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Indonesian Sharia Banking Law Politics Through Mergers and Digitalization of Sharia Banking

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ABSTRACT
This study aims to determine the legal politics of mergers and digitalization of Islamic banking in Indonesia, namely the basic policy of sharia banking regulations that cannot be separated from the national legal system, national and global economic system. The merger (merger) of Bank Syariah Mandiri (BSM), bank BNI Syariah (BNIS) and Bank BRI Syariah (BRIS) into one, namely Bank Syariah Indonesia (BSI) is realized as part of the effort to make the largestIslamic bank, as a national economic power and as a center of world's Islamic economics and finance. This research is a normative juridical research, using a legal approach to banking, namely Law Number 7 of 1992, Law Number 10 of 1998 and Law Number 21 of 2008 concerning Islamic Banking and OJK Regulation, Number 12/POJK.03/2018 concerning the Implementation of Digital Banking Services by Commercial Banks (POJK). The results of this study conclude that the management of large assets in terms of capital (merger politics) and optimal management of the quality of human resources, networks and services (digitalization politics) are strategic steps to occupy the top 10 global Islamic finance positions in 2025. This optimism is fundamental, based on the roadmap that has been prepared, the opportunities mentioned above have been prepared by strengthening the business model, through a strategy of cultivating the potential of the domestic market that has not been fully explored. This opportunity can be achieved by harmonizing the economy and an Islamic world view because Indonesia is an Islamic country with the largest Muslim majority population with market characteristics dominated by business managers and other customers are young millennials who prefer digital platforms in transactions because they are considered safer, more comfortable. and easy.

Keywords: *Legal Politics, Indonesian Islamic Banking, Mergers, Digitalization.*

1. INTRODUCTION

As a political object, the legal position is weak. Politics as a subject always influences the law. In the context of sharia banking, the basic policy of sharia banking regulations cannot be separated from the perspective of legal politics in it, namely sharia banking regulations in the national legal system and national and global economic systems. The national legal system is a legal system that applies throughout Indonesia, covering all legal elements that are interdependent and sourced from the preamble and articles of the 1945 Constitution.[1] The economic system is the interaction of small units (consumers and producers) into larger economic units in a particular area[2] reflected in the applicable legal system. Meanwhile, the global economic system is a bond of change, fundamental in nature, continuing continuously following technological advances that creates interdependence relationships and sharpens competition between countries in the sphere of trade, investment, finance and production.[3]

To understand the legal politics of Islamic banking in a legal system in the midst of political transformation, it must be observed from the wishes of the community and seen from the social political changes that occur[4] through indicators of justice, fairness, *equity* and *inclusion.* The social and political changes that occur are fundamental and there are strong desires and demands to implement Islamic law, especially in the economic field, namely sharia economics. These desires and demands are gaining momentum with the emergence of a new awareness of the Muslim community who understands sharia as something empirical and real in life, not just a philosophical and normative understanding.[5] This awareness is getting stronger with the emergence of various alternative sharia economic activities in society, including sharia banks, sharia capital markets, sharia insurance, and sharia pawning.[6]

The first Islamic bank that was born in Indonesia was Bank Muamalat Indonesia (BMI) in 1991. Actually, before BMI had been established, non-bank banking institutions that implemented the sharia system were also established. The existence of these sharia institutions is appreciated by the public who then gain regulatory support, strengthening the political positioning of sharia banking law. The government issued a policy that stipulates the existence of two banking systems in the country, they are the conventional banking system and the Islamic banking system. This opportunity was warmly welcomed by the banking community, which was marked by the establishment of several other Islamic banks, including Bank IFI, Bank Syariah Mandiri, Bank Niaga, Bank BTN, Bank Mega, Bank BRI, Bank Bukopin, BPD Jabar and BPD Aceh.[7]

At the global level, the initial awareness of sharia institutions was formed at the same time as the Asean Economic Community (AEC) was initiated in 2015. The AEC is a prototype of the European Union in the economic sphere, initiated in the Asian region, containing a free market that demands the quality of its industrial role, including the Islamic finance industry. Today, the Islamic finance industry has become a real force in the global financial market, the industry is creating new financial products that not only increase transaction costs, but also play a role in the process of economic financialization.[8]

Long before the AEC was agreed upon by ASEAN leaders, Islamic banking in Indonesia had undergone a gradual evolution. At the beginning of the regulation, it was determined as a bank with the principle of profit sharing through Law Number 7 of 1992. Then it was determined as a bank with sharia principles through Law Number 10 of 1998. Then it was separated from conventional banks through Law Number 21 of 2008. The next stage of evolution is the regulation of Law Number 3 of 2006 which states that sharia economic disputes are resolved by the religious courts, but in the explanation of article 55 paragraph (2) there is still a choice (choice of forum) to resolve sharia economic disputes in religious courts or state courts. Finally, the Constitutional Court Decision Number 93/PUU-X/2012 was issued, explaining that all explanations of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Islamic banking were decided contrary to the constitution and had no binding legal force.[9]

At the time of the enactment of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the position and opportunity of Islamic banking was stronger and more developed. The enactment of the law cannot be separated from the process of positivizing Islamic law, namely the acceptance of sharia law in positive laws and regulations that apply nationally. Currently, Islamic banking is growing between 38%-40%, surpassing conventional banking.[10]

In the next journey, to accelerate the growth of the global Islamic economic and financial center, state-owned Islamic banks were merged to become a new pillar of national economic strength and encourage Indonesia to become the center of world's Islamic economy and finance. This merger is the decision of the Minister of State-Owned Enterprises (BUMN), Erick Thohir.[11] On February 1, 2021, three major Islamic banks, namely Bank Syariah Mandiri (BSM), Bank BNI Syariah (BNIS) and Bank BRI Syariah (BRIS) were merged after going through a study by the National Committee for Islamic Economics and Finance (KNKS). The merger of the three is regulated in Government Regulation Number 28 of 1999, Company Law Number 40 of 2007 and Sharia Banking Law Number 21 of 2008, aimed at increasing the effectiveness and efficiency of the implementation of the national development plan in the field of Islamic finance and economics.

There is great hope for Bank Syariah Indonesia (BSI) Tbk., the result of the merger of the three previous Islamic banks is raising the ability and competitiveness of BSI in providing services, both at domestic and global levels. The merger of the three banks resulted in a total asset of Rp. 214 trillion, with a core capital of Rp. 20.4 trillion, supported by 1,200 branch offices and 1,700 ATM machine networks. The number of permanent employees from the three banks was also combined, totaling around 18,734 people. BSM has around 8,400 employees, BNI Syariah 5,723 employees (data as of 2019), and BRI Syariah 4,611 employees.[12] Of the total employees, 40% are women.[13]

After the merger, BSI immediately occupied the top 10 largest banks in Indonesia in terms of assets. The largest Islamic bank in Indonesia is also targeting to become a global player by 2025 and penetrate the world's top 10 Islamic banks in terms of market capitalization.[14] The existence of sufficient capital and assets from a financial perspective, coupled with the support of human resources, information technology and products and services. Bank Syariah Indonesia completes the Islamic finance ecosystem in the country, starting from the smallest capital reach through ultra-micro and micro-Islamic financial institutions to the largest capital.[15]

BSI's biggest challenge today is to harmonize the economy and the Islamic world view. Many parties still do not believe in the sharia of Islamic banking. This is a challenge. Even though Indonesia is an Islamic country with the largest Muslim majority population with the biggest Islamic Retail Banking in the world. Indonesia has the world's largest retail Islamic banking, the largest number of customers, and the largest Islamic banking study program provider university in the world. The existence of BSI opens up opportunities for Indonesia to enter the Islamic finance industry, namely global Islamic finance.[16]

Meanwhile, BSI's biggest demand today is banking digitalization, considering that many business managers and other customers are young millennials who prefer digital platforms for transactions because they are considered safer, more convenient and easier. This is in line with the increasing number of internet users in Indonesia, amounting to 200 million users. The islands that dominate the largest internet users are 56.4%, Sumatra Island 22.1%, Sulawesi Island 7%, Kalimantan Island 6.3%, Bali-Nusa Tenggara 5.2% and Maluku-Papua 3%. Smartphone users reached 95.4%. Laptop or tablet users 19.7% and PC 9.5%. The rest access the internet using WiFi installed in homes, offices, cafes, or public spaces. As many as 68.7% of internet users in Indonesia feel safe transacting on the internet. The three most widely used financial services are fintech applications (financial technology), m-banking, and internet banking.[17] The data above shows that conventional marketing strategies will not be able to accommodate the Islamic banking market. On the other hand, digitalization has become a necessity to penetrate the Islamic banking market today.[18] At the globallevel, 63% of banking customers use digital services. Banking digitization was followed by the use of digital money which was then followed by many companies engaged in financial digitization. Its prospects and market share continue to grow. The widespread use of payment applications and digital money has resulted in a 19% decrease in demand for PT Peruri banknotes in 2018[19] and the decline in the growth of credit card users.[20]

The regulation of digitalization of Islamic banking has been regulated through laws and regulations to ensure that the philosophical aspects are touched as mandated by Article 33 paragraphs (1) and (4) of the 1945 Constitution which means the growth of alternative banks, namely Islamic banks can be enjoyed by the whole community. Furthermore, the sociological aspect is creating strong regulations in the framework of building trust and security in Islamic banking. The last is the juridical aspect, digital banking is regulated in OJK Regulations to overcome risk problems that occur in theimplementation of digital banking for Islamic banking.[21] The implementation of digital banking is closely monitored in OJK Regulation No.12/POJK.03/2018 concerning the Implementation ofDigital Banking Services. In Law No. 7 of 1992 jo. Law Number 10 of 1998 concerning Banking does not regulate digital banking provisions.

Article 1 number 4 of OJK Regulation No.12/POJK.03/2018 concerning the Implementation of Digital Banking Services contains provisions that Digital Banking Services are Electronic Banking Services developed by optimizing the utilization of customer data in order to serve customers more quickly, easily, and according to needs (customer experience), and can be carried out completely independently by customers, taking into account security aspects. The study of Islamic law related to Islamic banking using *Al-Huriyah Wal Mas'uliyyah* is a value born of the belief that Allah has given humans the potential of reason as Allah's caliph in the world. This potential causes humans to be obliged to prosper the world by optimizing all gifts properly and correctly. This value ensures that bank management is carried out professionally and competitively so as to produce maximum benefit for all parties. Therefore, digital banking services have shown the application of the theory of *Al-Huriyah Wal Mas'uliyyah*.

Digital banking is regulated and supervised by the Financial Services Authority (OJK) as mandated by Article 5 of Law Number 21 of 2011 that OJK is the organizer of an integrated regulatory and supervisory system for all activities in the financial services sector. According to OJK, the implementation of digital banking services must meet the main requirements: (1) have a risk profile with a rating of 1 or 2 based on the assessment of the soundness of the bank in the last assessment period; (2) have adequate information technology infrastructure and management of technology infrastructure management.[22]

The digital transformation of banking in Indonesia is actually delayed compared to other countries, especially in Asia. Many factors cause this condition, including Indonesia's geographical conditions which cause digital literacy to be inhomogeneous so that the preference that occurs is conventional physical transactions. Since ATM machines were introduced in the early 1980s, banking technology evolved investing in technology to emerge in a new era of online transactions and since then the improvement of banking technology has become a must. In the next decade, the advantages of digital banking have become one of the important points, especially the use of social media to introduce various products and service features in an interactive communication that serves its customers

2. METHODS

As a normative juridical research, this study aims to place legal politics as a perspective in looking at the merger process and the need for digitalization of Islamic banking in Indonesia to see what has been done and what has not been done.[23] Normative juridical research is research that conducts a review of legal principles, laws and regulations, and the elements of legal reform in them.[24] Including researching primary, secondary and tertiary legal materials[25] relating to mergers concerning banking, namely Law Number 7 of 1992, Law Number 10 of 1998 and Law Number 21 of 2008. Likewise, laws and regulations relating to banking digitalization, namely Law Number 21 of 2008 concerning Sharia Banking and Financial Services Authority Regulation Number 12/POJK.03/2018 concerning the Implementation of Digital Banking Services by Commercial Banks (POJK).

The data collected through this study are secondary data and legal materials originating from books, journals, or the internet which are then analyzed qualitatively with a library research approach, which is a review study of books, literature, notes, and various related reports with a problem to solve.[26]

3. RESULTS AND DISCUSSION

3.1 Islamic Banking Achievements in the Legal Politicsof Mergers and Digitization

To achieve a social goal with a certain law in society in a certain way will always pay attention to the system of achievement, the most effective way, the time and strategy of legal transformation, the pattern to be used and the process to be followed, this is what is then understood as legal politics.[27] In another sense, legal politics is the study of state policies and institutions that have the authority to establish these policies to express what is contained in society and to achieve what is aspired. This is manifested in regulations that are in accordance with the circumstances and situations at a time, therefore legal politics includes policies regarding laws that will be enforced or not enforced in the context of achieving state goals, political, economic, social, cultural background (*Poleksosbud*) for the birth product of law; and law enforcement itself.[1]

Merger is the merger of companies as a strategyto strengthen capital with majority shareholding.[28] In the Government Regulation of the Republic of Indonesia Number 28 of 1999 concerning Mergers, it is stated that a merger in the banking sector is the merger of two or more banks by maintaining the establishment of one bank and dissolving the other banks without liquidating them first[29] to expand the company's reach, strengthen capital and create bank synergies which are the future business development strategy.

The swift of current of digital transformation can no longer be stopped. Entering all life processes, hitting all aspects and segmentation of problems very quickly and having an impact on all. Digital transformation is also referred to as the Industrial Era 4.0, reshuffling conventional ecosystems and business models to innovative and dynamic demands.[30] In the Islamic banking business area, digitalization is the ability to overhaul the entire infrastructure to be more adaptive and able to keep up with the developments and needs of the times.[31] This change must be radical if the existence of the business being carried out is to survive, and goes hand in hand with changes in the preferences and ways of customer transaction, namely improving thetransaction experience.[32] Digital transformation in the world of Islamic banking business means the ability to implement the change of strategies that will have an impact on the company's sustainability in the future.

Digitalization must be the main acceleration of the merger law politics that have been carried out. In digital transformation, large capital and extensive consumer networks are needed. Both of these are already owned by Bank Syariah Indonesia (BSI). With a core capital of around 21 trillion and customers totaling 15 million people. These two things become a strong foothold to boost market share, which has only been absorbed by around 6.33%, the rest is controlled by conventional banks.[33]

With this condition, BSI actually has a great opportunity to continue to grow positively and play a dominant role as well as become a financial industry that can maximize all the existing sharia economic potential, starting from MSMEs, investors and other corporations. This condition needs to be accelerated again with the awareness of the wider community, especially the majority of the Muslim population using Islamic banking, the conditions must be followed by improving the quality of Islamic financial services and easy access to finance for the wider community. If all the existing sharia-based economic potentials are continuously developed, then BSI will become a big icon of Islamic banking institutions at the world level.

The Financial Services Authority (OJK) noted that until June 2020 the asset value of the Islamic banking industrygrew 9.22% per year, higher than conventional banking, at 4.89%. Politics of the sharia banking merger has succeeded in increasing competitiveness and market share. The merger of state-owned Islamic banks could learn a lot from the successful merger of four state-owned banks in 1999. This means that the legal politics implemented must pay attention to strengthening literacy, education, and inclusion in order to reach the unbanked people. By digitizing business models andservices, the customer experience will improve so that itcan attract new customers.[34]

The legal politics of the merger has led to the acceleration of the development of sharia banking which is expected to encourage the growth of sharia banking in the long term. Including sharpening market segmentation acceleration and product development. The existence of sharia banking on a large scale can encourage the development of the sharia economy, such as accelerating the completeness of the halal value chain in the development of the halal industry, including the financing of supporting Micro, Small and Medium Enterprises, and being able to participate in financing large-scale projects using sharia schemes.[35]

The legal politics of digitalization will be aguarantee in the legal politics of mergers that the management of human resources will effectively managethe 20 thousand employees resulting from the merger, in addition to digitalization itself, there will be a synergy and process of consolidating the communication technology system. In this case, the novelty that was found related to the merger of Islamic banking and banking digitalization services was the application of thetheory of *Al-Huriyah Wal Mas'uliyyah.*

3.2 Indonesian Islamic Banking and Potential Global Islamic Finance Industry Opportunities Through Banking Digitization Services

The implementation of sharia banking businessis the application of Islamic law (sharia) in Indonesian banking whose principles have existed and have been enforced since the time of the Prophet Muhammad PBUH. The difference with current conditions is that current Islamic banking has used technology that allows the Islamic banking business to be organized systematically through legal political support for mergers and digitalization. Islamic banking is growing when the collective awareness of the Muslim community begins tomeet the studies of Muslim thinkers who initiated the literacy of Muslim financial institutions. The principle of Islamic banking is that there is no interest in every transaction, the business that is running does not conflictwith Islamic law and applicable law and there is a form of concern in its business through the management of zakat funds for the benefit of the people. These principles are also the basis for the global legal politics of Islamic finance.

Global Islamic finance is a provider of financial services based on the principles and rules of Islamic jurisprudence.[36] Applying *Fiqh al-Mu'amalat*, including laws regarding contracts, sanctions, crimes, guarantees, and other laws aimed at regulating human relations, both individuals and groups.[37] In a narrower sense, *fiqh al-Mu'amalat* discusses the laws regarding actions and human relations regarding property, rights and dispute resolution. While the technical understanding of *fiqh al-Mu'amalat* is a form ofbeneficial agreement that occurs between humans to meet all the needs of daily life, especially in matters related totrade and commerce.[38] In *Fiqh al-Mu'amalat* there is the theory of *Al-Huriyah Wal Mas'uliyyah*, which is a theory that teaches about the human ability to always develop technology and knowledge in line with the globalization of the times, including the merger of Islamic banking and digitalization services of Islamic banking. *Al-Huriyah Wal Mas'uliyyah* theory plays a role in global Islamic finance.

Global Islamic finance has become a global phenomenon, marked by the massive process of developing technology and business networks managed in various countries in various parts of the world. The rapid growth of Global Islamic finance is due to its existence as well as providing the values of justice, honesty, morals and ethics and universal social care. Its financial transactions provide benefits while at the same time providing hope to realize a humane economy. From the various existing cases, Global Islamic finance is also considered stronger against the financial crisis, because the principles of sharia do not "eat" each other between humans. In the digital era like today, Global Islamic finance can be an alternative choice for a more stable and fair world economy and finance, giving birth to many opportunities, being more creative, efficient, effective and innovative as well as *rahmatan lil'alamin*.

Departing from the same principles as the global Islamic finance sector, namely Islamic law, Indonesian Islamic banking has a great opportunity to enter global Islamic finance, considering that this opportunity stems from legal politics which is also the same as what is being targeted in the merger policy in sharia banking in Indonesia, namely the character of the value of advocacy, infrastructure, human resources and linkages. The value of this basic character has actually become the capital in the legal politics of mergers and digitalization of Islamic banking in Indonesia which is currently manifested into large assets owned by Islamic banking resulting from the merger and acceleration of digitalization to manage superior human resources, network bases and optimal services.

Long before the legal politics of sharia banking mergers was carried out, the Islamic economy in Indonesia had made achievements in the international arena, receiving the 2019 Global Islamic Finance Report (GIFR) in first place. This confirms the real role of the Indonesian Islamic banking and finance industry in the world. This achievement that has been achieved can actually be a reflection of how the management of sharia banking legal politics through mergers and digitalization that have been carried out can encourage Indonesia to become the center of Islamic banking in the world.

GIFR is an annual Islamic banking and finance report that was first published in 2010 and has been recognized as the most authentic source of market intelligence for the global Islamic finance industry. The 2019 GIFR is published by the Cambridge Institute of Islamic Finance (Cambridge-IIF) and produced by Cambridge IFA, a UK-based global think tank for the banking and finance industry.[39]

4. CONCLUSION

Through the management of large assets (legal politics of mergers) and improving the quality of human resources, services and networks (politics of digitalization law), Islamic banking in Indonesia, namely Bank Syariah Indonesia is targeting to occupy the top 10 positions in the world's Islamic banking by 2025. This optimism is fundamental, based on the roadmap that has been prepared, the opportunities mentioned above have been prepared by strengthening the business model, through a strategy of cultivating the potential of the domestic market which has not been fully explored. The potential of this country's Muslim community is 200 million, the largest in the world, this is correlated with the development of the halal industry in 2024 which is estimated to reach Rp. 4,800 trillion. Sharia banking is also targeting Micro, Small and Medium Enterprises as one of the main focuses, inherent in the competence of its predecessor bank, namely BRI Syariah. The consumer and retail segments are also the focus of Islamic banking by developing financing for the purchase of houses and vehicles which are the innate competencies of BNI Syariah and Mandiri Syariah. In the development of Islamic banking, with the merger and digitalization of banking services, the application of the theory of *Al-Huriyah Wal Mas'uliyyah* can become a falsification material for the development of *Fiqh al-Mu'amalat*..

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