



Islamic Banking: Dynamics and Comparison, Indonesia and Malaysia

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Abstract. The birth of Islamic banks around 1940 was initially motivated by the desire of the people to have other alternatives besides conventional banks. This thinking is mainly related to the operationalization of conventional banks which in the concept and context of Islamic teachings contain elements that are not in accordance with sharia principles. The elements that do not fit in question are gharar, usury, and maisir. This article aims to reveal the development of Islamic banking in Malaysia and Islamic banking in Indonesia, especially from the regulatory aspect. Based on the systematics, the Islamic Bank Act 1983 when compared with Law Number 21 of 2008 concerning Islamic Banking, there are several similarities and differences.

Keywords: Islamic Banks, Sharia Bank, Comparison.

1 Introduction

The background of establishment of Islamic banking among year 1940 because of the society need an alternative banking besides conventional banking. The idea relates to conventional banking operation in concept and relates to the Islamic Law consist of inconsistent to sharia principles such as *gharar*, *riba*, and *maisir*. Historically, Islamic banking was established is Mit Ghamr, located in Egypt year 1963.

Since April 21 until April 27 of year 1969, located in Malaysia, held on international conference of Islamic States in the world consist of 18 States Members. The result of the Conference concluded several matters about the establishment of Islamic banking, first the profits subject to law of profits and loss sharing. If not, included *riba*, and *riba*, small or big is haram. Second, proposed an Islamic banking which free of *riba* system as soon as possible. Third, meanwhile Islamic banking has not been established, banks may operation in really hardship (force majeure) condition.

Furthermore, year 1975, IDB (Islamic Development Bank) was established in Jeddah, and year 1977, continuously Faisal Islamic Bank was established in Sudan and Finance House was established in Kuwait. In year 1983 Islamic banking Malaysian Berhand was established in Malaysia and year 1992 Bank Muamalat Indonesia was established in Indonesia.

2 Islamic Banking in Malaysia

Firstly, promoted Islamic Financial Institution in Malaysia Financial System is the establishment of Lembaga Urusan and Tabungan Haji (LUTH), named as Lembaga Tabung Haji (LTH) year 1980. In Mei 1981 University of Kebangsaan Malaysia (UKM) held on “Seminar Kebangsaan Konsep Pembangunan Dalam Islam” (Seminar Kebangsaan Development Concept in Islam) asked for the Malaysian Kingdom (Kerajaan Malaysia) provided for Act (Law) to establish bank and financial institution was operated based on Islamic Principles. Related to establishing Islamic Banking both of LUTH / LTH and Badan Kebajikan Islam Malaysia also by Individual (Private Person). Finally, in July 30, 1981 the Malaysian Kingdom inaugurated the National Steering Committee to establishment of Islamic Banking. The Committee referred to the operation of Faisal Islamic Bank in Egypt and Sudan.

The establishment of bank operations in Malaysia, based on interest and not based on interest subject to Companies Act 1965, with highest authority of Bank Negara Malaysia (BNM), as Central Bank based on Provisions of Central Bank Act 1958.

The authority of BNM, include to control and regulate banking operations including conventional banking. The provisions is valid both Islamic Banking and Conventional Banking. Therefore, Malaysia as a State in his Constitution stated Islam as his legitimate (formal) religion, in banking sector operate dual banking system.

Banking system in the word was operated by States according to Hasan [1] consist of 4 (four) operation system. First, The States operate only Islamic Banking system and delete conventional banking system, e.g. Iran, Pakistan and Sudan. Second, The States operate only conventional banking system. Third, The States operate conventional banking system, but also offer banking products based on Islamic Law Principles (Islamic Windows). Fourth, The States operate Islamic Banking System and Conventional Banking System at the same time.

Bank Islam Malaysia Berhad (BIMB) as Islamic Bank in Malaysia, firstly established by Akta Bank Islam (ABI) or Islamic Bank Act (IBA) 1983, dated April 7, 1983 have given the permission Islamic Bank to operate based on Sharia, and directly control the operation of commercial Islamic Banking. IBA 1983 as addendum of Banking Act 1973.

The establishment of MIMB was promulgated in Syarikat Act 1965, dated March 1, 1983 and operated in July 1983 in Kuala Lumpur. The importance of BIMB with motto Progressive, Professional and Mesra, based on Sharia principles operate muamalah banking and financing without riba by profit and loss sharing with the objective based on good deeds, morality, and society based on Islamic doctrine stated in matlamat korporat penubuhan Islamic Banking of Malaysia, at the first phase year 1980, consisting of three bank, such as Malaysian Banking Berhad, Bank Bumi Putera Malaysia Berhad, dan United Malayan Banking Corporation Berhad. The second phase year 1983, consisting of ten such as financial institutions and banking in Malaysia, e.g. Perwira Habib Bank Berhad, Arab Malaysian Finance Berhad, Maybank Finance Berhad Year 1994, Islamic Banking System came from the Skim Perbankan Tanpa Faedah (SPTF) was Islamic Banking System Bank Kerjasama Rakyat Malaysia (Bank Rakyat) pada Mei 1993 firstly informed of Bank Kerjasama Rakyat Malaysia (Bank Rakyat) of Mei 1993.

The Structure of initial Capital of BIBM when establishment totally RM.500.00 million in 1991 was added to become RM.133.405.001, then in 1997 was added to become RM.2.0 milliard BIBM as the entity of bank under the holding company such as BIBM Holdings Berhad. According to Kasim and Abd Majid that the structure of capital was added to become RM.73.8 milliard at the end of year 2006.

The development of Islamic Banking Industry in Malaysia was supported by wide spread office channel with 10 Sharia Business Unit Firm and with 1.167 Branch of Islamic Banking such as Public Islamic Banking dan Sharia Office Unit, with the Customers easily access from whole states. Firstly, in 2007 several new BUS operate in Malaysia, such as Asian Financial Bank (M) Berhad, Bank Muamalat Malaysia Berhad, Hong Leong Islamic Banking Berhad, CIMB Islamic Bank Berhad, RHB Islamic Banking Berhad, Al-Rajhi Banking and Investment Corporation (M) Berhad, Am Islamic Bank Berhad, Affin Islamic Bank Berhad, EONCAP Islamic Bank and Investment Corporation (M) Berhad, Am Islamic Bank Berhad, Affin Islamic Bank Berhad, EONCAP Islamic Bank Berhad, Kuwait Finance House (M) Berhad.

The second Islamic Bank in Malaysia is Bank Muamalat Malaysia Berhad established in October 1, 1999 came from merger of Bank Bumiputera Malaysia Berhad and Bank of Commerce Malaysia Berhad. Based on using SKIM Islamic Banking, Bank Kerjasama Rakyat Malaysia as Bank Rakyat registered as bank which informed and operate Islamic Banking System in Mei 5, 1993. Sharia Principles was used by Bank Rakyat, e.g. al wadi'ah, al mudharabah, al murabahah, al rahn, bay' al 'Inah.

Based on above mentioned, has occurred transformation proses from Conventional Banking System to Islamic Banking System in all step by step. Year 1995, in general partly Bank Rakyat operate full as Islamic Bank and not offering several simplicity like at Conventional Bank. Iltizam to make sure that Islamic Banking operation by Bank Rakyat. based on muamalat principles.

Commitment to strengthen Islamic Banking in Malaysia fully supported by BNM to arrange Landscape Financial in Malaysia. Year 2005 BNM established International Financial Service Board (IFSB) has published the guidance for who offering Islamic financial services (International Islamic Financial Services) as Guiding Principles of Risk Management. Year 2006 BNM established Malaysian Institute Financial Center with task to arrange strategies in positioning Malaysia as Strategies State to developed and expanded Islamic Financial. Then, Year 2009 best effort to realize Malaysia as Center for Global Islamic Banking promulgated Central Bank Act (CBA). The New provisions give the opportunities for BNM to do cooperation with Government Institution, Legal Entities, Superintendent Authority or international organization and Supranational to promote Malaysia as Center for International Islamic Financial. Other role of BNM to established the Secretariat, Committee to support the Government, take efforts, facilitate, give financing to expand and promote Malaysia as Center for International Islamic Financial.

To strengthen Islamic Banking System in Malaysia, to measure actions such as to arrange for (i) planning of finance sector; (ii) program of economic transformation; (iii) Islamic Finance; (iv) connectivity with other parties; (v) connectivity banking system with other non-financial institution (IKBB), (v) strategies to minimize risk related to

assets and liability, (vii) program of sustainable financing for small business-man; (viii) to expand various product Islamic banking based up on Sharia contract.

3 Sharia Bank in Indonesia

Banking legislation in Indonesia pasca Independent Day, firstly regulated in Law No.14 of 1967 concerning the Fundamental Banking. After 25 years The Law was replaced by Law No.7 of 1992 concerning Banking (as called UUP 1992).

Then, after reformation the UUP 1992 was amended by Law No.10 of 1998 concerning amendment of Law No.7 of 1992 concerning Banking (as UUP 1998). The legislation arrange and regulated of Banking in Indonesia (as named Conventional Banking). The terminology of Conventional Banking is differed of the development of next legislation of banking and the validity of Law No.21 of 2008 concerning the Sharia Banking (named as UUPS 2008). Based up on the reality, since 2008 Indonesia is operating dual banking system, practically operate two different banking system in a country and same time. First, operate Conventional Banking System based up on UUP 1992 and UUP 1998, whereas the second, Sharia Banking System based up on UUPS 2008.

The consideration of UUPS 2008 stated that, establishment of UUPS 2008 to support the objectives of national development to reach the justice of the society and to fulfill the needs of Indonesian society more and more increase to Sharia Financial Institution. The configuration of UUPS 2008 consist of 13 Chapter and 70 Article as legal formal based for business activity of operational Sharia Bank with special and specifically compare with Conventional Bank. The special and specifically are to fulfill and comply with the Sharia Principles in doing business activity.

Karim [2] said that the establishment of sharia bank as effort economic Sharia since year 70 decade. The handicap from politic factor, e.g. established sharia banking mentioned as built an Islamic State. BMI established after ICMI cooperation with MUI. Firstly, established Sharia Banking was regret because Act (Law) does not support banking system. No bank without interest. Finally BMI was established

Syahdeini [3] said that the banking condition of financial crisis in 1997, several conventional bank want to self-convers from General Bank becomes sharia bank or established branch offices doing business based on Sharia principle. Conventional bank at time financial crises very buried. Banking buried in Indonesia because of negative spread, bank must pay high interest of time deposit about 62% pa, other hand credit interest (new or outstanding credit) about 35% pa.

The regulation related to Sharia Banking, such as: (i) Government Regulation No. 70 of 1992 concerning General Bank; (ii) Government Regulation No. 71 of 1992 concerning Bank Credit People (BPR); Government Regulation No. 72 of 1992 concerning bank based on profit sharing principle. Based on profit sharing principles. Then, regulation for profit sharing principles. The Regulation of Sharia Banking was followed up by Bank Indonesia

According to Letter of Decision of Board of Director of Bank Indonesia No. 32/33/KEP/DIR concerning General Bank. Letter of Decision of Director of Bank Indonesia No. 32/34/KEP/DIR concerning General Bank based on Princip Sharia Principal and Letter of Decision of Director of Letter of Decision of Bank Indonesia No. 32/36/KEP/DIR concerning Bank Credit People base on Shariah Principle. Then, Regulation of Bank Indonesia No. 2/7/PBI/2000 concerning Giro Wajib Minimum in Rupiah and Foreign Valuta for General Bank which doing business base on Sharia Principle; Regulation of Bank Indonesia No. 2/8/PBI/2000 concerning Money Market among bank base on Sharia Principle; and Regulation of Bank Indonesia No. 2/9/PBI/2000 concerning Certificate Wadiah Bank Indonesia (SWBI).

4 Legislation Comparison

The objectives of legislation comparison between the Islamic Bank Act 1983 in Malaysia with UUPS 2008 in Indonesia to find out, analyze and comprehend the similarities and the differentiations both legislations. Used methods to find out, analyze and comprehend the similarities and the differentiations both legislations mentioned to compare based on the systematics. Systematics is used according to attachments of the act (law) such as Title, Preface, Contents, Closing, and Explanation.

Based on systematics as mentioned above, the comparison between IBA 1983 with UUPS 2008 such as:

Pay close attention to both two legislations provide Islamic Banking in Malaysia and Sharia Banking in Indonesia, if compare based on systematics there are seen the similarities and the differentiations. In general, it is seen several similarities and differentiations from both the legislations based on contents govern but in the different placement.

About Title. The similarity of both legislations, include the title above and number. Legislation Islamic Banking in Malaysia with topics Laws of Malaysia Act 276 Islamic Bank Act 1983, whereas Sharia Banking in Indonesia, the topics Undang-Undang Nomor 21 Year 2008 about Perbankan Sharia (Law No.21 Year 2008 Concerning Sharia Banking).

About Preface. The similarity of both legislations, include mentioned board made/arranged/promulgated. In Malaysia by Kingdom / Royal / Raja. whereas in Indonesia by President as Head of State.

The differentiations both legislations about the placement and promulgation of act (law). In Malaysia places at the preface. Whereas Indonesia places at last (at the end) of Lembaran Negara. Other differentiation, at the preface is legislation in Malaysia not mentioned consideration of philosophy, sociology and legal as legislation in Indonesia.

The consideration include legal underlying to establishment of regulation. The differentiations at the opening of substantial regulated and included. Islamic Banking in Malaysia, at the legislation include the outline of the substantial regulated. The outline is called Arrangement of Sections. Whereas, legislation in Indonesia not include the outline look like in Malaysia. Furthermore, another differentiation inclusion of phrase

“with One God’s Mercy” in the opening of legislation in Indonesia, whereas at legislation in Malaysia not included that phrase.

At body text of content of each legislation in general has the similarity, e.g. explanation, permission, controlling and ownership. The differentiations, the main not regulated in Islamic Banking legislation in Malaysia, whereas is regulated in Indonesian legislation, e.g. legal basis, types of business activities, confidentiality of banking, settlement of disputes including the authority of institution, legal sanction, both administrative nature and penal nature.

Based on the differentiations that Islamic Banking legislation in Malaysia pure administrative nature. As mentioned at the opening legislation stated that the Act (Law) objective to give the license more regulate nature. Whereas UUPS 2008 which become legal bases for Sharia Banking in Indonesia. not only regulate substantial (material) for certain matters. The certain matters e.q. types of business activities and the sanction to violation of the rule (law) based up on UUPS 2018. Other differentiations is legislation of Islamic Bank in Malaysia not include the Closing of the legislation and not include the explanation of the legislation. Otherwise, in Indonesia, including UUPS 2008 the provisions regulated them related the Closing and the Explanation of the legislation.

References

1. Hasan, Z.: *Perlaksanaan Sistem Perbankan Islam Di Malaysia: Perspektif Undang-Undang*. University Sains Islam Malaysia (2008).
2. Karim, A.: *Bank Islam*. PT Rajagrafindo Persada, Jakarta (2008).
3. Syahdeini, S.R.: *Perbankan Islam dan Kedudukannya Dalam Tata Hukum Perbankan Indonesia*. Pustaka Utama Grafiti, Jakarta (2007).

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