

Maintaining the Plurality and Sacred Value of Islamic Law through the Existence of the Sharia Banking Law

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Abstract

Islamic banks are the fastest growing Islamic financial institutions in Indonesia. In fact, Islamic Banks already have special regulations, namely Law Number 21 of 2008. This article aimed to analyze how important the Sharia Banking Law is in maintaining the plurality and sacredness of Islamic law in every sharia banking operational activity. The method used in this article is qualitative with a normative approach. This article found that Sharia Banking Law supports the sacredness of Islamic law, namely to realize the benefit. The existence of the Sharia Banking Law indirectly shows its capacity as a legal product that provides a plurality space so that the law can be enjoyed by all humans and all religions based on community beliefs. In addition, the existence of the Sharia Banking Law can also be a reference for other Islamic law products to provide a plurality value space behind the sacredness of Islamic law in Indonesia.

Keywords: Sharia Banking Law; plurality; Islamic law; sacrality

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Bank Syariah merupakan institusi keuangan Islam yang paling pesat pertumbuhannya. Bahkan, ia telah memiliki regulasi khusus yaitu Undang-Undang Nomor 21 Tahun 2008. Artikel ini bertujuan untuk menganalisis betapa pentingnya Undang-Undang Perbankan Syariah (*Sharia Banking Law*; UUPS) dalam menjaga pluralitas dan kesakralan hukum Islam di setiap kegiatan operasional perbankan syariah. Artikel ini ditulis dengan menggunakan metode penelitian kualitatif dengan pendekatan normatif. Artikel ini menunjukkan bahwa keberadaan UUPS tidak lepas dari kesakralan hukum Islam yang diyakini masyarakat membawa nilai-nilai kebaikan, baik nilai keadilan maupun kemanfaatan. Keberadaan UUPS secara tidak langsung menunjukkan kapasitasnya sebagai produk hukum yang memberikan ruang pluralitas agar hukum dapat dinikmati oleh semua manusia dan semua agama berdasarkan keyakinan masyarakat. Selain itu, keberadaan UUPS juga dapat menjadi acuan bagi produk hukum Islam lainnya untuk dapat memberikan ruang nilai pluralitas di balik kesakralan hukum Islam di Indonesia.

Kata Kunci: Undang-Undang Perbankan Syariah; pluralitas; hukum Islam; sakralitas

Introduction

The formation of the Sharia Banking Law cannot be separated from complex dynamics, starting from the establishment of Islamic banking in 1992 until 2008 as a peak, namely the issuance of the Sharia Banking Law. Meanwhile, in the 2000s, the Islamic financial industry appeared to be growing in Indonesia. One proof is the existence of the Islamic banking sector, initially, almost without criticism.¹ Islamic banking had drawn much criticism when the discourse on the development of a sharia banking law project emerged. The criticism comes from political circles and non-Muslim circles.

This criticism was responded to through a study of three essential stages in making sharia banking legal policies. The three stages are: first, the stage of formulating Islamic banking law. Second, the stages of delivering the primary material in Islamic banking law. The third stage is the implementation stage. The three stages above, according to Yasin, cannot be separated from the involvement of Muslims and non-Muslims to produce critical dialectical interactions in determining the direction of sharia banking law policy.² The critical dialectic raises arguments, from political to ideological. Interestingly, the dialectic is colored by arguments with a religious character so that it raises the sentiment to reject and approve the Draft of Sharia Banking Law. This sentiment is then associated with a plurality.

The plurality system recognizes all traditions by the state, and the law applies to all Indonesian citizens. The system turned out to have positively influenced the existing legal tradition. However, in reality, the position of Islamic legal experience is strengthened when customary law is weakened in the national legal system.³ It gave rise to Islamic law products, one of which is Sharia Banking Law.

¹ Shofwan Al Banna Choiruzzad and Bhakti Eko Nugroho, "Indonesia's Islamic Economy Project and the Islamic Scholars," *Procedia Environmental Sciences* 17 (January 1, 2013): 965, <https://doi.org/10.1016/j.proenv.2013.02.114>.

² Mohamad Nur Yasin, "The Pluralism of Islamic Economic Law: Dialectic of Moslem and Non-Moslem in the Development of Sharia Banking in Indonesia," *Journal of Indonesian Islam* 10, no. 1 (June 7, 2016): 116, <https://doi.org/10.15642/JIIS.2016.10.1.113-138>.

³ Ratno Lukito, "Shariah and the Politics of Pluralism in Indonesia: Understanding State's Rational Approach to Adat and Islamic Law," *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 4, no. 1 (2019): 18, <https://petita.ar-raniry.ac.id/index.php/petita/article/view/8>.

Starting from the issue of plurality, policies regarding Islamic law, whether social, economic, or political, are no longer associated with the issue of establishing an Islamic state and changing the ideology of Pancasila. Although it must be realized, there is a small group that fights for it. The political struggle in sharia banking law was part of the initial format of the Jakarta Charter, which was part of the mechanism for enforcing Islamic law in Indonesia.⁴

From 1999-to 2002, the aspiration to implement Islamic law (*kāffah*) emerged when the 1945 Constitution was amended, particularly in Article 29. However, the People's Consultative Assembly (MPR) did not ratify this. Nahdatul Ulama and Muhammadiyah also rejected this aspiration.⁵ The refusal is to avoid conflicts that have the potential to damage the integrity of the Unitary State of the Republic of Indonesia.

The research related to Islamic banking law has been widely carried out. Husain, in his writings, revealed that the existence of sharia banking law is the long-awaited dream of Muslims so that economic activities follow sharia principles.⁶ The research is quite exciting but does not discuss the sacredness and plurality of Islamic banking legal values.

Yasin, in his research, revealed that when the Sharia Banking Law was still in the Draft Sharia Banking Law and there was a dialectic debate between Muslims and non-Muslims. There is an assumption that the Draft of Sharia Banking Law brings a positive side to economic development in Indonesia.⁷ This research is interesting because it relates the value of pluralism to Islamic economic law. However, further explanation is needed regarding the form the Draft of Sharia Banking Law provides a plurality value.

Based on the explanation above, this paper aims to examine Islamic banking law, which has a vital role in Indonesia's sustainability of Islamic banking operations. Some of the questions in this research are; First, does Islamic

⁴ Al Banna Choiruzzad and Nugroho, "Indonesia's Islamic Economy Project and the Islamic Scholars". 965

⁵ Imam Annas Mushlih, "Pemberlakuan Syari'at Islam di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 4, no. 2 (2010): 148, <http://ejournal.uinsaizu.ac.id/index.php/almanahij/article/view/3721>.

⁶ Husain Husain, "Falsafah Hukum Perbankan Syariah di Indonesia," *Sulesana Jurnal Wawasan Keislaman* 14, no. 1 (2020): 77, <https://journal.uin-alauddin.ac.id/index.php/sls/article/view/16816/9663>.

⁷ Yasin, "The Pluralism of Islamic Economic Law: Dialectic of Moslem and Non-Moslem in the Development of Sharia Banking in Indonesia.". 134

banking law have a sacred value for Islamic law? Second, how does Islamic banking law embody the values of plurality? The initial assumption is that Sharia Banking Law is believed to have sacred and plurality values.

This research is qualitative with library data. Data sources were obtained from various literature, documents, and other relevant works, including sharia banking laws. After the data was collected, the analysis used a qualitative descriptive method with a normative approach. Qualitative research is research that prioritizes non-statistical analysis procedures.⁸ At the same time, descriptive is to find out and explain the characteristics of the variables studied in certain situations.⁹ This study describes relevant aspects regarding the existence of Islamic banking law in maintaining sacred values and plurality.

Sharia Banking Regulations

The definition of a Sharia Commercial Bank according to Law Number 21 of 2008 Article 1 number 7 is a bank that carries out its business activities based on Sharia Principles and by type consists of Sharia Commercial Banks and Sharia People's Financing Banks. Sharia Bank is a bank whose operational procedures are based on procedures that exist in the rules of the Qur'an and Ḥadīth.¹⁰

Sharia banking regulation occurs in three phases as follows: First, 1992. In this phase, Law no. 07 of 1992 concerning Banking (UUP 1992) became the basis for the operational recognition of Islamic banks, namely Bank Muamalat Indonesia (BMI). Second, in 1998. In this phase, Law no. 10 of 1998 concerning Banking (UUP 1998) is an essential phase in responding to the needs and reaffirming the strengthening of Islamic bank operations by clarifying the provisions in the 1992 UUP. Third, the Year 2008. In this phase, Law no. 21 of 2008 concerning Sharia Banking (Sharia Banking Law; UUPS) is a phase of legal certainty and sharia compliance. This phase instills trust in the public in Islamic banking. At this phase, Islamic banking has been independent and separate from the legal system in conventional banks.

⁸ Assem Strauss and Juliet Corbin, *Dasar-Dasar Penelitian Kualitatif: Tata Langkah dan Teknik-Teknik Teoritis Data* (Yogyakarta: Pustaka Pelajar, 2017), 5.

⁹ Strauss and Corbin, 125.

¹⁰ Bagas Heradhyaksa and Ruzian Markom, "Mudharabah Financing Supervision of Islamic Banking in Indonesia," *Diponegoro Law Review* 3, no. 1 (April, 2018), <https://doi.org/10.14710/dilrev.3.1.2018.1-14>.

The authority to settle disputes was an issue prior to Law Number 21 of 2008. This law further strengthens that the Religious Courts as the courts with absolute authority to adjudicate cases in the field of sharia banking. Thus, in general, all disputes made using sharia agreements/agreements and matters related to them are under the authority of the religious court.¹¹ (AFIF NOOR & BAGAS)

Application of Islamic Law

The establishment of an Islamic state is no longer become the main agenda as a manifestation of the implementation of Islamic sharia. It is because the Indonesian government no longer represents the aspirations of certain groups. It is seen from the House of Representatives (DPR) members, which consists of various groups; secular and Islamic nationalists. The diversity of elite groups in the DPR will produce policies according to mutual agreement.

Many Islamic groups became government officials at the end of the New Order era. However, these groups are not representatives of Muslim groups who want to fight for the implementation of Islamic law. Thus, the resulting legal product is an agreement between these groups.

Islamic groups no longer want to change the ideology of the Indonesian state. They are oriented to Islamic law in private policy but are public. For example, the Palembang policy regarding congregational dawn prayers was stipulated through Mayor Regulation no. 62 of 2018 concerning the Congregational Fajr Prayer Movement. It includes regulating the obligation to wear the *hijab* and the prohibition of going out at night for Muslim women. Violators can be subject to *jināyah* law, as in Aceh.

The regulation shows that Islamic groups are trying to revive Islamic law in the context of the modern nation-state. They no longer demand the *kāffah* implementation of Islamic law. Moreover, the group's goal is to create a religious society and, at the same time, oppose secularism in Indonesia.

Applying Islamic law in the form of regional regulations has become a trend of the political elite. It is claimed as a form of propaganda structurally. The

¹¹ Afif Noor and Bagas Heradhyaksa, "Execution Mechanism of Mortgage Rights Using Executorial Title in Sharia Banking Is Whose Authority?" *Diponegoro Law Review* 5, no. 2 (October, 2020), <https://doi.org/10.14710/dilrev.5.2.2020.245-259>

application of the Shari'a Regional Regulation has reaped many problems, both in the process and in its implementation. There are Muslims who disagree with the concept of formalizing Islamic law. It is based on the point of view it uses. However, it must be admitted that Islamic law plays a vital role in developing national law. Because at the same time, other religions and cultures also have the same right to the idea.¹²

Warner revealed that the West considers sharia the same as Islamic law. They provide the following example

1. Provision of prayer rooms for Muslims by schools
2. Wearing the *hijab* for Muslim women
3. Prohibition of publishing cartoons of the Prophet Muhammad
4. Hospitals must provide exceptional care for Muslim women.

These demands form the basis for the application of sharia. It is considered a guide in everyday life. Scholars claim that the application of Islamic law is embodied in the practice of religion in public places. For example, praying at school and work, places of worship in public spaces, guaranteeing halal food, and the obligation to wear the *hijab* for Muslim women in public places. As exemplified by Warner above, setting Islamic law is a form of realization of Islamic law. Thus, it can be understood that the existence of Islamic banking law is part of applying Islamic law as a product of contemporary Islamic law today.

Building the Sacredness of Islamic Law through the Sharia Banking Law

Islamic banking regulations are motivated by public policies in each country. This policy can be seen in each different jurisdiction. Song and Oosthuizen give examples of several countries that apply regulations regarding Islamic banking, including; First, in the UK, Islamic banking is considered a financial innovation that can be accepted as a further presence as an international financial center. Second, in Kenya, South Africa, and Tanzania, Islamic banking is a demand from the Muslim community, even though it is a minority. Meanwhile, in Muslim countries, Islamic banking is the only banking system in the country. It is because Muslim countries make Islamic law the basis

¹² Makhrus Munajat, "Membangun Konfigurasi Politik Hukum di Indonesia," *Supremasi Hukum* 1, no. 2 (2012): 465, <http://ejournal.uin-suka.ac.id/syariah/Supremasi/article/view/1941/1401>.

of their country.¹³ The state's involvement in ensuring the existence of Islamic banking is an important matter. The system requires a robust legal framework to regulate all its activities. A legal framework is needed to support the successful development and facilitate the nation's economy.

Efforts to implement Islamic sharia policies in Indonesia affect dominant organizations that are close to political power. This is an opportunity to apply the law according to their aspirations. Political involvement in government policies shows an intervention in making sharia banking policies in Indonesia. This involvement is supported by input from Islamic organizations such as the Indonesian Ulema Council (MUI) and religious leaders. For example, the settlement of sharia economic disputes regulated in Law no. 3 of 2006 concerning Religious Courts.

MUI is one of the Islamic organizations involved in government politics. It was founded at the urging of the Suharto government in 1975. Its existence was designed to serve as a link between government, religion, and ulama.¹⁴ Initially, it could be said that MUI was only a liaison between the state and religion. Nevertheless, his emergence has become a strong enough opponent for the government along the way. It can be seen from the role of MUI after the New Order. He later supported applying Islamic law as formal law in Indonesia.¹⁵

Changes in the function of the MUI were seen significantly during the reign of Susilo Bambang Yudhoyono (SBY). In fact, MUI seems to have influenced and guided the country. At the same time, the government also supports in issuing fatwas that can be used as the basis for national law, especially on Islamic issues.¹⁶

¹³ Inwon Song and Carel Oosthuizen, "Islamic Banking Regulation and Supervision : Survey Results and Challenges," *IMF Working Paper Monetary and Capital Markets Department*, 220, December 12, 2014, 7, <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Islamic-Banking-Regulation-and-Supervision-Survey-Results-and-Challenges-42522>.

¹⁴ Robert W Hefner, *Sharia Law and Muslim Ethical Imaginaries in Modern Indonesia*, ed. Timothy P Daniels (Cham: Springer International Publishing, 2017), 106, <https://doi.org/10.1007/978-3-319-45692-8>.

¹⁵ Walid Nopriansyah, "Islamization of Economy in Indonesia: From Politics to Law," *Hikmatuna: Journal For Integrative Islamic Studies* 5, no. 2 (2019): 184, <http://e-journal.iainpekalongan.ac.id/index.php/hikmatuna/article/view/2169>.

¹⁶ Tim Lindsey, "Monopolising Islam: The Indonesian Ulama Council and State Regulation of the 'Islamic Economy,'" *Bulletin of Indonesian Economic Studies* 48, no. 2 (2012): 259, <https://doi.org/10.1080/00074918.2012.694157>.

This change in the role makes MUI an independent institution which is also paradoxical. The institution tries to show that it has a significant influence on the policies issued by the state in the field of religion. It is not surprising that many products of Islamic law have emerged, both at the central and regional levels.

The question is, what about Islamic banking law in Indonesia? Is it included in the section of Islamic law as an indicator of establishing an Islamic state? This question can be answered by looking at the function of the Sharia Banking Law. The issuance of the law is a step the SBY government takes to answer the complexities of Muslims related to Islamic banking practices.

The desire and complexity of Muslims is the existence of separate rules related to Islamic banking. It should be different and outside the conventional banking law. The steps taken by SBY are the same as those taken by Habibie. He adopted a policy by amending the 1992 UUP to the 1998 UUP. Although it cannot be separated from particular political interests, the UUP amendment is an attempt to overcome the problems of Muslims in the doctrines and practices of Islamic banking.

In the era of New Order government, the complexities of Muslims were ignored and did not receive attention. Suharto never worried about the complexities of Muslims in Indonesia. He did not try to solve the existing problems. This concern in the Suharto era continued into the reform era. Habibie then paid attention and was able to deal with the complexities of Muslims. According to Lukito, the policies taken by the government, especially during the Habibie era, were an official recognition from the state of the importance of practicing Islamic doctrine for Muslims.¹⁷

The policies taken by Habibie and SBY regarding the complexities of Muslims are decisions that have followed the mandate of the State Constitution. Article 29 of the 1945 Constitution stipulates the guarantee of freedom to apply religious law to its adherents. The article accommodates religious rules. It can be applied as long as it does not disturb the stability of the integrity of the Indonesian state.

The state is an essential instrument in accommodating and facilitating the application of religious doctrines. Several state policies as a form of accommodation are the existence of the Marriage Law, Religious Court Law,

¹⁷ Lukito, "Shariah and the Politics of Pluralism in Indonesia: Understanding State's Rational Approach to Aadat and Islamic Law," 16.

Sharia Banking Law, and Sharia Securities. In addition, the state has also issued laws containing religious values. For example, the state has issued the Corruption Eradication Law, the Citizenship Law, the Law on Prohibition of Monopolistic Practices and Unfair Business Competition, the Child Protection Law, etc. Although the law does not explicitly mention the word sharia, it has implemented the essence of Islamic law.

The issuance of the Sharia Banking Law is real support for sharia banking operations. The promulgation of sharia banking law is not based on the majority of the Indonesian population is Muslim. The main reason is the belief that by applying Islamic law in the state, socially and economically, a life of diversity will be realized. With it, mutual respect between various groups will be realized. The establishment of sharia banking and the Sharia Banking Law policies increase public confidence to aspire to an economy free from usury, *maysir*, *gharar*, injustice, and equitable welfare distribution. Through Sharia Banking Law, the Indonesian government ensures the improvement of the existing legal system related to finance and banking.

Referring to the history of Pancasila formulation, it can be understood that this country was built on a solid foundation based on Islam. Mohammad Natsir, a national figure, believes that Pancasila is in line with religious texts and is also in line with the essence of Islamic religious doctrine. Natsir's view became the basis for the birth of the Islamic banking industry and other Islamic laws. Islamic banking by the texts will be implemented. Thus, justice and welfare, which are the main goals, can be realized.¹⁸

Sharia banking law is considered the best way to maintain and preserve Muslim culture and identity for Muslims. Otto gave four reasons for accepting the majority of Muslims to sharia and sharia institutions.¹⁹

1. Sharia has fundamental values and virtues in justice, integrity, obedience, perseverance, and selflessness.
2. Sharia can answer the needs of the community in the state.
3. Sharia can end crime and other social problems.
4. Sharia has the opportunity to demonstrate its capabilities in development and justice.

¹⁸ Mohammad Natsir, *Islam Sebagai Dasar Negara* (Bandung: Segarsy, 2014), 32-33

¹⁹ Jan Michiel Otto, *Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy* (Leiden: Leiden University Press, 2008), 17.

These four reasons are the way for Muslims to live a better life. At the same time, the noble values of Islam will bring justice and benefit to everyone. Likewise, the presence of Sharia Banking Law is a regulatory framework that recognizes the specificity of Islamic banking. This policy can help reduce the complexity of regulations in countries with two banking systems; conventional and sharia. With it, the problems of Islamic banking regulatory standards can be avoided.

Referring to the views of Natsir and Otto, according to the author, Sharia Banking Law is an integral part of the sacredness of Islamic law. More than that, Sharia Banking Law also talks about norms and human behaviour in transactions by Islamic law. Thus, Sharia Banking Law is a form of application of Islamic law in Indonesia.

Sharia Banking Law is an introduction to Islamic identity through sharia symbols emphasizing public trust. Not only introduced but has practiced a banking system by sharia principles. However, some people had a pessimistic attitude regarding the pattern of applying these principles along the way. To continue to trust the public and ensure that Islamic banking is different from conventional banking, Sharia Banking Law comes with all the rules and legal certainty. It is hoped that there will be no more doubts about the operationalization of Islamic banking in the future.

Islamic banking is based on Islamic values by the provisions of the texts. However, it must be admitted that there are still parties who doubt and argue about it in reality. This problem results from the level of knowledge and understanding of religion owned by the community. The level of intelligence and acceptance of public information is the cause of the pros and cons of the existence of Sharia Banking Law.

Sharia Banking Law in Realizing Plurality Values

Creating a legal product that everyone can accept is not an easy matter. For this reason, accuracy and precision are needed in making a policy so that all levels of society can accept the product. Moreover, the legal products carry religion, namely Islamic law.

Diversity (plurality) in Indonesia is one of the considerations for the government in implementing Islamic law. Including when enacting sharia banking law. Pluralism can be defined as a willingness to treat other groups

somewhat based on peace and mutual respect.²⁰ Pluralism is an attitude of mutual respect, respect, and fairness toward other groups.

Historically, the issuance of Sharia Banking Law has been rejected by considering the reality of the level of plurality in Indonesia. The authorities are trying to make sharia banking legal policies full of interpretations from the *fiqh* side and pluralistic fatwas.

In the beginning, critical debate about Islamic banking legal policy was unavoidable. The tug of war was firm in the legislature and political parties when discussing the Draft Sharia Banking Law. At that time, some refused, and some supported it. Supporters come from Islamic parties, while opponents come from non-Islamic and Nationalist parties. However, there are also non-Islamic parties that support the Draft of Sharia Banking Law.

The critical debate over the Draft of Sharia Banking Law began when it was brought to the DPR meeting. The most striking debate occurs over the use of Islamic religious symbols.²¹ This critical discourse occurred, both from the government and the community. One that emerged was the rejection of the Balinese people. Igusti Ngurah Arya Wedakarna Mahendradatta Wedasteraputra Suyasa, Chancellor of Mahendrata University, expressed his opinion that Bali has implemented an economy and customs based on Pancasila. He argues that Islamic banking through sharia banking policies will become a problem when there is a hidden agenda to damage the economy in Bali. Moreover, Islamic banking only represents one religion, while Indonesia is a country with many religions and beliefs.²²

This debate shows that the legal policy of Islamic banking is inseparable from solid religious requirements. Countries with Muslim-majority populations consider Islamic banking one of the best ways to preserve Muslim culture and identity. In addition, the existence of Islamic banking is inseparable from the commodification of Islam; Islam has become a commodity or merchandise that generates profit. Derived from the commodification of Islam, some products use Islamic symbols, such as the use of halal labels. As a result, the symbol of Islam is permanently attached to capitalist commodity products. In contrast to Egypt,

²⁰ Qosim Nursheha Dzulhadi, *Islam Vs Pluralisme Agama* (Jakarta: Pustaka al-Kautsar, 2019). 83

²¹ Yasin, "The Pluralism of Islamic Economic Law: Dialectic of Moslem and Non-Moslem in the Development of Sharia Banking in Indonesia." 123-124

²² Yasin, 117.

Islamic symbols are more avoided because there are concerns from the ruling regime that sees Islamic symbols as fundamentalist movements.²³

There are at least three beliefs held by the fundamentalist Islamic Movement²⁴

1. Islamic law must be accepted as the constitution of the country
2. Political sovereignty is in God's hands
3. The idea of a national state contradicts the concept of the *ummah*, which knows no political and territorial boundaries.

The three beliefs above reflect the fundamentality of formally applying Islamic law as the ideals of previous Islamic leaders. However, this paradigm will always face opposition, especially in Indonesia and today's modern politics.

Indonesia is a unitary state that integrates all differences or diversity (plurality): race, ethnicity, culture, and religion. The use of sharia symbols in laws and products is considered only beneficial for specific religions and the enforcement of Islamic law. Religion is a potent symbol of emotional strength among its adherents for the community. Hence, religion is often used as a tool of legitimacy for certain groups who have ambitions to occupy political positions.

In addition, it is not uncommon for certain groups to look down on other groups. This situation can give rise to emotional strength for its adherents, and religious issues become very complicated and prone to conflict between religious adherents. Inter-religious conflicts can be avoided if the state can manage them properly. Differences can be a unifying tool and vital ammunition for the nation's progress. However, if not, it can have a very detrimental impact, anarchic and radical actions, which can damage the nation's integrity.

The founders of the Indonesian nation have united religious diversity through the principle of *Bhinneka Tunggal Ika*. The principle means "unity in diversity" without having to show religious symbols. The first precept of Pancasila, which reads "Belief in One Supreme God," reflects the acknowledgment of all religions. The first precept is then emphasized by the 1945 Constitution Article 29 Paragraph 2 that the state guarantees freedom for every citizen to embrace religion and worship according to his religion and

²³ Adrian Sutedi, *Perbankan Syariah: Tinjauan dan Beberapa Segi Hukum* (Bogor: Ghalia Indonesia, 2009), 2.

²⁴ Hilmi Muhammadiyah, "The Relation between Religion and State in Indonesia," *Asian Social Science* 11, no. 28 (November 22, 2015): 101–2, <https://doi.org/10.5539/ass.v11n28p98>.

belief. The state has guaranteed its citizens to freely embrace the religion they believe in and practice it correctly. It becomes natural for religious symbols to appear and be used.

The use of religious symbols is a gamble for religion. Sutedi stated that religion is at stake when its symbols are used in the Islamic banking industry. The consequences, of course, have to be borne. It is a reasonable risk for the existence of Islam, the Ummah, and its doctrines. In addition to risking religion, Islamic banking is considered to maintain Muslim identity.²⁵ So, with the issuance of the Sharia Banking Law, the support given to sharia banking operations is increasingly strengthening in maintaining Muslim identity.

Although the establishment of Islamic banking institutions and the promulgation of the Sharia Banking Law are no longer considered part of establishing an Islamic state, they are considered a danger to Indonesia's plurality. The same thing happened to the formalization of Islamic law, both in the form of regional regulations and other regulations.

Its presence is considered to discriminate against other religions and ignore the value of plurality. It makes a massive difference between the legal position of Islam and that of other religions. Meanwhile, in general, the existence of Islamic law is more profitable for Islam than other religions.

This discrimination is analogous to gender discrimination in classical *fiqh*. The legal position of men is more advantageous than women. Men have greater power to make crucial decisions such as marriage, divorce, and family life than women. This parable occurs in Indonesia. It can cause jealousy from other religions. The reason is that Indonesia does not only consist of one religion but also a plurality of religions.

To avoid jealousy and discrimination, the government should take steps that refer to the following four essential values.²⁶

1. Must not threaten the integrity of the nation.

The law is needed to strengthen the nation's integrity, create a spirit of unity, and always live side by side in peace, and the law must not threaten the nation's integrity. If that happens, it is contrary to the ideals of law in Indonesia.

²⁵ Sutedi, *Perbankan Syariah: Tinjauan dan Beberapa Segi Hukum*, 11.

²⁶ Munajat, "Membangun Konfigurasi Politik Hukum di Indonesia," 478.

2. Reflecting the principles of democracy.

The law presents a democratic political and state order that prioritizes the interests of the people through mechanisms that are honest, fair, and free from any pressure. The decisions received are the result of joint deliberation and are not authoritarian.

3. Contains the principle of social justice.

The law opens access to justice to create equitable social justice for all Indonesian people.

4. Respect plurality

The law must be able to create values of tolerance, both in terms of religion and culture. The law must guarantee and provide space for a pluralistic life.

These four principles become a reference in making laws, including Sharia Banking Law. The four of them must go together. From the perspective of democracy and social justice, the existence of Sharia Banking Law can be accepted as national law. So, it cannot be said that Sharia Banking Law destroys the existing plurality. More than that, Sharia Banking Law plays a role in the economic development of society and the nation. In terms of benefits, it does not distinguish social status, religion, ethnicity, and community customs.

The values of democracy, the values of social justice, and the absence of indications that threaten the disintegration of the nation contained in the Sharia Banking Law make it acceptable to the people of Indonesia. These values can be seen from the following indicators. First, Sharia Banking Law does not force Indonesians to use Islamic banking products. Second, Sharia Banking Law provides space for freedom in using Islamic banking products. Third, the use of contracts in each product does not require them to be Muslim; non-Muslims can also transact at Islamic banks.

The plurality value, for example, can be seen in Article 55, Paragraph 2 of the Sharia Banking Law. The article stipulates that when a dispute occurs, the settlement is carried out by the contents of the contract. Sharia Banking Law allows anyone to conduct transactions in Islamic banks regardless of one's religion or belief. In addition, aspects of justice, ethics, togetherness, and

brotherhood make the Islamic banking system credible and can be enjoyed by all people.²⁷

Sharia Banking Law mandates that all human beings can use Sharia banking products regardless of religion and belief. Figure 1 below illustrates the forms of plurality values contained in the Sharia Banking Law.

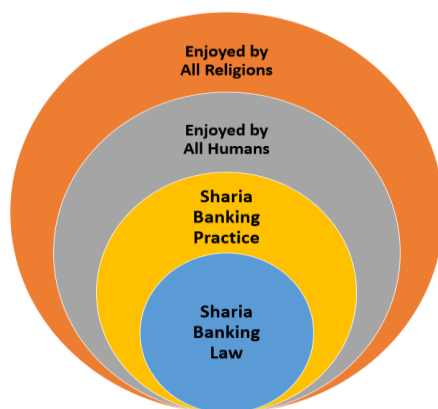


Figure 1: forms of plurality values in the sharia banking law

The spirit of the UUP is different from the Islamic criminal law system (*jināyah*), in Aceh. All communities must comply with these rules. Those who do not comply will be penalized. The National Commission on Violence Against Women noted that local governments had issued 421 discriminatory policies from 2009 to 2016. These discriminatory policies included the obligation to wear the *hijab* and prohibition of going out at night for Muslim women.²⁸ Some people think this policy interferes with the nation's disintegration and ignores plurality. To maintain plurality, the central government can take preventive action by cancelling regional regulations contrary to constitutional values.

Theoretically, the legal system in Indonesia adheres to a pluralism state legal system. This system was seen during the Old Order and New Order which did not include Islamic law products into the national legal system. These two eras show the face of legal plurality in Indonesia. Islamic law will be difficult for the government to accept whatever the form. In contrast to the reform era, which

²⁷ Abdul Mujib, "Dinamika Hukum dan Perkembangan Perbankan Islam di Indonesia," *Al-Ahkam* 23, no. 2 (2013): 171, <https://doi.org/10.21580/ahkam.2013.23.2.21>.

²⁸ Halili, "Politics of Religious Pluralism in Indonesia: State and Future," *Advance: Social Sciences & Humanities*, 2019, 10, <https://doi.org/10.31124/advance.7963622.v1>.

began to accept Islamic law products and received strong support until the birth of Law Number 12 of 2011 concerning the Establishment of Legislation. The law requires draft laws to follow the aspirations and legal needs of the community.

Countries that adhere to a system of pluralism impact the way they view religion. The doctrines and symbols of one religion cannot be accepted and applied to all societies and groups. This impact can be felt in developing the study of Islamic law and law which is very sensitive to the conflicts in Indonesia. The state cannot make legal policy by enacting certain religious laws. The state can only make laws that free its citizens to consciously carry out their beliefs. The state must serve and protect the wishes of religious adherents. The hope is that there will be no inter-religious conflict when the law is implemented.

There are four conditions under which a dominant group can produce a law.

1. Islamic groups dominate the government. This group will fight for Islamic law. In this condition, many Islamic law products will be issued.
2. Nationalists dominate the government. In this condition, products related to Islam will rarely be issued.
3. The balance of domination between nationalist and Islamic groups in government. In this condition, not many Islamic law products have been issued.
4. Authoritarian groups dominate the government. In this condition, it produces authoritarian legal products. The resulting legal products will only comply with government policies and benefit the government.

In addition to the four conditions, Wahyuni added one condition in which the political currents and Islamic ideology are weak. This condition causes the absence of tension between Islam and the state.²⁹ As a result, many Islamic products will be issued. So that religion will become an important entity in politics and law.

There are at least three tendencies regarding the relationship between religion and the state. First, religion is separated from state affairs. Second, the state considers religion as an important instrument in government. Third, religion becomes the ideology of a country. Indonesia can be categorized into the second group. The debate about these two things will continue; Religion

²⁹ Sri Wahyuni, *Politik Hukum Islam Pasca Orde Baru* (Yogyakarta: Gapura Publishing, 2014). 155

cannot be separated from the state or religion must be separated from state affairs.³⁰

Meanwhile, political pressure to apply certain legal traditions will influence countries to accept their traditions. The state, in this case Indonesia, cannot ignore the fact that Muslims are the majority population. Therefore, Islamic law will become part of national law.

Indonesia is not a religious state or a secular state, but a religious nation-state. The core of religious doctrine is the moral foundation of the state and the source of material law in the life of the state. Therefore, in making policy, the government will always refer to the guidelines of religious ethics.

Jonathan Fox conducted a survey of 177 countries on religious-political policies. As quoted by Qurtuby, there are several pluralistic attitudes towards religion and politics; first, there is a state that imposes massive restrictions on the space for religion to move. Second, some countries lock the central role of religion in society. Third, the state is influenced by certain religions.³¹

The three models will produce different policies, depending on which role is stronger. In contrast to customary law which is local and plural, it is very difficult to adapt to the uniformity of law at the national level. Customary law is difficult for all people in Indonesia to accept. Due to the diversity of customs, integrating them will find it difficult.

Based on the description above, the actual product of Islamic law will always clash with the value of plurality in Indonesia, one of which is related to religious diversity. Because, symbolically, sharia banking legal products are like property rights for Muslims.³² However, in substance, Islamic banking law has a plurality value.

Building Sharia Banking Law with Pluralism Values

The government and policy authorities always try to make legal policies that respect plurality. One of them is by making sharia banking legal policies full of

³⁰ Lukito, "Shariah and the Politics of Pluralism in Indonesia: Understanding State's Rational Approach to Aadat and Islamic Law," 18.

³¹ Sumanto Al Qurtuby, "Sejarah Politik Politisasi Agama dan Dampaknya di Indonesia," *Maarif Arus Pemikiran Islam Dan Sosial* 13, no. 2 (2018): 46, <https://doi.org/10.47651/mrf.v13i2.21>.

³² Yasin, "The Pluralism of Islamic Economic Law: Dialectic of Moslem and Non-Moslem in the Development of Sharia Banking in Indonesia." 117

fiqh and fatwas with plurality values. Three steps can be taken into consideration in making sharia banking legal policies.

1. Equality in law

In law, the principle of equality before the law is known. The law serves to protect everyone from loss and harm. Three objectives must be protected in legal equality: First, rights and obligations. Second, legal protection. Third, dispute resolution.

2. The content of plurality in Islamic banking

The values contained in Islamic banking must contain three basic pillars of religion; creed, morality, and sharia. Creed is proof of human faith in their religion. Morals show the identity of their faith in the form of good behaviour in every social affair. While sharia is a way of life in carrying out the commands and prohibitions of Allah. The three pillars above are then applied to the following two values:

a. The value of justice

Justice is not only given to those who are Muslims but also to adherents of other religions regardless of differences in certain groups.

b. Benefit value

The benefits to be achieved can be felt by everyone, regardless of religion. It has been practiced in the Sharia Banking Law policy, which benefits all people. Radbruch revealed that to achieve the value of benefit, it is necessary to pay attention to how much value the policy has for humans, both individually, collectively, and universally.³³

3. A contract that all humans can enjoy

Contract in Islamic banking has a broad interpretation value that comes from *fiqh* and has a plurality value. So far, there is a belief that Muslims can only carry out contracts used in Islamic economics and banking. Contracts in the field of *mu'āmalah* should be more lenient and flexible. It can be done by anyone so that there is diversity. Although the naming of the contract comes from Islam such as *muḍārabah*, *mushārahah*, *ijārah*, *istithnā'*, *salam*, *murābahah*, and others that use Arabic terms. Especially when looking at its development, where non-Muslims also participate in the contract.

Through the three steps above, institutions authorized to make economic policies and Islamic banking can apply the principle of plurality. This principle is

³³ Emil Lask, Gustav Radbruch, and Jean Dabin, *The Legal Philosophies of Lask, Radbruch, and Dabin*, ed. Kurt Wilk (Cambridge: Harvard University Press, 1950), 92.

one of the important bases in policy formation. The steps for making policies on economic law and sharia banking that contain plurality values can be seen in figure two below.

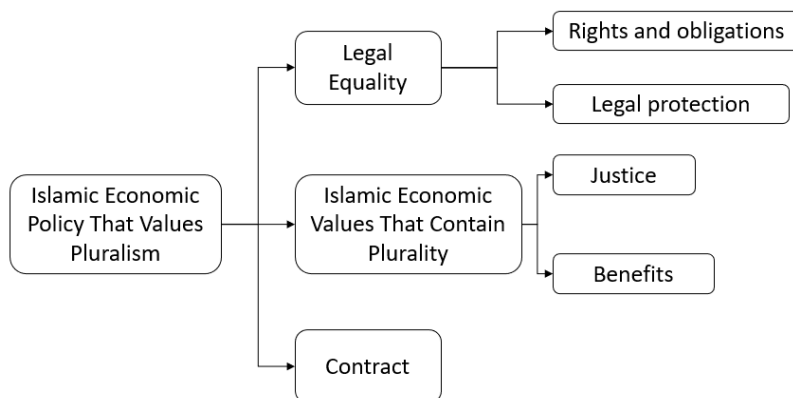


Figure 2: Steps for making Islamic banking and economic policies that contain plurality values

The above steps can also be used as guidelines for the authorities of legal institutions in making the Sharia Economic Law which is the current national legal agenda. Aziz Syamsuddin, Deputy Chairman of the House of Representatives for Political and Security Affairs and Rachmat Gobel, Deputy Chairman of the House of Representatives for Industry and Development, hoped that the Draft Law would be included in the National Legislation Program.³⁴

Conclusion

The existence of the Sharia Banking Law is an essential value for the development of Islamic banks. Sharia banking law was born from the sacredness of Islamic law, which is believed to bring good values that come from texts. Sharia banking law is also an important instrument in meeting the needs demanded by religion. In addition to having sacred values, Islamic banking law seeks to show that all humans can accept it. It can be seen from the legal content that provides space for plurality. It also provides freedom for all religious

³⁴ Happy Amanda Amalia, "DPR RI Dukung RUU Ekonomi Syariah Masuk Prolegnas Prioritas," Investor.id, 2020, <https://investor.id/national/231050/dpr-ri-dukung-ruu-ekonomi-syariah-masuk-prolegnas-prioritas>.

adherents to participate in Islamic banking transactions. The sharia banking law does not stipulate that only Muslims can transact, but all religions can contribute to economic development through sharia banking. Sharia banking law can be a reference for other sharia legal products that contain plurality values, such as the Draft Sharia Economic Law which is currently on the national legal agenda.

Based on the conclusions above, further research is still needed to see which aspects of the product have a plurality value. In addition, the extent to which sharia banking law provides the value of justice and benefit through the *maqāṣid al-sharī'ah* approach can be seen. For this reason, the scope of further research can be wider to respond to the development of Islamic banking, both through operations and legal products, to deepen and enrich scientific treasures.

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