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Sharia Arisan as an Innovation in Islamic Banking: A Normative Legal Approach

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Abstract

This research aims to find out the basics of sharia arisan as an innovative Islamic banking product that has a foundation in application and is in accordance with the concept of local wisdom. Specifically, what this research wants to know is how the mechanism of sharia arisan is applied in Islamic banking. This research is a literature research that uses a normative legal approach. This research shows that sharia arisan does not contradict customary law, Islamic law, and the philosophy of the nation, even sharia arisan is very relevant to be used as a means of investment in Islamic banking. This is because sharia arisan is based on three foundations: juridical, philosophical, and sociological. Furthermore, technically, sharia arisan can be applied in Islamic banking by using three contracts, namely *mudharabah mustarakah*, *wakalah*, and *ijarah*.

INTRODUCTION

The failure of the current economic system makes economists and jurists try to find a better economic system formula, one of which is the Islamic economic system. The Islamic economic system is in the spotlight of the world because in its golden age, Islam was able to raise the degree of the world economy. The Islamic economic system, especially in the field of Islamic financial services, is currently increasing and is the most important part of the global

financial industry.¹ The Islamic economic system is an economic system based on Islamic sharia. Sharia is a guideline that guides human life in getting closer to Allah. The Al-Quran and Sunnah as the foundation of Muslims have universal reach and regulating power.² The purpose of all of this is to lead humans on a straight path (*shirat al-mustaqim*)³ and to encourage human welfare and to ensure the protection of religion (*din*), soul (*nafs*), reason (*'aql*), offspring (*nasl*) and property (*maal*).

Basically, banking institutions are one of the financial institutions that have strategic value in the economic world of a nation. The institution functions as an intermediary for parties who lack funds (lacks of funds) with parties who have excess funds (surplus of funds),⁴ so that banks as intermediary institutions need products to channel financing or more precisely carry out their landing function.

Islamic banking products are generally made based on *tijarah* contracts and *tabarru'* contracts. *Tijarah* contracts are contracts that have a motive for financial gain, while *tabarru'* contracts are contracts that emphasize social motives and are not intended to seek financial gain alone. The *tijarah* contracts include sale and purchase contracts, profit-sharing contracts, and lease contracts. Meanwhile, *tabarru'* contracts include *wadiah* (entrustment) contracts, *wakalah* (authorization) contracts, *hiwalah* (transfer of debt) contracts, and *kafalah* (guarantee) contracts.⁵

Islamic banking in Indonesia, in terms of legal instruments as well as the number of Islamic banks, is already quite developed.⁶ However, when viewed from the ratio of Indonesia's majority Muslim population, innovation in Islamic banking products is still lacking. Islamic banking still tends to work on loyalist customers,⁷ while the number is still relatively small when compared to the much greater potential of floating customers.⁸

¹ Ingrid Tan, *Bisnis Dan Investasi Sistem Syariah, Perbandingan Dengan Konvensional* (Yogyakarta: UAJY Press, 2009).

² Suhrawardi K. Lubis, *Hukum Ekonomi Islam* (Jakarta: Sinar Grafika, 2004).

³ Achmad Ramzy Tadjoeddin, *Berbagai Aspek Ekonomi Islam* (Yogyakarta: Tiara Wacana, 1992).

⁴ Muhammad Djumhana, *Hukum Perbankan Di Indonesia* (Bandung: Citra Aditya Bakti, 2003).

⁵ Abdul Ghofur Anshori, *Kapita Selekta Perbankan Syariah Di Indonesia* (Yogyakarta: UII Press, 2008).

⁶ Helmi Haris, "Pembiayaan Kepemilikan Rumah (Sebuah Inovasi Pembiayaan Perbankan Syari'ah)," *La_Riba* 1, no. 1 (2007): 113–25, <https://doi.org/10.20885/lariba.vol1.iss1.art8>.

⁷ Loyalist customers are customers who are categorized as having loyalty to Islamic banking, regardless of the advantages or disadvantages that might be obtained by becoming an Islamic bank customer.

⁸ Floating customers are customers who want benefits regardless of whether the bank they use is an Islamic bank or a conventional bank, so that banks that offer more benefits will be chosen.

In order to attract floating customers, Islamic banking product innovation is needed. Product innovation should be made not only in accordance with the concept of sharia but also look at the values of local wisdom of the community in an area, so that product innovation can survive and be established in society. Based on these thoughts, it is necessary to develop new innovations to Islamic banking products that are in accordance with local wisdom values and do not conflict with sharia principles. Therefore, this research concentrates on sharia arisan as an innovative Islamic banking product that is in accordance with local wisdom values.

This writing will discuss the foundations that become the basis for arisan in accordance with the concept of sharia and the local wisdom of Indonesian society, then will be divided into several foundations, namely philosophical foundations, juridical foundations and sociological foundations. In addition, this paper will also discuss how the mechanism should be related to sharia arisan in Islamic banking. The purpose of this paper is to find out what foundations guide the need for this sharia arisan product. In addition, to find out about the mechanism of sharia arisan when applied to Islamic banking.

The type of research used in this paper is normative legal research, which is a type of legal research that uses library research in obtaining data.⁹ In this research, the author conducts research on the foundations related to sharia arisan so that it can fulfill the size as an innovative product of Islamic banking. In addition, this paper also examines the mechanism in sharia arisan so that it can be applied to Islamic banking in Indonesia.

The type of data used in this research is secondary data which is divided into 3 (three) legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. *First*, Primary Legal Materials, are legal materials that are closely related to the problem under study and are binding legal materials, namely (a) the 1945 Constitution of the Republic of Indonesia and (b) Law of the Republic of Indonesia Number 21 of 2008 concerning Islamic Banking.¹⁰ *Second*, Secondary Legal Materials, are legal materials that provide further explanation of primary legal materials, or materials that are closely related to primary legal materials and can help analyze and understand primary legal materials,¹¹ namely (a) books related to Islamic banking, contracts in Islamic banking and Islamic banking products, (b)

⁹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo, 2006).

¹⁰ Andrew Shandy Utama, "Sejarah Dan Perkembangan Regulasi Mengenai Perbankan Syariah Dalam Sistem Hukum Nasional Di Indonesia," *Jurnal Wawasan Yuridika* 2, no. 2 (2018): 187, <https://doi.org/10.25072/jwy.v2i2.180>.

¹¹ Romy Hanityo Soemitro, *Metodologi Penelitian Hukum* (Jakarta: Ghalia Indonesia, 1985).

various papers, journals, newspapers, magazines and research reports, and (c) documents and data from the internet related to the research. *Third*, Tertiary Legal Materials, namely materials that provide guidance and explanation of primary legal materials and secondary legal materials, namely related dictionaries and relevant encyclopedias.

The data collection technique is based on library research tools in the form of document studies, namely studying and examining various literature sources related to this research. The analysis technique used in this research is qualitative analysis, which is to explain and describe the data obtained from the research which is selected and grouped according to its quality and truth to answer the problem. According to Milles and Huberman, the stages of data analysis can be done by collecting data, reducing data, and presenting data.¹²

ANALYSIS AND DISCUSSION

1. Foundation of Sharia Arisan

Arisan Syariah uses two major concepts, namely the concept of sharia and the concept of local wisdom. When a customary (local) concept is applied to the concept of sharia, the customary concept must not contradict the concept of sharia itself. There are many examples of customary concepts that are applied in sharia concepts, one of which is the concept of money in Islam, namely dinars and dirhams, which were formerly used by the Romans and Persians. In addition, in Indonesia, for example, there is a division of property gono gini which did not exist during the time of the Prophet, but does not conflict with the concept of sharia. This is also the case with what is discussed in this research, namely the concept of sharia arisan, where the concept of arisan is a concept that stems from a customary system that becomes local culture or wisdom, which is then adjusted to the concept of sharia.

a. Philosophical Foundation

Sharia arisan is based on the combination of Islam, customs, and the nation's philosophy, namely Pancasila. In principle, religion, custom and Pancasila are communal-religious in nature. The characteristics of communal-religious nature are the requirements of good works, help, mutual cooperation, kinship, regionalism, deliberation and religion.

¹² Matthew B. Miles and A. Michael Huberman, *Analisis Data Kualitatif: Buku Sumber Tentang Metode-Metode Baru* (Jakarta: UI Press, 2007).

Philosophically, arisan contains communal-religious characteristics because the spirit of its formation is based on the laws that live in Indonesian society (living law). The values contained in it are the value of togetherness to build the economy, the value of helping others and not forgetting religious values.

This is in line with Pancasila with its motto *Bhineka Tunggal Ika*, which requires that if you want to grow (be it in terms of economy, politics, security, etc.) then unite. One way to realize that unity is to implement togetherness in various aspects. This concept of togetherness is then illustrated in arisan as a role to build the economy. In practice, arisan represents the value of togetherness and social harmony, namely the substance is not the money collected but the meeting place to realize togetherness. Arisan carried out in indigenous communities is even placed as a place to gather and share feelings among others.¹³

b. Juridical Foundation

The juridical basis of sharia arisan cannot be found explicitly in either positive law or Islamic law, but what is related to sharia arisan is found in the 1945 Constitution of the Republic of Indonesia Article 33 Paragraph 1 which reads "The economy is structured as a joint effort based on the principle of kinship". This constitution requires that every economic base created in Indonesia must be based on the principle of kinship, so this principle becomes mandatory. Arisan fulfills the elements of the constitution because it is built on the principle of kinship which prioritizes togetherness between fellow human beings. Paragraph 4 reads "The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity." This foundation is the pinnacle of the rules of every economic activity in Indonesia. In paragraph 4, there are important principles that are then related to the fulfillment of the foundation of arisan, namely togetherness, justice, independence and sustainability. Togetherness as the spirit of the arisan, justice in the system, independence in building every business supported through arisan funds and sustainability in building and helping to sustain community financing.

¹³ Ririn Haryani and Kelly Dombroski, "Arisan: Producing Economies of Care in Yogyakarta, Indonesia," in *Community Economies in the Global South: Case Studies of Rotating Savings and Credit Associations and Economic Cooperation*, ed. and Christabell P.J. Shenaz Hossein Caroline (Oxford University Press, 2022), <https://doi.org/https://doi.org/10.1093/oso/9780198865629.003.0009>.

The substance of the form of togetherness has also been said in the Quran, namely QS. Al-Maidah verses 1 and 2 which means "O you who believe! Fulfill the contracts, and help each other in (doing) virtue and piety, and do not help each other in (doing) sins and offenses ". This verse explicitly says that "help each other in doing good", the existence of helping is the existence of a togetherness, namely togetherness to do a good thing. This includes the goodness of creating sources of financing for the people, one of which is arisan which is supported by Islamic methods.

Other juridical foundations found in the Quran can be found in several letters, namely (a) QS. Al-Baqarah 283 which means "So, if some of you trust others, let the trustee fulfill his trust and let him fear Allah his Lord". (b) QS. An-Nisa 29 which means "O you who believe, do not eat (take) each other's property by false means, except by way of a voluntary trade among you...".

There are several important things mandated by the Quran that are then in line with the basic concept of sharia arisan itself, namely trust, mutual trust, and voluntary principles. At the practical level, arisan is very close to the concept of trust and mutual trust because it is not easy to entrust capital (money) to people who are not trusted. These values are internalized in the community itself. When people violate them, social norms will punish them.

To strengthen the existence of arisan in accordance with the concept of sharia, it is based on the ushul fiqh principle, namely "Basically, all forms of muamalah may be carried out unless there is evidence that forbids it". Sharia arisan is a form of muamalah, there is no evidence that says its prohibition and does not violate Islamic principles and can be used for the benefit of the maslahah of Muslims, so that it can be used in advancing the economy of Muslims.

3. Sociological Foundation

There is no definitive history of the development of arisan in Indonesian society, so it is not found in the literature. However, sociologically, we can feel the journey of arisan until now. This is evidenced by the fact that almost all regions recognize arisan, both in urban and rural areas, and are played by all groups consisting of children, teenagers, youth and adults.

As Savigny said, there is an organic relationship between law and the character of society.¹⁴ Therefore, customary law or local wisdom that grows and develops in society must

¹⁴ Frederick Charles Von Savigny and Abraham Hayward, *The Vocation of Our Age for Legislation and Jurisprudence* (London: Littlewood, 2002).

be seen as the true law of life.¹⁵ In line with H.J. Hamaker who said that the law is a shadow of society, which is reflected in the human soul, or is a reflection of social life.¹⁶

Both of these figures say that the law was born from society and then used and survived in society. This is also the case with arisan as a law based on increasing financing in the community. It is obvious that arisan was born from the community and until now no one has been able to stop it. Arisan is still firmly used in the community as an alternative financing.

In terms of practice, many people use this arisan system in the community. There are various motives of the community in arisan, including for personal (consumptive) interests, for business, and others. In terms of management, arisan management is very simple and seems to make people comfortable in practicing it. However, it is not denied that there are also cases and irregularities that occur, such as non-transparent money management, fraud, and others.¹⁷

The arisan system that is not well organized and legal makes arisan difficult to solve problems, such as many who are not responsible for financial management, and sometimes makes it difficult for law enforcement officials to find evidence. However, the fault does not lie in the arisan itself but in the morals of the people.

Therefore, there are several things that must be done, namely Islamizing the system in the sense that it is managed based on sharia principles by sharia banking, management is carried out professionally, institutionalizing it so as to facilitate its implementation, and making it in writing which can be used as evidence in case of problems in the future.

¹⁵ Bernard L. Tanya, *Teori Hukum, Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2010).

¹⁶ Van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnya Paramita, 2009).

¹⁷ Erlin Kusnia Dewi, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Akibat Hukum Terhadap Pelaksanaan Arisan Online Berdasarkan Undang-Undang Nomor 19 Tahun 2016," *Jurnal Konstruksi Hukum* 2, no. 2 (2021): 296–302, <https://doi.org/10.22225/jkh.2.2.3226.296-302>.

Sharia Arisan Mechanism

Naturally, the mechanism of arisan is very simple as shown in the chart below:

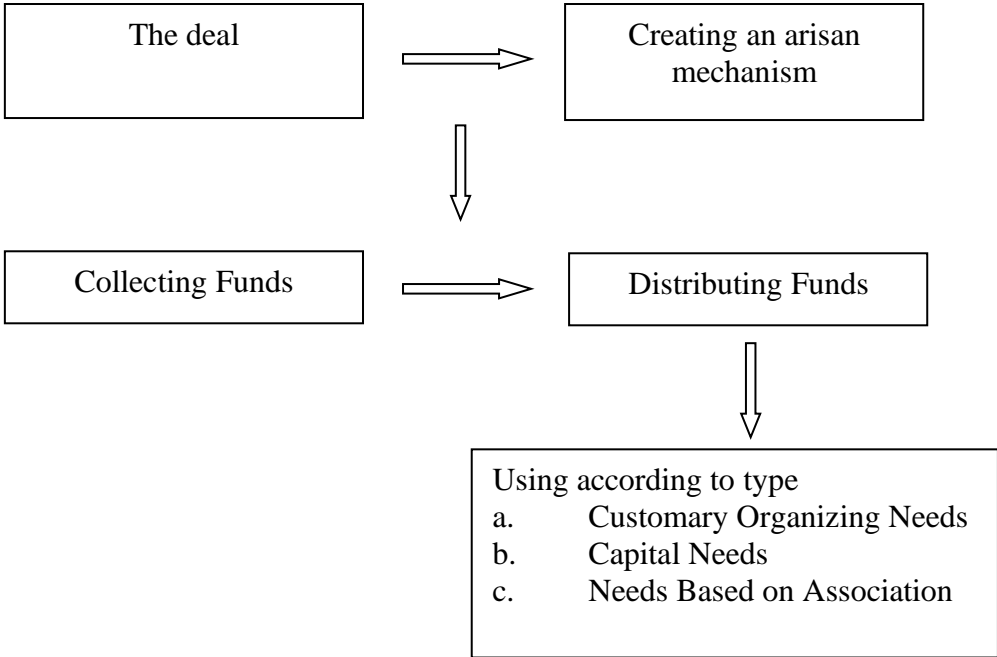


Fig. 1. Mechanism of Arisan

Agreements are made by arisan participants because of the bond between each participant which then creates rights and obligations. Each participant makes an agreement to follow, carry out and comply with it. An agreement exists because of a meeting of wills, namely the will of one agreed with the will of the other, the will must naturally be stated firmly. The statement of will can be done in 2 (two) ways, namely first, an express statement of will in the form of oral and/or with a sign. Second, tacitly, meaning that a person agrees without giving oral delivery and/or a sign.

The implementation of this statement of will requires good faith as its basic capital. The good faith can be seen through the signs of the bond, namely the sign of willingness, the sign of the eye, the sign so and the sign of testimony. These signs can apply in part or in whole.¹⁸

¹⁸ Hilman Hadikusuma, *Hukum Perjanjian Adat* (Bandung: Citra Aditya Bakti, 1990).

Creating an arisan mechanism starts from the collection of funds to the distribution of funds. The fund-raising mechanism is generally carried out in accordance with the agreement of the participants. Fund raising can be done on a daily, weekly or monthly basis. The amount of funds paid by participants is in accordance with their needs and objectives.

The mechanism of fund distribution is a process of channeling funds that will be given by arisan participants. Distribution of funds can be done once a week or once a month or according to the agreement and needs of arisan participants. The process of channeling funds can be classified into, first, the registration mechanism, the first recipient of funds and so on is the person who first registers and so on. Second, the lottery mechanism, arisan participants are gathered and then drawn, whoever gets the first lottery then he is entitled to get the first time and so on. Third, the bidding mechanism, whoever wants to get the funds for the first time then he can make a higher bid, usually the bidder pays higher contributions than other participants. Fifth, a mechanism based on the needs of traditional ceremonies, participants who need funds more quickly to organize traditional ceremonies will get them first.

In principle, Islamic banking can carry out arisan activities by changing its name to sharia arisan as one of the Islamic banking products. Sharia arisan based on the philosophical foundation, juridical foundation and sociological foundation will be able to develop and become an alternative investment for the people of Indonesia.

The sharia arisan mechanism is carried out between Islamic banks and sharia arisan participants by signing 3 (two) contracts, namely the *mustarakah mudharabah*, *wakalah*, and *ijarah*. *Mustarakah mudharabah* contract is a form of *mudharabah* contract in which the manager (*mudharib*) includes his capital in cooperation. This *mustarakah mudharabah* agreement is made between Islamic banks and sharia arisan participants, where the collected contributions are managed by Islamic banks through investment instruments that are in accordance with sharia principles.

Akad *wakalah* is an agreement in which someone delegates or hands over an authority (power) to another person to carry out an affair, and the other person accepts it, and carries it out for and on behalf of the authorizer. Sayyid Sabiq defines *wakalah* as the delegation of power by one person to another in matters that can be represented.¹⁹ *Wakalah* in this sharia arisan is

¹⁹ Abdul Ghofur Anshori, *Hukum Perjanjian Islam Di Indonesia (Konsep, Regulasi, Dan Implementasi)* (Yogyakarta: Gadjah Mada University Press, 2010).

in the form of delegation of management in the sharia arisan activity because the sharia arisan will be managed by an Islamic bank. This authorization is voluntary, without any kind of fee or wage given by the participants to the bank. In simple terms, it can be seen in the chart below.

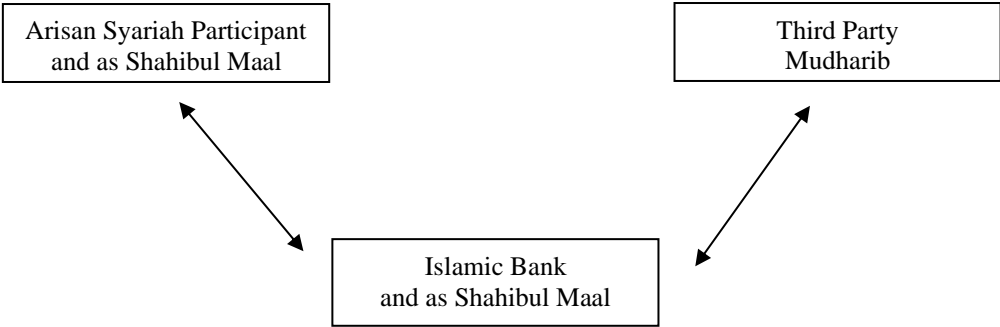


Fig. 2 Flow of *Wakalah* in Sharia Arisan

In *mudharabah mustarakah*, the Islamic Bank collects sharia arisan funds from participants and also includes Islamic bank funds in it. Then the Islamic bank as the manager, manages the funds to be invested. Islamic banks can invest it in third parties (*mudharib*) through financing contracts. From the investment results managed by the Islamic bank, the sharia arisan participants get the profit sharing. In order for the Islamic bank to manage the funds from the sharia arisan participants, a *wakalah* contract is used, in which the sharia arisan participants delegate the funds they collect to the Islamic bank to be invested.

Then another contract that emerged was the *ijarah* contract, the word *ijarah* comes from the word *ajara* which means renting. The word *ijarah* itself means rent. *Ijarah* is an agreement (contract) in terms of wages and rent. In Islamic banking terms, *ijarah* is a contract for the transfer of rights to use goods or services through payment of rental fees without being followed by the transfer of ownership (ownership, *milkiyyah*) of the goods themselves.²⁰ In this case, the Islamic bank is the service provider of the sharia arisan system and services to sharia arisan participants. For this *ijarah*, participants are charged a fee from the services provided by Islamic banking.

²⁰ Isriani Hardini and Muh. H. Giharto, *Kamus Perbankan Syariah* (Bandung: Penerbit Marja, 2007).

The mechanism of sharia arisan in Islamic banking begins with offering sharia arisan products to prospective participants. For prospective participants who are interested, they must become customers at the Islamic bank concerned by opening an account at the Islamic bank. Then the Islamic bank collects participants according to the needs and objectives of the sharia arisan. Islamic banks act as managers, service providers and participants.

Then the Islamic bank sets the time for the distribution of the sharia arisan funds to the sharia arisan participants. The distribution of funds to participants should be done at least once every 3 (three) months or more so that the funds can be managed as an investment tool by Islamic banking. In order not to reduce the philosophical spirit of the arisan, it is better to gather participants in the same region or in one region, so that at the time of the drawing, the Islamic bank can gather sharia arisan participants as a place of friendship. In addition, Islamic banks can also conduct Islamic propagation events to sharia arisan participants in the form of recitation or other useful things.

CONCLUSION

The foundation of sharia arisan can be seen from 3 (three) foundations, namely philosophical foundation, juridical foundation, and sociological foundation. The philosophical foundation is created because arisan syariah is formed from a combination of customary law, Islamic law and Pancasila. This illustrates that the philosophy is communal-religious. The juridical foundation related to sharia arisan is found in the 1945 Constitution of the Republic of Indonesia Article 33 and in the Al-Quran which concludes that sharia arisan fulfills the elements of kinship and mutual assistance in advancing the economy. Meanwhile, the sociological basis is the number of people who apply arisan in Indonesian society so that the system must be updated, namely in accordance with Islamic principles. These three foundations strengthen that sharia arisan does not conflict with customary law, Islamic law and the nation's philosophy. And sharia arisan is very suitable to be used as a means of investment in Islamic banking. The mechanism of sharia arisan is generally similar to arisan in general. The difference is that sharia arisan must be in accordance with sharia principles, there is a contract as a form of agreement and it is held in sharia banking. The mechanism of sharia arisan is applied through 3 (three) contracts, namely *mudharabah mustarakah* contract, *wakalah* contract, and *ijarah* contract. Practically, sharia arisan products can be an alternative investment for the community so that

this product can be applied in Islamic banking. In addition, academically, no one has studied in depth about sharia arisan so it is very likely to develop new theories. If this is studied more deeply, this product can be applied in all other Muslim countries. For researchers who are interested in developing this product, it is necessary to conduct further research, namely related to its fund management instruments and its application in depth for the people of Indonesia using an Islamic studies approach.

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