

ISLAMIC LAW PRINCIPLES FOR CUSTOMER (RESEARCH STUDY AT BSI CENTRAL MEDAN CITY)

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ABSTRACT

Islamic bank Indonesian is a bank in Indonesian which operates in the field of islamic banking. This bank was inaugurated February 1, 2021 years or to coincide with Jumadil Akhir 19, 1442 H. This bank is the result of a marger between Islamic bank Mandiri cooperate, Islamic BNI cooperate and Islamic BRI cooperate. The Financial Services Authority (OJK) officially issued a merger permit for the 3 (three) Islamic banking businesses on January 27, 2021 years letter Number SR-3/PB.1/2021. Furthermore, on February 1, 2021 years President Joko Widodo inaugurated Islamic Bank Indonesian. The merger of three banks provides more complete services, wider reach and has better capital capacity. Supported by synergy with companies and government commitment through the Ministry of BUMN. Islamic bank Indonesian at global level. The purpose of this study is to determine trends and predict the level of profitability of Islamic banks in Indonesia. The research method uses quantitative descriptive to explain trends and quadratic analysis techniques to predict profitability. Islamic commercial banks in Indonesia were used entirely as samples in this study.

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1. INTRODUCTION

This broad coverage of Syariat in general indicates that Moslem is comprehensive and perfect religion. So that everything has clear corridors and rules. Both in terms of orders and implementation. Advertisement Syariah law or Islamic law are rules or laws that originate from the Alqur'an and Haditsh. Syariah law is intended for just only Moslem. Syariah law was created to guide Moslem to the truth with the benefits and goodness of the contents of Syariah law. Not a few non Moslem used this law in their daily lives. Even though Syariah law is intended for Moslem, several countries have established it as State Ideology, like Indonesian country, aren't because Moslem are majority, but because from the start what formed the Ideology of the Indonesian nation was Islamic law or Syariah law. The influence of Syariah law in Indonesia is as follows :

1. Civil Law

Burgerlijk wetbook covers Munakahat (everything about marriage, divorce and it's legal consequences); Testament (heirs, inheritance, administration of all matters relating to the distribution of assets); Muamalah (in a special sense, right to material and human relations in sales, leases, loans, associations, contract, etc).

2. Public Law

Islamic public law contains Jinayah (rules for criminal behavior). Al Hakam as Sulthaniyyah (speech of the Head of State/Head of Government, central and regional government rights, taxes, etc); Siyar (issues of war and peace, relations with followers of other religions and the other countries); Mukhasamat (judiciary, judicial and procedural law.

3. Criminal Law

Islamic stipulates that people who commit adultery are threatened in public with one hundred lashes (Q.S. An-Nur 2), usuary forbidden because it is unfair to the weak (Q.S Al-Baqarah 278-279). Crediture are forced promises to give time to debiture. If the debiture is truly unable to pay his debt, then the creditur must donate to zakat (Q.S. Al-Baqarah 280).

The development of the Islamic banking system in Indonesia is carried out within the framework of dual banking system or dual banking system within the framework of the Indonesian Banking Architecture (API), to provide increasingly complete alternative banking services to the Indonesian people. Together's the Islamic banking system and conventional banking synergistically support the wider mobilization of public funds to increase financing capacity for national economic sectors. The characteristic of Islamic banking system that operates based on the principle of profit sharing provides an alternative banking system that is mutually beneficial for the community and the bank and emphasizes aspects of fairness in transactios, ethical invesment, prioritizing the values of togtherness and brotherhood in production and avoiding speculative activities in financial transactions. By providing a variety of banking products and services with more varied financial schemes, Islamic banking has become a credible alternative banking system that can be of interest to all groups of Indonesian society without exception.

2. METHODE OF RESEACRH

The type of research carried out was descriptive analysis using a Normative Juridical approach. Normative Juridical is an approach that analyzes problem using a legal principle approach and refers to legal norms contained in statutory regulations. The data used is Secondary Data. Secondary Data consists of :

- a. Primary Legal Materials consist of : legislation, relevant Ministerial Regulations, Decrees from related agencies and Doctinal.
- b. Secondary Legal Materials consists of : literature books relevant to research, scientific articles such as : national journals, international journals, proceeding and references from the internet.
- c. Tertiary Legal Material consists of : Indonesian dictionary and law dictionary.

Empirical Juridical is an approach that analyzes conditions directly in society, especially where the research is conduction. The methods used in this research are library research and field research.

3. FINDING AND DISCUSSION

A. Development of the Application Of Islamic Law in the Banking System in Indonesia

Currently, many terms are given to refer to Islamic Bank entitas other than the term Islamic Bank it self : Interest Free Bank, Lariba Bank and Syariah Bank. As in Indonesian, technically the juridical term for Islamic Banks uses the official term "Syaria Bank" or in full it is called "Bank Based on Syariah Principles". Laws of the Republic Indonesian Number 7 of 1992 about Banking as amended by Laws of the Republic Indonesian Number 10 of 1998 differentiates banks based on their business activities into 2 : Conventional Bank and Bank Based on Syariah Principles.

Article 1 point 13 defines the definition of Syariah principles as rules for agreement based on Islamic Law between banks and other parties of depositing funds and or financing business activities or other activities which are declared to be in according with Syariah, including : financing based on the principle of profit sharing (mudharabah, financing based on the principle of capital participation (musharakah), the principle of buying and selling goods at a profit (murabahah) or financing capital

good based on the principle of pure rental without options (ijarah) or with the option of transferring ownership of goods rented from the bank by another party (ijarah wa iqtina). With the enactment of law of the Republic of Indonesian Number 21 of 2008 concerning Islamic Banking, which was issued on 16 July 2008, the development of the national Islamic Banking industry increasingly has an adequate legal basis which will encourage its growth of more than 65 % per year in the last 5 years. So it is hoped that the role of the Islamic Banking industry in supporting the national economy will be increasingly significant.

In general, the function of Islamic Banks is no different from conventional banks : as an intermediary institution that mobilizes funds from the public and channels these funds back to the people who need them in the form of financing facilities. The difference lies in the type of profit the bank takes from the transactions it carries out, If conventional banks base their profits on interest, Syariah Banks base their profit on what is called compensation, either in the form of services (fee base income) or mark-up or profit margin and profit sharing (loss and profit sharing). In general, the function of Islamic Banks is no different from conventional banks : as an intermediary institution that mobilizes funds from the public and channels these funds back to the people who need them in the form of financing facilities. The difference lies in the type of profit the bank takes from the transactions it carries out, If conventional banks base their profits on interest, Syariah Banks base their profit on what is called compensation, either in the form of services (fee base income) or mark-up or profit margin and profit sharing (loss and profit sharing). The initiative regarding the establishment of an Islamic Bank in Indonesian was only carried out on 18-20 August 1990.

The Indonesian Ulema Council (MUI) held a bank interest and banking workshop in Cisarua, Bogor, West Java. The result of the workshop were discussed in

more depth at the IV MUI National Conference in Jakarta on 22-25 August 1990 resulting in a mandate for the formation of a working group for the establishment of Islamic Banks in Indonesian. The MUI Banking Team was given the task of approaching and consulting with all related parties. As a result, it was established on November 1, 1991 according to the PT. Bank Muamalat Indonesian officially operates with initial capital of IDR 106,126,382,000 until September 1999. Bank Muamalat Indonesian has more than 45 outlets spread throughout Indonesian.

B. Legal Settlement Process if There is Confidentiality Fraud on Customer's Identity and Funds so That the Customer Experiences Loss, Discomfort and Distrust

Banking secrecy is known in many countries in the world that has a bank financial institution. Banking secrecy is one of the most important principle. It is because the development and growth of one bank is very dependant on public trust. Confidentiality of information that is born in banking activities, is needed for the benefit of the bank and also the interest of the customer itself. the function of the banking financial institution in protecting their customers through the banking secrecy and how is the form of tort of law against the banking secrecy in a judicial proceedings that linked to the case. that to overcome problems with the banking secrecy, interference from the authorities in the consumer protection sector in the field of financial services is needed, that is Financial Services Authority institution or in Indonesian it is called Otoritas Jasa Keuangan. The institution is expected to be able to protect customers from financial service business that are considered to harm the interests of customers. In the case, the customer sued the bank for violation of banking secrecy on the basis of tort of law that is contrary to the bank legal obligations and the law as referred to the article 40 paragraph 1 of the Banking Law.

1. Customer Protection Through Bank Secrecy Principles

a. Bank Secrecy Principles According to the Banking Law

The definition of bank secrecy can be found in the provisions of the Banking Law, as follows; Bank secrecy is everything related to information regarding depositors and deposits, except in certain cases. From the understanding given regarding bank secrecy provisions the elements of bank secrecy can be deduced :

- 1) Bank secrecy relates to information about saving customers and their savings
- 2) Bank must keep things confidential, except in categories based on applicable procedures and laws
- 3) Parties who are prohibited from disclosing bank secrets are the bank itself and or affiliated parties

Bank as one of the financial service institutions and providers of payment system services as regulated in Financial Services Authority Regulation Number : 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector and Bank Indonesian Regulation Number : 16/I/PBI/2014 confirm that banks must implement consumer protection with the principles of confidentiality and security of personal data. Several cases of violations of customer data confidentiality by customers show that banking operational activities carried out by bank employees do not implement the consumer protection principles required by these two regulations. Bank confidentiality obligations that must be maintained by banks are solely for the interests of their own customers, but also for the bank concerned and for the interest of general public.

There are explicitly 2 types of criminal acts determined by Article 47 of the Banking Law relating to bank secrecy. First, criminal acts committed by those who, without carrying orders or permission from the leadership of Bank Indonesian,

deliberately force banks or affiliated parties to provide information that must be kept confidential by the bank. Second, criminal acts committed by members of the Board of Commissioners, Directors, Bank Employees or other affiliated parties who deliberately provide information that the bank must keep confidential. Banking is one of the means that is often used by criminals to clean up the proceeds of their crimes by means of money laundering and to reduce this risk, banks are required to know and determine the identity of their customers by monitoring every customer transaction and reporting any suspicious financial transactions carried out by them. The losses incurred by banks are known as the Know Your Customer Principle. This needs to be noted regarding the legal basis for bank secrecy, namely that the customer's consent can free the bank from the obligation to keep bank secrets.

Article 44A of the Banking Law provide certainty which determines the following

:

- 1) Upon request, approval or power of attorney from the depositor, made in writing, the bank is obliged to provide information regarding the deposit of the depositor at the relevant bank to the party appointed by the depositor;
- 2) In the event that deposit customer has died, the legal heirs of the deposit customer have the right to obtain information regarding the deposit customer's savings.

b. Principles of Bank Confidentiality as Customer Protection Through the Otoritas Jasa Keuangan (OJK)

Consumer protection in the financial services sector lies with financial with Otoritas Jasa Keuangan (OJK) institution, which is an institution that has regulatory and supervisory authority in the financial services sector. It is hoped that it will be able to protect consumers from Financial Services Business Actors (PUJK) who are considered to be detrimental to the interest of consumers (bank

customers). Protection of bank customers previously fell under the authority of Bank Indonesian as a State institution which had a supervisory function in banking business activities. Theoretically, there are 2 streams in terms of supervision of financial institutions. On the one hand, there is that says the supervision of the financial industry should be carried out by several institutions. On the other hand, there is that believes that supervision of the financial industry is more appropriate if carried out by several institutions.

The principles of bank secrecy is necessary for the interests of both banks and customers. By guaranteeing confidentiality for all investments in the customer's financial situation, it will further increase customers trust in the bank as a safe place to store funds. The relationship between the bank and the customer is based on an agreement or contract then gave birth to a contractual relationship between the bank and the customer, based on the principles that apply in contract law. One of them is that the agreement is carried out in good faith. Based on this principles banks has an obligation to keep information regarding bank customers and their deposits confidential.

According to Bambang Setioprodo, the bank's obligation to maintain customer financial secrets or protect customer financial confidentiality is based on :

1. Everyone's right not to interfere with personal privacy matters;
2. Rights arising from the relationship between the banks and its customer's, functioning as a proxy in good faith who is obliged to protect the interest of customer's;
3. On the basis of applicable statutory provisions;
4. Customs and customs in banking;

5. Characteristic of bank business activities

2. Unlawful Acts as a Violation of the Principles of Bank Confidentiality

Violations of bank secrecy are regulated by each country. Determining breaches of bank secrecy as a civil violation. Bank secrecy provisions are necessary because banks must protect their customer's. Banks leaking information that is categories as bank secrets is worthy of heavy sanctions. Although this provision is not rigid and strict without exceptions. If there is an agreement between the bank and the customer, then bank secrecy is contractual. So if a bank provides information about the condition of its customer's money, the bank can be used by the customer for reasons of default.

On the other hand, even through there is no agreement between the bank and the customer, the bank is still obliged to maintain bank secrets based on statutory regulations or other legal concepts, such as the concept of unlawful acts. This means that if a bank provides information that is detrimental to its customers, the bank can be used by its customers on the grounds that it is an unlawful act.

4. CONCLUSION

Indonesian economic development is experiencing rapid development and progress. Banking institutions are institutions that have a role in Indonesian economic development. Aims to achieve just and prosperous society based on Pancasila and the 1945 Constitution. In the era of globalization, banks have become part of the financial system and payment system. Bank that has obtained permission to establish and operate from the monetary authority of the country concerned, then the bank belongs to the community whose existence must not only be maintained by the bank owner, but also by the national and global community. The collaps of a banking institution has a chain

impact or domino effect, namely affecting other banks which can disrupt the function of the financial system and payment system of the country concerned.

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