 (2016): 24, <https://doi.org/10.32678/Alqalam.V33i1.383>.

⁶ Huta Disyon And Fildzah Rio, "Challenges In Enforcement Of Business Competition Law In The Islamic Banking Industry," *Journal Of Business Competition* 2, No. 2 (2022): 100–110, <https://doi.org/10.55869/Kppu.V2i2.67>.

⁷ Ade Onny Siagian, *Lembaga-Lembaga Keuangan Dan Perbankan* (Sumatera Barat: Cv Insan Cendikia Mandiri, 2021).

Number 11/10/PBI/2009 concerning Sharia Business Units (PBI UUS) as last amended by PBI Number 15/14/PBI/2013.⁸

The latest regulation from the Sharia Financial Services Authority Number 12 of 2023 concerning Sharia Business Units, the regulation explains regulations related to efforts to separate Sharia Business Units during *Spin-Offs*.⁹ In its development, OJK, which has been the supervisory authority of the financial services industry (banking, capital market, and non-bank financial industry) since 2011, issued strategic policies which, among others, aim to create a stable and competitive national banking so that it can answer the challenges of the increasingly dynamic and complex development of the financial services industry. One of the strategic policies issued by OJK is to encourage the banking industry to make consolidation efforts to create a strong banking structure, increase business scale and increase competitiveness through innovation capabilities, and can contribute significantly to the national economy.¹⁰ The background of OJK issuing OJK rules regarding Spin-Off in Sharia business units comes from several important considerations such as ¹¹ *First*, Increasing Commitment to Sharia Finance, the Government of Indonesia has shown a strong commitment to developing the Islamic financial sector to create a more inclusive and sustainable financial system. In facing global competition in the

⁸ Direktorat Pengaturan And Perizinan Perbankan Syariah, “Panduan Pemisahan Unit Usaha Syariah,” Ojk (Otoritas Jasa Keuangan), 2020.

⁹ Dewan Komisioner And Otoritas Jasa, “Peraturan Otoriter Jasa Keuangan No 12 Tahun 2023 Tentang Unit Usaha Syariah,” 2023, <https://Medium.Com/@Arifwicaksanaa/Pengertian-Use-Case-A7e576e1b6bf>.

¹⁰ Muhammad Lazuardi Annas And Raihan Putri, “Efisiensi Peraturan Mengenai Wajibnya Spin Off Pada Unit Usaha Syariah Di Indonesia Menurut Perspektif Dallil Masalah Mursalah,” *Jurnal Ilmiah Ekonomi Islam* 9, No. 02 (2023): 2406–15.

¹¹ Imara Mahally Anadya, “Upaya Pengembangan Perbankan Syariah Dengan Melakukan Spin Off Unit Usaha Syariah Pada Bank Pembangunan Daerah,” *Jisip (Jurnal Ilmu Sosial Dan Pendidikan)* 7, No. 1 (2023): 126–37, <https://Doi.Org/10.58258/Jisip.V7i1.4088>.

Islamic financial market, a comprehensive approach is needed and focuses on the establishment of strong and competitive Islamic business units.

Second, Optimization of Sharia Business Potential, By separating sharia business units into independent companies, it is hoped that sharia business potential can be optimized and focus on developing financial products and services with sharia principles. Independent Islamic companies will be more flexible in responding to market changes and making more adaptive business decisions. *Third, Stability and Consumer Protection*, *Spin-offs* in sharia business units can provide clarity on corporate structure and avoid potential conflicts of interest between sharia units and conventional banks. Thus, the stability and integrity of the Islamic financial sector can be better maintained, and consumer protection of Islamic financial products and services can be improved. *Fourth, Transparency and Good Corporate Governance*, By becoming a separate sharia company, sharia business units will be required to comply with transparency standards and good corporate governance set by OJK. This will increase public accountability and trust in Islamic companies, thereby encouraging business growth and investment in the Islamic financial sector. *Fifth, Product Innovation and Creativity Development*, *Spin-off* in sharia business units can encourage the development of innovation and creativity in creating more diverse Islamic financial products and services according to market needs. Independent Islamic companies will have the freedom to develop more specific products and focus on better service to consumers. *Seventh, Harmonization with International Standards*, in the face of global competition, the Islamic financial sector in Indonesia needs to operate with international standards. With the spin-off of sharia business units, sharia companies can more easily integrate and participate in the global sharia financial network.¹²

¹² Budi Prijanto And Meyta Indrayani, "Analisis Tingkat Efisiensi Unit Usaha Syariah Perusahaan Asuransi Jiwa Di Indonesia Dalam Mempersiapkan Rencana Spin-***Al-Ahkam***

By considering the above factors, OJK considers it important to issue clear and comprehensive rules regarding spin-offs in sharia business units. This regulation is expected to provide a strong framework for an effective and safe spin-off process, as well as increase the contribution of the Islamic financial sector in supporting inclusive and sustainable economic growth in Indonesia.¹³ In today's modern business environment, sharia-based economic and business concepts are increasingly receiving attention. Sharia Business Units, for example, which focus on sharia economic principles, also known as sharia business units, have become increasingly popular in recent years.¹⁴ *Sharia business unit Spin Off* refers to the separation or development of business units operating with sharia principles from large business entities that may have conventional operations. As we know that Islamic law always refers to the principles, rules, and guidelines of Islamic religious teachings in regulating human life, one of which is in the sustainable economic sector. Islamic law comes from the revelation of Allah SWT as detailed in the Qur'an and the Sunnah of the Prophet. If we examine the verses of the Qur'an relating to law, it turns out that the verses that show rather detailed laws are only about the law of worship and family law. As for laws in a broad sense, such as material matters, economics, treaties, statehood, statehood, and international relations, in general, they are only guidelines and outlines.

Off,” *Jppi (Jurnal Penelitian Pendidikan Indonesia)* 9, No. 1 (2023): 195, <https://doi.org/10.29210/020221877>.

¹³ E Arianty And A Ghoni, “Pemilihan Model Implementasi Spin-Off Unit Usaha Asuransi Syariah Di Indonesia Dengan Model Ahp,” *Jurnal Ilmiah Ekonomi Islam* 9, No. 01 (2023): 656–69, <https://jurnal.stie-aas.ac.id/index.php/jei/article/view/7933><https://jurnal.stie-aas.ac.id/index.php/jei/article/download/7933/3353>.

¹⁴ Disyon And Rio, “Tantangan Penegakan Hukum Persaingan Usaha Pada Industri Perbankan Syariah.”

Furthermore, this research was developed from several previous studies. Meanwhile, in the study Annas¹⁵ was found that regulations regarding Spin Off are mandatory where Sharia Business Units must be implemented based on *maslahah mursalah* because it is in accordance with the principles contained in *maslahah mursalah*.

Then in the study Muhammad Anif Afandi¹⁶ it was concluded that DPK, KAP, and PYD had a positive effect. Meanwhile, NPF and inflation did not affect the profitability of Islamic Commercial Banks.

Furthermore, in the study by Achmad Kusna Permana¹⁷ it was found that the strategy for the effectiveness of the implementation of the *Spin-off* policy lies in the strength of various aspects of the parent's commitment in supporting businesses with sharia concepts, such as maximum, network, human resources, and brand.

In the study by Dwi Rahmawati¹⁸ found that it is expected that there will be strong regulations regarding the separation of Sharia Spin Offin Business Units for companies. The reason is, *the Spin-off rules* in Sharia Business Units still refer to the old regulations, namely Bank Indonesia Regulations.

In contrast to previous studies, where previous studies discussed Spin-offs *related to old regulations, then analyzed the legal structure of balal certification*, and the

¹⁵ Annas And Putri, "Efisiensi Peraturan Mengenai Wajibnya Spin Off Pada Unit Usaha Syariah Di Indonesia Menurut Perspektif Dallil Maslahah Mursalah."

¹⁶ Muhammad Anif Afandi, Karnila Ali, And Jati Imantoro, "Pengaruh Kebijakan Pemisahan (Spin-Off) Terhadap Profitabilitas Bank Umum Syariah Di Indonesia," Jurnal Fidusia 6, No. 1 (2023): 41–57.

¹⁷ Achmad Kusna Permana, Strategi Implementasi Kegijakan Spin Off Unit Usaha Syariah Di Indonesia, Jurnal Bunga Rampai 30 Tahun Ekonomi Syariah Indoensia, 2021, https://www.researchgate.net/profile/Achmad-Firdaus-2/publication/366822393_Integrasi_Wakaf_Pada_Asuransi_Syariah/links/63b3bb18a03100368a4b435c/Integrasi-Wakaf-Pada-Asuransi-Syariah.pdf#page=139.

¹⁸ Dwi Rahmawati Soleman, Tinjauan Hukum Normatif Terhadap Penerapan Spin-Off Pada Unit Usaha Syariah, Repository.Uinjkt.Ac.Id, 2021, <https://repository.uinjkt.ac.id/dspace/handle/123456789/61481>.

impact of Spin-offs on BUS in Indonesia, and so on. Thus, this research was developed and there is a novelty which focuses on the new regulation of the Financial Services Authority, namely the Financial Services Authoritarian Regulation No. 12 of 2023 concerning Sharia Business Units, here the development of further writing will see how the legal system of this latest OJK regulation regarding Spin-Off and how Islamic law views the latest regulation.

B. RESEARCH METHOD

This research is a qualitative descriptive research with a normative approach. The research approach used is a statutory approach, because normative legal research of a research that is examined as the basis of the central theme of legal research is legislation.¹⁹ The source of this study consists of primary and secondary legal research. The primary data materials such as laws and regulations that have relevance to this research are related to *the Spini-off* of Sharia Business Units. While the secondary legal material is library material consisting of official documents, articles or journals, scientific papers that have relevant relevance to this research. For data collection techniques used, namely by collecting data by reviewing several library materials and conducting further searches (literature studies). Later it will be identified, then classified, and presented systematically in the form of a narrative.²⁰

C. RESULT AND DISCUSSION

Based on Law Number 21 of 2008 concerning Sharia Banking, that Sharia Bank is a Sharia financial institution in the form of a bank where business within the bank must be by sharia principles with the rules of the Fatwa of the

¹⁹ Joanedi Efendi, “Metode Penelitian Hukum: Normatif Dan Empiris,” In Metode Penelitian Hukum: Normatif Dan Empiris (Depok: Kencana Prenada Media Group, 2018).

²⁰ Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2015).

Indonesian Ulema Council.²¹ The principles of sharia in question must be principled to balance and justice (*‘adl wa tawazun*), benefit (*maslahah*), and universalism (*alīyah*), and do not have *magrib activities* (maysir, gharar, usury, and zhalim) and disappear from an object that is haram.²² Based on its activities, Islamic banking is divided into three parts, namely; Sharia Commercial Banks (BUS), Sharia Business Units (UUS), and Sharia Bank Credit Banks (BPRS).²³

Sharia Commercial Bank (BUS) is a type of Islamic bank where activities in this Islamic bank are in the form of services using payment. Business activities in this Sharia Commercial Bank such as raising funds in the form of current account deposits, savings deposits, and a *Wadi'ah* contract and other contracts that do not conflict with Sharia principles.²⁴ Sharia Commercial Banks also have services in the form of raising funds in the form of investments such as; Deposits, Savings, and other contracts like this *Mudharabah*. In Sharia Commercial Banks (BUS) there are also several types of contracts with sharia principles such as *murabahah contracts*, *mudharabah contracts*, *shtisna contracts*, *musyarakah contracts*, *greeting contracts*, *ijarah contracts*, *kafalah contracts*, *hawala contracts*, *bittamlik vomiting ijarah contracts*. The following are the types of Islamic banks at Sharia Commercial Banks (BUS), namely²⁵: PT. Bank Aceh Syariah, PT. BPD Riau Kepri Syariah, PT. BPD West Nusa Tenggara Sharia, PT. Bank Muamalat Indonesia, PT. Bank Victoria Syariah, PT. Bank Jabar Banten Syariah, PT. Bank Syariah Indonesia Tbk, PT. Bank Mega Syariah, PT. Bank Panin Dubai

²¹ Ismail, *Perbankan Syariah* (Jakarta: Kencana, 2016).

²² H Husain, "Falsafah Hukum Perbankan Syariah Di Indonesia," Sulesana: Jurnal Wawasan Keislaman 14 (2020), <https://Journal3.Uin-Alauddin.Ac.Id/Index.Php/Sls/Article/View/16816%0ahttps://Journal3.Uin-Alauddin.Ac.Id/Index.Php/Sls/Article/Download/16816/9663>.

²³ <https://Www.Ojk.Go.Id/>

²⁴ Anadya, "Upaya Pengembangan Perbankan Syariah Dengan Melakukan Spin Off Unit Usaha Syariah Pada Bank Pembangunan Daerah."

²⁵ <https://Www.Ojk.Go.Id/>

Syariah Tbk, PT. Bank Syariah Bukopin, PT. Bank Central Asia Syariah, PT. Bank Tabungan Pensiunan Nasional Syariah Tbk, PT. Bank Aladin Syariah Tbk.

Sharia Business Unit (UUS) is a type of sharia bank from the BUK unit or Conventional Commercial Bank whose function is as the parent bank of the unit bank with its banking activity system with sharia principles, some Sharia Business Units (UUS) are abroad carrying out activities as well as central banks yairu conventional banks but sub-branch offices do business with sharia principles. Business activities in this Sharia Business Unit (UUS) such as raising funds in the form of current account deposits, savings deposits, and a *Wadi'ah* contract and other contracts that do not conflict with sharia principles.²⁶ Sharia Business Unit (UUS) also has services in the form of raising funds in the form of investments such as; Deposits, Savings, and other contracts like this *Mudharabah*. In the Sharia Business Unit (UUS) there are also several types of contracts with sharia principles such as *murabahah contracts*, *mudharabah contracts*, *sbtisna contracts*, *musarakah contracts*, *greeting contracts*, *ijarah contracts*, *kafalah contracts*, *hawala contracts*, *bittamlik vomiting ijarah contracts*.²⁷ Receiving payments from securities with sharia principles, providing money transfers with sharia principles, providing a *letter of credit* facilities with sharia principles, and providing activities in social form with sharia principles.

The following are the types of Islamic banks at Sharia Commercial Banks (BUS), namely; PT. Bank Danamon Indonesia Tbk, PT. Bank Permata Tbk, PT. Bank Maybank Indonesia Tbk, PT. Bank CIMB Niaga Tbk, PT. Bank OCBC NISP Tbk, PT. BPD DKI, PT. BPD Daerah Istimewa Yogyakarta, PT. BPD Central Java, PT. BPD Jawa Timur Tbk, PT. BPD Jambi, PT. BPD North

²⁶ Andrianto And M. Anang Firmansyah, *Manajemen Bank Syariah (Implementasi Teori Dan Praktek)*, Cv. Penerbit Qiara Media, 2019.

²⁷ Yessi Nesneri, Fitri Hidayati, And Ulfiah Novita, "Strategi Unit Usaha Syariah Bank Umum Konvensional Dalam Menghadapi Spin Off 2023 (Studi Pada Pt. Bpd Riau Dan Kepulauan Riau)," *Jurnal Tabarru': Islamic Banking And Finance* 3, No. 2 (2020): 335–46, [https://doi.org/10.25299/jtb.2020.Vol3\(2\).5939](https://doi.org/10.25299/jtb.2020.Vol3(2).5939).

Sumatra, PT. BPD Nagari, PT. BPD South Sumatra and Bangka Belitung, PT. BPD South Kalimantan, PT. BPD West Kalimantan, PT. BPD East Kalimantan, PT. BPD South Sulawesi and West Sulawesi, PT. Bank Sinarmas, PT. Bank Tabungan Negara (Persero) Tbk, PT. Bank Jago, Tbk.

Sharia People's Financing Bank (BPRS) is a type of Islamic bank that does not provide payment traffic services. Business activities at Sharia People Financing Bank such as; Business activities in the Sharia People's Financing Bank (BPRS) such as raising funds in the form of current account deposits, savings deposits, and *Wadi'ah* contracts and other contracts that do not conflict with sharia principles. Sharia People's Financing Bank (BPRS) also has services in the form of raising funds in the form of investments such as; Deposits, Savings, and other contracts like this *Mudharabah*. In the Sharia People's Financing Bank (BPRS) there are also several types of contracts with sharia principles such as *murabahah contracts*, *mudharabah contracts*, *shtisna contracts*, *musarakah contracts*, greeting contracts, *ijarah contracts*, *kafala contracts*, *hawala contracts*, and *bittamlik vomiting ijarah contracts*. Providing money transfer services for customer interests through Sharia People's Financing Bank accounts, Sharia Commercial Banks (BUS), and Sharia Business Units (UUS).

The following are the types of Islamic banks at the Sharia People's Financing Bank, namely: ²⁸ PT. Sharia Fajar Sejahtera Bali, PT. Banka, PT. Harta Insan Karimah, PT. Baitul Muawanah, PT. Attaqwa Garuda Utama, PT. Wakalumi, PT. Mulia Berkah Abadi, PT. Blessings Ramadhan PD Cilegon Mandiri, PT. Indonesian Ummah Meeting, PT. Muamalat Harkat PT Safir Bengkulu, PT. Margirizki Bahagia, PT. Build Drajat Warga, PT. Amanah Rabbaniah, PT. PNM Mentari, PT. Baitur Ridha, and so on.

Spin-off is a term used in the business and media world to describe the formation of a new entity that is independent of an existing entity. Specifically, in

²⁸ <https://www.Ojk.Go.Id/>

the context of business, spin-off refers to a company's strategy to separate an existing business unit or subsidiary into a separate company. This process is carried out by dividing existing company shares or assets by new shareholders of the newly formed company.²⁹ The result of a spin-off is the formation of a new company that is usually stand-alone and has independent management and operations. This separation can be done because the parent company wants to focus on its main core business and release business units that are no longer by the business strategy or do not contribute significantly to the company's growth. Thus, spin-offs can help companies achieve greater efficiency and focus on more profitable core activities.³⁰ Typically, when a spin-off occurs, shareholders of the parent company will receive shares of the new company formed based on a certain ratio. The new company will have its management and board of directors and have the freedom to manage its operations, including setting the Company's strategy and policies. Spin-offs are different from mergers or acquisitions, where two companies merge into one entity or one company acquires a majority stake in another company. In a spin-off, no company takes over or merges, but rather the formation of a new company that is legally and operationally separate.

Financial Services Authority (OJK)

The Financial Services Authority (OJK) is an institution that functions as a supervisor and regulator in the financial services sector in Indonesia. OJK acts as the competent supervisor and regulator in regulating Indonesia's financial sector, with a primary focus on ensuring stability, consumer protection, and inclusive and sustainable development of the financial sector. OJK was established based on Law Number 21 of 2011 concerning the

²⁹ Laila Afni Rambe, Mohammad Saddam Jamaluddin Ishaq, And Uswatun Khasanah, "Analisis Pengaruh Spin-Off Bagi Unit Usaha Syariah Di Indonesia," *Muslim Heritage* 6, No. 1 (2021), <https://doi.org/10.21154/Muslimheritage.V6i1.2851>.

³⁰ Annas And Putri, "Efisiensi Peraturan Mengenai Wajibnya Spin Off Pada Unit Usaha Syariah Di Indonesia Menurut Perspektif Dallil Masalahah Mursalah."

Financial Services Authority and officially began operating on March 31, 2013. Since then, OJK has become an important pillar in maintaining the stability and growth of the financial sector in Indonesia.³¹ OJK supervises and regulates banking, insurance, and capital market activities nationally. OJK's main objective is to create stability, transparency, and trust in the financial sector to support sustainable economic growth. As a supervisory institution, OJK has an important role in protecting the interests of the public and other stakeholders in the financial sector. OJK is also tasked with maintaining market integrity, preventing illegal or harmful practices, and providing protection to financial service consumers. The Financial Services Authority (OJK) is a government institution that oversees the Indonesian financial system, both the conventional financial sector and the Islamic financial sector.

This suggestion aims to clarify the independence and role of the Financial Services Authority (OJK) in supervising the financial sector. The Financial Services Authority (OJK) is an independent, and free from interference from other parties that has the function of implementing an integrated regulatory and supervisory system for all Indonesian financial services sectors. The service sector in question includes activities in the banking sector, insurance, capital markets, pension funds, financing financial service institutions, and so on in financial services. The Financial Services Authority (OJK) has a vision and mission, the vision of the Financial Services Authority (OJK) is to become an independent and trusted supervision of the financial services industry, can protect the interests of consumers and the wider community, and can make the financial services industry a pillar of the national economy that has global competitiveness and can prosper in general. The mission of the Financial Services Authority (OJK) is *first*, to realize the implementation of all activities in the financial services sector in an orderly, transparent, fair, and accountable

³¹ <https://www.ojk.go.id/>

manner. *Second*, to realize a financial system that grows stably and grows sustainably. *Third*, to protect the interests of the public and consumers.³²

Some of OJK's duties and authorities include: *first*, Provide business licenses and supervise financial institutions, such as banks, insurance companies, and securities companies. *Second*, Supervise and regulate the capital and operational activities of financial institutions. *Third*, Issue policies and regulations to regulate the financial sector to be in line with government policies and national interests. *Fourth*, Conduct research and development in the field of financial services to support innovation and industry development. *Fifth*, Provide education and protection to financial service consumers so that the public can participate intelligently and safely in financial markets.

Sharia Business Unit (UUS) is a type of Islamic bank originating from the BUK unit or Conventional Commercial Bank whose function is as the parent bank of the bank unit with a banking activity system with sharia principles, some Sharia Business Units (UUS) are abroad carrying out activities like central banks, namely conventional banks but sub-branch offices do business with sharia principles. This research was developed from several previous studies and has differences, such as in the study (Latifah dkk, 2022) it was found that halal certification must have a regulatory hierarchy that has a clear process and strong derivative rules for its implementation, including self-declaration for MSEs. Friends of the Halal Center have contributed to encourage this. On the other hand, MSEs are very responsive in getting these services to build their products and are committed to guaranteeing their results keeping halal as a mandatory goal.

Meanwhile, in the study (Annas dkk, 2023) it was found that regulations regarding Spin Off are mandatory where Sharia Business Units must be implemented based on *maslahah mursalah* because it is in accordance with the

³² <https://www.Ojk.Go.Id/>

principles contained in masalah mursalah. Then in the study (Afandi dkk, 2023) it was concluded that DPK, KAP, and PYD had a positive effect. Meanwhile, NPF and inflation did not affect the profitability of Islamic Commercial Banks. Next, in the study (Achmad 2021) it was found that the strategy for the effectiveness of the implementation of the *Spin-off* policy lies in the strength of various aspects of the parent's commitment in supporting businesses with sharia concepts, such as maximum, network, human resources, and brand.

Business activities in this Sharia Business Unit (UUS) such as raising funds in the form of current deposits, savings, and *Wadi'ab* contracts and other contracts that do not conflict with sharia principles. Sharia Business Unit (UUS) also has services in the form of fundraising in the form of investment such as; Deposits, Savings, and other contracts such as *this Mudharabah*. In the Sharia Business Unit (UUS) there are also several types of contracts with sharia principles such as murabahah contract, *mudharabah* contract, *shtisna contract*, *msyarakah* contract, speech contract, *ijarah* contract, *kafala contract*, *hawala contract*, *bittamlik vomiting ijarah contract*. Receive payments from securities with sharia principles, provide money transfers with sharia principles, provide *letter of credit* facilities with sharia principles, and provide activities in social form with sharia principles.

Table 1 Development of Sharia Business Unit

No	Sharia Business Unit	Year			
		2020	2021	2022	2023
					June
1.	Branch Office	162	178	180	185

2.	Sub-Branch Office	169	201	200	214
3.	Cash Office	61	66	58	52

Source: ³³

Law is said to be successful in terms (of structural, substance, and culture) these three things are important points in regulation. Because it can create harmonization among groups of society, and finally the creation of the idea of justice, and peace that always gives birth to functions to society in general. A law or regulation is enforced not alone but due to certain factors in it. To emphasize the multifaceted nature of the implementation of the new regulations. A legal expert, Lawrence M. Friedman, said that a legal system or regulation can be seen from the internal part of the law itself. As such, the social system that has the greatest influence is not used as procedures, regulatory assets, and activities of officials who are sealed and exiled from the rest of society. Conceptually that the core point of the meaning of a law or regulation lies in the harmonization of active it is whose purpose is in the value hierarchy in a real and good context, and the brush that acts at the end of a regulation or law there is an elaboration of the value of creating peace, defense of living social security. In other words, Achmad Ali concluded that an abstract regulation or law lies in a static and helpless state without human action in it. Regulation or law can be seen as doing something and doing something because of the mutual interaction of human action itself. Peraturan atau undang-undang sering tunduk pada pendapat dan interpretasi yang berbeda. Lawrence M. Friedman mentioned that a legal system or regulation can be seen from the internal part of the law itself. As such, the social system that has the greatest influence is not used as

³³ <https://www.ojk.go.id/>

procedures, asset rules, and activities of officials who are sealed and exiled from the rest of society. This includes the Financial Services Authority (OJK) regulation which has just been inaugurated by the Financial Services Authority (OJK) on 12 July 2023, namely Financial Services Authority (OJK) Regulation Number 12 of 2023 concerning Sharia Business Units. In Chapter II of Capital and Licensing, Article 2 explains that BUK that will conduct business based on Sharia Principles is obliged to open a UUS and *spin-off*. The opening fund of UUS that has been set is at least one trillion rupiah.

To improve clarity, this suggestion simplifies the description of legal concepts by Lawrence M. Friedman. Law enforcement is related to three elements of the legal system: legal structure, legal substance, and legal culture, as defined by Lawrence M. Friedman. Law enforcement cannot be separated from the legal concept of Lawrence M. Friedman who said about the three elements of the legal system consisting of legal structure, legal substance, *and* legal culture. To provide more specific and focused questions on the research content, this study will discuss in more detail related to regulations. To improve clarity, this suggestion simplifies the explanation of the focus of the study on Sharia Business Units and their regulations. This research will focus on Sharia Business Unit *Spin-Off* regulations and Islamic Law.

Sharia Business Unit Spin-Off Substance Law

Improve the coherence and clarity of explanation of the legal substance of *Spin-Off activities*. The legal substance of *Spin-Off* activities in Sharia Business Units has previously been contained in a regulation or legislation and agreed to be separated *Spin-Off* in Sharia Business Units has been regulated by several laws that have their substance hierarchy in them. The following is the *legal substance* of the Spin-Off in the Sharia Activity Unit, namely:

Table 2 Development Sharia Business Unit Syariah Substance Law

Law	Drunk	Consequences
<p>Sharia Banking Law No. 21 of 2008 on Article 68</p>	<p>Conventional Commercial Banks that already have a Sharia Business Unit with assets of 50% of the total assets of their parent are required to separate the Sharia Business Unit into a Sharia Commercial Bank</p>	<p>Conventional Commercial Banks that do not separate from Sharia Business Units will be subject to sanctions for revocation of operational licenses</p>
<p>Bank Indonesia Regulation No. 15/14/PBI/2013 concerning Amendments to Bank Indonesia Regulation No. 11/10/PBI/2009 concerning Sharia Business Units</p>	<p>Conventional Commercial Banks that want to <i>Spin Off</i> to open Sharia Business Units only get permission from Bank Indonesia</p>	<p>Bank Indonesia will review the feasibility of Conventional Commercial Banks wishing to <i>Spin Off</i> opening Sharia Business Units by considering several things, as a result of which Conventional Commercial Banks (BUK) are reluctant to disclose their net profit to BI</p>

<p>Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (PPSK Law)</p>	<p>That the transformation obligation of Conventional Commercial Banks to <i>Spin Off</i> to Sharia Business Units is fully regulated by the Financial Services Authority (OJK)</p>	<p>A <i>spin-Off</i> to open Sharia Business Unit has not been fully implemented</p>
<p>Financial Services Authority (OJK) Regulation No. 12 of 2023 concerning Sharia Business Units</p>	<p>Conventional Commercial Banks that conduct business activities based on Sharia Principles are required to open Sharia Business Units within six months of the enactment of the P2SK Law</p>	<p>Sanctions will be imposed for the termination of Sharia Business Unit activities</p>

In the *legal substance* of the Financial Services Authority (OJK) Regulation No. 12 of 2023 concerning Sharia Business Units, namely: *First*, the obligation to provide business funds of Rp. 1 trillion rupiahs for *Spin-Off* for the opening of new Sharia Business Units and Sharia Business Units that are in the process of developing their business. *Second*, all directors and the Board of Commissioners of Conventional Commercial Banks that have Sharia Business Units must be

responsible for the development of Sharia Business Units. *Third*, Conventional Commercial Banks that already have Sharia Business Units with *an asset share* of more than 50% trillion or total assets *of more than Rp. 50 trillion* are required to Spin off to *open new Sharia Business Units*. *Fourth*, *Spin-Off* Sharia Business Units can establish a new Sharia Commercial Bank (BUS) or transfer the rights and obligations of Sharia Business Units (UUS) to existing Sharia Commercial Banks (BUS). *Fifth*, the Financial Services Authority (OJK) may request to separate the *Sharia Business Unit Spin-Off* to consolidate Islamic banking for the development and strengthening of Islamic banking. *Sixth*, Sharia Commercial Banks (BUS) that already have Sharia Business Units (UUS) must have a long-term strategy for the future business development of Sharia Business Units (UUS) by the policies of the Financial Services Authority (OJK), and Sharia Business Units (UUS) can utilize the resources of their parent Sharia Commercial Banks (UUS).

Legal Structure of Sharia Business Unit Spin-Off

The legal structure of the law is made to function nothing but to provide services and enforce the latest laws. As conveyed by the head of banking supervision at the OJK, Dian Ediana, the latest regulatory expenditure related to the *spin-off* of the Sharia Business Unit provides the latest clarity, be it the separation obligation, separation capital, and separation procedure. A solid legal umbrella in a regulatory regulation must be able to optimize self-enforcement, there is a clear time lag. The certainty of the legal structure in the Sharia Business Unit *Spin-Off* rule was initially in the draft P2SK Law which contained that banks or banks were required to separate their Sharia Business Units into their own companies that had entities, namely Sharia Commercial Banks.

However, the draft has been deleted on January 12, 2023, and replaced by regulations from the Financial Services Authority (OJK) regarding the *Spin-Off* of Sharia Business Units. Legally, Sharia Business Unit *Spin-Off* refers to the process of releasing or separating part of the assets and liabilities of a business

entity of one bank into a new bank. The separation or *Spin-Off* of the Sharia Business Unit is a new entity of a bank whose consequences are very important. This is because the Sharia Business Unit *Spin-Off* will focus more on implementing Sharia principles, customer needs, and development strategies. Treating the *Spin-Off* of Sharia Business Units forcibly has an impact on the growth of Sharia business, so conventional private banks are not interested. The rules in the Financial Services Authoritarian regulation no. 12 of 2023 concerning Sharia Business Units in conducting separation or *Spin-Off* are carried out on condition that with the permission of the Financial Services Authoritarian, the granting of the license is carried out by granting a permit to establish a Sharia Commercial Bank with two stages, namely the principle approval stage and business license. To establish a Sharia Commercial Bank (BUS) from the separation of Sharia Business Units, it must be attached to PBI BUS. However, there are some special provisions regulated in the POJK for the separation of Sharia Business Units, so when assessing Sharia Commercial Banks (BUS) must refer to the POJK for the Separation of Sharia Business Units. For this reason, the Financial Services Authority has an important role in providing good supervision of the Sharia Business Unit *Spin-Off* process. Sharia banking statistics show that by 2023 the number of Conventional Commercial Banks with Sharia Business Units will be 20. Conventional Commercial Banks with Sharia Business Units are expected to immediately carry out the *Spin-Off* process to create consolidation, development, and progress in Islamic banking.

Sharia Business Unit Legal Culture

The third element is the legal culture which is defined as ideas, attitudes, beliefs, values, expectations, and opinions/opinions held by the community about the law (Achmad Ali, 2009). Legal Culture also defines the climate of social thought and social forces that determine how laws are used, avoided, or abused. Quoting Lawrence, legal behavior is not just law-abiding behavior but all

behavior that is a reaction to something that happens in the legal system. This is in line with several conventional commercial banks wanting to establish Sharia Business Units to become Sharia Commercial Banks. Some economists and economic law experts agree and disagree regarding the regulation of the Financial Services Authority (OJK) Regulation No. 12 of 2023 concerning Sharia Business Units. Parties who are pro or agree regarding the regulation have views or opinions such as UUS and BUK must be separated in the context of purification of Islamic banking. Purification is an activity to uphold Sharia *compliance*, which in this context means avoiding the mixing of funds collected separately from sharia and non-sharia activities. This point may be relevant considering that transactions between UUS and BUK through Inter-Office Accounts (RAK) often ignore the fatwas of the National Sharia Council (DSN) and the Indonesian Ulema Council (MUI). This certainly opens up opportunities for sharia inaccuracy, or at least sharia incompatibility. In other words, UUS which is still integrated with BUK is considered vulnerable to violating the principle of prudence in transactions in sharia.

In addition to purification, strengthening the role of Islamic banking in intermediation and financial development is another fundamental reason for those who are pro with *Spin-Off*. As a *full-fledged* Islamic bank, Islamic financial institutions can have greater flexibility in their operations. This allows Islamic banking to grow faster, which in turn expands its market share. That way, national Islamic banking is expected to immediately get out of the 5% *trap*, namely *market share* which is stuck in the range of 5% of the total banking industry. While parties who contradict or disagree regarding the regulation have views or opinions such as Sharia Business Units (UUS) are much more efficient than Sharia Commercial Banks (BUS). This is reasonable considering that the Sharia Business Unit (UUS) operates using the infrastructure of its parent bank. This means that operational inefficiencies increase if the Sharia Business Unit

(UUS) stands alone as a new entity. Furthermore, this has implications for the poor performance of the Sharia Business Unit (UUS) which lasted for years after *the Spin Off*. Thus, the newly "weaned" Sharia Business Units (UUS) are unlikely to achieve economies of scale equivalent to BUK even if they earn profits. This creates difficulties for them, especially those with little capital, to compete in the national banking scene. Return on assets (ROA) data commonly used as a measure of banking performance is a justification for the above allegations. Four out of five Sharia Business Units (UUS) that have been *Spin-Off* for more than 10 years have a worse ROA than the industry average. On the other hand, Sharia compliance of Sharia Business Units (UUS) is still in a safe portion. Keep in mind that developments in the current era of banking digitalization have become more sophisticated, and the prevention of mixing Islamic and conventional funds is certainly much better.

Islamic Legal Perspective on *Spin-Off* Sharia Business Unit (UUS)

Sharia Business Unit Spin-Off (UUS) is the process of separating sharia business units from conventional companies and forming independent entities that operate under Islamic sharia principles. Islamic law regarding *the Spin-Off* of Sharia Business Units (UUS) shows the importance of separating conventional business and sharia business to ensure the existence of an independent and sustainable Sharia Business Unit (UUS) in implementing sharia principles in the services and financial products offered. In Islam, business and economic activities must follow the teachings of sharia which forbid *riba* (interest), *gharar* (uncertainty), *maysir* (gambling), and *muamalat* which are contrary to Islamic ethical and moral values. In the Qur'an Allah Almighty has said:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ
مِّنْكُمْ ۗ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۗ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Means:

O you who believe, do not falsely eat your neighbor's wealth, except in the form of business based on your likeness. Don't kill yourself. Indeed, Allah is Most Merciful to you.

Q. S. An-Nisa verse 29 above explains that do not eat food in a vanity way such as *riba* (interest), *gharar* (excessive uncertainty), or *maysir* (gambling). As is known that the Sharia Business Unit still has principal funds from Conventional Commercial Banks. Even though in Conventional Commercial Banks there are transactions that carry out the principle of usury. The Islamic law review of *the Sharia Business Unit (UUS) Spin-Off* provides an in-depth understanding of the importance of maintaining the integrity and independence of the Sharia Business Unit (UUS) to operate following sharia principles without being affected by conventional business that may involve haram or prohibited practices in Islam. One important aspect of Islamic law review regarding *Sharia Business Unit Spin-Off (UUS)* is the importance of maintaining the asset and financial separation between Sharia Business Unit (UUS) and conventional business.

In Islam, every business and economic activity should stand alone and not depend on each other, especially when it involves binding transactions and finances. *The Sharia Business Unit (UUS) Spin-Off* assures that the operations of the Sharia Business Unit (UUS) and conventional business do not affect each other and that the Sharia Business Unit (UUS) can manage its funds and assets in a manner that is under sharia principles.

In addition, the Islamic law review on *Sharia Business Unit Spin-Off (UUS)* also emphasizes the importance of ensuring that Sharia Business Unit (UUS) policies and management are based on sharia principles and implemented with high integrity. Sharia Business Units (UUS) must comply with the principles of Islamic muamalat in their business transactions, including transparency, fairness, and accuracy in determining the price and value of assets. The Islamic law review of *Sharia Business Unit (UUS) Spin Off* also highlights the importance of a

prudent approach in selecting financial activities and products that conform to sharia principles. Before conducting a *Spin Off*, companies must conduct a thorough audit to ensure that all financial products and services offered by UUS are strictly per sharia principles. If there are problematic products or transactions, there must be corrective or elimination steps before the Sharia Business Unit (UUS) is separated. In the review of Islamic law, the importance of education and awareness of the principles of sharia is also emphasized.

Sharia Business Unit (UUS) must educate employees and customers about sharia principles that apply to the products and services offered. Customers should be given a good understanding of the nature of transactions and their Shariah implications so that they can make smart decisions and be by their religious beliefs. Islamic legal views on the *Spin-Off* of Sharia Business Units (UUS) affirm the importance of separating sharia business from conventional business to ensure the sanctity and operational validity of Sharia Business Units (UUS) by sharia principles. *Spin-Off* Sharia Business Unit (UUS) creates an entity with independence and integrity, which can carry out its operations fairly, transparently, and by Islamic ethical values. Thus, *Spin-Off* Sharia Business Unit (UUS) is an effective solution to face challenges in maintaining the operational sanctity and integrity of Islamic finance and enabling the Islamic financial sector to grow and develop sustainably to achieve the goals of inclusive and sustainable economic development.

D. CONCLUSION

In the supervision and development of Sharia Business Units in which the government has provided adequate performance in it, it can be seen that regulations are given as in Sharia Banking Law Number 21 of 2008 concerning Article 68 that Conventional Commercial Banks that already have Sharia Business Units with assets amounting to 50% of the total wealth of their parents

are required to separate the Sharia Business Units into Sharia Commercial Banks. Conventional Commercial Banks that do not separate themselves from Sharia Business Units will be subject to sanctions for revocation of operational licenses. Then in Bank Indonesia Regulation No.15/14/PBI/2013 concerning Amendments to Bank Indonesia Regulation No.11/10/PBI/2009 that BUS that wants to Spin Off to open a Sharia Business Unit only gets permission from Bank Indonesia Bank Indonesia will review the feasibility of Conventional Commercial Banks that want to Spin Off the opening of Sharia Business Units by considering several things, thus causing Conventional Commercial Banks (BUK) to be reluctant to disclose their net profit to BI. Furthermore, Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (PPSK Law) that the obligation to transform Conventional Commercial Banks to spin off into Sharia Business Units is fully regulated by the Financial Services Authority (OJK) Spin-Off into open Sharia Business Units has not been fully implemented. And finally, in the regulation of the Financial Services Authority (OJK) Regulation Number 12 of 2023 concerning Sharia Business Units, Conventional Commercial Banks that carry out business activities based on Sharia Principles are required to open Sharia Business Units within six months of the enactment of the P2SK Law, and the consequences given to this latest regulation are quite severe and illustrate that Sharia Business Units that are still collaborating with Conventional Commercial Banks will soon separate alone.

And the review of sharia economic law on the regulation of the development of Sharia Business Units is considered to be the right step to create an independent and integrity entity, which can carry out its operations fairly, transparently, and follow Islamic ethical values. This is because previously the Sharia Business Unit had its operational funds still mixed with Conventional Commercial Banks. It is expected that the results of this study will add literature

on *Spin Off*, especially about Sharia Business Units. It is expected that the latest regulation will provide a strong and clear legal foundation for Sharia Business Units (UUS) to operate with sharia principles, as well as to maintain transparency and integrity in every aspect of their business. Then in further studies, it is expected to dig deeper related to the Spin Off of Sharia Business Units. Both in terms of research variables and different reviews. It is hoped that future research can expand the scope in terms of aspects of public perception of the Sharia Business Unit Spin Off.

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