

Islam and the State: The Evolution of Sharia Banking Regulation in Indonesia

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Abstract

The interplay of social, economic, and political dynamics influences the legal development of Sharia banking regulations. This study aims to analyze the evolution of Sharia banking regulations in Indonesia from their inception to the most recent developments. Using a juridical-legal approach, the research identifies five key phases in the development of Sharia banking regulations in Indonesia: initial, introduction, recognition, purification, and relaxation phases. Such regulatory changes have resulted from the negotiations among various stakeholders to reconcile the ideals of Sharia finance with the pragmatic needs of the banking industry, as well as the interest in strengthening the national financial system. Such legal development of Sharia banking regulations in Indonesia reflects the adaptability of Islamic law, enabling Sharia finance to evolve in response to societal changes and contextual dynamics while remaining grounded in the ethical principles of the Islamic moral economy.

Keywords: Evolution, Regulation, Sharia Bank

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Introduction

Sharia banking is a financial system based on Sharia principles or Islamic law, which are regulated in the Al-Qur'an and Hadith. These principles emphasize justice¹, equality, and economic empowerment as well as income distribution. One of the key elements in Sharia banking is the prohibition of usury² (interest) which is considered exploitative and contrary to social justice.³ Apart from that, Sharia banking also avoids *gharar* (uncertainty) and *maysir* (speculation)⁴, and encourages investment in productive and halal sectors.⁵

The development of Islamic banking began in the mid-20th century with the establishment of the first Islamic bank in Egypt.⁶ Since then, Islamic banking has

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- ¹ Alija Avdukic and Mehmet Asutay, "Testing the Development Impact of Islamic Banking: Islamic Moral Economy Approach to Development," *Economic Systems*, May 18, 2024, 101229, <https://doi.org/10.1016/J.ECOSYS.2024.101229>.
 - ² Mehmet Asutay, "Islamic Moral Economy as the Foundation of Islamic Finance," *Islamic Finance in Europe: Towards a Plural Financial System*, no. April 2013 (2013): 55–63, <https://doi.org/10.4337/9781781002513.00014>; Muhammad Maksum and Nur Hidayah, "The Mechanism of Avoiding Riba in Islamic Financial Institutions: Experiences of Indonesia and Malaysia," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023): 235–44, <https://doi.org/10.31958/juris.v22i2.6952>.
 - ³ Maksum and Hidayah, "The Mechanism of Avoiding Riba in Islamic Financial Institutions: Experiences of Indonesia and Malaysia."
 - ⁴ Nur Hidayah, Abdul Azis, and Moch Bukhori Muslim, "Complying with Sharia While Exemptinfrom Value-Added Tax: Murābahah in Indonesian Islamic Banks," *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (2022): 59–82, <https://doi.org/10.15408/ajis.v22i1.22833>.
 - ⁵ Nendi Juhandi et al., "The Growth of Sharia Banking in Asia," *Journal of Research in Business, Economics and Management* 12, no. 2 (2019): 2341–47.
 - ⁶ Abdullah Ashira, "Development and Challenge Sharia Banks in the Middle East," *International Journal of Science and Society* 2, no. 1 (2020): 62–72, <https://doi.org/10.54783/ijsoc.v2i1.60>; Rachmadi Usman, *Legal Aspects of Sharia Banking*, 1st ed. (Jakarta: Sinar Graphics, 2012).

developed rapidly in various countries, including Indonesia. In Indonesia, Sharia banking became known in 1992 with the establishment of Bank Muamalat Indonesia.⁷ As time goes by, Islamic banking continues to develop and is now an important part of the national financial system.⁸

With the increasingly vital role of Sharia banking in the national financial system, a number of regulations have been issued to regulate the operations of Sharia banks so that they can operate more sustainably and contribute to a prudent national financial system. Regulations in Sharia banking are significant to maintain the integrity and stability of the banking system.⁹ Effective regulations can protect the interests of customers and investors,¹⁰ as well

⁷ Iim Hilman, "Sharia Business Unit Spin-off: Strategic Development Model of Sharia Banking in Indonesia," *International Journal of Islamic Banking and Finance Research* 2, no. 2 (2018): 1–15, <https://doi.org/10.46281/ijibfr.v2i2.43>; M Ali Mansyur, "Legal Aspects of Sharia Banking and Their Implementation in Indonesia," *Journal of Legal Dynamics* 11, no. Edsus (2011), <https://doi.org/10.20884/1.jdh.2011.11.edsus.263>; Faizi Zaini, Dr. Mohd Sollehudin Bin Shuib, and Dr. Muhammad bin Ahmad, "The Prospect of Sharia Banking in Indonesia (Opportunities, Challenges, and Solutions)," *International Journal of Business Management and Economic Review* 02, no. 04 (2019): 01–14, <https://doi.org/10.35409/ijbmer.2019.2401>.

⁸ Juhandi et al., "The Growth of Sharia Banking in Asia"; Moh Rasyid, "Revisiting Sharia Principles in Sharia Banking in Indonesia," *Sharia Business Law Journal* 6 (2019): 92–111, <http://www.bi.go.id/web/id/Perbankan/PerbankanSyariah/>.

⁹ Nur Dyah Nastiti and Rahmatina Awaliah Kasri, "The Role of Banking Regulation in the Development of Islamic Banking Financing in Indonesia," *International Journal of Islamic and Middle Eastern Finance and Management* 12, no. 5 (2019): 643–62, <https://doi.org/10.1108/IMEFM-10-2018-0365>; Nafis Alam, "Impact of Banking Regulation on Risk and Efficiency in Islamic Banking," *Journal of Financial Reporting and Accounting* 11, no. 1 (2013): 29–50, <https://doi.org/10.1108/jfra-03-2013-0010>.

¹⁰ M. Chairul Ismail, Ro'fah Setyowati, and Muhyidin Muhyidin, "The Role of Sharia National Financial Committee in the Development of

as ensuring that Sharia bank operations comply with Sharia principles. Without adequate regulation, Islamic banking may face various risks, including reputational and operational risks.¹¹ With clear and consistent regulations, Islamic banks can develop new financial products that comply with sharia principles. This can increase public confidence in the Sharia banking system and attract more customers.¹² Overall, Islamic banks show more efficient performance in the context of a strict and structured regulatory environment.¹³

Islamic banking regulations, covering institutions, business activities, and liquidity management, focus on Sharia compliance.¹⁴ However, the full adoption of Sharia principles is hampered by the dominance of the conventional financial system and inadequate regulation due to a lack of political support.¹⁵ Renewal of Islamic legal

Sharia Banking Law in Indonesia," no. 21 (2021), <https://doi.org/10.4108/eai.17-7-2019.2303105>.

- ¹¹ A L J Hobvi and A Zunaidi, "Implementation Of Compliance Management In The Sharia Banking Sector," *Proceedings of Islamic Economics ...* 1, no. 2 (2022): 346–62, <https://jurnalfebi.iainkediri.ac.id/index.php/proceedings/article/view/260>; Diana Novita, "Compliance Risk Management in Sharia Banking in Indonesia," *EXISTBANK: Sharia Economics and Banking Business* 3, no. 1 (2019): 49–65, <https://doi.org/10.37726/ee.v3i1.32>.
- ¹² Palmawati Tahir, "Development and Legal Basis of Sharia Banks in Indonesia," *International Journal of Scientific and Research Publications* 7, no. 8 (2017): 100–107; Hobvi and Zunaidi, "Implementation Of Compliance Management In The Sharia Banking Sector."
- ¹³ Alam, "Impact of Banking Regulation on Risk and Efficiency in Islamic Banking."
- ¹⁴ Ja'far Baehaqi, "Paradoks Fatwa Dewan Syariah Majelis Ulama Indonesia Dalam Regulasi Hukum Perbankan Syariah," *Al-Ahkam* 27, no. 1 (2017): 1, <https://doi.org/10.21580/ahkam.2017.27.1.1330>.
- ¹⁵ Nurhadi, "Subhat Income of Sharia Financial Intitutions According to Dual Law (Formal and Sharia Law)," *Ahkam: Jurnal Ilmu Syariah* 19, no. 2 (2019): 411–28,

theory through *ijtihad* is an alternative solution to address this challenge, including the application of *maqāshid sharia*¹⁶ in Islamic banking fatwas.¹⁷ Such fatwas provide guidelines for Sharia banks in their business operations, systems, and products as well as services. Most of the DSN-MUI fatwas use the *Maharaj fiqhiyah* approach, which provides flexibility in addressing contemporary challenges.¹⁸ This approach demonstrates DSN-MUI's commitment to maintaining sharia compliance, although it requires a deep understanding of *fiqh* principles.¹⁹

This research aims to analyze the legal development of Sharia banking regulations in Indonesia from the initial phase to the current development and the social-economic-political contexts, as well as the implications for the development of Sharia banks in Indonesia. Then, to find out the novelty of this research, the author has reviewed several previous literature studies, including (1) The Crucial History of Sharia Banking Law Development in

<https://doi.org/https://doi.org/10.15408/ajis.v19i2.12982>.

¹⁶ Asutay, "Islamic Moral Economy as the Foundation of Islamic Finance"; Nur Hidayah, *Ekonomi Syariah Di Indonesia : Tinjauan Aspek Hukum* (Yogyakarta: Dee Publish, 2022).

¹⁷ Abbas Arfan, "Lima Prinsip Istinbat Kontemporer Sebagai Konklusi Pembaharuan Dalam Teori Penetapan Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam*, 2015, <https://doi.org/10.24090/mnh.v9i2.492>; Muhammad Taufik, Rifqi Muhammad, and Peni Nugraheni, "Determinants and Consequences of Maqashid Sharia Performance: Evidence from Islamic Banks in Indonesia and Malaysia," *Journal of Islamic Accounting and Business Research* 14, no. 8 (November 22, 2023): 1426–50,

<https://doi.org/10.1108/JIABR-07-2021-0205/FULL/XML>.

¹⁸ Nur Hidayah, "Metode Hukum Islam Dan Akomodasi Dinamika Keuangan Syariah," in *Teori Dan Metode Hukum Islam Kontemporer*, ed. Nur Hidayah (Yogyakarta: Dee Publish, 2023), 1–35.

¹⁹ Ma'rif Amin, *SOLUSI HUKUM ISLAM (MAKHARIJ FIQHIIYAH) SEBAGAI PENDORONG ARUS BARU EKONOMI SYARIAH DI INDONESIA*, 2017.

Indonesia²⁰ which only discusses the development of Sharia banking regulations in Indonesia in 1992-2008; (2) Sejarah Perkembangan Hukum Perbankan Syariah di Indonesia dan Implikasinya bagi Praktik Perbankan Nasional²¹ which only discusses the development of Sharia banking regulations in Indonesia and its implications in 1992-2008; (3) Peran regulasi perbankan dalam perkembangan pembiayaan perbankan syariah di Indonesia²² which only focuses on studying the influence of POJK²³ Number 12/POJK.03/2015 and POJK Number 19/POJK.03/2014 on the total distribution of Sharia banking financing in Indonesia; (4) Juridical Study of The Development of Islamic Banking Law and Its Implications For Islamic Bank Products²⁴ which only discusses the influence of Sharia banking regulations in Indonesia from 1992 - 2008 on the development of Sharia banking products in Indonesia; (5) History of Islamic Bank in Indonesia: Issues Behind Its Establishment²⁵ which only discusses issues that are obstacles to the establishment of

²⁰ Dahlan, Mawardi, and Mahfudz.

²¹ Abdul Ghofur Anshori, "Sejarah Perkembangan Hukum Perbankan Syariah di Indonesia dan Implikasinya bagi Praktik Perbankan Nasional," *La_Riba* 2, no. 2 (2008): 159-72, <https://doi.org/10.20885/lariba.vol2.iss2.art1>.

²² Nastiti and Kasri, "Peran regulasi perbankan dalam perkembangan pembiayaan perbankan syariah di Indonesia."

²³ Peraturan Otoritas Jasa Keuangan(POJK)

²⁴ Ade Sofyan Mulazid, "Juridical Study of The Development of Islamic Banking Law and Its Implications for Islamic Bank Products," *MIZANI SCIENTIFIC JOURNAL: Legal, Economic and Religious Discourse* 9, no. 2 (2022): 197, <https://doi.org/10.29300/mzn.v9i2.7701>.

²⁵ Mutiara Dwi Sari, Zakaria Bahari, and Zahri Hamat, "History of Islamic Banking in Indonesia: Issues Behind Its Establishment History of Islamic Bank in Indonesia: Issues Behind Its Establishment," no. September (2016), <https://doi.org/10.11648/j.ijfbr.20160205.13>.

Sharia banking in Indonesia²⁶; (6) History and Development of Islamic Banking Regulations in the National Legal System of Indonesia²⁷ which only discusses the development of Sharia banking regulations from 1992 - 2008; (7) History and Development of Sharia Banking in Indonesia²⁸ which only discusses the development of Sharia Banking in Indonesia from the promulgation of Law Number 7/1992 until the promulgation of Law Number 21/2008 concerning Sharia Banking.

Drawing on the preceding literature review, there remain limited studies addressing the progress of Islamic banking regulations up to the present development. In fact, the recent development indicates significant change following the enactment of Law Number 4/2023 on P2SK (Pengembangan dan Penguatan Sistem Keuangan/Development and Strengthening of the Financial System) that influences the legal dynamics and future development of Sharia banks in Indonesia. Therefore, this study aims to address this research gap. It offers a comprehensive analysis of the legal development of Islamic banking regulations in Indonesia, emphasizing how the surrounding socio-economic-political contexts have influenced such development and how these regulatory developments have influenced the trajectory of the industry's growth. The study traces the legal development

²⁶ Sari, Bahari, and Hamat.

²⁷ Andrew Shandy Utama, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia.," *Al-Is* 15, no. 1 (2018): 1-14, <http://dx.doi.org/10.24042/adalah.v%25vi%25i.2446>.

²⁸ S Mokodenseho, F Thomas, and ..., "History and Development of Sharia Banking in Indonesia," ... *Journal of Islamic ...* 2, no. 1 (2024): 130-51, <https://journal.iaimkotamobagu.ac.id/index.php/annubuwwah/article/view/52%0Ahttps://journal.iaimkotamobagu.ac.id/index.php/annubuwwah/article/download/52/38>.

of Islamic banking regulations into five distinct stages: initial, introduction, recognition, purification, and relaxation. Additionally, it provides valuable insights into the effectiveness and implications of these regulatory changes, offering guidance to stakeholders and policymakers in fostering the advancement of the Islamic banking sector.

This study is juridical research analyzing laws and regulations as well as legal documents related to this topic. The method is a historical legal research assessing such legal development by analyzing the continuity and change within the social-economic-and political contexts surrounding such legal dynamics and analyzing the impact of such regulation. Furthermore, it analyses the issue not only from a state legal perspective but also Islamic legal one since the nature of Sharia banks is subject to not only the state's law but also Islamic law/Sharia.

Regulatory Frameworks of Islamic Banks

This chapter discusses the regulatory framework governing Islamic banking from two main perspectives: the Islamic legal aspect, which includes the principles of Islamic law as the basis for Islamic banking operations and products, and the state legal aspect, which includes government regulations and policies that provide legal legitimacy and implementation guidelines for Islamic banking institutions in the national context.

State Legal Aspect

This section reviews the development of regulations governing Islamic banking in Indonesia from the initial phase to the relaxation phase.

- a. Initial Phase: The Long Path to Establishing Islamic Banking in Indonesia (1930–1991)

The idea of establishing Islamic banks in Indonesia emerged in the 1930s amid tensions between the Dutch government and Muslims. K.H. Mas Mansur pioneered the view that bank interest was *haram* because it contained elements of extortion.²⁹ This opinion sparked debate, especially with socialists such as Muhammad Hatta, who considered interest to be voluntary and in the public interest.³⁰ There was also a moderate view that interest could be *halal* or *haram*, depending on the context.³¹ During the Old Order Indonesia under Soekarno's regime (1945-1965), Indonesia's first Vice President, Muhammad Hatta, did not support Islamic banks due to his inclination toward socialism. This has contributed to a negative response from the public and government toward the establishment of Islamic banks in Indonesia. It seems that the issue of *halal-haram*/legitimate interest in conventional banks has continued among Muslims in Indonesia to the present time, which partly contributed to the slow growth of Islamic banks.³²

During the early period of the New Order era (1965-1980s), legal constraints are one of the main factors in establishing sharia banks in Indonesia. Law Number 14 of 1967 concerning Banking requires all banks in Indonesia to operate with an interest system.

²⁹ Ekonomi Islam : Suatu Kajian Kontemporer. 3rd ed. (Jakarta: Gema Insani, 2019); M Dawam Rahardjo, *The Question of Islamic Banking in Indonesia* (Jakarta: ISEAS, 1988).

³⁰ M Dawam Rahardjo, "Bank Islam" Dalam Ensiklopedi Islam Tematis (Jakarta: PT. Ichtiar Baru Van Houve, 2002); Nur Hidayah, "Fatwa-Fatwa Dewan Syariah Nasional Atas Aspek Hukum Islam Perbankan Syariah Di Indonesia," *Al-'Adalah* 10, no. 1 (2011): 13.

³¹ Rahardjo, *The Question of Islamic Banking in Indonesia*.

³² Muhlis Muhlis, "PERILAKU MENABUNG DI PERBANKAN SYARIAH JAWA TENGAH" (Diponegoro University, 2011).

Politically, such conditions have been attributed to the antagonistic policies of New Order's earlier period that were hostile towards Islam and Muslims' aspirations. Being backed up by secular military power, The New Order's early period had been marked by Islamophobia, the fear and hatred of the Islamic religion as a whole, and discrimination against Muslims, particularly activist Muslims struggling for Sharia implementation as in Jakarta Charter and /or Islamic state. Securing political stability for the sake of economic development, the New Order repressed any potential political opponents, including activist Muslims. During the repressive years of Soeharto's New Order regime (1966-98), when some Islamic leaders were wont to declare that the Muslim community was a majority with a minority mentality.³³

The struggle to establish an interest-free Islamic bank intensified after the OIC³⁴ conference in Kuala Lumpur in 1969. This conference resulted in the establishment of the Islamic Development Bank (IDB) in Jeddah in 1975 with Indonesia as one of the founders.³⁵ This motivated efforts to establish sharia banks in Indonesia to increase the economic empowerment of Muslims.

There are several reasons why the idea of establishing a Sharia Bank in the 1970s was not realized. First, no law regulated Sharia bank

³³ Greg Fealy and Ronit Ricci, "1. Diversity and Its Discontents: An Overview of Minority-Majority Relations in Indonesia," *Contentious Belonging*, no. Yudhoyono 2009 (2019): 1-16, <https://doi.org/10.1355/9789814843478-005>.

³⁴ Organization Islamic Cooperation

³⁵ Mutiara Dwi Sari, Zakaria Bahari, and Zahri Hamat, "History of Islamic Bank in Indonesia: Issues Behind Its Establishment," no. September (2016), <https://doi.org/10.11648/j.ijfbr.20160205.13>.

operations, so it conflicted with Law Number 14 of 1967. Second, Sharia banking was considered to have ideological connotations related to Islamic states. Third, there were no investors who were willing to invest capital.³⁶

In the early 1980s, domestic political conditions were still heightened and even at boiling point, especially in relation to the government's efforts to require the use of the single principle of Pancasila for all social organizations and socio-political organizations in Indonesia.³⁷ However, in 1982, relations between the Indonesian government and Islam improved slightly. The government shows an open attitude towards Islamic mass organizations. Muslim ulama and intellectuals used this era to re-propose the idea of Islamic banking, which they had been fighting for.³⁸

The October 1988 Policy Package (Pakto 88) was issued to support the development of the non-oil and gas sector and facilitate the establishment of new banks, thus triggering rapid growth in the banking industry. Pakto 88 allowed the establishment of banks with 0% interest³⁹, opening up opportunities for Islamic banks to operate without interest. However, after this policy was implemented, new challenges emerged related to the initial capital for establishing Islamic banks.

Partial support from the government makes it difficult to raise the initial capital required for the establishment of Islamic banks. The Muslim

³⁶ Sari, Bahari, and Hamat.

³⁷ Sari, Bahari, and Hamat.

³⁸ Sari, Bahari, and Hamat.

³⁹ Sari, Bahari, and Hamat.

community and intellectuals made various efforts to collect funds as initial capital for the establishment of Islamic banks. The Indonesian Muslim Scholars Association (ICMI), led by Prof. Dr. B. J. Habibie, played a positive role in contributing funds for the establishment of Islamic banks in Indonesia. To begin with, Islamic banks were established on a relatively limited and localized scale. Sharia banks such as Bait-At-Tamwil at ITB⁴⁰, Bandung, Rhido Ghusti Cooperative, Jakarta, and Sharia People's Credit Bank (BPRS) were established.⁴¹

The movement to establish Islamic banks in Indonesia began in 1990 when the Indonesian Ulema Council (MUI) held a seminar to discuss the issue of bank interest. The seminar resulted in an agreement to establish an interest-free Islamic bank. This decision was followed by the MUI National Conference, which formed the MUI Banking Team, a working group responsible for preparing the establishment of Islamic banks by consulting with various related parties.⁴²

This collaboration resulted in the establishment of Bank Muamalat Indonesia on November 1, 1991, which began operating on May 1, 1992.⁴³ After that, several Sharia Rural Banks were established, such as Sharia People's Credit Bank Berkah Amal Sejahtera and Sharia People's Credit Bank Amanah Rabaniah. The

⁴⁰ Institut Teknologi Bandung (ITB)

⁴¹ Adrian Sutedi, *Sharia Banking: An Overview And Some Legal Aspects* (Jakarta: Ghalia Indonesia, 2009).

⁴² Muhammad Syafii Antonio, *Sharia Banking: From Theory to Practice* (Gema Human, 2001); Perwataatmadja and Antonio, *What And How Islamic Bank*.

⁴³ Muhammad Anwar Fathoni et al., "Intention to Participate in Islamic Banking in Indonesia: Does Socio-Political Identity Matter?," *Journal of Islamic Marketing*, 2024, <https://doi.org/10.1108/JIMA-12-2023-0397>.

government responded quickly by passing Law Number 7 of 1992 to accommodate Islamic banks.⁴⁴

Based on the description above, the idea to establish a Sharia bank in Indonesia has emerged since 1930. However, due to various obstacles, including less supportive political conditions and minimal government support, Sharia banks could only be established in 1991. The initial opportunity to establish a sharia bank in Indonesia was the issuance of the October 1988 Policy Package (Pakto 88), which allowed the establishment of banks with 0% interest. However, after the policy was implemented, other challenges emerged related to the initial capital for establishing a sharia bank. Two years later, in 1990, the Indonesian Ulema Council (MUI) held a seminar discussing the issue of bank interest. This collaboration bore fruit with the establishment of Bank Muamalat Indonesia on November 1, 1991, and began operating on May 1, 1992. This development was then strengthened by Law Number 7 of 1992, which allowed banks to operate based on the principle of profit sharing, thus providing a more substantial legal basis for the growth of Sharia banking in the country.

b. Introduction Phase: Establishing the First Islamic Banking in Indonesia under Law Number 7 of 1992

The enactment of Law Number 7 of 1992 on Banking marked the beginning of the Islamic banking system in Indonesia⁴⁵, which underpinned the

⁴⁴ Andrew Shandy Utama, " PERKEMBANGAN PERBANKAN SYARIAH DI INDONESIA," *UNES Law Review* 2, no. 3 (May 11, 2020): 290–98, <https://doi.org/10.31933/UNESREV.V2I3.121>.

⁴⁵ Nur Hidayah and Abdul Azis, "IMPLEMENTATION OF PROGRESSIVE LAW IN SHARIA BANKING DISPUTE SETTLEMENT: Case Study of Religious Court Decisions in Indonesia," *Ulumuna* 27,

establishment of Bank Muamalat Indonesia (BMI) in May 1992.⁴⁶ The law introduced credit based on profit sharing rather than interest through the provisions of Article 1 of PP (Regulation Government)⁴⁷ Number 72 of 1992.⁴⁸ During this period, various initiatives to support the Islamic economy were launched, including the development of Baitul Maal Wat Tamwil (BMT), which operated under cooperative status because there was no formal legal framework. In 1994, ICMI established 85 BMTs in Aceh and Lampung, and Dompot Dhuafa launched the "1001 BMT and Islamic People's Credit Bank" program.⁴⁹

The development of Islamic banking between 1992 and 1998 was slow due to several factors. The public still did not understand Islamic banking, and the provisions and supporting monetary instruments were incomplete.⁵⁰ The network of Islamic bank offices was also limited, as well as the lack of human resources and experts. The rejection of Islamic scholars against bank interest, coupled with less than supportive socio-political conditions, meant that the government did not have the political will. Legal obstacles, such as the non-recognition of Islamic banks in Law Number 14 of 1967 concerning Banking and Law Number 13 of 1968

no. 1 (2023): 227–57, <https://doi.org/10.20414/ujis.v27i1.652>; Hidayah, "Fatwa-Fatwa Dewan Syariah Nasional Atas Aspek Hukum Islam Perbankan Syariah Di Indonesia."

⁴⁶ Anshori, " Sejarah Perkembangan Hukum Perbankan Syariah Di Indonesia Dan Implikasinya Bagi Praktik Perbankan Nasional."

⁴⁷ Peraturan Pemerintah

⁴⁸ Anshori.

⁴⁹ Al Banna Choiruzzad and Nugroho, "Indonesia's Islamic Economy Project and the Islamic Scholars."

⁵⁰ Mulya Siregar, "Agenda Pengembangan Perbankan Syariah Untuk Mendukung Sistem Ekonomi Yang Sehat Di Indonesia: Evaluasi, Prospek Dan Arah Kebijakan," *Iqtisad* 3, no. 1 (May 7, 2009): 46–66, <https://doi.org/10.20885/IQTISAD.VOL3.ISS1.ART4>.

concerning the Central Bank, also hampered its development.⁵¹

Law Number 7 of 1992 is considered inadequate because it only regulates the principle of profit sharing so Sharia banking products are limited and challenging to compete with conventional banking. This prompted regulatory changes, which were realized through Law Number 10 of 1998 concerning Banking.⁵²

c. Recognition Phase: Implementation of Dual Banking System in Indonesia based on Law Number 10 of 1998

The recognition stage was marked by the promulgation of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.⁵³ Law Number 10 of 1998 concerning Banking (UU 98) was promulgated by President B.J. Habibie on November 10, 1998, and had several goals.⁵⁴

In the era of Law Number 10 of 1998, the dual banking system⁵⁵ allowed conventional banks to provide sharia services through a mechanism *Islamic*

⁵¹ Siregar.

⁵² Mulazid, "Juridical Study of The Development of Islamic Banking Law and Its Implications for Islamic Bank Products."

⁵³ Hidayah and Azis, "IMPLEMENTATION OF PROGRESSIVE LAW IN SHARIA BANKING DISPUTE SETTLEMENT: Case Study of Religious Court Decisions in Indonesia"; Hidayah, "Fatwa-Fatwa Dewan Syariah Nasional Atas Aspek Hukum Islam Perbankan Syariah Di Indonesia."

⁵⁴ Ahmad Dahlan, *Political Economy of Islamic Banking in Indonesia*, 2021.

⁵⁵ Nur Hidayah et al., "SHARIA BANKING DISPUTES SETTLEMENT: Analysis of Religious Court Decision in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (2023): 75-92, <https://doi.org/10.30631/alrisalah.v23i1.1347>.

window by first establishing a Sharia Business Unit.⁵⁶ This accelerates the development of sharia banks in Indonesia, as is done by PT. Bank Rakyat Indonesia and PT. Bank Negara Indonesia.⁵⁷ Convenience is also supported by the office channeling concept, where conventional banks can provide sharia services without opening new branch offices. This is also supported by operational regulations, including PBI Number 8/3/PBI⁵⁸/2006 and PBI Number 9/19/PBI/2007 and its amendments as mentioned above.⁵⁹

Law Number 10 of 1998 was indeed a breath of fresh air for the Sharia banking industry. Since the enactment of this law, the number of Sharia banking office networks has skyrocketed. The head office of Sharia banks, which initially in 1991 only had one main office (BMI only) and only one branch office, In November 2004, the number of Sharia banking office networks has reached 18 head offices/sharia business units, 146 operational branch offices, 50 sub-branch offices, and 130 cash offices.⁶⁰

On January 24, 2004, the MUI issued Fatwa Number 1/2004, stating that bank interest is usury and *haram*, and encouraged Muslims to use Islamic banking services. If there are no Islamic financial institutions, people are allowed to use conventional

⁵⁶ Mokodenseho, Thomas, and ..., "History and Development of Sharia Banking in Indonesia."

⁵⁷ Anshori, " Sejarah Perkembangan Hukum Perbankan Syariah Di Indonesia Dan Implikasinya Bagi Praktik Perbankan Nasional."

⁵⁸ Peraturan Bank Indonesia

⁵⁹ Mokodenseho, Thomas, and ..., "History and Development of Sharia Banking in Indonesia"; Anshori, " Sejarah Perkembangan Hukum Perbankan Syariah Di Indonesia Dan Implikasinya Bagi Praktik Perbankan Nasional."

⁶⁰ Ascarya Diana Yumanita, *Islamic Banking: An Overview*, Central Bank Education and Study Center (PPSK) BI, 2005.

banking in emergencies.⁶¹ This fatwa drew criticism from Masdar F. Mas'udi, who stated that there were differences of opinion among scholars, although he acknowledged the authority of the MUI.⁶² On June 27, 2006, the Muhammadiyah Tarjih Council also issued a similar fatwa supporting Islamic economics.⁶³ Despite the differences of opinion⁶⁴, Islamic banking in Indonesia has shown positive developments. However, the differences in characteristics between Islamic and conventional banks encourage the need for special regulations to improve sharia compliance and optimize Islamic banking practices in Indonesia.⁶⁵

The recognition phase shows that because the development of Islamic banking in Indonesia was not optimal, the government changed Law Number 7 of 1992 with Law Number 10 of 1998. This change allows Islamic banks to be established with more evident Islamic principles, accelerating the development of Islamic banking. In addition, in 2004, the MUI issued a fatwa stating that bank interest is equivalent to usury and is haram, this further strengthens the legal and moral basis of Islamic banking in Indonesia.

d. Purification Phase: Law Number 21 of 2008 and Efforts to Purify Islamic Banking in Indonesia

The issuance of Law Number 21 of 2008 concerning Sharia Banking aims to increase Sharia

⁶¹ Al Banna Choiruzzad and Nugroho.

⁶² Al Banna Choiruzzad and Nugroho.

⁶³ Al Banna Choiruzzad and Nugroho.

⁶⁴ Maksum and Hidayah, "The Mechanism of Avoiding Riba in Islamic Financial Institutions: Experiences of Indonesia and Malaysia."

⁶⁵ Mulazid, "Juridical Study of The Development of Islamic Banking Law and Its Implications for Islamic Bank Products"; Ascarya; and Dian Yumanita, *Syariah Central Bank Series : General description*, 14th ed. (Jakarta: Bank Indonesia, 2005).

banks' compliance with the principles of the Koran and Hadith.⁶⁶ This is in line with the National Sharia Banking Development Vision, namely creating a Sharia banking system that is healthy, strong, and has principles of justice, benefit, and balance in order to achieve the material and spiritual welfare of society (*falah*).⁶⁷

Law Number 21 of 2008 concerning Sharia Banking has several implications. First, legal certainty for Sharia banking actors and users attracts foreign investors.⁶⁸ Second, government support is increasing, including outreach and investment.⁶⁹ Third, Sharia banking regulations must be adapted to this law.⁷⁰ Fourth, this law encourages synergy in sharia financial market regulations globally.⁷¹ Sharia banks also have more business opportunities, such as guaranteeing securities and custodianship, as well as carrying out social functions through *baitul mal* institutions.⁷²

Another provision regulated in this Law is that Conventional Commercial Banks that have Sharia

⁶⁶ Hidayah and Azis, "IMPLEMENTATION OF PROGRESSIVE LAW IN SHARIA BANKING DISPUTE SETTLEMENT: Case Study of Religious Court Decisions in Indonesia."

⁶⁷ Anshori, "Sejarah Perkembangan Hukum Perbankan Syariah Di Indonesia Dan Implikasinya Bagi Praktik Perbankan Nasional."

⁶⁸ Khotibul Umam, "History of the Development of Sharia Banking Law in Indonesia," *Truth and Justice* 6, no. 2 (2020): 250–73, <https://doi.org/10.25123/vej.3629>.

⁶⁹ Mulazid, "Juridical Study of The Development of Islamic Banking Law and Its Implications for Islamic Bank Products."

⁷⁰ Bambang Iswanto, "The Role of Bank Indonesia, National Sharia Council, Indonesian Waqf Board and Baznas in Developing Islamic Economic Law Products in Indonesia," *IQTISHADIA Journal of Islamic Economics and Business Studies* 9, no. 2 (2016): 421, <https://doi.org/10.21043/iqtishadia.v9i2.1738>.

⁷¹ Mulazid, "Juridical Study of The Development of Islamic Banking Law and Its Implications for Islamic Bank Products."

⁷² Mulazid.

Business Units must carry out a separation if the assets of the Sharia Business Unit reach at least 50% of the total asset value of the parent bank or 15 years from the enactment of the Sharia Banking Law.⁷³ The separation of Sharia Business Units (SBUs) can be carried out voluntarily or mandatory if the SBUs meet specific requirements.⁷⁴

The need for separation and the Sharia Banking Committee shows that there have been legal efforts to create more Sharia Commercial Banks so that their operations are more optimal and closer to genuinely compliant implementation of Sharia principles. Thus, Bank Indonesia's vision, as mentioned above, along with its mission, is to create a conducive climate for the development of Sharia banking that is competitive, efficient, and fulfills the precautionary principle, capable of supporting the real sector through activities based on profit sharing and actual transactions in order to encourage national economic growth.⁷⁵

The initial draft of the Sharia Banking Bill prepared by Commission XI of the Indonesian House of Representatives did not contain restrictions on the existence of Sharia business units (SBUs), indicating a desire to maintain Sharia business units (SBUs). However, after a series of debates, it was agreed that restrictions on Sharia business units (SBUs) would be included in the transitional provisions. This agreement follows considerations from Bank Indonesia, the

⁷³ Ari Andika Putra, Ahmad Mulyadi Qosim, and Hilman Hakiem, "Analisi Peluang Dan Tantangan Pelaksanaan Kewajiban Spin-Off Unit Usaha Syariah Menjadi Bank Umum Syariah," *Al Amwal* 0, no. 2 (2019): 1-12.

⁷⁴ Anshori, "Sejarah Perkembangan Hukum Perbankan Syariah Di Indonesia Dan Implikasinya Bagi Praktik Perbankan Nasional."

⁷⁵ Anshori.

Indonesian House of Representatives, and the government, with the restriction indicator based on the similarity of Sharia business units (SBUs) assets with the parent bank's assets or after 15 years since the Sharia Banking Law was passed.⁷⁶

Table 1. The Growth of Sharia Before And After The Enactment Of The Sharia Banking Law

Category	Before Law Number 21 of 2008	After Law Number 21 of 2008
Number of Sharia Commercial Banks (SCB)	66% increase (from 3 to 5)	120% increase (from 5 to 11)
Total Assets of SCBs and SBUs	20.88 trillion rupiah (2005)	127.15 trillion rupiah (2011)

Prasetyo, 2012

From the data on the development of Sharia banks, Sharia Banking Law has had a positive impact on the development of Sharia banking. Apart from that, Sharia Banking Law is also sufficient to provide confidence in legal certainty for national and even foreign bankers to develop Sharia banks in Indonesia.⁷⁷

- e. Relaxation Phase: Law Number 4 of 2023 and Adjusting the Criteria for Spin-Off in Islamic Banking Business Units

The spin-off provisions aim to purify sharia banks. However, after 12 years of Law Number 21 of 2008, there are no Sharia business units that meet the mandatory spin-off criteria, with the most significant

⁷⁶ Mokodenseho, Thomas, and ..., "History and Development of Sharia Banking in Indonesia."

⁷⁷ Prasetyo.

share assets at only 10%-12% at the end of 2019.⁷⁸ Association Indonesian Sharia Banking advises the government to reconsider this provision, considering concerns about its negative impacts, such as hampered Sharia Commercial Banks growth and declining services.⁷⁹ The Director of CIMB, Niaga Syariah, emphasized that the focus of the spin-off should be on growing the Sharia portfolio, not just increasing the number of banks. The Dual Banking Leveraging model implemented by CIMB Niaga shows significant growth.⁸⁰, while Maybank Syariah chose to remain as a Sharia business unit, considering that the spin-off was no longer necessary because it had proven to be efficient.⁸¹

The analysis results of the National Committee for Sharia Economics and Finance also stated that 9 to 12 Sharia Business Units (SBUs) out of a total of 20 Sharia Business Units (SBUs) are estimated not to be ready to face or undertake a spin-off in 2023. In this regard, it is necessary to change the principle's obligations to become voluntary.⁸² In line with this, the results of other research using the ARIMA method show that by 2023, there will not be a single Sharia Business Unit

⁷⁸ Financial Services Authority, "Indonesian Banking Statistics March 2020," *Financial Services Authority* 18, no. 4 (2020): 1–183.

⁷⁹ ASBISINDO, "Kontribusi UUS Dalam Perbankan Syariah Indonesia," 2022.

⁸⁰ Pandji P. Djajanegara, "Sharia Banking Development Policy and Strategy" (Jakarta, 2022).

⁸¹ Dina Miraanti Hutaaruk and Tendi Mahadi, "Bank Akan Pilih Pertahankan Status UUS Jika Spin off Tak Lagi Mandatory," <https://keuangan.kontan.co.id/news/bank-akan-elect-perlahankan-status-uus-jika-spin-off-no-longer-mandatory>, 2021.

⁸² "Naskah Akademik UU Pengembangan Dan Penguatan Sektor Keuangan,," n.d.

capable of reaching 50% of its parent bank's assets.⁸³ If Sharia Business Units are forced to convert, then this can hinder progress as a whole.⁸⁴

Sharia Business Units (SBUs) could turn into Sharia Commercial Banks (SCB) in 2034, not in 2023. In 2023, total Sharia Business Units assets will only reach 14.7% of the total assets of Conventional Parent Banks. In contrast, in 2034, total assets are projected to reach 54.6% of the parent bank's total assets. Legislative regulations related to operational technicalities in preparation for the transfer of the separation of SBUs into SCB need to be strengthened and confirmed with new regulations. For the Government and the Financial Services Authority (OJK), it is necessary to revise the spin-off policy regulations and laws so as to encourage the acceleration of the separation of Sharia Business Units into Sharia Commercial Banks.⁸⁵ Responding to these various inputs, the government responded by issuing two new regulations regarding spin-offs, namely POJK Number 12 of 2023 concerning Sharia Business Units and Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector.⁸⁶

⁸³ M. Nur Rianto Al Arif et al., "The Islamic Banking Spin-off: Lessons from Indonesian Islamic Banking Experiences," *Journal of King Abdulaziz University, Islamic Economics* 30, no. 2 (2017): 117–33, <https://doi.org/10.4197/Islec.30-2.11>.

⁸⁴ Anggito Abimanyu and Abdullah At Tamimi, "Should Islamic Window Be Converted into a Full-Fledge Islamic Bank? A Case Study in Indonesia," *Ethics* 23, no. 1 (2024): 183–200, <https://doi.org/10.15408/etk.v23i1.35082>.

⁸⁵ Angrum Pratiwi, "Spin-Off Sharia Banking In Indonesia: Calculation Projection And Critical Study Regulation," *Journal of Islamic Research* 15, no. 02 (2021): 229–42.

⁸⁶ Anastasia Pritahayu Ratih Daniyati, Sudarmonom Naufan Mufti, and Zahra, "URGENSI KEWAJIBAN SPIN OFF PADA UNIT USAHA

The previous provisions in Law Number 21 of 2008 regulate two separation provisions, namely, if the assets are more than 50% of the parent bank's assets, and 15 years after the enactment of Law Number 21 of 2008, which matures on July 16, 2023. After the ratification and promulgation of Law Number 4 of 2023, there is no longer an obligation to separate Sharia Business Units into Sharia Commercial Banks 15 years after the enactment of Law 21 of 2008.⁸⁷

Financial Services Authority (OJK) Regulation Number 12 of 2023 concerning Sharia Business Units regulates several important matters: First, the obligation to provide business funds of IDR 1 trillion for Spin-Off in order to open new and developing SBUs. Second, the directors and Board of Commissioners of Conventional Commercial Banks that have SBUs are responsible for the development of SBUs. Third, Conventional Commercial Banks with SBUs that have assets of more than IDR 50 trillion are required to conduct spin-offs to open new SBUs. Fourth, SBUs that conduct spin-offs can establish a new Sharia Commercial Bank (SCB) or transfer rights and obligations to an existing SCB. Fifth, OJK can propose the separation of SBUs for the consolidation and strengthening of sharia banking. Sixth, SBC that has SBUs must have a long-term strategy for UUS

SYARIAH DI ERA OMNIBUS LAW SEKTOR PERBANKAN," *Syntax Literature: Indonesian Scientific Journal* 8, no. 3 (2023), <https://doi.org/https://doi.org/10.36418/syntax-literature.v8i3.11557>.

⁸⁷ Daniyati, Mufti, and Zahra.

development in accordance with OJK policies and can utilize the resources owned by the parent SBC.⁸⁸

Table 2. Total SBUs Assets and Percentage of Total SBUs Assets to their Parent Bank

Bank	Total Assets of SBUs to Total Assets of its Parent Bank (in percent)	SBUs Total Assets (in Millions of Rupiah)
BPD Yogyakarta	10.36	1,916,897
PT BPD DKI	11.31	9,398,358
PT Bank Tabungan Negara (Persero)	12.37	54,288,709
PT CENTRAL JAVA REGIONAL DEVELOPMENT BANK	7.46	6,596,183
PT BPD EAST JAVA - UUS()	3.58	3,620,590
PT BPD JAMBI-UUS()	11.13	1,521,135
PT BPD SOUTH SUMATRA AND BANGKA BELITUNG	11.74	4,509,884
BPD WEST SUMATRA	13.83	4,413,303
PT BPD NORTH SUMATRA	8.51	3,778,225
PT BPD SOUTH AND WEST SULAWESI	7.59	2,339,024
BPD EAST KALIMANTAN	7.46	3,667,258
PT BPD SOUTH KALIMANTAN	12.68	3,011,597
PT BANK DANAMON INDONESIA TBK	6.18	12,524,197

⁸⁸ Rahmat Husein Lubis and Hikam Hulwanullah, "Analysis of Sharia Business Unit Spin-Off Regulations and Islamic Law," *Al Ahkam* 20, no. 1 (2024): 31–60, <https://doi.org/10.37035/ajh.v20i1.9802>.

Bank	Total Assets of SBUs to Total Assets of its Parent Bank (in percent)	SBUs Total Assets (in Millions of Rupiah)
PT BANK PERMATA, Tbk	14.89	38,338,144
PT BANK MAYBANK INDONESIA	25.90	41,039,983
PT BANK CIMB NIAGA, TBK	19.13	62,747,240
PT BANK OCBC NISP, TBK	3.66	9,153,784
PT BANK SINARMAS	15.43	7,572,388
PT BANK JAGO TBK	7.74	1,648,603

Source: Otoritas Jasa Keuangan, 2024

Based on these provisions, as of September 2024, if we look at the data on the ratio of total assets of SBUs to their Parent Bank, no SBUs meet the requirements to carry out a spin-off. However, if we look at the total SBU asset data, it is necessary to spin off 2 SBUs, namely the SBUs owned by PT Bank Tabungan Negara (Persero) and the SBUs owned by PT Bank Cimb Niaga, TBK.⁸⁹

The provisions related to spin-off obligations in Law Number 4 of 2023, which are regulated in detail in POJK⁹⁰ 12 of 2023 concerning Sharia Business Units replace the previous provisions in Law Number 21 of 2008, which required SCBs to conduct spin-offs no later than 15 years after the Law was enacted. Thus, this new provision provides more apparent limitations on spin-off obligations based on asset size and ensures the development of the Sharia banking industry to be more efficient, healthy, and sustainable.

⁸⁹ OJK, "Sharia Banking Statistics September 2023," vol. September (Jakarta, 2023), <https://doi.org/10.1016/j.ajodo.2023.07.001>.

⁹⁰ Peraturan Otoritas Jasa Keuangan

The Islamic Legal Aspect

There are 4 (four) fiqh solutions (*Makharij Fiqhiyyah*) that are used as the basis for determining the National Sharia Council (DSN)-MUI fatwa, namely *al-Taysîr al-Manhaji*, *Tafriq al-Halal 'An al-Haram*, *I'adah al-Nadhar*, and *Tahqiq al-Manath*.⁹¹

First, *Al-Taysîr al-Manhaji* can be interpreted as choosing a light opinion but still in accordance with the rules. Although taking a lighter opinion (*at-taisir*), it remains within the existing manhaj corridor. This means that the National Sharia Council-MUI fatwa will provide a way out by providing the best solution as long as it does not conflict with Sharia. However, the use of this method should not be done excessively (*al-mubalaghah 'i al-taysir*). This is not justified because it creates an attitude of underestimation (*al-tasâhul*). The basic principle of applying the *al-Taysir al-Manhaji* rule in the DSN-MUI fatwa is "using the opinion that is more *rajih* and more beneficial if possible; if not, then the opinion that is more beneficial (only) is used".⁹²

The following rule is related to the separation between halal and non-halal assets (*at-tafriq baina al-halal wal haram*). The explanation is that property or money, from a fiqh perspective, is not a *haram* object because of its substance (*'ainiyah*) but is *haram* because the method of obtaining it is not in accordance with sharia (*ligairih*), so it can be separated which one was obtained with which methods are halal and which are non-halal. Halal funds can be recognized as legal income, while non-halal funds must be separated and allocated for public purposes.⁹³ The

⁹¹ Amin, *SOLUSI HUKUM ISLAM (MAKHARIJ FIQHIYYAH) SEBAGAI PENDORONG ARUS BARU EKONOMI SYARIAH DI INDONESIA*.

⁹² Amin.

⁹³ Amin.

theory of tafriq al-halal 'an al-haram is used in the DSN-MUI fatwa with the consideration that in the Indonesian context, activities of Sharia economics cannot be separated from the usurious conventional economic system. At least Sharia economic institutions are related to conventional economic institutions, which are usurious in terms of capital, product development, and profits earned.⁹⁴

The following rule in the effort to implement the fiqh solution is *i'adah al-nazhar* (re-examination). Re-examination of the opinions of previous scholars can be done if the opinions of previous scholars are considered no longer suitable to be used as a guideline because they are challenging to implement (*ta'assur, ta'adzdzur aw shu'ubah al-amal*). One way to re-examine is by re-examining the *mu'tamad* opinion by considering the legal opinion that has been considered weak (*marjuh* or even *mahjur*) because of the existence of a new legal '*illah* and/or the opinion brings more benefits; then the opinion is used as a guideline (*mu'tamad*) in determining the law.⁹⁵

Meanwhile, *tahqiq al-manath* (analysis of determining legal reasons/*'Illat*) is an analysis to find out if there are other legal reasons (*'illah*) in one case, other than the *illat* that was previously known, either through texts, *ijma*, or *istinbath*.⁹⁶

The above-mentioned *fiqh* solution is applied based on the principle that the original law in Islamic economics is permissible unless there is evidence that forbids it. This principle provides room for innovation in the formulation of Islamic law related to Islamic economics.⁹⁷The *fiqh* principle *Mā lā yudraku kulluhu lā yutraku kulluhu* (What

⁹⁴ Amin.

⁹⁵ Amin.

⁹⁶ Amin.

⁹⁷ Amin.

cannot be achieved ultimately, do not abandon it altogether)⁹⁸ strengthens this approach. In the context of the Sharia Business Unit (SBUs), if a spin-off into a fully Islamic bank is not yet possible, alternative steps still need to be taken to fight for the substantive values of Islamic teachings. This approach is an important part of the development of Islamic banking in Indonesia.

This gradual approach is in line with the characteristics of Islamic law, which emphasizes that the prohibition of a community habit is enforced gradually so that the community is ready to accept the final law.⁹⁹ This is reflected in the process of prohibiting usury, which occurs in four stages. The first stage, QS al-Rum: 39, emphasizes that interest takes away blessings, while charity multiplies them. The second stage, QS al-Nisa: 161, condemns the practice of usury and equates usurers with those who take other people's wealth unjustly, accompanied by the threat of Allah's punishment.¹⁰⁰

The third stage, QS Ali Imran: 130-132, calls on Muslims to stay away from usury in order to achieve prosperity according to Islamic teachings. Finally, QS al-Baqarah: 275-281 firmly condemns the practice of usury, distinguishes between trade and usury, and calls for the elimination of usurious debts. This gradual process reflects the wisdom of the Shari'a in directing the people towards full acceptance of Islamic law. This principle is a strong

⁹⁸ Novendi Arkham Muhtadi and Sri Iswati, "Ethics of Sharia Auditors in Zakat Management Organizations : An Analysis of Fiqh Rules" 2 (2024): 212-23.

⁹⁹ Nur Hidayah, *Fatwa-Fatwa Dewan Syariah Nasional: Kajian Terhadap Aspek Hukum Islam Perbankan Syariah Di Indonesia*, 2019, [https://repository.uinjkt.ac.id/dspace/bitstream/123456789/50564/1/Buku Fatwa-fatwa DSN Kajian Terhadap Aspek Hukum Islam Perbankan Syariah di Indonesia.pdf](https://repository.uinjkt.ac.id/dspace/bitstream/123456789/50564/1/Buku%20Fatwa-fatwa%20DSN%20Kajian%20Terhadap%20Aspek%20Hukum%20Islam%20Perbankan%20Syariah%20di%20Indonesia.pdf).

¹⁰⁰ Hidayah.

basis for encouraging innovation in the Sharia economy without neglecting the fundamental values of Islamic teachings.¹⁰¹

Phases of Development of Sharia Banking Regulations in Indonesia: *Makharij Fiqhiyyah's* Perspective

The development phase of Islamic banking in Indonesia can be analyzed using five principles of *fiqh* that provide a comprehensive view of each stage. In the Initial phase (1930-1991), although there was no formal policy, efforts to find alternatives to the interest-based banking system began, with the principle of *Al-Taysîr al-Manhaji* reflecting efforts to find a light solution but in accordance with the rules. *At-Tafriq baina al-Halal wa al-Haram* appeared in the form of initial considerations about the separation of halal and haram, although without regulation. *I'âdah al-Nazhar* occurred in the form of studies and evaluations, although without formal decisions. The principle of *Mâ Lâ Yudraku Kulluhu Lâ Yutraku Kulluhu* was seen as an imperfect effort, but it was better than nothing at all. In the Introduction phase (1991-1998), the principle of *Al-Taysîr al-Manhaji* was seen with the government providing space for Islamic banks even though it was still in the experimental stage. The separation of Islamic and conventional banks is increasingly emphasized in the principle of *At-Tafriq baina al-Halal wa al-Haram*, and *I'âdah al-Nazhar* is implemented through evaluation and policy improvement. *Mâ Lâ Yudraku Kulluhu Lâ Yutraku Kulluhu* is reflected in an important initial step even though it is not yet completely perfect. In the recognition phase, Law No. 10 of 1998 marked a significant step in establishing Islamic banking in Indonesia by

¹⁰¹ Hidayah.

accommodating the dual-banking system and. The principle of *Al-Taysîr al-Manhaji* facilitated gradual integration by allowing conventional banks to establish Sharia Business Units (SBUs), reducing barriers and ensuring ease of transition while maintaining alignment with sharia. *At-Tafriq baina al-Halal wa al-Haram* ensured a clear separation of permissible (halal) and prohibited (haram) elements by mandating that SBUs maintain separate accounts, reinforcing ethical integrity. *I'âdah al-Nazhar* reflected adaptability, as the law was amended in response to growing public demand for Islamic banking, showcasing the dynamism of Islamic legal thought. *Mâ Lâ Yudraku Kulluhu Lâ Yutraku Kulluhu* allowed partial compliance by enabling SBUs to operate within conventional banks as a transitional measure, ensuring Islamic banking services were accessible while infrastructure for full independence developed. Lastly, *tahqiq al-manath* emphasized the comprehensive analysis of underlying factors, ensuring that the law aligned with both sharia objectives and Indonesia's financial realities. In the Purification phase (2008-2023), the principle of *Al-Taysîr al-Manhaji* is reflected in regulations that increasingly support Islamic banking through Law Number 21 of 2008. A more apparent separation was achieved thanks to the principle of *At-Tafriq baina al-Halal wa al-Haram*. At the same time, *I'âdah al-Nazhar* is carried out continuously to adjust policies to existing challenges. *Mâ Lâ Yudraku Kulluhu Lâ Yutraku Kulluhu* is reflected in steps towards independence even though it is full of challenges. In the Relaxation phase (2023-now), with the principle of *Al-Taysîr al-Manhaji*, more flexible regulations are applied, including the existence of POJK.¹⁰² Number 12 of 2023,

¹⁰² Peraturan Otoritas Jasa Keuangan

which allows SBUs to operate longer. The separation of halal and haram is increasingly apparent with the support of *At-Tafriq baina al-Halal wa al-Haram* and the strengthening of fatwas. *I'âdah al-Nazhar* is seen in the review of spin-off obligations that are adjusted to industry challenges. At the same time, the principle of *Tahqiq al-Manath* provides a more in-depth assessment of spin-off policies. Finally, *Mâ Lâ Yudraku Kulluhu Lâ Yutraku Kulluhu* emphasizes gradual progress towards independence, with Islamic banking continuing to develop in accordance with Islamic principles even though it has not yet achieved complete independence. Thus, although Islamic banking in Indonesia is not yet fully independent, these fiqh principles show that this sector continues to develop, adapt to market dynamics, and strives to achieve gradual progress without sacrificing Islamic values.

Conclusion

The initiative to establish a Sharia bank in Indonesia began in 1930 but was only realized on November 1, 1991, with the establishment of Bank Muamalat Indonesia as the first Sharia bank. The establishment process went through various regulatory challenges and adaptations to the needs of the community and the national banking system. Sharia banking regulations in Indonesia developed in five stages: initial, introduction, recognition, purification, and relaxation. Starting with the issuance of the October Policy Package (Pakto) 1988, which allowed the establishment of banks with 0% interest and was strengthened by Law Number 7 of 1992 and its revision in Law Number 10 of 1998. At the purification stage, Law Number 21 of 2008 required the spin-off of SBUs within 15 years. However, many SBUs were not ready to implement this, so Law Number 4 of 2023 changed these provisions to provide

flexibility for the industry. These regulatory changes reflect the government's efforts to balance compliance with sharia principles with operational efficiency, as well as the ability of regulations to adapt to market dynamics. It is hoped that this adaptive regulation can increase the market share of Islamic banking, strengthen trust, support innovation, and create a more inclusive and healthy financial sector so that Islamic banking can play a strategic role in strengthening the national financial system and encouraging sustainable industrial growth.

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