

## **QUO VADIS: THE LEGAL POLITICS OF ISLAMIC BANKS UNDER POST-LAW NUMBER 21 OF 2008 ON SHARIA BANKING**

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### **Abstract**

*The existence of legal politics in Islamic banks comprises the most common method for creating and enforcing regulations that can illustrate the kind and course in which the law will be constructed and implemented on the grounds. This is because the definition of legal politics itself is the official direction that the state uses as a basis to create and implement laws to achieve state goals. There are two dimensions of legal politics to consider when studying regulation: the basic policy dimension of why regulation is promulgated and the policy dimension of enactment. Regulations must be able to provide a basis and respond to the absence of the necessary supporting institutions for the Sharia banking industry, which serves as a form of improvement and implementation of the process of transforming the system of Islamic law into an integral part of the national legal system and laws regarding the operational system of banking business activities. The participation of Islamic banks in Indonesia is an important factor in national growth. This study employs an analytical-descriptive approach. It is a study that uses the statutory approach and the conceptual approach to define the scope and assess its existence. The formulation problem of this study is Quo Vadis: The Legal Politics of Islamic Banks under Post-Law Number 21 of 2008 on Sharia Banking. The purpose of this study is to examine the role of the state in regulating the development of Sharia banking in the context of the Plan to Create a Law on Sharia Economics.*

**Keywords:** Policies; Legal Politics; Islamic Banks.

### **INTRODUCTION**

Islam, as a living system or concept, is inclusive of all elements of human existence, including individual as well as community interactions. The fact that Islamic teachings cover all the specific areas of life reflects the completion and perfection of Islam as a system or idea of living. In his masterpiece, *Majma'atu Rasail*, Imam Hasan Al Banna convincingly argues for the role of Islam in life (Hasan al-Banna, 1997). The rapid regulation of the Sharia banking system is a novel event in the history of taqin in Indonesia (Ismatullah, 2011). Islamic banks based on sharia principles stated that the Islamic economy is built on religious principles and is oriented towards the world and the

afterlife (Marimin & Romdhoni, 2017). According to this perspective, the institutionalization of sharia principles is a concretization of the process of transforming the subsystem of Islamic law into a set of rules that only regulate the operational system of banking business activities and into an integral part of the national positive legal system. This strengthens Islamic law's legitimacy in the operational concept and the sharia economic system (Aristoni, 2019). Umar Chapra defines Islamic economics in his book *The Future of Economic: An Islamic Perspective* as knowledge that contributes directly or indirectly to the realization of human welfare, while still focusing on aspects of resource allocation and distribution with the main goal of

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realizing *maqâshid al-syarâh*. Islamic banks first appeared in Indonesia in 1992, with the establishment of Bank Muamalat. Sharia principles are defined as follows in Article 1 Paragraph 13 of Law No. 10 of 1998 on Banking: (RI & Bpk.go.id, 2017)

“Financing of business activities or other activities that are declared in accordance with sharia, including financing based on the principle of profit sharing (*mudharabah*), financing based on equity participation (*musyarakah*), the principle of buying and selling goods by obtaining profits (*mudharabah*), financing of capital goods based on the leasing principle pure without choice (*ijarah*), or with the transfer of ownership of goods rented from the bank by another party (*ijarah wa iqtina*).”

The basic difference between Islamic banks under the Banking Law (Law No. 10 of 1998) and Islamic banks under the Sharia Banking Law (Law No. 21 of 2008) is that the Sharia Banking Law provides a stronger and more specific legal basis for the establishment, regulation, and supervision of Islamic banks.

These differences are explained in greater detail below:

1. Establishment of Islamic banks In the Banking Law, Islamic banks can be established as part of existing commercial banks or separately. Whereas under Sharia Banking Law, Islamic banks can only be established separately and must be in the form of a limited liability company.
2. The Sharia banking Law provides a more in-depth explanation of Islamic

bank activities, which include raising funds, financing, providing services, and other actions that are permitted by law. The Banking Law only states that Islamic banks must follow sharia principles in carrying out their activities.

3. Sharia bank supervision in the Banking Law gives supervision authority to Islamic banks to Bank Indonesia, while the Sharia Banking Law provides supervisory authority to the Financial Services Authority (in Indonesian: *Otoritas Jasa Keuangan*, abbreviated as OJK), which has more specific duties and functions in regulating and supervising Islamic banks.

Related to that, according to Article 1 paragraph 12 of Law No. 21 of 2008 on Sharia banking, the definition of sharia principles is as follows: (RI & Bpk.go.id, 2017)

“Sharia principles are principles of Islamic law in banking activities based on *fatwas* issued by institutions that have authority to issue *fatwas* in the field of sharia.”

As indicated by the merger of Islamic banks belonging to State-owned Enterprises (SOEs), the establishment of Islamic banks in Indonesia is one of the supporting components of national growth. Beginning in February 2021, three state-owned Islamic banks, namely Bank Syariah Mandiri, BRI Syariah, and BNI Syariah, legally merge. These three banks have been renamed Bank Syariah Indonesia (BSI). The merging strategy is consistent with the Indonesian Islamic Economics and Finance Master Plan 2019-2024 (in Indonesian: Masterplan Ekonomi Syariah Indonesia, abbreviated

as MEKSI) (kemenkeu, 2021). The merged bank will operate in around 1,200 branch offices and available units previously held by BRI Syariah, Bank Syariah Mandiri, and BNI Syariah. Bank Syariah Indonesia's total assets would exceed Rp. 214.6 trillion, with a core capital of more than Rp. 20.4 trillion. This figure positions Bank Syariah Indonesia among the top ten largest banks in Indonesia by assets and among the top ten largest Islamic banks in the world by market capitalization. "There will be a tremendous surge in the Islamic economic sector later in 2021 since our state-owned banks are now approaching the stage of true merger." The united bank's position is intended to aid economic recovery. Ace Hasan Syadzily, Deputy Chairman of Commission VIII of the Indonesian House of Representatives (in Indonesian: Dewan Perwakilan Rakyat, abbreviated as DPR), stated that the merger of the three banks will strengthen the national economy (Indra Rezkisari, 2021).

Sharia economic law is founded on Pancasila as the basis for statehood and the 1945 Constitution of the Republic of Indonesia, Article 29 paragraph (1): "The state is based on belief in One Supreme God;" and paragraph (2): "The state guarantees the freedom of every citizen to embrace and worship according to their religion and beliefs." Economic development is one of the state's goals, and its execution has been planned through a progressive, planned, integrated, and sustainable process, as stated in Law No. 17 of 2007 on the 2005-2025 National Long-Term Development Plan (in Indonesian: Rencana Pembangunan Jangka Panjang Nasional, abbreviated as RPJPN). One of the

directions of the 2005-2025 RPJPN is to build a competitive nation competent of equipping Indonesia to tackle globalization's problems and capitalize on current possibilities. The merging of state-owned Islamic banks is one of the economic approaches to address global difficulties that are becoming more severe.

Legal politics refers to the link between political authority and a country's legal system. This concept refers to the process of making political decisions in the context of creating, implementing, and enforcing the law. Legal politics, according to Satjipto Rahardjo, is a political activity concerned with the invention, development, and implementation of law. Legal politics is concerned with the process of developing and enforcing laws in a country, as well as the impact of political policies on legal decision-making.

The legal politics codified in Law No. 17 of 2007 on the RPJPN directs legal development to support the realization of sustainable economic growth; regulating economic issues, particularly in the business and industrial worlds; and creating investment certainty, particularly through law enforcement and protection based on sharia principles, which are based on the values of justice, benefit, balance, and *rahmatan lil 'alamain* (universality). Article 2 of Law No. 21 of 2008 provides the essential regulation of Sharia banking's core business. The principles are as follows: 1) Sharia banking, in which companies operate in line with sharia principles; 2) economic democracy; and 3) the concept of prudence. Moreover, sharia principles are Islamic law principles in banking

activities based on fatwas given by organizations with jurisdiction in deciding fatwas in the sphere of sharia, according to Law No. 21 of 2008. The regulatory framework for Sharia banking is critical to ensuring the industry's growth and development, as well as the financial sector's overall stability. This is very important in Sharia banking.

The existence of Sharia banking raises a number of fundamental issues. To begin, in terms of substance, Sharia banking legislation has a significant implementation gap. Second, the legal framework of Sharia banking is demonstrated by substantially overlapping structural issues caused by unclear dual-system setups. Third, the legal culture of Sharia banking is characterized by the phenomenon of departures from Sharia compliance as a result of Sharia banking's institutional capacity, which tends to be business-oriented (profit-oriented) in order to prepare the way for the establishment of a consumer society. Fourth, while the presence of the Sharia banking system is legally secure, its growth has not been accompanied by sufficient educational institutions. A number of regulations, including Law No. 3 of 2006 on Religious Courts, which gave the Religious Courts absolute authority to handle sharia economic disputes, and Law No. 21 of 2008 on Sharia Banking, which provided a choice of forum for resolving disputes between the Religious Courts and Public Courts, merit investigation. Viewing some of the challenges listed above demonstrates that economic progress will fail unless present rules are reformatting. Improving legal institutions is both a requirement for economic advancement (a prerequisite for

economic change) and a tool for social transformation (an agent of social change) (Agustianto, 2008). Based on the foregoing, the authors address the issue of Quo Vadis: The Legal Politics of Islamic Banks under Post-Law Number 21 of 2008 on Shariah Banking. The purpose of this study is to examine the role of the state in regulating Sharia banking in connection to the proposal to develop Islamic economic law.

## **RESEARCH METHOD**

The descriptive-analytical approach was used in this study, which is research that explains the scope and assesses its existence. This research took a statutory approach, examining laws and regulations that are relevant to legal issues, as well as a conceptual approach, which is based on ideas and doctrines produced in the science of law. Primary legal materials in the form of legislation are used, as are secondary legal materials such as book texts, comments, and opinions that clarify and convey the law to practitioners and students. The method includes the study's kind or nature, data sources, data collection methodologies and processes, and data analysis.

## **RESULT AND DISCUSSION**

### **Quo Vadis: The Legal Politics of Islamic Banks under Post-Law Number 21 of 2008 on Shariah Banking**

Sharia banking regulatory structures can be seen in terms of legal politics. The presence of law in a country is a necessary condition for running the activities of the state and society and establishing order and peace. The law that is implemented must have values that the local community can apply. The national legal system in Indonesia is closely

related to the state legal basis, Pancasila, as the center in the formation of the national legal system, which is followed by the 1945 Constitution as the basis for every law that is enacted, along with statutory regulations, jurisprudence, and customary law. The regulation must be able to provide a basis for and respond to the lack of necessary supporting institutions for the Sharia banking industry, such as the National Sharia Council, National Sharia Arbitration Board, Sharia Author, Sharia Deposit Guarantee and Financing Institution, Religious Courts, and the Islamic Financial Information and Data Center (Wibisono, 2009). Complete, professional, and efficient supporting institutions play a significant role, particularly in guaranteeing the overall stability and growth of Sharia banking. Legal politics, according to Moh. Mahfud MD, is a legal policy that will be or has been implemented nationally by the Government of Indonesia and includes: first, legal development with the aim of creating and updating legal materials to ensure they're up-to-date in accordance with needs; second, the implementation of existing legal provisions, including the affirmation of institutional functions and the development of law enforcers (MD, 1998).

Meanwhile, Bellfroid describes *rechtspolitik* as the process of creating positive legislation from laws that will and must be passed in order to suit the necessities of people's lives as they develop. Legal politics is sometimes related to public policy, which is defined by Thomas Dye as "anything the government decides to do or not do in people's lives." The term policy is derived

from English policy or Dutch politics and can be defined as general principles that serve to direct the government in managing, regulating, or resolving public affairs, community problems, or the fields of drafting laws and regulations and applying regulations, with the goal of realizing the welfare or prosperity of the community (citizen) (Suhartono, 2021).

According to the formal legal standpoint, Sharia banking norms were first legislated in Law No. 7 of 1992 on Banking. This legislation accommodates Sharia banking by acknowledging the establishment of banks that operate on a profit-sharing basis, including commercial banks and the Sharia People's Finance Bank (in Indonesian: Bank Rakyat Syariah, abbreviated as BPRS). This statute, however, does not address the nature of a bank that works on a profit-sharing basis. The definition of a bank operating on a profit-sharing principle is stated in Government Regulation No. 72 of 1992 on Banks based on the profit-sharing Principle where Article 2 states the profit-sharing principle used by banks based on the profit-sharing principle in determining the compensation to be given to the public in connection with the use/utilization public funds entrusted to him, determines the compensation to be received in connection with the provision of public funds in the form of financing for both investment and working capital purposes including buying and selling business activities and determines the compensation to be received in connection with other business activities that are commonly carried out by banks with the principle of sharing results.

With the issuing of Law No. 10 of 1998 on changes to Law No. 7 of 1992,

which acknowledged the existence of Islamic banks and conventional banks and permitted conventional banks to build Sharia branch offices, the phrase bank with the concept of profit sharing was amended in 1998. A bank based on sharia principles is the phrase used to substitute a bank with a profit-sharing concept. In Law No. 10 of 1998, Article 1, Number 3, it is stated that the definition of sharia principles is a rule of agreement based on Islamic law between a bank and other parties for depositing funds and or financing business activities, or other activities declared in accordance with sharia, including financing based on the principles of profit sharing (*mudhârabah*), equity participation (*musyâarakah*), the principle of buying and selling goods by obtaining profits (*murâbahah*), or capital goods financing based on the principles of pure lease without choice (*ijârah*), or with the option of transferring ownership of the leased goods from the bank to another party (*ijârah wa iqtina*).

Amendments to Law No. 7 of 1992 on Banking were made in Law No. 10 of 1998, which covered sharia-compliant banking operations. A year later, the government passed Law No. 23 of 1999 on Bank Indonesia (BI), which specifies in Article 10 that BI may employ sharia-compliant financial practices. The establishment of these two regulations increases the legal basis for the establishment of Islamic banks in Indonesia. In addition to regulating Sharia banking, the two laws provide the legal basis for national banks to begin establishing a dual banking system, that is, conventional and Sharia banking systems that coexist. If conventional and Sharia banking coexist, various issues

must be explored. These effects are explained further below:

1. Both conventional and Sharia banking will compete for the same customers. Competitive competition can benefit customers by offering them more options for the form of banking that best meets their needs and ideals.
2. The products and services offered by conventional and Sharia banking differ from one another. Sharia banking offers profit-sharing products and services, whereas conventional banking offers interest-based products and services. Customers need to select a banking option that suits their needs and ideals based on this differentiation.
3. The regulations that apply to conventional and Sharia banking are different. This can have an impact on product development as well as banking activity supervision. The effect of these various standards is that conventional and Sharia banking must meet distinct regulatory compliance requirements.
4. The impact of conventional and Sharia banking on the economy is different. Conventional banking focuses on profit, but Sharia banking focuses on social ideals and justice. As a result of this distinction, Sharia banking has the potential to contribute to more sustainable and inclusive economic growth.

Since then, various Sharia Business Units have been established in conventional banks, such as the Bank IFI Sharia Business Branch (1999), the Bank Jabar Sharia Business Branch (2000), the Bank BNI 46 Syariah (2000), the Bank

Bukopin Sharia Business Branch (2001), the BRI Syariah (2001), the Bank Danamon Syariah (2002), the BII Syariah (2003), and others. Besides that, there were also Islamic Commercial Banks such as Bank Syariah Mandiri (BSM), which fully operated in Sharia (1999), and Bank Syariah Mega Indonesia (2004). As of January 2011, there have been 11 Islamic Commercial Banks, 23 Sharia Business Units, and 151 Sharia People's Financing Banks, with assets totaling 95 trillion plus 745 billion (as of January 2011). (Nur, 2021)

The word employed by the previous bank based on sharia principles was changed to bank syariah or Islamic bank by Law No. 21 of 2008. Under this regulation, two types of banks adopt sharia principles: Sharia Business Units and Sharia People's Financing Banks. Sharia principles are defined differently in Law Number 21 of 2008 than in Law Number 10 of 1998. According to Law Number 21 of 2008, sharia principles are Islamic law in banking activities and are based on *fatwas* given by institutions with the authority to issue *fatwas* in the field of sharia. Based on a number of Sharia banking rules, it is obvious that Sharia banking arrangements were first regulated within the realm of banking in general since Sharia banking was still deemed inseparable from conventional banking in the early stages. Sharia banking arrangements, in turn, are governed by Sharia banking regulation. The Sharia banking regulation is, of course, connected to the concept that Sharia banking cannot be compared with conventional banking; hence, particular procedures are required to demonstrate that Sharia banking is a different system.

An approach that can be used as a way to transform Islamic contract law into national law is using legal theory from Hans Kelsen (*Stufenbau des Rechts*). According to this theory, the enactment of a law must be able to be restored to a higher-ranking statute: 1) There is an abstract standard, the legal ideal (*rechtsidee*); 2) There is an intermediate norm (*tussen* norm, *generalle* norm, law in books), which is used as an intermediary to achieve goals; and 3) There are concrete norms as a consequence of the application of intermediate norms or their enforcement in court (Bambang Iswanto, 2013). The history of Sharia banking law may be divided into various periods. First, the stage of establishing Islamic banks as profit-sharing banks is represented in Law No. 7 of 1992, however, it has not validated the name sharia. Second, the strengthening stage, which affirms Islamic banks, is shown in Law No. 10 of 1998, which allows conventional banks to form Islamic bank units. Finally, under Law No. 21 of 2008, the rationalization step gives a decision or rationale for the creation of Islamic banks (Yadi Janwari, 2012).

Law No. 21 of 2008 established numerous formal considerations for the legislation passed. **First**, philosophical ideas have not addressed key economic issues such as economic democracy, people's economies, national growth, and fair market procedures. The worldwide market mechanism of the Sharia banking system is the primary aspect in the consideration of the formulation of this legislation. **Second**, sociological considerations have yet to touch on the most fundamental expectations of

society's sociological origins or socio-cultural economic base. This is more of a statistical analysis of the rise of Sharia-compliant financial firms. The expansion of Islamic banks is unrelated to Indonesia's historical roots. **Third**, due to its unique nature, Sharia banking has been designated as a separate entity that cannot be mixed with the conventional banking system; however, this development has not progressed to the point of implementing a full-fledged Islamic financial system, which necessitates the establishment of an Islamic central bank. **Fourth**, legal concerns reveal system overlaps linked to institutional independence and sharia competence, where the Sharia banking legal system is still interwoven with conventional systems. As a result, the system ceases to be systemic. The Sharia banking legal system, which is still interwoven with the conventional system, has consequences that can cause the system to operate in a non-systemic way. This is possible because Sharia banking differs from conventional banking, particularly in terms of the principles employed in designing products and services.

The following are the implications of the Sharia banking legal system, which is still incorporated with the conventional system:

1. Since not all regulatory and legal aspects used in conventional banking can be applied to Shariah banking, there is often legal uncertainty. This may have an impact on regulatory compliance and Sharia banking oversight.
2. The Sharia banking legal system, which is still intertwined with the conventional system, can lead to

potential misinterpretations when applying Sharia principles to banking products and services. This can lead to ambiguity in the creation of products and services as well as legal confusion for customers and banking institutions.

3. There is no systematic integration. In the financial system, disagreement between sharia principles and conventional principles might lead to the sharia banking system not being systematically integrated with the conventional banking system. It may have an influence on the supervision of Sharia banking operations as well as the general soundness of the financial system.

As a result, efforts must be made to systemically integrate the legal systems of Sharia and conventional banking in order to ensure legal clarity for consumers and banking institutions while also minimizing possible risks and their implications on the financial system's stability.

Since legal politics is the official direction that the state uses as a basis to make and implement laws in order to achieve state goals, the existence of Islamic banks should include the process of making and implementing laws that can indicate the nature and direction in which the law will be built and enforced. As a fair policymaker, the state must be able to create laws that are oriented toward justice. Law is best established by weighing the achievement of a value known as justice (Yadi Janwari, 2012). Legal politics integrates law into the method for achieving state passage through official state channels. The government's awareness and policy in



determining the regulations that will be enforced, namely determining the direction in which Sharia banking's position is the same as other conventional banking, especially in terms of regulation, where Sharia banking is distinguished from conventional banking (Mohamed Ariff, 1988)

The politics of Islamic economic law may be examined from two perspectives: those that are favorably charged for the growth of Islamic economics in Indonesia and those that are still not conducive to the advancement of Islamic economics in Indonesia. The presence of legal politics in Islamic economics may be traced as follows:

1. The enactment of Law No. 19 of 2008 on State Sharia Securities (in Indonesian: Surat Berharga Syariah Negara, abbreviated as SBSN) on May 7, 2008. The SBSN Law attempts to finance the Indonesian Budget (Anggaran Pendapatan dan Belanja Negara, abbreviated as APBN), which is perpetually in deficit, including project financing. The SBSN Law will provide more diverse development finance, allowing it to absorb more cash from investors. This law has established the legal basis for the government to issue state sukuk in order to attract investment capital. Sukuk is seen as a preferable option to borrowing from overseas since it incorporates features of investment cooperation, risk sharing, and the inclusion of assets (real projects), all of which underpin the issuing of sukuk. This shows the government's support for using Islamic financial instruments to fund the Indonesian budget, and it

has been demonstrated that global and retail sukuk have evolved extremely quickly after the government's political intent was established by enacting the SBSN Law (Abdul Ghafur Anshori, 2008)

2. On June 17, 2008, Law No. 21 of 2008 on Sharia banking was promulgated. The advent of Sharia banking legislation marked the beginning of the era of Sharia banking, which now has a legal basis. The Sharia banking law increases the legal foundation for Sharia banking, allowing it to compete with regular banks. Furthermore, this legal framework will strengthen the presence of Sharia banking in Indonesia and can expedite the expansion of Sharia banking's role and contribution in relieving poverty, social welfare, providing employment possibilities, and national development (Zainuddin Ali, 2008).
3. The enactment of Waqf Law No. 41 of 2004. In addition to this legislation, the government has enacted Government Regulation No. 42 of 2006 on the Implementation of Law Number 41 of 2004, as well as Ministerial Decree No. 4 of 2009 on Cash Waqf Registration Administration. All of this demonstrates that the Indonesian government's Islamic political economy in the field of Islamic public finance has demonstrated its alignment with the application of Islamic public finance in a legal and formal manner.
4. National Sharia Board of the Indonesian Ulama Council (in Indonesian: Dewan Syariah Nasional

Majelis Ulama Indonesia, abbreviated as DSN MUI). MUI, as an institution that has authority in the field of religion related to the interests of Indonesian Muslims, formed a sharia board on a national scale called the National Sharia Board (DSN), which was established on February 10, 1999, in accordance with MUI Decree (SK) No. Kep 754/MUI/II/1999. This MUI DSN is an institution that has strong authority in determining and maintaining the application of sharia principles in the operations of sharia financial institutions, including Sharia banking, Sharia insurance, and others. This is as contained in Law No. 21 of 2008 on Sharia Banking, Article 32, and Law No. 40 of 2007 on Limited Liability Companies, Article 109, which essentially state that a Sharia Supervisory Board must be formed in Islamic banks and companies that carry out business activities based on Sharia principles.

5. Law No. 38 of 1999 on Zakat. The enactment of the Zakat Law proves that Islamic economic politics in the sphere of public finance for the Indonesian government is highly accommodating to the requirements of Muslims in order to execute Islam's third pillar. Presently, the national potential for zakat collection is Rp. 39 trillion per year. In fact, only around Rp. 1 trillion can be gathered from such a big potential. As a result, the zakat legislation is a must for Muslims.
6. The promulgation of Law No. 3 of 2006. The issuance of Law No. 3 of 2006 on Amendments to Law No. 7

of 1989 on Religious Courts has offered a new direction for the Religious Courts' ability to manage, decide, and resolve cases at the first level between Muslims in the field of sharia economics. This modification is designed to address public legal demands, particularly in light of the rise and development of Islamic economic practices in Indonesia. In Muslim societies, Religious Courts are judicial entities with particular competence to decide cases involving family law and inheritance law. Cases that can be decided by Religious Courts include the following:

- a. Divorce. Religious Courts have the ability to adjudicate divorce disputes. This involves the allocation of shared assets, maintenance, child custody, and agreements signed between husband and wife regarding the distribution of assets.
- b. *Nafkah or nafaqah* (the obligatory financial support). The matters of *nafkah* that can be resolved by the Religious Courts include family support, children's support, and parents' support. This includes the husband's obligation to provide financial support for his wife and children.
- c. Inheritance. The Religious Courts also have the authority to resolve inheritance cases, such as distribution of inheritance, disputes over inheritance, and inheritance agreements.
- d. Waqf. Religious courts can also resolve waqf cases, namely the management and utilization of waqf assets.

e. Cases of marriage and polygamy. The Religious Courts have the authority to settle marriage and polygamy cases, such as marriage consent, *ijab qabul*, and marriage and polygamy agreements.

The Religious Courts also have the authority to resolve Sharia economic cases related to Sharia banking. Several sharia economic cases that can be resolved by the Religious Courts include:

a. Lawsuit Cases

The Religious Courts have the ability to settle Sharia banking-related cases, such as customer complaints against Islamic banks.

b. Cases of Conflict Resolution

Sharia banking issues, such as those between clients and Islamic banks over the duty to pay installments or interest, can also be resolved by Religious Courts.

c. Bankrupt Cases

Religious Courts are also allowed to handle bankruptcy cases involving Sharia banking. This covers the failure of Islamic banks that have run into financial problems.

d. Waqf Case

Religious courts can settle monetary waqf cases handled by Islamic banks, such as conflicts over waqf money administration and use.

The Religious Courts adopt the legal basis of Law Number 21 of 2008 on Sharia banking and the principles of Islamic law to resolve sharia economic cases. In settling certain cases, Religious Courts can work with Islamic financial organizations.

1. Sharia Economic Law Compilation (in Indonesian: *Kompilasi Hukum Ekonomi Syariah*, abbreviated as

KHES). The formation of KHES, directed by the Supreme Court of the Republic of Indonesia and later codified in the form of Supreme Court Regulation No. 2 of 2008, is a reaction to new developments in Indonesian Islamic economics research and practice. Since sharia economic practices have begun to be applied through existing sharia financial institutions, the establishment of KHES is part of attempts to positivize Islamic civil law in the national legal system. This compilation can be utilized as a resource in resolving Sharia economic cases, which are becoming more common.

2. The Ministry of Law and Human Rights has accepted notice of the merger of three Islamic banks held by State-owned Enterprises, namely PT Bank BNI Syariah and PT Bank Syariah Mandiri, which would combine with PT Bank BRISyariah Tbk (BRIS). The legitimacy of the merging of Islamic banks is becoming clearer with this letter, after the OJK earlier approved the merger. The data is in the form of a merger entry, which is stored in the legal entity administration system based on the Notary Deed No. 37 of January 14, 2021, drawn up by Notary Jose Dima Satria, domiciled in Jakarta, according to Letter No. AHU-AH.01.10-0011384 on January 28, 2021, signed by the Director General of Legal Administration, Cahyo Rahadian Muzhar (Sidik, 2021).

According to Abdurrauf in his published article titled "Application of Contract Theory in Sharia Banking," the

existence of Sharia banking in recent years has brought a new color to the financial industry in Indonesia, particularly when the Indonesian Parliament passed Sharia Banking Law No. 21 of 2008. This is true not only in terms of legal certainty and the legal and formal existence of Sharia banking, but it will also increase the enthusiasm of the Sharia banking industry in general, allowing it to participate more effectively in growing the national economy and improving people's standard of living (Abdurrauf, 2012). The existence of government legal politics that promote the growth of Islamic economics is extremely beneficial. The Minister of Finance, Agus Martowardojo, has also stated that the government is fully committed to the growth of the Islamic economy in Indonesia (Irawan, 2018). Apart from regulatory support, the government has employed a variety of Sharia-compliant vehicles in state finance. This support stems not only from the fact that the Islamic economic system is worldwide, but also from the fact that it can be done by anybody, not only Muslims, and that the ideals of the Islamic economy can be applied to excellent financial governance. The implementation of Sharia banking law in Indonesia's national legal system is a long evolutionary process. Sharia banking standards were first lightly controlled under Law No. 7 of 1992, which accommodated banks with profit-sharing principles. At this point, Sharia banking laws are a reaction to Sharia banking practice, which is still viewed as a bank with a profit-sharing concept. Sharia banking standards are controlled under Law No. 10 of 1998, which accommodates banks with sharia

principles. Islamic banks are governed by the same standards as normal banks under these two regulations. We must applaud the government's attempts to segregate Sharia financial arrangements into Law Number 21 of 2008 on Sharia Banking, which is a Sharia banking regulation independent from regular banks.

The significance of the development of the business world that uses sharia contracts and the frequent occurrence of disputes between sharia economic actors are addressed in Law No. 3 of 2006 regarding the authority of the Religious Courts in Article 49, which states that the Religious Courts have the duty and authority to examine, decide, and resolve cases in the first level between people who are Muslim in the fields of marriage, inheritance, wills, grants, endowments, *zakat*, *infaq*, *shadaqah*, and sharia economics. The Supreme Court renewed the sharia economic regulations stipulated by the Chief Justice of the Supreme Court, Hatta Ali, on December 22, 2016, by stipulating Supreme Court Regulation No. 14 of 2016 concerning Settlement of Sharia Economic Issues and referring to this statute. The Supreme Court recognized in this decision that the community deserves simpler, quicker, and lower-cost conflict resolution. Among these provisions is the assertion of religious courts' jurisdiction, technical courts' authority, and the administration of Sharia economic matters. Article 13 of Supreme Court Regulation No. 14 of 2016 on Settlement of Sharia Economic Cases explains that the implementation of decisions on sharia economic cases, mortgages, and fiduciary rights based on sharia contracts is carried out by courts within the religious courts. Likewise with

the implementation of sharia arbitral awards and their annulment, with reference to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. However, there are still deficiencies in it, such as no clarity regarding which judicial environment has the authority to receive, examine, and decide on mortgage and fiduciary rights based on sharia contracts; however, several religious courts continue to accept these cases with reference to Law No. 3 of 2006 and Decision of the Constitutional Court No. 93/PUU-X/2012.

Meanwhile, regarding the implementation of the sharia arbitral award and its annulment, the Supreme Court in 2008 issued Supreme Court Circular Letter No. 8 of 2008, which stated that the Religious Courts have the right to settle sharia arbitration disputes and cancel them. However, in 2010, the Supreme Court reissued Supreme Court Circular No. 8 of 2010, which explains that sharia arbitration cases and their annulment are entitled to be handled by the Public Court, and currently, since the issuance of Supreme Court Regulation No. 14 of 2016. Supreme Court Circular No. 8 of 2010 can no longer be used, which means that for all activities that use sharia contracts, the religious court has the right to adjudicate. Supreme Court regulations also serve as guidelines for the certainty of procedural justice, which provides law in the context of seeking proceedings in court (FNH, 2020). In addition to the aspect of legal certainty, the Supreme Court's regulation also fulfills the aspect of justice for the litigants. According to Aristotle, justice is giving everyone what is theirs or their

right (*ius suum cuique tribuere*) (Mohamad Aunurrohim, 2015).

Supreme Court Regulation No. 14 of 2016 (Rahmawati, 2018) also provides two choices for processing sharia economic cases: the simple way and the usual way. This is determined by the material's worth. If the lawsuit's worth is less than or equal to \$200 million, simple techniques can be employed; otherwise, it can be handled in the normal manner. Following the passage of Law No. 3 in 2006, all sharia economic issues have been settled in the usual way. With the current development of sharia economic cases, the Supreme Court continues to strive to enrich the human resources of Religious Court judges, especially sharia economic judges, by issuing Republic of Indonesia Supreme Court Regulation No. 5 of 2016 on Certification of Sharia Economic Judges, which is explained in Article 1: "Certification of Sharia Economic Judges is the process of awarding certificates to judges who have passed administrative selection, competence, integrity, and training to become Sharia Economic Judges." Sharia Economic Judges are religious court justices who have been certified and appointed by the Supreme Court's Chief Justice. As a result, judges are expected to be able to explore the legal and justice values that exist in society; if these rules are violated, the parties will lose, and if the judge does not obey them, it can result in an invalid decision according to the law or sanctions for unprofessional conduct. By analyzing and determining cases, judges must recognize that written law does not always answer the situation at hand (Sudikno Mertokusumo, 2001).

Sharia economic cases must be adjudicated by Sharia economic judges certified and appointed by the Chief Justice of the Republic of Indonesia's Supreme Court. As part of attempts to implement Sharia economic law that meets a sense of justice, this project intends to certify Sharia economic judges and strengthen the efficacy of addressing Sharia economic cases in Religious Courts. With the existence of the Supreme Court Regulation Concerning the Certification of Sharia Economic Judges, it is hoped that sharia economic disputes can be resolved by judges who have been qualified and tested for their abilities, removing doubts among sharia economic and financial industry players and replacing them with trust. Court judges must also have adequate expertise on Islamic financial institutions, even a judge must become more sensitive to the reality that sharia economic conflicts will arise outside of the laws. Explanation of Article 49, Letter I of Law No. 3 of 2006, because law and economics are dynamic and change with the times, and because free trade will be enforced, new difficulties may arise in the future that must be handled through religious courts. The judges of the Religious Courts face a difficulty with the added ability to study, adjudicate, and resolve sharia economic matters as specified in Law No. 3 of 2006. The ability of Religious Court judges to handle Sharia economic cases in conformity with the Religious Courts' procedural law principles, namely simple, rapid, and low-cost trials, is tested (Safitri Mukarromah, 2017). It should be understood that trust does not appear overnight. With the certification of sharia economic judges, the Supreme Court

began to build confidence over time as well as through serious processes and efforts, such as the issue of a Supreme Court Regulation. The merger policy of the three Islamic state-owned banks was implemented to enhance the Sharia banking sector in Indonesia and increase competitiveness in the global market, with the aim of improving efficiency and optimizing the market potential of the three Islamic banks.

## **CONCLUSION**

The reality of the dynamics of Sharia banking rules has its own meaning in the context of legal politics under Post-Law No. 21 of 2008 on Sharia Banking. While evaluating a regulation, there are two aspects to consider: the fundamental policy dimension of why a regulation is promulgated (basic policy) and the enactment policy dimension. In terms of regulatory policy, Sharia banking was held pursuant to Law No. 21 of 2008 to assure the formation of legal certainty for the Sharia banking business, which continues to expand and develop in the nation. From a policy standpoint, the effective application of Sharia banking norms in the national legal system is thought to be constructive and beneficial to the Indonesian people, and its goals are in line with national goals in the economic field. After getting official support in the form of Law No. 21 of 2008 on Sharia Banking, the development and growth of sharia economic practices in Indonesia may be considered to have been quite fast. Legal and political economic policies based on Islamic economic principles have led to fast advancements in many aspects of Islamic economics, including Sharia banking, Islamic insurance, sukuk, Islamic capital

markets, public finance, and others. This proves that the government's legislative policies in the implementation of the Islamic economy in Indonesia have been greatly positive and have had a significant impact on the Islamic economy's growth in Indonesia. To hasten the implementation of a just economic system, the government's regulatory backing and political will must be continuously promoted and maintained. Future Islamic law politics should be aimed at overcoming different legal voids. The absence of norms in society can lead to conflict. The mujtahids, of course, play this role. It not only adds a new subtlety to Islamic law, but it also fosters the establishment of a national legal system based on Islamic law.

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