

Harmonization of Islamic Law Norms in Sharia Banking Laws

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Abstract—There are three legal systems that apply in Indonesia, namely the Customary Law system, Islamic law, and Western law. The potential for disharmony is very possible. The question is, how was the birth of Islamic banking legislation in Indonesia, the methodological model used in harmonizing the laws in the Sharia banking Act. The purpose of this paper is to expose the process of drafting Sharia banking regulations. The application of the *istimbath* method or the method of legal discovery is used as a basic argument in the reform of Islamic banking law that is meaningful and guarantees legal certainty. Writing using normative analysis methods in the dogmatic legal system to create regularity in Islamic banking law in Indonesia. There are 3 components of the harmonization of laws in preparing Sharia banking laws and regulations. The first component of legal material (legal substance) such as the use of the term "financing" with "credit", the term "profit sharing" with "interest". Absorption in the positivity of Islamic law in Sharia Banking legislation is based on the *al-Maslahah al-Mursalah* method, (attracting benefit) *sadd dzari'ah* (prevention efforts). The legal structure component and its institution (legal structure), marked by the presence of the MUI represented by the National Sharia Board as an Institution that has the authority to issue a Fatwa which is used as a reference for Sharia guarantees in the technical preparation of Sharia banking Laws. Guaranteed enforcement of Sharia principles at Sharia banks is carried out by the Sharia Supervisory Board in each Sharia Banking. To eliminate the problem of the harmonization process in the legislation there is the Sharia Banking Committee (KPS) and the Dispute Resolution Institution by the Religious Courts as a compromise point in the discussion of competence in the authority of Sharia banking dispute resolution which eliminates sectoral egoism for the benefit of welfare. Components of legal culture (legal culture), namely the requirement to uphold sharia principles, sharia symbols and not to "*murtad*" in conducting muamalah. Sharia symbolization can be seen in every sharia bank that has permission from Bank Indonesia to conduct business as a sharia bank must clearly state the word "sharia" in the writing of the bank. All of this aims to support the development of Islamic banking business and as a step to prevent (*sadd dzari'ah*) errors in the practice of Islamic banking. **Keywords**— *harmonization, al-Maslahah al-Mursalah, sadd dzari'ah, Islamic banks, sectoral egoism*

I. INTRODUCTION

Legal reform in a broad sense, is identical with the natural evolution of law. This is an ongoing process in which all legal experts and some non-legal experts analyze, interpret, comment and apply the law and where the legislator enforces, modifies and changes the law. However, in common parlance, legal reform refers to a process in which the rules of certain fields of law are modified by the law to fix the problem. The problem includes consolidation in the form of laws, non-statutory developments in law, clarifying ambiguity, modifying laws to reflect or direct social behavior or a combination of these. Whatever the goal, narrow legal reform is part of and influences, sometimes radically, the process of legal evolution.

Therefore, legal reform must be sensitive to the concept of law as an organic entity with past, present and future entities evolving in ways that are often unpredictable and cannot be explained. This sensitivity must apply at practical and theoretical levels for the perception and formulation of legal problems and their solutions. This idealistic view of legal reform is not an absolute that cannot be achieved, nor is it intended to be an obstacle to legislative intervention in the evolution of law. This is a view of legal reform that promotes the right balance between static and

change to meet expectations that legal reform can be meaningful even though human understanding of legal concepts is imperfect.[1]

Efforts to reform the law must harmonize, that is, efforts or processes that want to overcome the limitations of differences, contradictory matters and irregularities in the law. Efforts or processes to realize harmony, conformity, harmony, compatibility, balance between legal norms in the legislation as a legal system within a single national legal system framework. [2]

The presence of Sharia Banking Regulations in Indonesia is marked by the passing of Law No. 21 of 2008 concerning Sharia Banking, which is a long and winding journey. In the context of Indonesia adaptation[3] or "absorption" the word sharia is more easily accepted by groups who are afraid of adopting or "applying" Islamic law (Islamic phobia) and non-Muslim groups. This is because the term "absorption of the word sharia" is more polite (soft) in carrying out sharia values literally. For the people of Indonesia, the term "absorption of Sharia" has a more tolerant and appropriate meaning than the term "application of Sharia".[4]

The phrases contained in the Fiqh of Muamalah/ Fatwa MUI do not necessarily become a standard clause in the legislation. Note Law No. 7 of 1992 concerning banking

Article 6 letter m, in no way uses the terms "Islamic bank" or "Islamic bank". The article only mentions "providing financing for customers based on the" profit sharing principle "in accordance with the provisions stipulated in Government regulations.

This paper wants to expose how the birth of Sharia banking legislation in Indonesia, the methodological model used in harmonizing the laws in Sharia banking law.

II. RESEARCH METHOD

This paper analyzes several policies related to Sharia banking regulations which also serve as the background for the birth of the Sharia Banking Law. The analysis used in this paper compares the results of previous studies related to the law harmonization model in sharia banking regulation. This paper analyzes several regulations and legislation. Act No 7 of 1992 concerning banking, Act No 10 of 1998 concerning Amendment to Act Number 7 of 1992, Act No 3 of 2006 concerning Amendment to Act No 7 of 1998, Act No 40 of 2007 concerning Companies Limited (PT), Law No. 21 of 2008 concerning Sharia Banking, Government Regulation No. 70 of 1992 concerning People's Credit, PBI 2/7/2000 concerning Statutory Reserves in Rupiahs and Foreign Currencies for Commercial Banks Conducting Business Activities Based on Sharia PBI 2/8/2000 concerning Interbank Money Market based on Sharia principles, PBI 7/7/2003 concerning Product Asset Quality for Sharia banks, PBI 5/9/2003 concerning Allowance for Product Write Off for Sharia banks, PBI No 9/19/2007, PBI No 10/16/2008 concerning Implementation of Sharia Principles for Financial Collecting activities and distribution and services of Sharia bank services, PBI Number 10/32/PBI/2008 concerning Sharia Banking Committee (KPS), Circular Letter Number 10/14/DPBs 2008 concerning Implementation of Sharia Principle for Financial Collecting Activities And Its Distribution And Sharia Bank Services, MA Regulation Number 02 of 2008 concerning Sharia Economic Law Compilation.

III. RESULT AND DISCUSSION

A. THE BIRTH OF SHARIA BANKING LAWS IN INDONESIA

Ontologically the word harmonization comes from the word harmony which in Indonesian means the statement of taste, action, idea: interest, harmony, harmony. [5] According to the National Law Development Agency in a book compiled by Moh. Hasan W and friends, harmonization of law is a scientific activity to go to the process of written harmonizing which refers to both philosophical, sociological, economic and juridical values. [6] The purpose of harmonizing law is to realize the simplicity, certainty and justice of the law. So that things will be contradicted and the discrepancy between the legal norms in the national legislation. harmonization of law serves to prevent and control disharmony both due to factors; too many regulations, differences in interests and interpretations, gaps in technical understanding and governance, technical implementation of regulations both

administrative mechanisms, enforcement of the law, overlapping authority and conflict of interests.[7]

While the legalized of Islamic law is the application of Islamic law which is formally constitutionally endorsed. [8] Opportunities for the promotion of Islamic law, especially *muamalah* law (*Fiqh Muamalah*) in Indonesia are guaranteed in article 2 of the Transitional Rules '45, article 29 paragraph 2 of the '45 Constitution, and Presidential Decree July 5, 1959 which still includes the Jakarta Charter June 22, 1945 containing seven controversial words[9] into the Preamble to the 1945 Constitution. Among the positive aspects of Islamic law as an example of a source of national law, namely Law no. 7 of 1989 concerning Religious Courts, Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts (BAL), and Law No 21 of 2008 concerning Sharia Banking. This shows a positive phenomenon in the politics of national law where Islamic law is increasingly gaining a very broad place in the legal system and national legislation.

Harmonization of the national legal system puts a mindset that underlies the preparation of the legal system within the framework of the national legal system (legal system harmonization) which includes: a. component of legal material (legal substance) or legal system consisting of an external legal order that is legislation, unwritten law including customary law and jurisprudence, and internal legal order that is the underlying legal principle; b. legal structure components and their institutions (legal structure), consisting of various institutional bodies or public institutions with their officials; and c. component of legal culture (legal culture), which includes the attitudes and behavior of officials and members of the community with regard to other components in the process of organizing community life. [10]

John Henry Merryman proposed three frameworks for the model of legal reform called the model of legal reform, "tinkering, following and leading". This legal reform model framework is applied as a model framework for legal harmonization. Theoretically known three models of legal harmonization, namely "tinkering harmonization"[11], "following harmonization"[12] and "leading harmonization." or "following harmonization", because legal products created will easily fall behind changes in social conditions. In other words, the legal products produced tend to be changed quickly.

An ideal model of legal reform to be adopted in harmonizing laws that are "leading harmonization" with (adoption) "in their original form", as well as in "modified" forms. Such as banking and financial law in the global era can be adapted by ratifying international conventions or the results of the design of international bodies, such as BIS, IBRD, ICC, WTO.[13] By taking this step of harmonizing the law, the resulting legal norms have more transnational values. Economically, it does not require too long and with a cost that is not too expensive.[14]

The reform of Islamic banking law is an effort to harmonize the law by adapting (adoption) legal phrases originating from Islamic sharia formulated by Fatwa by "absorption"[15]. This can pay attention to Article 6 letter m, Law Number 7 of 1992 concerning Banking.[16] Article 6 letter m, along with their explanations, do not use the terms

"Islamic bank" or "Sharia bank" as used as an official term in Indonesian banking regulations. The article only mentions providing financing for customers based on the principle of "profit sharing" in accordance with the provisions stipulated in Government Regulations (PP). Article 5 paragraph (3) PP Number 70 of 1992 concerning Commercial Banks also mentions the phrase "Commercial Banks operate based on profit sharing principles" and in the explanation the phrase "Banks are based on profit sharing principles". Likewise in article 6 paragraph (2) PP No. 71 of 1992 concerning the People's Credit Bank which only mentions the phrase "People's Credit Bank which will conduct business activities based on the principle of profit sharing".

The difference between Sharia banking and conventional banking lies in the interest and profit sharing system. The main difference lies in the types of profits taken by banks from transactions made. What if conventional banks base their profits on what is called "interest", then Islamic banks take advantage of what is called "wages" (*ujrah* or fees). Either in the form of services (fee-based income) mark-ups or profit margins or profit sharing (lost and profit sharing). Therefore, Sharia banks are sometimes called Islamic banks, interest free banks and usury banks (*lariba bank*).

Thus it can be concluded that "banks based on the principle of profit sharing" is a term for Islamic banks or Islamic banks by referring to the explanation of Article 1 paragraph (1) PP number 72 of 1992 concerning Banks Based on the "Profit Sharing" Principle. In the explanation of the paragraph, it is stated that the principle of "profit sharing" is the principle of *muamalah* based on Sharia in carrying out bank operations and activities. Six years later Act Number 7 of 1992 concerning Banking was amended by Act Number 10 of 1998[17]. Article 1 numbers 4, 12 and 13 explicitly state the identity of Islamic banking. There Islamic banking is referred to as "Sharia banks" or banks based on "Sharia principles".

Although according to Adiwirman A. Karim[18][19], Law Number 10 of 1998 concerning Banking, particularly Article 1 paragraph 11 and Article 12[20] almost equates the definition of Financing based on Sharia principles with credit (installments). The difference is in the credit yields obtained by giving "interest" while in financing based on Sharia principles the results are obtained by the imposition of "wages" (*ujrah* or fees) or "profit sharing". The word "installment" is replaced by the word "financing based on Sharia principles". The word "borrow and borrow" is removed, the word "borrower to pay off his debt" is replaced by "the party being financed must return the money or demand". The definition of financing in the Act narrows the definition of financing according to the MUI fatwa because it does not include other financing models based on sharia principles, such as *murabaha* financing[21], *salam*[22], *istisna* [23], *qardh*[24] and *ijarah al muntahiyah bi al Tamlik*. [25]

However, Sharia Banks have a double attitude when the definition of financing formulated by the Law, the Indonesian Bank Association (PBI), sometimes uses the paradigm of "fiqh agreement" is "principle", and sometimes using the paradigm of "Fiqh contract" is "type of agreement". If in 2000 BI was still consistently using the "principle" paradigm, namely in PBI 2/7/2000 concerning Statutory

Reserves in Rupiahs and Foreign Currencies for Commercial Banks Conducting Business Activities Based on Sharia Principles[26], and PBI 2/8/2000 on Money Markets Interbank Based on Sharia Principles[27]. However, in 2003 doubts arose because sometimes BI used the "principle" paradigm, namely PBI 5/7/2003 concerning Product Asset Quality for Sharia Banks and PBI 5/9/2003 concerning Allowance for Product Assets for Sharia Banks in Article 1 paragraph (5), (6) and (7)[28]. In the same PBI and others mentioned using Short Term Funding for Islamic Banks. PBI 5/7/2003 concerning Short Term Financing Facilities for Sharia banks, PBI 5/7/2003 and PBI 5/9/2003 Article 1 paragraph (8), (9), (10), (11) and (12)[29].

In the practice of Sharia banking, Bank Indonesia has issued many regulations as a demand for the implementation of Sharia principles. Sharia principles regarding collecting money and channeling it. Bank Indonesia has issued regulation No. 7/46/PBI/2005 concerning Money Collecting Agreements and Channeling for banks conducting transactions based on Sharia Principles. The regulation was then withdrawn and replaced with Bank Indonesia Regulation Number 9/19/PBI/2007 concerning the Implementation of Sharia Principles in Money Collecting and distribution activities and Sharia Bank Services. This withdrawal was carried out to adjust to the fatwa decision issued by the MUI National Sharia Board (DSN). It is indeed not easy to raise the fiqh covenants which normally occur in the real sector into the banking sector regulations. That is the process of making fatwa binding. There was a transformation of Islamic law into national law.

Then Bank Indonesia issued Circular Letter Number 10/14 / DPBs 2008 concerning the implementation of Sharia principles for financial collection activities and their distribution and Bank Syariah services. This Circular stipulates technically the implementation of banking business in accordance with Sharia principles, because Bank Indonesia Regulation Number 9/19/PBI/2007 contains banking business in general based on Sharia principles. This circular was issued to follow developments and the terms of the fatwa issued by DSN.

Then this PBI was amended by Bank Indonesia Regulation Number 10/16/PBI/2008 concerning the implementation of sharia principles for financial collection and distribution activities as well as Islamic bank services to adjust to Law No. 21 of 2008 concerning Banking. This law provides technical instructions regarding the obligation to submit to Sharia for efforts to develop banking and the need to follow the MUI DSN fatwa.

Harmonization of law as an effort to provide clarity by eliminating distortion, certainty without ambiguity and the benefits that have been agreed upon require and require accuracy and detail to maintain the robustness of regulations that are compiled and established. This is all done in order to facilitate citizens in creating prosperity by removing barriers and obstacles by building communication between interests.

B. METHODOLOGICAL LEGAL HARMONIZATION OF THE SHARIA BANKING ACT

The study of sharia banking regulations cannot be separated from sharia sources namely al-Qur'an, hadith and *ijtihad*. The word *ijtihad* in this case is closer to the existence of the fatwa of the National Sharia Council (DSN) of the Indonesian Ulama Council. The emergence of Islamic banking through this Act provides space for absorption of fatwas into the realm of practice or the banking system. Initially the MUI fatwas were absorbed in Bank Indonesia Regulations (PBI) in the form of stipulated methods and techniques. Then the fatwa on sharia banking was absorbed into the Sharia banking Act which was passed on June 18, 2008 which became the basis for the implementation of sharia bank practices in Indonesia.

The DSN MUI fatwa refers to popular sources of Islamic law, from primary sources to secondary sources. This means that in the perspective of the *fiqh* of the *mazhabi*, fatwas have accommodated from all schools which have different *istidlal* methods. Although within the major Muslim worship areas of the archipelago, even Southeast Asia adheres to the Shafi'i school [30] in *muamalat* affairs tend to be eclectic in color. If it is realized that there are many *muamalat* practices by Indonesian Muslims that refer to more flexible schools or propositions, such as the Hanafi school of thought, Maliki and Hanabilah scholars (not Imam Ahmad), although in matters of worship they follow, for example, the Shafi'i school of thought, tend to be "rigid" and well-known *ihhtiyat* method [31]. The sources of law here are sources of Islamic law and other sources that are used as a reference in the preparation of Fatwa. As understood, the sources of Islamic law are divided into two groups, namely: (1) agreed legal sources (*masadir al-ahkam al-muttafaq 'alaiha*) or often referred to as the main sources, namely the Qur'an, Sunnah, *Ijma* ', and *Qiyas*; and (2) disputed legal sources (*masadir al-ahkam al-mukhtalaf fiha*), i.e. *Istihsan*, *Istislah* (*al-Maslahah al-Mursalah*), *Zara'i* ', 'Urf, *Istishab*.

If Kusnu [32] requires the harmonization of the law to include legal material components, legal structure and institutional components, and legal culture components, then it can be seen in the process of sharia law reform. The Sharia banking law contains 13 chapters and 70 chapters, among which contain provisions on the procedures for establishing a Sharia bank that must request Bank Indonesia permission, Sharia banks are also required to include the word "Sharia" after the bank. Conventional banks may change to Sharia banks. but on the other hand Sharia banks cannot change into conventional banks. Shall the Sharia business unit of a conventional bank then change its status to a fully operational Sharia bank, if the Sharia business unit's assets have reached 50 percent of its parent bank, in the event of a merger or merger of Sharia banks and other banks, the merged banks or the merger must be a Sharia bank, Sharia banks may not buy and sell shares in the market directly, Sharia Banks conduct businesses that contain usury, formalize or buy and sell that contain *gharar*.

As a special regulation governing Sharia banking, this law also mentions that the rules relating to (Shariah compliance) are in the hands of the Indonesian Ulema Council (MUI) which is run technically by the National Sharia

Council. Then the application of the DSN fatwa is carried out by the Sharia Supervisory Board (DPS) which must be present in every Sharia bank and Sharia Business Unit (UUS). Whereas to realize the fatwa issued by the MUI into Bank Indonesia Regulations a Sharia Banking Committee (KPS) was formed. [33] The Fatwa of MUI was almost entirely absorbed into the Sharia banking Act, so that the fatwa became the basis for the formulation and implementation of the Act. This can be seen in the article that places the MUI as a reference for implementing the Act. Article (12) of the Sharia Banking Law states that Sharia principles are based on fatwa issued by an Institution that has the right to determine fatwa in the Sharia sector. Even in article 26 paragraphs (2) and 93) it is explicitly stated that MUI has the right to determine Sharia compliance fatwa, and then it is absorbed in Bank Indonesia Regulation through the Sharia Banking Committee (KPS) process. The preparation of PBI is carried out by KPS which is an internal institution where the members consist of Bank Indonesia, the Ministry of Religion and the public elements with a balanced composition. The members must have expertise in the field of Sharia and the number of members does not exceed 11 people. [34]

The establishment of the Sharia Banking Committee (KPS) is part of the struggle to change the non-binding fatwa to be put into practice in the form of a Bank Indonesia regulation (PBI) which will subsequently bind all Sharia banks. KPS which is under Bank Indonesia also functions to review the fatwa and make it a material for PBI. The function is similar to the function of the National Sharia Council (DSN) formed under the MUI, where the DSN is tasked with reviewing the fatwa material to be sent by the MUI regarding the *muamalah fiqh* issue.

The Sharia Banking Law expressly regulates the differences between principles consisting of Sharia principles, economic democracy and the principle of caution with types and business activities consisting of various types of contracts. The principles of sharia principles are business activities that do not contain elements: usury, *maysir*, *gharar* and *haram* and *dzalim*. The principle of economic democracy is sharia economic activities that contain togetherness, equality and expediency. The principle of caution is a bank management guideline that must be followed to realize; sound banking. strong and efficient in accordance with statutory regulations. [35]

Fulfillment of legal culture (legal culture), the process of absorption and adaptation of fatwa materials in the law carried out by preparing several types of sharia-based transactions. Such types of fake offers (*bay 'al-najsh*), selling something that is not owned (*bay' al ma'dum*), using insider information to take profits (*insider trading*), giving rise to misleading information, and hoarding (*ihhtikar*) with the principle sharia which forbids *gharar*. including the prohibition on immorality in transactions entered into the law becomes a prohibition on transactions against objects that may not be traded, so the word "haram" here is not only about the transaction process as proposed in most MUI edicts, but also about objects being traded. [36]

The Sharia Banking Law has absorbed the types of transactions that have been indicted by the Indonesian Ulama Council, although the way to absorb them is only the name of

the type of transaction and the definition that is put in the explanation of the law. Whereas the practice of these types of transactions leads to sharia principles which are stated by MUI. Therefore, the suitability and compliance of Islamic banking practices according to this law becomes the authority of the Indonesian Ulama Council through its fatwa where supervision is carried out by the Sharia Supervisory Board at each Sharia bank. This is the position of Islamic law as a source of national law to the same degree as other sources of national law: Adat law and Dutch colonial inheritance law to be incorporated and ratified into national law.

Thus it can be said that the component of legal material (legal substance), absorption / adaptation of the MUI fatwa into the Sharia Banking Law consists of collecting activities and, activities of financing sale and purchase and services. Article in the Sharia Banking Law which regulates fund raising is the uptake of a fatwa concerning current accounts, savings and deposits using a wadiah and mudharabah agreement. While the article governing the distribution of funds and financing is the absorption of fatwas on musyarakah, murabahah, salam, istishna', ijarah, ijarah al-muntahiyah bi al tamlik and al-qardh. Article in the Sharia Banking Law which regulates services is the absorption of fatwas on wakalah, credit cards and letters of credit. While the article governing the sale and purchase is an absorption of the fatwas murabaha, salam and and istishna'.

The component of the legal structure and its institutional structure (legal structure), is seen in the existence of MUI institutions represented by the National Sharia Board with Shariah compliance competency in each bank monitored by the Sharia Supervisory Board (Law No 21 of 2008, on Sharia Banking), Sharia Banking Committee (KPS) has a very important role for the discussion and adaptation of the MUI DSN fatwas into legislation (PBI Number 10/32 / PBI / 2008, Sharia banking dispute resolution institutions conducted by the Religious Courts (Law No. 3 of 2006 concerning Religious Courts).

The discussion on the article on dispute resolution is among the most difficult compared to other articles. Opposition occurs due to the government's perception that Islamic banking disputes are a business problem, not a religious problem so it must be resolved through the General Courts. Meanwhile, according to the Religious Courts Law No. 3/2006 concerning Amendment to Law No. 7/1989 concerning Religious Courts article 49 gives authority to resolve Sharia banking disputes to the Religious Courts authority. Likewise, many objections and proposals from the public so that the government does not violate the law. Finally it was agreed by way of compromise that Islamic banking disputes were settled by the Judiciary within the Religious Courts and / or courts according to the contents of the contract.

The point of compromise (the use of the al-Maslahah al-Mursalah method) lies in Article 55 paragraph (2), in the case of parties who have agreed on disputes other than as intended in paragraph (1), dispute resolution is carried out in accordance with the contents of the contract. This compromise has fulfilled the wishes of the government who want the dispute resolution through the General Courts, also fulfills the wishes of the people who want to enforce Law Number 3 of

2006 on Religious Courts, and also fulfills the desire to carry out the MUI fatwa stipulating that dispute resolution can be done through the Arbitration Board National if no agreement is reached through deliberations or negotiations. Then the Supreme Court (MA) of the Republic of Indonesia issued MA Regulation Number 02 of 2008 concerning the Compilation of Sharia Economic Laws. This compilation Providing harmonized guidance in examining and deciding Sharia economic cases must refer to Sharia principles. This principle is written in the Compilation of Sharia Economic Law[37] contained in the appendix to the decision of the Supreme Court.

The component of legal culture in the Sharia Banking Act, namely the obligation to uphold sharia principles, sharia symbols and not to "murtad" in conducting *muamalah*. In terms of adhering to sharia principles, the law confirms that conventional banks that have a Unit Sharia Business (UUS) whose asset value reaches at least 50 percent of the total asset value of the parent bank or 15 years after the enactment of this law, the conventional commercial bank is required to separate the UUS into a sharia commercial bank.

The symbol of sharia can be seen from the provisions stating: every sharia bank that gets permission from Bank Indonesia to do business as an sharia bank must clearly state the word "sharia" in its bank writing. And sharia banks must not "lapsed", meaning banks that have practiced *mu'amalah syar'iyah* in the banking world is prohibited from re-practicing conventional banking based on interest.

When there is a merger between several Islamic banks or between conventional Islamic banks, the bank must become a Sharia bank. The value of sincerity in adhering to the principles of sharia and should not be "apostasy" for banks that conduct sharia business is an attempt to implement Islamic values into muamalah practices. This is not clearly stated in the fatwa, but Islamic teachings teach it. In addition, it is also in the context of supporting the development of Islamic banking business and as a step to prevent (sadd dzari'ah) errors in Sharia banking practices.

IV. CONCLUSION

There are three components of harmonization of Sharia bank regulations. Components of legal material (legal substance), the phrase "financing" with "credit", the term "profit sharing" with "interest". Absorption in the positivity of Islamic law in Sharia Banking legislation is based on the al-Maslahah al-Mursalah method, (attracting benefit). The legal structure component and its institution (legal structure), marked by the presence of the MUI represented by the National Sharia Board as an Institution that has the authority to issue a Fatwa which is used as a reference for Sharia guarantees in the technical preparation of Sharia banking Laws by the Sharia Banking Committee (KPS). The guarantee of the application of Sharia principles is carried out by the Sharia Supervisory Board. Dispute resolution by the Religious Courts as a point of compromise in discussing the competence of the competence of Sharia banking dispute resolution authorities that removes sectoral egoism for the benefit of the benefit. Components of legal culture (legal culture), namely the necessity to uphold sharia principles, sharia symbols and should not be "apostasy"

in conducting muamalah With the aim of supporting the development of sharia banking business and as a step to prevent (sadd dzari'ah) errors in banking practices Sharia.

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- [24] Fatwa Dewan Syariah Nasional Nomor 19/DSN-MUI/IV/2001 concerning *al Qardh*
- [25] Fatwa Dewan Syariah Nasional Nomor 27/DSN-MUI/IV/2002 concerning *al Ijarah al Muntahiya bi al Tamlik*
- [26] Article 1 paragraph (7) of the Interbank Money Market Based on Sharia Principles, hereinafter referred to as PUAS, is a short-term investment activity in rupiahs between market participants based on the mudharabah principle; Paragraph (9) Interbank Mudharabah Investment Certificate, hereinafter referred to as IMA Certificate, is a certificate used as a means to obtain funds under the mudharabah principle.
- [27] Article 1 paragraph (4) states that the Interbank Money Market Based on Sharia Principles, hereinafter referred to as PUAS, is a short-term investment activity in rupiahs between market participants based on the Mudharabah principle. Thus paragraph (6) states the Interbank Mudharabah Investment Certificate, hereinafter referred to as the IMA Certificate, is a certificate used as a means to obtain funds under the Mudharabah principle. Description of Article 1 paragraph (5) Financing is the provision of funds and / or claims based on Mudharabah and / or Musharaka agreements and or other financing based on profit sharing principles; (6) Mudharabah is an agreement between a fund investor and fund manager to carry out certain business activities, with profit sharing between the two parties based on a predetermined ratio, (7) Mudharabah is an agreement between a fund investor and fund manager to conduct certain business activities, with profit sharing between the two parties based on agreed ratios. Description of Article 1 paragraph (8) Receivables are claims arising from buying and selling and leasing transactions based on murabahah, salam, istishna and or ijarah contracts; (9) Murabahah is a sale and purchase agreement between a bank and a customer in which the Sharia Bank purchases goods needed by the customer and then sells them to the relevant customer at an acquisition price plus an agreed margin / profit between the Sharia Bank and the customer, (10) Salam is an agreement sale and purchase of goods by way of order with certain conditions and payment in advance, (11) Istishna is a sale and purchase agreement of goods in the form of an order to make goods with certain criteria and conditions agreed between the buyer and seller, (12) Ijarah is a lease agreement renting an item within a certain time through lease payment, (13) Qardh is the provision of funds or bills between a Sharia Bank and the borrower which requires the borrower to make payments at once or in installments within a certain period of time. Concerning the recognition that the majority of Southeast Asian Muslims are Shafi'i can be seen in J.N.D. Anderson. 1959. *Islamic Law in The Modern World*. New York: New York University Press. hlm. 1 dan; Isnawati Rais. 1999. "Pemikiran Fikih Abdul Hamid Hakim (Suatu Studi tentang Pengembangan Hukum Islam di Indonesia)". Disertasi. Jakarta: Disertasi Doktor PPS IAIN Syarif

- Hidayatullah. hlm. 5, lihat Abdul Mughits *Kompilasi Hukum Ekonomi Syari'ah (KHES) dalam Tinjauan Hukum Islam*, Jurnal, Al-Mawarid Edisi XVIII Tahun 2008
- [28] Abdul Hadi. 2001. "*Fiqh Mazhab Syafi'i (dalam Peraturan Perundang-undangan tentang Perkawinan di Indonesia, Brunei dan Malaysia) (1971-1991)*" Disertasi. Yogyakarta: Doktor PPS IAIN Sunan Kalijaga. hlm. 1, Bruinessen. 1420/1998. Kitab Kuning, Pesantren dan Tarekat, cet. 3. Bandung: Penerbit Mizan. hlm. 88-104
- [29] Dr. Kusnu Goesniadhie S., SH.MHum. *op.cit.*
- [30] PBI Nomor 10/32/PBI/2008 tentang Komite Perbankan Syariah
- [31] Penjelasan Pasal 26 ayat (4) UURI Nomor 21 tahun 2008 tentang Perbankan Syariah
- [32] Penjelasan Pasal 2 UURI Nomor 21 tahun 2008 tentang Perbankan Syariah
- [33] Daftar inventarisir Masalah (DIM) tentang Perbankan Syariah, Menteri Keuangan Republik Indonesia Nomor S-32/MK.011/2008
- [34] KHES was prepared as a response to new developments in mu'amalat's law in the form of Sharia economic practices through LKSs that require a legal umbrella. Constitutionally, KHES is prepared in response to Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts (UUPA), which expanded the authority of the PA, such as the Sharia Economic Law. In other words, KHES is an effort to "positive" the mu'amalat law in the life of Muslims in Indonesia which is constitutionally guaranteed by the Indonesian constitutional system Undang-Undang No 21 Tahun 2008 tentang Perbankan Syariah Pasal 68 ayat (1)
- [35] Undang-Undang No 21 Tahun 2008 tentang Perbankan Syariah Pasal 5 ayat (4)
- [36] Undang-Undang No 21 Tahun 2008 tentang Perbankan Syariah Pasal 5 ayat (7) dan (8)
- [37] Undang-Undang No 21 Tahun 2008 tentang Perbankan Syariah Pasal 17 ayat (2)