

Conventional Banking, Sharia Banking, and Financial Justice

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Abstract

This article discusses the substantive differences, theoretically, between conventional banking and Islamic banking, which are associated with the formation of financial justice that occurs in the two institutions operating in the two banking systems. This article is written using a qualitative method. The data source is in the form of publication results. This type of data is in narrative empirical documentation, including the narrative of theoretical opinions of previous researchers or reviewers. The data collection technique is done by tracing sources, both print, and online publication sources. The data analysis technique was carried out in a descriptive, interpretive manner and, to some extent, comparative. The results obtained indicate that the financial justice formed in Islamic banking is closer to economic goals.

Keywords: *conventional banking, Islamic banking, financial justice, interest, profit-loss sharing.*

Perbankan Konvensional, Perbankan Syariah dan Keadilan Finansial

Abstrak

Artikel ini mendiskusikan, secara teoritis, perbedaan substantif antara perbankan konvensional dengan perbankan syariah, yang dihubungkan dengan pembentukan keadilan finansial yang terjadi dalam kedua lembaga yang beroperasi dalam kedua sistem perbankan tersebut. Artikel ini ditulis dengan menggunakan metode kualitatif. Sumber data berupa hasil-hasil publikasi. Jenis data berbentuk narasi dokumentasi empirik, termasuk pula narasi opini teoritik para peneliti atau pengkaji terdahulu. Teknik pengumpulan data dilakukan dengan melacak sumber, baik sumber publikasi cetak maupun online. Teknik analisis data dilakukan secara deskriptif interpretatif dan, dalam batas-batas tertentu, komparatif. Hasil yang diperoleh menunjukkan bahwa keadilan finansial yang terbentuk pada perbankan syariah lebih mendekati tujuan ekonomi.

Kata-kata Kunci: *perbankan konvensional, perbankan syariah, keadilan finansial, bunga, bagi hasil.*

INTRODUCTION

There is no agreement on the definition of a bank (Commons, 1968: 257). Several banking experts define the bank in various ways (Nitisha, 2015). Bank is the leading business entity to create credit that aims to satisfy credit needs either through its own payment or with money obtained from other people or circulating new means of exchange demand deposits (Joseph, 2007: 225). Bank is the financial institutions, money creators, fund collectors, and credit providers, executors of payment traffic, monetary stability, and a dynamist of economic growth (Werner, 2014). As the financial institution, in this case, a

bank is a business entity whose wealth is in financial assets and has profit (Lundelius, 2003: 79) and social motives (Board, 1971: 12). So, banks are not just looking for profit.

Meanwhile, according to Law of the Republic of Indonesia, Number 10 of 1998 concerning Amendments to Law of the Republic of Indonesia Number 7 of 1992 concerning Banking, a commercial bank is a bank that carries out business activities conventionally and or based on sharia principles which in its activities provides services in payment traffic.

Previous studies comparing conventional banks and Islamic banks can be seen in the following description, including: (1) Yuliatin (2012), *Perbankan dalam Dimensi Konvensional dan Syariah* (Yuliatin, 2012); (2) Masykuroh (2014), *Kinerja Bank Syariah dan Konvensional di Indonesia: Pendekatan Teori Stakeholder dan Maqāṣid al-Sharī'ah* (Masykuroh, 2014); (3) Zaharman (2016), *Analisis Perbedaan Kinerja Keuangan Perbankan Syariah dengan Perbankan Konvensional di Indonesia* (Zaharman, 2016); (4) Fatriani (2018), *Bentuk-Bentuk Produk Bank Konvensional dan Bank Syariah di Indonesia* (Fatriani, 2018); dan (6) Asraf, Yurasti dan Suwarni (2019), *Analisis Perbandingan Kinerja Keuangan Bank Syariah Mandiri dengan Bank Mandiri Konvensional* (Asraf et al., 2019).

In some previous studies, aspects of financial justice have been generally disclosed. However, the emphasis on this aspect, as the core of Islamic finance's moral values, has not been clearly expressed. Therefore, the purpose of this article is written to look more closely at the analysis of financial justice in Islamic banking.

METHOD

This article is written using a qualitative method. The data source is in the form of publication results. This type of data is in narrative empirical documentation, including the narrative of theoretical opinions of previous researchers or reviewers. The data collection technique is done by tracing sources, both print, and online publication sources. The data analysis technique was carried out in a descriptive, interpretive manner and, to some extent, comparative.

RESULTS AND DISCUSSION

Bank is linguistically taken from Italian (Hasibuan, 2008: 1), namely *banco* which means table (Chachi, 2005). Banks are a service industry that provides services to the public (Nielsen, 1994: 195) and is a financial agency or institution whose main task is to collect money from third parties as intermediaries to channel credit demand and supply at a specified time (Sobana, 2016: 13).

Commercial banks are banks that can provide services in payment traffic (Ridho and Devianto, 2020). Commercial banks are financial institutions that accept deposits or deposits from the public paid upon request and provide credit and services in payment traffic and circulation of money (Idiab et al., 2011). A commercial bank is a bank that

carries out its business activities conventionally or based on sharia principles that in its activities provide services in payment traffic (Mukti, 2020).

In banking law, several banking principles are recognized, namely as follows:

1. The Principle of Trust

The principle of trust is the principle that underlies the relationship between a bank and bank customers (Rusydiana and Hasib, 2019). Banks make efforts from public funds stored based on trust so that each bank needs to maintain its bank's health while preserving and supporting the community's trust. Regulated in article 29 paragraph (4) of Law Number 10 of 1998.

2. Precautionary Principles

The principle of prudence is a principle that emphasizes that banks in carrying out business activities, both in collecting, especially in channeling funds to the public, must be cautious (Yasin, 2016). The objective of applying this prudential principle is to ensure that banks are always in a sound condition to carry out their business properly and comply with the provisions and legal norms applicable in the banking sector (Trisanty, 2018).

3. The Principle of Confidentiality

The principle of bank secrecy is regulated in article 40 to article 47A of Law no. 10 of 1998. According to article 40, banks are required to keep confidential information about depositors and their savings. However, in this provision, the obligation to be privy is not without exception. Liabilities are excluded in matters for tax purposes, settlement of bank accounts payable.

Meanwhile, the definition of sharia principles itself is rule-based on Islamic law (Adib and Nabiha, 2016; Zubair, 2008). According to Law Number 21 of 2008 concerning Sharia Banking, Article 1 paragraph (7) and paragraph (1) that Islamic banks are banks that carry out their business activities based on Sharia Principles and typically consist of Sharia Commercial Banks Financing Banks Sharia People. Meanwhile, sharia banking is everything that concerns Sharia Banks and Sharia Business Units, including institutions, business activities, and methods and processes for carrying out their business activities (Masykuroh, 2014; Yuliatin, 2012).

Sharia Commercial Bank is a sharia bank that, in its activities, provides services in payment traffic. At the same time, the Sharia Business Unit is a work unit of the head office of a Conventional Commercial Bank that functions as the main office of an office or unit carrying out business activities based on sharia principles or a work unit in a branch office of a bank domiciled abroad which carries out conventional business activities (Cf., Wulandari et al., 2018), which functions as the principal office of the sharia sub-branch office and/or sharia unit (Hilman, 2018).

Islamic bank or Sharia Bank is a form of national banking that bases its operations on Islamic sharia (law), which operates without relying on interest (Ilieva et al., 2017). Islamic banking is a form of modern banking developed in the first century of Islam, using the concept of multiple risks as the primary method, and eliminating finance based on certainty. Besides, Islamic Bank is also a financial institution whose primary business is to provide financing and other services in payment traffic and circulation of money whose operations are adjusted to Islamic law (Ro'fah Setyowatia and Wekke, 2019).

Islamic Bank is an intermediary institution and financial service provider that works based on Islamic ethics and value systems, especially those that are free from interest (usury) (Aslan, 2017), free from nonproductive speculative activities such as gambling (*maysir*), free from things that are unclear and doubtful (*gharar*), has the principle of justice, and only finances lawful business activities (Sari et al., 2015). Islamic banks are often called interest-free banks. Interest-free banking is a narrower concept than Islamic banking when many of its instruments or operations are interest-free (Zaharman, 2016). Apart from avoiding interest, Islamic banks also actively participate in achieving the goals and objectives of an Islamic economy, which is oriented towards social welfare (Hanim, 2018).

Sharia Bank's definition is a financial institution that operates without relying on interest whose primary business is to provide financing and other services in payment traffic and circulation of money working following Islamic principles (Ahmad and Hassan, 2007). Some scholar differentiate into two definitions, namely Islamic banks and banks operating on Islamic principles. Islamic banks are (1) banks that run by the principles of Islamic shari'ah (Qādrī and Bhatti, 2020: 308); (2) banks whose operating procedures refer to the provisions of the Al-Qur'an and Al-Hadith (Heradhyaksa and Markom, 2018); meanwhile, a bank that works following the principles of Islamic sharia is a bank which in its operation follows the requirements of Islamic sharia (Ginena and Hamid, 2015: 68), especially those concerning the procedures for making muamalat in Islam (Muhammad, 2018).

Islamic banking was developed based on the principle that it does not allow separation between temporal (worldly) and religious things. This principle requires adherence to sharia as the basis of all aspects of life. In terms of compliance, this is not only in terms of ritual worship, but also business transactions must be under sharia teachings (Janin and Kahlmeyer, 2007: 19). For example, this is the most prominent aspect of Islamic teachings regarding muamalah, namely the prohibition of usury and the perception of money as a medium of exchange and a means of waiving obligations. Money is not a commodity. Thus, money has no time value except the value of goods exchanged through money by sharia (Hamza and Jedidia, 2017).

As a consequence of this principle, Islamic banks are operated based on the concept of profit sharing and risk sharing under one of the Islamic principles, namely, "profit is for those who bear the risk." In this context, Islamic banks reject interest as a fee for using

money and loans as an investment tool. In carrying out their investments, Islamic banks give confidence that their own funds (equity) and other funds available for investment generate income following sharia and is beneficial to the community (Ernawati, 2016). Sharia banks are banks based on the principles of partnership, fairness, transparency, and universality as well as conducting banking business activities (Furqani, 2015; Naqvi, 1978).

The following is a description of the researcher's argument that briefly four principles are so inherent in Islamic banking, or so-called anti-MAGHRIB (*Maysir*, *gharar*, *ribā'*, and *bāṭil* [falsehood]) (Supriadi and Ismawati, 2020).

1. The Prohibition of *Ribā'*

Islamic banks operate not on an interest basis, as is generally done by conventional banks, because interest in the Qur'anic explanation contains an element of usury forbidden to use. *Ribā'* means additional, namely the payment of premiums that the borrower must pay to the lender in addition to returning the principal, which is applied in advance for each type of loan (Uddin, 2015). Meanwhile, according to technical terms, *ribā'* means taking additional from principal assets or capital in vanity / it is said to be vanity because having funds requires the borrower to pay more than what is borrowed regardless of whether the borrower has the potential to gain or experience losses (Bälz, 2000).

Ribā' is prohibited in Islam gradually, in line with society's readiness at that time, as is the case with other prohibitions such as gambling and liquor (Kafabih and Manzilati, 2019). The first stage in sūrah al-Rūm verse 39 states that usury will keep wealth away from Allah SWT's blessings, while alms will often increase the benefits. The second stage in sūrah al-Nisā' verse 161 states that the practice of usury is strictly prohibited. *Ribā'* is likened to those who take the wealth of others wrongly and threaten both parties with Allah's grievous punishment. The third stage, according to Islam, in surah Āli 'Imrān verses 130-131 says that Allah calls on Muslims to stay away from usury if they want real welfare (Erdem, 2017).

In the letter QS. Ali 'Imran is what is meant by usury is *ribā' nasi'ah* (Sofhian, 2015), which according to most scholars *ribā' nasi'ah* is forever haram, although it does not double. *Ribā' nasi'ah* is the extra payment indicated by the lender. The last stage, ahead of the Prophet's mission finished by Allah SWT. Strongly condemn those who take usury, affirming the exact difference between commerce and usury (Salleh et al., 2011). Calling on them to take the point and give it to borrowers who are experiencing difficulties (Rahmawaty, 2010).

The prohibition of usury in Islam is certainly related to the evils of the practice of usury. As stated by Yūsuf al-Qaraḍāwī, in Lewis (Lewis, 2007: 70), there are at least four reasons for the prohibition of usury:

- a) Taking interest implies taking another person's property without giving anything in exchange. The lender receives something for nothing;

- b) Dependence on interest discourages people from working to earn money. Money lent at interest will not be used in industry, trade or commerce, all of which need capital, thus depriving society of benefits;
- c) Permitting the taking of interest discourages people from doing good. If interest is prohibited, people will lend to each other with goodwill expecting nothing more back than they have loaned;
- d) The lender is likely to be wealthy and the borrower poor. The poor will be exploited by the wealthy through the charging of interest of loans.

Therefore, the alternative offered by Islam as a substitute for usury or main interest is the practice of profit sharing, when the borrower and the borrower share in the risks and profits by sharing according to the agreement (Fatriani, 2018). In this case, neither party was wronged by anyone (Perwataatmadja and Antonio, 1992: 2–7).

2. The Ban on *Maysir*

Maysir literally means getting something very quickly without hard work or getting profit without work (Akbar and Nabiha, 2019). In Islam, *maysir*, what is meant here is anything that contains gambling, betting, or risky games. Gambling in all its forms is prohibited in Islamic law gradually. The first stage in sūrah al-Baqarah verse 219 says that gambling is a crime that has more harm than good. The next step, in sūrah al-Māidah verses 90-91 emphasize that gambling and betting in all their forms is prohibited and is considered a pious act and is very hated. In addition to prohibiting transparent gambling and betting forms, Islamic law also prohibits any business activity containing gambling elements (Bin Salamon et al., 2015).

3. The Ban on *Gharar*

Gharar literally means effect, disaster, danger, risk, and so on. In Islam, *gharar* includes all economic transactions that involve elements of obscurity, fraud, and crime. In the business world, *gharar* means running a business blindly without having sufficient knowledge or carrying out a transaction with excessive risk without knowing with certainty what the consequences are, or entering into the arena of risk without thinking about the results, even though the element of uncertainty, which is not large, may exist if indeed cannot be abandoned (Suzuki, 2013). Afzalur Rahman, in Mihajat (Mihajat, 2016), divides the concept of *gharar* into two, namely:

- a) *Gharar* because of the dominant element of risk that contains doubt, probability, and uncertainty;
- b) *Gharar* because of a questionable element that is linked to fraud or crime by one party against the other.

All transactions that contain ingredients of uncertainty in quantity, quality, price, time, risk, and deception or crime are included in the category of *gharar*. In all these forms of *gharar*, the mutually willing state of being attained is temporary, that is, while the

situation remains unclear to both parties. In the future, when the situation becomes clear, either the seller or the buyer will feel wronged, even though at first it is not (Dayan and Sheraz, 2016). The prohibition on *gharar* is intended to prioritize transparency in transactions and other operational activities and avoid confusion (Uluyol and Abdullah, 2016).

According to Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, it is stated that Islamic banks are commercial banks that carry out business activities based on Islamic principles which in carrying out their activities provide services in payment traffic.

In carrying out these activities, Islamic banks adhere to the following principles (Muhamad, 2011: 89–90), namely: (a) Principle of Justice; the principle of fairness, the code that is reflected in the application of returns based on profit sharing and profit margins that are mutually agreed upon between the bank and the customer; (b) Principles of Partnership or Equality; Sharia banks place customers as depositors of funds, customers who use funds, or banks in the same position or balance or on an equal footing between depositors of funds, customers using funds, and banks of the same level as business partners. This is reflected in the rights, obligations, risks, and benefits balanced between depositors and customers who use funds and banks. In this regard, banks function as intermediary institutions through their financing schemes; (c) The Principle of Peace; Islamic bank products follow the principles and rules of muamalah in Islam, including the absence of usury and the application of zakat assets. Thus, customers will feel physical and spiritual peace; (d) The Principle of Transparency or Openness; through bank financial reports that are open continuously, customers can find out the security of funds and the quality of bank management; (e) Universality; in supporting its operations, the bank does not differentiate between ethnicities, religions, races, and religious groups in society with Islamic principles as *rahmat li al-‘ālamīn* (mercy for the worlds); (f) Not *Ribā’wi*; there is no transaction containing interest forms; and (g) Reasonable Profits; broadly speaking, the economic relationship based on Islamic sharia is determined by the 'aqad relationship, which consists of five basic concepts' aqad.

Furthermore, products of Islamic financial institutions can be found (Asraf et al., 2019). Islamic banks and non-Islamic banking financial institutions to be operationalized. The concepts or principles are (Muhamad, 2011: 89–90): (a) Pure Savings Principle (*al-Wadī'ah*); the principle of pure savings is a facility provided by Islamic banks to provide opportunities for parties who have excess funds to save their funds in the form of *al-Wadī'ah*. The usual *al-Wadī'ah* facility is provided for investment purposes to gain benefits such as current accounts and savings. In the world of conventional banking, *al-Wadī'ah* is synonymous with demand deposits; (b) Profit Sharing Principle (*al-Syirkah*); this system includes procedures for sharing the results of operations between fund providers and fund managers. The sharing of this business's results can occur between the bank and the deposit of funds or between the bank and the customer receiving funds. The forms of products based on this principle are *muḍārabah* and *mushārah*. Furthermore, the *muḍārabah* principle can be used as the basis for both funding products (savings and deposits) and financing or participation; (c) Principles of Buying and Selling (*al-Tijārah*);

this principle is a system that implements buying and selling procedures, where the customer will first buy the required goods or appoint the customer as a bank agent to provide goods on behalf of the bank, then the bank sells the goods to the customer at a price plus the purchase price plus profit (margin), the implications can be *muḍārabah*, *salam*, and *istiṣnā'*; (d) Principle of Lease (*al-Ijārah*). This principle is broadly divided into three types (Muhamad, 2011: 89–90): (i) *Ijarah*, pure lease, and rental of tractors and other products (operating lease). In banking techniques, banks can first purchase the customer's equipment and then rent it out within the time and only what has been agreed upon to the customer; (ii) *Bay' al ta'jīrī* or *Ijārah al-Muntahiya bi al-Tamlik* is a combination of rent and purchase, where the tenant has the right to own the goods at the end of the lease period (financial lease); and (iii) Principle of Service / Fee (*al-ajr walumullah*) (Rusdianto and Ibrahim, 2016). These principles cover all non-financing services provided by the bank. Forms of products based on this principle include Bank Guarantee, Clearing, Collection, Service, Transfer, and others. In shari'ah this principle is based on the concept of *al-ajr walumullāh* (Ansori, 2018).

The development of Islamic banking must, of course, be supported by adequate human resources, both in terms of quality and quantity. However, the reality shows that there are still many human resources involved in Islamic institutions that do not have academic or practical experience in Islamic banking; this has a significant effect on Islamic banking's productivity and professionalism.

In the meantime, the objectives of Islamic banks, indicating closer to economic goals, can be broadly divided into six parts, namely (Sudarsono, 2003: 43):

1. Directing the economic activities of the ummah to experience Islam in Islam, especially muamalat related to banking, to avoid usury practices or other types of business/trade that contain elements of *gharar* (deception), where this type of business is prohibited in addition to being prohibited in Islam, too, has harmed the economic life of the people;
2. To create fairness in the economic sector by equalizing income through investment activities so that there is no large gap between the owners of capital and those who need funds;
3. To improve the quality of life of the ummah by opening up more significant business opportunities, especially for the poor, which are directed towards productive business activities, towards the creation of business independence;
4. To tackle the problem of poverty, which is generally the main program of developing countries. The efforts of Islamic banks in alleviating poverty are in the form of fostering customers whose togetherness is more prominent from a complete business cycle, such as the development program for producer entrepreneurs, training for intermediary traders, consumer development programs, work mode development programs, and joint business development programs;

5. To maintain economic and monetary stability. With the activities of Islamic banks will be able to avoid economic warming caused by inflation, avoiding unhealthy competition between financial institutions; and
6. The sixth objective of Islamic banking is to improve the dependence of Muslims on non-Islamic banks.

By looking at Article 3 of Law Number 21 of 2008 concerning Islamic Banking, it is explained that Islamic banking aims to support the implementation of national development in increasing justice, togetherness, and equitable distribution of people's welfare. In achieving the goal of keeping the implementation of national development, Sharia Banking will adhere to the Sharia Principles as a whole (*kāffah*) and consistently (*istiqāmah*).

CONCLUSION

After seeing the description in the results and discussion section above, this article concludes that, conceptually, Islamic banking emphasizes the aspects of financial justice. However, not only in the part of financial justice, this article also looks at other aspects, such as justice, togetherness, and equal distribution of people's welfare as the fruit of financial righteousness promoted by Islamic banking, which deserves further study and research. The aspects of the substantive prohibition of *Maysir*, *gharar*, *ribā'*, and *bāṭil* are the entry points for the realization of financial justice in banking and the economy in general. So, there are the indication that the financial justice formed in Islamic banking is closer to economic goals.

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