

Analysis of the Function of Sharia Principles As Legislative Fundament In the Islamic Economic and Banking System

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Abstract

The presence of Islamic Economic System through the contribution and function of Sharia Principles in the space of legislation and postivism of Islamic Banking Law, the religious values contained in the Sharia Principles become the mainstay and the main basis in the implementation of Islamic Law policy into the regulations of formal legislation and positive concerns concerning management activities, arrangements and management control of Sharia Banking in Indonesia. The Shari'ah principle that contains the values of the command (al amr) and the ban (al nahyu) is an icon of normative religious ethical doctrine in Islamic teachings, which is transcendental and gives positive effects, both in individual spiritual devotion, as well as on the implementation aspects of application management in its operational practices. Practically, the implementation of Sharia Principles in Sharia Banking Law is aimed at realizing the main principles in Shari'a Islam that are systematically described within the framework of the Political System of Islamic Economic Law that embodies and puts a value of justice, kindness (mashlahah) and protection of all aspects the economic life of the people and the State of Indonesia formulated into the spatial planning of achievement of the goals of the National Development Program stages. In general, it aims to support and improve the empowerment of people's economy in various real business sectors. In a special scope aims to develop the progress of the financial sector and Sharia Banking in Indonesia.

Keywords: Syariah Principle, Syariah Principle Function, Law of Syariah Banking.

A. Introduction

As mandated by the Pancasila and the Constitution of the United State of the Republic of Indonesia 1945, the aim of National Development was to create a just and prosperous society based on economic democracy, by developing an economic system focused on fair market mechanisms. To achieve this goal the implementation of national economic development is directed at economies that favor nationality economically, independently, independently, reliably, fair and able to compete in the international economy.¹ Lawmakers say that, Law is always behind economic activity. Every economic activity that a person undertakes must be that activity by the law's norms as a sign of its enforcement. The law of economic activity is a set of rules governing economic activity and is always influenced by the economic system adopted by a State.² Normally in Chapter XIV of National Economy And Social Welfare. Article 33 Section 1 states that: The economy is organized as a joint venture on the basis of family.³ In Section 3, it is stated that the Earth, Water, and Natural Resources contained therein are controlled by the State and used for the greater prosperity of the people.⁴ In Section 4, it states that the national economy is based on the principles of economic democracy, with the principles of equality,

¹ Abdul Ghofur Anshori. *Hukum Perbankan Syariah*. PT. Refika Aditama. Cetakan I. Bandung, Maret 2009. Page 153.

² Abdul Manan. *Aspek Hukum Dalam Penyelenggaraan Investasi di Pasar Modal Syariah di Indonesia*. Kencana. Jakarta, 2009. Page 6.

³ Undang-Undang Dasar 1945 Amandemen ke IV. 10 Agustus 2002. Fokus Media. Bandung, October 2009. Page 23.

⁴ *Ibid.* Page 24.

efficiency of justice, sustainability, environmental vision, independence, and by maintaining a balance of progress and unity of the National Economy.⁵ National Development that has been implemented over the years has demonstrated progress in various areas of people's lives, including social and religious life, economics, science and technology (iptek), politics, defense and security, Law and apparatus, regional and spatial development, provision of resources and infrastructure, and management of the Natural Resources (SDA) and the environment. In addition to the many progress we have made, there are still many unresolved challenges or problems. For that, it will still need efforts to address it in the National Development for the next 20 years.⁶ Economic constitution is developed in accordance with the dynamics of economic progress by applying sound governance principles in establishing efficient, effective and non-discriminatory regulatory and licensing frameworks, maintaining, developing and implementing a healthy business competition climate and protecting consumers, encouraging standardization development products and services to enhance competitiveness, formulate technology development strategies and policies in line with national economic development, enhance Small and Medium Enterprises (SMEs)⁷ in various regions of Indonesia so as to be an integral part of overall economic activity and strengthen domestic economy base.⁸ The Indonesian people, especially Muslims have long sought and fought for the enforcement of Islamic Shariah, not only through laws of organic technique, but more than that, which is completely constitutional.⁹ Particularly for Muslims, it is highly coveted by the existence of Bank Islam (a bank operating on shariah principles), as submitted by Mr. K.H. Mas Mansyur - Chairman of the Muhammadiyah PP for the period 1937-1944, who said that the use of the services of the conventional Bank was compulsory because Muslims did not have their own free bank (Karnaen A. Poerwaatmadja in Gumala Goddess, 2004 page 60).¹⁰ According to the Islamic Shariah economic perspective, the main cause of the current global economic crisis is the existence of three satanic trinity (gatan), namely gharar, money and usury. The financial and capital market systems of any country are always dominated by these three chains: gharar, maysir and usury. In the context of macroeconomic management, the widespread use of various Shariah-compliant financial products and instruments will enable the link between the financial sector and the real sector and create harmonization between the two sectors. Increasing use of Shariah-compliant products and instruments will further support the financial and business activities of the public, as well as reduce speculative transactions, thereby supporting the stability of the overall financial system, which in turn will contribute significantly to the achievement of medium and long-term price stability long-term.¹¹

B. Library Review.

B.1. Registration of The Syariah Banking Act Number 21 Year 2008.

On June 17, 2008: Proceedings of the Syariah Banking Law passed by the House of Representatives, and on July 16, 2008, the invitation was issued by the President of the Republic of Indonesia Prof. Dr. Soesilo Bambang Yudhoyono, it can be said that it is too late.¹² The Syariah Banking Act is very much needed, for several reasons is:¹³

a. In line with the aim of Indonesia's National Development to achieve the creation of a just and prosperous society based on economic democracy, it is necessary to develop an economic system based on the Islamic economic system in accordance with Islamic teachings.

⁵ *Ibid.*

⁶ Undang-Undang Republik Indonesia Nomor 17 Tahun 2007 *Tentang Rencana Pembangunan Jangka Panjang Nasional Tahun 2005-2025*. Sinar Grafika Offset. Cetakan I. Jakarta, 2007. Page 22.

⁷ <https://id.wikipedia.org/wiki/Usaha.Kecil.dan.Menengah>.

Access : Banjarmasin, 12 August 2016. Time : 11.04 Wit.

⁸ https://id.Wikipedia.org/wiki/Krisis_Finansial_Asia_1997.

Access : Banjarmasin. 5 March 2016. Time : 10.15 Wit.

⁹ Ma'ruf Abdullah. *Hukum Perbankan dan Perkembangan Bank Syariah di Indonesia*.

Antasari Press. Banjarmasin, Maret, 2006. Page 15.

¹⁰ *Ibid.*

¹¹ [Http://www.bi.go.id/id/Perbankan/Syariah/Contents/Default.aspx](http://www.bi.go.id/id/Perbankan/Syariah/Contents/Default.aspx).

Access : Banjarmasin, 11 April 2016. Time : 20.52 Wit.

¹² *Ibid.*

¹³ Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan dimuat dalam lembaran Negara Tahun 1992 Nomor 31 dan Tambahan Lembaran Negara Nomor 3472.

- b. Indonesia's demand for Shariah Banking services is growing, in line with the Muslim community and even non-Muslims that Shariah Banking services are better suited to the real needs of the community.
- c. Shariah banking has a specialty in comparison to conventional banking and requires special arrangements.
- d. Shariah banking as one of the national banking systems requires a variety of supportive measures to provide maximum contribution to national economic development.¹⁴

One of the forms of potential excavation and the contribution of society to the national economy is the development of an economic system based on Islamic values (shariah principles) by elevating its principles into the National Law System. Shariah principles are based on principles of justice, utilitarianism, equilibrium and universality. These values are implemented in Islamic banking arrangements based on a Shariah Principle called Shariah Banking.¹⁵ One of the principles in the Islamic economy is the prohibition of usury in its various forms, and the use of the system, among others the principle of revenue.¹⁶

B.2 Legitimacy of the Syariah Banking Act Number 21 Year 2008.

Legally, the legitimacy and existence of Sharia Banking is getting stronger, faster, more stable and recognized by its position and role in supporting and overseeing National Economic Development (popular economy) especially in the monetary sector and national banking activities in Indonesia. Based on this very conducive fact, it is necessary to have legal and conceptual regulatory arrangements through the form of a law, the Government issued Law Number 21 of 2008 concerning Syariah Banking.¹⁷ With the enactment of Law Number 21 Year 2008 concerning Syariah Banking issued on July 16, 2008, the development of the national Islamic Banking industry increasingly has an adequate legal basis and will encourage its growth even faster. With its impressive progress in development, which has achieved an average asset growth of more than 65% per year in the last five years, it is hoped that the role of the Islamic Banking industry in supporting the national economy will be even more significant.¹⁸ Sharia Banking Law is very necessary, for several reasons and interests, namely:¹⁹

- a. In line with the objectives of Indonesia's National Development to achieve the creation of a just and prosperous society based on economic democracy, an economic system based on an Islamic economic system that is in accordance with the teachings of Islamic law needs to be developed.
- b. Indonesia's need for Islamic Banking services is increasing, as Muslim and even non-Muslim community awareness that Sharia Banking services is more in line with the real needs of the community.
- c. Islamic Banking has specificity compared to conventional banking so it requires special arrangements.
- d. Sharia Banking as one of the national banking systems requires a variety of supporting facilities in order to be able to make a maximum contribution to the development of the national economy.²⁰

In addition, the development of the Sharia Banking system in Indonesia is carried out within the framework of the *dual banking system*²¹ or this Dual Banking System is within the framework of the

¹⁴ *Ibid.*

¹⁵ Penjelasan atas Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Lembaga Penjamin Simpanan.

<http://www.lps.go.id/Ketentuan-Terkait/-/Asset.publisher/nZ5y/content/uu-21-th-2008.Perbankan-Syariah.html>.

¹⁹ Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan dimuat dalam lembaran Negara Tahun 1992 Nomor 31 dan Tambahan Lembaran Negara Nomor 3472

²⁰ *Ibid.*

²¹ Investopedia. Dual Banking System.

<http://www.investopedia.com/terms/d/Dual-Banking-System.Asp.html>.

A Dual Banking System is the system of banking that exists in the United States in which state banks and national banks are chartered and supervised at different levels. Under the dual system, national banks are chartered and regulated under federal law and standards, and supervised by a federal agency. State banks are chartered and

Indonesian Banking Architecture (API), to present alternative banking services that are increasingly complete to the Indonesian people. Taken together, the Sharia Banking and Conventional Banking systems synergistically support broader mobilization of public funds to enhance financing capabilities for national economic sectors.²² Institutionally the Islamic financial system implemented in Indonesia includes Bank and non-Bank Financial Institutions. Both of these institutional systems play an important role in the Sharia Economic arena in Indonesia. Both also have different scopes. Although they are different, their roles are crucial in achieving the objectives of Sharia Economy in particular and National Economy in general.²³

B.3 Indonesian Religious Leader.

Indonesian Ulema Council (MUI) according to Presidential Regulation Number 151 of 2014 Regarding Funding Assistance The activities of the Indonesian Ulema Council are a forum for Muslim scholars, leaders and scholars to protect the people and develop Islamic life and increase Islamic participation in national development. The Indonesian Ulema Council is the Government's partner in organizing Islamic life development development programs. The Indonesian Ulema Council is a forum or assembly that brings together Indonesian Muslim scholars, zuamas and scholars to unite the movements and steps of Indonesian Muslims in realizing shared goals. The Indonesian Ulema Council as a forum for deliberation of ulama, *zuama* and Muslim scholars seeks to:²⁴

- a. Providing guidance to Muslims in realizing religious and social life blessed by Allah Subhanahu wa Ta'ala.
- b. Providing advice and fatwas on religious and social issues to the Government and the community, increasing activities for the realization of *ukhuwah Islamiyah* and harmony among religious communities in strengthening the unity and integrity of the nation as well.
- c. Be a liaison between ulama and umaro (government) and reciprocal translators between the people and the government in order to succeed national development.
- d. Improve relations and cooperation between organizations, Islamic institutions and Muslim scholars in providing guidance and guidance to the community, especially Muslims, by holding mutual consultation and information.²⁵

1. Function and Service.

In the service statement of the Indonesian Ulema Council, five main functions and roles of the Indonesian Ulema Council were formulated, namely:

1. Inherit the duties of the Prophets (*warasatul anbiya*).
2. Giver of Fatwa (*mufti*).
3. Guidance and servants of the people (*history of wa khadim al ummah*).
4. Movement *islah wal tajdid*.
5. Enforcement *amar ma'ruf and nahi munkar*.²⁶

2. National Sharia Council (DSN).

The Indonesian Ulema Council as an institution that has authority in the field of religion relating to the interests of Indonesian Muslims formed a national-scale sharia council called the National Sharia Council (DSN), established on February 10, 1999 in accordance with the Decree (SK) of the MUI Decision Number -754 / MUI / II / 1999.²⁷ This National Sharia Council-Indonesian Ulema Council

regulated under state laws and standards, which includes supervision by a state supervisor.

Access : Banjarmasin, 11 August 2016. Time : 15.00 Wit.

²² *Ibid*

²³ Sejak tahun 1970, lebih dari 200 Lembaga Keuangan tumbuh dan berkembang di dunia baik di negara muslim maupun non muslim. Perkembangan yang pesat ini dikarenakan inklusifitas keuangan Islam yang mengakomodir berbagai kalangan. Lihat, M. Kabir Hasan and Mervyn K. Lewis, *Handbook of Islamic Banking* (UK: Edward Elgar Publishing Limited, 2007. Page 1-4.

²⁴ Ainun Najib. *Fatwa Majelis Ulama Indonesia Dalam Perspektif Pembangunan Hukum Responsif*. Jurnal: Volume 4. No. 2. Desember, 2012.

²⁵ *Ibid*.

²⁶ *Ibid*.

²⁷ *Ibid*.

institution is an institution that has strong authority in determining and maintaining the application of Sharia Principles in operations in Sharia Financial Institutions, both Islamic Banking, Sharia Insurance and others. This is as contained in Act Number 21 of 2008 concerning Sharia Banking Article 32 as well as Act Number 40 of 2007 concerning Limited Liability Companies Article 109 which basically states that: Sharia Supervisory Board must be established in Islamic Banks or companies that carry out business activities based on Sharia Principles. The Sharia Supervisory Board can only be appointed if it has obtained a recommendation from the National Sharia Council-Indonesian Ulama Council Ijma'-Consensus of Indonesian Ulama Fiqh.²⁸ The National Sharia Council (DSN) is a supervisory / supervisory board / body that is at the national level or scope, whose main duties and obligations are to analyze and formulate sharia principles, one of which is through the issuance of fatwas as a guide in Islamic financial business. The sharia principles discussed in this institution / council are not solely focused on matters related to banks, but more than that covers all Islamic financial businesses that are applied in the State of Indonesia, including insurance, capital markets and mutual funds, and various business economic activities based on sharia principles. The National Sharia Board is not a Government body or institution, therefore Bank Indonesia does not have the authority to regulate including by issuing binding rules against this body and its members.²⁹ Fatwa of the National Sharia Council (DSN) was born and was made based on the Decree. Indonesian Ulama Council (MUI) Leadership Council on the Establishment of the National Sharia Council (DSN) Number: Decision 754 / MUI / II / 1999. One of the important tasks of the DSN is issuing Fatwas. Fatwas are based on the provisions of the texts of the Al Qur'an and As sunnah Rasulullah Muhammad Saw., Ijma Ulama, Qiyas and Qaidah Fiqh.³⁰

3. National Sharia Council Fatwa - Indonesian Ulama Council.

According to the Big Indonesian Dictionary (KBBI Language Development and Language Development Board of the Ministry of Education and Culture, Fatwa is a decision or opinion given by Mufti on a matter related to Islam. The government formed the Indonesian Ulama Council (MUI) in 1975 and continued to fund its members, however, the MUI's opinions in the form of Fatwa are not legally binding, however, the Fatwa of the Indonesian Ulama Council aims to provide moral guidance for Muslims and the community, and the Government seriously considers such Fatwa when making decisions or drafting legislation.³¹

B.4. Sharia Principles.

1. Understanding.

One form of exploring the potential and form of community contribution in the national economy is the development of an economic system based on Islamic Sharia values by elevating its principles into the National Law

system. Sharia principles are based on the values of justice, expediency, balance, and universality (*rahmatan lil'aalamiin*). These values are applied in banking arrangements based on Sharia Principles called Syariah Banking.³² In Law Number 21 Year 2008 Regarding Sharia Banking, in Chapter I General Provisions, Article 1 paragraph 12, it is stated that, Sharia Principles are Islamic Legal Principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the fields of sharia.³³ Sharia Principles are stated in Chapter I General Provisions, namely Article 1 Paragraph 12 states that Sharia Principles are Islamic Legal Principles in banking activities based on Fatwa issued by institutions that have the authority to determine Fatwa in the sharia sector.³⁴ In the definition of Sharia Principles there are two important things namely: Sharia Principles are Islamic Legal Principles. Determination of parties / institutions authorized to issue fatwas that form the basis of Sharia Principles.³⁵ As for the substance and

²⁸ *Ibid.*

²⁹ *Ibid.* Page 142.

³⁰ Agus Triyanta. *Hukum Perbankan Syariah – Regulasi Implementasi dan Formulasi Kepatuhan terhadap Prinsip-Prinsip Syariah*. Setara Press. Cetakan I. Malang, September 2016. Page 140-141.

³¹ <http://www.Kamus.Besar.Bahasa.Indonesia.id.htm>.

³² Abdul Ghofur Anshori. *Ibid.*

³³ Abdul Ghofur Anshori. *Filsafat Ilmu*. Gajah Mada University Press. Yogyakarta, 2009. Page 125.

³⁴ Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah.

³⁵ *Ibid.*

understanding of Sharia Principles stated in Chapter I General Provisions, namely: Article 1 Paragraph 12. Sharia Principles are Islamic Legal Principles in banking activities based on Fatwa issued by institutions that have the authority to determine Fatwa in the sharia sector.³⁶ Then in Chapter II about Principles, Objectives and Functions. Article 2 states: Sharia Banking in conducting its business activities based on Sharia Principles, Economic Democracy and Prudential Principles.³⁷

C. Research Methods.

This type of research is a purely juridical normative basic research (pure and normative juridical research) that is studying and positive rules or norms in relevant legislation namely Law Number 21 Year 2008 concerning Sharia Banking and National Sharia Council Fatwa about the prohibition of usury. Bank Indonesia Regulation Number 9/19 / PBI / 2007 concerning Implementation of Sharia Principles in Funds Collecting Activities and Services for Syariah Banks.

D. Results and Discussion.

D.1. Urgency of DSN Fatwa in Sharia Banking Law.

The government formed the Indonesian Ulema Council (MUI) in 1975 and continued to fund its members, but MUI opinions in the form of Fatwas were not legally binding. Nonetheless, the Indonesian Ulema Council fatwa aims to provide moral guidance to Muslims and the community, and the government seriously considers the fatwa when making decisions or drafting legislation. The Indonesian Ulema Council as an institution that has authority in the field of religion relating to the interests of Indonesian Muslims formed a national-scale sharia council called the National Sharia Council (DSN), established on February 10, 1999 in accordance with the Decree (SK) of the MUI Decision Number -754 / MUI / II / 1999. In carrying out its status, role, function and position as an Islamic Religious Institution that is authorized to perform *jijtihad* and formulate and determine boundaries related to social, economic and religious life issues in religious

activities and worship for Muslims in Indonesia, the National Sharia Council -The Indonesian Ulema Council has issued a legal policy in the field of *mumalah* cases based on Islamic Sharia Principles, including the following: National Sharia Council Fatwa Number 01 / DSN-MUI / IV / 2004 Concerning Interest (interest / *fa'idah*). In Decision:³⁸

a. The second part of the Law of Interest is stated: The practice of flowering of money has fulfilled the criteria of usury that occurred during the time of the Prophet Muhammad, peace be upon him, namely usury, rice. Thus, the practice of flowering money is one form of usury, and usury is unlawful. The practice of flowering is *haram*, both carried out by banks, insurance, capital markets, pawnshops, cooperatives, and other financial institutions or by individuals.³⁹

b. The Third Part about *Bermu'amalah* with Conventional Financial Institutions, stated: For areas that already have Sharia Financial Institution offices / networks and are easily accessible, transactions are not based on interest calculation. For areas where there is no office / network of Islamic Financial Institutions, it is permissible to conduct transaction activities in conventional financial institutions based on the principle of *dharurat/hajat*.⁴⁰

D.2. Elements of Shariah Principles in Shariah Banking Law.

Based on the source of the *ushul fiy maqashidnya*, the Shariah Principle consists of the basic elements of order (*al 'amr*) and prohibition (illegal).

1. Principles of Order (*al 'amr*).

Understanding *al amr* in a language means demanding to do something or make it.⁴¹ As the term implies, a slogan is used by someone in a higher position to demand that someone lower their degree to do something. *Al amr* can be interpreted as a command from the top down to demand an action to be taken. Lafal *al amr* is a phrase that shows compulsory meaning as long

– *Komisi Fatwa Se Indonesia III Tahun 2009*. Penerbit : MUI. Cetakan I. Jakarta Pusat, Maret 2009. Page 5.

⁴¹ Louis Ma'luf. *Al Munjid fi Al Lughah*. t.tp: Dar Al Masyriq, 1975. Page 17.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Fatwa Majelis Ulama Indonesia Nomor 1 Tahun 2004 Tentang Bunga (*Interest/Fa'idah*).

³⁹ *Ibid.*

⁴⁰ Majelis Ulama Indonesia. 2009. *Ijma' Ulama – Keputusan Ijtima' Ulama*

as it is in its essence. Surah Al Maidah Surah: 1.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مِمَّا يَمَلُ
مُجْلِي الصَّيْدِ وَأَنْتُمْ حُرْمٌ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

Meaning: O you who believe, fill those aqad. Animals are allowed for you, except for those that will be read to you. by not legalizing hunting while you are performing a pilgrimage. Indeed, Allah decrees the laws as He pleases.⁴² Surah Ali Imran Surah Qur'an: 104.

Meaning: And let there be among you a group of people who call upon the good, call on the virtuous and prevent the corrupt. They are the lucky ones.⁴³

2. Prohibition Principle (*al nahyu*).

Al Nahyu by language means boundaries or goals. Another meaning of this word is al Ghadir (tributary or swamp), because the flowing water will stop when it reaches that place. And from the same root word, reason is also called an nuhyat, because it can prevent intelligent people from doing wrong.⁴⁴ In addition to the meaning of lughawi as mentioned above, the word *al nahyu* is also interpreted as something that is forbidden to do and always leaves it. And usually also used is as in the form of sentences (لا تفعل) or in other words al nahyu is the opposite of *al amr*.⁴⁵ As for al nahyu according to the ulama ushuliyin is defined as طلب الترك من الاعلى الي الأدنى (the demand to leave the actions of a higher party to a lower party).⁴⁶ Al Nahah is a statement that shows a demand to leave an action from a higher party to a lower party. Like the prohibition of Allah to His servants, the prohibition of leadership to subordinates. In the science of usul fiqh, the opinion of Imam Shafi'i is known as the rule of الأصل في النهي التحريم (basically the prohibition shows

haram).⁴⁷ And because what is prohibited is unlawful, the nature of the prohibition must be repeated (*al tkrar*), and demands to leave it must be immediately implemented (*al faur*). In this context, if the pronunciation of the words is absolutely spoken. This means that there is no *qarinah* in the text which transfers the meaning of *al nahyu* to the meaning.⁴⁸ One element of the prohibition of Allah in the Qur'an, is the prohibition of the practice of usury is haram. Because Allah Ta'ala Al Kariim has confirmed the principal prohibiting a usury because it can cause harm and suffering in all aspects of the field of human life.⁴⁹ Al Qur'an Surah Al Baqarah: 275.

الذين يأكلون الربا لا يقومون إلا كما يقوم الذي يتخبطه
الشيطان من المس ذلك بأنهم قالوا إنما البيع مثل الربا
وأحل الله البيع وحرم الرب

Meaning: People who eat (take) usury cannot stand (prayer) but rather like the establishment of people who are possessed by demons because of the pressure of mental illness (crazy). Their situation is like that because they say (opinion), actually buying and selling is the same as usury, whereas Allah Most High. has allowed the sale and purchase and forbid usury.⁵⁰

2.1. Legitimacy of Shariah Prohibition Principles in Shariah Banking Law.

Syariah principles are a fundamental fundamentals that contain the fundamental rules of the Islamic religion, especially in Islamic law (*syariah*) which contains both rules and restrictions that bind and attach to the activities of life for every Muslim. It is based on one rule of law: *al ashlu fi al af'al al taqayyud bi hukmi assyar'i*, which argues that the original Law of an act is bound by the law of syari'ah (either obligatory-*wajib*, *sunnah*, *mubah*, *makruh* or *illegal-haram*). Therefore in carrying on a business must always adhere to the rules of the syariah.⁵¹ In Chapter II of

⁴² *Al Qur'an dan Terjemahannya*. Departemen Agama Republik Indonesia. 2018.

⁴³ *Ibid*.

⁴⁴ Abi Al Husain ibn Al Fariz ibn Zakariyah. *Mu'jam Maqayis Al Lughah*. Juz V. Maktabah Musthafa Al Babi Al-Halabi Wa Al Audah. Cairo, Mesir, 1972. Page 259-260.

⁴⁵ Muhammad Jawad Mugniyah. *Ilmu Ushul Fiqhi*. Dar Al Ilmi li Al Malayin. Beirut, 1975. Page 125

⁴⁶ *Ibid*.

⁴⁷ Al Amidiy. *Al Ahkam Fi Ushul Al Ahkam*. Juz II. Mesir. Muhammad Ali Shabih, 1968. Page 53.

⁴⁸ *Ibid*.

⁴⁹ *Ibid*.

⁵⁰ *Al Qur'an dan Terjemahannya*. Departemen Agama Republik Indonesia. 2018.

⁵¹ Johan Arifin. *Etika Bisnis Islami*. Walisongo Press, Semarang, 2009. Page 85.

Basics, Purposes and Functions. In Article 2, it is stated that Shariah Banking undertakes its activities in accordance with Shariah Principles, Economic Democracy and the Principle of Care.⁵² Later in Article 2 Explanation (TLN No. 4867) it is stated that business activities based on the Shariah Principles, among others, are business activities that do not contain elements :⁵³

a. Riba. That is, the unauthorized increase in revenue (counterfeit), among other types of exchange of goods of the same quality, quantity and time of delivery (*fadhli*) or in the case of a borrowing loan that requires the customer of the facility to return the funds received beyond the principal loan due to time (rice)..

b. Maysir. It is a transaction that is suspended in a state of uncertainty and profitability.

c. Gharar. It is a transaction whose object is unclear, non-existent, unknown of its existence, or cannot be surrendered at the time of the transaction unless otherwise stipulated in the syariah.

d. Haram. It's illegal. It is a transaction whose object is prohibited in syariah.

e. Zhalim. It is a transaction that causes injustice to the other party.⁵⁴

2.2. Legitimacy of Shariah Prohibition Principles in Bank Indonesia Rules.

In Explanation of Bank Indonesia Regulation Number 9/19 / PBI / 2007 on Implementation of Shariah Principles in Fundraising Activities and Services for Shariah Bank. In Article 2 verse 2 it is explained that:⁵⁵

a. Gharar. Gharar is a Transaction whose objects are unclear, unavailable and unknown to its existence or cannot be surrendered at the time of the transaction, unless otherwise stipulated in the Shariah.

b. Maysir. Maysir is a speculative transaction (profit) that is not directly related to productivity in the real sector.

c. Riba. Riba is the guarantee of an unauthorized increase in revenue (counterfeit), among others of the same kind of exchange of goods, quantity and time of delivery (*fadhli*) or

in a loan-lending transaction that requires the customer of the facility to return the funds received beyond the principal loan due over time (*nasi'ah*).⁵⁶

D.3. Implementation of Sharia Principles in Bank Operational Management Islam.

Technically and operationally, Sharia Banking is based on regulations under the Law, namely Government Regulations and Bank Indonesia Regulations (PBI). Several articles in the Sharia Banking Act also mandate the establishment of Bank Indonesia Regulations as implementing regulations. Bank Indonesia regulations that apply to date include regulating the business activities of Islamic banks and Aqads that underlie their products.⁵⁷ The Bank Indonesia Regulations governing the business of Islamic banks are as follows:⁵⁸

a. Bank Indonesia Regulation Number 6/24 / PBI / 2004 concerning Commercial Banks Conducting Business Activities Based on Sharia Principles.

b. Bank Indonesia Regulation Number 9/19 / PBI / 2007 concerning Implementation of Sharia Principles in Funds Collection and Funds Distribution and Sharia Bank Services Services.⁵⁹

This is based on the rule of *ushul al ashlu fi al af'al al taqayyud bi hukmi assyar'i*. that is, the law of origin of an action is bound by the Shariah Law', whether mandatory, sunnah, mubah, makruh or haram. So in carrying out a business must always stick to sharia provisions.⁶⁰

D.4. The Function of Sharia Principles in Sharia Banking Law.

Implementation and development of Sharia Principles functions, both containing orders (*al 'amr*) and prohibitions (*al haram*) in the Sharia Banking Law law policy, are a media of eye control in all activities of sharia banking transactions carried out - practiced by all parties involved or affiliated with the Islamic bank concerned so that there is no muamalah

⁵² Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Penjelasan atas Peraturan Bank Indonesia Nomor 9/19/PBI/2007 Tentang Pelaksanaan Prinsip Syariah Dalam Kegiatan Penghimpunan Dana Serta Pelayanan Jasa Bagi Bank Syariah.

⁵⁶ *Ibid.*

⁵⁷ Abdul Ghofur Anshori. *Lock cit.* Page 3.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Johan Arifin. *Etika Bisnis Islami.* Walisongo Press, Semarang, 2009. Page 85.

deviation from the prohibited elements, namely: haram, zhulm, gharar, maysir and usury. Sharia Principles are the main icons in the formulation of the contents of Law policies that are Islamic Sharia-based, both in terms of the principles of the command and the prohibition principle. As the main foundation in the operational practices of sharia banking management, substantially, Sharia Principles have the following policy functions:

1. Legislation function.

The position of the substance of Sharia Principles based on the Qur'an and Sunnah of the Prophet Muhammad. provides a strong position for the legitimacy and validation of Sharia Principles in the context of formulating value legislation and Islamic Law principles, both in the context of orders and prohibitions, into the provisions of the Sharia Banking law regulation policy. With the legislative function, the values of Sharia Principles can be absorbed, positivated and implemented into the formulation of Sharia Banking Law policies in carrying out operational performance management practices of Sharia Banking (which are mobilized by sharia commercial banks and sharia micro units). The function of this legislation is formally reflected in the development of the values of the command principle (*al amr*) which are the spiritual and moral foundations of Islamic banking operational management policies. In Chapter V Business Activities. Article 36. Stating that: Banks are required to apply Sharia Principles and the precautionary principle in conducting their business activities which include:⁶¹

1. Collecting funds from the public in the form of savings and investment, including:
 - a. Current accounts based on wadi'ah principle.
 - b. Savings based on the principle of wadi'ah and / or mudharabah; or
 - c. Time deposits are based on the mudharabah principle.
2. Channeling funds through:
 - a. The principle of buying and selling based on the contract includes:
 - a) Murabaha.
 - b) Istishna.
 - c) Greetings.
 - b. The principle of profit sharing based on the contract includes:
 - a) Mudharabah.
 - b) Musyarakah.

- c. The principle of leasing based on a contract includes:
 - a) Ijarah.
 - b) Ijarah muntahiya bittamlik.
 - d. The principle of borrowing and borrowing is based on a qardh agreement.
3. Providing banking services based on the contract including:
 - a. Wakalah.
 - b. Hawalah
 - c. Kafalah
 - d. Rahn
4. Buy, sell and / or guarantee at your own risk third party securities issued on the basis of real transactions (underlying transactions) based on sharia principles.
5. Purchase securities based on sharia principles issued by the Government and / or Bank Indonesia.
6. Issuing securities based on sharia principles.
7. Transferring money for self and / or customer interests based on sharia principles.
8. Receive bill payments for securities issued and calculate with or among third parties based on sharia principles.
9. Providing a place to store goods and securities based on the principle of wadi'ah yad amanah.
10. Carry out custodial activities including administration for the benefit of other parties based on a contract based on the principle of wakalah.
11. Providing letter of credit (L / C) facilities based on sharia principles.
12. Provides bank guarantee facilities based on sharia principles.
13. Conducting business cards.
14. Perform trustee activity based on wakalah contract.
15. Perform other activities normally undertaken by the Bank to the extent approved by Bank Indonesia and obtain a National Shariah Council ruling.⁶²

2. Restrictions Function.

The function of Restrictions means that sharia principles are to limit the scope of sharia banking practitioners in carrying out operational activities of sharia banking management, so that they remain disciplined and obedient, consistent (*istiqomah*), do not deviate outside and are responsible for carrying out the mandate of sharia prohibition principles which has been implemented in every application form of (*muamalah*) transactions in Islamic Banking. Formally, the function of this

⁶¹ Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah.

⁶² Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah.

restriction is reflected in a series of provisions in the articles that contain the prohibition policy in Law Number 21 Year 2008 concerning Sharia Banking. In Act Number 21 of 2008 concerning Sharia Banking, in Chapter IV on the Prohibition of Sharia Banks and Sharia Units, Article 22 states that: Each party is prohibited from collecting funds in the form of deposits or investments based on Sharia Principles without permission beforehand from Bank Indonesia, unless stipulated in other laws.⁶³ Specifically for the Prohibition of Usury, it is regulated in Chapter IV Prohibition of Sharia Banks, Sharia Units and Islamic People's Financing Banks in Part III.⁶⁴

a. Article 24 paragraphs 1 and 2 explain: Sharia Commercial Banks and Sharia Units are prohibited: In Letter a. Conducting business activities that are contrary to Sharia Principles.⁶⁵

b. Article 25 states: Sharia Rural Banks are prohibited; Clause a: Conduct business activities that are contrary to Sharia Principles. Business activities that are based on Sharia Principles according to the Sharia Banking Law include business activities that do not contain elements of *usury, maysir, gharar, haram and zhalm*.⁶⁶

E. Conclusion.

1. The significance of the Fatwa of the National Sharia Council-Indonesian Ulema Council, is the basis and guidelines for the provisions of the application of Sharia Principles both in the principle of orders and the principle of prohibition in the Sharia banking Act. The application of Sharia Principles must be upheld in accordance with the mandate of Islamic Legal Principles because it has become an important part in the development of National Positive Law, especially the improvement of the Islamic Economic Legal System and Sharia Banking Laws in Indonesia.

2. Based on its nature, Sharia Principles have two elements, namely:

- a. Command Element (*al amr*).
- b. Element of Prohibition (*al nahyu*).

3. Based on its function, Sharia Principles have two functions, namely:

- a. Legislation function.
- b. Restriction Function.

Suggestion.

1. The scope of the enactment of the DSN-MUI Fatwa specifically in the Sharia Banking Law materially must be expanded juridically,

meaning that it is not only limited to Islamic Banking financial institutions, but can also be applied and ensnare usurers of usury practices (moneylenders) that occur in middle of people's lives.

2. The implementation of Sharia Principles must be balanced with the implementation of intensive and controlled sharia compliance controls, so that the operational mechanism process of the Sharia Banking system runs according to its functions and objectives.

References

A. Literatur.

- Abdul Ghofur Anshori. *Filsafat Ilmu*. Gajah Mada University Press. Yogyakarta, 2009.
- Abdul Ghofur Anshori. *Hukum Perbankan Syariah*. PT. Refika Aditama. Cetakan I. Bandung, Maret 2009.
- Abdul Manan. *Aspek Hukum Dalam Penyelenggaraan Investasi di Pasar Modal Syariah di Indonesia*. Kencana. Jakarta, 2009.
- Abi Al Husain ibn Al Fariz ibn Zakariyah. *Mu'jam Maqayis Al Lughah*. Juz V. Maktabah Musthafa Al Babi Al-Halabi Wa Al Audah. Cairo, Mesir, 1972.
- Agus Triyanta. *Hukum Perbankan Syariah – Regulasi Implementasi dan Formulasi Kepatuhan Terhadap Prinsip-Prinsip Syariah*. Setara Press. Cetakan I. Malang, September 2016.
- Ainun Najib. *Fatwa Majelis Ulama Indonesia Dalam Perspektif Pembangunan Hukum Responsif*. Jurnal: Volume 4. No. 2. Desember, 2012.
- Al Amidiy. *Al Ahkam Fi Ushul Al Ahkam*. Juz II. Mesir. Muhammad Ali Shabih, 1968.
- Al Qur'an dan Terjemahannya*. Departemen Agama Republik Indonesia. 2018.
- Johan Arifin. *Etika Bisnis Islami*. Walisongo Press, Semarang, 2009.
- Louis Ma'luf. *Al Munjid fi Al Lughah*. t.tp: Dar Al Masyriq, 1975.
- M. Ma'ruf Abdullah. *Hukum Perbankan dan Perkembangan Bank Syariah di Indonesia*. Antasari Press. Banjarmasin, Maret, 2006.
- Majelis Ulama Indonesia. 2009. *Ijma' Ulama – Keputusan Ijtima' Ulama – Komisi Fatwa Se Indonesia III Tahun 2009*. Penerbit : MUI. Cetakan I. Jakarta Pusat, Maret 2009.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

- Muhammad Jawad Mugniyah. *Ilmu Ushul Fiqhi*. Dar Al Ilmi li Al Malayin. Beirut, 1975.
- Muhtar Yahya. *Dasar-Dasar Pembinaan Hukum Fiqhi Islam*, Al Ma'arif. Bandung.
- Rawwas Qal'ahji, *Ensiklopedi Fiqih Umar bin Khattab Ra.*, PT. Raja Grafindo Persada. Cetakan I. Jakarta, 1999.
- Sayyid Sabiq. *Fiqih Sunnah*, (Alih Bahasa oleh : Kamaluddin A.Marzuki), Jilid 13. PT. Al Ma'Arif. Cetakan II. Jakarta, 1988.

B. Peraturan.

- Undang-Undang Dasar 1945 Amandemen ke IV. 10 Agustus 2002. Fokus Media. Bandung, October 2009.
- Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan dimuat dalam lembaran Negara Tahun 1992 Nomor 31 dan Tambahan Lembaran Negara Nomor 3472. Penjelasan atas Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah.
- Undang-Undang Republik Indonesia Nomor 17 Tahun 2007 *Tentang Rencana Pembangunan Jangka Panjang Nasional Tahun 2005-2025*. Sinar Grafika Offset. Cetakan I. Jakarta, 2007.
- Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah.
- Peraturan Bank Indonesia Nomor 9/19/PBI/2007 Tentang Pelaksanaan Prinsip *Syariah* Dalam Kegiatan Penghimpunan Dana Serta Pelayanan Jasa Bagi Bank *Syariah*.
- Fatwa Majelis Ulama Indonesia Nomor 1 Tahun 2004 Tentang Bunga (*Interest/Fa'idah*).

C. Blog.Website Internet.

- <http://www.lps.go.id/Ketentuan-Terkait/-/Asset.publisher/nZ5y/content/uu-21-th-2008.Perbankan-Syariah.html>.
- <https://id.wikipedia.org/wiki/Usaha.Kecil.dan.Menengah>.
- https://id.Wikipedia.org/wiki/Krisis_Finansial_Asia_1997.
- <http://www.bi.go.id/id/Perbankan/Syariah/Contents/Default.aspx>.
- <http://www.Kamus.Besar.Bahasa.Indonesia.id.htm>.
- <http://www.investopedia.com/terms/d/Dual-Banking-System.Asp.html>.