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SOME DEMANDS TOWARDS ESTABLISHMENT FOR ISLAMIC BANKING LAW

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Introduction

Laws are made or designed by man (man-made) is only intended to regulate the life of human beings as members of society, not as individuals, to such so-called secular law. The worldly law established to submit to serve the needs of society, and therefore the law is subservient to society. In the law of regulations, rules relating to private law but norms are not called “moral”, “morality” or “decency”. In this case, the law is the law worldly as a result of the process of human life in society, as expressed by Cicero that “where there is a community there is no law”

1 Muhammad Muslehuddin, Philosophy of Islam and The Orientalists, (Kualalumpur: Publishing, 1995).
(Ubi societis ibi iux)².

In the course of the establishment of Islamic banking laws as will be the national law, many collisions occur politics surrounding. National law is a form of Islamic banking products by the government policy towards the establishment of Islamic banking law in Indonesia.

To establish and foster national law treated certain legal politics. Indonesian national law politic, subjects set in the Outlines of State Policy, elaborated further by the minister of justice of the Republic of Indonesia to implement, have established an institution (now) named National Law Development agency (BPHN) or Babinkumnas. Through coordination undertaken by these bodies, is expected in the future will come true one national law in our country³.

Once approved and enacted, Act No. 21 of 2008 on the Law of Islamic Banking, Islamic law has now become part of the positive law applicable to all citizens regardless of religion in Indonesia with what he holds. This law is based on the ideas explored and interpretations of the scholars of that contained in the Quran and Hadith and that serve as guidelines with respect to the elements of Islamic culture alive in Indonesian society.

The emergence of Islamic banking law was heavily influenced by various aspects of the charges. There are at least five demands which led to the birth of Islamic banking among other demands of the state ideology, the demands of religion as the majority of the biggest religious, political demands of power/conflict of interest, the demands of the political economy, and social and cultural demands. From the various causes of the birth of the Islamic banking law will be explored from the perspective of Islam.

The Demands of Ideology

Indonesia with the philosophical basis of Pancasila and the precepts of the first mentioned, “Belief in God Almighty”, indicates that the country is the country that is based on religion. This factor indicates a particular relationship with religion is Islam. For that Islam teaches his people to always serve and worship the Almighty God who created man.

Factor this ideology demands that demand should be established a law that regulates the life of the banking law in accordance with Islamic values. As described in the Quran, “And I (Allah) created not the Jin and humans except they should worship Me (Alone).” (Q.s. al-Dhariyat [51]:56);

This verse indicates that all activities are carried out by humans and jinn should be based on the command of Allah, and solely to serve him, including pure worship mabdal and ghayr mabdal or deal with. These activities should be governed by the rules set forth in a statute or law. This is so that people do not get out of their moorings or bond has been set Allah.

Then another verse which invites people so all we worship a God who has created the human interests and not the interests of God so that they become people enjoy life in peace and happiness. In The Quran described, “O mankind! Worship your Lord (Allah), who created you and those who were before you

an admonition from his Lord and stops eating ribā (usury) shall not be punished for the past; his case is for Allah (to judge), but whoever returns (to ribā (usury)), such are the dwellers of the fire-they will abide therein. Allah will destroy ribā (usury) and will give increase for ṣadaqah (deeds of charity, alms, etc.) And Allah likes not the disbelievers, sinners. O you who believe! Be afraid of Allah and give up what remains (due to you) from ribā (usury) (from now onward), if you are (really) believers. (Q.s. al-Baqarah [2]: 275-276, 278)

Second, surah ʿAlī Ṭiman below explain to people who believe that does not take usury doubled and for people who have been eating for immediate pious to Allah, so good luck, “O you who believe! Eat not ribā (usury) doubled and multiplied7, but fear Allah that you may be successful.” (Q.s. ʿAlī Ṭiman [3]: 130).

Third, then the letter al-Nisāʾ [4] also consists of one word, which explains that for those who devour usury, consuming the property of the vanities of them it will surely get a grievous Penalty, “Say (O Muhammad), “Truly, my Lord has guided me to a straight path, a right religion, the religion of Ibrahim (Abraham), Hanīfah (i.e. the true Islamic Monotheism—to believe in one God (Allah i.e. to worship none but Allah, Alone) and he was not of al-Mushrikin.” (Q.s. al- Nisāʾ [4]: 161).

Forth, the latter in surah al-Rūm letter regarding usury, consists of one word, which points out that Allah gives a comparison between usury and usury charity where it will not add to the hoards of people who commit usury, while the charity will provide additional abundant, as well as reward and the pleasure of Allah:

And that which you give in gift (to others), in order that it may increase (your wealth by expecting to get a better one in return) from other peoples property, has no increase with Allah, but that which you give in zakah seeking Allahs countenance then those, they shall have manifold increase. (Q.s. al- Rūm [50]: 39).

Likewise, in Hadith explicitly ban on usury8:

From Abū Saʿad Ra., recounted, “On one occasion, Bilal came to the holy Prophet. Bring Barni dates. Then the Prophet asked him, “Where’s dates? Bilal replied, Kurma us inferior because it’s my exchange with the two hanging hanging these dates for the food of the Prophet”. Then the Prophet said, “This is called usury. You do not ever do it again. If you want to buy dates (which was nice), first selling its date (which is not good), and then with the money buy selling it a better date.” (Hadith narrated by Muslim)

From Jābir Ra. Said, “Messenger of Allah, cursing ribā eaters, who told devour usury, ribā certificate maker clerks and witnesses. According to him, they are the same (sin).

After assessment against usury, it turns out, in addition to sin for violating the ban or the provision of Allah, also impact on the economy brings huge implications on human life. Implications include: First, society as a customer facing uncertainty, the results of the company's credit taken can not be predicted

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7 Referred to destroy ribā is destroy property or to negate his blessing. And is meant to foster charity is to develop the property have been issued donate or multiply the blessings.

with certainty. While he is still obliged to pay a percentage form by taking certain amount of money that remains above the principal amount of the loan. In addition, it will further burden the customer as to the determination of the percentage of interest will be multiple times the percent of the remaining loan term of the loan. Thus, in a certain period can occur any time the amount to be refunded customers doubled from principal.

This situation is contrary to the provisions of Allah, which is the point that only Allah can know something is going to happen in the future, humans will not be able to predict, it is described by Allah in the Quran surah Luqman:

"Verily, Allah is with Him alone is the knowledge of the Hour, and He sent down rain, and knows what is in the womb. And no one can know (for sure) what will be earned tomorrow. And no one can figure out where on earth he would die. Surely Allah is knowing, All-aware." (Q.s. Luqman: 31-34)

Second, application of the system resulted in the exploitation rate (extortion) by the rich against the poor. Money/capital controlled by the wealthy are not channeled into productive ventures that can create jobs for the community, but it’s actually a huge capital to unproductive interest credit. In addition, the application of the system of interest would lead to bankruptcy of enterprises, and in turn could lead to cracks domestic life, if the borrower is not able to repay the loan and interest. The Quran explain that wealth should not only rotates on rich people only, but should be circulated to all human beings on this earth.

Third, the system of interest would not be able to eradicate poverty, because the bank with less interest provide opportunities to the poor, to expand its business in a more sustainable economy. But instead of poor people as customers increasingly soulless consumerism and higher dependence to the bank. If the credit runs out for the interests of the consumer, directly taking credit again continuously. Even the various bank lines of credit do so in the end they will be in debt interest increases. The banks are now said to be successful in his efforts to equitable distribution of income, as institutions continue to guarantee the flow of interest payments from borrowers sources continuously towards creditors.

Islamic economics should ensure that the work of each individual. And verify the Muslims not as a recipient of alms (mustabiq), but that should be giving alms or zakah (Muzakki). In the Quran, confirmed the division of zakah in order to ensure the life of the poor:

Al-Sadagát (here it means zakah) are only for the fujani (poor), and al-masakin (the poor) and those employed to collect (the funds), and for to attract the hearts of those who have been inclined (towards Islam), and to free the captives, and for those in debt, and for Allahs cause (i.e. for Mujahidoon-those fighting in the holy wars), and for the wayfarer (a traveller who is cut off from everything), a duty imposed by Allah. And Allah is All-Knower, All-Wise. (Q.s. al-Tawbah [9]: 60)

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9 That is the man can not know with certainty what will be earned tomorrow or ever will get, however they are required effort.
Similarly, the Hadith of the Messenger of charity, that hands on is better than the hand below:

From Abu Hurayrah, he said, said the Prophet, "At best alms is what is left of the rich. The hand over was better than hand over. Begin (giving alms) from the yoke. One woman said, "If you feed me, and if you divorce me". The servant said, "give me a meal and bid me to work". And the child said, "Give me to eat up (no) one sad (because) I do."13

As described above, the system is not able to eradicate poverty rate. Finally, the Indonesian people will always depend on the state. While the state does not have the ability to maintain and nurture its people out of poverty, because the management of the bank or the economic system by using the system of interest, not profit-sharing system. Islam guarantees for the efforts and needs of a living human being. It is described in the Quran, "And no (moving) living creature is there on earth but its provision is due from Allah. And He knows its dwelling place and its deposit14 (in the uterus, grave, etc.). All is in a Clear Book (al-Lawh al-Malīḥ, the book of decrees with and distribute sakāh; (4) Convert. No hope infidels to Islam and those who are new to the faith of Islam is still weak; (5) Freeing slaves. Covers also to release the captive Muslims by infidels; (6) People in debt. Who owes due to interests that are not immoral and can not afford it. As for those who owe to maintain the unity of Muslims paid the debt to the charity, even though he can afford it; (7) In the way of Allah (sabil Allāh). That for the purposes of the defense of Islam and Muslims. Among interpreters have argued that it sabil Allāh includes common interests such as establishing schools, hospitals and others; (8) People who are on the way which is not immoral experiencing tribulations along the way.

13 Hadith narrated by al-Bukhāri, Muslim, Aḥmad, and Ibn Mājah from A'isha.

14 According to some commentators is the abiding place here is the world and the hereafter is storage. and according to some commentators the other purpose is abiding place, and where the coccyx is intended uterus. Allah. (Q.s. Hūd [11]: 6).

The Demands Political Power

General Suharto was a good Muslim, but he did not agree with the politics based on religion as it was championed by politicians NU students. However, due to various considerations, one of which is because the majority of Indonesia's population is Muslim, it would not be easy for him to reject not just against NU.15

In addition, because the interest is considered to be the interests of the Muslims, then any reason to keep the integrity of the nation and state unity, the brotherhood should prevail, as the Quran explains that fellow Muslims are brothers, "The believers are nothing else than brothers (in Islamic religion). So make reconciliation between your brothers, and fear Allah, that you may receive mercy. (Q.s. al-Ḥujurāt [49]: 10)

Demands of power politics or conflict of interest, the commodity used as a booster to reach Muslims with the approval of the bank's operations are based on the guidance of the Quran and Sunnah, let alone unity as adhesive brotherhood in Islam should prevail.

To strengthen brotherhood among Muslims must be accompanied by a gentle, in accordance with the guidance and hope that the Quran that matters of war and other world matters, such as politics, economics, sociology and others:

And by the Mercy of Allah, you dealt with them gently. And had you been severe and...

The meaning Yang reptiles here are all God's creatures animate.

15 Mochtar Mas'oed, Ekonomi dan Struktur Politik, 130.
harsh hearted, they would have broken away from about you; so pass over (their faults), and ask (Allah) forgiveness for them. And consult them in the affairs. Then when you have taken a decision, put your trust in Allah, certainly, Allah loves those who put their trust in Him⁴⁶. (Q.s. Āl īmārān [3]: 159).

This Prudence, which is later by President Soeharto used to embrace Muslims as well as encouraging the establishment of Sharia bank.

The Demands Political Economy

The Quran explain that, was originally a counsel against the capitalist-materialist Qurūn prophet who lived in the time of Moses. Whereas in the previous paragraph we are told that Qurūn hoard wealth that had warehouses, so that to carry the key required warehouse only the strong force. Repeatedly his people posing a threat not to brag. However, Qurūn replied haughtily, saying that wealth is derived from science. He forgot that Allah punish those who hoard their wealth.

Then we are told that Qurūn wearing a seductive splendor of faith who are easily influenced by worldly luxuries. In the next paragraph, it is mentioned that the person who is knowledgeable is more honoring character of the malignancy and the material and prefer the divinity of the worldly deception. As described in the Quran, which means the following:

But seek, with that (wealth) which Allah has bestowed on you, the home of the hereafter, and forget not your portion of legal enjoyment in this world, and do good as Allah has been good to you, and seek not mischief in the land. Verily, Allah likes not the mujāsidin (those who commit great crimes and sins, oppressors, tyrants, mischief-makers, corrupts). (Q.s. al-Qaṣāf [28]: 77).

Indonesia’s economic circumstances at the time was uncertain, then the presence of Islamic banking to bring fresh, at least give hope for the future of the national economy.

The Social and Cultural Demands

In accordance with national development objectives Indonesia to achieve the creation of a just and prosperous society based on economic democracy, the need to develop an economic system which is based on values of justice, solidarity, equity, and utilization in accordance with Islamic principles. The Quran has taught that Islamic economic system must be based on the values of justice and solidarity (Q.s. al-Ḥujūrāt [49]:13).

Then the Quran also provide the basis of the importance of living with helping each other, helping each other help do not follow the desires and deviate from the truth, and distort the facts and words or decline to do justice (Q.s. al-Nisā [4]:135).

Then in the next verse of the Quran explained that the we will not be able to live alone. Therefore, it must help each other to help in the good but not the bad, “Help you one another in al-Birr and al-Taqwā (virtue, righteousness and piety). But do not help one another in sin and transgression. And fear Allah. Verily, Allah is Severe in punishment.” (Q.s. al-Mā’idah [5]: 2).

Closing Remark

Islamic banking law dug by Islamic values contained in the Qur’ān and Sunnah. To that
end, the law of Islamic banking is part of the religion of Islam that applies to Muslims wherever he is, whatever the nationality. While the national law is the law applicable to a particular nation, in a particular national state. In the case of Indonesia, national law also means law established by Indonesia after Indonesia's independence and apply for Indonesian people, especially the citizens of the republic of Indonesia, instead of colonial law. Thus, Islamic law is used now instead of colonial law.

The establishment of Islamic banking laws influenced by several factors. The dominant factor of course, the religious factor. This is due to the majority of Indonesia's population is Muslim. With the factor demands of society, both national and international community, thus born Islamic banking in Indonesia.

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