

EXISTENCE AND POSITION OF ISLAMIC ECONOMIC LAWS IN INDONESIA

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Abstract

The Islamic economy in Indonesia has the potential to continue to grow and has great benefits for the welfare of the economy. The Islamic economic system has also penetrated the real sector with the presence of several types of sharia businesses that include halal food and medicine, Islamic fashion, and even sharia tourism. This study aims to determine the existence and position of Islamic economic law in Indonesia. The research method used in this study is normative juridical. The existence of the Islamic economy is marked by the mushrooming of Islamic-based financial institutions, for example, Islamic Banking, and Islamic Non-Bank Financial Industry (IKNB). The position of Islamic economic law in the Indonesian legal system is no longer just because of historical demands and population because the majority are Muslim but the needs of the wider community. Sharia economic law is felt to be fair so that it can oversee the welfare of the people aspired by the Indonesian people.

Keywords: Existence; Position; Islamic Economic Law

A. INTRODUCTION

Indonesia is a country with the largest Muslim population in the world, thus Indonesia has the opportunity to become a country with the highest development of sharia economic asset values in the world. Sharia-based economies grow and develop together with the birth and development of Islam in this world. When Rasulullah SAW was in Mecca, economic activity had not been carried out because Rasulullah SAW was more focused on monotheism. He is better known as a proponent of a new religion that is facing extraordinary challenges from the Quraysh and other residents of Mecca.¹

The study of Islamic economics is long enough. Most of the issues regarding Islamic economics are stored in Islamic literature such as the Qur'an and Hadith, Islamic economics (Islamic economics) both as a social science discipline and a system. The presence of the economic system is also not caused by the capitalist economic system. Islamic economics comes from the demands of Islam itself.²

In Indonesia, Islamic law is a living law which means it runs amid society. Soerjono Soekanto stated that law is a concretization of the value system that applies in society and a

¹ Hermansyah. *Kearifan Lokal sebagai Model Pendekatan Ekonomi Syariah*. Istinbath: Jurnal Hukum Islam IAIN Mataram, 12(2), 2013, 167-204, p. 169

² Amirus Sodik. *Konsep Kesejahteraan dalam Islam*. Equilibrium, 3(2), 2015, 380-405, p. 383

situation that is aspired to is the suitability between the law and the value system.³ Thus, Islamic law is a law that cannot be separated from Indonesian society.

According to the historical view, Islamic economic law in its very broad context has ever been applied or at least part of it still applies today. The production sharing system in the form of half-life and others in agriculture, animal husbandry, etc., which is widely known in several specific regions in Java, is a concrete example of the validity or enactment of Islamic economic law in the archipelago in the past. Likewise, the symbols of trade transactions in several traditional markets that seem thick with the jurisprudence schools known to the public.⁴

Public enthusiasm for the growth of Islamic economic practices is very high,⁵ especially with the mushrooming of the establishment of Islamic financial institutions (LKS) in the form of Bait at *Tamwil*, BPR Syariah or Islamic banking. Islamic banking is a trusted place for people who want to invest fairly with profit-sharing systems according to sharia principles. Fulfilling a sense of justice for all parties and providing benefits to the wider community is the main principle for Islamic banks.⁶ Therefore, Islamic banks apply the provisions by refraining from usury and implementing the principle of profit sharing and buying and selling system.⁷

The inclusion of Islamic elements (sharia economics) in the ideals of Indonesian economic law means that it has a strong foundation both formally and sharply as a constitution. Formally sharia, the existence of Islamic economics has a strong foundation of the argument. In the context of the country, Islamic economics has a constitutional basis.

Islamic law becomes a source of national law along with western law and customary law, it does not mean Islamic law must become formal law with its exclusive form, except for its nature to serve (not enforce imperatively) against what already applies as daily life.⁸ Moreover, Islamic law has long been a place in Indonesia in the context of its validity for so long, both normatively sociologically and formally juridically.⁹ Even though the formation of national law which is based on sharia teachings cannot be released in the context of national

³ Hari Sutra Disemadi, dan Kholis Roisah. *The Enforcement of Business Competition Law by the Police of the Republic of Indonesia*. Lentera Hukum, 6(2), 2019, 203-212, p. 207

⁴ Amirus Sodik., *Op.Cit.*, p. 392

⁵ Hari Sutra Disemadi, dan Paramita Prananingtyas. *Perlindungan Hukum Terhadap Nasabah Perbankan Pengguna CRM (Cash Recycling Machine)*. Jurnal Magister Hukum Udayana. 8(3), 2019, 286-402, p. 290

⁶ Hermansyah., *Op.Cit.*, p. 200

⁷ Elif Pardiansyah. *Investasi dalam Perspektif Ekonomi Islam: Pendekatan Teoritis dan Empiris*. *Economica: Jurnal Ekonomi Islam*, 8(2), 2017, 337-373, p. 339

⁸ Muh Barid Nizarudin Wajdi. *Monopoli Dagang Dalam Kajian Fiqih Islam*. At-Tahdzib: Jurnal Studi Islam Dan Muamalah, 4(2), 2016, 81-99, p. 88

⁹ Ayief Fathurrahman. *Pendekatan Maqāṣid Syarī'ah: Konstruksi Terhadap Pengembangan Ilmu Ekonomi Dan Keuangan Islam*. HUNafa: Jurnal Studia Islamika, 11(2), 2014, 193-214, p. 198

law, but in the context of practicing Islamic teachings (*kaffah*), Islamic legal legislation is placed within the framework of the needs of the Muslims themselves.¹⁰

Considering that the State of Indonesia is a country that has the most Muslim communities, the importance of research on economics, especially in the field of Islamic finance is considered very important, so the discussion of Islamic finance, in particular, is always important and actual for further study.

B. PROBLEM

Based on the description stated above, problems can be formulated, *first*, how is the existence of the Islamic economy in Indonesia; and *second*, the position of Islamic economic law in Indonesia. Then the purpose of writing this scientific article, among others, is to find out and examine the existence, the position of Islamic economic law in Indonesia.

C. RESEARCH METHODS

This research uses the normative legal research method using the statute approach and conceptual approach. The data used are secondary data both in the form of primary legal materials, secondary legal materials, and tertiary legal materials in the form of legislation, books, journals or other relevant sources. The technique of tracing legal materials uses document studies, as well as analysis of studies using qualitative analysis.

D. RESULTS AND DISCUSSION

1. The Existence of Islamic Economy in Indonesia

The meaning of the existence of Islamic economics means its existence in general amid society, especially in Indonesia. The Islamic financial industry, conceptually, has been by the demands of the times and is its historical obligation to be reborn and grow into an alternative-solutive financial system.¹¹ The Islamic finance industry in Indonesia has been known and applied by the public.¹² The existence of Islamic economics is marked by the mushrooming of Islamic-based financial institutions, for example, Islamic Banking, Islamic Capital Market, Non-Bank Financial Industry (IKNB) Sharia, and other Islamic Finance.

¹⁰ Ali Rama, and Makhilani Makhilani. *Analisis kesesuaian konstitusi ekonomi indonesia terhadap ekonomi Islam*. Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah, 6(1), 2014, 23-52, p. 25

¹¹ Moh Indra Bangsawan. *Eksistensi Ekonomi Islam (Studi Tentang Perkembangan Perbankan Syariah di Indonesia)*. Law and Justice, 2(1), 2017, 24-34, p. 27

¹² Ali Rama, and Makhilani Makhilani., *Op.Cit.*, p. 27

The economy of Muslims in history related to Islamic Banking was prevalent in the time of the Prophet Muhammad.¹³ These *muamalah* activities include receiving deposits, lending money for consumption and business purposes, and sending money by sharia-compliant agreements.¹⁴

Theoretically, the concept of Islamic Bank first appeared in the 1940s, with the idea of banking based on profit sharing. The development of modern Islamic banking internationally was initiated by Egypt. Egypt submitted a study proposal on the establishment of an International Islamic Bank for Trade and Development and a proposal to establish a Federation of Islamic Banks at the Foreign Minister's Organization of the Islamic Conference Organization (OIC) Conference in Karachi Pakistan in December 1970. In subsequent developments in Islamic banking in the 1970s, efforts to establish Islamic banks began to spread to many countries, including Indonesia and alongside conventional banks.¹⁵

The initiative to establish an Islamic bank in Indonesia began in 1980 through discussions on the theme of Islamic banks as a pillar of Islamic economics. In 1990, the Indonesian Ulama Council (MUI) held a Cisarua bank and banking interest workshop, Bogor, West Java. As a result of the MUI Banking Team's work, the first Islamic bank in Indonesia, PT Bank Muamalat Indonesia (BMI), which, according to its establishment certificate, was established on November 1, 1991. Since May 1, 1992, BMI has officially operated with an initial capital of Rp. 106,126,382,000.

Islamic banks and conventional banks, in general, have some similarities, especially on the technical side of money receipts, transfer mechanisms, computer technology used and so on.¹⁶ The basic difference between the two concerns the legal aspects, organizational structure, businesses financed and the work environment.¹⁷ The development of the Islamic banking system in Indonesia has made a lot of progress, both in terms of institutional aspects and supporting infrastructure, regulatory instruments, and supervision systems, as well as public awareness and literacy in Islamic financial services. Bank Indonesia provided a policy on the development of Islamic banking in Indonesia, which in 2002 had issued a Blueprint for Development of Islamic Banking in Indonesia such as the Indonesian Banking Architecture (API) and the Indonesian Financial System Architecture (ASKI) as well as international best practices formulated by international Islamic financial institutions, such as the IFSB (Islamic Financial Services Board).¹⁸ In the formulation of these policies, various aspects have been

¹³ Bustanul Arifin. *Eksistensi Maqasid al-Shari'ah Imam al-Syathiby Dalam Perkembangan Hukum Ekonomi Syari'ah*. At-Tahtzib: Jurnal Studi Islam dan Muamalah, 3(2), 2015, 75-99, p. 76

¹⁴ Moh Indra Bangsawan., *Op.Cit.*, p. 28

¹⁵ Otoritas Jasa Keuangan. *Sejarah Perbankan Syariah*. Available from <https://www.ojk.go.id/id/kanal/syariah/tentang-syariah/Pages/Sejarah-Perbankan-Syariah.aspx> (Accessed 1 April 2019).

¹⁶ Amirus Sodik., *Op.Cit.*, p. 394

¹⁷ Bustanul Arifin., *Op.Cit.*, p. 80

¹⁸ M. Nur Riyanto Al-Arif. *Penjualan On-Line Berbasis Media Sosial Dalam Perspektif Ekonomi Islam*. Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan, 13(1), 2013, 33-48, p. 40

comprehensively considered, including the actual condition of the national sharia banking industry and related instruments, the development trend of the national sharia banking industry which began to materialize and is inseparable from a more macro-financial system framework.¹⁹

Islamic finance in Indonesia has grown more than two decades since the operation of Bank Muamalat Indonesia, as the first Islamic bank in Indonesia. The development of Islamic finance has produced various achievements, from the increasing number of products and services to the development of infrastructure that supports the development of sharia in Indonesia.

About sharia IKNB in Indonesia has the potential to continue to grow and have great benefits for the economy. Sharia-based IKNB has become a pillar of strength in the Islamic financial industry, which in its development is expected to play a role in developing the Islamic economy in Indonesia.²⁰ Activities in the insurance industry, pension funds, financial institutions, and other financial service institutions constitute the Sharia IKNB, which in its implementation does not conflict with the principles of Islamic Economic Law. Sharia IKNB activities, in general, have no difference with conventional IKNB. But it has special characteristics, with products and transaction mechanisms that are based on principles in Islamic Economic Law.²¹

To see the existence of finance based on Islamic principles in the economy in Indonesia, it can be seen that in addition to the Sharia Banking and Sharia IKNB segments, there are also Sharia Capital Markets and other Sharia Finance that have developed. The development of the Islamic capital market in Indonesia is also caused by this halal activity, which is the activities of buying and selling securities (stocks, Sukuk), is *muamalah* activities so that transactions in the capital market are allowed as long as there is no prohibition according to sharia.²²

In Indonesia, there has been a trend for a shift in using conventional finance to finance based on Islamic economic principles. The existence of Islamic finance emphasizes that the existence of Islamic finance is in line with conventional finance, such as Islamic banks in line with conventional banks, which is similar to Islamic IKNB in line with IKNB in general.

The existence of the economy based on Islamic principles can be seen as a whole in its structure, substance, and culture. The economy based on Islamic principles in terms of structure can be seen in regulatory or enforcement institutions such as the Religious Courts, MUI National Sharia Council, OJK, Sharia Financial Institutions and so on, then from the substance it can be seen from regulatory products or fatwas concerning sharia finance, for example the Law Sharia banking and so on, and can be seen from its culture, namely the

¹⁹ Otoritas Jasa Keuangan. *Perbankan Syariah*. Available from <https://www.ojk.go.id/id/kanal/syariah/tentang-syariah/Pages/Perbankan-Syariah.aspx> (Accesed 2 April 2019).

²⁰ Moh Indra Bangsawan., *Op.Cit.*, p. 28

²¹ Ayief Fathurrahman., *Op.Cit.*, p. 209

²² Aris Baidowi. *Etika Bisnis Perspektif Islam*. Jurnal Hukum Islam, 9(2),2011, 239-250, p. 240

implementation of Islamic economic principles in society in the form of the operation of sharia banks or other sharia IKNB.

2. Legal Position of Islamic Economics in Indonesia

Along with the development of global culture and the advancement of science and information technology have an impact on various parts of everyday life. One of the impacts of global culture is also marked by the existence of the economic concept of the Islamic Economic Concept and the law needed to realize the welfare of society. Islamic economics is the science of people who believe in the values of Islamic life. Islamic economics that not only studies social individuals but also humans with the obligation to worship Allah SWT. Islamic Economics is controlled by the basic values of Islam in its application, based on the commands of the Qur'an and Hadith.²³

Sharia economic law based on Islamic law shows that Islamic law becomes a source of national law along with western law and customary law, it does not mean that it has to be formal law in its own exclusive form, except for its nature to serve (not impose imperatively) to what already applies as awareness in everyday life.²⁴ Here the source of law must be interpreted as a source of material law in the sense of being material content for a source of formal law. As Muslims, it is agreed that Islam regulates all aspects of social life with a set of norms, including legal norms. The Qur'an contains many general provisions to guide human behavior.²⁵

The existence of the sharia economic system in society is based on an understanding of Islam which is an integrated or comprehensive concept or system of life. Islam in economic activities provides a set of systems in the form of personal guidance, interactions and systems, application principles, and space to develop the economy with all policy instruments, institutions and legal aspects of development, control, and supervision. Of course, for these devices to produce quality, intensity, and usefulness of the system, it all depends on the people who develop, control and supervise the functioning of the economic system.²⁶

Technically, in practice in Indonesia, there is no difference in the terms Islamic economics and Islamic economics, but in academic studies the term is different. Because sharia according to language is water, roads, regulations, laws, and laws. Meanwhile, according to the term sharia which is a provision of the Islamic law that regulates the activities of mankind which contains commands and prohibitions, both concerning the relationship of vertical interactions with God and horizontal interactions with fellow beings.

²³ Elif Pardiansyah., *Op.Cit.*, p. 342

²⁴ Bambang Iswanto. *Ekonomi Islam Dan Politik Hukum di Indonesia*. Mazahib: Jurnal Hukum Islam. 12(2),2013, 77-91, p.80

²⁵ Ahmad Dimiyati. *Ekonomi Etis: Paradigma Baru Ekonomi Islam*. Jurnal Fakultas Hukum UII, 1(2), 2007, 153-168, p. 162

²⁶ Ramli Semmawi. *Urgensi Akad dalam Hukum Ekonomi Islam*. Jurnal Ilmiah Al-Syir'a, 8(2), 2010, 498-517, p. 501

The position of Islamic law in the Republic of Indonesia is very juridical constitutional as stated in Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In this article there are fundamental rules, namely:

- a. In the State of Indonesia there may not be or may not be applicable laws that conflict with religious rules that apply to adherents of religion in our homeland;
- b. The state is obliged to implement the Shari'a of all the religions that apply in Indonesia, if to run the Shari'a it requires the assistance of state power, this means that the state is obliged to regulate and enforce laws derived from religious teachings for the benefit of the Indonesian people if its implementation requires assistance in administering the state; and
- c. Sharia which does not require state authority to implement it because it can be carried out individually by each adherent of the relevant religion becomes the personal obligation of the adherents of the religion itself to carry it according to the provisions of their respective religions.

In national law politics, the position of Islamic law is clear, is one component of the Indonesian legal system, becoming one of the raw materials for the formation of Indonesian national law, which in Islamic law there are two fields, namely worship, and *muamalah*.²⁷ Legal arrangements relating to the field of worship are detailed, while legal regulations concerning *muamalah* only regulate their principles. The development and application of these principles are left entirely to the state and government administrators, namely the *ulil amri*. Thus the sharia economic law derived from Islamic law shows the existence of a new legal system in the Indonesian economy.²⁸

The formation of national law which is based on sharia teachings cannot be released in the context of national legal politics, but in the context of practicing Islamic teachings (*kaffah*), Islamic legal legislation is placed in the context of the needs of the Muslim community itself.²⁹ Therefore the law is carried out consistently because it is considered as a form of practice of Islamic teachings that are *kaffah* even in the form of legislation. With the teachings of Islam which are a source of sharia economic law in Indonesia, economic activities can be felt justice for Muslims and non-Muslims.

Indonesian state law or known as national law is a law that applies to the Indonesian people only. In Indonesia, national law is the law that was built by the Indonesian nation after independence and applies to the population of Indonesia, especially citizens of the Republic

²⁷ Bambang Iswanto., *Op.Cit.*, p. 82

²⁸ Ahmad Dimyati., *Op.Cit.*, p. 160

²⁹ A. Chairul Hadi. *Corporate Social Responsibility dan Zakat Perusahaan dalam Perspektif Hukum Ekonomi Islam*. AHKAM: Jurnal Ilmu Syariah, 16(2),2016, 229-240, p. 237

of Indonesia, as a substitute for colonial rule. National law for the national interest, based on the Pancasila and the 1945 Constitution, applies to citizens of the Republic of Indonesia.³⁰

The presence of Islamic economic law in the Indonesian legal system is a need of the wider community after it is well known and felt how fair and equitable the Sharia economic system is in guarding the welfare of the people aspired by the nation and the Unitary State of the Republic of Indonesia.³¹ The position of Islamic economic law as explained before this will be stronger when connected with the philosophy and constitution of the country namely Pancasila and the 1945 Constitution of the Republic of Indonesia.³²

Indonesia has a Pancasila ideology where the aim is to provide welfare for the people of Indonesia so that all rules must not conflict with Pancasila. In addition to the ideology of Pancasila, there is the 1945 Constitution of the Republic of Indonesia as a constitution that is always guarded by its spirit and dignity. When viewed the Sharia economic legal system in the Indonesian sharia economy is not at all contradictory let alone violate the Pancasila especially "The Precepts of God Almighty," also not at all contradictory let against the Constitution of the Republic of Indonesia both the preamble part in which include the sentence: "... By realizing social justice for all Indonesian people," as well as part of its contents, especially those contained in Chapter XI (Religion) Article 29 paragraphs (1) and (2), and Chapter XIV Articles 33 and 34 which regulate the national economy and Indonesian social welfare.

As a form of unification of sharia economic law in Indonesia, there are KHES. If the KHES is not compiled, the religious court judge decides the sharia economic case by referring to the fiqh books that are spread in various schools, because there is no positive legal reference that is unification, so there is a disparity in decisions between one court and another court, between judges one with the other judge.³³

The study of economics in general concerns the attitude of human behavior towards the problems of production, distribution, consumption of commodity goods and services. The study of Islamic economics in this respect is no different from secular economics, but from another aspect, it is bound by Islamic values, or in everyday terms, bound by halal-haram provisions.

³⁰ Bambang Iswanto. *Dimensi politik hukum dalam perkembangan ekonomi Islam di Indonesia*. Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan, 14(2), 2014, 271-284, p. 275

³¹ Mayoga Yudisthira, Neneng Nurhasanah, and Neni Sri Imaniati. *Pencegahan Tindak Pidana Pencucian Uang Pada Bank Umum Menurut Undang-Undang No. 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Hukum Ekonomi Islam (Studi Kasus Pada Bank Muamalat Indonesia Cabang Bandung)*. Prosiding Hukum Ekonomi Syariah, 2015, 412-418, p. 416

³² Muhammad Maksum. *Kedudukan Syariah sebagai sumber hukum positif: Kajian awal atas hukum perkawinan, ekonomi Islam, dan Hukum ketenagakerjaan di Indonesia dan Maroko*. Istinbath: Jurnal Hukum Islam IAIN Mataram, 15(2), 2016, 281-295, p. 291

³³ A. Chairul Hadi., *Op.Cit.*, p. 238

E. CONCLUSION

The existence of Islamic economics in general amid Indonesian society is conceptually by the demands of the times. The Islamic finance industry in Indonesia has been known and applied by the public. The existence of Islamic economics is marked by the mushrooming of Islamic-based financial institutions, for example, Islamic Banking, Islamic Capital Market, Non-Bank Financial Industry (IKNB) Sharia, and other Islamic Finance. Economic problems are the realm of *muamalah* where the law of origin of *al-ibahah* (allowed) unless prohibited, which means that any action or activity in the economic sphere is permissible unless the proposition forbids it.

Therefore the practice of Islamic economics often has in common with conventional economics but this does not mean Islamic economics is the same as conventional economics. The fundamental difference is its ideology, so that even though it looks the same but in determining and doing it differently. Islamic economics has an Islamic ideology. Everything is based on the Al-Qur'an and as-Sunnah or Ulama fatwas which are then used as the basis of Islamic economic law in which Islamic economics is built on religious principles oriented not only to the world but also to the orientation of the hereafter. Then the position of Islamic economic law is parallel with other conventional economic law. Relating to an economy based on Islam is mandatory for Muslim scholars in particular and is an alternative-solution for non-Muslims.

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