The Roles and the Influences of Political Parties in the Parliament towards the Formation of Islamic Bank in Indonesia

Dwi Andayani Budisetyowati

Faculty of Law, Tarumanagara University, Indonesia, email: dwib@fh.untar.ac.id

ARTICLE INFO

Keywords:

Islamic Banks, Parliament, Regulation, Bank of Indonesia, Formation, Development

How to cite:

Dwi Andayani Budisetyowati, "The Roles and the Influences of Political Parties in the Parliament towards the Formation of Islamic Bank in Indonesia", Fiat Justisia, 12 (1), (2018).

DOI:

10.25041/fiatjustisia.v12no1.1271

ABSTRACT

The Islamic Banking has been growing significantly in Indonesia. However, studies discussed the detail of the roles and the influences of the political parties in the parliament towards the formation and the development of the Islamic Banks had been limited. Due to this condition, this paper aims at discussing the roles and the influences of the political parties in the parliament towards the formation and the development of Islamic Banks in Indonesia. The method used to examine the above issues is by conducting desk research. Data and information collected are from the secondary sources and the empirical studies advanced in the literature. The study argued that the Islamic banking had been given a social and economic contribution to the Indonesian economy. However, support for the formation and development of this bank is still limited. For that reason, it is a must for the Government of Indonesia in general and the Bank of Indonesia in particular to support the development of Islamic bank. Also, the role of the political parties in the parliament was also considered important. Thus, much remain to be done.

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A. Introduction

This paper aims at examining the roles and the influences of political parties in the House of Representatives, the Republic of Indonesia locally abbreviated as DPR-RI in the formation and development of Islamic Banking in Indonesia. In the 1945 Constitution of the Republic of Indonesia or *Undang-Undang Dasar Negara Republik Indonesia (UUD 1945)*, it was clearly stated in Article 6A paragraph (2) and Article 22 E Paragraph (3) that political party is one important part of the democratic system in Indonesia. In other words, political party plays a strategic position in organizing and administering the country today.

The House of Representatives of the Republic of Indonesia is one of the highest institutions in the Indonesian state administration system as the representative body of the people. This body consists of members of political parties who were selected in the general elections, and they have the power to formulate laws. The number of political parties contesting in the 2014 general elections was twelve political parties. These political parties were determined by the General Election Commission (locally called KPU) as the participants of the general election. While the number of political parties registered in the Ministry of Law and Human Rights, the Republic Indonesia that did not pass the administrative procedures set by the General Election Commission (KPU) was eighteen political parties. Due to the process of the 2014 general election, the number of political parties in the House of Representatives of the Republic of Indonesia (DPR-RI) for the period from 2014 to 2019 are ten parties with the total number of 560 parliamentary seats.

A political party in Indonesia is defined as an organized group whose members have the same orientation, values, and future goals. This is mentioned in the Article 1 (1) Law No. 2 on 2011 as the Amendment of the Law of the Law No. 2 on 2008. In this law, it was defined that political party is a national organization and is formed by a group of Indonesian citizens voluntarily on the basis of the same vision and mission to protect and defend the interests, political members, the community, the nation and the State, as well as to maintain the integrity of the Unitary Republic of Indonesia under Pancasila and the 1945 Constitution of the Republic of Indonesia.

A legitimate political party is a political party registered in the Ministry of Law and Human Rights - the Republic Indonesia. This party has been considered as the party that has met several conditions set by the Ministerial Law and Human Rights No. 37 Year 2015 dealing with the registration procedures and the establishment of Law Firm, Statute, and substitution members' arrangement in the political Parties as mentioned in the Article 3 paragraph 1 of the Act No.2 of 2011 in conjunction with Chapter II, Article 2, paragraph 1 Regulation of the Minister of Justice RI No. 37 of 2015.

In recent years, however, there have been a growing number of the Sharia Islamic Banks that need attention by the House of Representative (DPR-RI). This particular attention mainly focuses on how the political parties in the parliament play roles and influences in the formation and the development of the sharia banks. As there have been limited works done in examining this issue, this study aims at discussing and analyzing the roles and the influences of political parties in the parliament in the formation and development of Islamic Banking in Indonesia. The method used in this study is a qualitative method by examining relevant theories and concepts advanced in the literature. However, before the details of the discussion are addressed, the following section 2 will deal with the literature review of the theories used in this study. It is then followed by a brief highlight of the characteristics and the role of Islamic Bank in section 3. Section 4 highlights the history of the development of Sharia bank and the legal aspects of the bank. Section 5 discussed the nature of supervision of the Bank of Indonesia towards the Sharia Bank. Section 6 addressed the role and influences of the political parties in the parliament towards the Sharia Bank. Finally, concluding notes are drawn in section 7.

B. Discussion

1. Literature Review

Many theories can be used to examine the influence of political parties in the parliament towards the formation and development of Sharia banking. However, this study will focus only on three theories, namely, the representation theory, the Law theory and the theory of Islamic banking. All these three theories are described as follows. The representation theory deals with the relationship between the representative and the represented. This theory can be seen in the theory of mandate consisting of imperative, independence, and representative, the theory of Organ, the theory of Sociology and the Objective Legal Theory.

Regarding the mandate theory, it was argued that a person becomes a member of the parliament if she/he has to mandate from the people or so-called "mandatorily." This theory was introduced by Roussesau, and followed by Petion.¹ However, this mandate theory has three dimensions. The first is an imperative mandate. The second is an independent mandate. The third is a representative mandate. An imperative mandate is a person who got a mandate, but she/he is not free in doing things outside what she/he represents. Independent mandate is the one who is free to act with no

¹ Mervyn K. Lewis & Latifa M. Algaoud, *Perbankan Sharia. Prinsip, Praktik, dan Prospek*, Jakarta: Ikrar Mandiri Abadi, (2007), p. 11

dependent on which he/she represented.² Whilst representative mandate is a mandate given to a representative person to join in the representative institution. However, between a representative and represented individual there is no relation at all. In this type of mandate, the representative institution will have a responsibility to the people.

Unlike the mandate theory, the Organ theory argued that the state has three organs to manage the country. These organs consist of three bodies namely, the Executive, Judiciary and the Legislative. These three bodies or institutions have their functions, but they have mutual interests. In this theory, it was stated that the people should not intervene in the institution. In other words, the intervention can only be done by the institution, not by the representative person or the people itself. The intervention of the institution, however, is organized in the law or regulation.³

The Sociological theory argued that a legislative body is not merely a political institution, but is a societal body. Thus, this body will represent the people in society. The theory of the objective legal deals with the relationship between the representative and the represented. The relationship is based on the law objective based on binding social solidarity. In this theory, the relationship between the representative and the represented can be implemented in the following ways. The first is by the general election. The second is by giving the equal position of the representative and the represented. The third is the representative person will conduct his/her duties by the laws. Fourth, the representative individual will have a chair in the parliament. Fifth, parliament in many countries may have different functions and missions. Sixth, the name of parliament may differ in many countries, but they are usually affected by the English language.

Regarding regulation or law theory, this can be divided into two parts, namely, legislation theory (*Gesetzgebungs*) and Regulation science (*Gesetzgebungslehre*). The first theory deals with the regulation, while the latter relates to how the rules and regulations are made and formatted and they are in the normative form.

The law is a product of legislation made by the House of Representative or parliament. The Parliament has three functions namely legislation, budgetary and monitoring which are undertaken to represent the people. In addition, there is also function to support the Government's efforts in implementing its foreign policy in accordance with the provisions of the legislation (the Article 20 A of paragraph 1 in the 1945 Constitution *juncto* CHAPTER III Article 69 paragraph 1 of Law No.17 of 2014 relating with the People Assembly (MPR), Councils (DPD) and Parliament (DPR) in

² Miriam Budiardjo, *Dasar –Dasar Ilmu Politik*, Jakarta: Gramedia Pustaka, (1977), p. 13

³ Riawan Amin, *Menata Perbankan Sharia Di Indonesia*, Jakarta: UIN Press, (2009), p. 20

conjunction with Chapter II, Article 4 of Regulation DPR-RI No. 1 of 2014 regarding the Rules of Conduct). The legislative function is undertaken as the realization of the parliament as the legal authority. The budgetary function is taken to discuss and give agreement or disagreement towards the National budget plan proposed by the President. The monitoring function is the function of parliament to monitor any policy and programs undertaken by the government.

However, the details of the authority of the parliament are as follows. First, to formulate the law that will be further discussed and approved together with the President. Second, to discuss and approve/disapprove the substitute of the Government Regulation submitted by the President to become the law. Third, to discuss the draft of the law proposed by the President or the parliament related to regional autonomy, central and local government relations, the establishment and expansion as well as the merger of regions, management of natural resources and other economic resources, and other related matters to the financial balance between the centre and regions by involving Regional Representative councils (DPD) before agreed by the President and by the Parliament. Fourth, to notice the regional Representative councils (DPD) consideration of the draft of the law on the state budget and draft of the law relating to tax, education, and religion. Fifth, to discuss with the President by taking into consideration given by the DPD and giving the approval towards the draft law of the state budget proposed by the President.

Sixth, to discuss and follow up the results of surveillance submitted by the DPD on the implementation of the law on regional autonomy, establishment, expansion, and merger of regional, central and local relations, management of natural resources and other economic resources, the implementation of the state budget, tax, education, and religion. Seventh, to give the agreement to the President to declare war, make peace and agreements with other countries. Eighth, to give the agreement towards the international cooperation that can give extensive and fundamental impacts to the lives of people related to the financial burden of the state and require changes or creation of laws. Ninth, to consider the President in an amnesty and abolition. Tenth, to consider the President in case of appointing ambassadors and approving ambassadors' placement from other countries. Eleventh, to choose the member of the Financial Surveillance Council (BPK) by taking into consideration the views from the DPD. Twelfth, to discuss and follow up the results of the state financial accountability submitted by the BPK. Thirteenth, to give the approval to the President on the appointment and dismissal of the member of the Judicial Commission (KY). Fourteenth, to approve the candidate of the chief of justice proposed by the Judicial Commission to become the chief justice by President. Finally, to

select the 3 (three) constitutional judges and submit it to the President to be unveiled by the President's decision.

Regarding the tasks, the parliament has eight tasks. The first is to formulate, discuss, determine and disseminate national legislative program. The second is to develop, discuss, and disseminate the draft of the law. The third is to receive the draft of the law proposed by the DPD related to regional autonomy, central and local governments' relations, the establishment and expansion and merger of regions, management of natural resources and other economic resources, as well as related to the financial balance between the central and regional governments. The fourth is to supervise the implementation of the law, the state budget, and government policies. The fifth is to discuss and follow up on the results of the management and financial responsibility of the State delivered by the CPC. Sixth, to give consent to the alienation of state assets under its authority under the provisions of the laws and agreements that result in extensive and fundamental impacts to the lives of people related to the financial burden of the State. Seventh, to absorb, collect, accommodate and follow the aspirations of the community. Finally, to carry out other duties as stipulated in the law.

Furthermore, regarding the structural form, the parliament consists of Executive Leaders/chairman, Consultative Body (BAMUS), Inter-Parliamentary Cooperation Agency (BKSAP), Agency of Household Affairs Committee (BURT), and legislation Agency (BALEG). Whilst the Commission in the parliament consists of 11 commissions: The Commission I that handles Defence, Intelligence, Foreign Affairs and Communications and Information Technology affairs; the Commission II that handles public Administration and Local Autonomy, Apparatus and Bureaucratic Reform, Electoral, Land and Agrarian Reform affairs; the Commission III in relation with Law, Human Rights and Security affairs; the Commission IV that deals with food, Marine, Forestry matters; the Commission V deals with transportation, Public Works, Housing, Rural Development and Underdeveloped Regions, and the Meteorology, Climatology, and Geophysics affairs; the Commission VI deals with Trade, Industry, Investment, Cooperatives, SMEs and SOEs and National Standardization affairs; the Commission VII deals with Energy and Mineral Resources, Research, and Technology, Environmental affairs; The commission VIII which relates to the Religious, Social and Empowerment of Women affairs; the Commission IX deals with Manpower and Transmigration, Population and Health affairs; The commission X deals with Education, Culture, Tourism, Creative Economy, Youth, Sports and Library affairs. Finally, the Commission XI deals with Finance, Planning and Banking affairs. In addition to the above organizational structure, the parliament also has

Budget Committee, Board of Honour members, Special Committee, and other organizations which are considered necessary and formed in the plenary meeting of the parliament.

Inlining the interests of board members, the fraction was formed in the parliament. This fraction is established to optimize the execution of the functions, powers, and duties of the House of Representatives, and the rights and obligations of members. This fraction was formed by the political parties that met the threshold of votes in the determination of the DPR seats and can be formed by a combination of the two or more political parties. Each board member shall be a member of one fraction. Each fraction is responsible in coordinating its activities to its members in carrying out the authority and responsibility of the Parliament as well as improving the ability, discipline, effectiveness, and efficiency of its members in carrying out the task that is reflected in each of the activities of the House. Fraction is also responsible for evaluating the performance of its members and reporting the evaluation results to the public at least once in a year trial. The respective fractions set the Fraction leaders. Table 1 shows the number of fractions and their members, 2014-2019.

Table 1. The number of fractions and their members, 2014-2019

No.	Name of Fraction	Abbreviation	Number of members	Percent (%)
1.	Partai Demokrasi Indonesia Perjuangan	FPDIP	109	19,46
2	Partai Golongan Karya	FGOLKAR	91	16.25
3.	Partai Gerakan Indonesia Raya	FGERINDRA	73	13.04
4.	Partai Demokrat	FPD	61	10.89
5.	Partai Amanat Nasional	FPAN	48	8.57
6.	Partai Kebangkitan Bangsa	FPKB	47	8.39
7.	Partai Keadilan Sejahtera	FPKS	40	7.14
8.	Partai Persatuan Pembangunan	FPPP	39	6.96
9.	Partai Nasional Demokrat	FNASDEM	36	6.43
10.	Partai Hati Nurani Rakyat	FHANURA	16	2.86

As mentioned above, the parliament as the holder of the power to make the law has a strategic role in the development of law in Indonesia. The draft of the law may originate from Parliament, the President, or DPD. The draft of the law of Parliament can be submitted by a Member, a commission, or a joint commission. The draft of legislation comes from the President proposed by the President. The draft of the law proposed by the DPD is proposed by DPD, in matters relating to regional autonomy, the central and local government relations; the formation, expansion, and merger of regions, management of natural resources and other economic resources; and other matters relating to the financial balance between the center and regions. The draft of law proposed is usually accompanied by academic texts, except the draft law on the state budget, the determination of government regulation in lieu of law into law, or repeal laws or revocation of government regulation in lieu of law.

In line with the establishment of laws based on the order of Article 22 A of the 1945 Constitution of the Republic of Indonesia, it was issued the Law No. 10 on 2004 on the formation of legislation, which was then amended by Law No. 12 on 2011, on the establishment of legislation starts from the preparation of the National Legislation Program (*Prolegnas*).

National Legislation Program is a program planning instrument forming constitution drafted in a planned, integrated and systematic way. *The members of Parliament and Government prepared Prolegnas*. Drafting national legislation in the House of Representatives is done by considering the proposals of fractions, commissions, members of DPR, DPD, and community. Legislation Agency is in charge of drafting the National Legislation Program that lists the order of the draft of the law and the reasons for 5 (five) years and annual priorities between the Parliament, the Government, and the DPD and decided in the Meeting of Legislation Council together with the Minister of Justice and Human Rights of the Republic of Indonesia. In certain circumstances, it is only the Parliament and the President who proposed the draft of the law for the Legislation outside *Prolegnas*. Note that, the detailed mechanism of the preparation of national legislation in the House of Representatives (DPR) was issued in the Parliament Regulation Number 1 the Year 2014.

Regarding the decision-making process, there are at least four methods undertaken in the parliament. The first method is by using consensus. The second is by counting the number of the members' parliament who attended the meeting. If the number of members' parliament who attended the meeting is more than half of the total members' parliament, the decision made was considered valid. However, if in the meeting there is no consensus reached toward the draft of legislation, this condition will be followed up in the next plenary meeting. Note that, before the next plenary meeting will be

held, the decision made should be first discussed to reach the consensus among the members' of the parliament. In the case that consensus can not reach the decision, the decision will be made by voting. Third, if Parliament and the President did not approve the legal draft, the legal draft cannot be submitted again to the parliament in that period. Finally, in the case that both the parliament and the president approved the legal draft, the draft will be approved as the law.

2. Characteristics and the Role of Islamic Banks

Islamic Banking is generally a banking institution that is run by Islamic principles. It suggests that the business activities of the bank are always using the laws of Islam contained in the Qur'an and Hadith. This condition is in contrast to the conventional banks which rely on the system of interest. Islamic banks prefer the profit-sharing system, the rental system and trading system that does not use a system of usury altogether. The regulation related to the Islamic Banking was in the Law No. 21 on 2008, Article 1 Paragraph (1). In this paragraph it was stated that Islamic banking is anything that involves about Sharia Bank and Sharia Business Unit, covering institutional, business activities, as well as the manner and process of carrying out its business activities.⁴

Schaik particularly stated that Islamic banks are a form of the modern bank that is based on Islam laws, which was developed in medieval Islam by way of using the concept of profit sharing and for risk as the main system and eliminate the financial system which is based on the assumption of the profit certainty previously predetermined. Further, Sudarsono cited in Djawahir Hejazziey (2012) defined Islamic banks as one of the country's financial institutions that provide credit and other banking services based on Islamic principles or Sharia principles.⁵ Whilst Perwataatmadja cited in Djawahir Hejazziey (2012) defines Islamic banks are banks that operate by following the principles of sharia or Islamic principles based on the Al-Quran and Hadith.⁶

The presentation of financial systems and the Islamic bank aims to provide halal financial services to the Muslim community. In addition to this objective, the development of Islamic Banking is expected to contribute in improving the socio-economic welfare of the Moslems on the one hand, and the economy on the other hand by creating employment opportunities as well as the distribution of income and wealth, etc. However, the management

⁴ Djawahir Hejazziey, *Konfigurasi Politik Hukum Islam Di Indonesia*, Bandung: Fajar Media, (2012), p. 4.

⁵ *Ibid.*, p. 9

⁶ *Ibid.*, p. 18

under the Islamic principles is the main characteristics of this bank in comparison to the conventional banks.

To be specific, the main purpose of Islamic banking can be divided into two. The first is that in this bank there is no interest on all financial transactions. The second is that distribution of income and wealth gave from this bank was reasonable, and this bank concerns with the progress of economic development. The argument against the usury or *Riba* is because it leads to the creation of property rights that are not in place. Thus, the payment and the withdrawal of the interest is contrary to the Sharia.

There are two kinds of property of individuals which are considered as Sharia. The first is the property which is obtained from a combination of a person's creative work and natural resources. The second is the property rights that have been transferred from the first owner for exchange, payment, or no rights of others in it, outright charity given by the owner to the needy, and the latter, to inheritance. Money is a claim from the owner of the property rights of others through one of the above. Lending money is a form of transfer of rights, and that can be claimed in return equivalently. Conversely, if the financial resources of the lender on his possessions remain intact and not be transferred, this will be owned by one of the co-owners together with the company. Thus, the investment has a legitimate claim and is entitled to have the same wealth generated by it.

The emergence of Islamic banks has given Muslims the opportunity to make interest-free financial transactions and, therefore, lawful. There are two models proposed to show how transactions should be conducted. The first is based on *mudaraba* scheme. Income bank of various activities is pooled and then shared with the depositors and shareholders by the provisions outlined in the contract. Banks are allowed to accept deposits of bearer that are not profitable but could attract service charges. This model, although it requires current deposits is paid at the request of the depositor, does not require any special reserve.

In the second model, proposed by Khan, the bank's balance sheet liabilities are divided into two places, one for bearer deposit and the other is for the investment balance. Depositors are free to choose his/her places. These models require a 100 percent reserve for current accounts, but it does not require a backup for the second places. It is based on the presumption that the money saved as demand deposits left as a trust or fiduciary relationships and must be returned completely. Money held in an investment account, on the other hand, if it is going to be invested in a risky project, should be known by the respective investors. Note that, both models assume the losses incurred are as the result of investment activities undertaken by

the bank which is reflected in the depreciation of the value of the wealth of depositors.⁷

In one model, there is an opportunity to make the interest-free investment at the individual level. However, there is disagreement about how many Islamic banks run this. Some scholars have argued that not all forms of Islamic legal finance fulfill *Shari'a* requirements. The form of financing that is most acceptable is the pattern of equity participation conducted according to the principle of profit and loss sharing. The largest part of the banking business should follow this scheme. However, most of the financing of Islamic banks do with *Murabaha* (markup) and *jarah* (leasing or rental). These contract methods generate revenue defined and known in advance and, as such, has the same effect as interest. This position is considered different from the value system of the Islamic economy.

Some writers have questioned the emphasis on transaction-oriented equity in Islamic banking, especially *mudaraba* models. Efforts to change the interest defined previously by uncertain profit do not necessarily make an Islamic transaction. It is because the excessive profit is as exploitative as the interests. One response to this criticism stating that it should be distinguished between profits and profiteering. Islam prohibits making excessive profits as it prohibits interest. Naqvi cited in Ma'ruf Amin, (2007) also stated that *mudaraba* is nothing sacred in Islam. He found *mudaraba* is not a concept derived from the Koran and Hadith, but it was the habit of pre-Islamic Arabs. In the past, *mudaraba* enable older women and children who have the capital to take part in joining trade by investing their funds to the merchants. If they are lucky, they get a share of the profits, and if the loss, all the losses borne by the owners of capital. For this reason, *mudaraba* cannot be considered as a special concept. Nevertheless, some reports stated that the Prophet was not against the practice of *mudaraba*, so this does not deserve to be considered un-Islamic.

3. Historical Development and the Legal Aspects of Sharia Bank

a. Historical Development of Islamic Bank

The development of Islamic banking is quite rapidly since 1992. This may be because of the Law No. 10 on 1998 which allows the banks to run a dual banking system so that conventional banks which dominate financial markets seek to develop Islamic business unit. Today, the development of Islamic banks in Indonesia is getting bigger. In 2015, the number of financial institutions that have given presentations at DSN - MUI was more than 20

⁷ Maria Farida Indrati S, *Ilmu Perundang-Undangan*, Yogyakarta : Kanisius, (2007), p.21

financial institutions. The details of the historical development of Islamic Banking can be divided into three periods as follows.

1) Year period 1990-1998: Pioneering Period

This began when the MUI (Ulama Islamic Council) organized a meeting in Cisarua – Bogor in 1990. This meeting agreed to form a Research and Development Team of Islamic Banking. In May 1998 the Bank of Indonesia issued the Law No. 10 on 1998 and supported only one Islamic bank, namely, Bank Muamalat.

2) Year period 1998 - 2002: Development Period

In these periods due to the issuance of fatwa by MUI in April 2000 and the establishment of the Bureau of Islamic Banking BI on January 1, 2002, this led to the establishment of seven Islamic banks, namely Bank IFI Sharia (1999), BNI Sharia (1999), BSM (1999), Bank Bukopin Sharia (2000), Bank Jabar Sharia (2000), BRI Sharia (2001) and Bank Danamon Sharia (2001).

3) Year period 2002 - 2005: Stabilization Period

In these periods it was marked again by the Fatwa MUI regarding the promulgation of Interest in December 2003 and the establishment of the Directorate of Islamic Banking BI on January 1, 2004, this led to the increasing number of Islamic Banks. There are about additional 12 Islamic banks, namely BII Sharia (2003), HSBC Sharia (2003), Bank DKI Sharia (2004), Bank Riau Sharia (2004), Sharia Bank Indonesia (2004), North Sumatra Islamic Bank (2004), Bank Niaga Sharia (2004), BPD Aceh (2004), BPD Kalsel (2004), Bank Permata Sharia (2004), Bank NTB (2004) and Bank BTN Sharia (2004).

Many things, among others cause the continued development of Islamic banking in Indonesia, are as follows. First, it is due to a large potential market associated with the number of Muslims in the country. Whilst at present, the number of users of the Islamic banks among the Muslims nowadays is still very small compared to the number of Muslims. Not to mention that the Islamic banks today is not only Muslims. Therefore, the potential market of Islamic banks is still very large. Secondly, it is because Muslims themselves will eventually choose Islamic banks compared to the conventional banks. This is partly because Islamic banks are already guaranteed *halal* (lawful), while for conventional banks there is no guarantee for *halal* especially after the MUI declared the system of interest and all transactions were considered haram. Thirdly, Sharia Bank does not cause resistance to those who are not Muslims. Consequently, customers of Islamic banks consist of not only Muslims but also from non-Muslims. Even in

Islamic bonds, the issuer majority at about 75 percent consists of the corporate property of non-Muslims.

Fourthly, Sharia Bank turned out to have a competitive advantage. It can be seen from the ability of Islamic banks provide for greater results to the owners of the fund compared to the conventional banks. Fifthly, Sharia Bank will not experience negative spread as Islamic banks do not pay interest on deposits which amount may exceed the bank's revenue. The Islamic banks shared revenue sharing ratio of the bank. Sixthly, Sharia Bank has successfully mobilized the economic potential of sharia, and in fact, it becomes the Movement of Islamic Economics (GES), which includes the synergy between the economic potential of sharia, and the growing economic potential of sharia in the community. This is simply because of the principles carried out by Islamic banks that do not allow finance activities businesses that are not in line with sharia. Finally, through Islamic banks, *Fiqh muamalah* can be implemented optimally. It is not even uncommon to pass the market demands rethinking the opinions expressed in the jurisprudence *muamalah* to be re-examined. In this case, it can be allowed as long as the demands do not conflict with the existing texts.

However, due to the establishment of the Law No. 21 on 2011 of the Financial Services Authority (FSA) locally called *Otoritas Jasa Keuangan* (OJK), it is mentioned in Article 6 a that the Financial Services Authority (FSA) carrying out the task of regulation and supervision of activities in the banking sector. The institutional arrangements and supervision of banks include: licensing for the establishment of banks, opening bank offices, the basic statue, work plan, ownership, management, and human resources, mergers, consolidations, and acquisitions bank. Financial Services Authority (FSA) is also authorized to regulate and oversee the business activities of banks, such as the source of funds, provision of funds, hybridization product, and activity in the service sector. Also, the Financial Services Authority (FSA) is also authorized to carry out the regulation and supervision of the health of banks, prudential aspects of the bank as well as an examination of the bank.

In Article 55 paragraph (2) of the Law No. 21 on 2011 concerning the FSA, it is said that since December 31, 2013, the functions, duties, and authority of the regulatory and supervisory activities of financial services in the banking sector (commercial banks, rural banks, Bank Sharia) switched from Bank Indonesia to the Financial Services Authority (FSA). It is also mentioned that definition of a bank is everything related to the bank, including institutional, business activities, as well as the process to fund its business operations processes in conventional and sharia as defined in the laws concerning banking and legislation on Islamic banking.

b. The Legal Aspects of Sharia Bank

Bank of Indonesia (BI) as the Central Bank is independent since the government issued the Law No. 23 on 1999 of the Bank of Indonesia. This law was declared effective on May 17, 1999. However, this law was further amended by the Law No. 6 on 2009. This law provides the status and position as an independent State agency and free of government interference or the other, except for matters expressly stipulated in this law. As an independent financial state institution, Bank Indonesia has full autonomy in formulating and implementing each of its duties and authorities as specified in the legislation. Outside parties are forbidden to interfere with the implementation of the tasks of Bank Indonesia. Bank Indonesia also obliged to reject or ignore the intervention in any forms from any parties. Due to this independence position, the Bank of Indonesia consequently has a special position in the constitutional structure of the Republic of Indonesia. Bank Indonesia is also not the same as the Department. This is because the position of Bank Indonesia is on the outside of the Government. These statuses and its special position of Bank Indonesia are required to carry out its role and function as a monetary authority more effective and efficient.

The status of Bank Indonesia as a public legal entity and the private legal institution was determined by law. As a public legal entity, Bank Indonesia is authorized to enact rules of law and implemented the law by the duties and responsibilities. However, in 2004 Bank Indonesia Act was amended from the Law No. 23 on 1999 to the Law No. 3 on 2004 concerning Bank of Indonesia. The regulation of the Bank of Indonesia was issued to supervise and maintain all domestic banks as well as banks that operated in Indonesia. The specific law to this regulation was the Law No. 7 on 1992 that was amended by the Law No. 10 on 1998. In this law, it is stated that the Bank of Indonesia has been given the authority to regulate certain matters related to commercial banks and credit banks (BPR), including the Sharia Bank. This regulation certainly has made a strong foothold to Bank Indonesia to issue regulations in the field of banking. The problem of Law No. 7 on 1992, as amended by Law No. 10 on 1998, however, was not specific to explore the specificity of Islamic Banking. This consequently has made Bank Indonesia faced difficulties managing the specificity of Islamic Banking. On the other hand, there has been a regulation that organized the presentation of the Sharia Bank that is not available in the regulation of the Bank of Indonesia.

In the law of Islamic Bank, there are many articles regarding certain matters that are regulated in Bank Indonesia. At least 21 provisions in Islamic Banking are ordered to be further regulated in the Regulation of Bank Indonesia. The development of Islamic banks in Indonesia cannot be separated from the development of legislation used as the legal basis. This

has been introduced since 1992 in that the banking legislation has accommodated any banking operations based on the principle of profit sharing as the base of Islamic banking system. Under Law No. 7 on 1992, Bank Sharia has been popularised as profit sharing bank, while other matters of this bank are regulated in accordance to the Bank of Indonesia regulation. Therefore, the management of Islamic banks is almost the same as the conventional banking systems with limited variation in the sense of sharia. As a result, not all community needs can be accommodated in the sharia banking systems. In short, the Law No. 7 on 1992 does not explicitly explain the Islamic banking.

The legal aspect of the Islamic Bank can be seen in the Law No. 10 on 1998. In this law, it was stated that there are two banking systems in Indonesia, namely, conventional banks and Islamic banks. The Islamic bank as stated previously is different from conventional commercial banks. Conventional banks tend to pursue material gain via the interest rate system, while the Islamic Bank emphasizes the profit-loss sharing system or *mudaraba* and there is also a benevolent loan to poor customers under "*qordul Hasan*" scheme that is a loan where the customer is not burdened with anything except return the principal. The development of Islamic economics has been started by the government with the enactment of the Law No. 19 on 2008 on the National Sharia Securities and the Law No. 21 on 2008 of Islamic Banking. The Law No. 19 can be referred to as the government's efforts to increase the share of national development funds through Islamic financing scheme of state bonds and other securities that do have a big opportunity for Indonesia to obtain from Middle Eastern investors and Muslims in Indonesia alone. The Law No. 21 on 2008 specifically addressed Islamic banking as the government effort to strengthen the contribution of Islamic financial institutions in strengthening national development. The issuance of this law by itself will increase the space for the development of Islamic economics in that Islamic banking is as a locomotive, although much remains to be done.

In conducting the business activities, the Islamic bank is based not only on Sharia, but it is also based on the economic democracy and prudent principle with the aim to support the implementation of national development in order to enhance fairness, solidarity, and distribution of welfare of the people. More specifically, the Islamic bank aims at the following: (1) to collect and distribute public funds; (2) to run a social function in the form of treasury institution, which receives fund from *zakat*, *infak*, donation, charity, or other social funds and distribute them to the charity (*zakat*) organization; (3) to raise funds derived from endowments money and distribute it to the management of *waqaf* (*Nazhir*) in accordance with the will of the giver of *waqaf*; and (4) to implement of social functions

referred to in paragraph (2) and (3) in accordance with the provisions of the legislation.

On the issue of licensing, the legal forms of the Islamic Bank are governed by the Law No. 21 on 2008. This is particularly stated in Article 5 of the law as follows. First, each party that develops Islamic banking activities must first obtain a license as an Islamic Bank from Bank Indonesia. Second, obtain a business license as Sharia Banks. To have this, it must meet the following minimum requirements concerning with organization and management system; Capital, Ownership, expertise in the field of Islamic Banking; and Feasibility; Third, there is a need to have a business permission as Islamic Bank as organized by Bank Indonesia Regulation; Fourth, Sharia Bank which has a license as referred to in paragraph (1) shall state clearly the word "sharia" in writing the name of the bank. Fifth, conventional Commercial Bank that has a license of Sharia Bank referred to in paragraph (1) shall state clearly the phrase "Sharia" after the bank name; Sixth, conventional banks can only modify its business activities based on Sharia Principles with the approval of Bank Indonesia. Seventh, Islamic Banks cannot be converted into a conventional commercial bank. Eighth, Commercial sharia financing cannot be converted into a Rural Bank. Finally, Conventional Commercial Bank will conduct business activities based on Sharia principles required to open Islamic banks in the Bank's head office with the permission of Bank Indonesia.

Note that in the Article 6 paragraph 1 and paragraph 4, it was mentioned that for the opening of a branch office of Sharia banks, as well as towards the opening of branches, representative offices, other types of offices abroad by Islamic Banks and Conventional Commercial Bank having Islamic Banking system, this can only be done with the permission of Bank Indonesia. Similarly, to open offices under branches, this must be reported and can only be made after receiving the letter of confirmation from Bank Indonesia. While for the Sharia Financing Bank, it is not allowed to open branch offices, representative offices, and other types of offices abroad. This rule was stated explicitly in the Act of Bank of Indonesia.

4. Bank of Indonesia Supervision Towards Sharia Bank

Bank of Indonesia is not only guided but also supervised the Islamic Bank. These guidance and supervision are done to maintain the level of financial health in terms of capital adequacy, asset quality, liquidity, profitability, solvency, management quality that describes the capabilities in the financial aspect, adherence to principle Sharia and Islamic management principles as well as other aspects related to the business of Sharia Bank as stated in paragraph (1) of the law. Also, the Islamic Bank shall deliver all the

information and explanations on their efforts to Bank Indonesia by the procedures that have been set.

However, Bank of Indonesia may assign public accounting firms or other parties for and on behalf of Bank Indonesia to carry out the examination referred to in Article 52 paragraph (2), as well as the requirements and procedures for the examination set forth in paragraph (1) of the Regulation of Bank Indonesia and Bank of Indonesia is authorized to conduct action against Islamic Bank when experiencing difficulties endangering its survival. To follow-up this supervision, this is done as follows. First, by limiting the authority of the General Meeting of Shareholders, directors, and shareholders. Second, by asking shareholders to raise the capital. Third, by asking shareholders to replace commissioners and directors of Islamic Bank. Fourth, by requesting the Sharia Bank to remove jammed disbursement bookkeeping and account for the loss of Islamic Bank capital. Fifth, by requesting Sharia Bank to conduct merger or consolidation with another Islamic Bank. Sixth, by requesting Sharia Bank sold to buyers who are willing to take over all of its liabilities. Seventh, by requesting the Sharia Bank to hand management of the whole or part of Islamic Banking activities to other parties. Eighth, by requesting Sharia Bank to sell some or all assets and liabilities of Sharia Bank to other parties.

If the Islamic Bank in conducting banking activities faced a dispute with other parties, the dispute settlement of Islamic Banking can be done/completed by the court within the Religious Court. However, if the parties have foretold the settlement of disputes other than those referred to in paragraph (1), then the dispute can be done by the contents of the Agreement. Note that, in the dispute settlement it should not be conflicted with Sharia principles. The base policy to solve the dispute consists of both internal and external base. At the internal base, the solution needs to establish and help the Indonesian economy, especially the economy based on the sharia principle. While at the external base, it needs to show to the world that the banking Sharia can carry out the economic activities both nationally and internationally, as well as to attract foreign investors, especially investors from Muslim countries. The above external factor is a very important one in the development of Sharia, to grow and develop very quickly, which in turn can be expected to help the Indonesian economy. Both of the internal and external factors consideration is important to minimize bad impressions towards Sharia Banks in the face of customers and investors both nationally and internationally. Therefore, careful consideration to solve the dispute is a must; especially since it involves the jurisdiction of two or more countries.

5. The Roles and Influences of Political Parties

As mentioned previously that the political parties in the parliament play roles in the process of the lawmaking. However, the process of law making should be by the spirit of the UUD NKRI 1945 and the aspirations of the people. This community aspiration represents the aspiration of political parties. The political party is a means, a tool or forum for people to express their aspirations. Some party members imply the greater the existence of the party. This was characterized by the number of representatives in the representative body of the people, ranging from the District / Municipal, Provincial and Parliament.

However, the state agencies involved in law-making is the Executive / President and the Parliament. The parliament consists of members of political parties who participate in the elections and are elected through general elections. The parliament is an arm of a political party. Through their respective fractions, the members of parliament have the right to submit a draft of the law, discussed for approval and ratification of the Bill. This was disclosed in the article 21 of the UUD NKRI. Therefore, the establishment of the law is heavily influenced by the aspirations of political parties conveyed through each faction.

Moreover, political party fraction is not only an arm of the political party but also as a reflection of a storefront or party in the legislature. Fractions in the legislative must fight for the ideals that "on behalf of" the people in general who put thought and at the same political party interests itself through the context of the various policies and legislation. In conjunction with the establishment of law and the development of Sharia Bank, political parties through their respective fractions in the House of Representatives have given many influential contributions. Each fraction gives its views and assessment to support the importance of Islamic banking to the national economy. This means that the Islamic banking participates in the economic development of the country.

For these reasons, the state is obliged to establish laws or other regulations, as the umbrella in carrying out the banking operations of sharia. Second, the development of infrastructure should be conducive to perform its duties and functions optimally. Third, there is a need to have additional financial revenues both from the conventional bank as well as from Sharia Banks. This is simply because Indonesia is predominantly Muslim country and hence market forces can be predicted accurately.

The influence of political parties on the formation and development of the Islamic Bank, especially about Sharia Bank is very large. This is because, as Gabriel Almond in his system theory, that there are elements that surround system, namely, the existence of interest groups, political parties, the legislature, the executive body, bureaucracy and the judiciary. These

elements are attached to input and output functionality. Input function in this system includes a variety of things, such as interest articulation, interest aggregation, political socialization, political communication and political recruitment. While at the output function, there are elements such as policymakers, policy implementers, and policy adjudication.

If it examines deeper, however, there are other input functions, such as interest articulation, interest aggregation, political socialization, political communication, and political recruitment. All these things are also attached to the main functions of political parties. These elements make a political party becomes so important in the passage of a political system in a country, including Indonesia. Furthermore, Gabriel Almond also noted that there are two important elements in the process of policy development and implementation, that is, the interest groups and political parties. It will further reinforce the role of political parties in the process of making and policy implementation in Indonesia.

In the process of policy-making, political parties certainly play important influences. The influence of the political parties is not only limited to the President as the head of government, but also as the head of state in Indonesia. The reason is simply that the President was elected not only directly by the people, but certainly promoted by a political party. Therefore, the president in carrying out his orders more or less is influenced by the policies supporting the political parties. This influence was organized in the 1945 Constitution paragraph 5, article 1. It is stated that the President is entitled to propose draft legislation to the House of Representatives. Also, in article 20 paragraph 4, it was stated that the President approves any draft of the law together with the parliament to become law. These conditions suggest indirectly that political parties can influence the policymaking process of the government.

The influence of political parties on the formation of law is clear enough. Each stage of the formation of legislation unavoidably is influenced by the political parties. These influences further ultimately affect the substance of the regulations established by the government. According to Article 1 paragraph 1 of the Law No. 12 on 2011, the establishment of the legislation is the creation of legislation that includes the stages of planning, preparation, discussion, approval or stipulation and promulgation. Toward the law of Islamic Bank, it was approved in a plenary session led by the chairman of the House of Representatives, Agung Laksono on June 17, 2008. There were ten political parties (fractions) present and voting at the ratification of Islamic Banking bill into law. With a majority, the fractions (F. PAN, PKB-F, F-PDIP, F-PG, F-PPP, F-PD, F-FBR, F-MCC, and F-BPD) gave full support and positive ratings to the development of Islamic banking and the passage of legislation of Islamic bank. One fraction of the PDS (the

Prosperous Peace Party) rejected the draft of the Islamic Banking Bill. They argued that the Islamic bank is not by the basic laws of Indonesia, *Pancasila* and the 1945 Constitution. This fraction through a spokesman, Retna Romanita Situmorang, said that "Information in some countries that she knew, proved that Islamic bank products are not in the form of laws, but they are only a derivative of the banking laws that exist. Thus, it was not in special legislation.⁸ From the government side, the Minister of Religious Affairs, Maftuh Basuni, hope that in the adoption of Islamic Banking Act, the Islamic Bank could encourage domestic banking industry to grow and develop better. He further hopes that Bank Indonesia made the rules of implementation of this law.

In summing up: the political parties in the parliament play roles as well as influencing the formation of the Sharia Bank in Indonesia. However, the roles and influences of the political parties in the parliament were not as simple as there was no comprehensive regulation yet. The regulation towards Sharia Bank is the Law No. 21 on 2008, particularly article 1 (1). This law states not only in relation with the structural forms of organization, but it also addresses bank activities, procedures, and process in operating the bank activities.

C. Conclusion

Islamic banks in the form of Sharia bank are growing, and the problems that accompany these developments appear to be more complex. Due to these complex developments, more comprehensive regulations need to be issued to minimize any problems associated with the growth of Sharia Bank in Indonesia. The importance of more comprehensive regulations is not only for the sake of response the rapid development of Sharia Bank, but it also to improve the growing public confidence towards the Islamic banks. Also, public confidence will be even greater if more Islamic banking improves adherence to Islamic principles by the fatwa DSN - MUI and the implementation of sharia supervisory effectively on each Islamic bank.

Finally, by looking at the potential and role of Islamic Banking in the national economy, it becomes clear that the strategic importance of this industry for the future of Indonesia. For this reason, the Government of Indonesia, Bank of Indonesia, and other interested parties should give total support for the development of Islamic Banking in Indonesia. The formation and the development of Islamic Banking must not be separated from the responsibility of the parliament (DPR). This means that the formation and the development of Islamic Banking should be supported by the political

⁸ Djawahir Hejazziey, *Perbankan Sharia. Ditinjau dari Aspek Hukum dan Politik*, Bandung: Fajar Media, (2013), p. 23.

parties represented in the parliament. Thus, much remain to be done to improve the Islamic Bank in Indonesia.

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