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## Legality Aspects of Sharia Banking in Indonesia

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### Abstract

Islamic banking in Indonesia has existed for a long time, namely within the 1980s whilst several Islamic activists performed research on Islamic economics who recommended Islamic banking, even working towards it on a limited scale, together with through Bait at-Tamwil Salman, Bandung. Extra intensive efforts had been made in the 1990s, which culminated in the IV countrywide Deliberation of the Indonesian Ulema Council (MUI) in Jakarta, 22-25 August 1990 which led to a mandate to form a working group for the status quo of Islamic Banking in Indonesia known as the MUI Banking group. The end result of this team's work is what is normally referred to as the establishment of PT bank Muamalat Indonesia (BMI), November 1, 1999, with an initial capital of more than IDR 106 billion. Several years later, Islamic banks emerged which includes independent Islamic banks, BNI Syariah, Mega Syariah banks and so forth. The purpose of this study is to determine the extent to which the Indonesian government has responded positively to the development of Islamic banking in the country. This will be done by analyzing the laws and regulations governing Islamic banking in Indonesia, using normative research. The sharia banking regulation itself is urgently wished for numerous motives, namely: in step with Indonesia's national development dreams to attain the advent of a just and prosperous society primarily based on economic democracy, it's far necessary to broaden an economic gadget primarily based on justice, togetherness, fairness and advantage. Islamic banking is the handiest instinct that is most appropriate to translate the above country wide development goals into real existence

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## INTRODUCTION

The concept of the rule of thumb of law as stated inside the Indonesian constitution.<sup>1</sup> have an impact on felony topics, whether residents or felony entities, in order that each act dedicated with the aid of prison subjects should have a criminal foundation, follow relevant law, and do now not violate current policies. based on Article 7 paragraph (1) of regulation number 10 of 2004 concerning the establishment of law, the kinds and hierarchy of legislations that are used as assets of regulation in Indonesia, both material and formal, are as follows:

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<sup>1</sup> Article 1 paragraph (three) of the 1945 constitution of the Republic of Indonesia Article 1 paragraph (3) of the 1945 constitution of the Republic of Indonesia.

- a. 1945 constitution of the Republic of Indonesia
- b. Legal guidelines/authorities policies in Lieu of law
- c. Government regulations
- d. Presidential decree
- e. Neighborhood law.<sup>2</sup>

Based totally on the substance of the thing above, sharia banking in sporting out its sports is needed to use the hierarchy of legal guidelines and rules as a criminal foundation in addition to numerous policies from sure agencies that are at once related to sharia banks. The prison foundation which in our opinion is the premise for the moves of prison subjects, especially in sharia banking, is as follows :

### **1. Pancasila**

Pancasila isn't covered in the felony hierarchy. but, it's miles extra normally referred to as the basic norm of the country. Pancasila is the philosophical basis of every felony product in Indonesia, so that all the substance of the guidelines under it do no longer struggle with any existing sila. the first precept, perception in one God is the philosophical basis for religious establishments, inclusive of Islamic banks. In preferred, this precept presents a statement that the country protects each citizen in wearing out their spiritual activities as long as they do not task the law and social norms, as described in Article 29 of the 1945 charter. further, if it is associated with Islamic concepts, this principle shows the presence of an detail of monotheism. or the Oneness of Allah SWT. and on the equal time state that Indonesia is a religious usa.

Islamic banks and community Financing Banks that run their commercial enterprise primarily based on Islamic financial ideas (fiqh muamalah) have huge possibilities to broaden their corporations with the safety from the nation, because those businesses can be categorized within the exercise of worshiping Muslims within the economic field. Efforts that recommend the principles of mutual help, honesty, interdependence, and justice as taught in Islam.

### **2. Article 33 Of The 1945 Charter**

The 1945 constitution (UUD) in legal science is called the source of all prison assets. The 1945 charter occupies the pinnacle role inside the statutory hierarchy as stated in

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<sup>2</sup> Regulation number 10 of 2004 concerning the establishment of legislation regulations of the country Gazette of the Republic of Indonesia of 2004 range 53.

Article 7 paragraph (1) of regulation quantity 10 of 2004 regarding the status quo of legislations above. the position of the 1945 constitution in this position is due to its pressing function for the state, namely as one of the conditions for the formation of a nation. according to Hans Kelsen, the basic law is categorised as Grundnormen,<sup>3</sup> or fundamental norms that grow to be the umbrella for the regulations below it. The fundamental guidelines within the financial sphere are contained in Article 33 of the 1945 constitution which reads:

- a. The economy is dependent as a joint attempt based on the precept of kinship manufacturing branches which can be essential to the state and which have an effect on the livelihood of the humans are managed by using the country.
- b. Earth and water and the herbal resources contained therein are controlled by using the country and used for the best prosperity of the humans.
- c. The country wide economic system is organized based totally on monetary democracy with the concepts of togetherness, performance with justice, sustainability, environmental insight, independence, and by preserving a balance of development and countrywide economic team spirit.
- d. further provisions regarding the implementation of this newsletter are regulated in law

Based at the substance of the object above, it can be visible that the financial device in Indonesia refers to numerous concepts, which include:

- a. Togetherness and own family
- b. people's prosperity
- c. Justice
- d. Sustainable
- e. Independence

Islamic banks as one of the monetary actors have the responsibility to put into effect the above ideas in carrying out their sports. collecting funds from the community after which dispensing them to human beings in need to boom human beings's independence in sustainable commercial enterprise as a way to enhance their financial system based totally at the precept of kinship.

### **3. Deregulation Period 1 June 1983**

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<sup>3</sup> Ishaq, *Dasar-Dasar Ilmu Hukum* (Jakarta: Sinar Grafika, 2008), 100.

The idea of a sharia bank in Indonesia emerged in the Nineteen Eighties through numerous practitioners inclusive of Karnaen A Perwataatmadja, M Dawam Rahardjo, AM Saefuddin, and M Amien Azis. Inside the early 1980s, the authorities's machine of controlling hobby rates started out to revel in problems. And the effect that emerges is:

- a. The banks which have been hooked up are surprisingly depending on the liquidity of financial institution Indonesia.
- b. there is no opposition between banks because of the determination of interest prices with the aid of the authorities.

This induced the authorities to trouble a deregulation inside the banking zone on June 1, 1983 which opened the shackles of placing the hobby price within the hope that a financial institution may want to decide an interest price of zero%.

However, the Deregulation of June 1, 1983 did now not cause an effect which was the implementation of the Islamic banking system through a pure agreement based on the precept of income sharing. There are numerous motives that prevent the belief of the Deregulation, namely:

- a. Operations of Islamic banks that apply the precept of income sharing have now not been regulated
- b. The deregulation changed into not in keeping with the simple Banking regulation No.14/1967.
- c. The idea of an Islamic financial institution is considered to have an ideological connotation, because it's far related to an Islamic state, at the same time as Indonesia isn't an Islamic country.

And at that time Islamic Banks could not be installed, because the present banks in Indonesia nevertheless notion that the hobby-free banking gadget became not a profitable commercial enterprise. consequently, a cooperative prison entity is used as its felony form, as a forum for imposing the sharia banking gadget.

#### **4. Percent length 1988**

In 1988, the authorities deemed it essential to open the widest possible banking commercial enterprise possibilities with the intention of mobilizing public budget to guide improvement. consequently, the October authorities coverage package deal (PAKTO) was issued on 27 1988 which contained banking liberalization which allowed the status quo of new banks further to the existing ones.

The term "sharia" was frowned upon being used in the Treasury of Legislation from the time of the declaration until the 1990s. According to the Jakarta Charter, the stigma attached to sharia in political and legal discourse may result from a phobia (concern) that its adoption will result in the establishment of an Islamic state or at the very least "the need to carry out Islamic law for its adherents."

The government and national legal political policies started to be "tolerant" with the word, but, as a result of the reforms that took place in the latter part of the New Order regime, and the stigmatization of sharia was gradually eliminated.

There are presently 108 laws and regulations (laws, government regulations, presidential regulations, presidential decrees, and bank indonesia regulations), according to a (temporary) search at the Directorate General of Legislation, Ministry of Law and Human Rights.

## **RESOURCES OF SHARIA MONETARY LAW IN INDONESIA**

### **1. Legislation**

#### **a. Historical past thoughts on the birth of the Sharia Banking law**

This also occurs in Indonesia, in popular, economic increase and development can't be separated from the increase and development of financial actors who perform monetary sports via banking financial offerings. Banks are economic establishments that have a strategic position in which the main activity of banking is to absorb finances from the public and channel them lower back to the network. put up-independence, which become regained via Muslim-populated international locations after the second world conflict, has raised cognizance of the need to broaden banks whose legitimacy is not unsure from a sharia point of view. moreover, after hundreds of years traditional banks around the sector have now not been capable to overcome the problem of monetary disparity, each between former colonial countries and their former colonies and within these former colonies.

Even inside the path of traditional banks with the idea of interest, which has the challenge of being an intermediary organization, it is taken into consideration less beneficial to the hassle of poverty, what takes place is that there may be an imbalance among the wealthy and the poor. And that reasons a awesome choice to replace the banking system.

After independence, it is estimated that there can be thoughts for the status quo of a economic institution that honestly refers to Islamic teachings.<sup>4</sup> in which the discussion of Islamic Banks regarded at seminars on Indonesia-center East relations in 1974 and 1976 in seminars held by means of the Institute for Social research and the Bhineka Tunggal Ika foundation. The development of considering the want for Muslims in Indonesia to have Islamic banking started considering the fact that then, along with the emergence of recognition of Muslim intellectuals and pupils in empowering the community's economy. at the start, there has been a debate approximately the regulation of financial institution interest and the law of zakat with taxes amongst Muslim scholars, intellectuals, and intellectuals.<sup>5</sup>

However, the concept championed with the aid of Muslim intellectuals and scholars did not move smoothly as they'd planned because of the inhibiting factors for the establishment of the Islamic bank. The inhibiting factors for the establishment of Islamic banks are:<sup>6</sup>

- 1) Operations of Islamic banks that apply profit sharing have no longer been regulated due to the fact they're not in line with the main relevant banking legal guidelines, particularly law wide variety 14 of 1967. The idea of Islamic banks from a political attitude has an ideological connotation, is a part of or associated with the concept of an Islamic kingdom, therefore the government does now not need the established order of an Islamic financial institution.
- 2) It is nonetheless questionable who is inclined to put money into this type of assignment, while the establishment of new banks from the center East continues to be being prevented, which includes regulations on the established order of overseas banks that desire to open places of work in Indonesia.

Getting into the Nineties, changes commenced to be felt via the authorities's mindset toward Islam to turn out to be more accommodating. This authorities policy which indicates the life of an accommodative nature is what has been taken benefit of. It has made financial leaders extra severe about organising a Sharia bank thru a series of discussions and seminars. The Indonesian Ulema Council (MUI) held a Workshop on

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<sup>4</sup> Karnaen A. Perwataatmadja & Hendri Tanjung, *Bank Syariah : Teori, Praktik, dan Peranannya*. Jakarta: Celestial Publishing, 2011, 174.

<sup>5</sup> Adrian Sutedi, *Perbankan Syariah*, (Jakarta : Ghalia Indonesia, 2009), 6.

<sup>6</sup> Dawan Raharja, *Islam dan Transformasi Sosial Ekonomi*, ( Jakarta : Lembaga Studi Agama dan Filsafat, 1999).

interest in Banks and Banking in Cisarua, Bogor, West Java on 18-20 August 1990. This workshop resulted inside the formation of a operating institution to set up an Islamic financial institution in Indonesia primarily based on the IV MUI country wide conference. And this working institution, known as the MUI Banking group, is tasked with coming near and consulting with all relevant events.<sup>7</sup> And the results of the work of the MUI Banking group succeeded in establishing PT bank Muamalat Indonesia (BMI). which become followed via the enactment of the law. No. 10 of 1992 wherein there's a provision that banks are allowed to function with a earnings sharing device. From this variation, in no time, only a few years later, has modified the attitude of the authorities that is adverse and accommodative.

## **b. Regulation on Islamic Banking**

### **1) Law Quantity 7 of 1992 Concerning Banking**

The bright spot for the established order of Islamic Banks began with the retaining of the Indonesian Ulema Council (MUI) workshop which turned into followed via the IV MUI national Deliberation in 1990. Then in 1991 financial institution Muamalat Indonesia changed into established which makes use of Islamic monetary concepts in sporting out its sports.<sup>8</sup> Juridically the lifestyles of Islamic banks changed into first identified through law quantity 7 of 1992 concerning Banking.

Article 6 letter (m) states that:

*“Business Banks are allowed to provide financing for customers based totally on the principle of earnings sharing in accordance with the provisions stipulated in government regulations”*

Article 13 letter (c) which states that:

*“Rural credit banks can offer financing for clients based at the precept of income sharing in accordance with the provisions stipulated in a government law;*

Based at the article above, it's miles recognised that the income-sharing system within the concept of Islamic economics has all started to be taken into consideration, however the call of the Islamic bank itself has now not been regulated on this law.

### **2) Regulation number 10 of 1998 concerning Amendments to regulation quantity 7 of 1992 concerning Banking**

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<sup>7</sup> Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktek*, (Jakarta: Gema Insani Pres, 2001), 25.

<sup>8</sup> Adiwarmanto A Karim. 2006, *Bank Islam Analisis fiqh dan Keuangan*, Jakarta, PT. Raja Grafindo Persada, 25.

In 1998, law number 7 of 1992 turned into revoked and replaced through regulation number 10 of 1998 regarding Banking. The adjustments inside the substance of the banking law offer more opportunities for Islamic banks to expand. The objectives of growing the Islamic banking device encompass:

- a) Assembly the desires of banking services for folks that do no longer accept the idea of hobby
- b) Establishing opportunities for commercial enterprise improvement primarily based at the principle of partnership (mutual investor courting)
- c) Doing away with non-stop hobby charges and ethical-primarily based enterprise financing.<sup>9</sup>

This law affirms the concept of Islamic banking by means of converting the time period "bank based on income Sharing ideas" in law quantity 7 of 1992 to "bank based on Sharia standards"

This regulation affirms the concept of Islamic banking by way of changing the time period "financial institution based on income Sharing principles" in regulation wide variety 7 of 1992 to "financial institution primarily based on Sharia principles". This point out is located in:

Article 1, paragraph three)

*"Business financial institution is a bank that incorporates out commercial enterprise sports conventionally and or primarily based on Sharia concepts which in its sports provides offerings in payment site visitors;"*

Article 1 paragraph (4)

*"Rural Banks are banks that carry out enterprise sports conventionally or primarily based on Sharia ideas which of their sports do no longer offer offerings in fee visitors;"*

Article 1 paragraph (12)

*"Financing based totally on Sharia standards is the availability of cash or equivalent claims based on an settlement or agreement between the financial institution and another party that requires the celebration being financed to return the cash or claim after a certain period of time with reimbursement or income sharing;"*

Article 1 paragraph (13)

*"Sharia precept is a rule of settlement primarily based on Islamic regulation among a bank and any other party for depositing finances and or financing enterprise"*

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<sup>9</sup> Wirdyaningsih, "Bank dan Asuransi Islam di Indonesia", (Jakarta: Kencana, 2005), 65.



*sports, or different sports which can be declared according with sharia, along with financing based totally at the precept of income sharing (mudharabah), financing primarily based on the principle of equity participation (musharakah), the precept of purchasing and promoting items with a income (murabahah), or financing of capital goods based totally on the principle of pure rent with out a desire (ijarah), or with the choice of shifting possession of the goods leased from the financial institution through another birthday celebration (ijarah wa iqtina);*

Further to the clarity of principle, this law has also discussed how to distribute budget according with the principles of Islamic economics inclusive of mudharabah, ijarah, murabahah, musyarakah, or ijarah.

BI observed up with further regulation on Sharia banks with the issuance of a Decree of the Board of directors of BI on 12 may 1999, specifically:

- a) Of the Board of directors of bank Indonesia No. 32/33/KEP/DIR concerning commercial Banks, especially bankruptcy XI concerning changes in enterprise activities and beginning of Sharia branch places of work;
- b) Decree of the Board of administrators of financial institution Indonesia No. 32/34/KEP/DIR concerning business Banks based totally on Sharia concepts; and
- c) Decree of the Board of directors of financial institution Indonesia No. 32/36/KEP/DIR regarding Rural Banks based totally on Sharia standards.

A number of the Decrees of the Director of BI in addition beef up the lifestyles of Islamic banks. some syar'i products are prepared to be operationalized with a clean prison umbrella. conventional banks can open sharia branches freely, as long as they meet the requirements. Likewise, if Islamic banking is to be practiced inside the form of a BPR, then the issuance of the Decree is the prison umbrella.

The emergence of the above guidelines, then followed up by way of the duties and government of BI in implementing the above guidelines, with the enactment of law no. 23 of 1999 regarding financial institution Indonesia (UUBI). Article 10 paragraph (2) UUBI authorizes bank Indonesia to use methods primarily based on sharia standards in engaging in economic control. Then Article 11 paragraph (1) UUBI additionally gives authority to financial institution Indonesia to overcome quick-term funding difficulties of a financial institution by imparting financing based totally on sharia principles for a most period of 90 (ninety) days. accordingly, the UUBI as a new significant bank law is legally wonderful and has recognized and provided a place for

the application of sharia concepts for bank Indonesia in sporting out its obligations and authorities.

### **3) Law number three of 2006 regarding Amendments to law quantity 7 of 1989 regarding spiritual Courts.**

The enactment of law wide variety three of 2006 concerning Amendments to regulation variety 7 of 1989 regarding the religious Courts has delivered important adjustments in the life of the present day spiritual Courts. one of the fundamental adjustments is the addition of the authority of the non secular Courts organization, such as within the discipline of sharia economics.

Based on article forty nine letter (i) of law wide variety three of 2006 concerning Amendments to regulation quantity 7 of 1989 concerning the non secular Courts, it is emphasized that the non secular Courts have the responsibility and authority to take a look at, listen and resolve cases inclusive of "sharia economics". What is supposed by using shari'ah economics are actions or enterprise sports finished in step with shari'ah standards which consist of shari'ah banks, shari'ah microfinance establishments, shari'ah insurance, shari'ah reinsurance, shari'ah mutual budget, sharia bonds Shariah and medium-time period securities, shariah securities, shariah financing, shariah pawnshops, shariah financial institution pension price range and shariah companies.

### **4) Regulation number 21 of 2008 regarding Sharia Banking**

The regulation that in particular regulates Islamic banking is law range 21 of 2008. This law emerged after the development of Islamic banking in Indonesia skilled a giant increase. In bankruptcy I, article 1, which contains the general Provisions, this regulation has truly differentiated among conventional banks and their sorts and Islamic banks and their kinds. The difference in mention has additionally been distinguished as regulated in article 1 factor 6 which mentions "Rural Banks" even as point 9 mentions "human beings's Financing Banks".

The commercial enterprise of Islamic banks in sporting out their functions is to acquire price range from clients and distribute financing primarily based on

contracts contained in Islamic economics. such as mudharabah, wadi'ah, masyarakat, murabahah, or other contracts that don't war with Islamic regulation.

## **5) Best Court Docket Law Quantity 2 of 2008 Regarding Compilation of Sharia financial regulation**

The enactment of law wide variety 3 of 2006 concerning Amendments to law number 7 of 1989 concerning religious Courts has introduced numerous sizeable modifications to the placement and lifestyles of religious courts in Indonesia. absolutely the authority of the non secular courts has multiplied, particularly that the non secular courts have the authority to deal with sharia financial issues which consist of sharia banking, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual price range, and several other Islamic economic troubles.

This improvement requires the ideal courtroom to issue rules associated with Islamic financial issues. On September 10, 2008 the perfect court issued perfect court docket law wide variety 2 of 2008 regarding the Compilation of Sharia economic regulation. PERMA is a way of facilitating the exam and determination of sharia monetary disputes as well as recommendations for judges regarding economic regulation based on Islamic ideas, as contained in its preamble. and BI guidelines regarding Sharia Banking.

## **2. MUI DSN Fatwa**

### **a. History of the delivery of the DSN Fatwa**

With the improvement of Islamic economic establishments inside the united states of america recently and the lifestyles of a Sharia Supervisory Board in every monetary organization, it's miles deemed important to set up a national Sharia Council (DSN) which will accommodate numerous issues/instances that require a fatwa a good way to attain equality in managing them each Sharia Supervisory Board in Islamic monetary institutions.

The plan to form a DSN started to be mentioned in 1990 while there have been workshops and conferences discussing financial institution interest and those's financial development, and advocated that the government facilitate the established order of banks based on sharia ideas. In 1997, MUI held a ulama workshop on Sharia Mutual finances, certainly one of which become the established order of a DSN. at the meeting on October

14, 1997, it become agreed to establish the DSN. This notion become accompanied up in order that the DSN became formally drafted in 1998.<sup>10</sup>

DSN is an institution formed via the MUI which is structurally underneath the MUI. The project of the DSN is to perform the responsibilities of the MUI in handling troubles associated with the sharia economy, whether or not associated with the sports of sharia economic establishments or others. In principle, the status quo of the DSN become supposed with the aid of MUI as an effort for performance and coordination of the ulama in responding to troubles associated with monetary and economic topics. similarly, DSN is predicted to act as a supervisor, director and driver of the application of Islamic values and concepts in economic life. consequently, DSN plays a proactive position in responding to the improvement of Indonesian society in the economic and monetary fields.<sup>11</sup>

The countrywide Sharia Council become hooked up by using the Indonesian Ulema Council, as said inside the country wide Sharia Council Decree No: 01 of 2000 regarding the basic suggestions for the Indonesian Ulema Council Council (PD DSN-MUI) at the simple recommendations and family guidelines of the Indonesian Ulema Council for the length 1995-2000, and Decree of the management Council of the Indonesian Ulema Council No: Kep-754/MUI/II/99 regarding the formation of the countrywide Sharia Council, a national Sharia Council turned into shaped, with the subsequent rationale:

- a) With the development of Islamic monetary establishments inside the country these days, and the life of a Sharia Supervisory Board in each economic group, it is deemed essential to establish a countrywide Sharia Council so that you can accommodate numerous problems/cases that require a fatwa in an effort to obtain equality in dealing with from each Sharia Supervisory Board in every Islamic monetary organization.
- b) The status quo of the national Sharia Council is an performance and coordination step for the ulama in dealing with troubles related to financial/financial problems.
- c) The countrywide Sharia Council is expected to function to encourage the application of Islamic teachings in monetary life.

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<sup>10</sup> M. Cholil Nafis, *Teori Hukum Ekonomi Syariah*, Jakarta: UI Press, 2011, 82.

<sup>11</sup> *Ibid.*,

d) The country wide Sharia Board plays a seasoned-active function in responding to the dynamic development of Indonesian society inside the economic and economic fields.

The best sharia authority in Indonesia lies with the national Sharia Council - the Indonesian Ulema Council (DSN-MUI), which is an independent organization in issuing fatwas related to all sharia issues, each worship and mu'amalah problems, along with financial, financial and banking troubles.<sup>12</sup>

#### **b. The Location of The DSN Fatwa In The Invitation Regulation**

DSN-MUI is an organization shaped by using the MUI that's structurally beneath the MUI and is tasked with dealing with problems associated with the sharia economic system, whether or not directly associated with sharia financial establishments or others. In principle, the established order of the DSN-MUI is intended as an attempt for performance and coordination of the ulama in responding to troubles associated with monetary and economic troubles, besides that the DSN-MUI is likewise expected to act as a supervisor, director and motive force of the software of the values of the ideas of the teachings. Islam in monetary life.

In reference to the improvement of Islamic economic establishments, the existence of the DSN-MUI and its prison products received legitimacy from BI, which is the country organization with the authority in banking, as stated within the Decree of the Board of administrators of financial institution Indonesia range 32/34/1999, where in article 31 it's far said: "so that you can carry out its enterprise sports, Islamic industrial banks are required to pay attention to the DSN-MUI fatwa", moreover, the Decree additionally states: The intended commercial enterprise interest has not but been issued a fatwa by using the DSN, so it's far compulsory to ask for DSN approval earlier than carrying out such enterprise sports.

In financial institution Indonesia regulation quantity eleven/2/PBI/2009 (PBI) further reaffirms the location of the Sharia Supervisory Board (DPS) that each industrial financial institution business that opens a Sharia commercial enterprise unit is needed to rent a DPS whose principal project is to provide advice and recommendations to the board of administrators and supervise sharia compliance. even as in the provisions of UUPS No. 21/2008 it's miles expressly said that the DPS is appointed at the general meeting of

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<sup>12</sup> Ascarya, (Ed), *akad dan Produk Ban kSyari'ah* (Jakarta: PT. Raja Grafindo Persada, 2007), 206.

shareholders on the recommendation of the MUI. primarily based in this, it is able to be said that the DSN-MUI is the only group this is mandated by law to outline a fatwa on Islamic economics and finance, it is also an institution set up to offer Islamic felony provisions to Islamic financial institutions in sporting out their sports. those provisions are very critical and end up the primary prison basis inside the course of its operations. without felony provisions, including Islamic law, Islamic economic institutions will find it hard to perform their activities.<sup>13</sup>

### 3. Sharia Economic Law Compilation

The start of KHES commenced with the issuance of regulation no. three of 2006 concerning Amendments to regulation no. 7 of 1989 concerning the nonsecular Courts (UUPA). regulation No. three of 2006 expands the authority of PA in accordance with legal traits and the modern desires of Indonesian Muslims., but also handles programs for adoption (adoption) and resolves disputes in zakat, infaq, in addition to belongings rights and other civil disputes among fellow Muslims, and the sharia financial system. when it comes to the new authority of the religious Courts, Article 49 of the UUPA is changed to:<sup>14</sup>

*"The spiritual Courts have the duty and authority to observe, decide and clear up cases at the first stage between folks that are Muslim inside the fields of: a. marriage; b. inheritance; c. will; d. grant; waqf; f. zakat; g. infaq; h. sadaqah; and i. sharia economics." cause of letter i (shari'ah financial system): "What is supposed by means of sharia economic system is an act or business interest accomplished according to sharia concepts, including amongst others: a. Islamic financial institution; b. Microshari'ah financial establishments; c. Sharia insurance; d. Sharia coverage; e. Sharia mutual finances; f. Shari'ah medium-time period bonds and securities; g. Shari'ah securities; h. Sharia financing; i. Sharia pawnshops; j. Sharia economic institution pension funds; and k. Sharia commercial enterprise."*

After law no. 3/2006 changed into promulgated, the Chairman of the ideally suited court formed a KHES education team primarily based on the Decree quantity: KMA/097/SK/X/2006 dated October 20, 2006 chaired by using Prof. Dr. H. Abdul Manan, S.H., S.I.P., M. Hum. The challenge of the group in standard is to gather and manner the specified substances, assemble a draft of the manuscript, preserve discussions and seminars that evaluate the draft of the manuscript with establishments, pupils and experts, refine the

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<sup>13</sup> Ibid., 90.

<sup>14</sup> Ramdlon Naning, "Penyelesaian sengketa dalam Islam", Dalam jurnal Varia Advokat, VI, 2008, 29-30.

manuscript, and record the results of the training to the Chairperson of the supreme court of the Republic of Indonesia.

in the meantime, the primary references for prison resources inside the KHES consist of several books of fiqh, existing legal guidelines and guidelines, and additionally PSAK (announcement of monetary Accounting requirements).

Systematically the Compilation of Sharia financial law (KHES) is divided into 4 books each:

- a. About legal subjects and Amwal, includes 3 chapters (articles 1-19)
- b. About the Akad includes 29 chapters (articles 20-673)
- c. Concerning Zakat and grants which consists of 4 chapters (articles 674-734)
- d. Concerning Sharia Accounting which consists of 7 chapters (articles 735-796)

Judging from the contents of the Compilation of Sharia financial regulation above, of the 796 articles, a total of 653 articles (80%) are related to contracts or agreements, for this reason the most fabric of the provisions on sharia economics is related to the regulation of engagement (settlement).

If we take note of the scope of chapters and articles inside the KHES, it may be said that the scope of sharia economics includes: ba'i, buying and selling contracts, syirkah, mudharabah, murabahah, muzara'ah and musaqah, khiyat, ististna', ijarah, kafalah, hawalah, rahn, wadi'ah, ghashab and itlaf, wakalah, shulhu, waiver of rights, ta'min, mudharabah sharia bonds, capital markets, sharia mutual funds, sharia financial institution Indonesia certification, multi-service financing, qard, sharia checking account financing, pension funds sharia, zakat and offers, Islamic accounting price range.

But, if we look at regulation no. 3 of 2006 concerning amendments to law no. 7 of 1989 regarding the nonsecular Courts, the scope of Sharia Economics consists of: sharia banks, sharia micro-financial financial establishments, sharia reinsurance, sharia mutual finances, sharia bonds and sharia medium term futures, sharia securities financing sharia, sharia pawnshops, pension price range, sharia monetary establishments, and sharia commercial enterprise.

In connection with the new authority of the religious Courts, the ideally suited courtroom of the Republic of Indonesia has set up numerous rules, which includes *first*: improving the centers and infrastructure of the spiritual Courts organization, both in subjects relating to the bodily constructing and topics relating to device, *two*: increasing the technical

capacity of human resources (HR). spiritual courts via collaborating with numerous universities to train religious judicial officers, specially judges inside the subject of sharia economics, *three*: establishing formal and fabric regulation to function pointers for spiritual courtroom officers in analyzing, adjudicating, and choosing sharia-compliant instances, fourth: satisfy systems and approaches so that cases regarding sharia economics may be completed in a easy, easy and low-fee manner.

The four ideal court docket guidelines above are the primary pillars of judicial power in sporting out judicial capabilities as mandated by Article 24 of the 1945 constitution jo. UU no. 4 of 2004 concerning judicial electricity.<sup>15</sup>

The beginning of KHES method positing and unifying sharia financial regulation in Indonesia. If KHES isn't always compiled, nonsecular court judges determine sharia financial cases by using referring to fiqh books scattered in numerous colleges of concept, due to the fact there is no unified effective legal reference, so there's disparity. in selections among one court and any other, among one decide and any other. it is genuine that the word different judge different sentence applies, exceptional judges have exceptional critiques and choices. KHES is issued within the shape of superb court regulation (perma) No. 2 of 2008 regarding the compilation of sharia economic law. This KHES has gone through changes to present sharia provisions, such as the DSN (national Sharia Council) fatwa.

## CONCLUSION

From the outline above, it is able to be concluded that the legal thing of banking is the existence of Islamic banking before country wide regulation; on this element, the life of Islamic banking in Indonesia has located a more potent location after the issuance of law no. 10/1998. If the law no. 7/1992 the life of Islamic banks nevertheless need to "conceal" in the back of the time period profit-sharing financial institution, in law no. 10/1998 its lifestyles is more and more open earlier than country wide law. inside the agreement of sharia banking disputes, in accordance with law quantity 3 of 2006 and law number 21 of 2008 concerning Sharia Banking, it can be completed via non secular courts or opportunity dispute resolutions certain in the contract in accordance with the Fatwa of DSN MUI and KHES.

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<sup>15</sup> Mardani, "Kedudukan Kompilasi Hukum Ekonomi Syariah di Indonesia", *jurnal Islamic Economics & Finance (IEF) Universitas Trisakti*.



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