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The Politics of Law of Sharia Economics in Indonesia

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Abstract. This study examines the process of institutionalization of sharia principles in the economic field, along with the process of legislation and regulation in the national legal system. The scope of this study will rely on the existence, opportunities, and challenges of actualizing the Islamic economic system from the perspective of Indonesian legal politics. Specifically, this approach is carried out based on the authority of Islamic law and its existence as a source of law in Indonesia's national legal order, with a sharp level of attention to the dynamics of regulatory policies on sharia economic business activities. Starting from the characteristics of Indonesian political legalism under the umbrella of the 1945 Constitution, which adheres to the concept of "unification and codification in a "unique way," the study of sharia economics in Indonesian legal politics has also given birth to several knots that are "unique." Theoretically, the concept of "unification" is a way for national legal politics to shape law in the condition of a pluralistic Indonesian nation. One principle that is used as a theoretical benchmark in this regard is how to carry out the process of legal unification in a pluralistic society that seeks to maintain a process of differentiation in a sustainable manner of sharia economics.

Keywords: Politics of law, Sharia Economics, Legal framework, Indonesia

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Abstrak. *Penelitian ini menyoroti proses pelembagaan prinsip syariah dalam bidang ekonomi berikut proses legislasi dan regulasinya dalam sistem hukum nasional. Lingkup kajian ini akan bertumpu pada eksistensi, peluang dan tantangan aktualisasi sistem ekonomi syariah dalam perspektif politik hukum Indonesia. Secara spesifik, pendekatan ini dilakukan dengan bertolak pada otoritas hukum Islam dan eksistensinya sebagai sumber hukum dalam tertib hukum nasional Indonesia, dengan tingkat perhatian yang tajam pada dinamika kebijakan regulasi atas kegiatan usaha ekonomi syariah. Bertolak dari karakteristik legalisme politik hukum Indonesia di bawah payung UUD 1945 yang menganut konsep"unifikasi dan kodifikasi secara "unik," kajian tentang ekonomi syariah dalam politik hukum Indonesia juga telah melahirkan beberapa kata simpul yang bersifat "unik." Konsep "unifikasi" secara teoritik merupakan satu jalan bagi politik hukum nasional untuk membentuk hukum dalam kondisi bangsa Indonesia yang majemuk. Salah satu prinsip yang dijadikan tolak ukur teoritis dalam hal ini adalah bagaimana melakukan proses penyatuan hukum dalam masyarakat majemuk yang berupaya mempertahankan proses diferensiasi ekonomi syariah secara berkelanjutan.*

Kata kunci: *Politik Hukum, Ekonomi Syariah, Kerangka Hukum, Indonesia*

1. Introduction

All products of laws and regulations in the Indonesian legal system are one unit and must apply throughout the country and for all citizens. It is "unique" in its operations because it provides juridical justification and legitimizes the diversification of enforcement. Meanwhile, the concept of "codification" means that all products of similar legal rules must be recorded in one book of laws in a complete and systematic manner. Codification is necessary and intended to guarantee legal certainty, legal simplification and legal unity. However, it is "unique" in its operations because juridical justification actually legitimizes its spread in various regulatory instruments.

Although there is no standard determination for the concept of an economic system and business activities based on Islamic law, the term sharia economics in the topic of this study is based on the practice of Islamic banking business activities which use the term "sharia banking" as a label for banking institutions that carry out business activities based on sharia principles. This nomenclature is in line with the formal juridical approach in which Islamic banking practices in Indonesia use the term "sharia banking" as introduced in Law no. 21 of 2008 concerning Islamic Banking and Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning the Religious Courts. Therefore, the determination of economics and business activities based on Islamic law, which is the subject of discussion in this book, uses the term "sharia economics."[1]

Indonesian legal politics, thoughts and ideas regarding the concept of Islamic economics have been represented in Islamic banking practices. In fact, access to the concept of sharia economics amid the practice of a contemporary economic system has in fact not penetrated much into the economic sector at the market and business world levels-until now it is still limited to the world of insurance, cooperatives, and is even still dominant in the world of banking. Thus, the selection of the banking sector to describe the development of sharia economic law in this study was carried out because sharia banking has a very significant role in the development of sharia economic law in Indonesia.

The conclusion of the study of sharia economics in Indonesian legal politics basically represents that even though the level of progress in regulatory policies

[1] Article 2 paragraph (1).

and the contemporary implications of institutionalizing "sharia principles" in the operations of contemporary banking business activities in Indonesia have simultaneously become a starting point for the actualization and acceleration of the sharia economic system, the existence and its legitimacy as an alternative economic system concept in the governance of contemporary global business activities is actually still faced with the complexity of problems of the legal system and the domination of the conventional economic system. Nevertheless, it cannot be denied that the operational concept of Islamic economics with all its characteristic specifications has become an alternative necessity, both in the international world in general and in Indonesia in particular.

2. Discussion

2.1. Dynamics of Sharia Economic Law in National Legal Politics

Historically-sociologically, Islamic law as an integral part of Islamic teachings has permeated and become part of the norms of Indonesian society since the arrival of Islam to the archipelago in the 1st/7th century.[2] In fact, demands for the existence of Islamic law in Indonesia have proven to be an important part of the struggle for thought and the development of national law during the colonial period. During the VOC era, the colonial government introduced Dutch law and established a judicial institution which also applied to the Indonesian nation. However, these efforts did not produce satisfactory results, and even met with dead ends and failures, so that in the end the institutions that lived in society were allowed to run as before.[3]

According to Ismail Suny, as quoted by Suparman Usman,[4] The acceptance of Islamic law during the Dutch East Indies period took place in two models, namely the acceptance of the full application of Islamic law to Muslims through the Receptio in Complexu theory and the acceptance of the application of Islamic law

[2] Ka'bah, Rifyal. *Hukum Islam di Indonesia*. Jakarta: Universitas Yasri Jakarta, 2020.

[3] Basyir, Ahmad Azhar. "Hukum Islam di Indonesia dari Masa ke Masa." *Unisia* 16 (1992): 9-13.

[4] Usman, Suparman. *Hukum Islam: asas-asas dan pengantar studi hukum Islam dalam tata hukum Indonesia*. Gaya Media Pertama, 2001.

to Muslims when it was desired, accepted and became customary law through the Receptie theory.

The Receptio in Complexu theory was first introduced by Lodewijk Willem Christian van den Berg. In simple terms, it can be said that the theory of Receptio in Complexu is a political theory of colonial law during the Dutch East Indies period. It is this Receptio in Complexu theory that underlies the acceptance of the full application of Islamic law to Indonesian Muslims effectively, so that legally and formally Islamic law applies fully to Muslims. The acceptance of the application of Islamic law is historical evidence which clearly shows how the existence and authority of Islamic law during the colonial period of the Dutch East Indies did not only function as a belief, but also acted effectively as a practical guide for Muslims in the realities of life and the legal system. This fact at the same time proves that the existence and authority of Islamic law during the reign of the Dutch East Indies had been recognized and applied as an integral part of the totality of the positive legal system.

Similar to the Receptio in Complexu theory, the Receptie theory is also a political theory of colonial law during the Dutch East Indies period. The Receptie theory was implemented by the Dutch East Indies government at the suggestion of Cornelis van Vollenhoven and Christian Snouck Hurgronje.[5] However, in contrast to the Receptio in Complexu theory, this Receptie theory emphasizes that the acceptance of Islamic law towards Muslims is only declared valid if it has been desired and accepted as their customary law. The influence of the Receptie theory has dominated Indonesian legal thought for quite a long time, not only until the time leading up to the promulgation of the 1945 Constitution, but until the end of the 1990s this trend was still visible and deeply felt.[6]

Likewise, the acceptance of Islamic law in the independence era also took place in two models, namely the acceptance of Islamic law as a persuasive source and an authoritative source.[7] Persuasive source means the source of which people must believe and accept it. The position of Islamic law as a persuasive source in constitutional life in the post-independence Indonesia period lasted for 14 years, from 22 June 1945 when the Jakarta Charter was born until 5 July 1949 when the Presidential Decree was issued. This is because the seven words "with the

[5] *Ibid.*

[6] Rofiq, Ahmad. *Pembaharuan Hukum Islam di Indonesia*. Gama Media, 2001.

[7] *Ibid.*

obligation to carry out Islamic law for its adherents"-derived from the Jakarta Charter were not set forth in the Preamble to the 1945 Constitution which was ratified on August 18, 1945. Meanwhile the acceptance of Islamic law as an authoritative source in constitutional life in the post-Islamic era Indonesia is independent, meaning that Islamic sharia law is a source that has strength. According to Ismail Suny,[8] The position of Islamic sharia law as an authoritative source has been effective since the re-activation of the Jakarta Charter by Presidential Decree 5 July 1959 until now.

Through the Presidential Decree of 5 July 1959, it was stated that the Jakarta Charter dated 22 June 1945 animates and constitutes a continuum of unity with the 1945 Constitution. Thus, the phrase "Belief in God, with the obligation to carry out Islamic law for its adherents" became reactivated in the implementation of the concept and process of state life. The definition of "Belief in the One and Only God" in the Preamble and Article 29 paragraph (1) of the 1945 Constitution returns to its "authenticity," namely as stated by Ki Bagus, "Belief in the One Almighty God means Monotheism."[9]

The adherence to the position of Islamic law in constitutionalism in the post-independence Indonesia era, among others, is evidenced by the recognition of the Receptie Exit theory initiated by Hazairin, the Receptio a Contrario theory introduced by Sayuti Thalib, and the Existence theory. These theories strengthen the argument that Islamic law in Indonesia has actually existed for a long time and has historical roots in the awareness of the Indonesian Muslim community, in line with the growth and development of Islamic teachings themselves. Constitutionally, the enactment of Islamic law in Indonesia from the start has positioned the state as a source of power in order to gain support and legitimacy so that its enforcement can run effectively. This constitutional basis is obtained through Article 29 of the 1945 Constitution. Hazairin provides an interpretation of Article 29 (1) of the 1945 Constitution by emphasizing that the law that is enforced in Indonesia is Islamic law, not customary law. According to Hazairin, as quoted by Muhammad Daud Ali,[10] the enactment of Islamic law must be based on

[8] *Ibid.*

[9] Amrullah, Ahmad. *Dimensi Hukum Islam dalam Sistem Hukum Nasional*. Jakarta: Gema Insani, 1996.

[10] Ali, Mohammad Daud. *Asas-asas hukum Islam: hukum Islam I: pengantar ilmu hukum dan tata hukum Islam di Indonesia*. Jakarta: Rajawali Pers, 1991.

the designation of legislation as customary law whose basis for enforcement is customary law itself, which is then supported by statutory regulations.

Hazairin further stated that in the Indonesian state, something must not happen or occur that is contrary to Islamic principles for Muslims, or contrary to Christian religious principles for Christians, or contrary to Hindu-Buddhist religious principles for Muslims. adherents of Hinduism and Buddhism. In addition, the Republic of Indonesia is obliged to enforce Islamic law for Muslims, Christian law for Christians, Hindu-Buddhist law for Hindus and Buddhists. Constitutionally, the implementation of the Shari'a requires regulation of state power. Islamic Shari'a, which does not require state power to carry it out, can be implemented by every adherent of the religion concerned, because it is everyone's personal obligation to God to carry it out according to their respective religions.

In line with Hazairin, Suparman Usman[11] confirms that by referring to Article 29 paragraph (1) of the 1945 Constitution and the formulation of Pancasila as contained in the Jakarta Charter which has been reinstated through Presidential Decree 5 July 1959, then:

1. The state is obliged to make laws based on religious law for each of its adherents.
2. The state is obliged to make laws based on Islamic law for Muslims, as well as for adherents of other religions.
3. Laws in Indonesia, especially those that apply to Indonesian Muslims, may not contain provisions that conflict with Islamic law.
4. The enactment of Islamic law as positive law for Indonesian Muslims, who constitute the majority, is based on the philosophical, juridical and sociological values of the Indonesian nation.
5. The state is obliged to make Islamic law a positive law for Indonesian Muslims. Because basically the way of thinking, outlook on life and character of a nation is reflected in its culture and laws.

According to Jimly Asshiddiqle,[12] State law must reflect the essence of justice based on Belief in the One and Only God. Sources of norms that reflect justice

[11] Usman, Suparman. *Hukum Islam:*… .

[12] Jimly Asshiddiqle, "Aktualisasi Hukum Islam dalam Pembangunan Hukum Nasional." *Internasional Seminar Islamic Law in Southeast Asia: Oportunity & Chalenge*, Jakarta: UIN Syarif Hidayatullah, 2007.

based on Belief in the One and Only God can come from anywhere, including from the Islamic sharia system. Whereas state law must reflect the essence of justice based on Belief in the One and Only God, it should be based on the principle of the hierarchy of norms and the elaboration of norms. The logic of the hierarchy of norms is that the law of a country contains the norms contained in the religious law of the religions adhered to by members of the community. While the elaboration of norms is that the norms reflected in the formulation of state law must be a normative elaboration or elaboration of the teachings of religious law that are believed by citizens.

Jimly Asshiddiqie further emphasized that after the amendment to the 1945 Constitution, one of the national agendas that was important and had to be carried out immediately in Indonesia was the development of national law, in the form of structuring statutory regulations and institutional consolidation in accordance with basic constitutional provisions. Apart from having to comply with the 1945 Constitution, the development of national law must also pay attention to various aspects and values that are believed by the people of Indonesia. Religious values are values that are very strongly held and adhered to by the Indonesian people. Because the majority of Indonesian people embrace Islam, it is common for Islam to have its own role and position in the development of national law.[13]

Teuku Muhammad Radhi, former Head of BPHN, as quoted by Superman Usman,[14] said that one of the conditions for law to apply properly in society is that the law must be in accordance with the aspirations and needs of society. One thing that cannot be denied is that the majority of Indonesian people are Muslim, and therefore it can be understood if there is a wish that in the preparation of national law the authorities heed Islamic law, and there should be no matters contrary to law in future national law. the Islamic. Nevertheless, according to Jimly Assiduities,[15] formulation of national laws based on tradition, aspirations and needs of the people must be pursued through deliberative channels and constitutional steps. The deliberative process is a space for the formulation of legal substance

[13] Sri Hastuti Puspitasari. *Paradigma Hubungan antara Kekuasaan Negara dan Perlindungan HAM Di Indonesia,* Available: https://www.google.com/search?q=Jimly+Asshiddiqle%2C%E2%80%9DAktualisasi+Hukum+Islam&rlz=1C1CHBF_enID1030ID1031&oq=Jimly+Asshiddiqle%2C%E2%80%9DAktualisasi+Hukum+Islam&aqs=chrome..69i57j69i60l2.3074j0j4&sourceid=chrome&ie=UTF-8 (2003)

[14] Usman, Suparman. *Hukum Islam:*….

[15] *Op. cit.,* p. 6-7

from various community groups. Each of them is certainly influenced by other social norms, one of which is religious norms. In fact, fighting for religious norms to become positive law can be understood as a struggle in God's way. And when a decision has been made, the law as a product must be accepted by all parties.

In fact, as stated by Rifyal Kaaba,[16] the actualization and codification of Islamic law through legislation has become a policy in Indonesia. Following what was theorized by the late Hazairin [17] and other Islamic figures, that the future of Islamic law will depend a lot on this policy. Policies like this are also carried out by almost all Muslim-majority countries, both in the Middle East and Asia and Africa.

According to Muhammad Daud Ali, as quoted by Arifin Hamid,[18] The applicability of Islamic law in Indonesia can be divided into two parts, namely normative Islamic law and positive Islamic law. Normative Islamic law is most commonly found in the main sources of Islamic law, namely the Koran and Hadith. This part of Islamic law is merely a norm, mainly due to direct orders from Allah and the Messenger of Allah. The enforcement and effectiveness of this normative Islamic law is largely determined by the level of faith and piety of the adherents of Islam concerned. In the context of this normative Islamic law, sanctions or punishments are more internal in nature in the form of sin, remorse, or exclusion from society. Meanwhile, Islamic law which has been appointed as national law is national law. The number of Islamic laws in this category is still very limited and generally concerns the field of muamalah. The enforcement of this positive Islamic law does not only depend on Muslim adherents, but the state must facilitate it so that it is carried out properly. The state is obliged so that this law can be upheld and effective because it has become part of national law. The legal sanctions given if this provision is violated are external in nature, meaning that the state will give strict sanctions to the violators.

Regarding Islamic law which has become positive law nationally, Azhar Basyir emphasized, as quoted by Jimly Asshiddiqie,[19] that the actualization of Islamic law can be divided into two forms, namely: efforts to enforce Islamic law by

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[16] Ka'bah, Rifyal. "*Kodifikasi Hukum Islam Melalui UU Negara di Indonesia," Seminar Nasional Kompilasi Hukum Ekonomi Syariah*, Medan: Kerjasama Fakultas Syariah IAIN Sumatera Utara dengan MA, 2007.

[17] Hazairin, *Tujuh Serangkai Tentang Hukum*, Jakarta: Bina Aksara, 1985.

[18] Hamid, M. Arfin. *Membumikan ekonomi Syariah di Indonesia (perspektif sosioyuridis)*. Elsas, 2006.

[19] Jimly Asshiddiqle, "A*ktualisasi Hukum Islam…"*

establishing certain legal regulations that apply specifically to Muslims and efforts to make Islamic law and fiqh a source of law for the formulation of national law.

The actualization of Islamic law in the form of special regulations that apply to Muslims, for example, is Law no. 7 of 1989 concerning the Religious Courts and the existence of KHI whose dissemination was carried out based on Presidential Decree No. 1 of 1991. While the actualization of Islamic law in national law that is generally accepted, for example, is Law no. 5 of 1960 concerning Agrarian Principles, especially those governing land endowments, Law no. 1 of 1974 concerning Marriage, Law no. 4 of 1979 concerning Child Welfare, and Law no. 23 of 2002 concerning Child Protection.

Of course, there are many other legal products which, if we are careful, will show the actualization of Islamic law in accordance with the level of awareness of Islamic law in the Indonesian people and the legislators. Especially with the current regional autonomy policy, of course the regions can make regional regulations (perda) as the actualization of laws that live in society, especially Islamic law.,[20] In fact, if we refer to contemporary developments in national legal products, recently Indonesia has issued law on the Religious Courts No. 3 of 2006 which revised Law no. 7 of 1989 which regulates the problem of Islamic law courts in Indonesia, including the settlement of disputes in the field of sharia economics. In addition, Indonesia has also issued Law no. 36 of 1999 which provides a basis for the management of zakat in national law. In the field of economic law, recognition of sharia economic principles is included in Law no. 10 of 1998 concerning Banking[21] and Law no. 40 of 2007 amending Law no. 1 of 1995 concerning Limited Liability Companies (PT),[22] as well as Law no. 21 of 2008 concerning Islamic Banking (UUPS).

Based on the information above, it is clear that the state is permitted, even obligated, to facilitate certain areas of religious teachings that relate to the needs of the masses. The field of sharia economics is one area that concerns many people and is related to efforts to achieve prosperity. Thus, the role of the state is needed in facilitating the implementation of Islamic law in the economic field in the context of the Republic of Indonesia.

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[20] Gunawan, Hendra. "Eksistensi Hukum Islam Di Indonesia Dalam Pembangunan Nasional." *Yurisprudentia: Jurnal Hukum Ekonomi* 4, no. 1 (2018): 108-131.

[21] Article 1

[22] Article 109

The actualization of sharia economic values has become significant, especially in the effort to find a way out of the multidimensional crisis that Indonesia is experiencing. In addition, the institutionalization of the Islamic economic system in various operational economic business activities is expected to be an alternative solution for efforts to optimize the potential of the community's economic resources, especially for the Muslim segment of society who have long doubted the halal interest system in conventional banking practices which in turn can eliminate all forms of ribawi economic business activities.

The sharia economic system is an umbrella for all economic institutions based on Islamic teachings. Through the concept of Islamic economics, values, principles, theories, and principles of Islamic economics are accumulated, which in turn will be applied to various forms of economic institutions. Thus, Islamic banking is a form of Islamic economic institution. However, historically-jurisdically, the existence of Islamic banking is a starting point for the development of other Islamic economic institutions in Indonesia.

According to Munir Foody,[23] the birth of a bank based on sharia principles in the Indonesian banking system has not only added to the splendor of the legal repertoire but has at the same time emphasized the vision of Indonesian banking life, based on two main reasons, namely;

1. Most of the Indonesian nation is Muslim, so the presence of banks based on sharia principles is really like tit for tat.
2. The conventional banking system whose business activities only rely on deposits or credit based on interest, which certain groups in Islam are still equated with money interest which is prohibited in Islamic law, or at least there are doubts about the halal or haram bank interest

From a formal juridical point of view, recognition of sharia economic principles has been included in Law no. 10 of 1998 concerning Banking and Law no. 40 of 2007 amending Law no. 1 of 1995 concerning PT. Institutionalization of sharia principles in banking applications in Indonesia after the promulgation of Law no. 16 of 1998 is nothing but a form of concretization of the process of transforming the sub-system of Islamic law into an integral part of the national

[23] Fuady, Munir. *Hukum Perbankan Modern Berdasarkan UU Tahun 1998*. Bandung: Citra Aditya Bakti, 1998.

banking positive legal system and as a set of rules that exclusively regulate the operational system of banking business activities.

The institutionalization of sharia principles, of course, in turn will further strengthen the authority of Islamic law in the operational concept and system of sharia economics. The operation of the Islamic economic system in the midst of contemporary economic system practices is expected to become an alternative economic system as a substitute for an interest-based economic system, with the principle of profit sharing being a common characteristic that underlies the totality of the operational system of business activities.[24] The basic meaning of the intended profit-sharing principle is the principle of profit-sharing based on Shari'a.[25]

It is interesting to point out that one fact in traditional Indonesian society shows that production sharing agreements are very well known as "paroan." This phenomenon represents that actually the principle of profit sharing which is a general characteristic that underlies the totality of the operational system of business activities in the Islamic economic system, also has traditional roots. In fact, from a historical perspective, the specifications of this traditional community profit-sharing agreement have been formalized into a juridical understanding after the promulgation of Law no. 2 of 1960 concerning Production Sharing Agreements, dated January 7, 1960.

Based on the provisions of Law no. 2 of 1960, as quoted by Chairuman Pasaribu,[26] a production sharing agreement is an agreement with whatever name is entered into between the owner on one party and a person or legal entity on the other party which in this law is called cultivator based on the agreement where the cultivator is permitted by said owner to carry out agricultural business on the owner's land, with distribution of the proceeds between the two parties. In the provisions of Article 4 paragraph (2) Presidential Instruction No. 13 of 1980 as a guideline for the implementation of Law no. 2 of 1960, among other things, it is determined that before the distribution is carried out in accordance with the profit-sharing agreement, the zakat must be issued first.[27]

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[24] Antonio, Muhammad Syafi'I. *Bank Syariah: dari teori ke praktik*. Gema Insani, 2001.

[25] Article 1 paragraph (1)

[26] Pasaribu, Chairuman, and Suhrawardi K. Lubis. "*Hukum perjanjian dalam Islam*." (2016). Available: https://repo.iainbatusangkar.ac.id/xmlui/handle/123456789/9071.

[27] Usman, Suparman. *Hukum Islam:… .*

The definition of a profit-sharing agreement of this kind is also known among fiqh scholars. Sayyid Sabiq said that etymologically the notion of profit sharing is a transaction of cultivating land with wages for some of the results that come out of it, namely a giving of results to people who cultivate/cultivate the land from which it is produced, such as; half, one third, or more than that, or lower according to the agreement of both parties.[28]

Currently, in conventional banking business operations, profit sharing agreement transactions have been positioned as an operational specification of sharia principles. The institutionalization of sharia principles that underlies the operations of conventional banking business activities is a legal fact that cannot be denied, of course it is a starting point for efforts to develop operational systems and economic business activities based on Islamic muamalah principles. The determination of sharia principles in a formal juridical perspective is basically defined as an agreement based on Islamic law between a bank and other parties for depositing funds and/or financing business activities or other business activities declared in accordance with sharia.

This juridical perspective means nothing but that the institutionalization of sharia principles is a form of concretization of the process of transforming the sub-system of Islamic law into an integral part of the national positive legal system and becomes a set of rules that exclusively regulate the operational system of banking business activities, which in turn will further strengthen the authority Islamic sharia law in the operational concept and sharia economic system. In this sense, the existence and authority of Islamic law has received delegation in a formal juridical manner for its application in the legal order of banking business activities, and even in economic business activities. In the context of the totality of the banking legal system, sharia principles as "agreement rules based on Islamic law" are a specification of the Islamic ahkâm al-mu'âmalah rules, especially a set of ahkâm al-iqtisadiyyah wa al-mâliyah rules which have been legally formally activated and transformed into sub - positive law system. The application of sharia principles as a form of development of the sharia-based profit-sharing principle, or sharia-based muamalah principles in the operations of banking business activities, is in essence

[28] Sabiq, Sayyid. *Fiqih Sunnah 13*. Kamalaudin A. Marzuki dari Fiqhus Sunnah (trans)., Bandung: Alma'arif, 1987, p. 132.

a basis for the pattern of bank relationships with customers in the operational system of banking business activities.[29]

In short, starting from the promulgation of Law no. 7 of 1992 concerning Banking,[30] and PP No. 72 of 1992 concerning Banks Based on Profit Sharing Principles,[31] until later after the promulgation of Law no. 10 of 1998[32] regarding Amendments to Law No. 7 of 1992 concerning Banking, and has been strengthened through Law no. 23 of 1999 concerning BI,[33] and finally the ratification of the Sharia Banking Bill to become Law no. 21 of 2008 concerning Islamic Banking, it seems very clear that the authority of Islamic sharia law in the operational concept and sharia economic system, especially in the banking system in Indonesia, already has legitimacy and legal certainty in a formal juridical manner. Thus, starting from the characteristics of Indonesian legal political legalism under the umbrella of the 1945 Constitution which adheres to the concept of "unification and codification in a unique way," the study of sharia economics in Indonesian legal politics has also given birth to several knot words that are "unique." Theoretically, the concept of "unification" is a way for national legal politics to shape law in the condition of a pluralistic Indonesian nation. One principle that is used as a theoretical benchmark in this regard is how to carry out the process of legal unification in a pluralistic society that seeks to maintain a process of differentiation in a sustainable manner. All products of laws and regulations in the Indonesian legal system are one unit and must apply throughout the country and for all citizens. It is "unique" in its operations because it provides juridical justification and legitimizes the diversification of enforcement. Meanwhile, the concept of "codification" means that all products of similar legal rules must be recorded in one book of laws in a complete and systematic manner. Codification is necessary and intended to guarantee legal certainty, legal simplification and legal unity. However, it is "unique" in its operations because juridical justification actually legitimizes its spread in various regulatory instruments.

Based on the description above, in the opinion of the author, the determination of economic concepts and business activities based on Islamic law

[29] Article 1
[30] Law No. 7 of 1992
[31] GR No. 72 of 1992
[32] Law No. 10 of 1998
[33] Law No. 23 of 1999

by using the term "sharia economy" is in line with the formal juridical approach to Indonesian banking practices by using the term "sharia banking." Starting from the determination of Islamic banking as a financial institution based on Islamic law and the political perspective of Indonesian law as described above, the following conclusions can be drawn from a juridical perspective:

1. The characteristics of the sharia economy have received the political legalism of Indonesian law under the umbrella of the 1945 Constitution, and the sharia economy in Indonesian legal politics has arrived at an empirical and unique reality.
2. The existence and authority of Islamic law has received a formal juridical delegation of its implementation in the legal order of national banking business activities.
3. The conclusion of the study of sharia economics in Indonesian legal politics, in essence, represents that the contemporary implications of institutionalizing sharia principles in the operations of contemporary banking business activities in Indonesia have become the starting point for the actualization and acceleration of the sharia economic system.

2.2. Basis of Sharia Economic Law in National Law

The discussion in this section will focus on answering the question, does sharia economic law have a constitutional basis in the Constitution of the Republic of Indonesia? Before answering these questions, the author will first set out

theoretical perspectives of Islamic law, stufenbau theory, and sources of contemporary Indonesian legal order. All three are needed to further explore the understanding of the existence and authority of Islamic law in contemporary Indonesian legal politics, as well as exploring and confirming the basis of sharia economic law in national law.

The term Islamic law as an equivalent of the notion of sharia (shari'ah) and fiqh (al-fikih) is often confused in its use. In Western terminology, the equivalent of the term Islamic law is translated through two categories, namely Islamic law and Islamic jurisprudence. The use of the term Islamic law refers to Islamic sharia, or as a translation of al-syari'ah al-islamiyah, while the term Islamic jurisprudence refers to Islamic jurisprudence, or as a translation of al-fikih al-islámi.[34]

[34] Rofiq, Ahmad. *Pembaharuan Hukum Islam di Indonesia*. Jakarta: Gama Media, 2001.

The word law in religious terminology is referred to as al hukm or al-ahkám, which means a set of provisions that are the main basis for the pattern of life and human life, regulate patterns of behavior and actions, as well as human moral, ethical and moral behavior. Meanwhile, the terminology of Islamic law in the discipline of ushul fiqh is divided into two categories, namely; Islamic law in the sharia category and Islamic law in the fiqh category. Islamic law in the sharia category includes a set of legal provisions that have been expressly explained by the texts of the Al-Quran or Sunnah which have qat'i status and do not contain interpretations and interpretations. Whereas Islamic law in the category of fiqh includes a set of legal provisions that have not been explicitly explained by the texts of the Koran or Sunnah, and can only be known clearly after being explored through the ijtihad of the mujtahids.[35]

According to Rifial Kaaba,[36] tasyri islami (Islamic legislation) in traditional studies contains two meanings. The first is as a decree from Allah and the Messenger. The second is as a provision based on human interpretation carried out by the jurists of all time since the era of the Companions. Tasyri itself kum (syari) means sinn al-qawanin (law-making). The maker of h in Islam is Allah and the Messenger. Therefore, the provisions of Allah and the Messenger are called sharia (shari'ah), namely the path outlined for humans. The law as the decree of Allah and the Messenger may not change, but the law of life follows the changes. In anticipation of these changes, humans can also make new laws based on the general principles laid down by the original sharia. This second type of law is the result of mujtahid ijtihad, or human understanding of divine law which is called fiqh. In the development of Islamic history, the term shari'ah is used for both forms of law. This is what is called al-tasyri' al-islâmî.

In simple terms, the word sharia can be understood as a set of provisions of Divine law in the form of propositions that are qat'i (definitive-imperative) or a set of concrete teachings, as well as those that are zannî (hypothetical-probabilistic) or a set of general teachings. , established by Allah SWT. and explained by His apostles, which relate to the regulation of human behavior in all aspects of personal

[35] IAIN Raden Intan. *Pengelolaan Zakat Mal Bagian Fakir Miskin: Suatu pendekatan Operatif*. Lampung: IAIN Raden Intan, 1990.

[36] Ka'bah, Rifyal. "Kodifikasi Hukum Islam Melalui Perundang-Undangan Negara di Indonesia." *Majalah Hukum Suara Uldilag* 2, no. 5 (2004).

and social life, whose guidance humans must follow in the form of obedience, in order to achieve a good life in this world and in the hereafter.

Aspects of sharia law whose scope includes provisions that are qat'i are aspects of Islamic law in the narrow sense and as law in abstracto. Meanwhile, aspects of Islamic law whose scope includes zanni provisions, which are commonly known in Islamic jurisprudence, are in concreto legal aspects. In the perspective of the formal legality of a country, according to him, an Islamic sharia provision explored by scholars from the texts of the Koran and Sunnah, which are compiled in the form of fatwas (doctrines) contained in fiqh books, is included in the category of Islamic sharia law in the sense in abstracto. However, if the provisions of Islamic sharia have been formally stated to apply as positive law in a country, then Islamic sharia law has become law in the sense of in concreto.[37] In the context of this discussion, Islamic law is intended to cover both categories, both Islamic law in the category of sharia (Islamic law) and Islamic law in the category of fiqh (Islamic jurisprudence), as well as the understanding of Islamic sharia law in the category of law in abstracto and in concreto.

On the other hand, in the study of legal studies, issues of legal order and sources of legal order are part of the topic of discussion in the stufenbau theory as introduced by Hans Kelsen. Stufenbau theory basically says that every rule of law is an arrangement of rules, where the legitimacy of a lower rule depends or is determined by higher level rules. Stufenbau Hans Kelsen's theory, as quoted by Satjipto Rahardjo,[38] basically want to see the rule of law as a concretization process step by step, starting from the general norms to the more concrete, and the most concrete. At the last end of this process, the legal sanction then takes the form of permission given to someone to carry out an action or to force an action. In this case, what was originally something that "should", has now become something that "may" and "can" be done.

According to stufenbau theory, as quoted by Pruned Prabhakaran,[39] a rule of law of a country is a hierarchical system of rules of law, the simplest of which consists of a system of positive rules as a system in the form of positive rules, namely:

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[37] Usman, Suparman. *Hukum Islam*:… .

[38] Rahardjo, Satjipto. *Ilmu hukum*. Bandung: Citra Aditia Bakti, 2020.

[39] Purbacaraka, Purnadi, and Soerjono Soekanto. *Perihal kaedah hukum*. Bandung: Citra Aditya Bakti, 1989.

1. At the lowest level consists of individual rules established by law enforcement agencies.
2. At a higher level, it consists of general principles in laws formed by the legislature, customary law.
3. At the highest level, it consists of constitutional principles, which are the highest level of national legal order, and the legitimacy of constitutional rules as the highest rules in this system of positive rules, is not based on a positive rule of law, but is based on a rule that formulated by juridical thinking which is a hypothetical basic rule, and it is this hypothetical basic rule that is classified as grundnorm.

The Pure Theory of Law or Reine Rechtslehre, as quoted by Purnadi Purbacaraka,[40] Hans Kelsen said that the grundnorm of a national rule of law is not a positive rule of law formed by any legislative act, but is only the result of an analysis of juridical thinking. When linked to the stufenbau theory, the grund norm is at the top of the stufenbau. The grundnorm conception as part of the basic nature of The Pure Theory of Law, besides functioning as a basis, is also a goal that must be considered by every existing law or regulation. In this conception, all such laws, grundnorm is the parent of being in the realm of grundnorm must relate to it. By giving birth to legal regulations that exist in a certain system order.[41]

Based on the description above, it is clear that there are fundamental differences between the theoretical version of jurisprudence and the views of Islamic legal theory regarding the notion of sources of law. In the Islamic legal tradition, the Qur'an and Sunnah are the main sources of law and at the same time a source of order in Islamic law. Moenawar Kholil[42] emphasized that the Koran is the first legal basis or the basis for all sharia principles. There is no doubt that the normative basis of Islamic law is essentially wholly sourced from the Al-Quran and Sunnah. The strength of the proof of the Koran as a source and legal argument, among others, is contained in the verses of the Koran that command mankind to

[40] Purbacaraka, Purnadi, and Soerjono Soekanto. *Perihal Kaedah Hukum*, Bandung: Citra Aditya Bakti, 1993.

[41] Rahardjo, Satjipto. *Ilmu hukum.*

[42] Kholil, Moenawar. *Kembali kepada Al-Quran dan Sunah*, Jakarta: Bulan Bintang, 1999.

obey God, and the position of the Sunna as the second source and legal argument after the Koran has the power to be obeyed and binding for all Muslims.[43]

However, even though the position of the Koran and Sunnah is the main source of law and at the same time as a source of legal order, or as a primary source in the Islamic legal system, they cannot be categorized as grundnorm as understood in Hans Kelsen's stufenbau theory. Because after all, the Al-Quran and Sunnah are not a hypothetical basic rule resulting from the formulation of juridical thought as in the grundnorm category.

In addition, the legal content in the Al-Quran and Sunnah is not always in the form of basic principles (zanni), because not a few also contain actual and detailed legal provisions (qat'i). Therefore, the position of Al-Quran and Sunnah in the Islamic legal system is not only as a source of material law (masâdir al-ahkâm), but also as a source of formal law (adillat al-ahkâm). Al-Quran occupies the main and first position, while the Sunna occupies the second main position of the Islamic sharia law system, both sharia in a broad sense which broadly includes i'tiqâdiyyah, khuluqiyyah and amaliyyah laws, as well as sharia in a narrow sense which outlines covering the laws of worship (sharia in the narrow sense) and mu'âmalah (sharia in the broad sense).[44]

Meanwhile, in the national legal system, the position of Pancasila as the basis of the state and as a source of national legal order in the Indonesian legal state system based on the 1945 Constitution, is to become a grundnorm form of the rule of law system. Meanwhile, the 1945 Constitution is the highest form of statutory regulation, which is the basis and source for all statutory regulations. Since August 17, 1945, the position of the 1945 Constitution legally constitutes one of the highest forms of statutory regulations, which are the basis and source for all statutory regulations. In this context, Kansil[45] said that based on the provisions of Article II of the Transitional Rules of the 1945 Constitution (after the Decree), all laws and regulations enacted during the Dutch East Indies era, during the Japanese Army era, and during the Republic of Indonesia era until now, are in full force in Indonesia today, with provisions as long as the regulations -These laws and regulations do not conflict with the 1945 Constitution which is currently in effect,

[43] Syarifuddin, Amir. *Ushul Fiqh*. vol. II. Jakarta: Logos Wacana Ilmu dan Pemikiran, 2000.

[44] Usman, Suparman. *Hukum Islam:…* .

[45] Kansil, Christine S. T. *Pengantar ilmu hukum dan tata hukum Indonesia*. Jakarta: Balai Pustaka, 1992.

and will continue to apply in Indonesia onwards as long as they have not been revoked, added to or changed by provisions based on the 1945 Constitution which are now in effect in the Unitary State of the Republic of Indonesia.

After Indonesia's independence, the two pillars of legal politics in the form of "legal unification" and "law codification" under the umbrella of the 1945 Constitution are a necessity. Legal unification means that all laws and regulations in the Indonesian legal system are one unit and must apply throughout the country and for all citizens. As for the codification of law, it means that all products of similar legal rules must be recorded in one book of laws completely and systematically. Legal codification is solely necessary to guarantee legal certainty, legal simplification, and legal unity.[46]

After entering the reform era, the sources of contemporary Indonesian legal order as regulated in MPR Decree No. III/MPR/2000.[47] According to this MPR RI Decree, a source of law is a source that is used as material for drafting legislation, which consists of written and unwritten sources of law. Apart from that, it is also known as a source of national basic law.[48] According to this MPR RI Decree, a source of law is a source that is used as material for drafting legislation, which consists of written and unwritten sources of law. Apart from that, it is also known as a source of national basic law.

At this point, we will come into direct contact with the question that was raised in the first paragraph of this discussion, namely whether sharia economic law has a constitutional basis & is in the Indonesian Constitution? Legally constitutional, Pancasila as stated in the Preamble of the 1945 Constitution functions as a source of national basic law, and the 1945 Constitution is a source of written basic law. Indonesian Unity and Democracy led by wisdom in deliberations/representations, and by realizing social justice for all Indonesian people.[49]

Because one of the country's basic values is KYME, state law must reflect the essence of justice based on KYME which is manifested through "hierarchical principles" of norms and "elaboration of norms." Sources of norms that reflect justice based on KYME can come from anywhere, including from the Islamic sharia system or values originating from Christian, Hindu, Buddhist and Confucian

[46] *Ibid.*
[47] MPR Decree No. III / MPR / 2000
[48] Article 1 paragraph (1)
[49] Article 1 paragraph (3)

traditions. Under these circumstances, state law culminating in the 1945 Constitution of the Republic of Indonesia may not conflict with the legal beliefs or religious beliefs of all Indonesian citizens who are legal subjects regulated by Indonesian national law based on Pancasila. In accordance with the KYME principles, there should be no Indonesian state laws that conflict with religious norms believed by Indonesian citizens themselves.[50]

In the context of Islam, Al-Quran and Sunnah function as the main source of law or as a primary source, and at the same time as a source of legal order in the Islamic legal system. Thus, the coherence of the Koran and Sunnah in the totality of contemporary Indonesian basic legal sources is essentially a form of consistency with the KYME principle as referred to in the Preamble to the 1945 Constitution, and at the same time as a form of consistency in the concept of "a state based on belief in one and only God" as referred to in the provisions of Article 29 (1) of the 1945 Constitution.

Al-Quran and Sunnah as the main legal sources of Islamic sharia law, automatically become inherent in the system of national basic legal sources. Therefore, apart from functioning as a source of material law (masâdir al-ahkâm), the Al-Quran and Sunnah also serve as a source of formal law (adillat al-ahkâm). The function of the Al-Quran and Sunnah is actually only one form of implementation of the characteristics of the Indonesian legal state system based on the 1945 Constitution. In fact, Muhammad Tahir Azhary[51] said that in a Pancasila legal state what is important is national law whose main source is Islamic law besides Pancasila.

If the above view is based on the category of legal sources as stated by Satjipto Rahardjo, then the position of the Al-Quran and Sunnah can be categorized as a legal source, namely as a source that has received formal legal recognition. In fact, in accordance with the provisions of Article 29 paragraph (1) of the 1945 Constitution, the position of the Koran and Sunnah as a source of material law in the Islamic legal system, by itself also becomes a source of material law in national law that has legal validity. This means that the substance of the Koran and Sunnah can directly give birth to or create law, so that the consistency of the Koran and Sunnah as a source of material law is completely a real embodiment of the essence

[50] Jimly Asshiddiqle. A*ktualisasi Hukum Islam*… . p. 3-4.

[51] Azhary, Tahir. *Negara hukum: suatu studi tentang prinsip-prinsipnya dilihat dari segi hukum Islam, implementasinya pada periode negara Madinah dan masa kini*. Jakarta: Bulan Bintang, 1992.

of "a state based on Belief in the One and Only God" as stipulated in Article 29 paragraph (1). 1) UUD 1945.

I hope that Hazar in's interpretation of the provisions of Article 29 paragraph (1) of the 1945 Constitution, as mentioned in the previous section, will be very relevant and realistic. Starting from Hazar in's interpretation of the provisions of Article 29 paragraph (1) of the 1945 Constitution, Superman Usman concludes that:

1. The state is obliged to carry out the religious sharia that is embraced by the Indonesian nation, for their interests, including implementing Islamic sharia for the benefit of Muslims.
2. Conversely, the state may not make regulations (laws) that conflict with the sharia of a religion for its adherents, and include regulations that conflict with Islamic sharia for Muslims, as well as for adherents of other religions.

In addition, the anatomy of ideal norms in historical interpretation of the basic provisions of Article 29 paragraph (2) of the 1945 Constitution on the phrase "and worship according to their religion and belief" can provide answers to the questions above. The word "worship" in that phrase contains a substance that contains a set of activities carried out according to the provisions of Islamic religious law. These activities, among other things, can be in the form of business activities that have economic value including trade/trade and industry. All activities that fall into the category of trade/trade and industry are regulated by the provisions of Islamic law.

In Islamic law, various issues related to the field of muamalah are taught, which provide clarification on certain laws such as zakat law, waqf law, and economic law, which include; (1) commercial law; (2) trade law which is always referred to as commercial law (3) industrial law covering agriculture, property, banking, tourism, manufacturing industry, mining and others, (4) kharráj or tax laws; (5) laws governing bank and non-bank financial institutions that must avoid practices that contain elements of usury. The legal relationship is carried out according to the law so that it has the right consequences according to the law. All of this is in the agreement/contract which in Islamic law is known as al -' agd (contract).

The entire field of law above regulates sharia principles governing trade, trade and governance, including regarding who is the legal subject in all these activities justified according to sharia principles. Based on the description above, the legal basis for implementing Islamic economics in Indonesia consists of two categories,

namely normative legal basis and formal legal basis. Both of them simultaneously provide legal force for the application of Islamic economics in Indonesia. The normative legal basis comes from Islamic law which originates from the Al-Quran, Sunnah, and ijtihad. Technically, the provisions used in Islamic economic practices are designed and determined through collective ijtihad (ijtihad jamá' 1) by the MUI and DSN.

Meanwhile, the formal legal basis is based on the constitution of sharia economic law based on Pancasila as the basis of the state and statutory regulations. Constitutionally, data: and the 1945 Constitution Article 29 paragraph (1) which reads, that "The state is based on Belief in the One and Only God; and (2) The state guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs. Thus, in simple terms it can be said that as a logical consequence of the coherence of the Al-Quran and Sunnah as a form of "consistency of KYME principles" as referred to in the Preamble of the 1945 Constitution, then:

1. The Islamic economic system as an integral part of the totality of the contemporary Indonesian economic law system, its basic legal sources formally include Pancasila, as stated in the Preamble of the 1945 Constitution as a source of basic law, and the 1945 Constitution, which is a source of written basic law.
2. The economic system as a sub-system of Islamic muamalah law which is based on the normative provisions of the Koran and Sunnah as the main and first source of fundamental law, is essentially consistent and a real embodiment of the nature of "a state based on Belief in the One and Only God" as referred to in the provisions Article 29 paragraph (1) of the 1945 Constitution.

The explanation above basically just discusses the sources of national basic law. In addition, there are written legal sources that must be used as guidelines in making national laws. As previously stated, the construction of a source of law and order after entering the reform era is fully based on MPR RI Decree No. III/MPR/2000. In this MPR Decree, it has been concluded that the form of a source of written law is in the form of the 1945 Constitution as a source of written basic law which contains the basis and outline of law in the administration of the state.[52]

[52] Article 3 paragraph (1)

As for MPR RI Stipulations, Laws, Perpu, PP, Presidential Decrees, Regional Regulations, and PBI/KBI, all of them are located as sources of written law.[53] The order of laws and regulations is a guideline in making legal rules below it, where each lower legal rule may not conflict with a higher legal rule. In fact, all forms of other statutory regulations may not conflict with the provisions in the order of these statutory regulations.[54]

Satjipto Rahardjo[55] said that a written law in its current development has become the equivalent of statutory law. A written law is also referred to as enacted law (enacted law, statute law), or as a set of legal rules contained in various statutory regulations.[56] Written law includes statutes and treaties.[57] Written law includes statutes and treaties.[58]

On that basis, in practice, written sources of sharia economics as a sub-system in the totality of the national legal system include all forms of written legal sources that specifically form the operational basis of contemporary Indonesian economic activities. The said source of written law can cover all forms of statutory regulations based on the provisions of Article 2 and Article 4 paragraph (2) MPR RI Decree No. III/MPR/2000, as follows:

1. In the provisions of Article 2 it is stated that the concrete form of the order of laws and regulations consists of: a) the 1945 Constitution; b) MPR RI Decree; c) law; d) Perpu; e) PPs; f) Presidential Decree, and; g) local regulations;
2. In the provisions of Article 4 paragraph (2) it is stated that other forms of laws and regulations that may not conflict with the provisions in the order of laws and regulations are in the form of; a) Supreme Court Regulations or Decisions; b) BPK regulations or decisions; c) Ministerial Regulation or Decree; d) BI regulations or decisions; e) All forms of regulations or decisions of bodies, institutions or commissions of the same level established by the Government.

[53] MPRS Decree No. XX / MPRS / 1966,

[54] Article 2

[55] Rahardjo, Satjipto. *Ilmu hukum.*

[56] Kansil, Christine S. T. *Pengantar ilmu hukum*… .

[57] Soekanto, Soerjono, and Purnadi Purbacaraka. *Aneka Cara Pembedaan Hukum*. Bandung: Aditya Bakti, 1994.

[58] Rahardjo, Satjipto. *Ilmu hukum.*

The basic source of written law as the most important and first basis for sharia economics in the contemporary Indonesian legal system is the provisions of Article 29 of the 1945 Constitution. 10 of 1998, with all its implementing regulations in the form of PP, PBI or KBI and so on. The source of written law is in the form of PBI or KBI, apart from being based on the direct provisions of Law no. 10 of 1998, has also been strengthened by the provisions of Article 4 MPR Decree No. III/MPR/2000.

Meanwhile, written sources of law in the form of PP products that were valid before the enactment of Law no. 10 of 1998, and directly becomes the basis for the operational system of bank business activities based on sharia principles, including PP No. 72 of 1992. Apart from that, of course all laws and regulations that apply as a source of written law, whether directly or indirectly related to the operation of economic business activities, can also become a source of written law for the operational system of the sharia economy, as long as it is not contrary to the principles of Islamic sharia law. In this case, the DSN fatwa can be categorized as a legal source and a source of written law.

As for unwritten sources of law, C.S.T. Kansil[59] interpret it as a law that is still alive in people's beliefs, which, although it is not written, is obeyed in effect as well as obeying a statutory regulation. Meanwhile, Satjipto Rahardjo[60] call it an unenacted law (unenacted law, common law). Meanwhile, according to Purnadi Purbacaraka,[61] an unwritten law is synonymous with customary law, which in Indonesia is also called customary law. Adat means habit, namely an act that is repeated in the same way or form.

In the 1975 Seminar on Customary Law and the Development of National Law, among other things, it was stated that customary law is original Indonesian law that is not written in the form of statutes, which here and there contain elements of religion. Purnadi said that unwritten law is one of the oldest forms of law. An unwritten law is the result of the social life process of a society. For an unwritten law to live in society not on the basis of something written, it is also possible for an unwritten law to be recorded, that is, it is called a truly unwritten law. In addition, there is an unwritten law that may be recorded by the leader. formal and informal leaders, or by scholars on a research basis.

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[59] Kansil, Christine S. T. *Pengantar ilmu hukum*….

[60] Rahardjo, Satjipto. *Ilmu hukum*

[61] Soekanto, Soerjono, and Purnadi Purbacaraka. *Aneka Cara Pembedaan Hukum.*

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Hartono Mardjono[63] then practically in all civil or muamalah life, Islamic law has been applied to Muslims in Indonesia, if they so wish.

The study of civil law studies, especially in the field of contract law, is known for an unwritten source of law in the form of an agreement, or what is commonly also called an agreement. In the provisions of Article 1233 of the Civil Code, it is stated that an engagement, apart from being born because of a law, is also born because of an agreement. In connection with this agreement, what is referred to as "the principle of freedom of contract" applies."

Based on this "principle of freedom of contract", basically everyone can make an agreement with any content, as long as it does not conflict with the law, decency and public order. [64] In fact, according to the provisions of Article 1338 of the Civil Code, all agreements made legally are valid as laws for those (the parties) who make them, and based on the provisions of Article 1340 of the Civil Code an agreement is binding on the parties who make it.

3. Conclusion

Starting from the description above, it can be said that the source of unwritten sharia economic law can be in the form of an agreement based on the "principle

[62] Amrullah, Ahmad. *Dimensi Hukum Islam dalam Sistem Hukum Nasional.* Jakarta: Gema Insani (1996).

[63] Article 1338

[64] Satrio, Juswito. *Hukum Perikatan: Perikatan Pada Umumnya*. Bandung: Alumni, 1993.

of freedom of contract" and in the form of a custom (customary law) that lives in public belief and is commonly obeyed in banking activities, both in the form of a law that completely unwritten or in recorded legal form (documents). In the application of the contemporary Indonesian banking legal system, it is clear that the operational system of sharia principles as an applied form of Islamic sharia law is based more on "agreement rules based on Islamic law." This means that the operational system of sharia principles is wholly based on unwritten law based on the provisions of Islamic law. In this context, Islamic law functions as an "exclusive source of law" which is legal, valid and has formal legal legitimacy.

On that basis, as a logical consequence, all sets of Islamic legal rules that live and are freely obeyed by the community, both in the form of sharia provisions in the broad and narrow sense, or sharia provisions in the form of basic rules (zanni) as well as actual and detailed legal provisions (qat`i), all of which can be categorized as sources of unwritten law. In this context, Al-Quran and Sunnah as the argument naqlî and become the main legal source of Islamic sharia law, both in the sense as a source of material law (masâdir al-ahkâm) are included in the category as an exclusive source of unwritten law. Of course, ijma' and qiyas as propositions of aqlî (ijtihad) in the tradition of Islamic sharia law are also categorized as sources of unwritten law, and even a fiqh rule is included in this category.

Even so, all forms of unwritten legal sources in the economic field can automatically be used as unwritten legal sources for the Islamic economic operational system. In fact, an agreement based on the principle of freedom of contract, or a custom that is common in economic business activities cannot automatically become a source of unwritten law. An agreement based on the principle of freedom of contract is not enough just not to contradict the law, decency and public order. Everything must be based on the principles of muamalah based on the Al-Quran and Sunnah. Therefore, an agreement will only be binding and can be considered legally valid as a law for the parties who make it, if stated in accordance with the provisions.

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