

APPLICATION OF THE INTEREST SYSTEM IN CONVENTIONAL BANKS AND ITS RELATION TO ISLAMIC LAW REGARDING USURY

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Abstract

Conventional banking operations benefit mainly from the difference between the deposit interest given to customers and the interest or credit loans given. In contrast, in Islamic Banks, the profits they get are not from interest but through profit sharing. The main difference between conventional banks and Islamic banking is the prohibition of Riba (interest) in Islamic banking. Under Sharia banking, bank interest is prohibited while trading is permitted by Allah. Riba is defined as Ziyadah (additional cost). Riba is an additional fee, both in trade transactions and loans that are illegal or contrary to the principles of Muamalah in Islam.

Keywords: Conventional Banks, Interest Profits, Sharia Banks, Interest is Forbidden by Allah

INTRODUCTION

National development as the implementation of Pancasila which covers all aspects of national life which is carried out jointly by the community and the government in essence aims to create justice and prosperity, as well as improve people's living standards, and realize reliable and professional human qualities. The concept of development contained in the meaning of this development is that basically development aims to increase human dignity as a whole.

One sector that plays an important role in the implementation of economic development in Indonesia is the banking sector. The existence of the banking sector occupies a very strategic position in bridging the needs for working capital and investment in the real sector with the owners of capital (agents of economic development). Thus, the main function of the banking sector in macroeconomic policy infrastructure is directed in the context of how to move, make effective and efficient increase in economic value. Therefore, the development of the banking sector in Indonesia is inseparable from the implementation of Indonesia's economic development strategy which is packaged in the Development Trilogy formulation which includes economic growth, national stability and equity.

Sharia Banking is a banking system developed based on sharia or Islamic law. The effort to establish this system is based on the prohibition in Islam to collect or borrow at interest or what is known as usury and the prohibition of investing in businesses that are categorized as illegitimate.

For a Muslim, *riba* as a whole is unlawful, both multiple and small *riba*, and usury is a disgraceful act because it is an act that exploits fellow human beings. The act of usury makes no difference whether it is carried out by individuals or in congregation as an institution where all of them are equally forbidden for Muslims. Even though there are still opinions, especially in Indonesia, who still doubt whether bank interest is considered usury or not, it has actually become an agreement among scholars, fiqh experts and Islamic bankers among the world.¹

As a country with the most followers of Islam in the world, it is a necessity and a certainty that quite a number of Muslims object to having to transact or deal with banking institutions that implement the usury system. Muslim communities who are reluctant to deal with banking because of fear of usury usually use banking only as a flow of funds such as transferring money or other transactions that can only be carried out by banks and withdrawing funds from banks as soon as possible after receiving a transfer of funds or their needs are met.

On the initiative of several parties from among the Muslim community initiated by the Indonesian Ulema Council (MUI), the bank with the first sharia concept was established, namely Bank Muamalat Indonesia which was established on November 1, 1991 with the aim of providing a solution for Muslims to be able to avoid *ribawi* practices. The establishment of this first sharia then received a positive response from the government which supported it with the release of law number 7 of 1992 which accommodated sharia principles in the implementation of banking practices.

Law No. 10 of 1998 concerning Completion of Law No. 7 of 1992 concerning Banking is a step forward in the development of banking, especially for sharia banking. In this law, sharia banking is given the same treatment as conventional banking. In fact, if you look at the numbers, when the law was passed, there was only one Islamic bank, namely Bank Muamalat and around 70 Islamic BPRs.

The ratification of Law no. 10 of 1998 has opened wider opportunities for Islamic banks to develop. This law not only mentions Islamic banks side by side with conventional banks in article after article, but also states in detail the principles of Islamic banking products, such as *Murabahah*, *Salam*, *Istisna*, *Mudharabah*, *Musyarakah* and *Ijarah*; even though in Law no. 7 of 1992 concerning Banking, the name sharia is not mentioned at all.²

Islamic banking and Islamic financial institutions are increasingly lively with this support for the development of sharia banking is also demonstrated by the existence of a "dual banking system", in which conventional banks are allowed to open sharia business units.³ The Islamic banking system is actually not limited to customers who have religious emotional ties (Muslim communities). Anyone can enjoy sharia banking services, regardless of their religion, as long as they are willing to follow a way of doing business that is permissible under sharia. Society needs financial institutions that are strong, transparent, fair and committed to helping improve the economy and businesses of customers.⁴

¹ Achmad Baraba, *The basic principles of Islamic banking operations*, Bandung: Human echo, 2010, page 3.

² Cecep Maskanul Hakim, *Product Development Problems in Islamic Banks*. Jakarta: DPNP, 2013, page 1

³ Harif Amali Rivai., *Identification of Consumer Decision Determinants in Choosing Banking Services: Islamic Banks Vs Conventional Banks*, Journal of Center For Banking Research, Padang: Andalas University, 2006. page 2

⁴ Lina Maulidiana, *Application of Murabahah Principles in Islamic Covenants (Operational Studies of Islamic Banks in Legal Modernization)*, Journal of Science and Information No.7, Faculty of Law, Sang Bumi Ruwa University Jurai, Bandar Lampung, 2011. Pg 7

According to Sunarto Zulkifli, regardless of whether bank interest is illegal or not, it must be honestly acknowledged that there are several weaknesses in the application of the interest system in the conventional banking system, including:⁵

1. One of the causes of the prolonged economic crisis, it cannot be denied that one of the causes was the collapse of several conventional banks due to the experienced Negative Speed. This Negative Speed is a condition when the interest costs that must be paid by the bank to depositors are greater than the interest income received by the bank. This occurs because the bank is still obliged to pay interest to depositors even though the business it finances suffers a loss. This obligation is a very common thing in a banking system that uses an interest system for depositors, in addition to earning interest profit spreads for the bank itself. In this regard, banks tend to choose the type of business that has little risk or even has no risk at all.
2. Creating a culture of laziness to save at the bank is the main alternative for people who have excess funds, especially with the lure of high interest income, gifts, government guarantees, and so on. The main motive is clear, namely fixed income every month without sweating or messing around with risk issues. This is definitely a bad culture that is often encountered. People prefer to deposit their money while faithfully waiting for the interest yield at the end of each month, rather than using it as business capital that still has the possibility of loss.
3. Widening the social gap between the poor and the rich.

Thus, the emergence of the Islamic banking system should be a means to educate the public about the negative impact of bank interest. For Islamic bank officers, this is the right time to contribute their energy and thoughts to make *ijtihad* to contribute to an interest-based economic system and develop an Islamic economic system.

RESEARCH METHODS

This study uses normative juridical legal research methods. This applies a statutory approach and also an approach taken by taking direct data in the field related to the application of the interest system in conventional banks and its relation to Islamic law. Retrieval of data from documents related to the problem under study, namely among others from books, laws and regulations, research reports, results of seminars and papers as well as from Conventional and Sharia Banks in Jayapura City which apply an interest system and profit sharing system to its customers.⁶ The data obtained in the study were analyzed descriptively. The qualitative analysis is intended to describe how the interest system is applied to conventional banks and how it compares to Islamic banks which apply a profit sharing system.

RESULTS AND DISCUSSION

A. Application of the Interest System in Conventional Banking

For a long time humans have always dodged every effort that hinders all their activities, including in trade. In practice, this aspect throughout human history has been filled with the traps of usury which have always managed to circumvent the prohibitions of various religions, especially the Jews and Christians, by providing fabricated pretexts. In Europe itself, especially England, the prohibition of usury was issued in 1545 by the reign of King Henry VIII. It was at that time that the term usury was replaced with the term interest. The term interest on money was issued to soften as well as an attempt to avoid using a backdoor against the prohibition of usury, which at that time was vociferously echoed by philosophers, thinkers and the church. But they agreed that *riba* (usury) is forbidden, while interest is permissible under the pretext of trade (business) and for productive endeavors. Such an assumption is the notion of ignorance, which equates *riba* activities with trade. At this time such assumptions resonate again. To answer the understandings that equate usury with trade, Allah SWT sent down His explanation:

Those who eat usury cannot stand up but are like the standing of a person who has been possessed by a devil because of (pressure) madness. Their situation is like that, is because they say (opinion), Verily buying and selling is the same as usury, even though Allah has justified buying and selling and forbidding usury. people who have come to him a ban from his Lord, then continue to stop (from taking usury). Then for him what has been taken first (before the prohibition comes); and his affairs (submitted) to Allah. people who return (take usury), then that person is the inhabitants of hell; they abide therein" (QS Al-Baqarah; 275)

⁵Sunarto Zulkifli, *Guide to Sharia Banking Transaction Practices*, Akarta: Zikrul Hakim Publisher, 2007. Pages 8-9

⁶Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: UI Press, 2012, page 42.

For banks that operate based on conventional principles, the main advantage is obtained from the difference between the interest on deposits given to depositors and the interest on loans or credit extended. The profit from this interest difference in banks is known as spread based. If a bank experiences a loss from the difference in interest, where the deposit interest rate is greater than the lending rate, this term is known as the negative spread.⁷

According to Kashmir, deposit interest and loan interest are the main components of cost and income factors for banks. Deposit interest is the cost of funds that must be paid to customers, while loan interest is income received from customers. Between deposit interest and loan interest, each one influences the other. If the interest on deposits is high, the loan interest will automatically be affected, and vice versa.⁸

In order for the profit to be maximized, the bank management must be clever in determining the size of the interest rate component. This is because if it is wrong to determine the size of the interest rate component, it will be detrimental to the bank itself. According to Kashmir, the main factors that affect the size of the application of interest rates can be broadly explained as follows:⁹

1. Need for Funds
The funding requirement factor is devoted to savings funds, namely how much funding is desired. If the bank is short of funds, while loan applications are increasing, what the bank does to fulfill these funds quickly is to increase deposit interest rates. However, an increase in interest rates on deposits will also increase interest rates on loans. On the other hand, if there are a lot of funds in savings at the bank, while the number of loan applications is small, the deposit interest will decrease because this is a burden;
2. Desired profit target
This factor is devoted to loan interest. This is because the profit target is one of the components in determining the size of the loan interest rate. If the desired profit is large, the loan interest will also be large and vice versa. However, to face competitors, profit targets can be reduced to a minimum;
3. Quality Assurance
The quality of the guarantee is also intended for loan interest, so that the liquid guarantee (easily disbursed) is given, the lower the loan interest charged and vice versa;
4. Government policy
In determining policies both for deposit interest and loan interest, banks may not exceed the limits set by the government. That is, there are maximum and minimum limits for interest rates that are allowed, with the goal being that banks can compete fairly;
5. Period of time
Both for deposit interest and loan interest, the time period factor is very decisive. The longer the term, the higher the interest on the loan. This is due to the large possibility of the risk of jamming in the future. And vice versa if the short-term loan interest is relatively lower;
6. Company Reputation
Company reputation also determines interest rates, especially for loan interest. The bona fide company that will obtain credit will determine the interest rate that will be charged later, because usually a bona fide company has a relatively small risk of bad credit in the future and vice versa for companies that are less bona fide the risk factor for bad credit is quite large;
7. Competitive product
Competitive products determine the size of the loan interest. Competitive means that the products financed sell well in the market. For competitive products, the loan interest given is relatively low when compared to products that are less competitive. This is due to competitive products with a high product turnover rate so that payments are expected to run smoothly;
8. Good relationship
The amount of loan interest is related to the trust factor in a person or institution. In practice, banks classify their customers between primary (primary) and ordinary (secondary) customers. This classification is based on the activeness and loyalty of the customer concerned to the bank. The main customer usually has a good relationship with the bank, so that in determining the interest rate, it is different (low) compared to ordinary customers;
9. Competition

⁷Kashmir, *Fundamentals of Banking Fourth Revision*, Jakarta: Raja Grafindo Persada Publisher, 2006, page 11

⁸Kashmir, *Revised edition of Banking Management*, Jakarta: Raja Grafindo Persada Publisher, 2008, page 37

⁹*Ibid.* page 38

In an unstable condition and banks lack funds, while the level of competition in competing for deposit funds is quite tight, banks must compete hard with other banks to obtain customer funds, so deposit rates can be increased by several points compared to their competitors.

B. Application of the profit sharing system in Islamic banking

According to Kasmir, for banks that operate based on sharia principles, profits are not obtained from interest but from a profit sharing system. At this bank, the bank services provided are adjusted to sharia principles based on Islamic law, namely:¹⁰

1. Financing based on the principle of profit sharing (mudharabah);
2. Financing based on the principle of equity participation (muskharakah);
3. The principle of buying and selling goods by obtaining profits (murabahah);
4. Financing of capital goods based on the principle of pure lease without choice (ijara); or
5. With the option of transferring interest in goods leased from the bank by another party (ijarah wa iqtina)

The main difference between Islamic banking and conventional banking is the prohibition of usury (interest) for Islamic banking. For Islam, Riba is prohibited, while buying and selling (al-bai) is permitted. Furthermore, according to Zainul Arifin, the main principles adopted by Islamic banks are:¹¹

1. Prohibition of usury (interest) in various forms of transactions;
2. Carrying out business and trading activities based on obtaining legitimate profits according to sharia; and
3. Giving zakat

Riba literally means ziyadah (additional). In another sense linguistically, usury also means addition and enlargement. Meanwhile, according to technical terms, usury means taking additional assets or capital in vanity. In general, there is a common thread that emphasizes that usury is additional taking, both in buying and selling transactions and lending and borrowing in vanity or contrary to the principles of muamalah in Islam.

Substitute or counterbalancing transactions mean business or commercial transactions that legitimize the addition in a fair manner, such as buying and selling transactions, mortgages, leases, or project profit sharing. In a rental transaction, the lessee pays the rental fee because of the rental benefits enjoyed, including the decrease in the economic value of an item due to the use of the lessee. In savings and loan transactions, conventionally the lender takes the addition in the form of interest without any counterbalance being received by the borrower except for the opportunities and time factors that have taken place during the lending process.

The strict prohibition of usury in Islam is caused by a deep concern for the moral, social welfare and economic aspects of mankind. Many Muslim scholars convey rational arguments about the wisdom of this prohibition. Various recent studies have also corroborated their opinion with various additions and broader elaborations of their arguments.

Allowing the collection of interest on debt prevents people from doing good to one another, as Islam requires. If usury is prohibited in a society, people will carry out lending and borrowing transactions in good faith, expecting no return other than what they have lent. But if usury is permitted, the person in need will be required to pay a larger debt (than what he borrowed). This will ultimately reduce his good faith and friendly attitude towards lenders. This is the moral aspect of the prohibition of usury.

Eating usury is the same as taking other people's property without giving anything in return. Because people who lend one dirham by returning two dirhams get one dirham for free. Because human property is highly protected in Islam and is used to meet their needs, as in the hadith "a person's wealth is pure blood", then taking someone's property without giving a reward (price) as a substitute is forbidden.

Business transactions that use the interest system are very contrary to Islamic law, because usury makes the rich richer and the poor poorer. For people who have more income, there will be many opportunities to increase their income by making loans to other people, whereas for those who have a small income, not only have difficulties in paying installments but also have to think about the interest that will be paid.

Thus, in a society that uses usury, the strong will take advantage of the suffering of the weak, as a result the rich get richer and the poor get poorer. The gap between socio-economic classes in society will also be created. This in itself will lead to jealousy and hatred of the poor towards those

¹⁰Ibid. p.14

¹¹Zainul Arifin, Fundamentals of Islamic Bank Management, Jakarta: Azkiah Publisher, 2009, page 15

who are rich, and contempt and indifference of the rich towards the poor. Conflicts will arise, socio-economic structures are torn apart, revolutions explode and social harmony is in jeopardy

CONCLUSION

Based on the results of the research that has been done, it can be concluded that the existence of a conventional banking system that applies an interest system and was built from the colonial system still has a very large role and relationship to economic development in Indonesia. The banking system in Indonesia still uses an integrated dual banking system in development so that people find it difficult to avoid transactions with conventional banks that operate by applying an interest system. Trying to increase wealth is a human thing, but money is not a source of happiness or a tool that can fix everyone's problems. What adds to wealth is a blessing from Allah and how the money is obtained. In Islam, usury is seen as one of the major sins and a form of disobedience to Allah. All parties involved in ribawi transactions were cursed by Allah and His Messenger.

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