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Introduction

Indonesia is a country with a population of 230 million, 80 per cent of which are Muslims, thus making it the largest country in the world with a Muslim population. For historical and political reasons, Indonesia does not identify itself as an Islamic country but rather bases its political, legal and social institutions on the principles of Pancasila or Five Pillars of the State. Although there are several laws relating to Islamic law in relation to family, succession, property and lately Islamic banking and finance as well as the Islamic Courts (known as Religious Court or Peradilan Agama), their existence is recognised by the principles Pancasila. This means that Government involvement in Islamic religion is limited to aspects provided for by the laws. As such, non-governmental organisations manage and sponsor Islamic education, mosque, payment of zakat (religious tithe), administration of waqf (religious charity endowment) fatwa (religious opinion or edict given by a specialist in Islamic law) etc. Nonetheless, Islam is an important force in the government and society in Indonesia and this is manifested through political, social and intellectual movements and dynamics that are constantly influencing and reshaping the policies and decisions of the Government. In fact, there have been intense debates especially after the Reformasi Period as to whether Islam can replace the Pancasila as the state ideology. As a result, Islam has gained increasing influence in the Indonesian state’s affairs especially through the introduction of provincial regulations, which provide for the application of Islamic law and the role of fatwa in social and public affairs especially issued by Indonesian Islamic Scholars Council or Majelis Ulama Indonesia (MUI).

In contrast to other Muslim countries or even non-Muslim countries with a Muslim minority such as Singapore and Thailand there is no state Mufti (a specialist in Islamic law) in Indonesia. The role of a Mufti or the task of issuing fatwa to the Muslim public and Government alike is managed by Muslim organisations through their fatwa committees. Historically, the issuance of fatwas by these committees goes back to colonial years with the formation of Nahdlatul Ulama (NU) through its fatwa committee known as Lajnah Bajah al-Masâ'il (Research Committee) in 1926. This was followed by Muhammadiyah in 1927 through its Majelis Tasyah (Preference Committee). Muhammadiyah was actually established earlier than NU in 1912 whose main idea to propagate the use of ijtihâd by directly referring to al-Qur'an and al-Sunnah. Other main organisations that have their own fatwa committee are Sarakat Islam (SI) with its Majelis Syuro (Consultative Committee), Persatuan Islam (PERSIS) with its Dewan Hizbi (Investigation Committee) and Al-Jam'iyyatul Wasiyati with its Dewan Fatwa. The main task of these fatwa committees is to study the problems associated with religion of Islam in general and specifically to provide religious rulings based on Islamic Shariah.

In order to ensure that the needs of fatwa are accepted not only at the national level especially to the Government, a central body is therefore required. With the blessing of the Indonesian Government, all of the main and important Islamic organisations in Indonesia as mentioned above agreed to establish MUI in July 26, 1975. Soon after that, MUI also established a special committee known as Komisi Fatwa or Fatwa Commission to study and issue fatwa. Since the formation of the Committee, it has issued many fatwas pertaining to religious rites, marriage, culture, politics, science, medicine and lately on economic transactions. All these are now published in the following compilations:

1. MUI Fatwa Collection (Kumpulan Fatwa MUI),
2. MUI Fatwa Compilation (Himpunan Fatwa MUI), and

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Islamic financial banking laws in Indonesia

When the Government of Indonesia introduced some measures to reform the financial and banking system through a policy known as Paket Kebijakan Oktober or PAKTO (October Policy Package) in 1988, Muslim scholars seized the opportunity to propose to the Government to introduce a bank based on Islamic principles. The idea was not successful since the law at that time still required every financial institution to charge interest in their banking operations and products, a requirement, which is against Islamic prohibition on riba. It was through a seminar in Bogor from August 18 to 20, 1990 that revisited the issue with more louder and specific demands for the establishment of Islamic bank.

In just matter of days after Bogor seminar, from August 22-25, 1990, MUI in its Fourth National Congress in Jakarta recommended the formation of a working group, known as MUI Banking Team, to study the feasibility of establishing Islamic bank in Indonesia. The formation of this working group was facilitated as the proposal, as recommended above, was publicly supported by the then Indonesian President Suharto and the inclusion of the representatives from the Ministry of Finance and Central Bank of Indonesia.

Among the tasks of this team was to approach and consult with all the stakeholders involved in the area of banking and finance. Finally, after two years of consultative work with the relevant parties, the Indonesian Parliament passed Law No.7/1992 on Banking, which allows quite cautiously, commercial banks in Indonesia to offer banking products based on the principle of profit sharing (known Prinsip Bagi Haul).

This late and cautious introduction is due to the position of Indonesia Government not to be seen directly involved with any religious domination. Apart from this, there is a general feeling or rather indifferent attitude of the ruling elites in the past that the practice of modern banking is not something that Islamic religion views with disapproval. This is also a result of a relaxed understanding of the Shariah rulings not just in mu'amalat or transaction but also in other matters.

In a survey conducted in the island of Java by Bank Indonesia (being...
the Central bank of the country) published in 2001, it was found that 35 per cent of the respondents had the view that charging of interest as practiced by the conventional bank is not against Islamic prohibition of riba. This is not a surprise since one of the largest Muslim organisations, Nahdhatul Ulama in its 13th Congress in 1938 affirmed that bank interest is permissible when and if it brings benefit to the borrower. Interestingly, this stance remains unchanged until today. While the Mohammadiyah prior to that in its 1936 national congress only declared bank interest as doubtful or shubhat.

Another argument to explain this late entry is lack of regulations and laws to stimulate the development of Islamic banking and finance in Indonesia. For example, the concept of trust used in the establishment of special purpose vehicle company for the issuance of Islamic securities or sukuk is not properly addressed until the passing of Law No.19/2008. Claims by a certain writer that the protracted development of Islamic banking in Indonesia is partly due to its legal system inherited from the Dutch is probably less than true as some international financial centres, such as Japan and China, also use the same legal system as Indonesia. For this reason and slow progress of Islamic banking in Indonesia, MUI decided to decree a fatwa in 2004 which declares interest charge or payment by the Bank is a form of Ribah Nashih (deferment) and urges all Muslim to use Islamic banking services instead. A study carried out shortly after this fatwa was issued found that it had some positive impact on the performance of the Islamic bank. This despite the fact that the fatwa was initially resisted by certain circles in Indonesia by arguing the fatwa was released without proper consultation on the effect and ability of the financial sectors to fulfil the sudden demands from Muslims.

Law No.7/1992 is actually a general law on banking and did not specifically provide for the establishment of Islamic bank as it was the case in other countries such as Malaysia (through the Islamic Banking Act 1983). As mentioned above, it only provides an opportunity to the conventional banks to offer banking business based on the principle of profit sharing (art.6(M)). Two government regulations relating to Banking released almost immediately after the passing of Law No.7/1992 provide the opportunity. Obviously, the term profit sharing is not precisely the same to the Islamic banking terminology of profit and loss sharing. To clarify this ambiguity Law No.7/1992 (art.6(M)) and its Elucidation explains that the term is to include Islamic bank or Shariah bank. Similarly the Elucidation on Government Regulation on Banking Based on Profit Sharing Principle (No.72/1992) explains profit sharing as to mean muamalah based on Shariah in conducting bank activities and operations. Non-reference to the term Islamic banking or Islamic principle in text of the law is to avoid controversy or criticism on the realisation that religion is not a state business. This is similar to the situation in Malaysia where the introduction of the Islamic banking windows or counters in 1993 which was initially known as Interest Free Banking Scheme. Nonetheless, the Malaysia case is more for political reason than business as not to attract complaints or raise fear among non-Muslim in the country on the implementation of Islamic law.

As to make the use of terms much more precise, Law No.7/1992 on Banking was amended by Law No.10/1998 by replacing the term profit sharing from the previous law with the term Shariah. Substitution of such a term is interestingly coincident with development in Malaysia where the Interest-Free Banking Scheme, as mentioned above, was renamed Islamic Banking Scheme in 1997 through the amendment to the Banking and Financial Institutions Act 1989. The amended law of No.10/1998 although still deals with matters relating to Islamic banking in a piecemeal treatment, but it added some substantial provisions. Thus, banking based on the Shariah principle is defined by art.1(13) of the Amended Law as rules of agreement based on Islamic law between bank and other party in a saving fund or financing, or other activities in compliance with the Shariah, among others based on the principles of profit sharing (mudarabah), joint capital (musharakah), sale of goods with profit (murabahah), leasing proper (ijarah) and leasing or hiring with option to buy (ijarah wa istisna’). This is nothing new in this provision and it is in fact an endorsement to the ideologue, in first two principles, and current practice, in the latter two, of Islamic banking worldwide.

Finally, after 16 years of existence of Islamic bank in Indonesia, a full-fledged legislation on Islamic Banking was introduced in 2008. The law was passed by Indonesian Parliament on June 18, 2008 and enacted in the National Gazette of the Republic of Indonesia Number 94 and Supplement to State Gazette of the Republic of Indonesia Number 4867 and known as Law No.21/2008 on Shariah Banking (Undang-Undang Perbankan

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21 This Act has now been repealed and replaced by a new legislation, Islamic Financial Services Act 2012 which covers both banking and Islamic Insurance or Takaful sectors.
22 Regulation on Commercial Banks No.70/1992—art.5 para.(3) and Regulation on People Credit Banks No.71/1992—art.6 para.(2).
24 State Gazette of the Republic of Indonesia Year 1998 No.182, Supplement to State Gazette of Republic of Indonesia No.3790.
Indonesian society and preparatory steps taken by the judiciary to train Shariah court judges in matter of modern banking and finance.

Conclusion
Indonesia, despite being a state based on the five principles of Pancasila, the social and economic movement in the country on the other hand is moving towards reasserting Islamic values in its affairs. Absorption of fatwa and the recognition on the role fatwa committee in respect of Shariah banking and finance coupled with other favoured policies indicate the strong undercurrent of the masses and government of this reassertion. This is natural to Indonesia as the process of Islamic assimilation is organic and a balance between the economic and political needs, culture and social and national aspiration. In other jurisdictions, the fatwa or resolution of the Shariah Committee or Council in matter of banking and finance is largely limited for the private use of financial institutions under which these committees has been established. Indonesia has advanced a step ahead by making that its Shariah banking and financial laws and regulations should be compatible with the fatwa of its Shariah Committee. From Islamic point of view, this process is conceivably restrictive since it limits the independence of fatwa petitioner or mustafii to choose the most convincing fatwa. However, in business, commerce and trade especially in banking and finance, uniformity and standardisation is of paramount importance. This is probably what Indonesian fatwa attempts to achieve.