

Eclectic Islamic Economic Law: Multiakad in Indonesia's Sharia Banking

Mohamad Nur Yasin

Department of Islamic Business Law, Faculty of Sharia, UIN Maulana Malik Ibrahim, 65144, Malang, Indonesia

ABSTRACT

This study evaluates the enactment of multiakad principles in the Sharia Banking products within the frame of eclectic law. There are 13 Sharia Commercial Banks in Indonesia that offer 228 non multiakad products and 168 multiakad products. This study identifies factors behind the enactment of multiakad principles in Sharia Banking products and the model of eclectic law that it subscribes to. The study is based on library research. The data used for this research was obtained from reputable documents and online literature. The findings show that various factors surround the implementation of multiakad in Sharia Banking products in Indonesia: political, economic and law. There are three models of eclectic law in multiakad products in Sharia Banking in Indonesia, namely Eclectic Methodological Doctrine, Eclectic Style, and Eclectic Culture

Keywords: Eclectic Islamic economic law, eclectic style, eclectic culture, multiakad sharia banking

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E-mail address:

yasinm.nuryasin@yahoo.co.id

* Corresponding author

INTRODUCTION

Islamic finance philosophy propagates the nurturing of human resource competencies to safeguard stakeholder's interests towards achieving long term sustainability in Islamic banks (Nor et al., 2017). The diversity of human entities leads to the diversity of law models. In the context of legal philosophy, combinations of law model varieties is called the eclectic law. According to Arnold

A. Lazarus and Larry E. Beutler, “eclectic is straight forward, selecting what appears to be best in various doctrines, methods or styles” (Lazarus & Beutler, 1993).

The enactment of eclectic law in Indonesia takes place in the midst of people’s lives and has become the people’s choice. This is reflected in the incorporation of various elements of Islamic economic law in the concept of Sharia Banking products. In the context of Islamic economic law, it is called multiakad. According to the Financial Services Authority in July 2018, there are 13 Sharia Commercial Banks which cover 396 banking products which consists of 228 non multiakad products and 168 multiakad products (Financial Services Authority, 2018). This study focuses on two questions. Firstly, what are the factors behind the enactment of multiakad principles in Sharia Banking products in Indonesia and secondly what are the models of eclectic law in multiakad products in Sharia Banking in Indonesia.

LITERATURE REVIEW

Eclectic law refers to a combination of various principles, methods or styles of law that are formulated into a new law formulation. Eclectic law shares the same spirit with the concept of multiakad in Sharia Banking products. The early construction of the concept of multiakad was pioneered by Nazih Hammad. He stated that the basic principle of Islamic law was the ability to perform transactions of multiakad (Hammad, 2005). Hammad’s concept was perfected by Abdullah Al-Imrani. Al-Imrani

devided multiakad into five types namely: (1) *al-uqud al-mutaqabilah*, (2) *al-uqud al-mujtami’ah*, (3) *al-uqud al-mutanaqidhah wa al-mutadhadah wa al-mutanafiyah*, (4) *al-uqud al-mukhtalifah*, and (5) *al-uqud al-mutajanisah* (Al-Imrani, 2006).

The earliest multiakad study in Indonesia was conducted by Hasanudin Maulana. He analyzed glimpses of its substance and methods that complied with sharia principles (Maulana, 2011). In the article titled *Al-Uqud al-Murakkabah in Sharia Economic Perspective*, Najamuddin focused on the debates among scholars on the legality of fiqhiyah’s concept of multiakad (Najamuddin, 2013). Murtadho wrote *Fiqih Muamalah Model on Hybrid Contract Formulation*, where he examines multiakad in the frame of progressive modern Islamic law thinking (Murtadho, 2013). Under the perspective of Ali Amin Isfandiar, traditions can inspire the emergence of multiakad concepts (Isfandiar, 2013). According to Burhanudin Susanto, there are two types of multiakad; natural multiakad (*al-uqud al-murakkabah al-thabi’iyah*) and modified multiakad (*al-uqud al-murakkabah al-ta’dilah*). Both of them can be found in the fatwa on Sharia Banking (Susanto, 2016). Yosi Aryanti stated that ulama should formulate fatwa through a multiakad approach (Aryanti, 2017). In the article titled “Hybrid Contract Implementation on Take Over Sharia Banking Financing from Conventional Banks to Sharia Banks under perspective of Islamic Law”, Distie Saraswati and Syamsul Hidayat focused on hybrid contract in the take over process

of Sharia Banking (Saraswati & Hidayat, 2017). Nurcholis Sjamsuddin asserts that the verification power of multiakad has not been seen in business contracts made in writing in the form of deed (Sjamsuddin, 2018). Sjamsuddin and all the authors above however did not discuss multiakad in the frame of eclectic law and they did not focus on the products issued by 13 Sharia Commercial Banks in Indonesia. This gap paves the way for this new study on the use of eclectic law in Sharia Banking.

METHODS

This study was based on library research. Data was obtained from reputable online literature and publications. The data collection and analysis in this study used the philosophy of law approach (Bekker & Zubair, 1990).

Table 1

Multiakad products within sharia commercial banks in Indonesia

No.	Name of Bank	Amount of Products	Non-Multiakad	Contains Multiakad
1	Bank Aceh Sharia	29	25	4
2	Bank Muamalat Indonesia	24	16	8
3	Bank Victoria Sharia	13	8	5
4	Bank Rakyat Indonesia (BRI) Sharia	25	14	11
5	Bank JabarBanten(BJB) Sharia	19	12	7
6	Bank National Indonesia (BNI)Sharia	53	14	39
7	Bank Sharia Mandiri	106	48	58
8	Bank Mega Sharia	22	18	4
9	Bank Panin Dubai Sharia	26	14	12
10	Bank ShariaBukopin	26	18	8
11	Bank Central Asia (BCA)Sharia	21	16	5
12	BTPNSharia	11	10	1
13	MaybankSharia Indonesia	21	15	6
	Total	396	228	168

RESULTS

The Profile of Multi Akad Products in Sharia Banking in Indonesia

Based on Sharia Banking Statistics published by the Financial Services Authority in July 2018, there are 13 Sharia Commercial Banks (Table 1) (Financial Services Authority, 2018). Bank Aceh Sharia has 29 products, and 4 of the products contain multiakad (Bank Aceh Sharia, 2018). There are 24 products issued by Bank Muamalat Indonesia, 8 of them contain multiakad (Bank Muamalat Indonesia, 2018). Bank Victoria Sharia has 13 products, 5 of them contain multiakad (Bank Victoria Sharia, 2018). Bank Rakyat Indonesia (BRI) Sharia covers 25 products, 11 products apply multiakad (BRI Sharia, 2018). Bank Jabar Banten (BJB) Sharia has 19 products, 7 of them contain multiakad (Bank Jabar Banten Sharia, 2018).

Bank Nasional Indonesia (BNI) Sharia covers 53 products, 39 of them contain multiakad (BNI Sharia, 2018). In Bank Sharia Mandiri, there are 106 products, with 58 of them applying multiakad (Bank Sharia Mandiri, 2018). Bank Mega Sharia consists of 22 products, 4 of them contain multiakad (Bank Mega Sharia, 2018). Panin Dubai Sharia Bank has 26 products, 12 of them apply multiakad principles (Panin Dubai Sharia Bank, 2018). In Bank Sharia Bukopin, there are 26 products, 8 of them implement multiakad (Bank Sharia Bukopin, 2018). BCA Sharia covers 21 products, 5 of them apply multiakad (BCA Sharia, 2018). Bank Tabungan Pensiunan Nasional (BTPN) Sharia consists of 11 products but only one product applies multiakad (BTPN Sharia, 2018). Maybank Sharia Indonesia offers 21 products with 6 products applying multiakad (Maybank Sharia Indonesia, 2018).

DISCUSSION

Enactment Factors of Multiakad in Sharia Banking

There are various factors surrounding the enactment of multiakad in Sharia Banking products. *First*, is the political factor. There are two determinants for politics: negative-pejorative-destructive and positive-constructive-legitimative. In the negative-pejorative-destructive context, politics has the power and way to undermine the people's prosperity and nation (Yasin, 2018). In this study, politics is interpreted as positive-constructive-legitimative, ie the powers and strategies to achieve prosperity among human beings. According to Mohd

Syakir bin Mohd Rosdi, Islamic political economy emphasizes on both spiritual and material development (Rosdi, 2015). Under the perspective of Muhammad al-Buraey, without political power, economic systems can not be realized (Al-Buraey, 1986). Without politics, there will not be Bank Muamalat Indonesia (Sasono, 2000) and all Sharia Banking in Indonesia. *The second* factor is the economic factor. Economic factors emerged as a consequence of the Indonesian nation as an economic entity. Humans as the economic being is represented by the interdependence of economic attitude among others to meet the needs of life. *The third* factor is law. The emergence of Sharia Banking products cannot be separated from positive law factors and Islamic law as framed in the fatwa of National Sharia Council–The Council of Indonesian Ulama (DSN-MUI). Politics, economic, and law factors in the enactment of Sharia within Banking products can also be observed by reviewing the commitment of the Indonesian Presidents towards the development of Sharia Banking.

In the era of President Soekarno, there was no Sharia Commercial Bank in Indonesia. Sharia Commercial Bank was started in the era of President Soeharto, namely Bank Muamalat Indonesia (BMI). BMI refers to Law Number 7 Year 1992 on Banking which promotes the term “profit sharing” (Sekretariat Kabinet RI, 1992). Under the perspective of Jurna Petri Roszi, the new order is based on the state's political creation using the concept of Pancasila state and harmonizing Islamic

values (Roszi, 2017). In the era of President Habibie, Law Number 10 Year 1998 on the amendment to Law Number 7 Year 1992 on Banking was introduced. This law no longer uses the term “profit sharing principle” and adopted the term “Islamic banking” (Sekretariat Kabinet RI, 1998). Nadirsyah Hosen stated that in the era of Habibie began the process of developing a new political system and creation of a new legal framework. Those laws were a reflection of political compromise and therefore did not meet the demands for genuine reform, only promoting good governance and the rule of law (Hosen, 1999). However, Habibie sought to realize economic reform (Marks, 2009).

In the era of President Abdurrahman Wahid there was one new Sharia Commercial Bank that was established, namely Bank Sharia Mandiri. During his era, foundation for law reformation was enacted. According to Saefur Rochmat, President Abdurrahman Wahid already tried to unify the modern system of knowledge to the Islamic one by employing the *fiqh* paradigm (Rochmat, 2017). In the era of President Megawati there were two new Sharia Commercial Banks established, namely May Bank Sharia 2003 and Bank Mega Sharia 2004. Ulla Fionna and Dirk Tomsa asserted that Megawati’s grip on internal party matters is unique among the core parties (Fionna & Tomsa, 2017). During Megawati’s period of rule, Indonesia began facing problems due to the emergence of radical Islamist groups (Sirozi, 2006).

In the era of Yudoyono, there were eight Sharia Commercial Banks, ie; Bank Aceh Sharia 2006, Bank Rakyat Indonesia Sharia 2008, Bank Sharia Bukopin 2008, Bank Panin Dubai Sharia 2009, Bank Jabar Banten Sharia 2010, Bank National Indonesia Sharia 2010, Bank Central Asia Sharia 2010, and Bank Victoria Sharia 2010. According to Aleksius Jemadu, Yudoyono had to face at least two main challenges during his presidency in the implementation of good governance in Indonesia (Jemadu, 2017). In this era, the term “sharia economic” increasingly gained recognition in line with the issuance of Law Number 3 Year 2006 on Religious Courts. The position of the term “sharia economic” got stronger in the national legal system which was marked by the issuance of Law Number 21 Year 2008 on Sharia Banking (Sekretariat Kabinet RI, 2008).

In the era of President Joko Widodo there was one Sharia Commercial Bank opened, namely Bank Tabungan Pembangunan Nasional (BTPN) Sharia, and this was in 2014. According to Aleksius Jemadu, Widodo’s political capital may also come from his reputation as a populist leader. He enjoys maintaining close relationships with many civil society activists (Jemadu, 2017). To harmonize the Law, President Joko Widodo established the National Committee of Sharia Financial on January 5, 2016.

The Models of Eclectic Law within Multiakad in Sharia Banking

The innovation of Sharia Banking products continue to grow rapidly. Multiakad as

an approach to the dinamization of new products of Sharia Banking continues. Within the frame of the philosophy of law, this reality is in line with the concept of eclectic law. According to Sultan H. Alharbi, “the eclectic approach stresses using a variety of methodologies and approaches, choosing techniques from each method” (Alharbi, 2017). Alessandra Arcuri stated that eclecticism was a paradigm open to a variety of methodologies, doctrines and styles (Arcuri, 2008). Arnold A. Lazarus and Larry E. Beutler stressed that eclecticism was straight forward, selecting what appeared to be the best in various doctrines, methods, or styles (Lazarus & Beutler, 1993). Under the perspective of Eric Datu Agustin, the eclectic legal theory is the approach to theorizing what seems best among the various competing theories whereby their variants are selected to answer persistent and pressing problems in the legal theory (Agustin, 2016). According to William A. Reppy Jr., eclecticism is an approach used by the court from two or more distinct choices of law methods or a part of those methods in deciding a law issue (Reppy Jr., 1983). Based on the core ideas above, the analysis of multiakad in the frame of eclectic law is mapped into eclectic methodological doctrine, eclectic style and eclectic culture .

Eclectic Methodological Doctrine

Eclectic Methodological Doctrine is characterized by the use of various doctrines and methods of ijtihad and methods of interpretation in the multiakad formulation. The implementation of multiakad products

in Sharia Banking is always based on Bank Indonesia’s Regulation (PBI). The substance of PBI always adopts the fatwa of National Sharia Council–The Council of Indonesian Ulama (DSN-MUI). This condition illustrates that Bank Indonesia is a regulator that uses sociological method, namely the method of law interpretation based on the conditions faced with the aim to harmonize various laws within the field of arrangement including all the problems of law which are relevant. Bank Indonesia also uses a systematic method interpretation which always harmonizes with the fatwa of DSN-MUI.

According to Ma’ruf Amin, there is a standard mechanism used by DSN-MUI to formulate a fatwa on economic sharia including the fatwa on Sharia Banking. The majority of fatwa of DSN-MUI uses the Islamic law solution method (*makharij fiqhiyah*). There are four methods of ijtihad used simultaneously to formulate and establish the fatwa of DSN-MUI, namely *al-taysir al-manhaji*, *tafriq al-halal ‘an al-haram*, *i’adah al-nadhar*, and *tahqiq al-manath* (Amin, 2017).

First is the method of *al-taysir al-manhaji*, which selects the lightest argument (*at-taysir*) that is relevant to the applicable method (*manhaj*). The use of *al-taysir al-manhaji* method is done proportionally and not excessively (*al-mubalaghah fi al-taysir*) in order to avoid the belittling behavior (*al-tasahul*) of Islamic law. The second method is *at-tafriq baina al-halal wal haram* which is used to separate halal and non-halal property. Third is the method

of *i'adah al-nazhar*, ie the reinterpretation of the classical ulama's opinion which was once considered irrelevant as it is considered difficult to implement (*ta'assur, ta'adzur aw shu'ubah al-amal*). Reinterpretation in the form of testing the opinion of *mu'tamad*, reconsidering law opinions that had been considered weak. Fourth, is the *tahqiq al-manath* method (review of the determination of law reasons). This method is used to analyze the presence or absence of law arguments in a case (Amin, 2017). The use of the four methods are relevant to the principle in sharia economic law whereby "all business activities are permissible, unless there is a proposition that forbid it (*al-ashl fi al-mu'amalat al-ibahahhattayadull al-dalil 'ala al-tahrim*)".

Eclectic Style

Eclectic Style in Sharia Banking products in Indonesia is characterized by the use of law formulation. There are three thoughts related to the interconnection between law and human action. The first relates to the philosophical differences. Some Islamic law scholars hold on to the rational paradigm that the source of Sharia Banking product formulation is contemplation. However, other law scholars describe it through the empiric paradigm that the formulation of Sharia Banking products must refer to the practice of people. The second reason is the terminological difference. Several Islamic law scholars formulated Sharia Banking products based on the purpose of the law while several others based it on the function of the law, or on the system of law.

The third is the socio historical differences, namely differences in social and intellectual background. Every social environment in Indonesia contributes to the construction of one's thinking.

Surah Ali Imron verse 112 affirms that there is a necessity for man to always be loyal to the law of Allah (*hablmin Allah*) and loyal to the agreement of humanity (*hablmin al-nas*), so that human civilization can be realized in dignity and justice. In line with this, Thomas Aquinas as quoted by Bernard L. Tanya, Yoan N. Simanjutak and Markus Y. Hage asserted that there were two positive laws: *divinum positivum* and *humanum positivum* (Tanya et al., 2007). The law imposed in this study is *hablmin al-nas (humanum positivum)* which is imbued by *habl min Allah (divinum positivum)*. *Hab lmin al-nas (humanum positivum)* encourages people to design patterns of relationships among others in a constructive and sustainable way. Thus, it appears to affect each other and between one and another law entity.

Marcus Tullius Cicero as quoted by David B. Kopel, Paul Gallant and Joanne D. Eisen stated that *ubi societas ibi ius*, where there is society there is law (Kopel et al., 2007). Cicero's concept shows that the style of relation between law and the non-law aspects is patterned inductively (bottom up), ie non-law realities (such as social and economic realities) precede the law. Lawrence M. Friedman asserted that one of the functions of law is to perform social engineering (Friedman, 1975). It illustrates that style of relation between law

and non law aspect is of deductive character (top down). The aspects of inductive style (*bottom up*) and the deductive style (*top down*) in multiakad products can be traced to the socio economic reality that underlies the issue of fatwa by DSN-MUI.

Eclectic Culture

Eclectic Culture is characterized by the use of various cultures in the formulation of multiakad. The various cultures that contribute to multiakad products are the cultures or business traditions of the society which in law terms is called living law and the gobal tradition is usually absorbed into the Constitution of the State through interaction of civilizations. Under the perspective of Karomani, communication is loaded with pragmatism and idealism (Karomani, 2017). Sreethi Nair stated that time is irreplaceable and irreversible. The way we select to spend our time determines the quality of our lives. As far as an individual is concerned, time plays a major role (Nair, 2017). According to Rudolph von Jhering as quoted by Bernard L. Tanya, Yoan N. Simanjutak and Markus Y. Hage, the law is indeed the soul of a nation. Others are the result of the adoption of the outer elements, both as a result of association with other nations and because the nation has interest in that external element (Tanya et al., 2007).

Jhering's idea shows that departing from the original reality of a nation is often referred to as living law. The formation of law requires creative and fair modification. In this regard, Paul Scholten says, as

quoted by Rahardjo that the sistematisize and construction method taken as the development of logical reasoning methods is the only decisive method. Scholten proposed three loads for law construction. *First*, the construction must be able to cover the entire field of positive law in question. *Secondly*, there can be no logical contradictions in it. *Third*, the construction should meet the beauty of the land (Rahardjo, 1991). According to Rahardjo, the purpose of beauty here is that the law is not something that is made carelessly but constructed with clarity. Furthermore, it may be possible to combine new rules to create new insights (Rahardjo, 1991), including interconnections or law integration.

The existence of local culture in Sharia Banking products is mentioned in the statements of President Soeharto and Thobi Mutis. According to Soeharto, the approval of the establishment of Sharia Banking in Indonesia is because Sharia Banking uses the principle of profit sharing (*mudaraba*). The concept of profit sharing is in harmony with the great tradition of Indonesian people who are accustomed to the life of *gotong royong*. According to Thoby Mutis, Rector of Trisakti University of Jakarta, Sharia Banking is very good because there is openness and honesty in the Islamic economy. Furthermore, he explains that the concept of profit sharing has already been used since the past and is now being continued. This concept requires honesty and openness in cooperation and it is very good if it is applied in the business sector. Thobi Mutis' support to Sharia Banking is

also due to the fact that the sharia here does not contradict with customary laws (Yasin, 2016). Suharto and Thoby Mutis both saw a cultural dimension in the products of Sharia Banking. Cultural assimilation between local culture (local wisdom) and global culture in the form of new flows of Islamic economics internationally has given rise to a new face for Sharia Banking products in the treasury of Indonesian national banking.

CONCLUSION

Based on the above description and analysis, there are two significant conclusions. *First*, there are various factors surrounding the implementation of multiakad products in sharia banking in Indonesia. The political factor is characterized by the support of the president in the development of sharia banking. Economic factors emerged as a consequence of the dynamics of economic life of the Indonesian nation. Law factors show that the emergence of regulations of Sharia Banking contribute to the implementation of multiakad products in Sharia Banking.

Second, there are three models of eclectic law in multiakad products in Sharia Banking in Indonesia, namely eclectic methodological doctrine, eclectic style and eclectic culture. Eclectic methodological doctrine is a combination of doctrines and methods in the formulation of multiakad products. Eclectic Style is characterized by the use of the force of law formulation. In this study there are two styles of multiakad product formulation identified, namely inductive bottom up style and top

down deductive style. Eclectic culture is characterized by the use of local culture and global culture in the formulation of multiakad.

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