



International Islamic Comparative Law Study

ALSA LOCAL CHAPTER UNIVERSITAS SRIWIJAYA



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Relevance of Islamic Law Principles in Indonesian Sharia Bank (BSI) Operations

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ALSA Local Chapter Universitas Sriwijaya

Issue

Indirectly, the terms "banking" and "bank" are almost the same terms but in fact both have different meanings but are still interrelated. Juridically it is stated in the Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking that what is meant by banking is everything related to banks, including institutions, business activities, as well as methods and processes. in carrying out its business activities. Then what is meant by a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the people at large. Banks are considered to be able to carry out various forms of financial activities that are often carried out by the public, such as saving money, sending money, and providing credit to investment.

Banks in Indonesia are divided into two types, namely conventional banks and Islamic banks. Conventional banks are banks that carry out conventional banking activities, while Islamic banks are banks that carry out banking activities based on the principles of Islamic law. Based on research in 2013, conventional banks are in great demand by the people of Indonesia because conventional banks are considered to have better performance results than Islamic banks. However, along with the increasing number of conventional bank customers, the working system of conventional banks has become an important concern for customers, namely related to returns and profit sharing between customers and the bank. Conventional banks use the interest system, while Islamic banks use the principle of profit sharing and risk sharing. At first the interest system was considered to be able to advance the community's economy, but in fact the interest system actually made it difficult for customers. Why don't Islamic banks use the interest system? Because the interest system is very contrary to the teachings of Islamic law where the interest system is classified as an act of usury, Islamic banks strictly prohibit and forbid the system.

Along with the increasing Muslim population in Indonesia, there is also a lot of modernization in the economy, including Islamic banking. In 2020, Deputy Minister of State-Owned Enterprises (BUMN) II, Kartika Wiroatmodjo said that the growth of Islamic State-owned Bank customers increased to 13.8%, equivalent to twice the growth of conventional



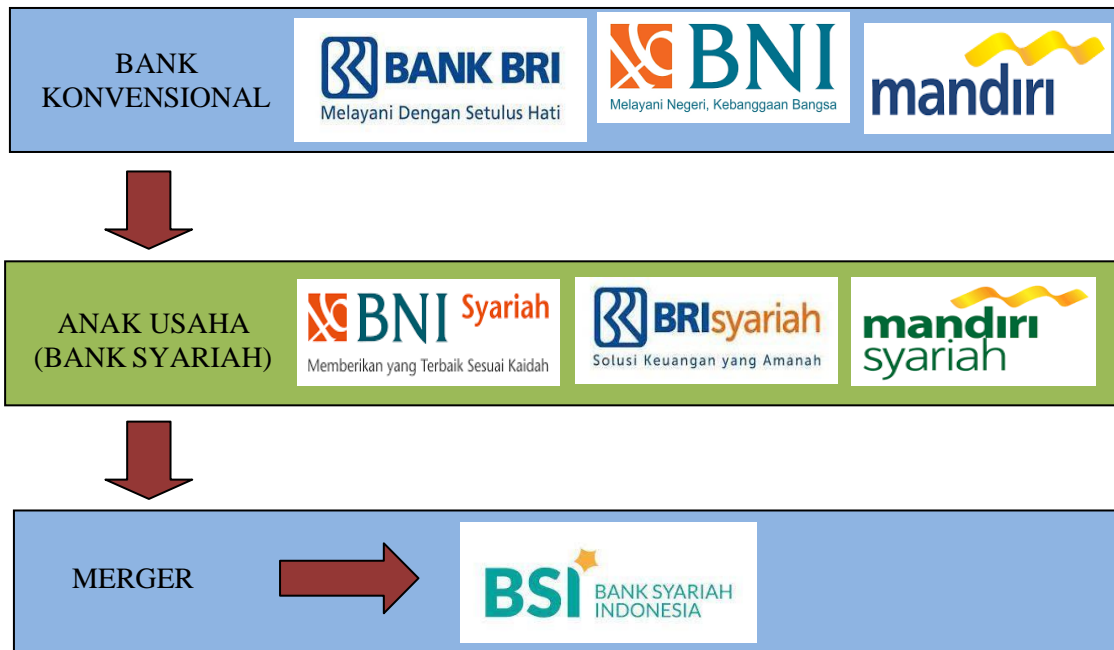
bank customers. In this situation, it is considered that customer interest in using Islamic banks has increased significantly. Until finally on February 1, 2021, three state-owned sharia bank plates consisting of PT BRI Syariah Tbk (BRIS), PT Bank BNI Syariah (BNIS), and PT Bank Syariah Mandiri (BSM) agreed to merge into one entity, namely Bank Syariah Indonesia (BSI) with the company name PT Bank Syariah Indonesia Tbk. Since PT Bank Syariah Indonesia Tbk officially started operating, the interest of Islamic bank customers has increased and gradually the Indonesian people and conventional bank customers have switched to using Islamic banks through Bank Syariah Indonesia (BSI). Seeing this situation, a question arises for all of us, how is the banking system implemented by Bank Syariah Indonesia (BSI)? Is the working system in accordance with the principles of Islamic law? Therefore, the phenomenon of the embodiment of this law must be an issue that the public and banking customers pay attention to.

Rules

- Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law of the Republic of Indonesia Number 7 of 1992 concerning Banking.
- Law of the Republic of Indonesia Number 21 of 2008 concerning Islamic Banking.
- Fatwa of the National Sharia Council-Indonesian Ulema Council Number 02/DSN-MUI/IV/2000 concerning Savings.

Analysis

As explained above, in 2020, the growth of Islamic State-owned Bank customers increased to 13.8%. Until finally on February 1, 2021, three state-owned sharia bank plates consisting of PT BRI Syariah Tbk (BRIS), PT Bank BNI Syariah (BNIS), and PT Bank Syariah Mandiri (BSM) agreed to merge into one entity, namely Bank Syariah Indonesia (BSI) with the company name PT Bank Syariah Indonesia Tbk. The establishment of the Indonesian Islamic Bank (BSI) marks the rapid development of the Islamic economy in Indonesia with total assets of around 239.56 trillion rupiah. Indonesia is a country with the largest Muslim population in the world. Many banks set up separate sharia business units. Therefore, it is no stranger that almost all Islamic banks in the country are actually subsidiaries of conventional banks that already exist, for example, Islamic banks owned by SOEs, including PT BRI Syariah Tbk (BRIS) is a subsidiary of PT Bank Rakyat Indonesia. (Persero) Tbk, PT Bank BNI Syariah (BNIS) is a subsidiary of PT Bank Negara Indonesia (Persero) Tbk, and PT Bank Syariah Mandiri (BSM) is a subsidiary of PT Bank Mandiri (Persero) Tbk.



Bank Syariah Indonesia (BSI) in carrying out its banking activities applies sharia principles. Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law of the Republic of Indonesia Number 7 of 1992 concerning Banking states that sharia principles are the rules of agreements based on Islamic law between banks and other parties to deposit funds and or finance business activities, or other activities. which are declared in accordance with sharia, including financing based on the principle of profit sharing (mudharabah), financing based on the principle of equity participation (musharakah), the principle of buying and selling goods with a profit (murabahah), or financing of capital goods based on the principle of pure lease without choice (ijarah), or with the option of transferring ownership of the goods leased from the bank by another party (ijarah wa iqtina). The same thing is also stated in the Law of the Republic of Indonesia Number 21 of 2008 concerning Islamic Banking that sharia principles are Islamic legal principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia.

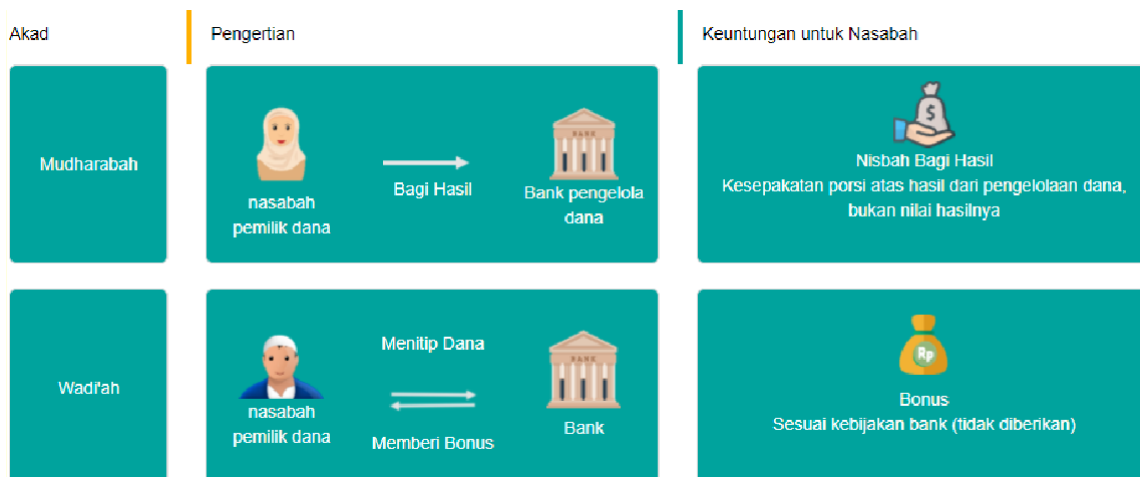
There is no need to doubt the sharia principles applied by Bank Syariah Indonesia (BSI). This is supported by the presence of technological advances that can provide information openly through the website or official website of Bank Syariah Indonesia (BSI) such as bankbsi.co.id and bsm.co.id. The website or page explains the work system implemented in every product and service offered by Bank Syariah Indonesia (BSI) ranging from savings, financing, investment, digital banking, and customer information services to information on selling prices and buying prices of gold and listed also related to sharia education regarding the



company PT Bank Syariah Indonesia Tbk.

One of the services of Bank Syariah Indonesia (BSI) is a savings service. According to the Fatwa of the National Sharia Council-Indonesian Ulema Council Number 02/DSN-MUI/IV/2000 concerning Savings, savings are divided into two (2) types. First, savings that are not justified by sharia, namely savings based on interest calculations. Second, savings that are justified by sharia, namely savings based on the principles of Mudharabah and Wadi'ah contracts. According to the Law of the Republic of Indonesia Number 21 of 2008 concerning Islamic Banking, a contract is defined as a written agreement between a sharia bank or sharia business unit and another party that contains rights and obligations for each party in accordance with sharia principles. The same law also explains the principles of mudharabah and wadi'ah contracts. Mudharabah contract is a cooperation agreement between the first party (malik, shahibul mal, or customer) as the owner of the funds and the second party ('amil, mudharib, or sharia bank) acting as fund manager by dividing the business profits according to the agreement stated in the contract. Meanwhile, wadi'ah contract is defined as a contract of safekeeping of goods or money between the party who has the goods or money and the party who is entrusted with the aim of maintaining the safety, security, and integrity of the goods or money.

Based on the fatwa and the law, the fact is that Bank Syariah Indonesia (BSI) itself has implemented the principles of mudharabah and wadi'ah contracts in its various savings services. The following is a brief description of the principles of mudharabah and wadi'ah contracts that have been implemented by Bank Syariah Indonesia (BSI) :



Sumber: webform.bsm.co.id



Conclusion

Based on the description of the analysis above, it can be concluded that Bank Syariah Indonesia (BSI) in carrying out its banking work system has implemented the principles of Islamic law. One of the concerns is the savings service system that applies sharia principles and is free from interest calculations, namely by applying the principles of mudharabah and wadi'ah contracts. The enactment of the Law of the Republic of Indonesia Number 21 of 2008 concerning Islamic Banking coupled with a fatwa issued by the National Sharia Council-Indonesian Ulema Council (MUI) which has provided the basis or general guidelines for Islamic banks in Indonesia, especially for Indonesian Sharia Banks (BSI). in order to provide services in accordance with sharia principles for customers.



Bibliography

Anggraeni, Rina, "Minat Menabung di Bank BUMN Syariah Meningkat 2 Kali Lipat",

<https://economy.okezone.com/read/2020/12/09/320/2324730/minat-menabung-di-bank-bumn-syariah-meningkat-2-kali-lipat>, diakses 15 Desember 2021.

Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia Nomor 02/DSN-MUI/IV/2000 tentang Tabungan.

Idris, Muhammad, "Memahami Cara Kerja Bank Syariah yang Diklaim Bebas Riba dan Halal",

<https://amp.kompas.com/money/read/2021/02/01/153157026/memahami-cara-kerja-bank-syariah-yang-diklaim-bebas-riba-dan-halal>, diakses 30 Desember 2021.

Indonesia, Bank Syariah, "Bank Syariah Indonesia", <https://www.bankbsi.co.id/>, diakses 16 Desember 2021 & 5 Januari 2022.

Madyawati, Ulfi Rana Nurmala, 2018, Analisis Perbandingan Kinerja Bank Syariah dan Bank Konvensional di Indonesia, Skripsi, Program Studi Manajemen Fakultas Ekonomi Universitas Islam Indonesia, Yogyakarta.

Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 7 Tahun 1992 Tentang Perbankan (Lembaran Negara Republik Indonesia Tahun 1998 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 3790).

Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 Tentang Perbankan Syariah (Lembaran Negara Republik Indonesia Tahun 2008 Nomor 94, Tambahan Lembaran Negara Republik Indonesia Nomor 4867).



Indonesian Islamic Banking Challenges In the Era of the Industrial Revolution 4.0

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1. Problem

A great Scottish thinker once said, “Man is a bargaining beast: no other animal does this” indeed it is! Homo sapiens is the only species that can work in large numbers, especially they can create very complex economic systems but on the one hand, are also able to run them.

For millions of years, starting from the discovery of the first money by the Lydians in 1000 BC, which is now a territory of Turkey, many great economic and social thinkers were born and contributed their thoughts to the economic system and Islam is no exception. Islam is the only religion that provides an economic system that comes directly from the religion itself.

Apart from the rampant economic system of liberalism-capitalism, the Islamic banking economic system can still survive and compete in society, not least in the western world. Islamic banking in Indonesia itself has undergone changes and developments to adapt to the times and the needs of society, but in the 21st century, a new challenge has emerged that this economic system inevitably has to face, namely the Industrial Revolution 4.0 in the form of the emergence of artificial intelligence.

2. Regulation

Law, sociology, and economics are inseparable things, seeing the Industrial Revolution 4.0 in banking dynamics, especially in this case Islamic banking. Because the Industrial Revolution 4.0 comes with technological disruption where artificial intelligence can compete, even defeating human cognitive abilities. This is where the law is present to provide an answer to this dilemma.

The global world is faced with this dilemma and requires global cooperation in the form of political globalization (which includes the economy) in the form of political dynamics in countries even big cities must have a greater impact on solving global problems¹, and this also concerns the problem of Islamic banking. , because this economic system is also used

¹ *Ibid*



in several European countries, the regulations are:

- a. Challenges of the Industrial Revolution 4.0 in the banking sector
- b. Challenges of Indonesian Islamic banking facing the Industrial Revolution 4.0

3. Analysis

3.1 A Brief History of Islamic Banking in Indonesia

In the homeland, Islamic banking first appeared in 1992, namely Bank Muamalat.² In 2000, conventional and sharia-based banking opened sharia business units within their banks to 6 units, in addition, the number of BPRS (Islamic People's Credit Banks) has reached 86 units and continues to grow from time to time which is also influenced by other players. new players, the increase in the number of Islamic bank branch offices, as well as the opening of Islamic windows in conventional banks.

Within the economic system, of course, there are also special aspects to ensure the proper operation of the economic system and the Islamic banking system is no exception. There are 3 aspects contained in the Islamic banking economic system, and the three aspects are; philosophical aspects, legal aspects, and potential and prospect aspects.

3.2 Legal Basis for Islamic Banking in Indonesia

The legal basis governing sharia banking regulations in Indonesia first appeared in 1992 in the form of Law no. 7 of 1992, 6 years later, Law no. 10 of 1998. This legal basis gave rise to the forerunner of a strong sharia legal basis, the latest and which continues to apply today is Law No. 21 of 2008, this regulation which regulates operations, types of business, provisions of sharia principles, and so on to enforce and maintain the shariabanking system itself.

3.3 Differences in the Islamic Banking Economic System

Every economic system has its characteristics and differences, and in this case, Islamic banking is no exception. What characteristics and differences make Islamic banking different from other economic systems? If we refer to Law no. 21 of 2008 several things must be avoided by the implementation of Islamic banking, which is also a characteristic and differentiator of this economic system from other systems, the things

² *Ibid*

that must be avoided are; usury, Maisie, gharar, and the last is haram.

3.4 Industrial Revolution 4.0 Challenges

The industrial revolution first started in the 19th century, when James Watt first invented the steam engine to increase productivity and save time to produce commodities for the owners of capital in England, then 2 centuries later in the 21st century, we are then faced with the challenge of revolution. industry 4.0. with the advent of artificial intelligence. Several things will be a challenge in facing this big wave, namely; smart technology, the areas affected by this technological disruption, employment, and finally investment.

Bill Gates founder of Microsoft applications once said something in 1994, "Banking is essential; banks are not" This quote is becoming more and more relevant from year to the year considering that we are currently fighting against the technological disruption that is increasingly sadistic in all aspects of our lives, including the banking world.

In this industrial revolution, people can make investments, withdraw money, and send money via their smartphones, without the hassle of going outside to find an ATM or visiting a bank. There are so many features that can be presented in applications that we can easily download. But what impact can all this sophistication have on Islamic banking in Indonesia?

Drs. Asep Mulyadi, MM as Deputy Regional Head of BNI Syariah West Region said, "One concrete example is that transactions in the era of the industrial revolution 4.0 involve more cyberspace (e-money). Facing the industrial revolution 4.0, Islamic banks must innovate to remain involved in the wheels of the Indonesian economy." But what have we done to meet this challenge? Given that this is the first time a banking system has been entered by an unreal entity called an algorithm that can easily regulate the economy because it can overpower human cognitive abilities or someone can use this artificial intelligence for personal gain.

We can analyze the three challenges of the industrial revolution 4.0 with the legal basis of Law No. 21 of 2008, then there are several things that we can draw straight, namely;

- Has Islamic banking issued regulations to protect aspects that are avoided in Islamic banking, given that the industrial revolution 4.0 will take banking more time into the



virtual world. The virtual world is a world without boundaries where there are no boundaries, are they able to protect their consumers?

- Is Islamic banking able to protect the personal data of users of the applications they provide on the phone smart users? I remember that applications like this require filling in personal data.
- Is Islamic banking able to monitor every investment made by users through cyberspace? How can banks be sure the investment does not involve prohibited items? And if there is a regulation that requires that users have to take photos of what they want to invest in or what they want to invest in, will Islamic banking be able to guarantee that the investment is safe, considering that someone could hack the photos.

4. Conclusion

Based on the description that I have explained above, it is clear that Islamic banking is experiencing the challenges of the industrial revolution 4.0. This industrial revolution will make everything in human life more effective, considering that human life will be made easier by algorithms, but on the one hand, it also presents a big problem and has become a global problem, namely the protection of personal data.

Islamic banking has not issued regulations to prevent the three problems above, and it is hoped that Islamic banking will be able to issue these regulations as soon as possible. On the one hand, the government must not remain silent, the government must discuss this in discussion forums, and if necessary openly. Given that the government may have to issue this regulation in the form of a law, or maybe if necessary include this in the constitution?

What we need to remember is that our constitution is not a political constitution but an economic one because it is clear that articles 33-34 of the 1945 Constitution regulate the economy. In the 1940s this was a strange thing, why? Because the countries that usually regulate the economy in the constitution are the only countries that have communism and socialism, but after communism collapsed more and more countries set their economy in the constitution. Seeing this is not impossible if personal data protection is also included in the constitution, especially in terms of economic regulation, considering that the law is dynamic, and the law will always follow the demands and developments of the times. And if this scheme is successful, then this model can also be applied by other countries and even globally to protect the personal data of Islamic banking users.



Bibliography

1. Yuval Noah Harari, 21 Lessons For 21st Century (Manado: Penerbit Global Indo Kreatif, 2018), hlm. 136.
2. Muhith Abdul, September 2012, Sejarah Perbankan Syariah, Attanwir, Vol. 1 No. 2, <http://ejournal.kopertais4.or.id/pantura/index.php/attanwir/article/view/3108/2226>
3. Admin, Landasan Hukum Bank Syariah Yang Wajib Diketahui, <https://shafiec.unu-jogja.ac.id/2021/03/landasan-hukum-bank-syariah-yang-wajib-diketahui/>
4. Admin, Tantangan dan Peluang di Era Revolusi Industri 4.0, <https://www.uir.ac.id/tantangan-dan-peluangdi-era-revolusi-industri-4-0/>



Islamic Comparative Law Study : Islamic Capital Market In Building Public Trust With Investment

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Issue

Generally, economic activity is an activity that cannot be separated from social life itself. Since economic activities are useful for fulfilling daily life, people are required to be able to manage their finances in order to meet their needs, there are many ways to manage finances, one of which is by investing.

Investment is generally divided into conventional investment and sharia investment, where the investment itself can be done in the capital market. In Indonesia, regarding sharia investment, there are numerous references for Muslims to invest, which is in accordance with the Fatwa of the National Sharia Council which regulates sharia investment activities in Indonesia is Number: 40/DSN-MUI/X/2003 dated October 4, 2003 concerning the Capital Market and General Guidelines for the Implementation of Sharia Principles in the Capital Market Sector has determined the criteria for investment products in accordance with Islamic studies.

The capital market has become something important in this era of globalization. The capital market is one of Indonesia's needs, not only as a place to raise capital, but also as an alternative investment. However, even though there has been a fatwa from the National Sharia Council, there are still obstacles in Indonesia, including how the society still considers that investing is unsafe, lacks of education, and even considers all investments as usury and incompatible with the life of the Muslim community. Therefore, this article will explain how the actual position of sharia investment in terms of the Islamic religion, and what steps must be taken in order to increase the trust of the Muslim community, especially in investing.

Rules

1. Al-Quran
2. Hadith
3. Ijma
4. Qiyas
5. Law No. 7 of 1992 About Islamic Banking



6. Law No. 10 of 1998,
7. Law No 21 of 2008.
8. Law Number 19 of 2008 concerning State Sharia Securities (SBSN)
9. Fatwa of the National Sharia Council No: 40/Dsn-Mui/X/2003
10. Fatwa of the National Sharia Council No: 69/Dsn-Mui/Vi/2008 concerning State Sharia Securities.
11. Compilation of Sharia Economic Law (Khes) Consecutively Consists of Four Books, namely;
“(1) Legal Subjects and *Amwal* Consists of 3 Chapters (Articles 1-19); (2) The contract consists of 29 chapters (Articles 20-673); (3) *Zakat* and Grants are Divided into 4 Chapters (Articles 674-734); (4) Sharia Accounting Consists of 4 Chapters (Article 735- 796)- (Supreme Court Ri, 2008)”.

Analysis

The development of the sharia economy is currently experiencing quite good growth, we can see this from the development of sharia banking, sharia insurance, and the sharia capital market following the development of a sharia-based economy. Likewise, with investment which is the main activity in the capital market. There are two investment concepts that are different from conventional and Islamic investments. The concept of sharia investment itself is based on the principles of morality and justice which make it the basis of value, and also the concept of sharia investment itself must avoid things that are forbidden, such as: *Maisyir*, *Gharar* and *Riba*. And as we know, investing in conventional concepts is closer to gambling, because the return and risk always move in the same direction. So that conventional investment is contrary to the teachings of Islam itself.

The capital market is one of the pioneers of today's economy, especially the traditional economy. The development of the capital market is a sign of national prosperity, and the existence of the capital market is considered very important. This spirit is the driving force for academics, practitioners, and the general public to build a sharia capital market mechanism to create a sharia capital market. However, it cannot be denied that the capital market has played an important role in complicating the current world economy. In it, various economic behaviors manifest themselves as extraordinary human creativity and innovation. This is surprising because economic transactions take place with large dynamic values through the capital market and are always changing from second to second during the process (Nurhayadi 2008).



The Islamic capital market itself can be interpreted as a capital market that applies sharia principles in economic transaction activities and regardless of things that are prohibited by religion, such as: *Maisyir*, *Gharar* and *Riba* and others. If it contains elements that are forbidden, then the investment cannot be qualified as a sharia investment. In Indonesia, the Islamic capital market was officially launched on March 14th 2003, along with the signing of the MOU between BAPEPAM-LK and the National Sharia Council – Indonesian Ulema Council (DSN – MUI). Although officially launched in 2003, Islamic capital market instruments have been present in Indonesia since 1997.

According to Achsien (2000), the first developer of Islamic indices and equity funds such as mutual funds was the United States, after the launch of The Amana Fund by The North American Islamic Trust as the world's first equity mutual fund in 1986. In February 1999, Dow Jones launched the index. Islamic market. First. The Dow Jones Islamic Market Index (DJIMI) is part of the Dow Jones (DJGI) global index group. This proves that the United States was the first to carry out Islamic capital market activities.

The Dow Jones Islamic Market Index (DJIMI) covers stocks from 34 countries, covering 10 economic sectors, 18 market sectors, 51 groups and 89 industry sub-groups. Several countries included in the Dow Jones Islamic Market Index (DJIMI) include the Dow Jones Islamic Market Index Europe (DJIEU), Dow Jones Islamic Market Index Malaysia (DJIMY), Dow Jones Islamic Market Index AS (IMUS), Dow Jones Islamic Market Index. Japan Market Index (DJIJP). This Islamic stock is one of the stocks with a fairly high price compared to Islamic stocks in other countries.

The term investment or capital market itself is not mentioned in classical Islamic literature, but as an economic activity, investment or capital market can be categorized as buying and selling activities (*al-bay*). Thus, to find out whether investment activity in the capital market is something that is permissible or not according to Islamic teachings, it is necessary to know what things are forbidden by Islamic teachings in buying and selling relationships so that we know whether investment or capital market activities are forbidden or not. so that it can be qualified as a sharia investment.

The basic concept of sharia investment in the Indonesian capital market when referring to the Qur'an and Hadith as the main source of Islamic teachings, it can be seen some provisions regarding this matter in Surah An-Nisa verse 29:³

3 Q.S. (5) : 1.



"Oh you who believe, do not eat each other's wealth in a vanity way, except by way of commerce which is carried out with mutual consent between you..."

Basically the verse explains the mudharabah principle, because buying and selling (al bay) can be categorized as an investment activity or capital market, it has the same concept, where in the buying and selling process there should be no property acquired in a vanity way, because it is forbidden. , the concept also applies to sharia investment, which may not contain elements of falsehood in it.

Based on the Qur'an, Hadith and the opinions of fiqh experts (Islamic teachings), there are several things that are prohibited or forbidden, and should not have anything to do with sharia investment itself, where if there is such a thing then the investment is not allowed or forbidden, the following are prohibited : 4

1. Haram because of the object (substance). The prohibition of muamalah activities is caused because the object or substance that is the object of the activity based on the provisions of the Qur'an and Hadith has been prohibited/forbidden. These objects include: pigs, khamr (liquor), animal carcasses, and blood.
2. Haram apart from the object (substance). The definition of the prohibition of this activity is an activity whose object from the activity is not objects that are forbidden because the substance means that these objects are objects that are allowed (halalized). However, the object becomes forbidden due to the elements: *tadlis*, *taghrir/gharar*
3. *Riba*. Occurrence of *ikhtikar* and *bay najash*
4. The contract is invalid. As is the case with the prohibition because other than the substance, in this activity the object used as the object is an object based on the substance which is categorized as halal (allowed), but the object becomes haram because the contract or agreement that forms the basis for the transaction is prohibited/forbidden by Islamic teachings. These agreements, among others: *Ta'aluq*, there is an agreement in which the actors, objects and periods are the same.

From these provisions, it is clear that sharia investment must not contain elements that are unlawful in substance, unlawful other than because of the object, usury, and the contract is invalid. this will have implications for the prohibition or prohibition of investment in Islamic teachings. This is prohibited in order not to cause harm to the parties in investing.

4 Study Team on Sharia Investment in Indonesian Capital Market, Study on Sharia Investment in Indonesian Capital Market, Jakarta, Ministry of Finance of the Republic of Indonesia Capital Market Supervisory Agency for Capital Market Efficiency Improvement Project Fiscal Year 2004, pp.12-13.



The Fatwa of the National Sharia Council (DSN) which regulates sharia investment activities has its own characteristics in conducting sharia investments, including in the capital market sector. The limitation is in the form of conformity of an investment product to the principles in accordance with DSN Fatwa Number: 40/DSN-MUI/X/2003 article 3 paragraph 2, namely:⁵

"2. Types of business activities that are contrary to the Sharia Principles as referred to in Article 3 number 1 above, among others:

- a. gambling and games that are classified as gambling or prohibited trade;
- b. conventional financial institutions (ribawi), including banking and insurance conventional;
- c. producers, distributors, and traders of illegal food and beverages; and
- d. producers, distributors, and/or providers of goods or services that damage moral and harmful.
- e. invest in Issuers (companies) which at the time of transaction (ratio) the company's debt to usury financial institutions is more dominant than the capital;"

Based on these provisions, investment products in the capital market that comply with sharia principles can be in the form of:⁶

1. Sharia Stock

Sharia shares are proof of ownership of a company that meets the criteria (according to sharia principles) and does not include shares that have special rights. There is no difference between shares in the Islamic capital market and the conventional capital market. However, shares traded in the Islamic capital market must come from issuers that meet sharia criteria.

Investment products in the form of stocks are basically in accordance with Islamic teachings. When referring to the mixed theory, Islam recognizes the existence of a *syirkah* or *musharaka* contract, which is a collaboration between two or more parties to conduct a business in which each party deposits a certain amount of funds, goods or services.⁷ As for the types of *syirkah* in fiqh, namely: *'inan*, *mufawadhah*, *wujuh*, *abdan*, *mudharabah*. The distribution is based on the type of deposit of each party and who among the parties manages the business activities.

In its development itself, many countries have determined the limits of a stock that can be categorized as Islamic stock. Like Malaysia, the United States through the

⁵ Fatwa DSN No: 40/DSN-MUI/X/2003 article 3 number 2

⁶ Study Team on Sharia Investment in Indonesian Capital Market, Study on...Op.Cit., at. 16-18

⁷ Ibrahim, I. M. (2013). "Mekanisme dan Akad Pada Transaksi Saham di Pasar Modal Syariah." *Journal of Islamic Economics and Law*, Vol. 3, No. 2.



Dow Jones Islamic Index. However, several world financial institutions have set limits for the category of Islamic stocks, including: Wellington Management Company, Citi Asset Management Group, Islamic.com and others.

2. Sharia Bonds

Bonds are long-term debt securities issued by issuers to bondholders with the obligation to pay interest in a certain period and pay off the principal at maturity to bondholders.

Based on this understanding, it can be said that bonds are a product that is not in accordance with Islamic teachings. According to Islamic teachings, a debt or debt is included in *tabarru* (virtue) activities, so it is forbidden to get something from these activities. For example, if someone borrows Rp. 10,000,000.00, then the person providing the loan may not ask for excess funds from the loan.

This explanation is very contrary to the understanding of bonds that are known today. This is because bonds are usually used for business or business activities. In the teachings of Islam itself, business activities are categorized as *tijarah* activities. The *tijarah* mechanism itself is, where the issuer who owns the object for lease leases the object to the investor (as a lessee), but the issuer then leases the object back so that the issuer is obliged to provide fixed fees (fees) to investors. Judging from current practice, investors rent out their own property, investors rent out things that are not theirs (because there is no transfer of ownership), besides that this mechanism is only made to outsmart lending and borrowing transactions. (in addition) by utilizing contracts that can be used to prevent transactions that are actually prohibited. Logically, if someone borrows funds for business activities, the lender is entitled to a portion of the profits from the business.⁸

As a solution to this problem, DSN through fatwa Number: 32/DSN-MUI/IX/2002 on September 14, 2002 regarding Sharia Bonds has redefined the meaning of bonds themselves. The definition of sharia bonds in the fatwa is a long-term security based on sharia principles issued by issuers to sharia bond holders which requires the issuer to pay income to sharia bond holders in the form of profit sharing/margin/fees and repay bond funds at maturity.

3. Sharia Mutual Funds

Mutual funds are a tools used to collect funds from the investor community to be invested in securities portfolios by investment managers. Sharia mutual funds are

⁸ Salmah Said. "Pemikiran Ekonom Muslim Tentang Pasar Modal Syariah. *Jurnal Al-Fikr*." Vol. 16. No. 2 of 2012



mutual funds that operate according to the provisions and principles of Islamic sharia, both in the form of contracts between investors as property owners (*shahib al-mal/rabb al-mal*) and investment managers, as well as investment fund managers. as representative of *Shahib al. -mal*, as well as between investment managers as representatives of *shahib al-mal* and investment users.

In Indonesia, the DSN Fatwa Number: 20/DSN-MUI/IX/2000 dated April 18, 2000 concerning Guidelines for Investment Implementation for Sharia Mutual Funds has explained that sharia mutual funds are mutual funds that operate according to the provisions and principles of Islamic sharia, either in the form of the contract between the investor as the property owner (*shahib al-mal/rabb al-maal*) and the investment manager as the representative of the shahib al-mal, as well as between the investment manager as the representative of the shahib al-mal and the investment user. Based on this, the limits for products that can be used as portfolios for sharia mutual funds are investment products in accordance with Islamic teachings.⁹

After the public's trust in investment is good, the next step is how to attract people to start being aware of investing in several ways, in general this can be done by general introduction in sermons or recitations, because considering the dynamics of Muslim life, so also with In financial matters, the Muslim community also needs to encourage themselves to invest, where the sermon or recitation will only be a general appeal in order to build public confidence in the importance and lawfulness of investing.

Another action that can be taken is to promote it with social media, and also students with investment galleries, by encouraging students, they will become agents to spread good and right investments.

When there is public trust in investment, the next step is how to attract people to be literate to invest, namely by doing several ways:

1. Introduction of sharia investment through preachers and recitations

The introduction in question is through preaching at the time of the sermon or recitation, this aims to increase public trust in investing, and also change the mindset of people who assume investment is haram, with this delivery it will

⁹ Obiyathullah Ismath Bacha. Derivative Instruments and Islamic Finance: Some Thoughts for A Reconsideration. *International Journal of Islamic Financial Services*. Volume 1. 1999.



provide changes for the Muslim community in terms of understanding about investment, and this will encourage the Islamic economy to be more advanced.¹⁰

However, the introduction of the investment made by the preacher is only limited to religious and economic knowledge, does not make this a means of promotion,¹¹ but as a means of knowledge to provide an understanding for the public of the importance of investment and the religious legal status of investment.

2. Social media and campus are investment-attracting media

Social media and campuses are media that can disseminate understanding about investment effectively and efficiently, because social media has a wide scope and campus is a place to discuss investment in terms of science and practice, where students can later disseminate their understanding to their closest friends and colleagues. even their families, where they become the most important agents in disseminating the investment itself. by forming such as investment galleries, investment consulting and others.¹² The purpose of doing so through social media andalso campuses are so that sharia investment does not become a taboo subject, and the public is also aware of investment, for the sake of economic progress in general as well as sharia economy.

Conclusion

Investment in general is a term with several meanings related to finance and economics, to use (money) to make more money than something that is expected to increase in value. The term relates to the accumulation of a form of asset with the hope of obtaining a profit in the future. Investment is also known as investment. Sharia investment is sharia-based investment that uses sharia instruments in its implementation. There are several types of investments based on timeframe, risk and process. These things need to be known to ensure the accuracy between the reasons and how to invest. The difference between Islamic and conventional investment is that Islamic investment uses a profit-sharing system (*mudharabah*) while conventional uses an interest system. Especially for stocks, the profits obtained are in the form of capital gains and dividends.

¹⁰ Nana Herdiana "Abdurrahman, *Manajemen Strategi Pemasaran...*", 25 2018.

¹¹ Irfan Fahmi, "*Manajemen Strategis Teori dan Aplikasi*", Bandung: CV Alfabeta, 2015.

¹² Irwan Abdalloh, "*Pasar Modal Syariah; Sebuah Pengenalan Dasar Tentang Pasar Modal Syariah*", Jakarta: PT Elex Media Komputindo, 2018.



The development of the Islamic capital market, one of which is supported by the role of various parties, especially in conducting socialization and education. Socialization and education are carried out to the community, both institutions and individuals, and socialization is carried out nationally and internationally. One of the objectives of socialization and education is to increase investors in the capital market. In addition, to increase investor confidence in the Islamic capital market.



Bibliography

Salmah Said. Pemikiran Ekonom Muslim Tentang Pasar Modal Syariah. *Jurnal AlFikr*. Vol. 16. No. 2, 2012

Sutedi, Adrian. 2011. *Pasar Modal Syariah*. Sinar Grafika Offset. Jakarta.

Syekh. H. Abdul Halim Hasan Binjai. 2006. *Tafsir Al-Ahkam*. Jakarta: Kencana.

Tim Studi Tentang Investasi Syariah di Pasar Modal Indonesia. 2004. *Studi Tentang Investasi Syariah di Pasar Modal Indonesia*. Jakarta: Departemen Keuangan Republik Indonesia Badan Pengawas Pasar Modal Proyek Peningkatan Efisiensi Pasar Modal.

Zamir Iqbal dan Abbas Mirakhor. 2008. *Pengantar Keuangan Islam: Teori dan Praktik*, Jakarta: Kencana.

Andri Soemitra. 2009. *Bank dan Lembaga Keuangan Syariah*. Edisi Pertama. Jakarta: Kencana.

Burhanuddin Susanto. 2009. *Pasar Modal Syariah: Tinjauan Hukum*. Yogyakarta: UII Press.

Gunawan , A. (2013). *Analisis Penerapan Prinsip Syariah di Pasar Modal Konvensional (Studi Kasus di Pasar Modal Indonesia)*. Jakarta: Tesis, Universitas Trisakti.

Nasional Indonesia . *Al-Risalah Forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol. 16, No. 1, 95-111.



Sharia Banking Dispute Resolution :
Comparative Study Of Indonesia And Malaysia
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Abstract

In the modern era like today, almost all aspects of life are developing rapidly. Especially in the field of economy where the development of regulations is growing rapidly that they are sometimes left behind. We can also see the developments in this economic field from a legal perspective, for example Sharia Banking Law whose scope is not much different from the national banking law that is used and made by the state. As with any existing law, there will definitely be a dispute, not least in Sharia Banking Law. In this study, we will discuss the comparison between how to resolve disputes in the field of Sharia Banking Law between Indonesia and Malaysia which is a country with a majority of Muslim population. This research uses a qualitative descriptive method.

Keywords: *Sharia Law; Banking; Dispute Resolution.*

A. Introduction

Sharia Banking is a part of the Islamic economic system that has special characteristics and values that focus on *amar ma'ruf nahi munkar*, such as *Ilahiyyah* economy characteristics; morality; humanity, justice, and balance; realizing integrity of Muslims who are *kaffah* and benefit the economic empowerment of the people.¹³ According to one expert in the field of Sharia Banking, namely Dr. Mardani, sharia banking is an activity or business carried out by individuals or groups or business entities that are legal entities and non-legal entities in order to meet commercial and non-commercial needs according to sharia principles.¹⁴ From the definitions above, it can be concluded that the definition of sharia banking is an economic system that originates from Islamic values (Al-Qur'an and Hadith) which are used as guidelines in meeting the needs of every human being in order to maintain their life sustainability.

In the powerless period of the capitalist, socialist, and other economic systems have provided a large gap for economic development within the scope of today's sharia law. The Islamic economic system is considered as one of the alternative solutions to deal with the

¹³ Ali Zainuddin, *Hukum Ekonomi Syariah*, Cetakan II, Jakarta : Sinar Grafika, 3 (2008).

¹⁴ Aan Anshori, *Digitalisasi Ekonomi Syariah*. Jurnal Ekonomi Keuangan dan Bisnis Islam, Vol. 7, No. 1, 4 (2016).



current chaotic economic system. As it is known that sharia banking is an act or business activity carried out according to sharia principles, including: sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and sharia medium term securities, securities sharia, sharia financing, sharia pawn shops, sharia financial institution pension funds, and sharia business.¹⁵

In Law of the Republic of Indonesia Number 10 of 1998 on Banking, it is emphasized that sharia principles are one of the differences between conventional banks and sharia banks. In the aspect of dispute resolution, there are also differences between conventional banks and sharia banks and these differences are very prominent. There are 3 (three) institutions that are competent in handling dispute resolution in the sharia economy, including district courts, religious courts, and arbitration. Meanwhile, if you look at the settlement of sharia economic disputes according to Islamic teachings, there are also 3 (three) methodes, namely peace (*Al- Shulh*), arbitration (*Al-Tahkim*), and justice (*Al-Qadha*) which refers to QS. Al-Nisa 4:128 and QS. Al-Hujarat 49:9.

The development of Sharia Banking is increasing rapidly in various sectors, especially in the undeniable regulatory sector, which requires extra and comprehensive understanding of this matter. The complex and rapid development of the sharia banking has resulted in a variety of sharia economic products and the increase in economic cooperation has certainly made the possibility of disputes even greater. Finally, in 2016, the Regulation of the Supreme Court Number 14 of 2016 on Procedures for Settlement of Sharia Banking Disputes was officially ratified.¹⁶ With this regulation, it is hoped that it can help resolve disputes regarding Sharia Banking in Indonesia.

It is different in Malaysia, Malaysia has established Bank Islam Malaysia Berhad (BIMB) since 1983.¹⁷ Malaysia is considered to have relatively more experience in resolving sharia banking disputes, while Indonesia itself has only started about 1 (one) decade later than Malaysia. Although the developments achieved based on sharia principles in Indonesia are not as great as those of similar business developments in Malaysia, the Islamic finance industry has shown a reality that can be said to be quite good. Malaysia has been seen to be able to

¹⁵ Ahmad Khotibul Umam, S.Ag., M.H., *Hukum Penyelesaian Sengketa Ekonomi Syariah di Indonesia*, Jurnal Pendidikan dan Studi Islam, 2 (2016).

¹⁶ Musyifikah Ilyas, *Tinjauan Hukum Islam Terhadap Musyawarah dalam Penyelesaian Sengketa Ekonomi Syariah*, Jurnal Al-Qadau, 228 (2018).

¹⁷ Agus Triyanta dan Rusni Hassan, *Penyelesaian Sengketa Bisnis Keuangan Islam Melalui Pengadilan di Malaysia dan Relevansinya dengan Indonesia*, Jurnal Hukum Vol. 15 No. 2, 207 (2008).



contribute more to the development of legal instruments and at the same time provide a new face for the development of the sharia finance business.

In a context like this, Indonesia must look at Malaysia's experience which becomes an urgency, because Indonesia is in an elementary stage, where Indonesia is relatively new in an elementary stage which is still entering the era of resolving business disputes through the courts, after 1 (one) decade of trusting the solution is only in the sharia arbitration process. Because the comparison of the settlement of sharia banking disputes in Indonesia and Malaysia is an object of study that is very interesting to discuss, the author raises the title "**Sharia Banking Dispute Resolution: Comparative Study of Indonesia and Malaysia**".

B. Problem Formulation

Based on the background, the following problem formulation can be drawn :

1. How is the sharia banking dispute resolution system in Indonesia and Malaysia?
2. What are the factors that distinguish the resolution of sharia banking disputes in Indonesia and Malaysia?
3. How is sharia banking dispute resolution in Malaysia?
4. What is the role of district courts, religious courts, and arbitration in resolving sharia banking disputes in Indonesia and Malaysia?

C. Discussion

1. Dispute Resolution in Islamic Teachings

Developments in the banking sector continue to grow rapidly, especially sharia banking in Indonesia, which has a population with the majority of Muslim. This has led to an increasing need for the Indonesian Muslim community to accommodate the values and principles that have been taught in Islam. With the increasing needs and users of sharia banking, this certainly causes several disputes to occur. There are several ways of resolving disputes in sharia banking that can be done, but before that we must first know how to resolve disputes when we look at it from an Islamic perspective.

In resolving disputes that occur between humans in various aspects of life, Islam in its teachings has provided several concepts that are used as references to resolve these disputes.

As for Islam, judicial power is divided into three parts, the first is *Al-Qadhâ'* which in fiqh has the meaning of setting the law on a dispute to resolve it fairly and bindingly. The authority of *Al-Qadhâ'* is to settle criminal and civil cases. Then, *Al-Hisbah* which is an



institution formed by the government in order to adjudicate minor violations that do not require to be processed in court. Then, *Al-Mazalim* where the function of this institution is to resolve disputes caused by the arbitrariness of rulers, officials, judges, and others.¹⁸

As for the outside of judicial power, it can be done by the method of peace (*As-Sulhu*) while *As-Sulhu* literally means breaking up a dispute. The parties who want this peace are called *Mushalih*, the object in dispute is called *Mushalih 'anhu*, and the actions committed by one of the *Mushalihs* are called *Mushalih 'alayhi*. Then the next method is arbitration (*At-Tahkim*) where in fact *At-Tahkim* is still part of *Al-Qadhâ'*, the only difference is the procedural. In principle, *At-Tahkim* is a process of resolving disputes by peaceful means in the presence of a third party to resolve disputes between the disputing parties.¹⁹

2. Sharia Banking Disputes Resolution in Indonesia and Malaysia

It should be known that according to the constitution of the State of Indonesia, namely in Article 24 Paragraph (2), it has been mentioned that judicial power is implemented by General Courts, Religious Courts, Military Courts, State Administrative Courts, and the Constitutional Court. This is also reaffirmed in the Law on Judicial Powers No. 4 of 2004 which was later amended by Law no. 48 of 2009.

However, since the enactment of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, other ways have been opened in resolving disputes outside the institutions of judicial power or litigation. As for dispute resolution within the scope of sharia banking, it refers to 3 (three) laws and regulations, namely Article 49 of Law Number 3 of 2006 on Religious Courts, Article 55 of Law Number 21 of 2008 on Sharia Banking, and the Decision of Bank Indonesia Number 9.19/PBI/2007 on Implementation of Sharia Principles in Fundraising and Distribution Activities as well as Sharia Bank Services. Thus, from the existing legal basis, it can be concluded that the settlement of sharia banking disputes is not much different from other civil disputes, which can be carried out through court (litigation) or out of court (non-litigation). It's just that the difference in the solution is also used by arguments from sources of Islamic law.

¹⁸ Rahmat Rosyadi, *Arbitrase dalam Perspektif Islam dan Hukum Positif*, Bandung: Citra Aditya, 29-39 (2002)

¹⁹ Nurul Ichsan, *Penyelesaian Sengketa Perbankan Syariah*, *Jurnal Ahkam*, Vol. 15, No. 2, 233 (2015)



I. Religious Courts

Religious Courts have absolute authority in adjudicating cases related to sharia economics, including sharia banking. This is regulated in Article 49 letter (i) of Law Number 3 of 2006 on Amendments to Law Number 7 of 1989 on Religious Courts. In this article, it is stated in detail about the authority of the Religious Courts in examining, deciding, and resolving cases for people who are Muslim in the fields of: marriage, inheritance, grants, waqf, zakat, infaq, shadaqah, and also sharia bankings. Then, the authority of the Religious Courts was strengthened again in Article 55 paragraph (1) of Law Number 21 of 2008 on Sharia Banking which explicitly stipulates that the settlement of sharia banking disputes is carried out by courts within the Religious Courts. However, Article 55 Paragraph 2 of Law no. 21 of 2008 states that dispute resolution can not only be carried out through the courts, but can be resolved out of court as long as the parties have previously made an agreement or dispute settlement agreement as long as it does not conflict with sharia principles.²⁰ The efforts to settle disputes in sharia banking are as follows:

- Deliberation;
- Banking mediation;
- Through the National Sharia Arbitration Board or other arbitration institutions;
- Through courts within the General Courts.

II. General Courts

Although the authority to adjudicate cases related to sharia banking based on Law Number 21 of 2008 on Sharia Banking lies with the Religious Courts, the General Courts should not be ruled out, because basically the General Courts are also part of the exercise of judicial power. However, in the context of sharia banking dispute resolution, the General Court is aligned with other non-litigation dispute resolution alternatives. This is done to avoid the duality of judicial authority. because if the general court also acts as a litigation dispute resolution route, it will be confusing for the disputing parties if the competence to adjudicate is held by 2 (two) different litigation institutions.²¹

²⁰ Rika Delfa Yona, *Penyelesaian Sengketa Perbankan Syariah di Indonesia*, Economic : Jurnal Ekonomi dan Hukum Islam, Vol. 4, No. 1, 64 (2014)

²¹ Id, P. 78



III. Alternative Dispute Resolution (non-litigation)

As for the parties who want this sharia banking dispute resolution to be carried out outside the court, then they can use several non-litigation dispute resolution channels which of course must be agreed upon in advance by both parties. The examples are as follows :

▪ **Deliberation**

Deliberations or negotiations conducted by the two parties that are in dispute are the first solution that is always carried out by the community in dealing with existing disputes. The deliberation is carried out internally between the bank and the customer only without the participation of a third party. Both parties are trying to negotiate to find an agreement as a solution to the problem.

This is always the first choice for the community because in the management structure of a bank itself, there are usually functional positions available whose main function is to resolve disputes that occur in the banking process, either with customers or with other banks in a familial, efficient, and effective manner. This is evidenced by the small number of sharia banking disputes that have entered the path of arbitration or even court.²²

▪ **Sharia Arbitration**

Arbitration is one way of resolving non-litigation disputes which is based on a written agreement by both disputing parties before and after the conflict or dispute occurs.²³ It should also be noted that not all civil disputes can be resolved by arbitration. Only certain fields have been explicitly stated in Article 5 Paragraph 1 of Law Number 30 of 1999 which reads "Disputes that can be resolved through arbitration are only disputes in the trade sector and regarding rights which according to law and statutory regulations are fully controlled by the parties that are disputing". The trade here can also be interpreted as the banking sector.

As for the Sharia banking dispute, there is an institution that was specifically established to handle these matters. This institution is called the National Sharia Arbitration Board which is autonomous and independent. National Sharia Arbitration Board itself has the authority to resolve fairly and quickly muamalah or civil disputes that arise in the fields of trade, finance, industry, services, and others, which according

²² Id, P. 66

²³ Frans Hendra Winarta, *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Arbitrase Internasional*, Jakarta : Sinar Grafika, 39 (2013)



to legal entities and laws as well as regulations, especially those pertaining to sharia banking, the decision to choose the method of settlement is fully controlled by the disputing parties and then they agree in writing to submit the settlement to the National Sharia Arbitration Board in accordance with the procedures implemented by National Sharia Arbitration Board.²⁴ In addition they can still use assistance from other institutions such as the Financial Services Authority whose legal basis is Law Number 21 of 2011 concerning the Financial Services Authority, which prior to this law was mandated to Bank Indonesia and then in 2014 Bank Indonesia's banking supervision functions, duties, and powers, including the mediation function, were transferred to the Financial Services Authority after the issuance of Financial Services Authority Regulation Number 11/POJK.07/DDI/2014 on Alternative Dispute Resolution Institutions in the Financial Sector which regulates dispute resolution mechanisms. The mechanism is divided into two, namely from internal sharia financial service institutions themselves or from external institutions outside the judicial institution.

3. Sharia Banking Dispute Resolution in Malaysia

Sharia banking dispute resolution in Malaysia is not much different from that of Indonesia. We can see this from the distribution, namely through court or litigation or out of court or non-litigation. It's just that there are slightly differences in the mechanisms and institutions that run them, namely as follows:

A. Civil Court and Sharia Court

In Malaysia, the percentage of sharia banking dispute resolution options is more dominant in choosing the litigation route through the Court. This is due to several reasons, such as the influence of the common law which prioritizes jurisprudence as a legal reference when faced with the same disputes. In addition, in the alternative dispute resolution mechanism, it uses judges from the Court who will act as arbitrators or mediators, which is related to how the flow of dispute resolution is sometimes similar to the Court.²⁵

Then in the jurisdiction to adjudicate, sharia banking disputes in Malaysia are within the competence of the Civil Court, not the Sharia Court. This is based

²⁴ H. Syaikh, M.H.I et. al, *Mekanisme Penyelesaian Sengketa Perbankan Islam di Malaysia dan Indonesia*, Palangka Raya : IAIN Palangka Raya, 55 (2016).

²⁵ Agus Triyanta, Rusni Hassan, Op. Cit, 211

on several juridical arguments, namely: although the term Islamic law is indeed recognized and included in the applicable legal regulations in Malaysia, its application is very limited because it can only be used for parties who are Muslim. As for banking transactions, many people from various religious backgrounds are involved in it.

The second reason is that the financial and banking business problems in Malaysia are regulated in federal legislation, while in state legislation there is still no statutory regulation that accommodates them. Therefore, regulations from the federal government apply nationally. The federal legislation is only bound to the provision that the financial and banking business is included in the civil law regulation. Thus, disputes over sharia banking will automatically fall under the authority of the Civil Court.²⁶

It is different from Indonesia, which has a special arrangement that gives the authority to the Religious Courts to handle sharia banking disputes.

B. Alternative Institution for Resolution of Sharia Banking Disputes in Malaysia

▪ The Ombudsman Skim

This Financial Services Ombudsman has been in effect since 2016 under the auspices of Bank Negara Malaysia. This is also based on the promulgation Islamic Financial Service Act (IFSA). This institution provides free services for disputes between customers and a financial institution in the banking sector, including sharia banking, insurance, capital markets, and money exchange. The dispute that can be submitted has a nominal value of RM250,000.

The mechanism used by the Ombudsman in carrying out his duties is as a counselor, conciliation, adjudication, and arbitration. It should also be noted that the Ombudsman will not serve disputes that have passed the expiration period which according to the law is six years or disputes that have been submitted to the court or to the arbitration institution.²⁷ If the Ombudsman has issued a decision, then it must be complied with by the relevant financial institution, but for customers, the decision is not required to be obeyed.

²⁶ Id, P. 63

²⁷ H. Syaikh, MHI et. al, Op. cit, 65.



▪ Kuala Lumpur Regional Center for Arbitration

The development of arbitration provisions in Malaysia was initially regulated in the Arbitration Act 1952 which followed the British Arbitration Act 1950. Then, in 1972 the Arbitration Act was reviewed and expanded to all states in Malaysia. Finally, in 1980 this Law was amended by adding a chapter which regulates the reduction of international judicial control.

The KLRCA (Kuala Lumpur Regional Center for Arbitration) was founded on the idea of the Asia-Africa Legal Consultative Committee. The KLRCA has its own arbitration rules which are a modified form of the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). This institution is a non-profit and independent institution. KLRCA also helps to resolve financial disputes which include Sharia banking by means of mediation, adjudication and arbitration. As for the period of the examination process until the decision, on average it takes approximately six months. However, this institution is not very attractive to most people who are in dispute because they think that the decision from the Court is stronger and more convincing, so that the percentage of sharia banking cases that are resolved by the KLRCA is very small.²⁸

4. Differences in Sharia Banking Dispute Resolution in Indonesia and Malaysia

1. Sharia Banking Dispute Resolution in Indonesia

Conflicts caused by differences in interests will always develop into a dispute if there are parties who experience losses who express dissatisfaction or concern, either directly or indirectly to the party causing the loss²⁹. Indonesia only applies judicial power which is constitutionally institutionalized which is commonly referred to as the judiciary in accordance with Article 24 of the 1945 Constitution of the Republic of Indonesia. Therefore, it can be concluded that those who have the authority to examine and adjudicate disputes only judicial bodies under the auspices of judicial power culminating in the Supreme Court of the Republic of Indonesia³⁰.

In the legal context in Indonesia, the settlement of sharia banking disputes

²⁸ Id, P.66.

²⁹ Nurul Ichsan, Op. Cit, 231.

³⁰ Syukri Iska, *Sistem Perbankan Syariah di Indonesia*, Yogyakarta : Fajar Media Press, 286 (2012).



can be carried out in 2 (two) channels, namely through litigation and non- litigation. Litigation settlement is the area of competence of religious courts (Article 49 of Law Number 3 of 2006 on Religious Courts)³¹. Meanwhile, non- litigation settlement is divided into 2 (two), namely through arbitration and alternative dispute resolution. Non-litigation dispute resolution is regulated in Article 6 of Law Number 30 of 1999 on Dispute Resolution Mechanisms³². Meanwhile, according to Islam itself, arbitration can be equated with *tahkim* which has the meaning of preventing a dispute. If there are problems or disputes related to property rights, inheritance, and other issues, most of them are resolved by the help of a peacemaker or a referee who has been selected or appointed by each disputing party.

With the issuance of Supreme Court Regulation Number 14 of 2016 on Procedures for Settlement of Sharia Banking Cases which aims to ensure the implementation of sharia banking dispute resolution which is simpler, faster, and less costly. For the handling of sharia banking cases in a simple way, it refers to the Supreme Court Regulation Number 2 of 2015 on Procedures for Settlement of Simple Claims (Small Claims Court) and for handling sharia banking cases in the usual way, still referring to several laws and regulations that are applicable.

2. Sharia Banking Dispute Resolution in Malaysia

Since 1983, which was marked by the early presence of the Islamic finance business in Malaysia, Bank Islam Malaysia Berhad (BIMB) was also established. The jurisdiction of sharia banking dispute resolution falls on a civil court or general court. Islamic finance business is a business transaction that applies the principles of *muamalah* with the following explanations, such as:³³

- a. Islamic law only applies to people who embrace Islam in Malaysia. This is based on the legal regulations in force in Malaysia. However, when it comes to financial transactions or anything related to the economy, many people with different religious backgrounds have to be involved in the Sharia Banking.

³¹ Kelik Pramudya, *Strategi Pengembangan Ekonomi Syariah Melalui Penguatan Fungsi Pengadilan Agama Dalam Penyelesaian Sengketa*, Jurnal Rechtsvinding, Vol. 7 No. 1, 41 (2018).

³² Marhamah Saleh, *Metode Penyelesaian Sengketa Ekonomi Syariah Dalam Perspektif Hukum Islam dan Indonesia*, 32 (2012).

³³ Agus Triyanta and Rusni Hassan, Op. Cit, 210.



- b. Finance and banking matters are regulated in the federal power legislation, which so far there is no regulation on financial and banking business in state legislation. Therefore, the state has not been able to regulate financial and banking matters, so the regulation refers to the state (federal government) that applies nationally. Meanwhile, federal (national) legislation is bound by provisions stating that financial and banking businesses are included in civil law regulations, therefore automatically disputes over Sharia Banking businesses fall under the authority of civil court. Malaysia needs the development of a more conducive and strong legal instrument. Malaysia must also strive for a better sharia banking dispute resolution mechanism in terms of procedures and/or legal substance that regulates it. The hope in the future is that Malaysia can truly comply with sharia elements, both in terms of contract implementation practices and in terms of dispute resolution. Malaysia must implement transparency in the Islamic finance business in order to create *outputs* that are competitive, efficient, and receive worldwide recognition and approval.

D. Conclusion

Sharia Banking is a part of the Islamic economic system that has special characteristics and values that focus on *amar ma'ruf nahi munkar*, such as *Ilahiyyah* economy characteristics; morality; humanity, justice, and balance; realizing integrity of Muslims who are *kaffah* and benefit the economic empowerment of the people. Sharia banking is also an act or business activity carried out according to sharia principles, which include: sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and sharia medium term securities, sharia securities, sharia financing, sharia pawn shops, sharia financial institution pension funds, and sharia businesses.

The resolution of sharia banking disputes in Indonesia and Malaysia is clearly different. However, the resolution of sharia banking disputes is not much different from other civil disputes, which can be done through court (litigation) or out of court (non-litigation). It's just that the difference in the solution is also used by arguments from sources of Islamic law. Dispute resolution within the scope of sharia banking refers to 3 (three) laws and regulations, namely Article 49 of Law Number 3 of 2006 on Religious Courts, Article 55 of Law Number 21 of 2008 on Sharia Banking, and the Decision of Bank Indonesia



Number 9.19/PBI/2007 on Implementation of Sharia Principles in Fundraising and Distribution Activities as well as Sharia Bank Services. Thus, from the existing legal basis, it can be concluded that the settlement of sharia banking disputes is not much different from other civil disputes, which can be carried out through court (litigation) or out of court (non-litigation). It's just that the difference in the solution is also used by arguments from sources of Islamic law.

Although the term Islamic law is indeed recognized and included in the applicable legal regulations in Malaysia, its application is very limited because it can only be used for parties who each embrace Islam. As for banking transactions, many people from various religious backgrounds are involved in it.



Bibliography

Books

Iska, Syukri. (2012). *Sistem Perbankan Syariah di Indonesia*, Yogyakarta : Fajar Media Press .

Rosyadi, Rahmat. (2002). *Arbitrase dalam Perspektif Islam dan Hukum Positif*, Bandung: Citra Aditya.

Winarta, Frans Hendra. (2013). *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Arbitrase Internasional*, Jakarta : Sinar Grafika.

Zainuddin, Ali. (2008). *Hukum Ekonomi Syariah*, Cetakan II, Jakarta : Sinar Grafika.

Journals

Anshori, Aan. (2016). *Digitalisasi Ekonomi Syariah. Jurnal Ekonomi Keuangan dan Bisnis Islam*, Vol. 7, No. 1.

Ichsan, Nurul. (2015). *Penyelesaian Sengketa Perbankan Syariah*, Jurnal Ahkam, Vol. 15, No. 2.

Ilyas, Musyfikah. (2018). *Tinjauan Hukum Islam Terhadap Musyawarah dalam Penyelesaian Sengketa Ekonomi Syariah*, Jurnal Al-Qadau.

Pramudya, Kelik. (2018). *Strategi Pengembangan Ekonomi Syariah Melalui Penguatan Fungsi Pengadilan Agama Dalam Penyelesaian Sengketa*, Jurnal Rechtsvinding, Vol. 7 No. 1.

Saleh, Marhamah. (2012). *Metode Penyelesaian Sengketa Ekonomi Syariah Dalam Perspektif Hukum Islam dan Indonesia*.

Syaikhu, et. al. (2016). *Mekanisme Penyelesaian Sengketa Perbankan Islam di Malaysia dan Indonesia*, Palangka Raya : IAIN Palangka Raya.

Triyanta, Agus dan Rusni Hassan. (2008). *Penyelesaian Sengketa Bisnis Keuangan Islam Melalui Pengadilan di Malaysia dan Relevansinya dengan Indonesia*, Jurnal Hukum Vol. 15 No. 2.

Umam, Ahmad Khotibul. (2016). *Hukum Penyelesaian Sengketa Ekonomi Syariah di Indonesia*, Jurnal Pendidikan dan Studi Islam.



Yona, Rika Delfa. (2014). *Penyelesaian Sengketa Perbankan Syariah di Indonesia*, Economic : Jurnal Ekonomi dan Hukum Islam, Vol. 4, No. 1.

Laws and Regulations

- Constitution of the Republic of Indonesia.
- Laws of Malaysia Arbitration Act 1952.
- Laws of the Republic of Indonesia Number 3 of 2006 on Amendments to Law Number 7 of 1989 on Religious Courts.
- Laws of the Republic of Indonesia Number 10 of 1998 on Banking.
- Laws of the Republic of Indonesia Number 21 of 2008 on Sharia Banking.
- Laws of the Republic of Indonesia Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.
- Regulation of the Indonesian Supreme Court Number 14 of 2016 on Procedures for Settlement of Sharia Banking Disputes.



Empowering The Future : Brunei Darussalam's Initiative On Islamic Fintech

By Batrisyia Junaidi

Background

In this modern world, the use of digital technology is not seen just as a need or luxury. It became a necessity for most people especially since the COVID-19 pandemic is not yet over. Digital technology is essential in various sectors like trade, agriculture, and in particular, the financial sector. To be relevant in the market, the financial services industry must adapt to technological advances. Customers' access to financial products and services has changed as with the help of financial technology.

Financial technology, also known as fintech, is one of the latest innovations that is currently being developed. Fintech, involves the application of technology and innovation which aspires to compete with traditional financial practice in the delivery of financial services.³⁴ Fintech, according to Freedman's book *Introduction to Financial Technology* (2006,p.1), is focused on developing systems that represent, value, and process financial items like stocks, bonds, money and contracts. Peer-to-peer (P2P) lending, crowdfunding, money transfers, mobile payments, and trading platforms are the most common fintech services.

Fintech is also applicable in Islamic finance. Islamic finance offers financial services to customers in compliance with the Syariah's regulatory requirements such as avoiding the prohibited like *gharar* (uncertainty), *riba* (usury) and *masyir* (gambling).³⁵ Islamic banking, Islamic insurance (takaful), Islamic funds, the sukuk market, and other financial institutions all fall under the scope of modern Islamic finance. It is the primary goal of Islamic finance to promote societal economic progress through the application of syariah-compliant measures.

According to the *Gulf Times*, which proclaimed fintech to be a huge success for Islamic finance in 2016, new initiatives are combining syariah-compliant financing principles with new technologies, including web-based Islamic crowd funding, peer-to-peer lending, and other forms of IT-based financing options like Bitcoin-based and syariah-compliant micro-lending. As a result, fintech solutions have the potential to revolutionise Islamic financial services by leveraging the "Fourth Industrial Revolution," which is the movement toward integrating

³⁴ [Infinite Financial Intermediation](#), 50 Wake Forest Law Review 643 (2015).

³⁵ Muhammad Ilyas Ab Razak, Nur Akma Mohd Dali, Guru Dhillon & Azwina Wati Abdull Manaf. (2020). *Fintech in Malaysia: An Appraisal to the Need of Shariah-Compliant Regulation*. *Pertanika J. Soc. Sci. & Hum.* 28 (4): 3223- - 3233. Doi: <https://doi.org/10.47836/pjssh.28.4.40>



everyday aspects of daily life, such as finance, into the digital realm in order to improve speed, efficiency, and convenience. Internet of things (IoT), artificial intelligence (AI), and data analytics are among the technologies that will help drive change. (*Borneo Bulletin*, 11 November, 2016).

Indeed, the adoption of fintech in countries, including Brunei Darussalam, can assist the stimulation of economic growth. However, there should be an extra effort in ensuring the stability of the financial system and safeguarding it from fraud or crises. Hence, this paper will focus on particular aspects; emergence of Islamic fintech in Brunei Darussalam, the country's actions on developing fintech, the obstacles and opportunities faced by Islamic financial institutions in adopting fintech, as well as the recommendations to solve such challenges.

The Rise Of Fintech In Brunei

After other ASEAN countries, Brunei Darussalam launched its first fintech office in 2017.³⁶ Simultaneously, regulatory guidelines were also established.³⁷ This Islamic sultanate attempted to create its own fintech sector among stronger neighbours like Singapore, Malaysia and Hong Kong, which are traditional financial hubs, due to its dedication to Islamic principles and syariah. Despite that, Brunei still lags behind its neighbouring countries as Brunei, for a fact, delayed the growth of fintech. As such, Brunei's fintech environment is still developing as a result.

The Ministry of Finance's Autoriti Monetari Brunei Darussalam (AMBD) recognizes fintech's potential to alter the financial services industry in Brunei Darussalam. AMBD has chosen a Muzakarah-inspired approach to fintech regulation in Brunei Darussalam.³⁸ The Muzakarah approach entailed the involvement of all relevant stakeholders, the study of international best practices, and the development of holistic and country-specific regulatory frameworks and mechanisms.

a. Opening the Fintech office

The establishment of the fintech office, which is a virtual facilitation office, is one of the AMBD's objectives. The office;

³⁶ Department of Economics Statistics; White Paper on the State of FinTech in Brunei Darussalam.

³⁷ Vanne Khut & Yuthan Chea. (Jan. 14, 2022). *Role of Fintech in Advancing Financial Development in Brunei Darussalam*. AMRO. Retrieved from: <https://www.amro-asia.org/role-of-fintech-in-advancing-financial-development-in-brunei-darussalam/>

³⁸ Mohamad Roazaiman Abdul Rahman. *The Emergence of FinTech in Brunei Darussalam*. (2018). ZICO Law. Retrieved from: <http://zico.group/wp-content/uploads/2018/04/ZICO-Law-Brunei-Legal-Alert-The-Emergence-of-FinTech-in-Brunei-Darussalam.pdf>



- i. performed as the first point of contact for those looking to engage with AMBD on a fintech matters;
- ii. performed as a repository for fintech administration of facts; and
- iii. performed as a portal for interested parties to submit feedback and questions.³⁹

a. Implementing FinTech Regulatory Sandbox

In addition, AMBD had made efforts to establish the FinTech Regulatory Sandbox (“Sandbox”) in 2017.⁴⁰ The Sandbox is aimed to promote the appropriate and safe usage of fintech. The Sandbox consists of all the relevant safeguards in place and lessen fintech experimentation and consequences.

The Brunei Darussalam government produced a guideline on how to use the Sandbox. This guideline is applicable to businesses who want to provide fintech solutions to the financial market. Companies must first register their interest with AMBD in order to use the Sandbox.⁴¹

The following is an overview of the Sandbox application and use process;

- i. interested parties (such as organisations planning to deploy fintech solutions) must apply to AMBD to access the Sandbox;
- ii. once the companies have been approved by AMBD, they can use the Sandbox to test their fintech solutions.⁴²

Controls are also implemented for the period of the Sandbox test run. These safeguards ensure that any risks posed by fintech solutions are contained and lessened. Following the successful completion of the test, the companies will be released from the sandbox and must comply with all applicable rules and regulations in order to continue operating.⁴³

³⁹ *ibid.*

⁴⁰ Vanne Khut & Yuthan Chea. (Jan. 14, 2022). *Role of Fintech in Advancing Financial Development in Brunei Darussalam*. AMRO. Retrieved from: <https://www.amro-asia.org/role-of-fintech-in-advancing-financial-development-in-brunei-darussalam/>

⁴¹ Mohamad Roazaiman Abdul Rahman. *The Emergence of FinTech in Brunei Darussalam*. (2018). ZICO Law. Retrieved from: http://zico.group/wp-content/uploads/2018/04/ZICO-Law-Brunei_Legal-Alert_The-Emergence-of-FinTech-in-Brunei-Darussalam.pdf

⁴² *ibid.*

⁴³ *ibid.*



The Initiatives On Islamic Fintech

Brunei Darussalam's initiatives for Islamic fintech was adamant in November 2016 where the small nation committed to develop a solid economy based on Islamic principles. The Brunei government has agreed to collaborate with South Korea on the development of Islamic fintech and allocated \$2 million for this purpose.⁴⁴ The Energy and Industry at the Prime Minister's Office (EIDPMO) held a seminar titled, "Exploring Islamic FinTech Seminar" in collaboration with the Embassy of the Republic of Korea.⁴⁵ Throughout this seminar, both countries expressed their perspectives on developing Islamic fintech sector in Brunei Darussalam by partnership in terms of skills, advanced technologies, and expertise in the Islamic finance industry. Both Brunei Darussalam and South Korea believe that Islamic fintech is an essential part of finding avenues for international collaboration and investment to obtain income, spinoffs in the market place for job opportunities, and eventually, diversify and enhance their economies (Norjidi, 2016).

Brunei Darussalam also shown its progress in approaching fintech through Bank Islam Brunei Darussalam's (BIBD) launching of BIBD NEXGEN as a digital banking concept.⁴⁶ This was eventually successful as there was a massive rise of the use of BIBD's digital banking platforms. Moreover, the project was linked with Brunei Wawasan 2035 by the bank in ensuring the betterment of Brunei's economic growth.

Through these measures on fintech, Brunei Darussalam is positioning itself for a secure future.

Improvements On Financial Development

Researchers agree that Brunei Darussalam has great growth potential, according to ASEAN *Today* (5 June 2018). Brunei could use Islamic finance to help enhance and achieve itseconomic goals. The development of fintech here, is therefore, important. Brunei recognised fintech as a major contributor in expanding the country's financial industry contribution to 8% of GDP by 2035, rising from 5.6 percent in 2020.⁴⁷ Brunei's fintech ecosystem has made significant progress in recent years, according to the ASEAN+3 Macroeconomic Research Office's (AMRO) Annual Consultation Report on Brunei Darussalam. This is mostly due to

⁴⁴ Hazik Mohamed & Hassanian Ali. (2019). *Blockchain, Fintech and Islamic Finance*. Walter de Gruyter Inc.

⁴⁵ *ibid.* 103.

⁴⁶ *Better late than never? Brunei and its role in the fintech revolution.* (June 5, 2018). Asean Today. Retrieved from: <https://www.aseantoday.com/2018/06/better-late-than-never-brunei-and-its-role-in-the-fintech-revolution/>

⁴⁷ Vanne Khut & Yuthan Chea. (Jan. 14, 2022). *Role of Fintech in Advancing Financial Development in Brunei*

Darussalam. AMRO. Retrieved from: <https://www.amro-asia.org/role-of-fintech-in-advancing-financial-development-in-brunei-darussalam/>



government initiatives to expand the digital economy and growing demand for digital financial services in the country, which has been fuelled by an increase in digital transactions as a result of the pandemic.⁴⁸ A study by Oliver Wyman (2016), found that digital technology is expected to boost income and reduce expenses in the global banking and insurance industry by USD1 trillion or roughly 17.5% of total revenue. According to a report by the Asian Development Bank, digital financial solutions can meet 40% of the payment volume gap and around 20% of the unmet credit needs of poor people and small companies in Asia. Thus, the adoption of fintech in financial services innovation can help strengthen the economy in Brunei by lowering transaction and operating costs, increasing financial inclusion, and advancing Islamic finance development.

Applying fintech in financial services innovation can help Brunei economically by lowering transaction and operating costs, increasing financial inclusion, and boosting Islamic finance development. Financial institutions and fintech companies in the country can use digital platforms to **increase the scope and scale of their financial services to a wider spectrum of clients**, especially among the technologically literate and unbanked, while **lowering their reliance** on physical branches and personnel.⁴⁹

Not only that, an integrated and competitive fintech ecosystem will encourage **interoperability and lower the cost of domestic and cross-border fund transfers**. Affordable digital remittance services are critical for the country's significant number of foreign workers, who make up more than 20% of the overall population.⁵⁰

Brunei Darussalam can **improve its expertise in niche financial services based on Islamic principles**, allowing these services to be provided to Muslim clients in regional and global markets. Within the regulatory sandbox framework, financial institutions and fintech companies can create and explore innovative digital financial solutions that follow Syariah regulations in the sectors of crowdfunding, microlending, and insurtech platforms.⁵¹

Brunei Darussalam has the second-highest human development index⁵² and the third-highest digital adoption index among ASEAN members⁵³, indicating a good standard of living and financial literacy. These favourable conditions, combined with high internet and

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² *Human Development in South-East Asia*. (2020). The Global Economy. Retrieved from : https://www.theglobaleconomy.com/rankings/human_development/South-East-Asia/

⁵³ Vanne Khut & Yuthan Chea. (Jan. 14, 2022). *Role of Fintech in Advancing Financial Development in Brunei*



smartphone membership rates, create an **ideal environment for testing digital Islamic and other financial products in the market.**

The authorities' dedication to **improve the sandbox application process and reduce application assessment time** in the near future is also promising, since it will help to establish a more appealing fintech sector.⁵⁴

Existing Challenges

Islamic fintech in Brunei Darussalam as well as other countries still continues to face obstacles and so, it is essential that companies must have the dedication to solve these difficulties in order to assure long-term success.

The major challenge is the **regulatory environment**, which is always evolving where there are problems surrounding standardisation, regulation development, and product innovation. Regulatory constraints and concerted efforts could impede Islamic finance institutions' capability to adopt innovative models based on themes like decentralisation and privacy.⁵⁵

Another challenge is the **full adoption of syariah rules and principles of the Islamic finance institutions' products and activities.**⁵⁶ With Islamic finance gaining popularity around the world, the regulatory framework for various products, notably fintech, has been carefully examined and reviewed by industry stakeholders (Haqqi, 2014).

The **threat to information security and privacy** is another critical issue which is also a risk for consumers. Given the growing frequency of cyber security incidents in recent years, the adequacy of present security standards and practices is being questioned. Fintech development requires additional work to improve its security, efficiency, and prosperity. To secure data and consumer protection, as well as public trust and financial stability, cybersecurity and supervisory competence must be improved.⁵⁷

Another significant concern is the **decreasing market share and increasing customer churn.** Fintech enables personalised and online solutions such as robo-advisors and peer-to-

⁵⁴ *ibid.*

⁵⁵ Hazik Mohamed & Hassanian Ali. (2019). *Blockchain, Fintech and Islamic Finance*. Walter de Gruyter Inc.

⁵⁶ Abdurrahman Haqqi. (2020). *Strengthening Islamic Finance in South-East Asia Through Innovation of Islamic FinTech in Brunei Darussalam*. Retrieved from: https://www.researchgate.net/publication/338667009_Strengthening_Islamic_Finance_in_South-East_Asia_Through_Innovation_of_Islamic_FinTech_in_Brunei_Darussalam

⁵⁷ Irum Saba, Rehena Kouser & Imran Sharif Chaudry. *FinTech and Islamic Finance - Challenges and Opportunities*. Review of Economics and Development Studies, 5(4). Retrieved from: https://www.researchgate.net/publication/338342216_Fintech_and_Islamic_Finance-challenges_and_Opportunities



peer lending platforms that are affordable, simple to use, and easily accessible.⁵⁸ As a result, market share is lost. Despite these considerations, many Islamic financial institutions believe that clients are not ready for fintech innovations to entirely replace their services, which is one of the main reasons why increased customer churn is not a serious issue.

⁵⁸ *ibid.*



Recommendations

Islamic Financial institutions both in Brunei Darussalam and other nations are working to expand their business and establish a reputation in the market. Fintech is enhancing and improving economic processes and services. On the other hand, it is essential for institutions to take necessary actions in overcoming the existing and potential obstacles surrounding the use of fintech.

First and foremost, the Islamic fintech industry may overcome challenges through **regulatory aid**. It is known that the financial industries are among the most highly regulated industries.⁵⁹ Thus, supportive regulations and policies are critical in fostering an environment favourable to both entrepreneurship and innovation.

In working towards overcoming the challenges faced by the Islamic fintech industry, it is also necessary to consider **financial aid**.⁶⁰ There is a significant number of businesses and organisations providing seed, angel and venture levels to conventional fintech platforms. Unfortunately, financial opportunities for Islamic fintech platforms are limited and the process is relatively slow.

It cannot be stressed enough that **syariah compliance** is crucial in overcoming the obstacles surrounding the Islamic fintech industry.⁶¹ This is the top concern for Islamic fintech, as well as the fundamental aspect that makes it Islamic. To properly analyse syariah compliance, syariah advisory scholars must now be conversant with the technology involved that powers digital syariah solutions. To make sensible judgements, these syariah scholars must also be well-versed in economics and finance, and future scholars must be multidisciplinary, much like their forefathers during Islam's Golden Age.

As the modern world is becoming surrounded with technological competitiveness, **agility and adaptation** are also, without a doubt, vital. This is necessary for Islamic fintech to compete with its conventional counterpart especially being in an industry where practically every section is being modernised.⁶²

⁵⁹ Hazik Mohamed & Hassanian Ali. (2019). *Blockchain, Fintech and Islamic Finance*. Walter de Gruyter Inc.

⁶⁰ *ibid.* 106.

⁶¹ *ibid.* 106.

⁶² *ibid.* 107.



Having **entrepreneurial courage and persistence** is also key in overcoming such challenges. Each and every business endeavour takes a great deal of confidence and perseverance. In addressing the obstacles of the future of Islamic finance, the Islamic world requires people to have such skills.⁶³

Empowering The Future : A Conclusion

The future of fintech in Brunei Darussalam is clear. Financial technology will help empower the economic growth of Brunei, reducing the country's dependence on oil and gas. The establishment of fintech was also included as part of Brunei Wawasan 2035 with the aim to develop a competitive sector, in which the country has already shown its progress on fintech and its success. Brunei Darussalam must therefore begin innovating in order to compete with countries that have made fintech a priority. On the other hand, the country must also take actions in overcoming the potential challenges of approaching fintech. Nonetheless, it is most sufficient to say that technology has become the core element for future businesses as Islamic finance advances, not just in Brunei Darussalam, but also for other countries as well.

⁶³ *ibid.* 107.



References

Abdurrahman Haqqi. (2020). *Strengthening Islamic Finance in South-East Asia Through Innovation of Islamic FinTech in Brunei Darussalam*. Retrieved from: https://www.researchgate.net/publication/338667009_Strengthening_Islamic_Finance_in_South-East_Asia_Through_Innovation_of_Islamic_FinTech_in_Brunei_Darussalam

Better late than never? Brunei and its role in the fintech revolution. (June 5, 2018). Asean Today. Retrieved from: <https://www.aseantoday.com/2018/06/better-late-than-never-brunei-and-its-role-in-the-fintech-revolution/>

Department of Economics Statistics; White Paper on the State of FinTech in Brunei Darussalam.

Hazik Mohamed & Hassanian Ali. (2019). *Blockchain, Fintech and Islamic Finance*. Walter de Gruyter Inc.

[Infinite Financial Intermediation](#), 50 Wake Forest Law Review 643 (2015).

Irum Saba, Rehena Kouser & Imran Sharif Chauldry. *FinTech and Islamic Finance - Challenges and Opportunities*. Review of Economics and Development Studies, 5(4). Retrieved from : https://www.researchgate.net/publication/338342216_Fintech_and_Islamic_Finance-challenges_and_Opportunities

Hassanian Ali, Muhd Zaki Zaini & Rose Abdullah. (2019). *Fintech and Its Potential Impact on Islamic Banking and Finance Industry: A Case Study of Brunei Darussalam and Malaysia*. International Journal of Islamic Economics and Finance (IJEf), 1, (2), 73-108. Doi: <https://doi.org/10.18196/ijief.2116>.

Muhammad Ilyas Ab Razak, Nur Akma Mohd Dali, Guru Dhillon & Azwina Wati Abdull Manaf. (2020). *Fintech in Malaysia: An Appraisal to the Need of Shariah-Compliant Regulation*. Pertanika J. Soc. Sci. & Hum. 28 (4): 3223- - 3233. Doi: <https://doi.org/10.47836/pjssh.28.4.40>

Mohamad Roazaiman Abdul Rahman. *The Emergence of FinTech in Brunei Darussalam*.

(2018). ZICO Law. Retrieved from: <http://zico.group/wp-content/uploads/2018/04/ZICO-Law-Brunei-Legal-Alert-The-Emergence-of-FinTech-in-Brunei-Darussalam.pdf>

Vanne Khut & Yuthan Chea. (Jan. 14, 2022). *Role of Fintech in Advancing Financial Development in Brunei Darussalam*. AMRO. Retrieved from: <https://www.amro-asia.org/role-of-fintech-in-advancing-financial-development-in-brunei-darussalam/>

