Compilation of Sharia Economic Law and Islamic Law Positivisation in Indonesia

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Abstract; Muslims in Indonesia occupy the first rank in terms of quantity. Along with that, naturally it is fulfilled its needs in the field of law, both in the civil and criminal fields. In the civil sector, many laws have been born, for example; waqf laws, zakat laws, marriage laws and compilation of Islamic law, banking laws and a series of other laws including religious justice laws. This is a manifestation of the struggle of Muslims to align Islamic law in the legal system in Indonesia. These successes did not dampen the enthusiasm of Muslims to continue to fight for their rights in the form of a compilation of sharia economic law which contained the regulation of the economic dispute of Muslims. The application of this effort is the cultivation and desire of Indonesian Muslims in positioning themselves in the field of law, which is called Islamic law positivisation into national law. The struggle for compilation of Islamic law in Indonesia as a form of handling the problem of legal disputes in the civil sector, apart from the issue of waqf, zakat and marriage, banking disputes in Indonesia have reached a deadlock, should be found the right solution by formulating a law that is the legitimate basis for resolution the problem of bank disputes among the people, especially the issue of status and ownership rights of customers who are customers of Islamic banks.

This problem is related to the concept of contract contained in chapter II, but if further observed the settings in book I (subject to Law and Amwal), Book III (Zakat and Grants), and Chapter IV (Shari'ah Accounting), basically concerns the problem contract. However, in several articles, for example in the capital market discussion (article 580-583) it is not included in the contract but about the place where the contract is held. On the other hand, the practice of agreements that are mudhorobah has been expanded again with the existence of intermediary parties, namely banking. So as to reduce the risk of moral hazard, usually in other Shari'ah banks and institutions, debtors must include their collateral. It seems that the Codification of the Sharia Economic Law needs to be carefully regulated regarding this guarantee. If the debtor includes the guarantee while the business experiences a loss, what will the Bank or Islamic Financial Institution do with the guarantee. Bearing in mind the mudhorobah system if there is a loss due to the normal process of the business, and not due to negligence or fraudulent management, the loss is borne entirely by the owner of the capital, while the manager loses the energy that has been poured out, while the manager loses due to negligence and fraud. completely against these losses. On the settlement side, it is not possible to settle the dispute in the district court, so that the religious court is the only court that is used as a place for resolving the dispute.

Keywords: *Legal compilation for the certainty of the banking system*

A. Introduction

At the beginning of the 20th century, Islamic banks were only an obsession and theoretical discussion of academics from both the field of Islamic law (fiqh) and economics. Awareness emerged that Islamic banks were the solution to solving the nation's economic problems for the achievement of social welfare, but concrete efforts that enabled the practical implementation of the idea were almost drowned in a sea of world economic systems that could not escape the interest of banks with conventional systems. Nevertheless, the idea continues to grow even if only slowly. Several trials continue to be carried out starting from simple project forms to large-scale cooperation. From this effort the proponents of Islamic banks can think of making a banking system infrastructure that is interest-free.

The development of the Islamic economic system from time to time along with the struggle with the world economic system (capitalist and social), economic development in Indonesia can be said to experience delays compared to other Muslim countries. The development of the Indonesian economy since the 90s, faced with the nuances of information disclosure and the rate of economic growth in Islamic countries in the world, then at the same time Muslims in Indonesia play an important role in developing and growing Islamic economic systems with reason and enthusiasm to avoid usury. the emergence of Shari'ah banking in Indonesia as evidence of the attention of Muslims and the establishment of Bank Muamalat as the first Islamic Bank as a means of developing Islamic economics and supporting the country's economy. When compared with Malaysia, this country has far demonstrated its economic development with a satisfying Islamic banking system.

After the existence of Bank Muamalat in Indonesia, the presence of this bank was enough to give a prospect on the national economic scene, especially after it appeared in 1992, which was able to ward off Indonesia's economic crisis around 1998. The presence of the Bank was followed by Sharia Financial Institutions (LKS) others such as the Bank of Sharia Financing and other syari'ah microfinance institutions are determining economic growth in Indonesia.

Seeing the reality of developments and positive consequences for the development of Islamic financial institutions, with the emergence of Islamic Banks and Islamic Financial Institutions - other Sharia Financial Institutions show significant consequences of the development of Islamic economic institutions, of course they will be faced with problems that arise due to attraction interesting between the interests of the parties in economic matters, meanwhile, currently there are no specific legislation that specifically regulates these problems. Furthermore, in 1994, the existence of the Syari'ah Arbitration Board became the only mediator institution for resolving disputes between parties in terms of the Shari'ah economy. The presence of this institution determines the birth of legal decisions in the field of syari'ah arbitration which is not necessarily a legal binding. The regulations applied are still limited to following the Bank Indonesia (BI) Regulations and only refer to the fatwa of the National Syari'ah Council of the Indonesian Ulema Council. While the fatwa itself is only a non-binding legal opinion.

In line with the efforts of Shari'ah economic law positivist in Indonesia became a sign of starting a new direction of legal policy for banking management in Indonesia after the revision of Law No. 7 of 1989 became Law No. 3 of 2006 concerning the Religious Courts. In the revision, it is stated that the Religious Courts are currently not only authorized to settle disputes in the fields of marriage, inheritance, wills, grants, endowments and sadaqah, but also the Religious Courts are authorized to handle adoptions and resolve disputes over zakat, infaq and the Islamic economy.

The consequences of the expansion of the authority, requiring law enforcers, especially in the Religious Courts and the Supreme Court, must prepare law enforcers at the judiciary by increasing their capability in the Islamic economy to provide a sense of justice for the community, especially sharia law with material the legislative material mandated by the Act in question, for example in terms of resolving Muslim disputes in the field of shari'ah economy.

As a follow up to this, the Supreme Court formed the Compilation Team of the Syari'ah Economic Law Compilation, the existence of this Compilation of Syari'ah Economic Law is indeed very necessary as a guide and reference for the Religious Courts in deciding sharia economic disputes. To compile a draft Compilation of Syari'ah Economic Law, the team from the Supreme Court has held various discussion and seminar events that examine the draft of the manuscript with institutions, scholars and legal experts, so that in approximately one year the compilation of the Shari'ah Economic Law Compilation completed. However, as an effort to maximize and improve the Compilation of Syari'ah Economic Laws, towards the ideal format, of course the efforts to get the criticism received responses from various parties to continue to be followed up to date.

B. Positivisation of Islamic Law in Indonesia

The application of the concept of Islamic banks requires sharia economic law or positivation legislation in Indonesia. This law has an important position in the legal system in Indonesia. Therefore, in order to be able to apply formally it is necessary to positivate sharia economic law. The positivity of sharia economic law in Indonesia originated from the birth of Law No. 10 of 1992 which contained provisions concerning the possibility of banks operating with profit sharing systems. UU no. 7 of 1992 concerning Banking has not explained the definition of profit sharing and the understanding of the results of the statement is further explained in Government Regulation (PP) No. 72 of 1992 concerning Banks Based on Principles of Profit Sharing and promulgated on October 30, 1992 in the State Gazette of the Republic of Indonesia No. 119 of 1992. The Bank is based on the profit sharing principle then described in a Bank Indonesia Circular Letter (SE.BI) No. 25/4 / BPPP dated February 29, 1993.

In 1998 Law No. appeared. 10 of 1998 concerning Amendment to Law No. 7 of 1992 concerning Banking, where there are changes that provide greater opportunities for the development of Islamic banking. Enactment of Law No. 10 of 1998 was followed by the issuance of a number of implementing provisions in the form of a Decree (SK) of the Bank Indonesia Board of Directors which provided a stronger legal basis and broad opportunities for the development of Islamic banking in Indonesia.

Based on this new Banking Law, the banking system in Indonesia consists of Conventional Commercial Banks and Islamic Commercial Banks (or used the term Syistem Dual Banking). Since the enactment of Law No. 10 of 1998, followed by government policies which were originally set out in the form of Government Regulations transferred to the Policy of Bank Indonesia (BI) as the Central Bank. The Bank Indonesia Policy Regulation that replaces the position of PP in the Banking sector is an improvement on the provisions that support the operation of Sharia Banking in Indonesia.

With the issuance of Law No. 23 of 1999 concerning Bank Indonesia, so in the explanation of the Law it has been mandated that to anticipate the development of sharia principles, the duties and functions of BI to accommodate these principles. In order to fulfill the mandate, Bank Indonesia has opened a Sharia Banking Bureau that handles the regulation, supervision and licensing of Islamic banks. On the other hand, the Indonesian Ulema Council has also formed a National Sharia Council which is tasked with providing fatwa 27 and establishing a Sharia Supervisory Board (DPS) in every Islamic financial institution in Indonesia. These two institutions work together to issue legal products or fatwas for the development and supervision of Sharia Banking business activities and activities in Indonesia.

In connection with resolving sharia economic disputes, with the issuance of Law No. 3 of 2006 concerning Amendment to Law No. 7 of 1989 concerning the Religious Courts, then sharia economic disputes constitute the absolute authority of the Religious Courts. This law is a product of legislation that first gave competence to religious courts in resolving sharia economic cases.

Along with the rapid sharia banking industry in Indonesia, it requires a separate regulation which is lex specialis from the Banking Law. On July 16, 2008 Law Number 21 of 2008 concerning Sharia Banking was ratified. Birth of Law No. 21 of 2008 the existence of Islamic Banking has become stronger and has a stronger legal basis. However, on the other hand, the provisions of Article 55 paragraph (2) of Law No. 21 of 2008 along with its explanation, juridically, shows that there has been a reduction in the competence of religious courts in the field of Islamic banking. Given Law No. 3 of 2006 has provided absolute competence in sharia economic matters (including Islamic banking) to the Religious Courts. Islamic insurance emerged in 1994 along with the inauguration of PT. Syarikat Takaful Indonesia which later established 2 subsidiaries namely PT. Family Takaful Insurance in 1994 and PT. General Takaful Insurance in 1995. This insurance operating license was obtained from the Ministry of Finance through Decree No. Kep-385 / KMK.017 / 1994 dated August 4, 1994. From a legal standpoint, Islamic insurance is still basing its legality on Law No. 2 of 1992 concerning Insurance Business which actually does not accommodate sharia insurance because it does not regulate the existence of insurance based on sharia principles.

Indonesia, which is inhabited by the largest number of Muslims, has also contributed its thoughts and actions in order to advance Indonesia in general, on the other hand it cannot be denied that Muslims must be able to fight for their needs or needs in various ways including the current positivisation of Islamic Law. into national law. Legal experts often call it the theory of existence which in relation to Islamic law is a theory that explains the existence of Islamic law in Indonesian national law. The Indonesian national law is a national law originating from the Pancasila state philosophy.

The positivist effort itself has actually been going on for a long time, with the issuance of the Agrarian Law of 1960, Law Number. 1 of 1974 concerning Marriage Law, then increased to Islamic law as a source of national law in Law Number. 7 of 2009 concerning Religious Courts, Presidential Instruction No. 1 of 1991 concerning the socialization of the Compilation of Islamic Law, Law Number. 41 of 2004 concerning Waqf, Zakat Law, Hajj Act and the last Law Number. 3 of 2006 concerning Amendment to Law Number. 7 of 1989 concerning the Law on Religious Courts which provides the expansion of material competence for the Religious Courts, including in the economy of Shari'ah.

When talking about law, in fact it will not be far from the political range. The involvement of Muslims in political matters also determines the character of the legal product produced. The character of legal products is identical to the nature and nature of legal products. Referring to the statement above, then it should provide opportunities in various fields, including the law on sharia economic disputes settlement in the form of the Compilation of Shari'ah Economic Law (KHES), so that Muslims can breathe a sigh of relief. The law is into national law. The application of the desires and results of the efforts of Indonesian Muslims is in the field of law.

Law is not entirely autonomous institution, but it is in a position that is interrelated with other sectors of life in society. One aspect of this situation is that it must always make adjustments to the objectives of the community. Therefore, law is a dynamic. Political law is a factor of cause such dynamics, therefore it is directed to the iure constituendo (ius constitutum) that law should apply.

The development of national law objectively recognizes legal plurality within certain limits. The policies of customary law and religious law for certain legal and natural environments are therefore not possible to impose a legal unification for several fields of life. There is no need to question if the subject of Islamic law is carried out by Shari'ah economic law. Furthermore, it is also natural in family relations that sometimes local customary law is more dominant. The principle of legal unification must be a guideline, but so far unification is impossible, then the plurality of laws must be accepted in reality. Ideally legal plurality must be accepted as part of the national legal order.

Through the struggle of Islamic nationalist founding fathers to incorporate Islamic values into the Indonesian constitution with the seven words in the Pancasila as the basis of State ideology, it has shown the effort to proceed, even though the the struggle to include the seven words in the panacasila failed to realize the reason for the creation of national unity and unity. This is not an obstacle to continuing to fight for Islamic values in every constitution in Indonesia.

Referring to this description, actually since the establishment of this State Islamic values have been fought for in the field of law, as Soepomo argues, explaining that Indonesia does not have to be an Islamic state, but a country that uses the noble moral basis advocated by Islam. If examined in depth these opinions, it is appropriate that Muslims in Indonesia must continue to fight for and maintain and enhance Islamic values in fields that are very urgent needs to regulate and resolve the problems faced by Muslims today. Of course to fight for a constitution based on the moral basis of Islam must be encouraged by the performance of Muslims themselves in every policy. Both for those who sit in Legislative institutions, Executive institutions and Judicial institutions. Without the role of Muslims in these institutions it is impossible for Islamic moral values to be fulfilled and placed in the Indonesian constitution. This can be achieved and at least depends on tenacity and shrewdness because often political interests can hinder the program of Islamic law legislation. However, Indonesian Muslim-majority society has made Islam as a way of life in daily life, of course, only limited to personal and in limited matters.

Thus, the presence or absence of an Islamic political obsession in various legal formulations organically from fundamental norms and constitutional activities in the course of the nation's history does not have the slightest influence on the existence of Islamic law. The close closure of the opportunities at each social and political forum is not able to withstand the seepage of Islamic law. To be able to answer that challenge, Muslims must also have the right methodology and strategy for the positivist efforts of Islamic law in Indonesia. Because the views of different policy holders, including among the Islamic community itself, so that the attraction of interests between various existing political interests, including with the state or exponents of other religions will be increasingly stringent.

According to Syamsul Anwar as quoted by M. Rusydi, there are at least two stages for the positivist process of Islamic law, namely the hermeuneutis stage and the political stage. At the stage of hermeuneutis there is a need for classification of shari'ah law so that the classification can produce a legal format that has been compromised with the context of space, time, situation, and conditions of the Indonesian people. Therefore, the terminology put forward has become a universal language that will be easily accepted by all groups. Whereas at the political stage carried out by the legislature, people's representatives, especially those carrying out Islamic values can dialogue about Islamic values with various legislators. So that qualified foresight and lobbying from Islamic legislators is crucial. Related to the Islamic economy that has spread in this country, of course many expect a set of rules that are certain about it. Through efforts to compromise politics and the sincerity of various parties little by little the regulations concerning the shari'a economy have begun to be rolled out including the existence of the Compilation of Shari'ah Economic Law.

Thus the positivation of Islamic law in Indonesian National Law can be achieved if various parties are able to lift macro and micro potentials of Islam that are able to blend with national law can certainly be supported by two abilities and stages, namely the potential that emerges from Muslims as implementers of Islamic teachings itself and sustained by the next stage, namely the political stage, namely the stage of Muslims who are able to fight for it in the legislature, people's representatives, especially those carrying out Islamic values can dialogue with various other legislators, so that carefulness and lobbying by Islamic legislators becomes very decisive to produce results.

C. Urgency of Codification of Shari'ah Economic Law

After the birth of various laws relating to the needs of Muslims starting from the Agrarian Law of 1960, Law No. 1 of 1974 concerning Marriage Law, then increased to Islamic law as a source of national law in the Law Number. 7 of 2009 concerning the Religious Courts, Presidential Instruction No. 1 of 1991 concerning socialization of the Compilation of Islamic Law, Law No. 41 of 2004 concerning Endowments, Zakat Law, Hajj Act and the last Law No. 3 of 2006 concerning Amendments to Law -Number of numbers. 7 of 1989 concerning the Law on Religious Courts (UUPA) which provides for the expansion of material competence for the Religious Courts. This did not dampen the enthusiasm of Muslims to identify the needs of Muslims which must be addressed in regulations as directors in the lives of Muslims in all fields, then other important things were hastened so that Muslims struggled for Sharia Economic Law which was then formulated in the form of Legal Compilation Syari'ah Economy (KHES), considering the shari'ah economic law as the law of muamalat has a variety of different views.

Codification is the collection of various regulations into laws or matters for the preparation of statutory books. In its history, the formulation of a law or regulation was made in writing called jus scriptum. In subsequent developments various regulations in written form were born called corpus juris. After the number of regulations became so many, it required a legal codification that gathered various kinds of laws and regulations.

Legal experts try to master the regulations well so that they can solve various kinds of legal problems that arise in the community with full justice and benefit. In making decisions in the courts in the field of Islamic economics there is a possibility of differences of opinion. Therefore, legal certainty is needed as a basis for decision making. Moreover, with the characteristics of the muamalah which are "elastic and open", it is very possible to vary these decisions which can potentially hinder the fulfillment of a sense of justice. Thus the birth of Codification of Sharia Economic Law in a Civil Code of Islamic Law became a necessity. It is understandable that the formulation of material for Codification of Sharia Economic Law is not found in Jurisprudence in Indonesian judicial institutions. Nevertheless, jurisprudence in the same case can be referred to as long as it does not conflict with the principles of sharia economic law. That is, the legal decisions of the past were disputed, because they were judged to be in accordance with sharia.

So the work of the Indonesian sharia economic mujtahids, not only formulates new economic laws that come from fiqh / sharia norms, but how can they facilitate existing national law. National law sourced from the Civil Code (BW), most likely in accordance with sharia, then the material and legal decisions in the form of jurusprudensi can be accepted or adopted.

Based on that rationale, then sharia economic law originating from fiqh muamalah, which has been practiced in activities in Islamic financial institutions, requires a forum for legislation to facilitate its application in business activities in these Islamic financial institutions. The existence of Sharia Economic Law Codification is a new breakthrough as an effort of Islamic Law positivisation into national Law. The rapid development of the Syari'ah Economy in Indonesia has made the need to prepare material for the Shari'ah Economic law to be held immediately. In the framework of these needs Codification of Sharia Economic Law finally emerged as the material law of the Shari'ah economy.

D. Analysis of Compilation of Shari'ah Economic Law

When the authority to adjudicate sharia economic legal disputes is the absolute authority of religious court judges, it is necessary to have a complete sharia economic law codification so that Islamic economic law has legal certainty and judges have standard references in resolving disputed cases in the Shari'ah business. In the field of marriage, inheritance and waqaf, we already have KHI (Compilation of Islamic Law), whereas in the field of Islamic economics we do not have it yet. The position of KHI is constitutionally, still very weak, because its existence is only as presidential decree. Therefore a stronger rule of law is needed which can be a reference for judges in deciding various legal issues. For this reason we need to formulate a Codification of Islamic Economic Law, as made by the Ottoman Turkish government named Al-Majallah Al-Ahkam al-‘Adliyah consisting of 1851 articles.

Codification is the set of various regulations into laws or the matter of drafting statutory books. Historically, the formulation of a law or regulation was made in writing called jus scriptum. In later developments various regulations were written in a written form called the corpus juris. After the number of regulations became so many, it required a legal codification that gathered various kinds of laws and regulations. The legal experts and judges also try to master the rules well so that they can solve various kinds of legal

problems that arise in the community with full justice and benefit. Based on that rationale, then Islamic economic law originating from fiqh muamalah, which has been practiced in activities in sharia financial institutions, requires a forum for legislation to facilitate its application in business activities in Islamic financial institutions.

In making decisions in the courts in the field of Islamic economics there is a possibility of differences of opinion. For this reason, legal certainty is needed as a basis for decision making at the Court. Moreover, with the characteristics of the muamalah which are "elastic and open", it is very possible for the variability of these decisions to be very potential to hinder the fulfillment of a sense of justice. Thus the birth of the Codification of Sharia Economic Law in a Civil Code of Islamic Law became a necessity. It is understandable that the formulation of material for Codification of Sharia Economic Law is not found in Jurisprudence in Indonesian judicial institutions. Nevertheless, jurisprudence in the same case can be referred to as long as it does not conflict with the principles of sharia economic law. That is, the legal decisions of the past were disputed, because they were judged to be in accordance with sharia. If you look at the contents of the Syai'ah Economic Law Compilation (KHES), of course there are still some things that can be used as notes for future improvements. Some of these things include:

1. Preparation of Compilation of Islamic Economics Law Codification

Impressed in the compilation of the Compilation of Shari'ah Economic Law, it was too hasty. The duration of the making of the Islamic Economics Law Codification is approximately a year. When compared to the making of the Compilation of Islamic Law (KHI) it seems that the preparation needed takes quite a long time. Compilation of Islamic Law was prepared since 1985 with the Joint Decree (SKB) of the Chairperson of the Supreme Court of the Republic of Indonesia and Minister of Religion No. 07 / KMA / 1985 and No. 25 of 1985 dated March 25, 1985. The period of project implementation was set for two years from the date of the enactment of the Joint Decree.

One of the most important things in drafting a law is the excavation of the sociological aspects of Islamic law and legal opinions among experts, scholars, pesantren and academics. This effort is a way to more "Indonesianize Islam" so that it is in accordance with the Indonesian culture itself. Besides that, by listening to input from each party, the existence of the law is expected to be of higher quality. When looking at the preparation for the preparation of the Codification of the Sharia Economic Law, it seems that it does not optimize the sociological aspects and legal opinions of many experts. Those involved in the preparation of the Codification of Sharia Economic Law are arguably only a small part, in contrast to the formulation of the Compilation of Islamic Law which involves many Ulama (Kyai), Islamic boarding schools, and the emission of several well-known State Islamic Institutes in Indonesia, and several other practitioners. But of course, this did not dampen our appreciation for the existence of the Compilation of Syari'ah Economic Law as a "grand" work from the Supreme Court as a new breakthrough in the History of Islamic Law in Indonesia.

2. The term Syari'ah in the Codification of Sharia Economic Law

The Material of Sharia Economic Law Codification (KHES) is basically a compilation of various types of fiqh that already exist, there are even a number of things that are classified as ijtihad compilation team of Codification of Sharia Economic Law itself. When looking at Shari'ah terminology as rules or points set by God so that humans make it as a rule in relation to God, fellow Muslims, fellow humans, and their environment. In other words, syari'ah is a basic, fixed and wide-ranging regulation. When using the term Shari'ah in the Codification of Sharia Economic Law, this contains contradictions because Economic Law, which is Muamalat Fiqh, is certainly not static but dynamic. As has become a general rule in muamalah, that the law of ashl from muamalah is permissible as long as there is no text that prohibits.

Economic law contained in the Codification of Sharia Economic Law is of course the result of human thoughts that will continue to be dynamic in accordance with the development of the times. Even the terms contained in the Islamic Economics Law Codification of course there are those that contain new terms such as capital markets or accounting. From this description, it is actually inappropriate to mention the term syari'ah in the Codification of Sharia Economic Law, perhaps it is more appropriate to use the term Islamic Economic Law as it is commonly used in other Islamic countries.

3. Content of Codification of Sharia Economic Law and Concept of Contract

When looking at the entire contents of the Islamic Economics Law Codification it seems too much to discuss the concept of contract. As stated by the Supreme Judge Dr. Abdurrahman, Islamic Economics Law Codification almost 80% contained about contract. In accordance with the contents of the Sharia Economic Law Codification, the discussion of the concept of contract can be found in chapter II, but if further observed the settings in book I (subject to Law and Amwal), Book III (Zakat and Grants), and Chapter IV (Shari'ah Accounting)), basically related to the issue of contract. However, in several articles, for example in the capital market discussion (article 580-583) it is not included in the contract but about the place where the contract is held.

4. Formulation of Covenant Terminology

Concerning the formulation of the contract contained in the Codification of Sharia Economic Law article 20 number (1). This article defines a contract with an agreement in an agreement between two or more parties to do or not carry out certain legal actions. This formula seems to be just a duplication. Because the contract itself is translated by agreement or contract. According to Mustafa Ahmad Az-zarqaakad in language means al-rabth which means to collect or collect two ends of the rope and tie one to the other until both of them continue and become one strin.

There are several terminology of the contract proposed by experts including Wahbah Az-zuhaili defining the contract as a connection between consent and qabul that is justified by syara 'which creates legal consequences for the object. Meanwhile, according to Syamsul Anwar, the definition of contract with the meeting of consent and obedience is a statement of the will of two or more parties to give birth to a legal effect on the object. The definition of the contract shows the following: First, the contract is an attachment or meeting of consent and obedience which results in the emergence of legal consequences. Second, the contract is the act of two parties because the contract is a meeting of the ijab that presents the will of one party and the decree which expresses the will of the other party. Third, the purpose of the contract is to give birth to a legal effect. Thus, the meaning will be even richer if the terminology put forward by the Sharia Economic Law Codification does not contain duplication, but rather parses the principles of the contract such as the qabul agreement between the two parties.

5. Not Mentioning Sub-Subjects of Important Topics in Covenants

Sharia Economic Law Codification has not mentioned important sub-topics in the contract, so the contents are still too general. This will cause problems when cases arise which are not covered in the Sharia Economic Law Codification, so the interpretation of the "forced" judge will actually cause another problem, namely the sense of justice of the parties. This is where the need for a more detailed legal format, so that it can answer many problems. If the law is too global, the difference in interpretation especially for judges will not be inevitable given the different perspectives and paradigms of judges.

In Islamic law, recognizing the contract of al-Qardh is a loan contract to the customer (muqtaridh) which requires provided that the customer must return it at a specified time. This financing product is guided by the DSN fatwa No.19 / DSN-MUI / IV / 2001 concerning al-Qardh, Bank Indonesia Regulation No. 9/19 / PBI / 2007 and Law No. 21 of 2008 concerning Islamic Banking. In its implementation, this contract is rarely used by Islamic Banks because in this contract there must be no additions to the loan agreement, according to the rules of jurisprudence "Every receivable that brings (takes) benefit / additional / additional, then it is usury." therefore, even if it is used, the bank is very careful in its implementation because on the one hand it cannot take profits and on the other hand the bank also minimizes the risks that will occur. As for usually banks use this contract as a complementary product for customers who have proven their loyalty and loyalty that require immediate bailout funds for a relatively short period of time. The customer will return the money as soon as possible, can be exemplified: Hajj bailout loans, where prospective hajj customers are given a bailout loan to meet the conditions for depositing the cost of the Hajj trip. As a facility for customers who need fast funds while they cannot withdraw funds, for example because of deposits. As well; Islamic financing card products (Syariah charge card). As a loan to a small businessman, where according to the calculation the bank will burden the entrepreneur if given financing with a scheme of buying and selling, ijarah (wages-wages or rent), or mudharabah (profit sharing). In this case special products in Islamic banking have been introduced called Qardhul Hasan. As a loan to the bank management, where the bank provides these facilities to ensure the fulfillment of the needs of the bank's management.

a. Guarantee in Musyarakah

Musyarakah is financing based on cooperation agreements between two parties or more a particular business, where each party contributes funds provided that the benefits and risks will be borne together in accordance with the agreement. This financing product is guided by the MUI DSN fatwa No. 08 / DSN-MUI / IV / 2000 concerning Musyarakah, Bank Indonesia Regulation No. 09/19 / PBI / 2007 and Law No. 21 of 2008 concerning Islamic Banking. In implementing the Musyarakah it is commonly used in Project Financing. Musyarakah is usually applied to finance projects where sharia customers and banks both provide funds to finance the project. After the project is completed, the customer returns the funds together with the agreed results for the bank. Venture Capital In special financial institutions that are allowed to invest in company ownership, musharaka is applied in a venture capital scheme. Investments are carried out for a certain period of time and after that the bank disvests or sells part of its shares, both briefly and gradually.

b. Mudhorobah Guarantee

In classical fiqh, there is no provision even the necessity for a mudhorib to surrender a guarantee to Shohibul Maal in a mudhorobah contract. This is because, the practice of mudhorobah in the past is still very simple and of course it is still in an atmosphere of kinship and mutual acquaintance with one another. In contrast to the current reality, mudhorib and Shahibul Maal sometimes do not know from one another, even the practice of Mudhorobah has now been expanded again with the existence of intermediaries, namely the banking sector. So as to reduce the risk of moral hazard, usually in other Shari'ah banks and institutions, debtors must include their collateral. In accordance with its meaning Mudharabah is a fund investment transaction from the owner of the fund (Shahibul Maal) to the fund manager (mudharib) to conduct certain business activities that are in accordance with sharia, by dividing the results of the business between the two parties based on a previously agreed ratio. This product is guided by the DSN MUINo.07 / DSN-MUI / IV / 2000 fatwa concerning Mudharabah, Bank Indonesia No Regulation. 09/19 / PBI / 2007 and Law No. 21 of 2008 concerning Islamic Banking. In its Implementation Sharia Banks use this contract in the collection of term savings funds, namely savings savings intended for special purposes, such as hajj savings, qurban savings, deposits, and others. Special deposits (special investment), where funds are given by customers specifically for certain businesses, such as murabahah or ijarah (services) only. then in Fund

Distribution / Financing Working capital financing such as working capital for trade or services. Special investment, also called mudharabah muqayyadah, where special funding sources, special fund disbursement with the conditions set by the funder (Shahibul Maal).

Types of Murabahah in Islamic Banks Mudharabah Muthlaqah (unrestricted Investment Account) The owner of capital (Shahibul Maal) does not set certain limits or conditions for the manager (mudarib). Mudharabah Muqayyadah (Restricted Investment Account) The owner of a fund establishes certain restrictions or conditions for the fund manager regarding the place, method and object of investment. Mudharabah muqayyadah is divided into two, namely Mudharabah Muqayyadah On Balanche Sheet, namely the flow of funds from one investor customer to a group of business executors in certain sectors, or in certain types of contracts, (and banks bear the risk of channeling investment funds, called Executing Agent / Executing)) Mudharabah Muqayyadah Off Balance Sheet, namely the flow of funds from one investor customer to one financing customer. Banks only act as arranger (intermediary), (and the bank does not bear the risk, called Channeling Agent / Channelling). Easyarabah Musytarakah Is a combination of mudharabah contract and musyarakah contract). Mudharabah Musytarakah is a form of Mudharabah agreement in which the manager (mudharib) includes his capital / funds in the investment collaboration. Based on the fatwa of the National Sharia Council of the Indonesian Ulema Council (MUI DSN) number 50 / DSN-MUI / III / 2006 concerning the Mudharabah agreement Musytarakah.

Guarantees in Mudharabah Basically there is no guarantee of capital, however, so that the fund manager does not make a deviation, the owner of the fund can request a guarantee from the fund manager or a third party. This guarantee can only be disbursed if the fund manager is proven to have made a deliberate, negligent mistake or violated the agreed upon matters in the contract.

The explanation above should be used as a reference for managing the contract in the banking system, especially for Islamic banks, but it is not reflected as intended, this indicates that the codification of the Sharia Economic Law needs to be carefully regulated regarding this guarantee. If the debtor includes the guarantee while the business experiences a loss, what will the Bank or Islamic Financial Institution do with the guarantee. Given in mudhorobah if there is a loss due to the normal process of the business, and not because of negligence or fraudulent management, the loss is borne entirely by the owner of the capital, while the manager loses the power and expertise he has devoted. If there is a loss due to negligence and fraudulent management, then the manager is fully responsible.

In the banking system like this, a legal policy is needed to regulate the second agreement between parties with the fund manager so that there is no promise (one achievement) between the two parties, and there will not be any loss in the agreement, so that the contract deemed legal.

6. Status of Usury in the Qardh Agreement

In syari'ah banking services or other Islamic Financial Institutions there are usually types of qardh loans. Qardh is a virtuous / soft loan without compensation, usually for the purchase of fungible goods (ie items that can be repaid and replaced according to their weight, size and quantity). While Riba linguistically, usury also means growing and growing so that, usury means taking extra from basic assets or capital in vanity, but in general there is a red thread that confirms that usury is an additional take, both in buying and selling transactions and borrowing in vanity or contrary to the principle of muamalah in Islam.

In the Codification of Sharia Economic Law, there is no mention of the legal status of usury in the qardh contract, on the other hand it is stated that the administrative costs in the qardh contract are borne by the customer without limitation. This will cause problems when creditors over-interpret administrative costs so that they can overload the debtor. So feared there will be hidden usury. In order for administrative costs not to be covered in interest, these costs may not be proportional to the loan amount.

7. Nishab in Zakah on Plants and Fruits

Nishab is the minimum amount that zakat must be issued. In this case the value is calculated from assets that exceed the basic needs: clothing, food, and shelter. The provisions of nishab are important in zakat because of the extent to which a person is obliged to issue zakat. In the Codification of Sharia Economic Law the issue of plant and fruit-fruit zakat rules has not yet been stipulated so that it creates a counterproductive effect on determining the minimum limits of plants and fruits that must be paid for zakat. While all other types of assets are mentioned. Plants and fruits are of various types. But the majority of jurisprudents argue that there is no obligation to produce zakat from fruits and fruits before reaching five times. Based on the hadith, the scholars have calculated the equation of five wasaq (a single word from ausaq) with the size of the present measure, and found that the amount is equal to approximately 653 (six hundred fifty three) kelo grams of staple food in each country.

In Indonesia, of course with rice. Counting nishab on fruits, such as dates and grapes, is done by calculation after both have dried. Namely the still wet dates (Ruthab) become dates, and wine becomes raisins. As for calculating the number of dates and grapes before cooking, it is best to estimate them by estimation or estimation carried out by zakat collectors, who are experts and experienced, when the fruits begin to look perfect (before they are fully cooked).

Such an assessment aims to find out how many kilos of dates or dried grapes (raisins) will be obtained later. In order for this estimate to be known in the form of the amount of zakat, and how many are still the rights of the owner. It will be more complicated if the Codification of Sharia Economic Law discusses the characteristics of plant and fruit zakat. In order to make the Codification of Islamic Economics Law more complete.

E. Conclusion

The existence of the Compilation of Syari'ah Economic Law is a breakthrough and response to the needs of current economic law. When the development of Islamic economic activity in Indonesia shows a satisfying number, of course it will be accompanied by a clash of various interests. Then the Law No. 3/2008 concerning the Religious Courts came out which gave the Religious Courts the breadth to deal with Shari'ah economic disputes.

Based on the conditions and needs of Muslims when in various fields including economic needs, the Religious Courts began to improve and prepare material laws to resolve the Islamic economic dispute. Thus it was important that the Compilation of Shari'ah Economic Law was born. The existence of regulations that breathe Islam is of course an attempt to positivist Islamic law into national law.

The compilation of Shari'ah Economic Law is of course not a holy book, so it cannot be changed. Therefore, it can be analyzed that there are still many shortcomings that must be corrected in the Codification of Sharia Economic Law. This is something that commonly happens as happened in the past in Islam and has been embodied in the rules of fiqh; the law can change with changes in time, place and condition at the time of the stipulation of the law.

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