Journal of Islamic Law Studies

Volume 4 | Number 1 Article 3

May 2021

THE APPLICATION OF ISLAMIC BUSINESS CONTRACT IN THE NATIONAL LAW REGULATIONS (THE COMPARISON BETWEEN COUNTRIES WITH CIVIL LAW SYSTEMS AND COMMON LAW SYSTEMS)

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Abstract

With the growth of Islamic banking and finance business in many countries nowadays, the legal aspect is very important to be understood by the parties. This is because in Islamic business law, not only the contract becomes law for the parties, but also to be compliant with Islamic teachings. Otherwise it will be null and void that could cause loss to both sides. However, in some Civil Law system countries there might not be clear rules regarding Islamic contract law. Also, in Common Law system countries, with the character of Islamic law which has specific provisions on the law of contracts needs to comply with the rules in practical Islamic business. In addition, the function of the court in finding the law for dispute settlement in Islamic business transactions becomes a necessity. For this reason, it is important to see how are the countries with the Civil Law and the countries with the Common law system applying Islamic business contract law. In This paper will be compared the application of Islamic business contracts in the national law regulations of two countries, Indonesia (with Civil Law System) and Malaysia (with Common Law system). The main focus of this research is the application of transactions based on sharia principles on the regulations and the legal process by the law enforcers in the compared countries based on their different legal system. The result to be expect is to find the similarities and the differences amongst the two countries.

INTRODUCTION

In line with the increasingly complex life of the modern society, there is a growing risk of financial transactions and this has the potential to become a threat to the parties, as well as to transactions using the Sharia system (based on Islamic contract law). The most significant risk is the risk of a contract that in Islamic contract law is based on the validity (*ijab* and qabul) and the execution of a contract that must conform to the provisions of Islamic law. If it is not implemented in accordance with the provisions of Islamic law then the transaction is threatened null and void or can be canceled. It is the fact that encourages the importance of obtaining legal protection in the regulation of state legislation for the parties to legitimate expectations to be achieved through the transactions it makes (the protection of the legitimate expectations of the parties).

In order to realize these contractual goals, legal norms are developed in the form of a set of principles and rules of law that are generally understood as law of agreement which is expected to increase certainty, justice and predictability and at the same time become a tool for the parties to manage risk (risk management tool). Islamic law has provided guidelines and limitations of the procedure of transactions

in accordance with the provisions contained in the verses of the Qur'an and the Sunnah of the Prophet Muhammad (*pbuh.*) which then taken the essence through the Ijtihad of scholars from time to time as applicable legal principles in everyday life.

Sharia principles, which are basically known in traditional economic activities, are now beginning to enter into modern economic activities, especially in the financial sector, such as banking, capital markets, insurance, pension funds, and so on. The principle of buying and selling (*murabahah*), leasing (*ijarah*), borrowing (*qard*) and depositing (*wadiah*), all of which are suitable to be applied into the activities of modern economy to this day. All forms of contract in the financial field have their own rules.

On the other hand, the contract's agreement must be accompanied by the legality of contracts which are made according to the prevailing state laws and regulations. This is where the functions of the Government of each country to put the rules in detail about the application of Islamic contract law in business activities in the financial field in order to be able to provide legal protection for the perpetrators of transactions and seek order in the implementation of Islamic contract law in practice.

Islam has arrangements in various fields, especially in the field of economic law. For Muslims it is imperative to implement all the rules in various areas of life including in conducting economic transactions, especially for financial needs. In many countries Muslims are in the majority position. However, Islamic law, especially socio-economic dimension, cannot simply be applied and / or become a state law without going through procedures and mechanisms that are legally recognized. In other words, the implementation of Islamic law as intended requires the prerequisite of acceptance of the national law first through the so-called legislation, namely the formation of state law by the agency / institution or authorized official.[99]

The product of national legislation is strongly influenced by the legal and political system of the existing law in that State. In countries with Islamic legal system can directly apply the provisions of sharia in the implementation of legislation.[100] However, in Indonesia and in some other countries with the Continental European legal system (Civil Law), requires a more structured arrangement based on the order of applicable legislation rules.[101] Whereas in countries with the Anglo Saxon (Common Law) legal system it is preferable to pre-existing court decisions that can be used. For example, for the decision of the law by the next judge (precedent) in providing legal certainty for the implementation of

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[99] Ja'far Baehaqi., *Pengaruh Dialektika Hukum Islam dan Hukum Nasional Terhadap Produk Legislasi Perbankan Syariah*(The Influence of Dialectic of Islamic Law and the National Law on the Products of Sharia Banking Legislation), (Semarang: LP2M, 2017), pp. 3-4

[100]. For example, in the Kingdom of Saudi Arabia and the Islamic Republic of Iran the main source of law of the Qur'an and the Books of hadith and books result of Ijtihad Muslim jurists.

[101]See more in Munir Fuady, *Perbandingan Ilmu Hukum* (Comparative Law Science) (Bandung: Refika Aditama, 2010), p. 32-33

shariah contract law. Malaysia is among the examples of countries with a common law system that have developed quite advanced sharia economic developments.[102] The research method used in this research is normative-comparative research method. Normative research method is done by examining the literature, or also called bibliography research. Normative legal research focuses on the inventory of positive law, legal principles and doctrines, the discovery of law in the case of concert, systematic law, the level of legal synchronization, comparative law, and legal history.

In this study, the legal discovery of the legal arrangement of Islamic contracts in Malaysia as a country with the common law system and compare it with Indonesia as a country with Civil Law legal system. This study looks at the relationship between the legal system used by a State in applying the Law of Contract of Islam and its influence on the development of Islamic Contract Law itself. The data to be obtained in the study comes from some relevant laws and regulations in Indonesia and Malaysia regarding the application of the Law of Contract of Islam in Islamic Banking business.

THE CHARACTERISTICS OF THE NATIONAL LEGAL SYSTEM *Characteristics of the Legal System in Indonesia*

As the result of Dutch colonialization, nowadays Indonesia become part of Civil Law legal system. This system, which is also commonly called Continental European system, is rooted in the Roman law system, which is generally embraced by Continental European countries, Germany, France, the Netherlands and its former territories. This legal system is based on codified civil codes.[103]

As a country with civil law system Indonesia must have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. Such codes distinguish between different categories of law: substantive law establishes which acts are subject to criminal or civil prosecution, procedural law establishes how to determine whether a particular action constitutes a criminal act, and penal law establishes the appropriate penalty. In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The judge's decision is consequently less

[102]There is a significant progress in Islamic banking in Malaysia. The share price on Islamic Banking in Malaysia has increased 4-fold from 7.1% in 2010 to 28% in 2016. See https://themalaysianreserve.com/2017/08/21/growing-islamic-banking-business/ accessed on March 26 2018.

[103]Nurul Qamar, *"Perbandingan Sistem Hukum dan Peradilan Civil Law System dan Common Law System*", (Makassar: Pustaka Refleksi , 2010), p. 16.

crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes.[104]

The main characteristics of Civil law legal system can be put forward the characteristics as follows:[105]

1. The existence of codification system.
2. Judges are not bound by the precedent or doctrine of stare decisis, so the law becomes its main legal reference.
3. The judicial system is inquisitorial.

In Indonesia, the legal system has the codification system taken from Dutch Civil Code, in the contract law based on Burgerlijk Wetboek which start from the year 1855. This source of law becomes the main legal reference. Indonesian Judicial system is *inquisitorial*, a legal system where the court or a part of the court is actively involved in investigating the facts of the case, as opposed to an *adversarial system* where the role of the court is primarily that of an impartial referee between the prosecution and the defense. However, on practical base, Indonesia, like most countries in the world according to Achmad Ali belongs to the Mix Legal System and not the Continental European Law System. There are several legal realities in Indonesia that can be put forward for the statement, namely:

(1) Indonesia treats legislation that is a characteristic of the European Continent;

(2) The existence of customary law as a characteristic of Customary Law;

(3) The existence of Islamic Law and the existence of Religious Courts in Indonesia as a hallmark of Muslim Law System; and

(4) Judges in Indonesia in practice follow jurisprudence (which is a common law characteristic with stare decisis.

Characteristics of the Legal System in Malaysia

Before we look up Malaysian legal system, we will see the characteristics or characteristics of the Common Law system are:[106]

1. Jurisprudence as the main source of law
2. Dicutnya Doctrine Stare Decisis / System Precedent
3. Adversary System in the judicial process
4. Jurisprudence as the main source of law

There are 2 (two) reasons why jurisprudence is embraced in Common Law system, that is[107]:

a. Psychological reasons.

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[104]The Robbins Collection, School of Law (Boalt Hall), University of California at Berkeley, "*THE COMMON LAW AND CIVIL LAW TRADITIONS*". https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html

[105]Nurul Qamar, *supra*, p. 40

[106]*Id*., p. 47.

[107]I*d*

The reason is that for every person assigned to settle a case, he or she tends to find the justification of his verdict by referring to a pre-existing verdict rather than taking responsibility for his own decision.

b. Practical reasons.
It is hoped that there will be a uniform decision because it is often expressed that the law must have certainty rather than accentuate justice in every concrete case.

In addition, according to the Common Law system, placing the law as the main reference is a dangerous act because the rule of law is the work of the theorists who are not impossible different from the reality and not in sync with the needs. Moreover, as time passes, the law is no longer compatible with the circumstances, requiring court interpretation.

Although in the Common Law system, it is said to apply the doctrine of Stare Decisis, but it does not mean that irregularities by the court may be made possible, by doing distinguishing, provided the court can prove that the facts are different from the facts that have been decided by the previous court. That is to say, the new facts are expressed unlike facts that have precedents.

Common law legal system is generally *uncodified*. This means that there is no comprehensive compilation of legal rules and statutes. While common law does rely on some scattered statutes, which are legislative decisions, it is largely based on *precedent*, meaning the judicial decisions that have already been made in similar cases. These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law known as year-books and reports. The precedents to be applied in the decision of each new case are determined by the pre-siding judge. As a result, judges have an enormous role in shaping American and British law. Common law functions as an adversarial system, a contest between two opposing parties before a judge who moderates. A jury of ordinary people without legal training decides on the facts of the case. The judge then determines the appropriate sentence based on the jury's verdict[108]

However, in Malaysia, English Common Law system does not apply in full meanings. Since the arrival of the English in the Malay lands, even after the residency system came into effect, and until the early 20th century, English law could not be applied in all Malaysian states. As long as it is still in contact with the Malays, the law will be adjusted to Malay customary law and custom. Islamic law is not a foreign law, but local law in which courts are required to comply with it in making judicial decisions. Each of the Federal Malay states has legislation administering Islamic Law.[109]

THE REGULATION ON ISLAMIC BANKING AND FINANSIAL INSTITUTION

Indonesian Regulations

[108] *Id.*

[109] Peter de Cruz, *Perbandingan Sistem Hukum Common Law, Civil Law, and Socialist Law*, (Bandung: Penerbit Nusa Media, 2013), p. 177

Through the practice of law in the Islamic investment banking activities are to begin implementation sharia principles in Banking and financial institutions. Although by law the term "sharia" is not known, but the concept of "dual banking system" has been started by introducing the term "Bank dengan Prinsip Bagi Hasil" (Bank with Profit Sharing Principles) in addition to the conventional banks. The purpose of the Regulations is initially only as an effort to mobilize the "idle" funds which are restrained from investments as a form of the Muslim community resistance against system of interest which is considered contrary to the sharia. But then, with the monetary crisis in the country, the Islamic banking system even be the correct solution to overcome the problems of the crisis due to the uncertain impact of the interest rate as a fluctuated-exchange rate (cost push inflation).[110]

In the early 90s has established several rural banks in Indonesia by leveraging moment issuance of Government Policy Package October 27, 1988 (PAKTO 88), which is the starting point that provides ease of banking liberalization establishment of new banks. After passing through the first 2 years, Bank Muamalat Indonesia (BMI) which is the first Islamic commercial bank in Indonesia has been able to switch the status of a foreign bank, because it already has an adequate level of health. Under the umbrella of Law Act. No.7 of 1992, the regulations implementing, PP 70, 71 and 72, 1992, Islamic banking activities should only be carried out by banks with Islamic principles alone. In other words, the conventional banks at that time cannot run Islamic investment. [111]

Then the switch in Law no. 7 of 1992 was by Act No. 10 of 1998 on the Amendment Law. 7 of 1992, conventional banks can participate to operate Islamic system by opening a branch office of sharia or sharia units (Unit Usaha Syariah/UUS). The procedure for the establishment or conversion to Islamic banks operation has been set up, initially by PBI No.4/1/PBI/2000 and then be further regulated by PBI No.8/3/PBI/2006 About The Change of Operations of the Conventional Banks Became the Banks which Implementing Business Based on Sharia Principles and Implementing Office Opening Bank Business Based on Sharia Principles by Conventional banks. Even with the release of PBI. 8/3/PBI/2006 [112] the Conventional Bank has been able to do "office channeling" to implement sharia services in conventional bank branches. This suggests substantial

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[110]See: Gemala Dewi, *Aspek-aspek Hukum Dalam Perbankan dan Perasuransian Syariah di Indonesia*, 4th ed. (Jakarta: Kencana Prenada Media, 2007), p. 192, Fathurrahman Djamil, "Urgensi Undang-Undang Perbankan Syariah di Indonesia", *Jurnal Hukum Bisnis* (Vol.20, 2002), p. 39, Wirdyaningsih, et.al. *Bank dan Asuransi Islam di Indonesia*, 3rd. ed. (Jakarta: Kencana Prenada Media, 2007), p. 51.

[111]Zaenul Arifin, *Memahami Bank Syariah: Lingkup, Peluang, Tantangan dan Prospek*, (Jakarta: Alvabet, 2000), p.17.

[112]PBI (Peraturan Bank Indonesia) or **Bank Indonesia Regulation** is the legal provisions stipulated by Bank Indonesia and binds any person or entity, and published in the State Gazette of the Republic of Indonesia. *(Article 1 Point 8 of Law No. 23 of 1999 concerning Bank Indonesia).*

opportunities for people to invest through both sharia Islamic Banks and Conventional Banks to open the account in the Branch Office.

The early 2000s is a period of purification begun all Islamic investment. At the beginning of 2000 the introduction of the Interbank Money Market based on Sharia principles (Pasar Uang Antarbank Syariah/PUAS) by issuing PBI. 2/8/PBI/2000 dated February 23, 2000 jo. PBI. 7/26/PBI/2005 dated August 8, 2005 on the Amendment PBI. 2/8/PBI/2000 About PUAS. In 2002 services were held completion banking network released with PBI 4/1/PBI/2002 Jo. PBI. 8/3/PBI/2006 About the Change of Business Activity from Conventional Bank (BUK) becomes a Sharia Bank (BUS) and Office Opening by BUK. While in the year 2003 began Introduction to Islamic Capital Market.[113]

In 2005 an attempt on purification of sharia is equipped with provisions of Regulation No. 7/46/PBI/2005 concerning the collection and Disbursement Agreement for Commercial Banks Conducting Business Based on Sharia Principles. This regulation provides guidance on boundary limits must be adhered to in carrying out banking transactions using Islamic principles, especially in the collection and distribution of funds. PBI is very relevant in order to prepare for the legal protection of the Islamic parties in the transaction and also provide legal certainty to invest in Shariah. With several changes in this enhanced PBI, PBI was originally revoked by PBI. 9/19/PBI/2007 on Sharia Implementation in fund-raising activities and Disbursement Services and Islamic Banking Services, which regulates the provision of Islamic banking covenant agreement-both in terms of raising funds and grants from the PBI jo. 10/16/PBI/2008 on Amendment PBI. 9/19/PBI/2007.

Concerning about contract the Central Bank also introduce The Codification of Islamic Banking Products attached on the Circular Letter issued by Bank Indonesia (SEBI) No. 10/31 DPbS Jakarta, dated October 7, 2008 regarding Islamic Banking products and Sharia Unit. And to accommodate the progress of future types of banking products the government also issued PBI. 10/17/PBI/2008 Date of 25 September 2008 concerning Islamic Banking products and Sharia.

To better accommodate the purity of Islamic banking in Indonesia, as a legal umbrella and then in the House of Representatives of the Republic of Indonesia (DPR RI), made the Draft of Law on Islamic Banking (Islamic Banking bill or IB bill). In connection with this IB bill, since it was first proposed around 2003, there was some IB bill proposed by various groups in the country, namely by Bank Indonesia (BI), the Association of Indonesian Islamic Banking (Asbisindo), the Association of Indonesian Muslim Intellectuals (ICMI) and the proposal of the House of Representatives their own initiative. The bill proposed Islamic Banking initiative DPR-RI is then based on the Letter of the President of Republic of. R 08/Pres/2/2007 discussed with the Parliament, the Minister of Finance, Minister of Religious Affairs, Ministry of Law and Human Rights, in particular regarding:

[113]Gemala Dewi, *Supra*. p.110.

a. Institutions authorized to issue decrees and or opinions on the suitability of products and services according to Shariah;
b. Establishment of Islamic Banking Committee;
c. Sharia Supervisory Board at conventional banks having Islamic business units (UUS).

These three things are the most important things to be set in order to achieve the implementation of the Islamic banking operations in accordance with the provisions of Islamic law (sharia compliance). The results later on July 16, 2008 enacted Law No. 21 Year 2008 on Islamic Banking, which is then followed by implementing regulations issued by Bank Indonesia Bank Indonesia Regulation (PBI) or the Governor of Bank Indonesia Circular Letter (SEBI).

Malaysian Regulations

The development of sharia banking in Malaysia began when the government established *Tabung* Haji in 1963. This institution was formed to invest the local people's savings in interest-free instruments, especially for those who want to perform the pilgrimage. The *Tabung* Haji Institute uses *mudharabah, musyarakah* and *ijarah* schemes in financing investments under the guidance and supervision of the Malaysian National *Fatawah* Committee of Malaysia. However, the *Tabung* Haji institution is only a storage institution and has various shortcomings of innovation and financial incentives.

Malaysia's sharia financial industry has existed for more than 30 years. The presence of the Islamic Banking Act (IBA) 1983 (Islamic Banking Act, IBA) encourages the establishment of the first sharia bank. Furthermore, the process of liberalization of the Islamic financial system contributes to the development of sharia financial institutions in Malaysia. With more than 30 years of experience, the sharia banking system in Malaysia already has a relatively complete and comprehensive infrastructure of sharia banking system development.

THE APPLICATION OF ISLAMIC CONTRACT LAW IN BANKING BUSINESS

The Application of Islamic Contract Law in Indonesia Banking Business

In the application of Islamic contract law in the financial field (Financial), the products and procedures of transactions conducted therein shall not be contrary to the rules of the Qur'an, Hadith, and Ijma 'ulama. To facilitate the implementation of uniformity in practice in financial institutions in Indonesia, the Fatwas issued by the National Sharia Council of the Indonesian *Ulema* Council (DSN-MUI). For example, there is a fatwa in the field of Banking which confirms the limits of sharia contracts that spread in various fatwas since 2000 starting with the fatwa no. 01 / DSN-MUI / IV / 2000 concerning Demand deposits until the last fatwa at the time of writing there was no fatwa. 116 / DSN-MUI / IX / 2017 concerning Sharia Electronic Money. The latest arrangement relating to sharia principles in banking is regulated in POJK no. 24 / POJK.03 / 2015 on Products and Activities of Sharia Banks and Sharia Business Units.

In the Elucidation of Article 2 of Law no. 21 of 2008 concerning Sharia Banking, it is stipulated that business activities based on sharia principles are business activities free from the elements of *riba* (usury), *maisir, gharar, haram* and *zalim*. Business activities based on Sharia Principles, among others, are business activities that do not contain elements:

a. usury, namely the addition of unauthorized income (vanity), among others, in the exchange of similar goods transactions that are not equal to the quality, quantity and time of delivery (*fadhl)*, or in a lending-borrowing transaction which requires the Facility Receiving Customer to refund the received funds exceeding the principal because the passage of time (*nasi'ah*);
b. *maisir*, that is a transaction that hangs on an uncertain circumstance and is a chance;
c. *gharar*, a transaction whose object is unclear, not owned, not known to exist, or cannot be delivered at the time the transaction is made unless otherwise stipulated in sharia;
d. *haram*, i.e. transactions whose objects are prohibited in sharia; or
e. unjust, i.e. transactions that cause injustice to the other party.

Besides, in the application of sharia principles in banking should also pay attention to the concept of "economic democracy" is the economic activities of sharia which contains the value of justice, togetherness, equity, and expediency.

In the field of Insurance there is also a fatwa no. 21 / DSN-MUI / X / 2001 on General Guidelines for Sharia Insurance and other fatwas. Furthermore, there is a Regulation of the Financial Services Authority in relation to Sharia Insurance, namely POJK. 69 / POJK.05 / 2016 on the Implementation of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies. As has been pointed out previously, what is meant by Takaful or also called *ta'min, takaful* or *tadhamun* is the effort of mutual protection and help among some people through investment in the form of assets and / or *tabarru* 'giving the pattern of return to face certain risks through the contract (engagement) in accordance with sharia. As for the intent of a shariah contract is a contract that does not contain gharar (fraud), *maisir* (gambling), usury, zhulm (persecution), risywah (bribery), illicit goods, and immoral).

While in the field of Capital Market there is a fatwa DSN MUI. 40 / DSN-MUI / IX / 2003 concerning Capital Market and General Guidelines for Sharia Principles Implementation in the Capital Market Division which in essence affirms that all activities in the Capital Market in accordance with the principles of sharia are activities free from dharar, gharar, riba, maisir, risywah, maksiat and zalim and in its operational mechanism utilize sharia-based agreements

In accordance with the principle, then, as is usual of sharia-based economic / financial transactions, any transaction or economic action in the economic activities of sharia also use certain contracts. The contracts used are among others:

1. Ijarah is an agreement between the leasing party / service provider (mu'jir) and the tenant / service user (musta'jir) to transfer the use rights of an Ijarah

object which may be the benefit of goods and / or services within a certain time with rent and / or wage payment (ujrah) without being followed by the transfer of ownership of the Ijarah object itself.

2. Istishna is a contract between buyer / mustashni and the manufacturer / shani 'to create Istishna objects purchased by the buyer / mustashni party with the agreed criteria, requirements and specifications sides.
3. Kafalah is a contract between the guarantors (kafiil / guarantor) and the guaranteed party (makfuul 'anhu / ashiil / the indebted person) to guarantee the guaranteed party's obligation to the other party (makfuullahu / the indebted person).
4. Mudharabah (qiradh) is a cooperation agreement between the owner of capital (shahib al-mal) and the manager of the business (mudharib) with the capital owner (shahib al-mal) handing over the capital and business manager (mudharib) to manage the capital in a business.
5. Musharaka is an agreement (akad) cooperation between two or more parties (syari) by including capital in the form of money or other forms of assets to conduct a business.
6. Wakalah is a contract between the power of attorney (muwakkil) and the power of attorney (representative) by way of the authorizing party (muwakkil) authorizing the power of attorney to perform certain actions or acts.

The Application of Islamic Contract Law in Indonesia Banking Business *Sharia Financial System and Banking in Malaysia*

Malaysia is a country that implements dual finance and banking system starting in 1983 when the issuance of sharia banking law in 1983 and sharia insurance law in 1984. In terms of sharia banking development strategy and its products Malaysia chose a comprehensive and pragmatic approach. With a comprehensive development strategy, sharia banks are developing well in Malaysia because the supporting infrastructure required by Islamic banks is all available.

The long-term goal to be achieved in developing sharia banking in Malaysia is to create a comprehensive Islamic financial and banking system that operates parallel to the conventional banking system. To create a solid banking system required three important elements, namely: 1) the number of players that many; 2) wide variety of instruments; and 3) Islamic money market. There are various things that reflect the characteristics of sharia banking in Malaysia. Some of them are: 1) the financial and banking system adopted; 2) the madhhab and the views held by the state or its Muslim majority; 3) Sharia bank position in law; and 4) Sharia banking development approach and its selected products.

Characteristics of Muslims and the Sharia Bank position in the Law.

The majority of the Muslim population of Malaysia adheres to Shafiite school of thought. Despite having the same madhhab as the majority of Indonesian Muslims, the application of Sharia principles in the banking world may differ,

depending on the understanding and opinion of the cleric. Islamic banks in Malaysia are under different laws depending on the shape of the institution. A full-fledged Islamic bank is under the Islamic banking laws of 1983.

Sharia Council positions

The highest Sharia authority in Malaysia is at the NSAC established on May 1, 1997 and is within the organizational structure of Bank Negara Malaysia (BNM). NSAC members are appointed by the BNM board of directors for a period of three years and may be re-elected for the next term.

Sharia Banking Development Strategy and Its Products.

Islamic banks in Malaysia apply various contracts for sharia financial products and instruments offered to customers. These contracts include contracts for funding, card services, trade financing, and banking services as follows:

- Funding: Wadiah, Mudharabah;
- Financing: Murabahah, BBA (BBA), Ijarah, Ijarah Thumma Bai ', Variable Rate Ijarah, Wakalah, Bai' al-Inah, Bai 'al-Dayn, Istishna;
- Trade Financing: Murabahah, Bai 'al-Dayn, Kafalah, Wakalah, Ijarah, BBA;
- Banking Services: Ujrah.
- Card Services: Qard Hasan, BBA, Bai 'al-Inah, Ujr;
- Treasury / Money Market Instrument: Bai 'al-Inah, BBA, Murabahah, Mudharabah, Ujr;

Some of the trademarks used by Malaysian sharia banks are trade-buying contracts, namely Bai 'al-Inah, Bai' al-Dayn, and BBA (BBA), as well as rental-patterned agreements, namely Variable Rate Ijarah. These are the typical Islamic Bank Agreements in Malaysia

a. Bai 'al-Inah
   Bai 'al-Inah is a sale and purchase agreement when the seller sells its assets to the buyer with a promise of repurchase (sale and buy back) with the same party. Bai 'al-Inah is a cash sale followed by a deferred payment sale (BBA).
b. Bai 'al-Dayn
   Bai 'al-Dayn is a trading contract when the traded is Dayn or debt. The Syariah Council of Malaysia holds that debt is equal to property (debt = property). Because debt is equal to property, then the debt can be traded at any price like property.
c. BBA
   BBA (BBA) is a sale and purchase agreement (cost + margin) when the payment is done in a robust and repayments in the long term, so it is called long term murabahah credit.

CONCLUSION

By looking at the relationship between the legal system used by a State in applying the Law of Contract of Islam in banking business, we can see its influence on the development of Islamic Contract Law itself. in both countries between Indonesia and Malaysia. There are some similarities and differences on the study comes from some relevant laws and regulations in Indonesia and Malaysia regarding the application of the Law of Contract of Islam in Islamic Banking business.

However, the presence of special law and supervision on Islamic Banking are still needed in order to encourage the various actors and activities in the role of Islamic banking operations to behave in accordance with the provisions of Islamic law as defined in the legislation.

The state should in making the legal system be applied properly should pay attention to the culture of its people like in Indonesia and Malaysia, because the community will be more obedient if the law used in accordance with the values that have been ingrained and ingrained in them especially in the application of Islamic contract law principles.

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